The Planning Inspectorate

Appeal Decisions

Inquiry Held on 12, 14 and 15 June and 19, 20 July 2018

Site visit made on 12 June 2018

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2018

Land known as Kingfisher Farm, West Chiltington Lane, Billingshurst, West Sussex RH14 9DR

Appeal 1 Ref: APP/Z3825/C/16/3153910

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr John Casey against an enforcement notice issued by Horsham District Council.
- The enforcement notice, numbered EN/16/0092, was issued on 7 June 2016 (Notice 1).
- The breach of planning control as alleged in the notice is without planning permission the unauthorised use of the Land for the stationing and use of caravans for residential purposes for Gypsies and Travellers and non-Gypsies and Travellers.
- The requirements of the notice are:
    1. Cease using the Land as a residential caravan site.
    2. Cease using the Land for the stationing of caravans for residential purposes.
    3. Remove from the Land the caravans and associated residential paraphernalia.
    4. Remove from the Land all materials and debris resulting from compliance with the above requirements, and restore the Land to its condition before the breach took place by levelling the ground and re-seeding it with grass.
- The period for compliance with the requirements is six (6) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Appeal 2 Ref: APP/Z3825/C/16/3153915

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr John Casey against an enforcement notice issued by Horsham District Council.
- The enforcement notice, numbered EN/16/0092, was issued on 7 June 2016 (Notice 2).
- The breach of planning control as alleged in the notice is without planning permission the incidental operational development on the Land ancillary to the unauthorised use for the stationing and use of caravans for residential purposes on the Land, together with the formation of hardstanding and access track, erection of fences and gates, lighting, utility/dayrooms and stable blocks and laying of drainage pipes and septic tanks.
- The requirements of the notice are:
    1. Remove the incidental operational development in connection with the unauthorised residential use from the Land.
    2. Remove the access track, hardstanding, patios, plinths and steps from the Land.

3. Remove the drainage pipes and septic tanks from the Land.
4. Remove the fencing and brick piers and entrance gates delineating the individual pitches from the Land.
5. Remove the utility/day rooms, the stable blocks and sheds.
6. Remove the external lighting from the Land.
7. Remove from the Land all materials and debris resulting from compliance with the above requirements, and restore the Land to its condition before the breach took place by levelling the ground and re-seeding it with grass

- The period for compliance with the requirements is six (6) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Summary of Decision: The enforcement notice is quashed.

Appeal 3 Ref: APP/Z3825/W/17/3188942

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr John Smith against Horsham District Council.
- The application Ref DC/17/1184 is dated 24 May 2017.
- The application sought planning permission for use of land for the stationing of caravans for residential purposes for 11 no. gypsy pitches together with the formation of additional hardstanding and utility/day rooms ancillary to that use at Kingfisher Farm, without complying with conditions attached to planning permission granted on appeal Ref APP/Z3825/A/11/2150329, dated 19 December 2011.
- The conditions in dispute are Nos 3, 11 and 13 which state that:
  Condition 3: There shall be no more than 11 pitches on the site, as shown on drawing nos 09_312_005 & 006, with no more than two caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) stationed on each pitch at any time of which only one shall be a residential mobile home.
  Condition 11: The turning head shown on drawing nos 09_312_005 & 006 shall be provided prior to the occupation of any pitches and thereafter shall be retained solely for that purpose.
  Condition 13: No development shall take place until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. All approved planting shall be carried out in accordance with a timetable agreed in writing by the local planning authority. Any trees or plants which die, are removed or become seriously damaged or diseased within 5 years of planting shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- The reasons given for the conditions are:
  Condition 3: To minimise visual impact.
  Condition 11: To ensure the site operates properly.
  Condition 13: For a satisfactory appearance.

Summary of Decision: The appeal is dismissed

Appeal 4 Ref: APP/Z3825/W/17/3188945

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr John Smith against the decision of Horsham District Council.
- The application Ref DC/17/1185, dated 24 May 2017, was refused by notice dated 21

July 2017
- The development proposed is change of use of land as an extension to permission granted in appeal APP/Z3825/A/11/2150329.

Summary of Decision: No further action is taken on the appeal.

Preliminary matters

1. Itchingfield Parish Council did not have rule 6 status but was able to present evidence, cross examine the appellants' witnesses and make submissions. The oral evidence of Mr John Casey was given under solemn affirmation because he was the one witness who was able to provide first hand knowledge on disputed matters of fact.

Land at Kingfisher Farm

2. Kingfisher Farm lies to the west of the village of Barns Green and was formerly one large field of some 5 hectares. The eastern part of the field has been developed as a caravan site.

3. A highly relevant episode in the planning history was the grant of planning permission on appeal on 19 December 2011 for a gypsy caravan site of an irregular shaped area of land within the larger land parcel (the 2011 permission)[1].

4. The issue as to whether the permission was lawfully commenced and remains extant is fundamental to all appeals and will be addressed after clarifying various matters regarding the enforcement notices and Appeals 3 and 4.

Enforcement notices

5. On appeal there is the power to correct any defect, error or misdescription in the enforcement notice provided that the correction will not cause injustice to the appellant or the local planning authority (s176(1))[2].

6. The grounds of appeal did not claim that the notices did not tell the appellant what he had done wrong and what needs to be done to put it right. There were no ground (b) appeals. Nevertheless I requested comments from the Council and the appellant on several matters to do with the way the alleged breaches of planning control were described.

7. In terms of Notice 1, headed Material Change of Use, the allegation refers to a single primary use of the Land, not an act of development. I also sought clarification as to whether all the Land was alleged to be a caravan site because much of the western part of the land appeared undeveloped.

8. As to Notice 2, directed at operational development ('the ops'), the description of the alleged breach referred to incidental operational development ancillary to the unauthorised use and yet the incidental works were in a separate notice to the use. Furthermore the type(s) of work involved were not detailed, as distinct to the additional works, namely the formation of the hardstanding and access track, the erection of fences and gates and so on.

[1] Appeal ref APP/Z3825/A/11/2150329 dated 19 December 2011
[2] The reference is to the relevant section in the 1990 Act

9. At the beginning of the inquiry submissions on these and related matters included reference to the history of use and ownership of the Land, some consideration of the planning unit and whether there was a mixed use, and the facilitating nature of 'the ops'. Mr Rudd for the appellant suggested combining 'the ops' and use in a single notice.

10. During the adjournment the Council put forward an amended form of words for Notice 1, which in effect would combine the alleged unauthorised developments into one notice. The Land remains the same area covering the larger land parcel. The appellant confirmed that no injustice would arise from proceeding on the basis of a single notice but remained concerned that the Land had not been reduced in area to coincide with the existing extent of the caravan site.

11. The Land identified by Notice 1 is bounded by West Chiltington Lane to the west and extends over a large field that is now occupied on the eastern part by a caravan site. Notice 2 relates to the same area of Land. The Land is enclosed by mature hedgerows along the northern, eastern and western boundaries. Some mounding has taken place along the southern boundary. The Land is linked to the highway and is served by a single principal access track along the northern edge.

12. By way of background, the Council's summary of 'relevant planning and enforcement history' indicates that over the period 2012 to the end of 2015 development took place on the eastern part of the Land in connection with establishing a caravan site. During that period the Council raised a number of matters related to compliance with planning conditions attached to the 2011 permission. In the early months of 2016 the numbers of caravans on the land increased. A report of a site investigation on 16 May 2016 refers to 61 caravans, encroachment into the field and the installation of a new sewerage system by the laying of pipes across the adjoining field.

13. The Council applied for an injunction and on 20 May 2016 an Order was made that prevented further caravans being stationed on the land, building or engineering operations (including the creation of a hard standing or laying of pipes) and the bringing on of materials unconnected with the use of the land for agriculture. The enforcement notices were issued shortly after on 7 June 2016, the Land affected being the same area as that defined on the Order plan.

14. Land Registry details for 17 May 2016 showed that much of the Land, including Plot 8 and extending to the West Chiltington Lane boundary, was under a single title in the names of Christopher Ball, Maurice Black and Wisdom Penfold. The other ten plots were in different ownerships. In the Council's view the title boundaries were not reflected on the ground.

15. The Council's documents also included a series of aerial photographs of the Land over the period 2005 to October 2015. Noticeable new development dated from September 2012, with the developed area gradually expanding in size. The photograph dated October 2015 indicates the formation of a track running across the land between the southern end of the caravan site and the south west corner, near to West Chiltington Lane.

16. Therefore in the period leading up to the issue of the enforcement notices the recent history of breaches of planning control, the details of the injunction Order, the lack of a distinct boundary between the area of development and

the adjacent land, and the pattern of land ownership all indicated that the affected Land should encompass the whole of the area and not be confined to the eastern side of the site.

