iii) by deleting the words in section 3 and substituting therefor the words 'Without planning permission, the material change of use of the Land from use as a Travelling Showperson's site to a use for the siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons, the erection of buildings/structures on the land and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.'.

I also direct that the enforcement notice be varied as follows:

i) by deleting the word 'permanently' in sections 5(i), 5(ii) and 5(iii);

ii) by deleting the words 'which are shown on the attached plan in their approximate position marked with an X' in section 5(ii);

iii) by deleting the words in section 5(iii) and substituting therefor the words 'Remove from the Land (a) the building labelled with an X and shown edged and hatched green and (b) the dividing fence marked by the zig-zag line notated 1-2, both on Plan A attached to the decision.'.

Subject to these corrections and variations the appeal is allowed and the enforcement notice is quashed.

Appeal B: APP/L1765/C/10/2138149 (Plot 2)

30. I direct that the enforcement notice be corrected as follows:

i) by substituting Plan B annexed to this decision for the plan attached to the notice;

ii) by deleting the words 'the attached plan' in section 2 and substituting therefor the words 'Plan B attached to the appeal decision';

iii) by deleting the words in section 3 and substituting therefor the words 'Without planning permission, the material change of use of the Land from use as a Travelling Showperson's site to a use for the siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons, the erection of buildings/structures on the land and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.'.

I also direct that the enforcement notice be varied as follows:

i) by deleting the word 'permanently' in sections 5(i), 5(ii) and 5(iii);

ii) by deleting the words 'which are shown on the attached plan in their approximate position marked with an X' in section 5(ii);

iii) by deleting the words in section 5(iii) and substituting therefor the words 'Remove from the Land (a) the two buildings labelled with an X and shown edged and hatched green and (b) the dividing fence marked by the zig-zag line notated 3-4, both on Plan B attached to the decision.'.

Subject to these corrections and variations the appeal is allowed and the enforcement notice is quashed.

Appeal C: APP/L1765/C/10/2138150 (Plot 3)

31. I direct that the enforcement notice be corrected as follows:

i) by substituting Plan C annexed to this decision for the plan attached to the notice;

ii) by deleting the words 'the attached plan' in section 2 and substituting therefor the words 'Plan C attached to the appeal decision';

iii) by deleting the words in section 3 and substituting therefor the words 'Without planning permission, the material change of use of the Land from use as a Travelling Showperson's site to a use for the siting of caravans/residential mobile homes for occupation by persons who are not

Travelling Showpersons, the erection of buildings/structures on the land, and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.'.

I also direct that the enforcement notice be varied as follows:

i) by deleting the word 'permanently' in sections 5(i) and 5(ii);

ii) by deleting the words 'which are shown on the attached plan in their approximate position marked with an X' in section 5(ii);

iii) by deleting section 5(iii) in its entirety.

Subject to these corrections and variations the appeal is allowed and the enforcement notice is quashed.

Appeal D: APP/L1765/C/10/2138152 (Plot 7)

32. I direct that the enforcement notice be corrected as follows:

i) by substituting Plan D annexed to this decision for the plan attached to the notice;

ii) by deleting the words 'the attached plan' in section 2 and substituting therefor the words 'Plan D attached to the appeal decision';

iii) by deleting the words in section 3 and substituting therefor the words 'Without planning permission, the material change of use of the Land from use as a Travelling Showperson's site to a use for the siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons, the erection of buildings/structures on the land and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.'.

I also direct that the enforcement notice be varied as follows:

i) by deleting the word 'permanently' in sections 5(i), 5(ii) and 5(iii);

ii) by deleting the words 'which are shown on the attached plan in their approximate position marked with an X' in section 5(ii);

iii) by deleting the words in section 5(iii) and substituting therefor the words 'Remove from the Land the dividing fence marked by the zig-zag line notated 5-6 on Plan D attached to the decision.'.

Subject to these corrections and variations the appeal is allowed and the enforcement notice is quashed.

Appeal E: APP/L1765/C/10/2138153 (Plot 8)

33. I direct that the enforcement notice be corrected as follows:

i) by substituting Plan E annexed to this decision for the plan attached to the notice;

ii) by deleting the words 'the attached plan' in section 2 and substituting therefor the words 'Plan E attached to the appeal decision';

iii) by deleting the words in section 3 and substituting therefor the words 'Without planning permission, the material change of use of the Land from use as a Travelling Showperson's site to a use for the siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons, the erection of buildings/structures on the land and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.'.

I also direct that the enforcement notice be varied as follows:

i) by deleting the word 'permanently' in sections 5(i), 5(ii) and 5(iii);

ii) by deleting the words 'which are shown on the attached plan in their approximate position marked with an X' in section 5(ii);

iii) by deleting the words in section 5(iii) and substituting therefor the words 'Remove from the Land (a) the two buildings labelled with an X and shown edged and hatched green and (b) the dividing fence marked by the zig-zag line notated 7-8, both on Plan E attached to the decision.'.

Subject to these corrections and variations the appeal is allowed and the enforcement notice is quashed.

Appeal F: APP/L1765/C/10/2138155 (Plot 9)

34. I direct that the enforcement notice be corrected as follows:

i) by substituting Plan F annexed to this decision for the plan attached to the notice;

ii) by deleting the words 'the attached plan' in section 2 and substituting therefor the words 'Plan F attached to the appeal decision';

iii) by deleting the words in section 3 and substituting therefor the words 'Without planning permission, the material change of use of the Land from use as a Travelling Showperson's site to a use for the siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons, the erection of buildings/structures on the land and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.'.

I also direct that the enforcement notice be varied as follows:

i) by deleting the word 'permanently' in sections 5(i), 5(ii) and 5(iii);

ii) by deleting the words 'which are shown on the attached plan in their approximate position marked with an X' in section 5(ii);

iii) by deleting the words in section 5(iii) and substituting therefor the words 'Remove from the Land (a) the building X shown edged and hatched green and (b) the dividing fences marked by the zig-zag lines notated 9-10 and 11-12, both on Plan F attached to the decision.'.

Subject to these corrections and variations the appeal is allowed and the enforcement notice is quashed.

D E Morden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Michael Rudd	Counsel, instructed by Green Planning Solutions
He called	
Mr M Black	Appellant
Mr D Birch	Appellant
Mr F Wall	Appellant
Mr M Wall	Appellant's spouse
Mr D Carter	Appellant
Mr M James	Appellant
Mr M Green	Partner, Green Planning Solutions LLP

FOR THE LOCAL PLANNING AUTHORITY:

Mr Trevor Ward	Counsel, instructed by Mr H Bone, Head of Legal Services, Winchester City Council
He called	
Mr T Patchell BA(Hons) DipTP DipPlg	Principal Planning Officer, Winchester City Council

INTERESTED PERSONS:

Councillor Mr S Godfrey	c/o Winchester City Council

DOCUMENTS (submitted at the Inquiry)

1 Council's letter notifying Inquiry arrangements to interested persons
2 Council Committee report regarding gypsy/traveller site allocation (17/10/11)
3 Copy of appeal decision (App/J0540/A/07/2033957)
4 Copy of gypsy/traveller biannual count summary (1/7/11)
5 Sec of State decision (APP/T3725/C/10/2133714)
6 Unsigned draft Statement of Common Ground
7 CLG publication Designing Gypsy and Traveller Sites (May 2008)
8 Showman's Guild publication – Travelling Showpeople's Sites – A Planning Focus, Model Standard Package (September 2007)
9 Council's latest Local Development Framework – DPD Programme (for adoption dates) June 2011
10 Draft list of planning conditions for discussin

PLANS

A Site layout plan showing disputed fences
B Site layout plan showing disputed buildings/structures

The Planning Inspectorate

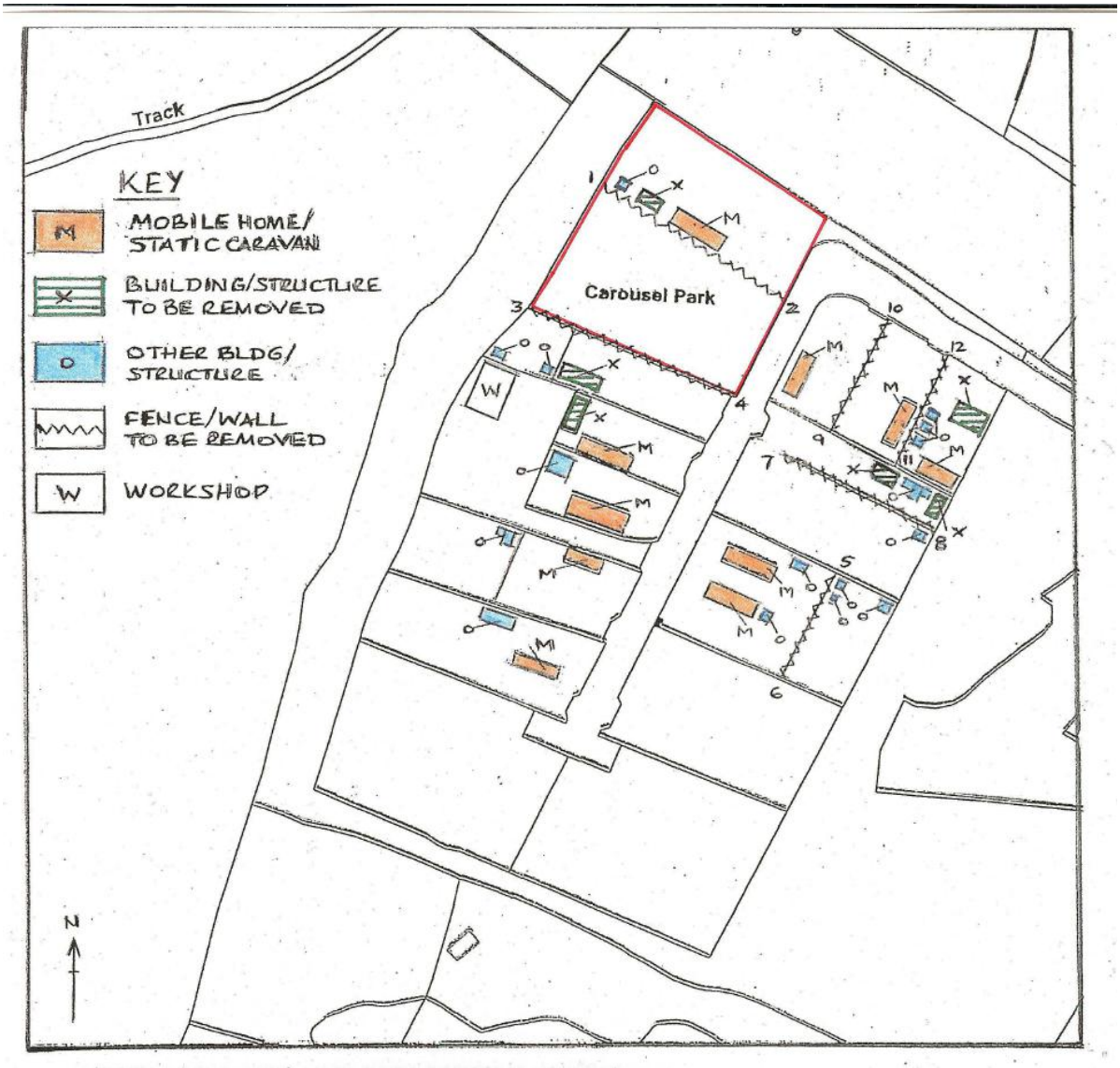
Annex to Appeal Decision - Corrected Plan A

This is the plan referred to in my decision dated: 09.12.2011

by D E Morden MRTPI

Plot 1, Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW
Reference: APP/L1765/C/10/2138144

Scale: Not to scale



The Planning Inspectorate

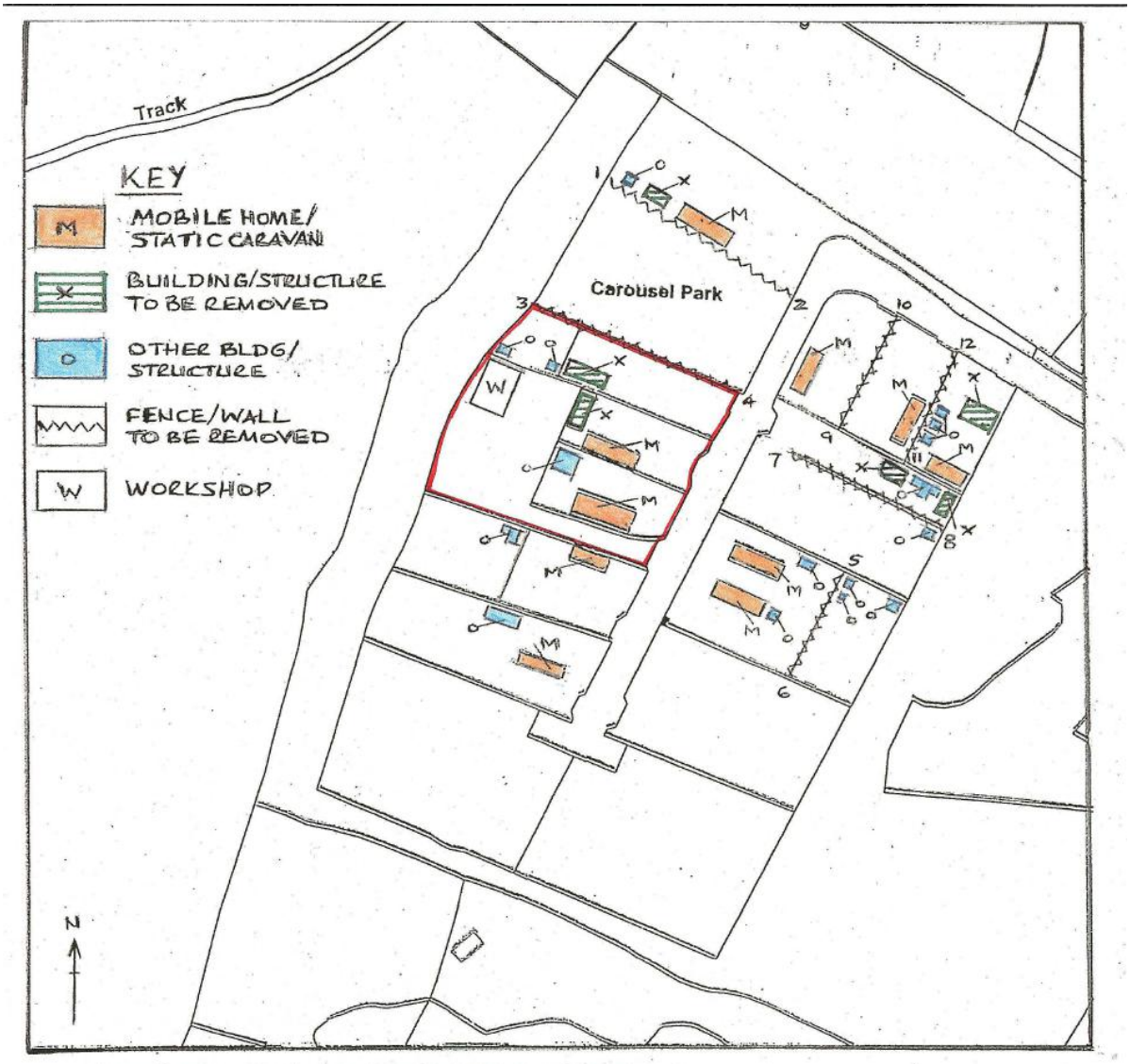
Annex to Appeal Decision - Corrected Plan B

This is the plan referred to in my decision dated: 09.12.2011

by D E Morden MRTPI

Plot 2, Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW
Reference: APP/L1765/C/10/2138149