17. The Land was physically distinct and served by a common access and track. Occupation was encroaching into the wider area and in places internal boundary fencing was removed to enable this encroachment to occur. The large influx of caravans in May 2016 indicated that occupation was not in all cases limited to the owners of pitches. The details of the owners of the land included with the enforcement notices and the subsequent witness statements provided for the appeals suggested that ownership of plots of land was not stable and was changing hands. The evidence leads me to conclude that at the time of June 2016 the circumstances were such that the Land was a single planning unit.

18. The inclusion of the ops into the material change of use notice makes good sense because the laying of the hardstanding and formation of the access track, the definition of the pitches, the drainage works, the associated structures and so on are integral to the change of use. The development as a whole would be able to be assessed through a single ground (a) / deemed planning application. It is not necessary to refer to the ops in the description of the alleged breach and therefore the amended description is acceptable in that respect. I intend to maintain the wording 'mixed use' because there is sufficient evidence to support the use of that term at the time the notice was issued, as set out in considering the extent of the Land. The two component primary uses are clearly stated and appropriately the reference to the nature of the occupation is deleted.

19. The single corrected notice incorporates consequential amendments to the reasons for serving the notice.

20. A notice directed at a material change of use is able to require the removal of the works integral to the use so that the land is restored to its condition before the breach took place. The amended requirements reflect that approach. The original requirement to level the ground and re-seed with grass has been omitted, which deals with the single matter raised in the ground (f) appeals.

21. The time for compliance now incorporates two periods, 6 months to cease the use and remove the caravans and 8 months to complete the requirements in order to restore the land. I will consider the reasonableness of the two periods if necessary under the ground (g) appeal.

22. In conclusion I intend to make corrections and related variations to Notice 1 substantially in the form set out in the amended notice submitted by the Council. As a result Notice 2 will be quashed. The evidence related to the ops will be considered as necessary through the grounds of appeal in respect of Notice 1. I am satisfied that no injustice will be caused to the appellant or the Council by this course of action.

Appeal 3: variation of conditions

23. The main purpose of the application was to regularise the existing layout of 11 pitches on the site along with the material change of use application for the extension (Appeal 4). The application also sought to increase the number of

caravans on each pitch, apart from pitches 3 and 6. The result would be an additional 28 caravans, of which no more than 14 would be mobile homes. By comparison with the 2011 permission, the proposal is for 11 pitches with 50 caravans as opposed to 11 pitches with 22 caravans.

24. The Council decided it could not determine the application because "as the original application granted at appeal …. has lapsed the proposed application to remove/vary the original conditions is precluded by s73(4) of the TCPA 1990". The second reason was that the site area identified on the submitted location plan is different (smaller) than the area identified on the proposed and existing site plan.

25. It appears that the red line on the location plan 16_786_001 at scale 1:1250, identifying the application site, is in the same position as the red line on the location plan for the 2011 permission. However, the 1:500 scale plan of the proposed site, (and existing site), shows a site layout on a larger area. It follows that the layout plan supporting the variation of conditions is not for the same site area granted planning permission in 2011. My initial view was that the layout plan could not be taken into consideration.

26. During the adjournment of the inquiry the appellant submitted a revised plan (ref 16_786_011 rev A). The site layout of the pitches illustrated on the plan generally corresponds to the pitch layout on the ground. On the western side of the caravan site the layout cuts off part of pitches 7 and 8, because they are on land outside the area granted permission in 2011.

Appeal 4: extension to caravan site

27. The proposal is for the area of land that falls outside the area granted permission in 2011 and which has been developed as part of the existing caravan site.

28. The OS 1:1250 site location plan identifying the red line of the site shows a roughly rectangular shaped parcel of land centrally located within the larger area of ownership (the blue land). The appellant's supporting statement and plans indicate that the proposed change of use is to be considered as part of the caravan site adjacent to the east.

29. An amended/additional plan ref 16_786A_011 was submitted on 2 July 2018 that shows the remaining part of pitches 7 and 8 excluded from the amended site layout supporting Appeal 3.

30. The highway authority made an objection to the proposed extension to the site in view of its concerns about the wider impact on the highway network and highway safety, especially in relation to the site access. Following the submission of detailed information and assessment of highway matters on behalf of the appellant, the highway authority agreed that the impact of the proposed development would be acceptable and the objection was withdrawn. As a result neither the Council, nor the Parish Council, pursued the matter further at the inquiry[3].

[3] See the signed statement of common ground on highway matters dated 6 June 2018.

The 2011 permission

31. Permission was granted 'for use of land for the stationing of caravans for residential purposes for 11 no. gypsy pitches together with the formation of additional hard standing and utility/day rooms ancillary to that use.' The permission was in accordance with the terms of the application ref DC/10/1041, dated 2 July 2010, and was subject to 15 planning conditions. The plans submitted as part of the application included plans of the site layout and therefore these plans were approved.

32. The Council confirmed at the inquiry that it was no longer part of its case that the permission lapsed because the site was not laid out in accordance with the approved drawings referred to in the 2011 permission. That being so the Council's case on the lawfulness of the development rests solely on the issue of conditions precedent.

33. The two conditions relevant to whether the permission was lawfully commenced, and remains extant, are:

    - Condition 9: "*No development shall take place until details of the finished levels of the access road and hardstandings in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details*".

    - Condition 15: "*No development shall take place until details of sewage disposal and surface water drainage have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the occupation of any of the pitches".*

34. An initial consideration is whether these conditions were breached. Tracing through the correspondence on the matter of discharge of conditions, it is clear that in July 2012 the Council confirmed that the submitted details on external lighting, the colour of the render for the utility dayrooms, the height of fencing and refuse and recycling provision were all acceptable[4]. Further information was requested in respect of condition 9 (proposed heights in comparison to existing ground levels, cross sections) and condition 15 (including soakaway details in relation to proposals for sewage disposal, management of surface water run off).

35. Following the submission of some further details the Council advised in November 2012 that details were outstanding on the larger hardstanding area that comprises the site pitches (Condition 9). In addition a request was made for details/results of percolation tests, details of access to the proposed Klargester, the design and construction of a soakaway and means of disposal of excess water (condition 15). The position was reviewed by the Council in May 2013, when all registered landowners and GPS as agent were informed of the outstanding matters. The matter was followed up again by the Council in writing in December 2013.

36. The appellants made reference to 'some confusion as to what approval was given informally'. In his evidence Mr John Casey (Plot 5) stated that some 15

[4] Letter dated 12 July 2012

months after he moved onto the land he installed his own treatment plant and that he told the Council when the work was done. A few people came to look at the plant but he was not able to recall who came or when. He maintained no-one from the Council ever said on site that anything he had done on his plot was wrong, although he had no knowledge of the written correspondence (referred to above). In my view Mr Casey's account provided no basis for concluding even informal approval was given for the means of sewage disposal and surface water drainage.

37. In conclusion, there is no record in the appeal documentation to show that all the necessary information was submitted and approved in writing by the local planning authority in accordance with the requirements of conditions 9 and 15. By the end of the inquiry the appellants accepted that conditions 9 and 15 were not formally discharged by the local planning authority.

38. Accordingly the issue as to whether the permission was lawfully commenced and remains extant centres on whether condition 9 and/or condition 15 are true conditions precedent.

39. The closing submissions on behalf of the appellants, the Council and Itchingfield Parish Council set out principles derived from case law, notably *Whitley & Sons v Secretary of State for Wales*, *R (on the application of Hart Aggregates Ltd) v Hartlepool Borough Council*, *Greyfort Properties Ltd v Secretary of State for Communities and Local Government*. The appellants also drew attention to *Bedford Borough Council v Secretary of State for Communities and Local Government and Aleksander Stanislaw Murzyn*, which endorsed the approach taken in *Hart*.

40. The initial matters to consider for each condition are:

    - whether the condition prohibits development without compliance with it and hence can be categorised as a pre-commencement condition, and
    - whether the condition goes to the heart of the permission as matter of judgement.

Condition 9

41. A key phrase is *No development shall take place*, which clearly prohibits any development until approval of the required details of the finished levels of basic infrastructure of the development. The more contentious point between the parties is the second test.

42. The reason for the condition is to ensure a satisfactory appearance of the development. The development, as described in the permission, is (a) for the stationing of caravans for residential purposes for 11 no. gypsy pitches, and (b) the works involved in the laying of additional hardstanding and the erection of utility/day rooms. The approved layout plan shows the term 'hardstanding' applies to the base for the main body of the site where the caravans are to be stationed, the internal access track between the pitches and the access track linking the caravan site to the highway. The hardstanding is an element of the development that is integral to the use. It was intended to cover a very substantial part of the overall site. The utility/day rooms, not the hardstanding, are described in the permission as ancillary to the use. This functional relationship to the primary use is confirmed by condition 7 which requires the

utility/day rooms to be used only for purposes ancillary to the use of land at Kingfisher Farm as a caravan site.