Scale: Not to scale



The Planning Inspectorate

Annex to Appeal Decision - Corrected Plan C

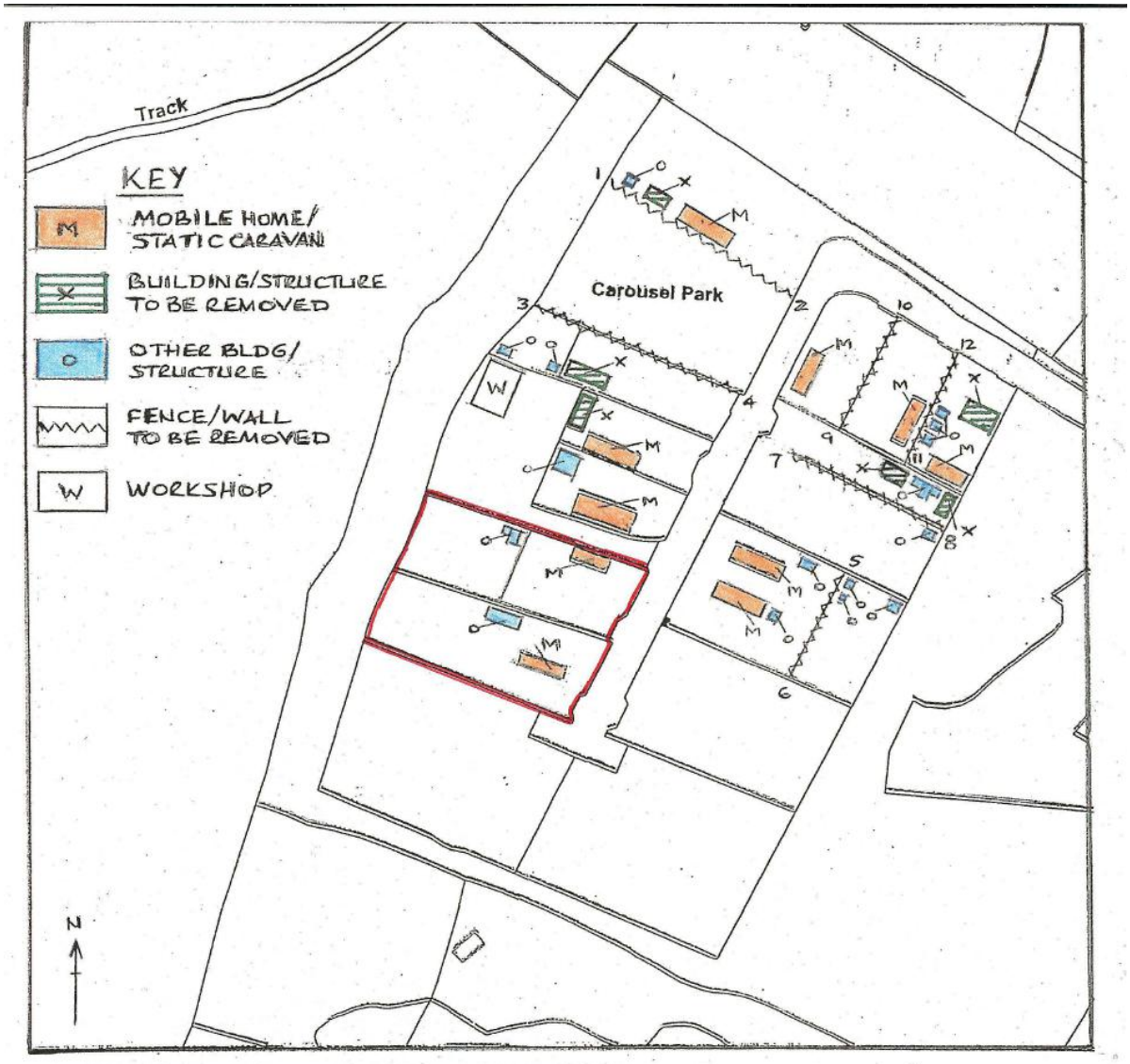
This is the plan referred to in my decision dated: 09.12.2011

by D E Morden MRTPI

Plot 3, Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW

Reference: APP/L1765/C/10/2138150

Scale: Not to scale



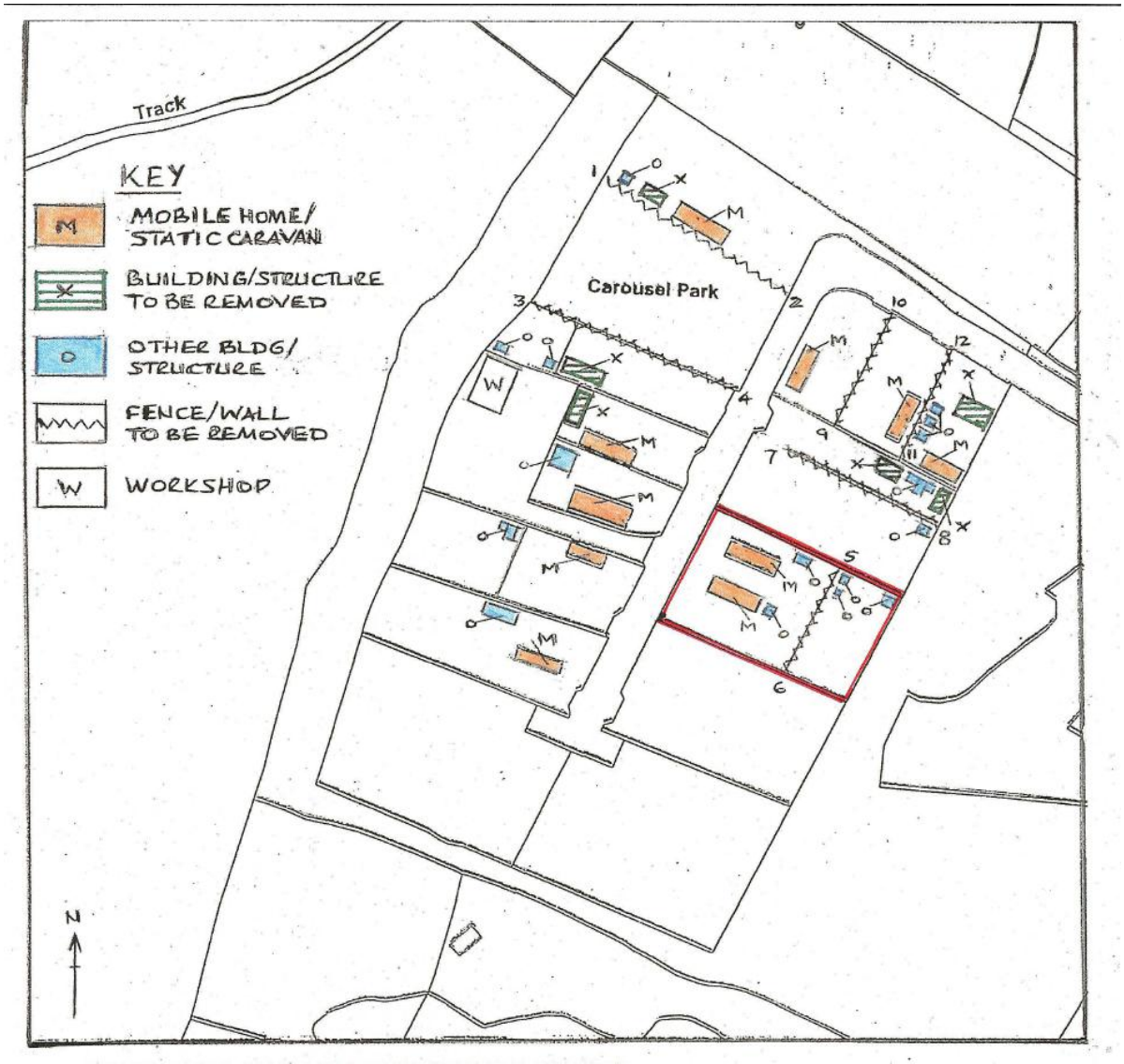
Annex to Appeal Decision - Corrected Plan D

This is the plan referred to in my decision dated: 09.12.2011

by D E Morden MRTPI

Plot 7, Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW
Reference: APP/L1765/C/10/2138152

Scale: No to scale



The Planning Inspectorate

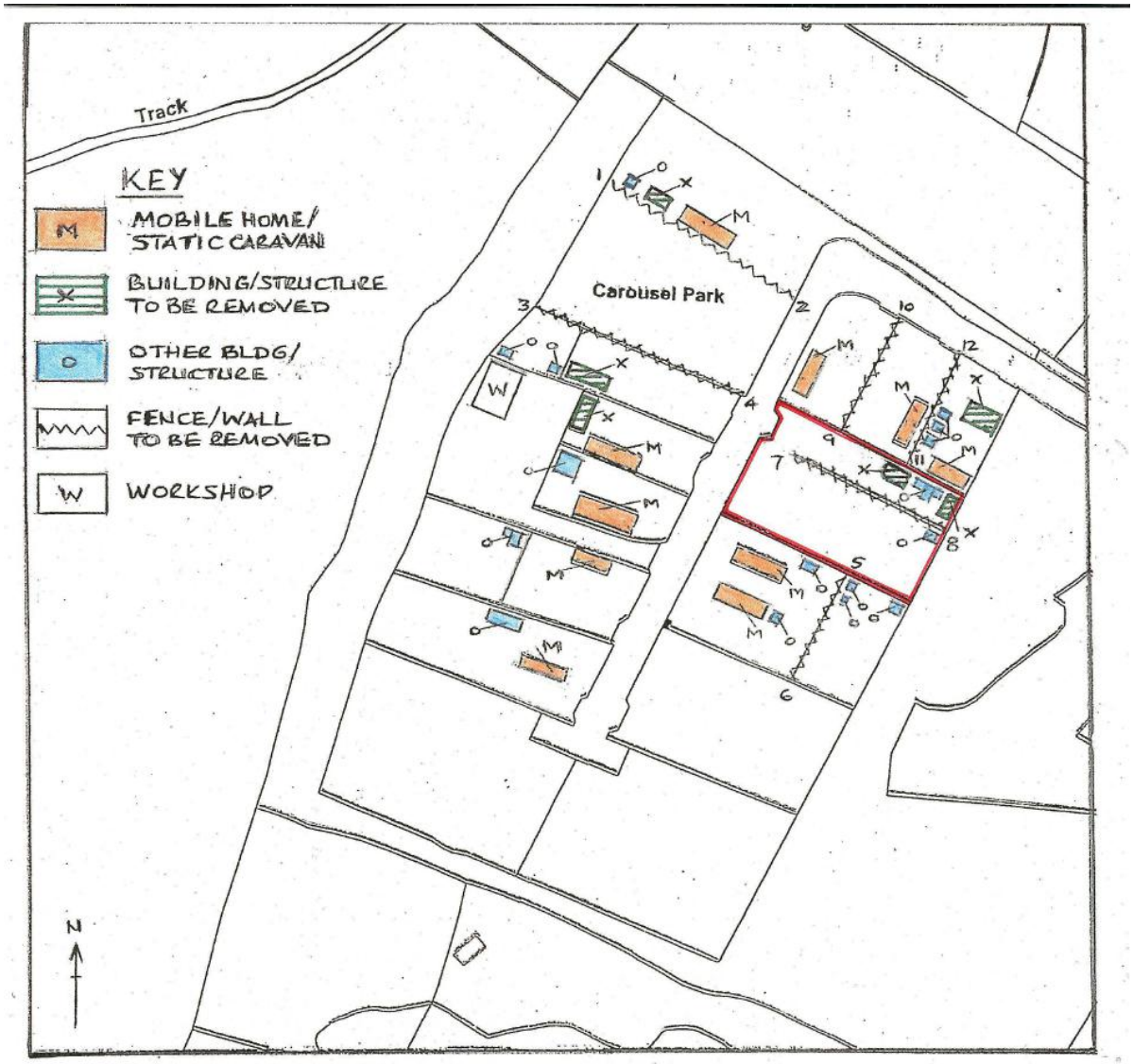
Annex to Appeal Decision - Corrected Plan E

This is the plan referred to in my decision dated: 09.12.2011

by D E Morden MRTPI

Plot 8, Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW
Reference: APP/L1765/C/10/2138153

Scale: Not to scale



The Planning Inspectorate

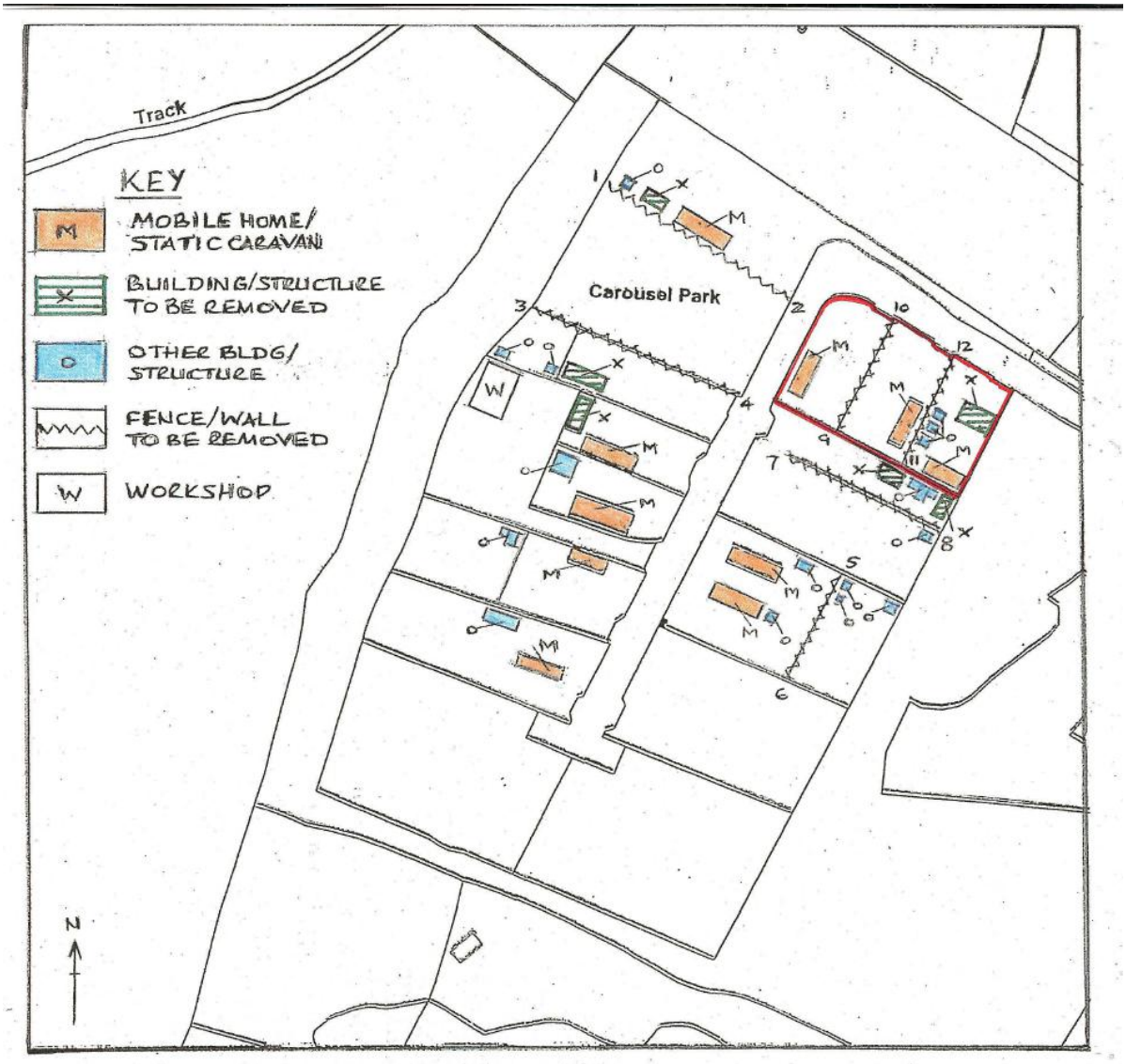
Annex to Appeal Decision - Corrected Plan F

This is the plan referred to in my decision dated: 09.12.2011

by D E Morden MRTPI

Plot 9, Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW
Reference: APP/L1765/C/10/2138155

Scale: Not to scale



APPENDIX A
Appeal A: APP/L1765/C/10/2138144
Plot 1, Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW

- 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 M Wall against an enforcement notice issued by Winchester City Council.
- The Council's reference is 09/00348/BCOND.
- The notice was issued on 6 September 2010.
- The breach of planning control as alleged in the notice is the material change of use of the Land from use as a Travelling Showperson's site to a use for siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons, and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.
- The requirements of the notice are to (i) Permanently cease the use of the Land for the siting of residential caravans/mobile homes for occupation by persons who are not travelling showpeople (as defined within Paragraph 15 of Circular 04/2007: Planning for Travelling Showpeople), (ii) Permanently remove from the Land all caravans/mobile homes, which are shown on the attached plan in their approximate position marked with an "X" and (iii) Permanently remove from the Land all sheds, areas of hardstanding, dividing walls and fences within each individual plot and any other domestic and business items and equipment unrelated to the occupation of the site by travelling showpeople and their dependents.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- The inquiry sat for 4 days on 11 – 14 October 2011.

Appeal B: APP/L1765/C/10/2138149
Plot 2, Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW

- 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 M Black against an enforcement notice issued by Winchester City Council.
- The Council's reference is 09/00348/BCOND.
- The notice was issued on 6 September 2010.
- The breach of planning control as alleged in the notice is the material change of use of the Land from use as a Travelling Showperson's site to a use for siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons, and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.
- The requirements of the notice are to (i) Permanently cease the use of the Land for the siting of residential caravans/mobile homes for occupation by persons who are not travelling showpeople (as defined within Paragraph 15 of Circular 04/2007: Planning for Travelling Showpeople), (ii) Permanently remove from the Land all caravans/mobile homes, which are shown on the attached plan in their approximate position marked with an "X" and (iii) Permanently remove from the Land all sheds, areas of hardstanding, dividing walls and fences and any other domestic and business items and equipment unrelated to the occupation of the site by travelling showpeople and their dependents [apart from those fences specifically granted planning permission under reference number 05/01605/FUL (Retrospective planning permission for the erection of fences) and 06/00441/FUL (construction of a garage workshop for the servicing and repair of travelling showman vehicles and equipment)]
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- The inquiry sat for 4 days on 11 – 14 October 2011.

Appeal C: APP/L1765/C/10/2138150
Plot 3, Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW

- 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 Mrs S Wall against an enforcement notice issued by Winchester City Council.
- The Council's reference is 09/00348/BCOND.
- The notice was issued on 6 September 2010.
- The breach of planning control as alleged in the notice is the material change of use of the Land from use as a Travelling Showperson's site to a use for siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons, and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.
- The requirements of the notice are to (i) Permanently cease the use of the Land for the siting of residential caravans/mobile homes for occupation by persons who are not travelling showpeople (as defined within Paragraph 15 of Circular 04/2007: Planning for Travelling Showpeople), (ii) Permanently remove from the Land all caravans/mobile homes, which are shown on the attached plan in their approximate position marked with an "X" and (iii) Permanently remove from the Land all sheds, buildings, dividing walls and fences and any other domestic and business items apart from those specifically granted planning permission under reference numbers 05/01605/FUL (Retrospective planning permission for the erection of fences).
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- The inquiry sat for 4 days on 11 – 14 October 2011.

Appeal D: APP/L1765/C/10/2138152
Plot 7, Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW

- 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 D Birch against an enforcement notice issued by Winchester City Council.
- The Council's reference is 09/00348/BCOND.
- The notice was issued on 6 September 2010.
- The breach of planning control as alleged in the notice is the material change of use of the Land from use as a Travelling Showperson's site to a use for siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons, and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.
- The requirements of the notice are to (i) Permanently cease the use of the Land for the siting of residential caravans/mobile homes for occupation by persons who are not travelling showpeople (as defined within Paragraph 15 of Circular 04/2007: Planning for Travelling Showpeople), (ii) Permanently remove from the Land all caravans/mobile homes, which are shown on the attached plan in their approximate position marked with an "X" and (iii) Permanently remove from the Land all sheds, areas of hardstanding, dividing walls and fences within each individual plot and any other domestic and business items and equipment unrelated to the occupation of the site by travelling showpeople and their dependents.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- The inquiry sat for 4 days on 11 – 14 October 2011.

Appeal E: APP/L1765/C/10/2138153
Plot 8, Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW

- 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 D Carter against an enforcement notice issued by Winchester City Council.
- The Council's reference is 09/00348/BCOND.
- The notice was issued on 6 September 2010.
- The breach of planning control as alleged in the notice is the material change of use of the Land from use as a Travelling Showperson's site to a use for siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons, and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.
- The requirements of the notice are to (i) Permanently cease the use of the Land for the siting of residential caravans/mobile homes for occupation by persons who are not travelling showpeople (as defined within Paragraph 15 of Circular 04/2007: Planning for Travelling Showpeople), (ii) Permanently remove from the Land all caravans/mobile homes, which are shown on the attached plan in their approximate position marked with an "X" and (iii) Permanently remove from the Land all sheds, areas of hardstanding, dividing walls and fences within each individual plot and any other domestic and business items and equipment unrelated to the occupation of the site by travelling showpeople and their dependents.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- The inquiry sat for 4 days on 11 – 14 October 2011.

Appeal F: APP/L1765/C/10/2138155
Plot 9, Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW

- 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 M James against an enforcement notice issued by Winchester City Council.
- The Council's reference is 09/00348/BCOND.
- The notice was issued on 6 September 2010.
- The breach of planning control as alleged in the notice is the material change of use of the Land from use as a Travelling Showperson's site to a use for siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons, and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.
- The requirements of the notice are to (i) Permanently cease the use of the Land for the siting of residential caravans/mobile homes for occupation by persons who are not travelling showpeople (as defined within Paragraph 15 of Circular 04/2007: Planning for Travelling Showpeople), (ii) Permanently remove from the Land all caravans/mobile homes, which are shown on the attached plan in their approximate position marked with an "X" and (iii) Permanently remove from the Land all sheds, areas of hardstanding, dividing walls and fences within each individual plot and any other domestic and business items and equipment unrelated to the occupation of the site by travelling showpeople and their dependents.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- The inquiry sat for 4 days on 11 – 14 October 2011.

Appeal G: APP/L1765/A/11/2148378
Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW

- 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.
- The appeal is made by Mr M Black against Winchester City Council.
- The application Ref 10/02598/FUL, is dated 24 September 2010.
- The development proposed is the use of the land as a travelling showman's site.
- The inquiry sat for 4 days on 11 – 14 October 2011.

The Planning Inspectorate

Costs Decisions

Inquiry opened on 11 October 2011

Site visits made on 11 and 14 October 2011

by D E Morden MRTPI

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

Decision date: 9 December 2011

Land at Carousel Park, Basingstoke Road, Micheldever, Hants, SO21 3BW
Costs application in relation to
Appeal A: APP/L1765/C/10/2138144 (Plot 1)
Appeal B: APP/L1765/C/10/2138149 (Plot 2)
Appeal C: APP/L1765/C/10/2138150 (Plot 3)
Appeal D: APP/L1765/C/10/2138152 (Plot 7)
Appeal E: APP/L1765/C/10/2138153 (Plot 8)
Appeal F: APP/L1765/C/10/2138155 (Plot 9)
Appeal G: APP/L1765/A/11/2148378 (Plots 1 - 3 and 7 – 9)

- The applications are made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The applications are made by Messrs M. Wall, D. Birch, M. Black, D. Birch, D. Carter, M. James and Mrs S. Wall for a full award of costs against Winchester City Council.
- The inquiry was in connection with 6 appeals against enforcement notices alleging the material change of use of the Land from use as a Travelling Showperson's site to a use for siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons, and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople. Appeal G was a s78 appeal for the use of the land as a travelling showman's site.
- The inquiry sat for 4 days on 11 to 14 October 2011

Summary Decisions: The applications fail and no awards of costs are made, as set out in the Formal Decisions at paragraph 16 below.

The submissions for the appellants

1. The appellants referred to Circular 03/2009 and stated that a full claim was being submitted for the costs of the appeals (or in the alternative six separate partial awards were made – one for each appellant). The claims were made on the basis that the issue of the enforcement notice was unreasonable for four reasons. Firstly, there was no breach of planning control as there was no material change of use involved; secondly, there was no breach as the appellants were travelling showmen; thirdly, if there was a change of use it was one that should have been granted planning permission and fourthly, in the event that the application was not satisfactory overall it could have been made so by granting a temporary permission with conditions.

2. The submission concerning the fact that there was no limitation on the 2003 planning permission had been dealt with in closing so was not repeated here. The Council in issuing the Notice clearly did not follow the advice in paragraphs 7 and 8 of PPG18. The advice states that action should not be taken purely to regularise an existing situation and remedy the absence of a valid planning

permission. Further if a development can be made acceptable through the imposition of conditions then that is the course of action that should be taken.

3. The Council could not have acted with expediency as it had not investigated whether there were other available, suitable, acceptable and alternative sites for the occupiers of the appeal sites. It had not delivered land for sites itself and had not investigated the health, housing or welfare needs of the occupiers and had not taken them into account before taking action. The Council had accepted that some occupiers were travelling showmen and it was up to the Council to show what had changed; no evidence was produced. In summary the Council failed to carry out the balancing exercise it should have done and it cannot show, therefore, that it was expedient to issue the Notice.

4. The Council did not consider the possibility of granting permission with conditions, in particular the grant of a temporary permission. Regardless of the harm identified, Circular 01/2006 advises that substantial weight should be given to unmet need when assessing a temporary planning permission. A different balancing exercise should have been carried out to see if such a planning permission could have been granted and it did not happen. That was unreasonable behaviour by the Council in this case and contrary to the advice in Circular 03/2009.

The response by Winchester City Council

5. The Council stated that that any decision to take action could only be based on the information available to it at the time, that information having come from reasonable investigations. Planning Contravention Notices (PCNs) had been issued twice and one was ignored despite the use of a professional agent. It was not unreasonable to take action on the basis of the information received. It was wrong to argue that action should not have been taken because there was an unmet need and no alternative sites; that has been decided in the Courts *(Chapman case).* In any event the expediency has to be balanced against the harm (which in this case was acknowledged). That was done and whilst it may be that a different conclusion is reached as to where that balance should lie it does not mean it was unreasonable to take action against the use.

6. Whilst it may be argued that the Council should have granted planning permission with conditions there had been no application submitted at the time it was resolved to take action. When the application was eventually submitted it was appealed against without warning and taken out of the hands of the Council. As has been pointed out, the Council has no objection to granting a planning permission for the development applied for. The application was to use the land as a travelling showpersons' site; there was nothing in it concerning occupancy by gypsies. Two points arise from that; firstly, the application would not have dealt with the alleged breach and secondly, even if the Council had realised the appellants wanted a gypsy site a conditional grant of a planning permission for something different would not have been relevant.

7. On the question of no limitations or restrictions on the planning application even the appellants state that the matter is not absolutely clear cut and is arguable so it could not have been unreasonable to proceed in the way that the Council did. Paragraph B37 of the costs circular states that there has to be a serious misunderstanding of a clearly established principle of law and that is not the case here.

8. Regarding the question of no breach of control anyway, as the occupants are travelling showpeople it was an evidential matter that needed to be tested at the inquiry (and is then a matter for the inspector's decision based on that evidence). Bearing in mind the responses received to the PCNs it was not unreasonable to take enforcement action, the Council could not know from that whether the people on site were travelling showpeople or not.

9. Turning finally to the question of gypsy considerations there was nothing mentioned until the appeals were lodged to suggest that gypsy status needed to be engaged at all in these cases. It was not mentioned in either PCN and the Notice itself does not refer to a change of use to gypsy occupation. Again it was not unreasonable for the Council not to consider those matters in taking the action that it did as they had not been mentioned at all. The Council did produce evidence of harm (the loss of a site needed for travelling showpeople) and whilst it may have appeared that the Council has not defended the s798 appeal, that is because it is for the use of the land for travelling showpeople; something that the Council does not object to. Any conditions would only have been those relevant to such people but it would not have solved the breach.

Reasoning

10. I have considered this application Circular 03/2009 which advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

11. On the question of whether there were any restrictions or limitations on the planning permission granted in 2003, the appellants agreed that the matter was not clear cut. The case they relied upon (*I'm Your Man v SSE*) was concerned with a temporary planning permission and the court decision resolved that point rather than what might be argued was a different point, namely whether that court decision should be applied to the nature of the permission granted. Even though I came to the conclusion that the principle decided in the court was applicable in this case it was reasonable for the Council to submit that it did not apply in this particular instance.

12. Moving on to the question of whether, if the use was restricted to travelling showmen, there had been any breach at all, the Council rightly argued that the information available to it left that question open to doubt. I acknowledge the appellant's point that a Council should investigate thoroughly before issuing a Notice but it can only go so far along that path if the information it needs is not forthcoming. In those circumstances it has to issue a Notice before it is out of time to do so if it has reason to believe that there may be a breach of planning control. I do not consider that the Council acted unreasonably in taking the action it did having tried to ascertain the on site situation.

13. Regarding whether or not planning permission should have been granted with conditions, as the Council pointed out there was no planning permission before it when the Notice was issued. When an application was submitted it was appealed against before the Council determined it (although it had been with the Council for nearly 24 weeks at the time the appeal was made). The Council however, was not able to determine it once the appeal had been made.

14. The same problem arises with the appellants' claim that a temporary permission should have been granted if the application was not satisfactory

overall. Whether a temporary permission could be granted depends on what was unsatisfactory with the application, it does not follow that a temporary permission can get around what might be unacceptable with an application; there could be a fundamental objection to a particular development being allowed on a site. Additionally the appellants' argument for a temporary permission was based on a further balancing exercise taking place due to an unmet need for gypsy sites but the application was not for that use.

Conclusion

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009 has not been demonstrated and no awards of costs are justified.

Formal Decisions – all appeals

16. I refuse the applications for the award of costs.

D E Morden

INSPECTOR

Case No: CO/149/2012 & CO/532/2012

Neutral Citation Number: [2013] EWHC 101 (Admin)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/02/2013

Before :

PHILIP MOTT QC
Sitting as a Deputy High Court Judge

- -

Between :

WINCHESTER CITY COUNCIL	**Claimant / Appellant**
- and -	
SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**1st Defendant / Respondent**
- and –	
MR M WALL, MR M BLACK, MRS S WALL, MR D BIRCH, MR D CARTER, MR M JAMES	**2nd Defendants / Respondents**

- -

(Transcript of the Handed Down Judgment of
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Tel No: 020 7404 1400, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

- -

Trevor Ward (instructed by **Winchester City Council**) for the **Claimant/Appellant**
Stephen Whale (instructed by **Treasury Solicitor**) for the **1st Defendant/Respondent**
Michael Rudd (instructed by direct access) for the **2nd Defendants/Respondents**

Hearing dates: 25 January 2013

- -

Judgment

Philip Mott QC :

1. On 9 December 2011 a Planning Inspector appointed by the Secretary of State for Communities and Local Government ("SSCLG") issued a Decision Letter in respect of six appeals against enforcement notices issued by the Winchester City Council ("WCC") and one appeal against the failure of WCC to determine a planning application submitted to it ("the planning appeal"). The Inspector quashed the enforcement notices and took no further action on the planning appeal.

2. WCC now applies for permission to appeal under section 289 of the Town and Country Planning Act 1990 ("the 1990 Act") against the quashing of the enforcement notices, and challenges under section 288 of the 1990 Act the decision on the planning appeal.

3. By consent it was ordered on 8 March 2012 that the two matters be heard together, and that the substantive and permission stage in relation to the section 289 appeal be held together as a rolled up hearing.

4. I have concluded that permission should be granted under section 289 and the appeals allowed. As a result, it is agreed, the matter will have to go back to the SSCLG to appoint another Inspector to determine the enforcement notice appeals afresh. As to the section 288 challenge, I dismiss this on the merits and on a discretionary basis.

Background

5. The premises concerned are at Carousel Park, Basingstoke Road, Micheldever, Hampshire. On 16 April 2002 a planning application was submitted for "Change of use of land to travelling showpeople's use". The existing use of the land was stated to be "Redundant agricultural". A block and location plan was submitted which was not put before me.

6. On 2 October 2003 permission was granted for "Change of use of agricultural land to travelling showpeoples' site" in accordance with the plans and particulars submitted with the application, subject to 15 conditions. The relevant conditions for present purposes are as follows:

> 4. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan for each pitch indicating the positions, design, materials and type of boundary treatment and gates to be erected, the position of all areas of hardstanding and storage, the position and sizes of all residential caravans and any other temporary or permanent structures or buildings and the areas of open amenity space. Development shall be carried out in accordance with the approved details before the pitches are first occupied.
>
> 5. No vehicles, equipment, caravans, mobile homes or other structures on the site are to exceed 4.5 metres in height above ground level.

> 7. No maintenance, repairs or testing of equipment or vehicles shall be carried out other than between the hours of 0730 and 1800 Monday to Friday and 0730 and 1800 Saturdays and at no time on Sundays and Bank Holidays, unless otherwise agreed in writing by the Local Planning Authority.
>
> 10. There shall be a maximum of three caravans or mobile homes occupied for residential purposes on each pitch. Any additional touring caravans used by the travelling showpeople may be stored within the defined storage areas but may not be occupied for residential purposes at any time.
>
> 11. There shall be no more than 9 family pitches on the site and the pitches may not be sub-divided at any time.
>
> 13. In the event that the site ceases to be used for the purposes of travelling showpeople, it shall be restored to its former condition. All structures, hardstandings, equipment, vehicles and materials brought onto the site in connection with the use shall be permanently removed from the land within 12 months of the use ceasing.
>
> 15. No more than 50 people shall occupy the site at any time.

7. None of the conditions attached to the planning permission expressly restricted the occupation of the site to travelling showpeople, as they could have done.

8. At the same time as the grant of the planning permission a section 106 agreement was entered into, which was designed to restrict the occupation of the site to travelling showpeople. However it appears to have been defective, and in any event was not expressly incorporated into the planning permission as it could have been.

9. Enforcement notices were issued by WCC on 6 September 2010 because it was thought that the site was being occupied by gypsies and travellers who were not travelling showpeople. Whether this is so in fact is disputed. The notices alleged that this constituted a material change of use from that permitted by the 2003 planning permission. Whether such a change of use would be "material" is also disputed. Neither issue has been the subject of any finding on appeal to the Inspector, and neither arises for determination in these proceedings.

10. The notices were appealed on a number of grounds, as follows:

    (a) that planning permission should be granted for the breach of planning control alleged;

    (b) that the matters alleged had not occurred;

    (c) that the matters, if they occurred, did not constitute a breach of planning control;

    (d) that at the date the enforcement notice was issued no enforcement action could be taken against the matters alleged to be in breach;

(f) that the steps required by the enforcement notice to remedy the breach of planning control were excessive;

(g) that the period for compliance specified in the notice to remedy the breach of planning control fell short of what should reasonably be allowed.

11. At the appeal hearing the notices were amended by agreement, and Grounds (c) and (d) were withdrawn in their entirety. The Inspector decided the appeals only on one limb of Ground (b), namely that the planning permission should be interpreted as being simply "use as a residential caravan site" and not restricted to travelling showpeople. He made no findings in respect of the remaining limb of Ground (b), which was that the occupants were in fact travelling showpeople. He also did not consider Grounds (a), (f) or (g), and took no further action on the planning appeal.