43. The laying of the hardstanding is fundamental to delivering a caravan site in the form and with the layout shown on the approved plans. The final finished levels could reasonably be expected to affect the depth of any necessary excavation and how the base course of the hardstanding would be laid. The required information, including the reference back to pre-development existing ground levels, would need to be approved before any development commenced to ensure the scheme could be progressed in accordance with an agreed plan. The way that the finished levels of the hardstanding, including the access tracks, related back to existing ground levels and topography would be an important factor in ensuring that the site was not harmful to the appearance of the area and was well integrated into its surroundings. This was a very significant factor that resulted in the balance being in favour of the proposed use.

44. The appellants have sought to distinguish the nature of the approved development involving a material change of use of the land from a development that involved the erection of building, where the finished floor levels would be fundamental to the construction process. However for the reasons set out above the proposed levels are not minor details and would be essential to proper and acceptable development of the site. The establishment of the agreed levels of the hardstanding in this development would be the equivalent to the finished floor levels in a building. The importance of the details of the levels of the hardstanding to the laying out of the pitches is indicated in the correspondence on the planning conditions. The condition is not akin to a condition requiring approval of materials for a building where approval may be acceptable post commencement.

45. The condition does not require development to be carried out in accordance with the approved details, either prior to occupation or in accordance with a specific timetable. However, reading the permission and conditions as a whole, the tarmacadam turning head on the layout plan, the provision of the approved refuse storage facilities and the approved fencing enclosing each pitch has to be erected to the approved height, all before occupation (conditions 10, 11 and 12). Logically the approved hardstanding would need to be in place prior to the provision of the turning head and the fencing (because the approved height would be measured from the final ground level of the hardstanding). Therefore this consideration does not lessen the significance condition 9 but rather confirms it.

46. My conclusion is that condition 9 is central to the development and is a condition precedent.

Condition 15

47. The opening phrase of the condition very clearly states that no development should proceed until the means of drainage has been approved. Furthermore, the approved scheme for drainage and surface water disposal should be carried out before the occupation of any pitches. Therefore the condition is fundamental to delivering the material change of use to a caravan site.

48. As to the second stage, the reasoning in the decision letter identifies drainage of the site as a matter of local concern due to the clay soil. The inspector reports no technical objections, subject to details of both foul and surface water drainage being provided. He considered that there was no reason to suppose a solution could not be devised because the appellant owned the adjoining land to the south west. The section on conditions in the inspector's decision refers back to this earlier reasoning to justify a condition requiring drainage details.

49. Against this background set out within the appeal decision the acceptability of the use is dependent on resolving satisfactorily how the site will be drained. The correspondence on compliance, with reference to a range of technical matters of concern, demonstrates well the especial significance of the condition for this site development. Having an adequate system in place from the outset would be essential for the health and amenity of the site occupants and nearby residents or visitors to the area. Consequently condition 15 goes to the heart of the permission and is a true condition precedent.

Exceptions

50. In accordance with the *Whitley* principle development commenced in contravention of planning conditions 9 and 15 and therefore is development without planning permission.

51. In recognition that the principle needs to be applied flexibly, a number of exceptions have emerged thorough the subsequent judgements. The appellants did not rely on any exceptions in this case or suggest a new exception for consideration.

Overall Conclusion

52. Conditions 9 and 15 are fundamental to achieving the material change of use of the land within the terms of the 2011 permission. They are pre-commencement conditions that go to the heart of the permission. Work relied on to commence the planning permission was carried out in breach of those conditions. None of the *Whitley* exceptions apply.

53. Therefore the permission was not lawfully commenced. Having regard to condition 1 that requires the development to commence no later than 19 December 2014 (three years from the date of the decision) the permission is no longer extant.

54. In brief this conclusion has fatal consequences for Appeals 3 and 4, as will be explained more fully later in this decision. I now turn to Appeal 1.

APPEAL 1

Appeal on ground (c)

55. The main issue is whether the matters alleged in the notice (as proposed to be corrected) constitute a breach of planning control.

56. Development requiring planning permission had occurred. The appellant's case relied on the 2011 permission being extant.

57. I have concluded for the reasons stated above that the 2011 permission is not extant. It follows that the caravan site on the land subject to that permission

does not benefit from the necessary planning permission and is a breach of planning control.

58. The appellant accepted that the western part of the caravan site, subject to Appeal 4, amounted to development without the necessary planning permission and was a breach of planning control.

59. The appeal on ground (c) fails.

Appeal on ground (a), deemed planning application

Main issues

60. The deemed planning application is directly derived from the description of the breach of planning control as proposed to be corrected. Therefore the caravan site development includes the related incidental works such as the access track, hardstanding, utility and day rooms and sheds. The use of the remaining land for agriculture is not contentious and is acceptable, although the unauthorised use is the mixed use and shall be determined as such.

61. The conclusion that the 2011 permission is not extant and the failure of the ground (c) appeal means that the baseline position is one of a greenfield site. Nevertheless the Council raised no objection to an 11 pitch caravan site with a similar footprint to that approved under the 2011 permission. This approach is consistent with the proposed allocation of Kingfisher Farm for 11 pitches in the draft Site Allocations Development Plan Document (the draft DPD). The Council's main concern is the potential of the current development to accommodate some 50 caravans (as proposed in Appeals 3 and 4), compared to the 22 caravans found acceptable in 2011.

62. The Parish Council confirmed that it has always maintained an objection to the principle of development at Kingfisher Farm. However it recognised the difficulty of sustaining this objection given the inspector's decision in 2011, the Council's current case, the proposed allocation of 11 pitches and the Council's acceptance of unmet need and an absence of a 5 year land supply. The key issue for the Parish Council is the extent and intensity of the existing/proposed development.

63. The main issue focuses on the scale, form and details of the site development, having had regard to the stated position of the Council and the Parish Council, the common ground on there being an unmet need and absence of a 5 years' worth of deliverable sites, and the decision by the inspector in 2011. More specifically the issue is whether or not the caravan site element of the mixed use is compatible with its surroundings, taking particular account of the design and layout, including the number of pitches and caravans, the effect on the character and appearance of the land and the local landscape, and the effects on the nearest settled community and infrastructure, on and off site.

64. The following issues are also relevant: the existing level of local provision and the need for sites, the availability (or lack) of alternative accommodation for the occupiers, their personal circumstances including their human rights and the best interests of the children. In the event planning objections are identified consideration will be given as to whether they are able to be overcome or suitably mitigated by the use of planning conditions.

65. The occupation of the caravan site has been primarily by gypsies and travellers, although in the period before the issue of the enforcement notice the Council recorded that some occupiers did not enjoy this status. At the inquiry a number of the current occupiers and owners of the pitches gave evidence about their travelling lifestyle and employment. This evidence confirmed that members of these family groups have gypsy status within the terms of the definition in the Planning Policy for Traveller Sites (PPTS). The merits of the development were assessed by all parties on the basis of the caravan site component being occupied by gypsies and travellers and I will do likewise. Race is a protected characteristic and therefore the public sector equality duty (PSED) applies [5].

66. In determining the appeal under s174 there is provision in s177 of the 1990 Act to grant planning permission in respect of the whole or any part of the matters stated to constitute the breach of planning control or all or part of the land to which the development relates.

Policy

67. The development plan includes the Horsham District Planning Framework (excluding South Downs National Park) (the HDPF) adopted in November 2015. The Introduction emphasises that all policies are inter-related to one another and the document should be read as a whole.

68. The site is outside the built–up area boundaries for Barns Green. Policy 26 applies, which seeks to protect the rural character and undeveloped nature of the countryside against inappropriate development. The Council accepted that a traveller caravan site may be acceptable in a countryside location and that criterion 4 of the policy, on sustainable development of rural areas, enables allocation of such sites. Policy 23 sets out the criteria for consideration when determining planning applications for non-allocated gypsy and traveller sites. Further policies will be referred to when considering each of the issues.

69. The replacement National Planning Policy Framework was published on 24 July 2018 (the Framework). The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication. The main parties were invited to submit comments on the implications of the policy changes in so far as relevant to their respective cases and the response will be taken fully into account.

70. The Planning Policy for Traveller Sites (PPTS) should be read in conjunction with the Framework and is a material consideration in planning decisions.