12. The basis of the Inspector's decision to allow the enforcement notice appeals was one of law, as he acknowledged. It arose from the decision of this court in *I'm Your Man Limited v Secretary of State for the Environment* (1999) 77 P&CR 251, a decision of Robin Purchas QC sitting as a Deputy High Court Judge. The Inspector set out his interpretation in paragraph 23 of his Decision Letter:

> "I acknowledge that it is a matter of law but in my view, *I'm Your Man* decided a point of principle concerning limitations on planning permissions; it was not concerned with the detail of what type of limitation was being debated. In these circumstances I conclude that it is clear that the 2003 planning permission is not limited as there is no condition attached to it that restricts occupancy and the legal agreement, which does contain a restriction, was not incorporated into the permission."

13. Having concluded that he could not look to the terms of the section 106 agreement as it was not incorporated into the terms of the planning permission (a conclusion which is not challenged in this appeal), he concluded in paragraph 26 of his Decision Letter:

> "Taking all these factors into consideration I conclude that the 2003 permission, in line with the decision in *I'm Your Man*, is for the use of the land as a residential caravan site with no restrictions on who may occupy the site. In those circumstances the appeals succeed on ground (b) and the notices as corrected and varied will be quashed."

Planning permission and enforcement notices

14. Section 57 of the 1990 Act provides that, in general, "permission is required for the carrying out of any development of land". By section 55(1) "development" is defined as including "the making of any material change of use of any buildings or other land".

15. Section 55(2) provides that certain operations and uses of land shall not be taken to involve development. They include, by paragraph (f), "in the case of buildings or other land which are used for a purpose of any class specified in an order made by the

Secretary of State under this section, the use of buildings or other land … for any other purpose of the same class".

16. The Secretary of State has made such an order setting out various categories known as "Use Classes" in the Town and Country Planning (Use Classes) Order 1987. Uses which do not fall within any use class are considered "sui generis". These will include, for instance, theatres, scrapyards and petrol filling stations.

17. Section 75 of the 1990 Act sets out the effect of planning permission. It is a grant which enures for the benefit of the land, and thus runs with the land. The section continues:

> (2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used.
>
> (3) If no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.

18. Section 171A of the 1990 Act provides that:

> (1) For the purposes of this Act –
>
> (a) carrying out development without the required planning permission; or
>
> (b) failing to comply with any condition or limitation subject to which planning permission has been granted,
>
> constitutes a breach of planning control.

19. Section 172 allows the local planning authority to issue an enforcement notice where it appears to them that there has been a breach of planning control, and that it is expedient to issue the notice.

I'm Your Man Limited

20. The case concerned a permission granted to use two aircraft hangers for sales, exhibitions and leisure activities "for a temporary period of seven years". No condition was imposed to require cessation of that use at the end of the seven year period. The court held that there was no express or implied power for a local planning authority to impose limitations on a planning permission, and so the grant of permission was a permanent one.

21. The Judge noted that there is an express power, in section 60(1) of the 1990 Act, for permission granted by a Development Order to be subject to such conditions or limitations as may be specified in the Order. Section 70(1), which allows a local planning authority to grant permission, allows the imposition of conditions, but gives no power to impose limitations. Therefore, he concluded, there was no such express power, and none should be implied.

22. The Judge dealt with a submission that the time limit was part of the use authorised by the permission, so that "the use itself should be seen as a use limited for that period". He rejected this submission, saying:

> "I have doubt whether the character of a use for the purpose of section 55(1) of the 1990 Act can properly include without more whether the use was temporary or permanent. Change of use is from one use or non-use to another use and should be considered in terms of the character of the use of the land. Materiality for the purposes of section 55(1) should be judged as a matter of degree on a comparison between the use before and after the change. I do not consider that generally the character of a use would alter whether it was to last for one year or seven years or was permanent. In most cases the use of the land on each basis would be for planning purposes identical." [emphasis added]

23. The appeal in *Jeffery v First Secretary of State & Teignbridge District Council* [2007] EWCA Civ 584 was decided on the basis of a concession that *I'm Your Man* applied and was correctly decided. Both Jacob LJ and Hughes LJ expressly reserved the question of whether that was so.

24. The Divisional Court in *R (Altunkaynak) v Northamptonshire Magistrates' Court* [2012] EWHC 174 (Admin) expressly approved *I'm Your Man*, and applied it to a case where permission to use premises at 15B Silver Street Kettering as a hot food takeaway was expressed to be "as an extension to the present premises at number 15". The Court held that these words were not valid to limit the way in which the new use of number 15B could be exercised. Indeed, in paragraph [39] Richards LJ said:

> "But the reasoning in *I'm Your Man Limited* contains nothing to justify confining its application to temporal limitations. The relevant principle, drawn from the wording of the statute, is a general one: if a limitation is to be imposed on a permission granted pursuant to an application, it has to be done by condition."

25. Clearly the *I'm Your Man* principle means that when permission is granted for a certain use, any limitation on the way in which that use is exercised must be imposed by condition. It does not matter whether the limitation is by way of a time limit (as in *I'm Your Man*), or by linking it to the use or occupation of other premises (as in *Altunkaynak*). Nor is the principle limited to those two examples.

26. The underlying principle, as explained in *I'm Your Man*, is that "limitation" is a technical term used in the statute only when imposed by Development Order. Any restriction seeking to have the effect of a limitation, but imposed by a local planning authority, can only be effective if included in a condition.

27. That leaves the question of what use is permitted by a grant of permission, as opposed to any restriction or limitation on that use. Where the permission is also for the erection of a building, section 75 applies. Where the use described is covered by one of the specified use classes, it will cover all uses within that class unless restricted by

conditions. But where, as here, the permitted use (however it is defined) is "sui generis", the description or definition of the use permitted must come from somewhere.

28. It cannot be that, absent a specified use class, planning permission for change of use must be interpreted as permission to do absolutely anything, unless that freedom is circumscribed by conditions. Neither Respondent espoused such a proposition. Both argued that the grant is to be found from the planning permission as a whole, including the application and plans if (as here) they are incorporated into the permission by reference.

Submissions

29. Mr Ward submits on behalf of WCC that the 2003 grant of permission was for a "sui generis" use as a travelling showpeoples' site. The *I'm Your Man* principle does not apply because WCC are not seeking to rely on any restriction or limitation on that use. The limits on permitted use come from the grant itself, not from any derogation from or limitation upon that grant, which it is accepted would have to be imposed by condition. The grant of permission for use as a travelling showpeoples' site defines the character and nature of the use itself. If the words "travelling showpeople" have no functional significance in planning terms, there is nothing left in the grant to explain the use permitted.

30. In support of those submissions, Mr Ward relies additionally on *Wilson v West Sussex County Council* [1963] QB 764, where the word "agricultural" attached to the word "cottage" was held to be of "functional significance", not merely architectural or descriptive. Whilst the case may be distinguishable, and I do not rely on it as authority for my conclusion, it points to the fact-specific issue of construction of the permission actually granted in an individual case.

31. In like manner, Mr Ward cites *Williamson and Stevens v Cambridgeshire County Council* (1977) 34 P&CR 117, a Lands Tribunal interim decision, and *Waverley District Council v Secretary of State for the Environment and Miller and Davies* [1982] JPL 105, where Hodgson J concluded on the particular facts that the word "cattle" when attached to "transport lorries" had a functional significance. I look on these cases as merely examples of the application of normal principles of construction to particular facts.

32. For the First Respondent, Mr Whale submitted that WCC could and should have imposed a condition. It is not doubted that it could have done so, and therefore there is no need to strain construction of the planning permission to accommodate its failure. The First Respondent relies heavily on *I'm Your Man* and *Altunkaynak*. In addition, reference is made to *Smout v Welsh Ministers* [2011] EWCA Civ 1750, in which a submission that permission to develop land in phases A-F meant that the development had to be carried out in alphabetical order was roundly dismissed by the Court of Appeal.

33. Mr Whale accepted that there must be some limit on the use to which the land could be put, and submitted that this came from the whole of the application, plans and permission. Whether a descriptive word was significant would depend on the circumstances. He agreed that *I'm Your Man* was not authority for a proposition that

the wording of the permission could simply be ignored, but the answer would come from the whole suite of documents.

34. Mr Whale also accepted that there was a practical and visual difference between a site for travelling showpeople and one for general residential use, or even one for gypsies and travellers, but did not accept that they would amount to a different planning use or that there was any significant land use distinction.

35. Mr Rudd, for the Second Respondents, made submissions similar to those of Mr Whale. He too submitted that there is no fundamental difference in land use terms between travelling showpeople, gypsies and travellers, or New Age travellers.

Travelling showpeople

36. There is a longstanding recognition of the particular needs of travelling showpeople. Circular 22/91 was effective at the time of the grant of permission in 2003. It described the category as follows:

> "2. Showpeople are self-employed business people who travel the country holding fairs, chiefly during the summer months. Although their work is of a peripatetic nature, showpeople nevertheless require secure, permanent bases for the storage of their equipment and more particularly for residential purposes. Such bases are most intensively occupied during the winter, when many showpeople will return there with their caravans, vehicles and fairground equipment. For this reason, these sites traditionally have been referred to as "winter quarters". But increasingly showpeople's quarters need to be occupied by some members of the family permanently; older family members will stay on for most of the year and there are plainly advantages in children living there all year to benefit from uninterrupted education."

37. The Circular goes on to distinguish showpeople from gypsies, and points out that:

> "4. The nature of showpeople's sites is unusual in planning terms. The sites illustrate the showpeople's characteristic self-sufficiency by combining residential, storage and maintenance areas. Typically a site comprises areas set aside for the showpeople's accommodation – usually caravans and mobile homes – and areas where vehicles and fairground equipment can be stored, repaired and tested. This means that <u>the sites do not fit easily into existing land-use categories</u>. Some of the difficulties showpeople have experienced with the planning system can be attributable to this." [emphasis added]

38. In August 2007 new Guidance was issued, headed "Planning for Travelling Showpeople". This was in force at the date of the appeal to the Inspector. It repeats the passages quoted above in substantially the same terms. It also comments, at paragraph 9(a), that "Travelling showpeople do not in general share the same culture or traditions as Gypsies and Travellers".

39. In March 2012 a new document was issued by the Department for Communities and Local Government entitled "Planning policy for traveller sites", which covers both travelling showpeople and gypsies and travellers. The Glossary makes clear that "travelling showpeople" are distinct from "gypsies and travellers", who are excluded from the former group definition.

40. None of these documents can be used to change or even interpret the terms of the planning permission granted, but in my judgment they do point to the following conclusions:

    i) Travelling showpeople are a distinct group, which does not include gypsies and travellers.

    ii) As a group they have their own particular planning needs.

    iii) There is a distinction, significant in planning terms, between the use of land for travelling showpeople and its use by gypsies and travellers.

    iv) Even more so, there is a distinction, significant in planning terms, between the use of land for travelling showpeople and its use as a residential caravan site.

Discussion

41. Having concluded that a travelling showpeoples' site may be a significant and separate land use in planning terms, the next question is whether the 2003 planning permission, on its proper construction, granted permission only for that use.

42. The fundamental question is whether this was a limited grant of permission to use the site as a travelling showpeople's site, or an attempt (which would be ineffective as a result of the *I'm Your Man* principle) to impose a limitation or restriction on a more general grant.

43. The Inspector did not address this question, having come to his decision on the basis that *I'm Your Man* provided an entire answer as a matter of principle, regardless of the details of the particular case.

44. It would be possible simply to allow the appeal and leave a second Inspector to come to a conclusion. Since this is very much a question of law (though heavily fact-specific), I think it just and proportionate to come to a conclusion myself.

45. The unifying feature of *I'm Your Man*, *Altunkaynak* and *Smout* is that the use remained the same, with or without the purported restriction or limitation. The restrictions all related to the manner in which the use could be exercised, not as to the extent of the use itself. This case is very different, because the issue turns on the extent of the use itself.

46. In my judgment everything points to the 2003 grant being one of permission to use the land as a travelling showpeoples' site. Not only is this what was applied for, and was granted in the short description, it is also consistent with the conditions which I have set out in paragraph 6 of this judgment. Nowhere is it described as a residential caravan site, nor are the conditions taken as a whole appropriate for such a site. The only sensible construction is that it was a site for travelling showpeople only.

47. In short, this was not the grant of permission to use the land as a residential caravan site, with an ineffective attempt to limit that use to travelling showpeople. It was the grant of permission to use the land as a travelling showpeople's site, which is a distinct and narrower use, without any further attempt to limit that use.

s.288 application

48. The planning appeal arose out of an application dated 7 October 2010 by Mr Black for permission for "Use of land as travelling showmans site". The existing use of the land was described on the application form as "Travelling Showperson site". WCC accepted and processed the application, but made no determination within the time provided under the law.

49. In those circumstances the applicant is entitled to appeal to the Secretary of State under section 78(2) of the 1990 Act. The powers of the Secretary of State (exercised through an Inspector) are set out in section 79(1) as follows:

> (1) On an appeal under section 78 the Secretary of State may –
>
> (a) allow or dismiss the appeal; or
>
> (b) reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not),
>
> and may deal with the application as if it had been made to him in the first instance.

50. In the present case the Inspector decided that the permitted use was already wider than that applied for, and therefore took no further action on the section 78 appeal.

51. Mr Ward submits that the Inspector had no power to take no further action. He had either to allow or dismiss the appeal. The powers under section 79(1)(b) do not apply where there has been no decision by the local planning authority. Although the Inspector has the further power to deal with the application as if it had been made to him in the first instance, that did not include taking no action. The power of a local planning authority to decline to determine planning applications is very limited and none of the relevant circumstances applied here.

52. Mr Whale submits that this Court has no jurisdiction to entertain this challenge under section 288 of the 1990 Act. That section only applies (in a case such as this) where there has been "any decision on an appeal under section 78" (see section 284(3)(b)). It does not apply where the Inspector has taken no further action, and therefore not made any decision on the appeal. He cites, by parity of reasoning, *Golding v SSCLG* [2012] EWHC 1656 (Admin) at paragraphs [40] to [43]. WCC's only remedy would have been by judicial review, and it is now far too late for that.

53. Alternatively, Mr Whale submits, the Inspector had the power to act as he did by virtue of the concluding words of section 79(1), and it was a perfectly reasonable decision since the application was for the same use as was granted in 2003 on any interpretation of that permission.

54. In an attempt to understand the practical significance of the decision to take no further action, I asked Mr Whale what would happen if the section 289 appeals succeeded. He had no instructions, but expressed the view that the Secretary of State would be unlikely to reopen the planning appeal.

55. Mr Rudd submits that the 2010 application was wider in terms than the 2003 permission as interpreted by WCC, but became superfluous once the Inspector had decided as he did. Mr Rudd supported the submissions of Mr Whale and did not seek, on behalf of his client, to have the planning appeal reopened, even if the section 289 appeals succeeded.

56. I do not need to decide whether this challenge should have been brought by way of judicial review. My preliminary view is that a challenge under section 288 is available, because in my judgment the Inspector did make a decision on the appeal, but it was one which he was entitled to make.

57. WCC did not rely on any specific powers to decline to determine the 2010 application. As Mr Ward said, none of those circumstances applied. WCC simply made no decision and let the time for doing so elapse. In other words, they accepted and processed the application but then took no further action. The Inspector was entitled to deal with the appeal as if the application had been made to him in the first instance. He did exactly what WCC did.

58. If I am wrong about the legal position, I would also refuse relief under section 288 on discretionary grounds.

59. Mr Ward sought to argue that it was important to have the file closed. That is a curious submission when his own client did nothing to conclude the application. If Mr Black had not appealed, the file would still nominally be open. In any event, it seems to me that the only person with any interest in having the appeal re-opened is Mr Black, and Mr Rudd on his behalf has declined to support this challenge.

Conclusion

60. I will leave counsel to agree the appropriate form of order. If there are any issues about costs, these should if possible be decided on written submissions.

Case No: C1/2013/0473

Neutral Citation Number: [2015] EWCA Civ 563
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT
QUEENS BENCH DIVISION
(ADMINISTRATIVE COURT)

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 17 March 2015

B E F O R E:

LORD JUSTICE SULLIVAN
LORD JUSTICE McFARLANE
MR JUSTICE BLAKE

- - - - - - - - - - - - - - - - - - - -

MR M WALL, MR M BLACK, MRS S WALL, MR D BIRCH,
MR D CARTER, MR M JAMES

Appellants

-v-

WINCHESTER CITY COUNCIL

1st Respondent

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Interested Party

- - - - - - - - - - - - - - - - - - - -

(DAR Transcript of
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Official Shorthand Writers to the Court)

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Mr Michael Rudd (instructed by Direct Public Access) appeared on behalf of the Appellants
Mr Trevor Ward (instructed by Winchester City Council) appeared on behalf of the First Respondent

The Interested Party did not appear and was not represented

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J U D G M E N TIntroduction

1. LORD JUSTICE SULLIVAN: This is an appeal against the order dated 4 February 2013 of Philip Mott QC, sitting as a Deputy High Court Judge, allowing Winchester City Council's appeal, under section 289 of the Town and Country Planning Act 1990 ("the Act"), against a decision of one of the Secretary of State's Planning Inspectors to allow the respondent's appeals against six enforcement notices (enforcement notices A to F) issued by the Council in respect of land at Carousel Park, Basingstoke Road, Micheldever in Hampshire ("the site").

2. For convenience I will refer to the appellant in this court as "the Council" and to the respondents in this court as "the appellants", as they were before the Inspector.

Background

3. On 2 October 2003, planning permission was granted for the "change of use of agricultural land to travelling showpeoples' site" at the site. The planning permission was subject to a number of conditions, but an occupancy condition, providing that the site shall not be occupied by any persons other than travelling showpeople, was not imposed. The breach of planning control alleged in the enforcement notices was:

> "the material change of use of the Land from use as a Travelling Showperson's site to a use for siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons, and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople."

The Inspector's Decision

4. The Inspector corrected the enforcement notice so that the alleged breach of planning control was:

> "Without planning permission, the material change of use of the Land from use as a Travelling Showperson's site to a use for the siting of caravan/residential mobile homes for occupation by persons who are not Travelling Showpersons, the erection of buildings/structures on the land and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople."

5. The appellants appealed against the enforcement notices on a number of grounds, including ground (b) in subsection 174(2) of the Act. The Inspector summarised their appeal on this ground, in paragraph 12 of the Decision, as follows:

> "The appellants submitted two separate arguments on this ground: firstly, that the planning permission should be interpreted as being simply 'use as a residential caravan site' and not restricted to just travelling show people and secondly, that the occupants, in any event, were travelling show people so even if the permission restricted who could occupy the site, the

existing occupants came within that restriction. If either argument was successful, there had been no breach of planning control, so the appeals should succeed and the Notices should be quashed."

6. The Inspector said in paragraph 14 of the decision letter:

> "There was no dispute that the permission had been implemented and, so far as could be determined from the available records, conditions that required various matters to be agreed have been submitted and implemented. There was no submission, therefore, that what had taken place was development without any planning permission."

I had thought that it followed from the Inspector's conclusion that the planning permission had been implemented, that, at least initially, the site had been used as a travelling showpeoples' site, and that the Council's complaint was that there had subsequently been a material change of use to a caravan site that was occupied by persons who were not travelling showpersons. Before the Inspector it was submitted, on behalf of the appellants, that the site had historically been used to accommodate showmen and that the majority of the appellants, or their partners, had lived on the site for many years and that four of the appellants had previously been accepted by the Council as travelling showmen.

7. Neither Mr Rudd, on behalf of the appellant, nor Mr Ward, on behalf of the Council, were able to say, with any certainty, that it had been common ground at the inquiry that initially at least the site had been used as a travelling showpeoples' site. If this appeal is dismissed and the matter is remitted to the Inspector, then further consideration will have to be given as to whether the planning permission was ever implemented in the sense that I have described.

8. Turning to the appellant's ground (b) appeal, the Inspector considered a number of decisions, including the decision of Mr Robin Purchas QC, sitting as a Deputy High Court Judge in I'm Your Man Ltd v Secretary of State for the Environment [1999] 77 P&CR at page 251. In paragraph 23 of the decision the Inspector said:

> "I acknowledge that it is a matter of law but in my view, *I'm Your Man* decided a point of principle concerning limitations on planning permissions; it was not concerned with the detail of what type of limitation was being debated. In these circumstances I conclude that it is clear that the 2003 planning permission is not limited as there is no condition attached to it that restricts occupancy and the legal agreement, which does contain a restriction, was not incorporated into the permission."

9. The Inspector's conclusion in respect of the ground (b) appeal was contained in paragraph 26 of the decision as follows:

> "Taking all these factors into consideration I conclude that the 2003

> permission, in line with the decision in *I'm Your Man*, is for the use of the land as a residential caravan site with no restrictions on whom may occupy the site. In those circumstances the appeals succeeds on ground (b) and the notices as corrected and varied will be quashed."

So the Inspector allowed the appeals on ground (b) and quashed the enforcement notices.

The Judgment Below

10. The Council appealed against that decision. The appeal was heard by Philip Mott QC sitting as a Deputy High Court Judge. His judgment is to be found at 2013 EWHC 101 (Admin). Having considered the relevant authorities, including I'm Your Man, Mr Mott concluded in paragraphs 45 to 47 of his judgment:

> "45. The unifying feature of *I'm Your Man*, *Altunkaynak* and *Smout* is that the use remained the same, with or without the purported restriction or limitation. The restrictions all related to the manner in which the use could be exercised, not as to the extent of the use itself. This case is very different, because the issue turns on the extent of the use itself.
>
> 46. In my judgment everything points to the 2003 grant being one of permission to use the land as a travelling showpeoples' site. Not only is this what was applied for, and was granted in the short description, it is also consistent with the conditions which I have set out in paragraph 6 of this judgment. Nowhere is it described as a residential caravan site, nor are the conditions taken as a whole appropriate for such a site. The only sensible construction is that it was a site for travelling showpeople only.
>
> 47. In short, this was not the grant of permission to use the land as a residential caravan site, with an ineffective attempt to limit that use to travelling showpeople. It was the grant of permission to use the land as a travelling showpeoples' site, which is a distinct and narrower use, without any further attempt to limit that use."

Mr Mott allowed the Council's appeal under section 289.

The Appellants' Submissions

11. On behalf of the appellants, Mr Rudd submitted that the Deputy Judge erred. The Inspector's application of the principles that had been established in I'm Your Man was correct, and applying those principles the permitted use of the site was for the stationing of caravans for residential purposes.

Discussion

12. I have no doubt that the Deputy Judge's understanding of the effect of I'm Your Man was right and the Inspector's application of that decision was wrong. My reasons for so

concluding are as follows. In Wilson v West Sussex County Council (1963) 14 P&CR 301 the Court of Appeal had to consider the effect of a planning permission for the erection of an "agricultural cottage". The local planning authority subsequently modified the planning permission by the addition of an agricultural occupancy condition and the question was whether that modification entitled the owner to compensation. The Lands Tribunal said "no". On appeal the Court of Appeal said that compensation might be payable, because while there was a limitation upon the permitted user of the cottage in the absence of an occupancy condition, it would be a question of fact and degree whether use by a non-agricultural occupant would be a material change of use.

13. Wilmer LJ, with whom Danckwerts LJ agreed, said at page 311:

> "But in the particular circumstances of this case I am satisfied that this particular cottage was subject, by the terms of the respective planning permissions, to a limitation in relation to its user. What the position would have been if there had been no modification order, and supposing, after being occupied by a person bona fide engaged in agriculture, there had been a change of occupant to somebody not engaged in agriculture, I do not think it is possible for this Court here and now to decide. It would be a question of fact having regard to all the circumstances of the case whether the change amounted to a material change of use. Whether the possible right to install a subsequent non-agricultural occupant had a cash value, which has been lost as a result of the condition now imposed by the modification order, is a matter which the parties no doubt will consider. If they cannot agree the question will have to be determined by the Lands Tribunal."

Diplock LJ said at page 315:

> "The permission was thus a permission for two kinds of development, development by erection of a building viz. a cottage, and development by change of use, viz. to use the cottage after erection for occupation by a person engaged in the business of agriculture. It is not, I think, strictly accurate to say that it was a permission to erect a cottage subject to an implied condition that it should not be occupied by a person who was not engaged in the business of agriculture. In any context other than that of the Town & Country Planning Act, 1947, this might be a convenient way of putting it; but Section 23 draws a distinction between carrying out development without permission and non-compliance with conditions subject to which permission was granted, and this distinction is an important one. (See *Francis v. Viewsley Urban District Council*, 1958, 1 Q.B., 478). The true legal position in my view under the outline and final permissions granted in 1956 and 1959 respectively is that if the cottage upon erection were used for occupation by a person not engaged in the business of agriculture, this would be a material change of use of the land from its use as grazing or for pig-styes for which permission had not been

> granted; while if, after erection and occupation for some time by a person engaged in the business of agriculture, the cottage were occupied by someone not so engaged, this would be a change of use and it would be a question of fact whether it were a "material change of use" and thus the carrying out of development without permission."

Though the Court of Appeal in Wilson was concerned with the Town and Country Planning Act 1947 the same distinction between the carrying out of development without permission and non-compliance with conditions subject to which permission has been granted, remains in the 1990 Act.

14. The Court of Appeal's decision in Wilson was followed by Sir Douglas Frank QC, President of the Lands Tribunal in Williamson and Stevens v Cambridgeshire County Council [1997] 34 P&CR 117. The Lands Tribunal had to determine the compensation payable for land, which had been acquired for use by the County Council as a Gypsy caravan site. The land had the benefit of a deemed planning permission for use "as a site for caravans occupied by gypsies". Compensation was sought upon the basis that the planning permission permitted a use as a general caravan site. Sir Douglas Frank, applying the Court of Appeal's decision in Wilson, rejected that submission. Having concluded that the words "occupied by gypsies" had a functional significance and were to be construed as limiting the proposed use to one as to occupation by gypsies (see page 119), Sir Douglas Frank continued:

> "Mr Marder [who was counsel for the complainant] argues that such a limitation is not capable of enforcement. He refers to the definition of gypsies as in section 16 of the Caravan Sites 1968 namely:
>
> > It means persons of nomadic habit of life whatever their race or origin but does not include members of an organised group of travelling showmen or of persons engaged in travelling circuses travelling together as such.
>
> and says that great difficulties could be encountered on deciding who are 'persons of nomadic habit.' What is a site owner to do if a person comes along asking for a site and he says he is of nomadic habit and he is not? He gave other demonstrations of the difficulty of enforcing that limitation. As I listened I heard echoes of the illustrations given in the case of Fawcett Properties Limited v Bucks County Council, where great play was made of the difficulty in enforcing a condition restricting a house to occupation by agricultural workers. But whether the limitation would be difficult to enforce is not the question before me. When there is a limitation, the question is whether it is a valid limitation. If there is a difficulty that either the Planning Authority overcome it or they fail to enforce the limitation; that does not invalidate the limitation as such, nor do I think, to deal with another argument, that there is no power to grant a permission subject to a limitation."

Having referred to the judgments in Wilson, Sir Douglas Frank continued:

> "So there was a case where it was held that in an expressed permission granted by the planning authority the words in dispute were a limitation.
>
> Returning to the matter of the difficulty of enforceability, of course whether there has been a breach of a condition of limitation becomes a question for the planning authority (or an appeal to the Secretary of State), and whether occupation is by gypsies as defined would have to be determined on the particular facts at the time. In any event, even assuming in Mr Marder's favour that the words concerned are not a limitation, the question arises whether it would be a material change of use to use the land as a site for 'general caravans'. In my judgment there can be no doubt that it would be a material change of use. The County Council has gone out of its way to make specific provision for fulfilling a duty in relation to sites for gypsies..."

15. Both Wilson and Williamson and Stevens were applied by Hodgson J in Waverly District Council v Secretary of State for the Environment [1982] JPL page 105. Planning permission had been granted for the use of an old brickworks "as a depot for cattle transport lorries". Following another intermediate use, the land was then used as a general haulage depot. The Secretary of State allowed the appeals against the enforcement notices upon the basis that a general haulage depot use was not materially different from a depot for cattle transport lorries. The local planning authority appealed. Hodgson J accepted the following propositions, which were advanced on behalf of the local planning authority:

> "1. If planning permission was granted for use A it did not permit the recipient to carry on use B, even though use B would not be a material change of use from use A. Planning permission for use A only permitted use B if, on a proper construction of use A, it comprehended use B. The question whether another use would be a material change of use was immaterial.
>
> 2. If there was planning permission for use A and the land was actually being used for use A, then no planning permission was needed for use B, if use B was not a material change of use from use A. This was not because planning permission for use A included use B but because there was no material change of use from the one being used, that question being of course one of fact and degree.
>
> 3. If there was planning permission for use A and the land was used for use X and a further change of use from use X to use B was made it was wholly irrelevant that use B would not be a material change of use from use A, because the change was not

from A but from X.

> In those equations in this case, A equalled use as a depot for cattle lorries, B equalled general haulage use and X equalled the intermediate use found to have taken place ..."

16. It was submitted on behalf of the Secretary of State that the limitation to "cattle" transport lorries was meaningless except as a description of a certain type of vehicle. Hodgson J said at page 107 that he:

> "had no doubt that the word 'cattle' had just as functional a meaning as 'agricultural' and 'for the use of gipsies'. The word 'cattle' could no more be construed as descriptive of a particular type of vehicle than the word 'agricultural' could be construed as describing a particular type of building. Nor did he find anything vague in the word 'cattle': it seemed to be every bit as clear and precise a limitation as those in the cases to which he had referred."

17. Those cases included, as I have mentioned, both Wilson and Williamson and Stevens. Hodgson J concluded that use as a general haulage depot did not fall within the permitted use as a depot for cattle transport lorries, and allowed the Council's appeal.

18. Applying these principles to the present case, 'A' is a planning permission for a change of use to travelling showpeoples' site and 'B' is alleged in the enforcement notice to have been a material change of use to a use for the siting of caravan/ residential mobile homes by persons who are not travelling showpersons.

19. The planning permission in the present case was for a change of use of agricultural land to travelling showpeoples' site. It permitted that change of use and no other. It did not permit a change of use to a use for the stationing of caravans for residential purposes by persons who were not travelling showpeople. Since there was no occupancy condition use of the site by occupiers who were not travelling showpeople was not prohibited. Whether the site was being used by non-travelling showpeople and, if so, whether that use was a material change of use from an initial use by travelling showpeople, were matters of fact and degree, which the Inspector should have determined, but did not, because he misunderstood the effect of the decision in I'm Your Man.

20. The limitation of the use to a site for travelling showpeople is just as much a functional limitation on the 2003 planning permission as were the limitations to "agricultural cottage" or "site for caravans occupied by gypsies" or "depot for cattle transport lorries". When the planning permission was granted in 2003 it was clear from Circular 22/91 "Travelling Showpeople" that there were specific characteristics that sites had to meet if they were to be suitable for travelling showpeople.

21. The I'm Your Man line of authorities has, in my judgment, been misunderstood by the appellants, and it was misapplied by the Inspector in paragraph 26 of his decision. It

was not relevant, in the circumstances of the present case, when the allegation in the enforcement notice was that there had been a material change of use from use as a travelling showpeoples' site to use as a caravan site for persons who were not travelling showpersons. As Mr Mott said in paragraph 45 of his judgment, the unifying feature of the I'm Your Man line of authorities is that the use remained the same. Thus:

(i) In I'm Your Man the same warehouse/factory for sales, exhibitions and leisure activities use continued after the expiration of the 7-year period. Plainly, a continuation of the same use did not amount to a material change of use. It simply does not follow that the planning permission for the change of use was granted for a period of more than 7 years.

(ii) In Altunkaynak [2012] EWHC 174 (Admin) the same restaurant takeaway and hot food takeaway business was continuing, but in No 15B alone and not in No 15 - see paragraph 20 of Cotswold Grange County Park LLP v Secretary of State for Communities and Local Government [2014] EWHC 1138 (Admin). Continuing a use which has been taking place in two adjoining premises in only one of those premises is not a material change of use of the premises in which the use continues.

(iii) In Cotswold Grange the use of the site for the stationing of caravans remained the same. There was simply an increase in the number of caravans - a further six caravans in addition to 54 existing caravans. While the planning permission permitted the stationing of 54 and not 60 caravans, there was no material change of use from the permitted 54 caravans.

(iv) Smout v Welsh Ministers and Wrexham County Borough Council [2011] EWCA Civ 1750 was concerned with planning permissions for landfilling which envisaged, but did not require, that the landfilling would be carried out in phases lettered A to F. Simply changing the order in which the permitted landfilling was carried out did not amount to either a material change of use or operational development without planning permission.

22. It can be seen that in none of these cases was there an alleged change of use from the permitted use to some other use. If such a change is alleged in an enforcement notice, then in the absence of any condition limiting the use of the site to the permitted use, the question in every case will be: has the alleged change of use taken place and, if so, is it a material change of use for planning purposes? If the answer to either of these questions is "no" there will have been no development, so planning permission will not be required. If the answer to both these questions is "yes" there will have been development and planning permission will be required. The position was accurately summarised by Hickinbottom J in paragraph 15 of his judgment in Cotswold Grange Country Park:

> "...the grant identifies what can be done – what is permitted – so far as use of land is concerned; whereas conditions identify what cannot be done – what is forbidden. Simply because something is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is

> proposed is a material change of use – for which planning permission is required, because such a change is caught in the definition of development – generally, the only things which are effectively prohibited by a grant of planning permission are those things that are the subject of a condition, a breach of condition being an enforceable breach of planning control."