Effects of the development

71. A survey of the site was carried out on 4 November 2016 and the appellant confirmed that the existing site layout shown on plan ref 16_786_002 was the position on the ground at that time. The Council did not have any contrary information and at the inquiry it was agreed that the plan probably reflected the basic layout around the time the notice was issued in June 2016.

72. In 2016 the caravan site occupied much of the eastern part of the site, linked to West Chiltington Lane by a hardsurfaced track along the northern boundary.

[5] Section 149 of the Equality Act 2010

The 11 pitches were laid out in a block, with 10 pitches having access onto a central internal road. The access to pitch 11 was directly onto the main track to the north. On the east side of the road 6 pitches extended up to the boundary and 5 pitches were on the western side of the road. The western boundary was irregular in alignment with an area of rubble/hardcore identified to the rear of pitches 8, 9, 10 and 11. The pitches were generous in size, particularly pitch 7. The pitches and access were shown to consist of hardstanding, apart from a few small areas of green space. A caravan was present on pitches 6, 7, 8 and 10 with two caravans and two structures on pitch 5. Small structures were indicated also on pitch 2, 4 and 7. There was no specific detail to indicate means of enclosure or the type of boundaries of the pitches.

73. Therefore in November 2016 the basic layout consisted of an extensive hard surfaced area divided into 11 pitches with a low level of occupation. On the appeal site visit about 18 months later the level of occupation was very noticeably greater, with one or more mobile homes on each pitch, touring caravans, day rooms, sheds, external lighting, other residential paraphernalia and various types of walls and fences.

74. Compared to the approved layout plan for the 2011 permission, a larger area is hardsurfaced. It appears that pitches 1 to 6 took in the width of the internal track, the gap to the eastern boundary was reduced and pitch 1 extended close to the northern boundary. Pitches 7 to 11 extended further to the west, including into the area of proposed amenity space. This change was confirmed on the site visit, when the western boundary of pitch 7 on the approved 2011 layout was identified to be equivalent to the inner edge of the central green space. The western boundary is not clearly defined because of the encroachment of hard surfacing and gaps in the fence through to the land behind. The appellant described the current area as being equivalent to some 25 pitches, which I agree is a more accurate reflection of the size of the caravan site. Also a simple comparison of the red line site areas does not give an accurate reflection of the difference in the scale and intensity of development. The red line of the 2011 area was drawn generously to allow for boundary landscaping, a large area of amenity space, a curving alignment of the main access track and a package treatment plant.

75. With these considerations in mind, an 11 pitch layout as established on the ground by July and November 2016 forms the starting point for the planning assessment, although a level of occupation of the caravan site is not fixed by the description of the deemed planning application. A planning condition(s) would be the mechanism for doing so by controlling the number and type of caravans. A principal concern of the Council was the completely unrestricted nature of the numbers of residents on the site. The current ownership and occupation of the land[6], together with the pitch size, indicate a strong probability that the number of caravans would be in the order of 50 rather than the 22 caravan limit imposed through the 2011 permission.

Character and appearance

76. The brief description of the surroundings in the 2011 appeal decision is still very relevant today.

[6] A plan was submitted by the appellant detailing the current adult residents of the pitches.

77. The surrounding area is rural and characterised by an undulating topography with small woodlands, tree belts and mature hedgerows that help to define the linear field pattern. The sense of enclosure is strong. The long established farmsteads and village development now exist alongside the modern settlement, which often has a more suburban character. The local mix of traditional building materials includes timber framing, weatherboarding, brick and tile hanging. To the west of West Chiltington Lane a grade II listed building, Pear Tree Farmhouse, is the only identified significant contributor to cultural heritage. A fishing and camp site lies on the edge of Barns Green. The very recent gypsy caravan pitches at Greenfield Farm have extended linear development along Valewood Lane round into West Chiltington Lane. Caravan site development now forms part, but not a dominant feature, of the local settlement character. The local public rights of way network is quite extensive in the vicinity of the camp site, linking through to the surrounding country lanes.

78. The development has retained the field boundaries on three sides of the land and the mature hedgerows and trees are a strong landscape feature. Built development is confined primarily to the eastern half of the land. Nevertheless the site coverage of the residential use is very significant and is characterised by hard urban forms including extensive areas of hardstanding, the internal road now black topped, external lighting and fences and brick walls, together with static and touring caravans and associated structures. The western part of the land does not appear to be actively managed and shows signs of encroachment such as near the site entrance and near the southern boundary. At the time of the site visit a small number of ponies owned by the site residents were grazing on the land.

79. In 2011 the inspector concluded that the significant concentration of urbanisation would detract from the intrinsic open nature of the countryside. The size of the site would result in a negative impact on area character, although the degree of harm would not be great. In this case the larger site undoubtedly has a harmful effect on local landscape character. The Council considered that the additional footprint would not be of a size that would significantly change the harm considered acceptable before. The concern was directed to the effect of the new layout on the reduced scope for landscaping, particularly by pitch 1 and the further urbanisation of the area and related impacts through an increase in the number of caravans, activity and external lighting. The degree of landscape harm would be greater than assessed in the site allocation DPD.

80. I share those concerns. A more effective use of land would be achieved but with a less satisfactory layout. An increase in caravans, facilitated by the larger hardsurfaced pitches, would also be accompanied by more structures, such as day rooms, utility rooms, sheds and stables. The amount of activity would increase and further extension into the agricultural land could occur, unless adequately controlled by condition. The development would not be in character with the countryside surroundings.

81. The caravan site is set well back from West Chiltington Lane. The local topography and presence of mature landscape features provide good natural enclosure. As a result the caravan site is not prominent in views from the wider surrounding area. Vehicular movement in the north east corner of the site is

visible from the public right of way to the north and there are limited views of the development from the access on West Chiltington Lane. Overall the effect on visual amenity and the appearance of the local landscape is minor on the basis of the current extent of each of the component uses.

82. The development does not exist in isolation from Greenfield Farm to the south, where there has been an increase in the number of authorised pitches to 14. Unlike the appeal site, the layout has a linear form fronting onto Valewood Lane and West Chiltington Lane, enclosing the land behind. The presence of an increased number of pitches / caravans nearby at Greenfield Farm does not justify additional development at Kingfisher Farm. To the contrary, containing the area of caravan site development and maintaining settlement patterns and quiet rural character assume greater importance.

83. In conclusion, the harm to the visual amenity and the appearance of its surroundings is limited. However, the development results in harm to landscape character, harm that is increased markedly by the cumulative impact. The caravan site is not sensitively designed to mitigate its impact on its surroundings and would be the dominant component of the mixed use if occupied close to its maximum capacity. There is a lack of compliance with criterion (e) of Policy 23 of the HDPF and the high quality of design sought by Policy 32 is not achieved. The area of the component uses and the total number of caravans are important to ensuring an acceptable scale of development, appropriate to its countryside character and location in accordance with Policy 26.

84. Policies 23 and 26 are broadly consistent with the Framework, a matter agreed by the appellant. Policy 32 is directed at all development, not only housing and in my view is also broadly consistent with the Framework. Optimising the potential and making efficient use of the site to a level of development, as sought by the appellant, have not secured a well-designed layout. The balance sought by the Framework, between promoting an effective use of land in meeting the need for homes (in this case pitches) and safeguarding the environment, has not been achieved.

Nearest settled community and local infrastructure

85. This consideration is derived from the PPTS which states that sites in rural areas should respect the scale of and not dominate the nearest settled community and avoid placing an undue pressure on local infrastructure. This requirement reflects an aim of the PPTS to reduce tensions between settled and traveller communities.

86. In the 2011 decision the inspector took account of the residential properties within a 500 metre radius of the site, the village of Barns Green and outliers (300 houses in total) and the 1,000 or so inhabitants within Itchingfield. His overall conclusion was that the proposal for 11 pitches (22 caravans) would not dominate the nearest settled community even in combination with other pitches.

87. Since then there have been various occurrences and permanent changes. Information has been updated and representations received on and evidence presented for the current appeals. The Parish Council confirmed that some 80 new houses had been built in Barns Green and estimated a population of

around 2,000 in Barns Green and Itchingfield. Planning permissions were granted in 2014 and July 2017 for extensions to the Greenfield Farm gypsy caravan site, providing a total of 9 additional pitches. In 2016 complaints were received from local residents about anti-social behaviour allegedly linked to the site and increasing numbers of caravans arriving. The Council's investigations reported up to 61 caravans on the land and unauthorised works taking place, leading to an injunction being obtained on 20 May 2016. The Council also reported that in December 2013 police had attended the site in connection with incidents.

88. Support for the Parish Council to oppose the appeal was given through consultation on the Neighbourhood Plan by a public survey and at two well attended meetings on 7 June 2016 and 6 June 2017. The Parish Council also received reports about disruption to the village centre, attributed to occupants of Kingfisher Farm. Representations in September 2016 were made by individuals and business owners who stated they had experienced first hand intimidating behaviour by people from Kingfisher Farm and who referred to incidents when the police attended. On the other hand the Parish Council acknowledged at the inquiry that residents and children from the site have had a positive impact in the local school. The Local Policing Branch of Sussex Police had no comments in respect of the Appeal 3 application and no major concerns regarding the Appeal 4 application from a crime prevention perspective.

89. I agree with the inspector in 2011 that the nearest settled community is not confined to the residential properties within the immediate vicinity of the site but takes in Barns Green and outliers at the least. Based on current ownership and occupation, there would be roughly double the number of households on site by comparison with the occupation envisaged in 2011. Bearing in mind the expansion in permanent dwellings, dominance solely in terms of population is not evident.

90. The Parish Council placed emphasis on social dominance on a daily basis and this was supported by detailed representations, which are not able to be dismissed lightly. The Council's factual reports of incidents on the site in December 2013 have not been disputed. Later contact with site residents focused on their wish to resolve the outstanding planning issues. The reported incidents and occurrences of anti-social behaviour all pre-dated the enforcement notice and appear to have coincided with the early period of site development and the unauthorised encampment in 2016. Significantly there have been no reports of similar incidents more recently. Residents of the site who gave evidence at the inquiry spoke of wishing to have a base from which to travel to earn a livelihood, ensure their children had a good education and to be near members of their extended family. Such aspirations should be compatible within the wider community.

91. The implications for local services and facilities were not illustrated by facts on school rolls, medical centres, shops, community buildings, open spaces and such like. In a rural area an increase in residents and new households may offer a means of supporting declining services. The limited information available indicated that there is capacity at the new primary school in the village. Therefore it is does not follow that doubling the numbers of caravans on site would be likely to dominate local services and social infrastructure and community provision.

92. Traffic surveys carried out over a week in March 2018 confirmed that the local roads are lightly trafficked and that even on single track lanes with passing places traffic flows, including those from the development, are able to be accommodated without adversely affecting their operation. Levels of traffic movements generated by the caravan site were shown to be within the day to day variation of traffic on the local roads. Therefore the capacity of the highway network is adequate to absorb the existing level of development. A review of accidents over a five year period and detailed consideration of visibility at the site access confirmed no risk to highway safety. Accordingly there is support from criterion 1 of Policy 40.

93. In terms of infrastructure related to essential utility services, consideration of condition 15 attached to the 2011 permission highlighted the importance of resolving surface and foul water drainage before occupation because of the ground conditions. Further support for that requirement is provided by the Council's evidence together with consultation comments, including those from the Environment Agency on the need for adequate foul drainage provision and Southern Water on the use of sustainable drainage systems. More particularly the Council referred to the pooling of water in the south west corner of the land, probably caused by inappropriate design of the soakaways, and the need for drainage field disposal to be used only when percolation and trial hole tests have been favourable. The environmental health officer was concerned in June 2017 about flooding from a ditch onto the road at the Kingfisher Farm entrance. It appeared that sewage treatment package plants serving the site ran into the ditch and that over-occupation of the site was contributing to the problem. In their evidence residents of the site stated that they had obtained the necessary certification but no documentation was provided to clarify exactly what had been approved.

94. Therefore the larger pitches and increased level of occupation have implications for local infrastructure, health and environmental protection. In the absence of a comprehensive scheme to show how surface and foul water would be disposed satisfactorily the development fails to comply with Policy 24, more particularly criterion 2. It may be that, as observed in the 2011 decision, there are no overriding technical objections but it is important that the drainage systems are suitably designed and take full account of the ground conditions and the level of occupation. It has not been shown the site can be properly serviced and that the development is compliant with criterion (c) of Policy 23 and Policy 39 on infrastructure provision.

95. There is the potential for cumulative effects with the authorised expansion Greenfield Farm, which is "noted" in the draft DPD December 2017. The Council's Sustainability Appraisal of November 2017 states that "current assessments through planning applications have not identified any showstoppers in this respect". The appraisal would have been based on the level of development envisaged in the 2011 permission and therefore has to be treated with caution in respect of the probable level of occupation associated with the unauthorised development. However, the concerns raised in the current appeal have not been substantiated with evidence and no adverse implications are identified or quantified. Consequently in the absence of any identified harm I am unable to attach significant weight to this matter.

96. In summary, doubling the number of households on site would not dominate the nearest settled community. There is not the evidence to substantiate harmful cumulative impacts on social and community facilities and the highway network. However, undue pressure is being placed on ground conditions and capacity of the drainage infrastructure with unacceptable potential consequences for the health of the site occupiers, general amenity and the local environment. The relevant development plan policies are consistent with the Framework, which emphasises the importance of healthy places.

Other policy considerations

97. With reference to the Sustainability Appraisal November 2017 the land is not located in an area of flood risk. No constraints exist in terms of ground stability or proximity to hazardous installations. Criterion (a) of Policy 23 is met in respect of these matters. Matters concerned with drainage are considered above in relation to local infrastructure.

98. The highway assessment submitted in respect of Appeal 4 has demonstrated that the site is served by a safe and convenient vehicular and pedestrian access and the development should not result in a significant hazard to other road users. There is no concern linked to criterion (b) of Policy 23 and criterion 9 of Policy 40 is met.

99. The site is more than large enough to provide adequate vehicle parking and circulation space, play areas and ensure amenity for residents is safeguarded. The current layout does not provide any play areas, in terms of a separate area outside of the hard surfaced pitches. The possible intention, as indicated with the plans submitted with Appeals 3 and 4, is that an amenity space would be provided close to the main access on the northern side of the hardsurfaced area (plan ref 16_786_003). This would expand the caravan site further at the expense of the undeveloped agricultural land. Also, in the 2011 approved layout a way was shown between pitches 8 and 9 to gain convenient access from the main body of the pitches, but no such way is reserved in the current layout. Full compliance with criterion (c) has not been demonstrated. Referring to PPTS, the opportunity has not been taken to encourage healthy lifestyles by ensuring adequate landscaping and play areas for children.

100. The site is located near to Barns Green, categorised as a 'medium village' by Policy 3 of the HDPF that provides some day to day needs for residents. The nearest higher order settlement is Billingshurst, about 4.5 km away. The possibilities of various modes of travel have been considered in some detail in the appellant's evidence, the Council's recent sustainability appraisals and the 2011 decision. In my view there are options for using other means of transport than a car, although less so for people with disabilities, the elderly or the very young given the distances involved and the nature of the routes. The use of the private car would be the more convenient and safer means of transport and hence probably would be the predominant mode of travel. Nevertheless, with reference to the policy criterion, I conclude that the site is near to an existing settlement and is within a reasonable distance of a range of local services and community facilities. Criterion (d) of Policy 23 is met and no conflict arises with the relevant criteria of Policy 40.

101. The caravan site at Greenfield Farm and the dwellings on Valewood Lane are to the south of the land. The addition of a caravan site alongside the lawful

agricultural use would be unlikely adversely to affect the nearest neighbouring development by reason of loss of privacy, noise or disturbance because of the separation distances. An increase in the number of caravans on the 11 pitches to around 50 probably would not result in any significant harm to the amenity of neighbouring properties in those respects. On these matters there is no conflict with this aspect of criterion (e) of Policy 23.

102. The setting of Pear Tree Farm is the surroundings in which the designated heritage asset is experienced. There is no intervisibility or perception of activity between the listed building and Kingfisher Farm due to the separation distance, the intervening physical features and pattern of land use. Accordingly the site is not within the setting of Pear Tree Farm and the development has no effect on the significance of the listed building. That being so requirements of Policy 34 do not apply and there is a neutral effect on the designated heritage asset.

General need and 5 year supply

103. By way of background, a Gypsy/Traveller, Travelling Showpeople Accommodation Needs Assessment published in December 2012 (GTANA 2012) informed the provision made for Gypsy and Traveller sites in the HDPF. Policy 21 requires provision to be made for 39 net additional permanent residential pitches for Gypsies and Travellers for the period 2011 to 2017. It confirms the intention to make provision for necessary additional pitches over the rest of the plan period. The policy also identifies and allocates sites for traveller development to help fulfil the current backlog of unmet need and future need. Policy 22 safeguards existing authorised traveller sites and states a Site Allocations Development Plan Document (DPD) will meet objectively assessed needs beyond 2017. Potential means of providing sites are identified, such as extensions to or redesign of existing sites to deliver additional pitches. As already reported, Policy 23 sets out considerations for assessment of allocations and site specific proposals.