23. There is no suggestion in I'm Your Man, Cotswold Grange Country Park or Altunkaynak that the Court of Appeal's decision in Wilson or the decisions in which Wilson was subsequently applied were wrong, nor could there have been such a suggestion since I'm Your Man and Cotswold Grange Country Park were first instance decisions and Altunkaynak was a Divisional Court decision. Understandably, in these circumstances, Mr Rudd placed considerable emphasis upon the decision of the Court of Appeal in Smout in support of his submission that the imposition of a limitation in the 2003 planning permission to travelling showpeoples' site was unlawful. The basis for this submission was said to be paragraph 20 of the judgment of Laws LJ, with whom Pitchford LJ and Lloyd Jones J, as he then was, agreed.

24. Having referred to the Inspector's conclusion that there was nothing in either the planning permission or the plans which required the permitted landfilling to be carried out in any particular sequence, Laws LJ said this in paragraph 20 of his judgment:

> "20. In my judgment the inspector was right. Specifically, there is nothing in the planning permission to require the phases to be developed in alphabetical order. If a planning authority desires to impose a restriction or limitation upon development being permitted by the permission in hand, that must be done by means of a condition attached to the planning permission: see the decision of Mr Robert Purchas QC, sitting as a divisional judge of the Queen's Bench in I'm Your Man Limited v Secretary of State [1999] 77 P&CR 251. Here the conditions attached to the planning permission are set out in Annex C. There is no condition requiring the phases to be developed in alphabetical order. Mr Harwood referred this morning to the terms of the environmental statement in the case, consolidated as I have indicated in 1992. He says that that shows the importance of fulfilling the phases in order. However, the environmental statement plainly does not constitute a planning condition."

25. In the context of the planning permissions for landfill in that case, the proposition that if the local planning authority wished to ensure that the landfilling was carried out in a particular sequence of phases, then it had to impose a condition to that effect is wholly unexceptional. However, those observations of Laws LJ are not authority for the proposition that any limitation in the form of a description of the development that is permitted in a planning permission is unlawful. Wilson is not referred to in Smout. That is not surprising as there was no need to do so, because in Smout there was no

change from the operational development that had been permitted, namely landfilling.

26. It is possible that the use of the word "limitation" in the judgments has contributed to the misunderstanding of the effect of the I'm Your Man line of authorities. The simple proposition which should not be lost sight of is that the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself. Whether other uses would or would not be materially different from the permitted use is irrelevant for the purpose of ascertaining what use is permitted by the planning permission. If the permitted use has been implemented, and a change to the permitted use takes place, then it will be a question of fact and degree whether that change is a material change of use.

Conclusion

27. For these reasons the Deputy Judge's conclusion was correct. This appeal must be dismissed and the appellant's appeal under section 174 of the Act must be remitted to the Inspector so that he can consider whether the 2003 planning permission was implemented in the sense the site was initially used as a travelling showpeoples' site, whether the alleged change of use has taken place and, if so, whether that alleged change of use amounts to a material change of use. If the answer to the last of those questions is "yes", then the Inspector will have to go on to consider whether planning permission should be granted for that material change of use under the appellants' ground (a) appeal.

28. LORD JUSTICE McFARLANE: The planning inquiry in this case opened as long ago as 11 October 2011 and with admirable dispatch the Inspector concluded the process when he handed down his decision on 9 December 2011. More than 3 years have now been spent in analysing whether or not the Inspector was correct in his approach to the decision that fell to him to make. Although the result of the decision that my Lord has announced today means that the whole process will now have to be reopened, and the inquiry before a different Inspector may well see the fourth anniversary of the opening of the first inquiry, I am entirely in agreement with all that my Lord has said in his judgment and I agree that the appeal has to be dismissed.

29. MR JUSTICE BLAKE: I agree that the appeal should be dismissed for the reasons given by Sullivan LJ.

Case Ref: 09/00116/CARAVN

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)

BREACH OF CONDITION NOTICE

ISSUED BY: WINCHESTER CITY COUNCIL

To: Caroline Stevens of Plot 9, Carousel Park, Basingstoke Road, Micheldever, Winchester, Hampshire SO21 3BW

1. THIS NOTICE is served by Winchester City Council ("the Council"), under section 187A of the above Act, because they consider that conditions imposed on a grant of planning permission, relating to the land described in paragraph 2 below, have not been complied with. The Council consider that you should be required to comply with the conditions specified in this notice. The Annex at the end of this notice contains important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**

Plot 9, Carousel Park, Basingstoke Road, Micheldever, Winchester, Hampshire SO21 3BW Hampshire shown edged red on the attached plan ("the Land").

3. **THE RELEVANT PLANNING PERMISSION**

The relevant planning permission to which this notice relates is the permission granted by the Council on 2 October 2003 for change of use of agricultural land to travelling showpeoples' site (ref: 02/01022/FUL).

4. **THE BREACH OF CONDITION**

The following conditions have not been complied with:

10. There shall be a maximum of three caravans or mobile homes occupied for residential purposes on each pitch. Any additional touring caravans used by the travelling showpeople may be stored within the defined storage areas but may not be occupied for residential purposes at any time.

Condition 10 has been breached in that, on 16 April 2019, there were 11 caravans occupied for residential purposes on the Land (3 mobile homes and 8 touring caravans).

11. There shall be no more than 9 family pitches on the site and the pitches may not be sub-divided at any time.

Condition 11 has been breached in that the Land has been subdivided into three pitches or plots (plots 9, 9A and 9B) by the erection of timber fencing between each pitch. Three separate gated entrances have been created in the boundary wall from the access road.

5. WHAT YOU ARE REQUIRED TO DO

As the person responsible for the breaches of conditions specified in paragraph 4 of this notice, you are required to comply with the stated conditions by taking the following steps:

1. Reduce the number of caravans or mobile homes in residential occupation on the Land to a maximum of three;
2. Remove all other caravans and mobile homes from the Land;
3. Take down the two fences which divide plot 9 into 3 pitches and remove the resultant materials from the Land;
4. Remove the gates which provide access to plot 9A and plot 9B and seal up the two accesses by building a stone wall to the same height as the existing boundary wall using matching materials.

6. TIME FOR COMPLIANCE

Period for compliance:

Steps 1 and 2: **28** days beginning with the day on which this notice is served on you.

Steps 3 and 4: **42** days beginning with the day on which this notice is served on you.

Dated: 18 April 2019

Signed: [redacted]

Lisa Hall, Head of Legal Services (Interim)

On behalf of:

Winchester City Council, City Offices, Colebrook Street, Winchester, Hampshire, SO23 9LJ

Nominated Officer: David Townsend, Team Leader - Enforcement

Telephone Number: 01962 848371

ANNEX

WARNING

THIS NOTICE TAKES EFFECT IMMEDIATELY IT IS SERVED ON YOU IN PERSON OR ON THE DAY YOU RECEIVED IT BY POST.

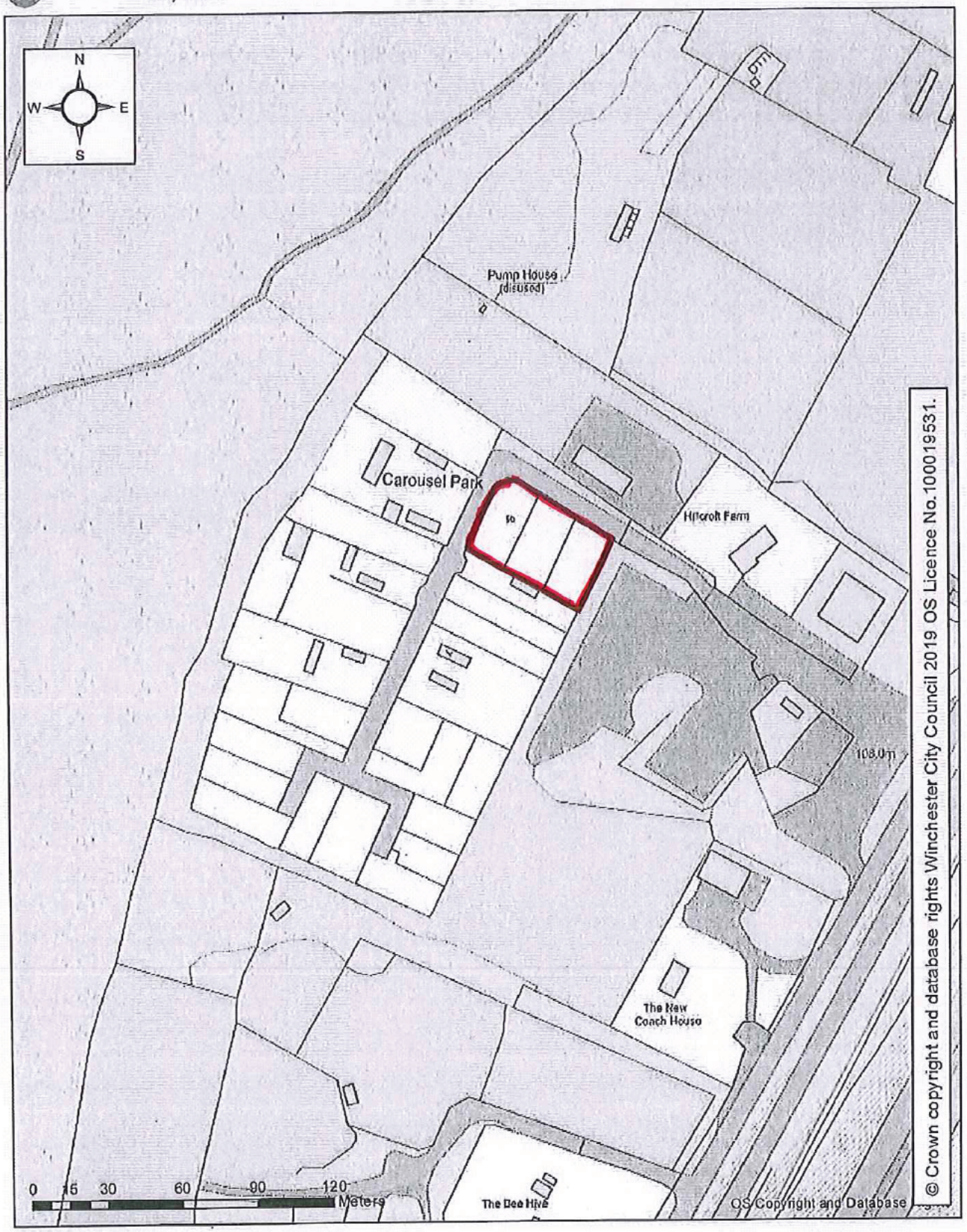
THERE IS NO RIGHT OF APPEAL TO THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT AGAINST THIS NOTICE.

It is an offence to contravene the requirements in paragraph 5 of this notice after the end of the compliance period. You will then be at risk of immediate prosecution in the Magistrates' Court, for which the maximum penalty is standard level 4 for a first offence and for any subsequent offence.

If you are in any doubt about what this notice requires you to do, you should get in touch immediately with David Townsend, Team Leader – Enforcement, Winchester City.

If you do need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review.

Carousel Park



Date: 16/04/2019

Scale: 1:2,000

Author: Winchester City Council

Map Notes

09/00116/CARAVN

Legend

Appeal Decisions

Inquiry Held on 1 – 3, 8 – 10, 14 – 16 and 21 – 23 May 2019; 12 – 13 June 2019; and 5 September 2019.

Site visit made on 1 May 2019

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22 November 2019

Appeal A: APP/L1765/C/10/2138144
Land at Plot 1, Carousel Park, Basingstoke Road, Micheldever, Winchester, Hampshire

- 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 M Wall against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 6 September 2010.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from use as a Travelling Showperson's site to use for siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.
- The requirements of the notice are:
  - (i) Permanently cease the use of the Land for the siting of residential caravans/mobile homes for occupation by persons who are not travelling showpeople (as defined within Paragraph 15 of Circular 04/2007: Planning for Travelling Showpeople);
  - (ii) Permanently remove from the Land all caravans/mobile homes, which are shown on the attached plan[1] in their approximate position marked with an "X"; and
  - (iii) Permanently remove from the Land all sheds, areas of hardstanding, dividing walls and fences within each individual plot and any other domestic and business items and equipment unrelated to the occupation of the site by travelling showpeople and their dependents.
- The period for compliance with the requirements is 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B: APP/L1765/C/10/2138149
Land at Plot 2, Carousel Park, Basingstoke Road, Micheldever, Winchester, Hampshire

- 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 M Black against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 6 September 2010.
- The breach of planning control as alleged in the notice is as per the notice in appeal A.

[1] I.e. the plan attached to the enforcement notice.

- The requirements of the notice are:
  (i) As per the notice in appeal A;
  (ii) As per the notice in appeal A; and
  (iii) Permanently remove from the Land all sheds, buildings, areas of hardstanding, dividing walls and fences and any other domestic and business items and equipment unrelated to the occupation of the site by travelling showpeople and their dependents [apart from those fences specifically granted planning permission under reference number 05/01605/FUL (Retrospective planning permission for the erection of fences) and 06/00441/FUL (construction of a garage workshop for the servicing and repair of travelling showman vehicles and equipment).]
- The period for compliance with the requirements is 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g).

Appeal C: APP/L1765/C/10/2138150
Land at Plot 3, Carousel Park, Basingstoke Road, Micheldever, Winchester, Hampshire

- 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 Mrs S Wall against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 6 September 2010.
- The breach of planning control as alleged in the notice is as per the notice in appeal A.
- The requirements of the notice are:
  (i) As per the notice in appeal A;
  (ii) As per the notice in appeal A; and
  (iii) Permanently remove from the Land all sheds, buildings, dividing walls and fences, vehicles and all other domestic and business items apart from those specifically granted planning permission under reference numbers*[sic]* 05/01605/FUL (Retrospective planning permission for the erection of fences).
- The period for compliance with the requirements is 3 months after the notice takes effect
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g).

Appeal D: APP/L1765/C/10/2138152
Land at Plot 7, Carousel Park, Basingstoke Road, Micheldever, Winchester, Hampshire

- 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 D Birch against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 6 September 2010.
- The breach of planning control as alleged in the notice is as per the notice in appeal A.
- The requirements of the notice are as per requirements (i) to (iii) of the notice in appeal A.
- The period for compliance with the requirements is 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (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 as amended have lapsed.

Appeal E: APP/L1765/C/10/2138153
Land at Plot 8, Carousel Park, Basingstoke Road, Micheldever, Winchester, Hampshire

- 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 D Carter against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 6 September 2010.
- The breach of planning control as alleged in the notice is as per the notice in appeal A.
- The requirements of the notice are as per requirements (i) to (iii) of the notice in appeal A.
- The period for compliance with the requirements is 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g).
- This decision supersedes that issued on 9 December 2011. That decision on the appeal was remitted for re-hearing and determination by order of the High Court.

Appeal F: APP/L1765/C/10/2138155
Land at Plot 9, Carousel Park, Basingstoke Road, Micheldever, Winchester, Hampshire

- 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 M James against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 6 September 2010.
- The breach of planning control as alleged in the notice is as per the notice in appeal A.
- The requirements of the notice are as per requirements (i) to (iii) of the notice in appeal A.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g).

Decisions

Appeals A, B, C, E, & F: APP/L1765/C/10/2138144, 2138149, 2138150, 2138153 & 2138155

1. The appeals are allowed, and the enforcement notices are quashed.

Appeal D: APP/L1765/C/10/2138152

2. It is directed that the enforcement notice be:

   (a) corrected by deleting "vehicles," from the allegation set out in section 3 of the notice;

   (b) varied in section 5 by deleting requirements (ii) and (iii) and substituting a new requirement (ii) as follows:

   "Permanently remove from the Land the building/structure shown hatched black within the red outline on the attached plan and permanently remove the fence/wall shown within the red outline and running between points '5' and '6' on the attached plan";

(c) varied in section 6, by substituting "12 months" as the period for compliance; and

(d) varied by deleting the plan attached to the notice and substituting the new plan attached to this decision.

3. Subject to this correction and these variations appeal D is dismissed, and the enforcement notice is upheld.

Procedural/preliminary matters

4. These appeals involve the redetermination of enforcement appeals dismissed by another Inspector on 9 December 2011, the matter having been remitted to the Secretary of State for rehearing and determination by Order of the High Court (HC) on 1 February 2013[2]. An appeal against the decision of the HC was dismissed by the Court of Appeal (CA) on 17 March 2015[3]. This decision on appeals A – F supersedes that issued on 9 December 2011.

5. Another Inspector was appointed to re-determine the appeals and she opened the inquiry in June 2016. That Inspector (the previous Inspector) then sat for 10 days over a lengthy period, last adjourning on 28 June 2018 but, for personal reasons, she was unable to continue. The matter was therefore transferred to me and whilst much evidence had already been heard before my involvement, I started afresh. Much of the evidence had been amended and supplemented over the years and, following a pre-inquiry meeting on 17 October 2018, the parties submitted revised and consolidated proofs of evidence and core documents (CDs). I did not consider earlier evidence, unless it was specifically drawn to my attention and I was not bound by any preliminary views expressed by the previous Inspector. This approach was set out in my pre-inquiry note of 26 April 2019.

6. The grounds of appeal initially included ground (d), but this was withdrawn during the 2011 inquiry. Before my inquiry opened the appellants in appeals A and E sought to add ground (e). However, they accepted during the inquiry, and in closing, that I had no power to consider that new ground at this stage.[4]

7. All evidence was taken under oath or affirmation, except during the 'round table' sessions concerning gypsy and traveller need and housing land supply.