104. Policies 21 and 22 confirm a plan-led approach to providing for accommodation needs beyond 2017. The focus now turns to the progress of the required DPD. The GTANA 2012 was updated and consultation carried out on a draft Gypsy and Traveller Site Allocations document published in April 2017. As a result of the early consultation process four sites were removed from the preferred options, with a loss of 23-25 potential pitches. Further work was carried out to identify additional sites in order to meet the requirement. A revised draft Site Allocations DPD was published in December 2017 setting out a preferred strategy. This document concluded that 78 pitches would be required for the 15 year period 2017-2032. This figure includes a backlog of 40 pitches and takes account of an additional 8 pitches granted planning permission since April 2017.

105. To meet the identified need the December 2017 document proposes the allocation of sites that would have the potential to deliver 68 pitches, including 11 pitches at Kingfisher Farm. The allocations are considered to be more than sufficient to meet the identified requirement of 60 pitches over the next 10 years. It is recognised that a further 10 pitches will need to be identified to meet the total requirement for the 15 year period to 2032.

106. The outcome of the December 2017 consultation on the DPD is not publicly known. The preferred strategy has to be published and be subject to

examination before adoption. At the inquiry the Council confirmed that the timetable for the submission version of the DPD remains under review.

107. Therefore the plan making process has not proceeded sufficiently quickly to enable a DPD to be in place by the end of the initial five year period. The absence of a DPD for the period beyond 2017, derived from an up to date evidence base, results in the development plan for the District being inadequate in this respect.

108. Referring to policies 10 and 24 of the PPTS, a clear unmet need exists for pitches and in the absence of an adopted DPD there is not a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against the locally set target. The Council accepted this to be the position. These considerations weigh significantly in favour of the development and the increase in the numbers of caravans, bearing in mind the planning history of the site.

109. GPS for the appellant considered that the level of need in the District was underestimated as a result of several flaws in the methodology and approach used in the GTANAs. The Council did not put forward any contrary evidence for the reason that the matter would be more appropriately addressed through the examination on the DPD.

110. GTANAs, by their nature, cannot be precise and they are a means of informing strategy and policy. At a broad level, the assessment builds on the data of the needs of the travelling community within the District collected over a number of years. The backlog of 40 pitches includes the 11 pitches at Kingfisher Farm within the total of 27 unauthorised pitches and also those 13 pitches that have a temporary permission or are tied to a personal occupancy condition. The study accepts that the identified need is derived from the existing traveller sites and that no attempt has been made to assess and take into account need arising from gypsies and travellers living in bricks and mortar accommodation. The implications for pitch provision of the PPTS definition of gypsies and travellers and the statutory requirement to assess accommodation needs of caravan dwellers are not addressed. All in all, 78 pitches is an indication of the level of need to 2032 and is likely to be a minimum requirement.

111. The existence of a very significant need was regarded by the appellant to inform the extent of the failure of policy to meet the needs of the travelling community both historically and in the future. The inspector in 2011 concluded that the national policy aim, to increase significantly the number of traveller sites with planning permission by 2011 to address under-provision, had not been met and to that extent there was a failure of policy. However, he attributed little weight to this factor in itself, having considered the resultant implications.

112. After the 2011 decision, the HDPF included policies to address Government guidance and the issues identified through the development plan process. It recognised that further work would be needed to monitor need and to provide for additional pitches beyond the initial 5 year planning period. The fact is that four allocated sites have not come forward through the development management process. Two are tolerated sites and the third a site that requires the removal of a personal permission. They contribute to the current backlog of

need, together with the unauthorised pitches at Kingfisher Farm and at Greenacres.

113. The available information suggests that a shortfall in site allocations to meet identified need or a failure to deliver on policy is related partly to due process and to unforeseen and changing circumstances. Having regard to the approach of the inspector in December 2011 and the Secretary of State decisions in 2011 and 2013[7], the weight I attach to the 'failure of policy' is small in this case. The consequences are of more significant weight. Furthermore, a 'failure of policy' does not justify failings in site design and service provision.

Needs of site occupiers

114. Since the original development a number of the pitches appear to have changed ownership. The witness statements explain why the residents are in need of a stable base, primarily related to family ties, health and children's education and that they know of no alternative site to move to if the appeal is unsuccessful. A number of children of varying ages live on the site and some parents are expecting new additions to their families. The Council did not reject their evidence and accepted that the best interests of the children on the site are likely to be served by allowing them to remain. However, the Council drew attention to the fact that not all adult occupiers gave evidence and so for some pitches there was no evidence of a need for or intention to occupy that pitch.

115. With reference to the GTANA December 2017 there are no allocated sites in Horsham District that would provide an alternative pitch(s) for the families resident on site. There no was indication that pitches on publicly owned sites would be available in the short/medium term. The DPD process to date indicates finding appropriate sites is challenging. Nevertheless little is said by the current residents about any efforts to investigate the availability of possible alternative sites elsewhere outside of Horsham district, the locational requirements of a suitable site and the financial resources that may or may not be available to them.

116. In general most site residents have taken the opportunity to register at medical practices in the area and to ensure their children attend local schools. They have been used to living in caravans and would not wish to live in bricks and mortar. Travelling extensively for work purposes is also a common aspect of the evidence.

117. All these various considerations have to be assessed within relevant statutory duties. Among such requirements due regard must be given to the need to eliminate discrimination, and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those who do not share it.[8] The article 8 right to respect for private and family life, a Convention right enshrined in UK law by the Human Rights Act 1998, is likely to be engaged. There also is a positive obligation, imposed by article 8, to facilitate the gypsy way of life. Policy 42 of the HDPF reflects this requirement. Where the article 8 rights are those of children they

[7] The Secretary of State decisions relied on by the appellant are: Mr Crawt and Guildford Borough Council dated 24 February 2011, Mr Stanley and St Albans City and District Council dated 15 December 2011, Mr Amer and others and Mole Valley District Council 10 April 2013.
[8] This is an abbreviated statement of section 149(1) of the Equality Act 2010 which sets out the public sector equality duty.

must be seen in the context of the UNCRC[9], which require a child's best interest to be a primary consideration.

118. The personal circumstances of the site residents, including the best interests of the children, weigh strongly in favour of the development.

Use of planning conditions to mitigate harm: overview

119. As set out in paragraphs 54 and 55 of the Framework planning conditions may be used to make otherwise unacceptable development acceptable. Conditions should be kept to a minimum and be imposed only where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. A draft list of conditions was submitted by the Council and used as a basis for discussion at the inquiry. Development has been carried out, which has implications for the scope and wording of conditions.

120. I concluded that 'the land' should remain as defined on the notice plan and that the use described should include agriculture as well as a caravan site. In order to restrict the area of the caravan site a plan would need to define its extent, which could be the existing area of hardstanding or a smaller or larger area. In view of the evidence presented I consider the options are essentially the existing developed area or the hard surfaced area granted permission in 2011. However, reverting to the 2011 caravan site area would require new engineering works to remove hard surfaces and hardstanding, alterations to the site layout and definition of pitch areas. In addition the change in the pattern of land ownership – where pitches are individually owned rather than the land being a single landholding – means that the implementation of a revised scheme is not solely within the control of the appellant. In the discussion of conditions the submission of a revised layout was not proposed. The imposition of a condition to return to the 2011 layout would be unreasonable in the circumstances and the caravan site element would need to reflect the extent of hard surfacing present at the time the notice was issued.

121. To ensure the development meets an identified need would necessitate a condition to limit the occupation of the caravan site to gypsies and travellers, as defined in Annex 1 to PPTS. The number of pitches proposed was eleven, which would reasonably reflect the existing site layout and would be a reasonable and necessary means of controlling the scale of development. The intensity of development, as reflected by the number of caravans, is a key point of dispute rather than the number of pitches. Here the reasonable options are 50 caravans, as proposed in Appeals 3 and 4 or 42 caravans related to the evidence of residents who attended the inquiry. The 22 caravans, as allowed for in the 2011 permission, would be inefficient use of the larger pitches as laid out and could be regarded as unreasonable and unenforceable.

122. The Council and the appellant agreed that submission of a site development scheme could be required within three months of grant of permission to resolve outstanding matters regarding surface and foul water drainage, landscaping, external lighting, boundary treatments and refuse storage. After careful consideration I am not satisfied that would be the case in respect of all these matters.

[9] United Nations Convention on the Rights of the Child article 3.

123. In considering the effects on infrastructure and the condition precedent issue, the importance of resolving surface and foul water drainage has been highlighted and that the matter goes to the heart of a permission on this site. The evidence indicates drainage is currently piecemeal on a plot by plot basis and harm is being caused to the local environment and amenity. The level of occupation, as represented by the number of caravans, is a very relevant factor. Critically, in the absence of an acceptable scheme I am unable to conclude on the number of caravans that may be acceptable.

124. The ability to secure a good quality landscape scheme is constrained by the current extent of hardsurfacing – for example there is no scope for planting near the northern boundary. The wider site area may enable planting to take place outside the existing defined pitches to soften the edges and for the provision of amenity space. The appellant has not put forward a plan showing the additional land that would be required, even though given the opportunity to do so. The absence of such information does not assist in defining the caravan site component of the mixed use. The identified harm to landscape character would remain and there is not the evidence to conclude that a sensitive design and layout would result.

125. In summary, the caravan site could reasonably be restricted by planning condition to the existing developed area. However, the likelihood is that additional land, as yet undefined, would be required for landscaping, amenity space and drainage. In view of the link with the details of site infrastructure it is not possible to conclude how many caravans would be acceptable, yet this control is essential to a permission to ensure other impacts are acceptable. I am unable to conclude that adverse effects are able to be suitably mitigated by the use of planning conditions.

Policy Balance

126. Considering the development plan first, the deemed application would be a positive measure to address the requirements from the specific needs of a minority group within the district and hence has the support of Policy 42. Policy 26 allows for the mixed use within a countryside location as a sustainable development but the scale is not appropriate to its countryside character and location. There is no conflict with Policy 40 and parking provision complies with Policy 41. The considerations set out in Policy 23 highlight significant harm regarding essential utility services to the site, landscape character and design of the layout. A requirement in respect of environmental protection in Policy 24 is not satisfied, the quality of the development falls below the requirement of Policy 32 and development principles within Policy 33 are not met.

127. Policy 1 is intended to ensure the Local Plan is compliant with national planning policy but it pre-dates the replacement Framework. The policy includes wording that has parallels with paragraph 11 c) and d) on decision making in the Framework. However, there are significant differences in the precise wording as to the circumstances when the tilted balance applies, the test itself and there are no footnotes or specific reference to applications involving the provision of housing of any description. Policy 1 is inconsistent with the Framework and has little weight. Reliance on paragraph 11 Framework would now more appropriately fulfil the purpose of Policy 1. I also note that the

precise wording of the final paragraph of Policy 1 is not the same as in the 2012 Framework.

128. Nevertheless, considering the specific wording of Policy 1, I recognise that relevant policies Policy 21 and Policy 22 on traveller site provision could be considered out of date in so far as the underlying information base and the five year target require review. Therefore that approach indicates the final paragraph within Policy 1 comes into play. In any event, other considerations including national planning policies have to be taken into account, whether or not as part of the tilted balance approach as set out in Policy 1.

129. The Framework, in paragraph 11, sets out how a presumption in favour of sustainable development should apply to decision-making. With reference to sub paragraph d), there are relevant development plan policies. The policies that are the most important for determining the appeal, which I consider are Policies 23 and 26, and Policy 42 Inclusive Communities, are not out of date. Therefore in these circumstances the tilted balance does not apply. The lack of a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set target, as required by Policy B of PPTS, does not automatically trigger the tilted balance but is a material consideration.

130. The appellant submitted that the absence of a 5 year land supply (of traveller sites) triggers paragraph 11 d). However, in my view the matter should be looked at afresh in light of the specific wording of the Framework, which is now the Government's statement on National Planning Policy and the development plan policies in question. Of particular relevance in the Framework are paragraphs 3, 4, 61 and 73 (including footnotes). Pre-existing Written Material Statements should be disregarded. PPTS is the Government's policy for traveller sites.

131. Policy H of the PPTS directs the decision maker to determine an application in accordance with the presumption in favour of sustainable development. General need and a lack of a five year supply of sites weigh in favour of the development, as do the needs of the site occupiers, especially in view of the lack of alternative accommodation for them and the challenge in finding suitable sites. These considerations are reflected too in Policy 42 of the HDPF. The best interests of the children have very significant weight, whilst the 'failure of policy' has a small degree of weight. The site is not in the open countryside away from existing settlements and the land is located to enable reasonable access to facilities. Development would not dominate the nearest settled community and undue pressure would not be placed on the highway network.

132. However, the development does not accord with all the locally specific criteria used to assess applications on unallocated sites. Infrastructure provision (drainage) is outstanding and in view of the implications for public health has substantial weight. Positive weight is not able to be attached to use of brownfield land, positive enhancement of the environment through site planning and soft landscaping or the promotion of healthy lifestyles. Planning conditions are not able to overcome the planning objections.

133. As to additional relevant policies in the Framework, the mixed use development would promote an effective use of land but the balance with safeguarding and improving the environment and ensuring healthy living

conditions has not been demonstrated. The absence of an approved drainage system and the related insufficient information to determine the site capacity are particularly important to achieving an appropriate density of development and in ensuring full account is taken of ground conditions and the likely effects on health, living conditions and the natural environment.

134. Having carried out all the various balances my conclusions are: the development is not supported by Policy 1 and even allowing for the limited weight of that policy now, the development does not accord with the development plan when read as a whole. Material considerations do not indicate that the decision should be otherwise than in accordance with the development plan. Even following the appellant's approach, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The mixed use in its present form is not a sustainable form of development when balancing social, environmental and economic objectives.

Proportionality assessment

135. The proposed refusal of permission would be an interference with the rights of the appellant and his extended family living on neighbouring pitches to respect for their home and family life. The interference would have consequences of sufficient gravity as to engage the operation of Article 8 because of the potential loss of the home, disruption to family life and the possibility that an alternative pitch would be less suitable or that they would have to return to living by the roadside. The interference would be in accordance with the law provided that planning policy and relevant statutory duties are appropriately and lawfully applied. The interference would be necessary in the interests of the protection of the environment and the health of residents as part of the regulation of land use, recognised as an important function of Government. A proportionality assessment is necessary to establish whether the interference would be proportionate to the legitimate public end sought.

136. Summary of relevant considerations relating to the enjoyment of private and family life and the home. The relevant considerations relating to the family's enjoyment of the home and the best interest of the children are set out in the witness statements and which were expanded on in oral evidence. Recognising the sensitivity of personal information suffice to say that they are a close knit family and rely on mutual support in everyday life and in caring for those who are not well. The site has been their home for some 5 years. It provides a safe and settled base from where they are able to follow their travelling lifestyle and benefit from being near local services and community facilities. The children of school age are able to make progress in their early education and the hope is that the younger children will follow in due course. A return to a roadside existence would be very hard, especially for the children who have not been used to it. Securing planning permission is seen as a means of keeping the family together and improving their living conditions.

137. Public and community interests. The Framework confirms that the purpose of the planning system is to contribute to the achievement of sustainable development. The interdependent economic, social and environmental objectives need to be pursued in mutually supportive ways. In this case in order for the development to be acceptable to the community a priority is the

achievement of a well-designed site that will function well over its lifetime, have a high standard of amenity and provide healthy living conditions, as well as be sympathetic to local character and avoid harmful impacts on the natural environment. In turn the health of the residents of the site would be protected.

138. Fair balance. This consists of a structured weighing up and balancing of all the personal and community interests, attributing weight to the various factors and interests, including the best interests of the children and remembering that new babies are expected. There is the potential for a very serious interference with home and family life. On the other side of the balance, safeguarding the public interests, especially securing the health and amenity of the wider community and the site residents through a well-planned and serviced development, is of overriding weight. Therefore the interference with the Article 8 Convention rights of the appellant and his extended family is necessary and proportionate in pursuit of the legitimate aim of regulating land use in the public interest.

139. I have carried out a similar assessment for each other family/extended family who are resident on the site, taking account of their particular family circumstances. The information available on the residents on plot 6 is minimal because no witness statements were submitted. The residents of plot 1 drew attention to the importance of being near a local doctor, the education of the children and the ability to live in caravans in accordance with their culture. The residents of plot 2 do not own the pitch but their uncle, who is the owner, allows them to live there. They now rely on having a stable base in the Horsham area for health and family reasons.

140. The appellant provided a very limited amount of information about the circumstances of his brother who lives with his large family on plot 3 and with whom he has little contact. On that basis I do not regard the residents of plot 3 to be within the family unit of the appellant for the purposes of the assessment. Mr Casey who lives on plot 7 with his extended family (and is the brother of the appellant for Appeal 1) highlighted various medical needs, the value of mutual support and the advantages of the proximity of the site to the local school. Similar points were made by the Connors family on the adjacent plot. Less detail was provided by the owners of plot 9 who appear to have weaker ties to the community services. The family living on plot 10 are vulnerable and rely heavily on having a stable base. The residents of plot 11 referred to the uncertainty affecting their engagement with local service provision and the importance of having a site for the children's well-being and mutual family support.