The allegation

8. The terms of the allegation are crucial to the determination of grounds (b), (c), (a) and indeed (f).

9. In appendix 36 of Mr March's proof, the Council set out suggested corrections to the allegations. However, having regard to the appellants' testimony, Mr March revised these during his evidence in chief and the Council's final suggestions were detailed in Mr Ward's closing submissions.[5] In particular, the

[2] *Winchester CC v SSCLG & Mr M Wall, Mr M Black, Mrs S Wall, Mr D Birch, Mr D Carter and Mr M James* [2013] EWHC 101 (Admin).
[3] *Mr M Wall, Mr M Black, Mrs S Wall, Mr D Birch, Mr D Carter and Mr M James v Winchester CC & SSCLG* [2015] EWCA Civ 563 2015 WL 1134428.
[4] The reasons for this are clearly stated on pages 1 and 2 of the Council's closing submissions (inquiry document (ID) 32).
[5] ID32, pages 3 and 4.

Council conceded that it was only in relation to Plot 7 (Appeal D) that the evidence indicated a mixed business element in the breach. The suggested corrections were presented as 2 options.

10. The Council's **Option 1** is that, save for Plot 7 (appeal D), the allegation should be amended to:

> "without planning permission, the material change of use of the Land from use as a Travelling Showpersons' site to a use for the siting of caravans for residential use."

11. In respect of Plot 7, the Council's suggested allegation is:

> "without planning permission, the material change of use of the Land from use as a Travelling Showpersons' site to a mixed use comprising the siting of caravans for residential use and the storage of business materials equipment and vehicles."

12. The Council contended in closing that its suggested wording merely "simplifies" the breach and "adds further clarity that the breach is concerned with land use and not the identity of the occupiers per se." That contention was controversial, as the appellants say the Council's "principal focus in this case has always, until recently, been on the identity of residents, not the physical use of the land."[6] In addition to the words of the allegation in the notices, the reasons for issuing them referred to the Council's belief that "a large number of persons occupying the site are gypsies and travellers." Furthermore, the requirements sought the cessation of use for siting of caravans "for occupation by persons who are not travelling showpeople (as defined in Paragraph 15 of Circular 04/2007…"

13. The Council did suggest amending the allegation some time ago, albeit after the HC and CA rulings. The proposed wording was different to that now suggested, but also involved deletion of the words "for occupation by persons who are not Travelling Showpersons...". It is apparent from the HC judgement in this case that Mr Ward's submissions to the court on behalf of the Council stressed the functional significance of the words "travelling showpeople." However, in an email to the appellants dated 5 April 2016[7], whilst expressing the view that the breach alleged in the notices "remains correct", the Council said it would be likely to ask the Inspector to amend it:

> "…so the breach reads…"to a use for the siting of caravans/mobile homes and the storage of vehicles, equipment and materials, etc…" This is simply because the emphasis throughout these appeals and Court proceedings appears to have been on the nature of the occupiers of the site as opposed to use of the site and this change of wording would help make this clear.
>
> …
>
> The appeal was in part under ground (b) i.e. that there was no breach of planning control. This was largely based on the argument that the appellants were traveling showpeople. However, as the breach of planning control

[6] ID 33, paragraph 2.
[7] Mr March's appendix 2.

relates to the use of the land not to occupancy I would be grateful if you would please clarify whether you maintain the ground (b) appeal."

14. The fact that the proposed amendment to the allegations was linked to the suggestion that ground (b) might not be pursued indicates that there was some significance to it beyond mere clarification. It is also worth noting that, rather than providing clarity, the allegation proposed in that 2016 email was flawed, as it identified no purpose for the siting of caravans/mobile homes.

15. In Mr March's proof for my inquiry and in Mr Ward's opening submissions for the Council, my attention was drawn to the fact that, at the outset of, and during the previous remitted inquiry, the previous Inspector also suggested amending the notices in line with what is now the Council's Option 1. Nevertheless, in determining whether the Council's proposed amendments are necessary or appropriate, I start by considering what the HC and CA have said in relation to this case. When remitting the matter for redetermination, the HC stated that the enforcement notices had been issued "because it was thought that the site was being occupied by gypsies and travellers who were not traveling showpeople" and the notices alleged that this was a material change of use. However, the HC said the Inspector made "no findings in respect of the …limb of ground (b), which was that the occupants were in fact travelling showpeople."

16. The CA dismissed the appeal against the HC decision. In the leading judgement, Sullivan LJ considered the CA ruling in *Wilson v West Sussex County Council* (1963) 14 P&CR 301, the Lands Tribunal judgement in *Williamson and Stevens v Cambridge CC* (1997) 34 P&CR 117 and that of Hodgson J in *Waverly DC v SSE* [1982] JPL 105.

17. In *Wilson*, the CA held that, where the erection of a cottage was permitted for occupation by a person engaged in agriculture and it was first occupied by such a person, its later occupation by someone not engaged in agriculture would be a change of use. (It would then be a question of fact whether that change was material). The Lands Tribunal followed this in *Williamson*, in which it held that, where land had deemed planning permission "as a site for caravans occupied by gypsies", the words "occupied by gypsies" had a functional significance. They were to be construed as limiting the use to one as occupation by gypsies and whether occupation was by gypsies as defined would have to be determined on the particular facts at the time. In *Waverly*, the court found that, where planning permission was granted for the use of an old brickworks "as a depot for cattle transport lorries", the word "cattle" had just as functional a meaning as "agricultural" and the phrase "for the use of gypsies". In Sullivan LJ's words, Hodgson J concluded that "use as a general haulage depot did not fall within the permitted use as a depot for cattle lorries."

18. Applying these principles to the present case, Sullivan LJ noted that the enforcement notices alleged a material change of use to a use for the siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons. He said that planning permission Ref 02/01022/FUL (the 2003 permission[8]):

[8] Although the CA judgement noted some doubt as to whether the 2003 permission was implemented, it is now common ground that it was. (See the Statement of Common Ground (ID30), paragraph 23.

> "…was for a change of use of agricultural land to travelling showpeoples' site. It permitted that change of use and no other. It did not permit a change of use to a use for the stationing of caravans for residential purposes by persons who were not travelling showpeople. Since there was no occupancy condition use of the site by occupiers who were not travelling showpeople was not prohibited. *Whether the site was being used by non-travelling showpeople and, if so, whether that use was a material change of use from an initial use by travelling showpeople, were matters of fact and degree, which the Inspector should have determined* (my emphasis), but did not, because he misunderstood the effect of the decision in *I'm Your Man*.
>
> *…the appellant's appeal…must be remitted to the Inspector so that he can consider … whether the alleged change of use has taken place* (my emphasis) and, if so, whether that alleged change of use amounts to a material change of use."

19. In opening for the Council, Mr Ward said that, throughout the appeals and Court proceedings, the "appellants had wrongly focused on the nature of the occupiers of the site as opposed to the use of the land". He said the proposed amended wording would "help clarify the issue and avoid the same erroneous approach to the breach being continued during the course of the remitted inquiry." I do not say the following point necessarily makes it impossible for me to find that corrections to the allegations are necessary, but neither the HC nor the CA suggested that changes along the lines proposed in Option 1 are needed or appropriate. Although this was not the central issue before the HC and CA, both rulings suggest it was not incorrect to allege "occupation by persons who are not Travelling Showpersons", given the functional significance of those words.

20. The Council drew my attention in closing to *Newbury DC v SSE and Another* [1988] JPL 185[9]; (1989) 57 P&CR. In that case, Kennedy J said that, when a matter went back before the Secretary of State:

> "…he was in a position to review the whole of the matter. Whether in fact…it would be appropriate to make any alteration other than that which has already been canvassed… by each of the parties…is a matter to which no doubt he will give very careful consideration. It seems to me plain that when a court has detected an error of law and the error of law is pointed out, the Secretary of State on reconsidering the position in the light of what has been said about the matter by the court, may come to the conclusion that other alterations have to be made to his decision in the light of the court's expression of view as to the error of law. He cannot be restricted to simply correcting the error of law on the face of the document, but *if he makes changes which go further than those which are called for as a result of the expression of view which has been tendered by the court, and does so without reference to compelling new material, it stands to reason that there may be further litigation arising out of his revised decision.* (My emphasis)

21. In this case, the HC and CA found the first Inspector had erred in law by concluding that the 2003 permission was for the use of the land as a residential

[9] Incorrectly cited in the Council's closing as [1988] JPL 248.

caravan site, with no restrictions on the occupation of the land, relying upon the principle in *I'm Your Man Ltd. v SSE* (1999) 77 P&CR 251. This does not indicate that the allegation should be altered in line with Option 1; indeed, both the HC and CA stated that, on remission, the Inspector should consider whether the change of use alleged in the notice has taken place. In the words of Sullivan LJ, "whether the site was being used by non-travelling showpeople" was a matter "of fact and degree, which the Inspector should have determined." This necessitates a focus on the identity of the occupiers when the notices were issued.

22. I have considered the Council's submissions carefully and had regard to the preliminary views of the previous Inspector. The notices could have been originally drafted in line with Option 1. However, in the light of the HC and CA rulings in this case, and the judgement in *Newbury*, that does not compel or persuade me that they should now be amended along those lines. I reach that conclusion even if such amendment would not strictly cause injustice.

23. That said, even though the Council could have waited nearly 10 years to issue a change of use notice anyway, it is now more than 9 years since the notices were issued and the original drafting of the allegations inevitably led to a focus on the identity and status of the occupiers and what was needed to establish that. Mr Ward said in closing for the Council, "…the 2003 permission has granted a land use as a TSP site. That is different from simply considering whether an occupier of the land is a travelling showperson."[10] Nevertheless, the notices alleged occupation by persons who are not travelling showpeople. Notwithstanding the Council's first suggested amendment in an email sent in 2016, more than a year after the CA judgement, amending the notices as now requested would do more than simply "clarify" the issues; it would shift the focus of consideration away from the identity and status of the occupants at a very late stage.

24. In closing, Mr Rudd did not pursue the injustice point with equal vigour in relation to all the appeals, but I am satisfied that some injustice would be caused for all the appellants in shifting the focus so long after the notices were issued, the appeals were first considered, and the HC and CA rulings were made. A change of use can be enforced against up to 10 years after the date of the breach. However, that does not mean that changing the allegation would not cause injustice; the passage of time would still present problems for the appellants in recalling the detail of matters which did not appear to be the focus of attention for many years. The injustice would be particularly acute in relation to appeal D, where Mr Birch did not to pursue ground (a) at the remitted appeal stage. Mr Green explained in evidence that this was because the fee for ground (a) had been refunded to him by mistake and, having reconsidered the matter on advice and being confident that his status was that of a showperson, he saw no need for ground (a).

Conclusions on the allegation

25. For the reasons given, I reject the Council's Option 1. In that event, its **Option 2**, was that the allegation in relation to Plot 7 (appeal D) should remain unchanged but, in the other appeals, it should be amended to:

[10] ID32, page 11.

> "without planning permission, the material change of use of the Land from use as a Travelling Showperson's site to use for siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons."

26. This just flows from the Council's acceptance that, as a matter of fact, Plots 1, 2, 3, 8 and 9 were not being used for the alleged storage purposes when the notices were issued. This change is uncontroversial, appropriate and can be made without causing injustice. Accordingly, in appeals A, B, C, E and F, I will correct the notices in line with Option 2 but will not alter the allegation in appeal D, save as indicated later in my decision.

Ground (b) (All appeals)

27. The Council accepted in closing[11] that if I chose Option 2 above, I would be solely concerned with whether the occupiers, at the date of issue of the notices, were travelling showpeople. In the light of this and the points raised by me in my pre-inquiry note of 26 April 2019 and when opening the inquiry:

    i. to succeed on appeals A, B, C, E and F, the appellants must prove on the balance of probability that, as at the date of issue of the notice, the use of the land had not changed from use as a Travelling Showperson's site to use for siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons; and

    ii. to succeed on appeal D, the appellant must prove on the balance of probability that, as at the date of issue of the notice, the use of the land had not changed from use as a Travelling Showperson's site to use for siting of caravans/residential mobile homes for occupation by persons who are not Travelling Showpersons and the storage of vehicles, equipment and materials in association with the operation of businesses unrelated to that of travelling showpeople.

Who are Travelling Showpeople?

28. It is necessary to determine the essential characteristics of a Travelling Showperson (showperson) at the time the notices were issued (6 September 2010). Whilst the HC and CA decisions in this case provide considerable guidance in relation to the nature of showpersons' sites, they say less about the essential characteristics of showpeople themselves. For the reasons already given, having decided that I should only amend the allegation in line with the Council's Option 2, rather than Option 1, I will focus on the status of the occupiers, rather than whether the land was being used in the way one might normally expect showpersons' sites to be used.

29. The HC referred to Government guidance in Circular 22/91, Circular 04/2007 and Planning Policy for Traveller Sites (PPTS) 2012. Circular 22/91 was in force when the 2003 permission was granted and 04/2007 was current when the enforcement notices were issued, and when the first Inspector made his decision. The 2012 PPTS had been published when the HC made its decision, though its definition of travelling showpeople was the same as in Circular

[11] Ibid, page 16.

04/2007. However, Circulars 22/91 and 04/2007 must be most relevant to my consideration of the position as at the date of the notices and indeed 04/2007 is specifically cited in the notice requirements. PPTS was further revised in 2015 and that revision has a more restrictive definition of showpeople. The HC said that none of the policy documents published before the judgement could be used to change or even interpret the terms of the 2003 permission, but they did point to certain conclusions, including that "travelling showpeople are a distinct group, which does not include gypsies and travellers."

30. Circular 22/91[12] described the nature of Travelling showpeople's (showpeople) sites. In terms of defining travelling showpeople themselves, unlike in subsequent guidance, there was no section explicitly headed "definition". However, it did say:

> "2. Showpeople are self-employed business people who travel the country holding fairs, chiefly during the summer months…
>
> 3. Most showpeople are members of the Showmen's Guild of Great Britain… showpeople are specifically excluded from the definition of gypsies under the Caravan Sites Act 1968…"

31. Though this related more to the nature of showpeople's sites, paragraph 2 of Circular 22/91 also said "…increasingly showpeople's quarters need to be occupied by some members of the family permanently; older family members will stay on for most of the year…" When cross examined, Mr March accepted for the Council that this allowed for retired showpeople to come within the definition 22/91. He said older people would normally remain part of a family group which included working showpeople, but he could see that this would not always be the case.

32. Circular 04/2007[13] also described the nature of showpeople's sites, but said:

> "1. Showpeople are members of a community that consists of self-employed business people who travel the country, often with their families, holding fairs. Many of these families have been taking part in this lifestyle for generations…
>
> 2. Most showpeople are members of the Showmen's Guild of Great Britain…
>
> 3. Some showpeople do not operate funfairs, but instead hold circuses…
>
> 6. The traditional pattern of showpeople's travelling is changing and the community has generally become more settled. For example, a reduction in the number of large scale traditional fairs has lead*[sic]* to a diversification of showpeople's activities involving more localised travelling…
>
> 7…the ability to travel remains an inherent part of the way of life of travelling showpeople and the way in which they earn their living. Some communities of travelling showpeople live in extended family groups and often travel as such…

[12] Core Document (CD) 18.
[13] CD17.

> 9…(a) Travelling showpeople do not in general share the same culture or traditions as Gypsies and Travellers;…"

33. Having said all that in the "preface" and "introduction" section, for the purposes of Circular 04/2007, paragraph 15 provides the following explicit definition of "travelling showpeople":

> *"Members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). This includes such persons who on the grounds of their own or their family's or dependants' more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily or permanently but excludes Gypsies and travellers as defined in ODPM Circular 1/2006."*

This is the definition referred to in the enforcement notice requirements and it explicitly includes retired showpeople and those who have ceased to travel through ill health or other specified reasons.

34. In closing for the Council, Mr Ward said that determining whether the occupiers of the site are showpeople will require consideration of whether their evidence has demonstrated that they "earnt a sufficient means of income to earn a living to support them and their dependents through the business of being a showperson."

35. The references in Circulars 22/91 and 04/2007 to "self-employed business people" and their "pattern of trading" indicate that the holding of fairs must be for a business/economic purpose; engaging in this activity as a mere hobby would be insufficient to make someone a showperson. Paragraph 7 of 04/2007 refers to travel remaining "an inherent part of the way of life of travelling showpeople and the way in which they earn their living." However, this is insufficient to support the Council's contention that holding or attending fairs alone must provide a sufficient income to support a person and their dependents. That is certainly not part of the specific definition in 04/2007 and of course retired showpersons are included in that definition.

36. The memo instructing the Head of Legal Services to serve the enforcement notices had suggested that occupiers would need to be able to demonstrate that the "majority" of their income was derived from attending fairs.[14] In chief, Mr March said he would not necessarily stand by that "majority of income test", but there would need to be a significant number of fairs – probably 15 – 20 per year on the basis that a fair is 1 day. He said that, to be a showperson, you did not need to work exclusively as a showperson, but it is necessary to look at how people earn their living and a very low level of showperson activity would be insufficient. In Mr March's opinion, if someone had a significant amount of non-showperson employment, it would be a matter of fact and degree whether they were a showperson.

37. However, when cross examined, Mr March said that you do not have to be making a living through fairs to *be* a showperson, but you have to do so in order to be *using the land* as a showpersons' site. He reiterated this when re-examined. In the context of the allegations and the HC and CA rulings, I am

[14] CD2, page 43 (internal page 7).

looking at whether the occupiers are showpeople, rather than how they are using the site. Furthermore, although paragraph 9(b) of Circular 04/2007 also indicates that sites for travelling showpeople normally need to "enable the effective storage and repair of significant amounts of equipment" there is nothing to suggest that someone must own or operate large rides or equipment to be a showperson. Similarly, there was nothing in Circular 22/91 or in the HC and CA judgements in this case to suggest that the ownership or operation of large rides or equipment is a prerequisite to showperson status. There is still nothing to that effect in PPTS.

38. For the appellants, Mr Green said that, if someone does other work, in addition to attending fairs, it is a matter of fact and degree whether they are a showperson and the amount of money a person earns from an activity can be unrelated to the amount of activity; it is about the work, not the income. Furthermore, the lack of fairs in the winter makes it inevitable that showpeople do other things and this was emphasised by several of the site occupants. It is also reflected in Circular 04/2007's recognition that the number of large-scale traditional fairs has reduced.

39. None of the Government policy/guidance referred to amounts to a definitive statement of the law, but I have regard to it in determining who can reasonably be described as a showperson. Bringing all this together, in determining whether the occupants were showpeople when the notices were issued, I shall consider whether they were members of a community or group who travelled the country in the business of holding fairs[15], whether or not they had other, additional employment or income.

40. Determining whether the occupants were showpeople at the relevant time involves a fact and degree judgement not dependent on a specific amount or proportion of income being derived from showperson activity or attendance at a specific number of fairs. Identifying a minimum number of fairs would be arbitrary and would take no account of the size or duration of the fair. Membership of the Showmen's Guild of Great Britain (the Guild) is indicative of being a showperson, but it is not a prerequisite. Although the position has been altered in the 2015 PPTS, it is also clear that, when the notices were issued, it was accepted as a matter of policy that retired showpeople were still showpeople, as were those who had stopped working temporarily, because of educational or health needs or old age.

Are the appellants Travelling Showpeople?

Appeal A (Plot 1)

41. I heard evidence from Michael Wall, who is now in his early forties. He left the appeal site sometime after 2017 but moved onto Plot 1 in 2009 and was living there when the enforcement notice was issued in 2010. Mr Wall described himself in his written statements as a travelling showman. He said his uncle, Felix Wall, lives on Plot 3, that they are all friends and family on the site and have worked and travelled together in the past. In this regard he also specifically mentioned Maurice Black in oral evidence, as he used to work for 'Black & Wall Amusements' on the 'Waltzer', spinning the cars and warning the

[15] None of the evidence relates to circuses or other shows.

girls "the louder you scream, the faster it goes." Mr Black separately confirmed Mr Wall's involvement.

42. Mr Wall's statement says he used to operate a bouncy castle and still does from time to time, travelling with Mason's Funfair at least 4 or 5 times per year and sometimes up to 10. A letter from Masons dated 4 March 2011 confirmed Mr Wall "travels a joint and a Juvenile ride through the traveling*[sic]* season, with Mason Funfair. He has travel*[sic]* with us for quite a few seasons." Mr Wall explained that "a joint" is a stand which can be used for different things, such as a coconut shy, and what he was paid depended on what was taken on the stand. When he was not working at fairs Mr Wall said he did "odd jobs here and there to get by, mostly landscaping work."

43. In his 2017 statement, Mr Wall said he was born a Gypsy but works in fairs and goes travelling with fairs. In oral evidence Mr Wall said he was a "Gypsy that does fairs" and that he did go to fairs in 2010 and before. Being an ethnic Gypsy does not exclude him from the definition of a showperson.

44. In terms of fairs attended, Mr Wall specifically mentioned Dorset Steam Fair, which was where he borrowed a 'juvenile' ride, namely a ladybird ride for children. This was owned by a good friend and kept at his yard, which was Mason's yard in Reading. That friend is a showperson who lives, and stores his equipment, at Mason's yard. Indeed, Mr Wall also lived there years ago and used to repair a lot of his friend's equipment. He gave the owner half of what he earned from the juvenile ride.

45. Mr Wall explained that, like many showpeople, he never owned any large rides, but did have a bouncy castle and dart board in 2010 and before, which were kept in a shed on Carousel Park. The bouncy castle came with its own petrol pump and was transported in the back of a transit van. The dart board would just be set up on a wooden framework with an awning at the back and cuddly toys were offered as prizes. As a young person, he also used to make money at fairs guessing people's ages for a pound.

46. Mr Wall said he used to travel with Mason's Funfair 8 or 9 times a year, and probably more, when he also helped set up the big rides and work on them as a mechanic. Sometimes he would just take his dart board stand to a fete, but if it was a bigger venue, he would bring his bouncy castle. He said that he could not really remember the details, but probably only did about 3 fairs in 2008 earning not more than £1000 per fair, but that £1000 was a lot to him, adding "a big pot of stew lasts us a long time."

47. He said that he was not sure but did maybe 4 or 5 fairs in 2009. He could not remember them all, but mentioned the 'Bedford Gathering', the Great Dorset Steam Fair and Burghfield, as well as 4 or 5 fetes, including at Mortimer. A receipt was produced for the Bedford Gathering for 2007, but not 2009. Receipts were also produced for a "juvenile" at St Matthews Fair in 2008 and The Great Dorset Steam Fair in 2010. Mr Wall said he did not have other paperwork but, in spring and summer he was probably out "every other weekend." He said there are not large fairs to attend every weekend anyway.

48. Mr Wall explained that 2010 itself was a very bad year for him for personal and health-related reasons. He could not remember many details but said he did very little work that year.

49. Mr Wall is not a Guild member now and was not in 2010. His evidence of working at fairs at and before the notice was issued was not as extensive or detailed as it might have been, and the documentary evidence was sparse. Nevertheless, I have no reason to believe Mr Wall's sworn evidence was less than truthful and he spoke with authority about the 'show business', which is part of his extended family heritage.

Conclusions on appeal A ground (b)

50. The evidence clearly indicates that, at the relevant time, Mr Wall was a member of a community or group who travelled the country in the business of holding fairs. Although the income he derived from this was very modest and he supplemented it with landscaping work, his fair-related activities were much more than just a hobby and travelling to fairs had always been an inherent part of his way of life and the way in which he earned his living. I am satisfied as a matter of fact and degree on the balance of probability that Michael Wall was a travelling showperson when the notice was issued. The fact that Mr Wall says he was born a Gypsy does not change that view. Furthermore, having regard to the definition in Circular 07/2007, failing to travel to a significant number of fairs in 2010, because of health-related issues, does not alter that conclusion. As Mr Ward said in oral closing submissions, Mr Wall was not really earning a living at all that year.

51. For the appellant, Mr Green also pointed out that, when the notice was issued, Plot 1 had been sub-divided into Plot 1 (owned by Michael Wall), Plot 1A (owned by Mr Darren Loveridge[16]) and Plot 2C (owned by Beverley Black/the Black family). The appellant therefore suggests there were 3 planning units, meaning the notice was defective and should be quashed on that basis alone.

52. However, I need not determine the planning unit issue, as it is only relevant to the assessment of whether a change of use is material. Success on ground (b) avoids the need to consider materiality. In any event, if there were indeed 3 separate planning units, it might be possible to amend the red line area on the notice plan without causing injustice. However, on the evidence of Mr Green and Freddie Loveridge, Plots 1A and 2C were unoccupied and unused when the notice was issued. That is not contradicted by the Council and so, when the notice was issued, no part of Plot 1, as defined on the notice, was in use for the siting of caravans/residential mobile homes for occupation by persons who were not Travelling Showpersons.

53. For the reasons given, appeal A succeeds on ground (b). I will quash the notice and no other grounds fall to be considered.

Appeal B (Plot 2)

54. When the notice was served, Plot 2 had been subdivided in accordance with a planning permission granted in October 2005.[17] Plot 2A was occupied by Maurice Black and his wife. Plot 2B was occupied by their son, Randolph Black, and his family. I heard evidence from Maurice Black, who is now in his late 60s and was about to turn 60 when the notice was issued. Mr Black gave oral

[16] Freddie Loveridge said he bought 1A from his brother Darren in 2012, when it was empty and had never been used by Darren.
[17] CD9.

evidence for about 4.5 hours and provided a lot of detail including many entertaining tales, which I cannot recount here.

55. Mr Black explained that when he purchased Plots 2 and 3 in 2004, like many showpeople, he was a "non-guild showman." He had been travelling and building up fun fairs with his partner Felix Wall for some 30 years, and his written evidence included a copy of his daughter's birth certificate from 1988, which recorded his occupation as "Showman." Mr Black's wife and Mr Wall's wife are sisters and their family are showpeople. Though Mr Black was brought up as a Romany Gypsy, his great grandparents were showpeople and he produced a newspaper article concerning them. He said he identifies as a showperson, but many Romany Gypsies started funfairs.

56. The Council insisted Mr Black become a Guild member to live on the site. As the Guild rules control which fairs you can attend, he and his partner Felix Wall, then calling themselves 'Black & Wall Amusements', then travelled for a couple of years with Guild fairs in Hampshire, Wiltshire and the Isle of Wight, opening with Walls Amusements[18], Matthews Funfairs, Charles Coles Amusements and Patrick Burton and J Stokes, who are all well-known showman. Mr Wall said that, when he moved to Carousel Park, he brought: 2 or 3 juvenile rides (including a jeep ride seen in photographs); a hoopla stall; a bouncy castle; a kiosk/catering van; and a couple of box vans. Shortly after arriving, he acquired a 'Roundup', as well as a 'Trabant' to renovate.

57. Unfortunately, Mr Black became seriously ill in 2006 and travelled very little in that year or in 2007. In oral evidence, he said he then started doing some fairs again. However, a response to a Planning Contravention Notice (PCN) in June 2010[19] indicated that he only attended 5 fairs in 2009 and subsequently was only doing 1 or 2 events per year. Mr Black's 2017 statement merely referred to attendance at "a number of showman fairs" in 2010. In oral evidence, Mr Black said he was no longer the same man because of his illness.

58. Mr Black's 2011 statement said that, for the last 3 years, he had been providing amusements for 2 major holiday camp owners. He no longer operated any large rides personally but brought other people in if he needed them. In oral evidence, Mr Black said he still organised fairs, but was "a back-seat driver" and he agreed that he could be described as a "broker or agent", albeit for a "minute" income, such that he was living mainly on savings and family help.

59. In his 2017 statement, Mr Black said that, as well as travelling to a number of fairs in 2010, he was storing rides in the shed on his plot, including a train set, a car ride (a set of jeeps) and 2 children's rides. In addition, he had a 'Roundup' ride which he was repairing on his plot, until he sold it in 2007. He also had a 'Paratrooper' at Carousel Park, until around 2010/11, and a 'Trabant' ride, which he scrapped in 2006/7 or possibly a bit later. Mr Black had owned many other large rides and operated them with Felix Wall over the years, including a 'Waltzer', 'Chair plane ride', 'Rib tickler', 'Speedway' and 'Skid ride'. He said that other residents of Carousel Park had also opened at fairs with them, including Michael Wall, Danny Carter (junior) and Derek Birch. They had

[18] Not connected to Felix Wall.
[19] Mr March's appendix 22.

all helped with his rides many times over the years, if he was stuck, and they would also come and open with their "smaller stuff."

60. Other documentary evidence produced by Mr Black and spanning the period 2004 - 2010 included: insurance certificates for rides and a refreshment stall; inspection certificates for rides; log books for vehicles referring to "Black Wall Amusements", and which Mr Black explained he used to transport "side show stuff, such as hooplas and "swag", which is prizes"; a receipt for the sale of the "Roundup (Meteorite)" in 2007; Guild membership cards; a cover note referring to him as a "showman"; and a July 2010 letter from an insurance broker specialising in the entertainment and leisure industry confirming that Mr Black "is a Showman" and that they had dealt with him as such for many years. There are also fair-related photographs dating back to the 1980s. The documentary evidence provided does not constitute a wholly comprehensive or continuous record, but it is entirely consistent with and supportive of Mr Black's testimony.

61. An April 2008 photograph[20] shows a roundabout "toy set" on a trailer on Mr Black's plot. Photographs[21] taken in November 2009 show other fairground equipment on Plot 5, which is not the subject of a notice. Mr Black said this was his equipment, but he was still very ill at the time and Mr Wilkins, who occupied Plot 5, used to take those rides out for him. The Aerial Imagery Statement of Common Ground (SOCG) includes an image from May 2008, in which Mr Black said it was obvious to him that there was fairground equipment on Plots 2 and 5. Sometime between May 2008 and May 2010, when another photograph was taken[22], Mr Black built a workshop on his plot for the servicing and repair of fairground equipment in accordance with a planning permission granted for that purpose in 2006.[23]

62. In his 2017 statement, Mr Black said he retired from the showman business when he turned 65, which would have been in 2016. He still works in fairs with friends and colleagues when needed but must attend medical appointments. Mr Black remains a member of the Guild and whilst his 2010 membership card said, "no equipment operated", he explained this did not mean he did not have any equipment at that time; he just did not declare it. I do not know the relevant Guild rules, but Mr Black said you can declare equipment in the name of the "lessee" you are going to the fair with and then do not have to pay the Guild for it. He said the lessee usually owns the big rides and everything else at the fair is owned by people renting ground from the lessee. However, Mr Black said they are all showmen, even if just bringing a bouncy castle or coconut shy. Whether or not they are in the Guild, they are "operating stuff" and indeed he said even a fortune teller can be a showman. However, you can only join the Guild if you are from a known showman family.

63. Mr Black said that his son Randolph left the site sometime between 2011 and 2017. When the notice was served, Randolph was living on Plot 2B and used to help Mr Black with fairs when needed but did building work between venues. Mr Black explained that every showperson in Britain does other jobs in the

[20] Mr March's appendix 12.
[21] Mr March's appendix 16.
[22] Mr March's appendix 21.
[23] CD11.

winter. He said years ago, many used to deliver coal, now many lay tarmac or block paving, or open empty shops. In any event, though he no longer works as a showperson, the response to the PCN in June 2010 indicated that Randolph did about 18 fairs per year at that stage.

64. When I asked Mr March whether it was the Council's case that Maurice Black was not a showman he said: "That's why we are focusing on the use. Mr Black's evidence is that he was a broker." Mr March reached the conclusion that Mr Black was not earning his living as a showperson. I have concluded that that, whilst a person must be attending fairs on a business footing, there is no specific income test and doing other additional work does not prevent someone being a showperson. In any event, the policy definition of showpeople at the time allowed for them to cease travelling temporarily or permanently on the grounds of their health needs or old age. To exclude Mr Black, a Guild member, from that definition because, despite his illness and age, he only did a small number of fairs and earned a small additional income from acting as a fairground ride 'broker', would be perverse. Furthermore, being an ethnic Gypsy does not exclude Mr Black from the definition of a showperson.

Conclusions on appeal B ground (b)

65. I found Mr Black to be a convincing witness who gave the kind of detailed evidence that only a showperson could give. Although he acknowledged that his son Randolph did building work as well, there is nothing to contradict Mr Black's evidence that Randolph was helping at fairs when the notice was served. A PCN response referred to his attendance at 18 fairs per year and I am satisfied this was an inherent part of his way of life and the way in which he earned his living.

66. For all the reasons given and having regard to the factors summarised at paragraphs 39 and 40 above, I am satisfied on the balance of probability that, when the notice was issued, Plot 2 was not in use for the siting of caravans/residential mobile homes for occupation by persons who were not Travelling Showpersons. Appeal B therefore succeeds on ground (b). I will quash the notice and no other grounds fall to be considered.

Appeal C (Plot 3)

67. I heard evidence from Felix Wall, who occupies Plot 3 and was living there with his wife Susan when the notice was issued, having moved onto Carousel Park with Maurice Black in 2004. Felix Wall confirmed what Mr Maurice Black had said about his working at fairs with him for over 30 years, his involvement with 'Black & Wall Amusements', and the fact that Mrs Black and Mrs Wall are sisters. Although Felix Wall is from a Romany Gypsy background, he says he started working at fairs when he got married, his wife having been a travelling showperson all her life. Mr Black said he regarded Felix Wall as a showperson.

68. In his 2011 statement Felix Wall said he had retired by then, but still helped with fairs from time to time. However, he said that when the notice was issued in 2010, as well as his mobile home, he kept his showman's equipment, including a hoopla coconut shy and some children's rides, on the site. These were sometimes on his plot and sometimes on Mr Black's plot, or even on Plot 5, but it did not matter, as they were "family". Indeed, Mr Wall said the rides were partly his and partly Mr Black's, but he described Maurice Black as