141. Having weighed and balanced the personal interests of each of the families against those of the wider community the interference with their Article 8 Convention rights is necessary and proportionate. The conclusion would be the same even if the residents of plots 4, 5 and 7 are considered as a single family group.

142. In conclusion, to refuse to grant planning permission for the mixed use development and to dismiss the ground (a) appeal would strike a fair balance in relation to all the family units and would not result in a violation of their rights under Article 8.

Temporary planning permission

143. A grant of temporary planning permission would interfere considerably less with residents' rights than a refusal of permission. It is also generally the case that the harm is reduced over a temporary period. The appellant sought a minimum period of two years in order to allow for the DPD to be adopted and for site allocations to become available for habitation.

144. However, in this appeal the circumstances are not directly comparable, where a key factor is resolving the site drainage issue before permission is granted. A condition precedent is of course precluded by the fact development has taken place. A condition requiring the submission of a scheme for approval within three months is inadequate because of the essential link with the level of occupation. Therefore the ability to grant a temporary permission, with required conditions that meet the six tests, is constrained by very specific factors in this case.

145. A grant of temporary planning permission would not achieve the relevant planning objectives. As an alternative, an increase in the length of the compliance period will be considered under the appeal on ground (g).

146. The appeal does not succeed on ground (a).

Appeal on ground (f)

147. The purpose of the notice is to remedy the breach of planning control. The matter raised in the ground of appeal is specific to a point about the restoration of the land. That being so the issue is whether it is excessive to require the restoration of the Land to its condition before the breach took place by levelling the ground and re-seeding it with grass.

148. It was not necessary to consider this matter in detail at the inquiry because the point originally taken by the appellant was resolved by the Council's proposed amendments to the enforcement notice. There is no evidence to indicate that the position agreed between the parties is unreasonable. The appeal on ground (f) succeeds.

Appeal on ground (g)

149. The issue is whether a compliance period of six months is reasonable and proportionate.

150. The Council, in the amended notice, proposed a staggered compliance period, allowing an additional two months for the removal of the incidental operational development and restoration of the site. The appellant's final position was that the period should be two years. This period was on the grounds that the appropriate period is not limited to remedying the breach of planning control but should be determined by the proportionate period to enable the residents to locate and secure suitable alternative accommodation.

151. Planning Practice Guidance confirms that there is a clear public interest in enforcing planning law and planning regulation in an appropriate way. Effective enforcement is important to tackle the unacceptable impact of the unauthorised development on the amenity of the area, to maintain the integrity of the decision making process and to help ensure public acceptance of the decision

making process is maintained. A compliance period of two years would be inconsistent with those reasons, bearing in mind that a temporary planning permission for a similar period is not an acceptable option.

152. Six months to cease the use and remove the caravans would be achievable in the physical sense. Nevertheless this period takes insufficient account of the social implications for the families involved. The presence of a number of children on the site, some of whom are very young, is a strong reason for extending the compliance period with a view to securing alternative accommodation. In addition, extra time may enable outstanding site development issues to be resolved with the Council.

153. I conclude that compliance periods of 1 year to cease the use and remove the caravans with a further two months to remove the incidental operational development are reasonable and proportionate.

154. The appeal on ground (g) succeeds to this extent.

Conclusion

155. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

APPEAL 3

156. The proposal is for the development of the land without complying with conditions attached to the 2011 permission.

157. The 2011 permission was not extant on the date of the application 24 May 2017, for the reasons given above. I agree with the Council that the appeal must fail because it relies on the continued validity of the 2011 permission.

APPEAL 4

158. The appellant confirmed that the appeal does not stand alone but is parasitic or coterminous with the other appeals. In the event Appeals 1 and 3 fail, Appeal 4 is not pursued.

159. That being the case, no further action is taken on the appeal.

DECISIONS

Appeal 1 Ref: APP/Z3825/C/16/3153910

160. It is directed that the enforcement notice be corrected by:

- The deletion of paragraph 3.1 and the substitution of: Without planning permission the material change of use of the land to use for a mixed use for agriculture and the stationing of caravans for residential occupation.
- In the Reasons for Issuing the Notice the addition of a paragraph 4.4 stating: The unauthorised development is out of character in this countryside location contrary to Policy 25 (Strategic Policy: The Natural Environment and Landscape Character) and Policy 26 (Strategic Policy: Countryside Location) of the Horsham District Planning Framework.

161. It is directed that the enforcement notice be varied by the deletion of paragraphs 5.1, 5.2, 5.3 and 5.4 and the substitution and addition of new paragraphs:

- 5.1 Cease the use of the land for the stationing of caravans for residential purposes.
- 5.2 Remove from the land all caravans and associated residential paraphernalia.
- 5.3 Remove from the Land all works of operational development incidental to the unauthorised residential caravan site use of the land (comprising the access track, hardstanding, patios, plinths and steps, drainage pipes and septic tanks, fencing, walls, brick piers and entrance gates delineating the individual pitches on the land, utility/day rooms, stable blocks, sheds and external lighting).
- 5.4 Remove from the land all materials and debris resulting from compliance with the above steps 5.1, 5.2 and 5.3.
- 5.5 Restore the land to its condition before the breach took place.

162. It is directed that the wording of paragraph 6 of the enforcement notice be varied by the substitution of: "Steps 5.1 and 5.2 twelve (12) months from the date this notice takes effect, Steps 5.3 to 5.5 fourteen (14) months from the date this notice takes effect." as the Time for Compliance.

163. Subject to these corrections 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.

Appeal 2 Ref: APP/Z3825/C/16/3153915

164. The enforcement notice is quashed.

Appeal 3 Ref: APP/Z3825/W/17/3188942

165. The appeal is dismissed.

Appeal 4 Ref: APP/Z3825/W/17/3188945

166. No further action is taken on the appeal.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Michael Rudd of Counsel	Instructed by Green Planning Studio Limited
He called	
Mr Matthew Green	Director Green Planning Studio Limited
Mr John Quinn	
Mrs Rosemary Quinn	
Mr Joseph Maloney	
Mr Michael Casey	
Mr John Patrick Casey	
Ms Chelsea Casey	
Mr Michael Connors	
Mrs Catherine Connors	
Mr Michael Casey	
Mr Frances Casey	
Philomena McCarthy	
Mr Coleman McCarthy	
Mr Michael Connors junior	

FOR THE LOCAL PLANNING AUTHORITY:

Mr Robin Green of Counsel	Instructed by the solicitor to Horsham District Council
He called	
Ms Helen Sissons BA(Hons) MA MRTPI	Principal Planning Compliance Officer, Horsham District Council
Mr Matthew Porter BA(Hons) MA MRTPI	Senior Planning Officer, Horsham District Council

FOR ITCHINGFIELD PARISH COUNCIL:

Mr John Fitzsimons of Counsel	
He called	
Mr James Sheppard	Parish Councillor

INTERESTED PERSONS:

Cllr Mrs T Youtan	District Council Member for Itchingfield and Barns Green, speaking on behalf of the residents

DOCUMENTS submitted at the inquiry

1 Letter of notification of the inquiry and list of people notified
2 Witness statement of John Quinn
3 Witness statement of Rosemary Quinn
4 Witness statement of Joseph Maloney
5 Witness statement of Chelsea Casey

6 Witness statement of John Casey
7 Witness statement of Michael Casey (Plot 4)
8 Witness statement of Michael Connors (Plot 11)
9 Witness statement of Coleman McCarthy
10 Witness statement of Philomena McCarthy
11 Witness statement of Frances Casey
12 Witness statement of Michael Casey (Plot 7)
13 Witness statement of Catherine Connors
14 Witness statement of Michael Connors (Plot 8)
15 Opening Statement on behalf of Horsham District Council
16 List Entry Summary Pear Tree Farm and comment from the Council's Senior Conservation Officer
17 Unsigned statement of common ground
18 List of planning conditions submitted by the Council
19 Plan ref 16_786_011 rev A Appeal 3
20 Plan ref 16_786A_011 Appeal 4
21 Planning permissions for Greenfield Farm, Valewood Lane
22 Signed statement of common ground
23 Statement by Cllr Youtan
24 Schedule of planning conditions for Appeal 3 submitted by the appellant
25 Schedule of planning conditions for Appeal 4 submitted by the appellant
26 Closing submissions on behalf of Itchingfield Parish Council
27 Closing submissions on behalf of Horsham District Council
28 Closing submissions on behalf of the appellant