TOWN AND COUNTRY PLANNING ACT 1990

SECTION 174 INQUIRY

IN RESPECT OF LAND AT CAROUSEL PARK, BASINGSTOKE ROAD, MICHELDEVER, WINCHESTER, HAMPSHIRE, SO21 3BW

APPEALS BY MR LOVERIDGE, MR O'DONNELL, MR P. STOKES, MR CARTER, MR B. STOKES, MR CRUMLISH, MR FLYNN

PINS REFS: APP/L1765/C/22/3296767; 3296768; 3296771; 3296772; 3296773; 3296774; 3296776; 3296777; 3296778; 3296779; 3296781; 3296782; 3296783; 3296784; 3296503; 3296504

CLOSING SUBMISSION ON BEHALF OF THE LOCAL PLANNING AUTHORITY

WINCHESTER CITY COUNCIL

(I) INTRODUCTION

1. The Inspector is aware of Carousel Park's extensive and complicated planning history and has heard extensive factual evidence given by seventeen occupants[1] of the site during this inquiry. The Council has summarised that evidence in **Annex 1** to these closing remarks, cross-referenced with an annotated map in **Annex 2**[2], having now heard and tested the Appellants' case.

2. However complicated the background to these appeals, there are some fundamental aspects to this inquiry that are not seriously contested.

    a. In 2003, planning consent was granted for the change of use of agricultural land to a travelling showpeople's site (TSP) based on the identified needs of the district and by reference to the particular characteristics of the site, which made it suitable for TSP use.

    b. The 2003 permission was lawfully implemented. Carousel Park was used as a TSP site in accordance with the permission.

    c. The only lawful use of the site is as a TSP site in accordance with the conditions imposed on the 2003 consent.

    d. The use of the land as a TSP site is a use distinct from, and narrower than, the use of land as a residential caravan site as well as being distinct from the use of the land as a residential caravan site for gypsies and travellers. As the Council said at the outset of this inquiry, the Appellants appear to ignore this relatively uncontentious proposition (although at the end of cross-examination, Mr Woods appeared to accept that the Court of Appeal had indicated that a TSP use was a separate use in planning terms).

    e. The use of the land was as a residential caravan site when the enforcement notices were issued and is now materially different from the use permitted by the 2003 consent.[3] The

[1] Sixteen witnesses of fact were called by the Appellant, and another site occupant addressed the inquiry himself.
[2] This plan was provided to the inquiry as Appendix NW2 to the rebuttal proof of evidence of Mr Nigel Wicks. There were some discrepancies between some of the Appellants as to which "plot number" they lived at, which are described below. The plan at Annex 2, which shows the arrangement of the site in November 2021 is also slightly different from the plan submitted by the Appellants in support of their deemed application for planning permission
[3] 02/01022/FUL, LPA 1, p.32.

inquiry has heard extensive evidence from the Appellants about their use of the site (which is obviously not as a TSP site) which has only reinforced this conclusion.

f. The Appellants do not dispute that they are using the land in breach of the conditions imposed on the 2003 consent.

3. It became increasingly clear during the inquiry that the Appellants' legal grounds of appeal were hopeless, to the extent that the Council has sought to make an application for costs (set out separately).

4. On the Appellants' Ground (a) appeals, the Council has demonstrated that the change in use of the appeal site to a residential caravan site would not be justified. It was only at the inquiry that the Appellants accepted that permission should not be granted for the use alleged in the notice and confirmed that they only sought permission for a narrower use, i.e. use as a residential caravan site for gypsies and travellers. Even on that basis, the Council maintains its objection to the deemed planning application on the basis that the site is safeguarded for TSP use and is required to meet TSP needs in the district, a purpose for which the site is particularly well-suited, and because the site is not sustainably located for use as a gypsy/traveller site. The Council's other objections can, in principle, be overcome by reference to suitably worded conditions. Nevertheless, the Council's principal position is that the appeals on Ground (a) should be dismissed. The Council equally makes an application for costs against the Appellants by reference to their approach to the ground (a) appeals.

THE ENFORCEMENT NOTICES

5. The Council explained the details of the underlying notices in this appeal in opening. For ease of reference, that background is summarised below:

a. The Council issued three enforcement notices – EN1, EN2 and EN4 – on 1 March 2022 in respect of Land at Carousel Park, Basingstoke Road, Micheldever, Winchester, Hampshire, SO21 3BW (the appeal site). Plans were attached to each notice indicating the relevant area of the site in each case. There was another enforcement notice – EN3 – which is not subject to an appeal. In the event that the appeals against EN1 are dismissed and EN1 is upheld, EN3 and EN4 would be withdrawn.

b. The breach of planning control alleged in EN1 is: "*without planning permission, the material change of use of the Land to a residential caravan site, including the stationing of approximately 100 caravans for residential use ("the Unauthorised*

Use")." EN1 required the specified use to cease, the removal of items associated with that use and the restoration of the land to its condition before the breach took place.

c. The breach of planning control alleged in EN2 is: "*without planning permission, the breach of conditions 10, 11 and 15 of planning permission 02/01022/FUL of 2 October 2003* […]". The planning permission referenced in EN2 granted consent for the change of use of the site to a TSP site. Condition 10 restricted the number of caravans used for residential purposes to 3 per pitch; Condition 11 restricted the number of family pitches to 9; and condition 15 limited occupation to no more than 50 people, each for reasons related to local amenity.5 EN2 required each of the abovementioned breaches to be remedied.

d. The breach of planning control alleged in EN4 is: "*Without planning permission, the material change of use of the Land to a residential caravan site for 10 caravans ("the Unauthorised Use")*" with equivalent requirements to EN1.

e. Each notice provided that the time for compliance was 6 months after the relevant notice takes effect.

THE APPEALS

6. In openings, Mr Rudd on behalf of the Appellants contended that the enforcement notices issued by the Council "*failed to grapple with what is actually happening on the site and the notices are consequently, largely defective*". This hyperbolic, unparticularised and unfounded complaint does not give rise to a ground of appeal under s.174 TCPA 1990 and takes the Inspector nowhere in considering his statutory task in determining the appeal.

7. In reality, the appeals now proceed on the following grounds (although has been apparent throughout these proceedings, the legal grounds advanced by the Appellants have always been an unmeritorious diversion from more substantive matters):

a. Seven appeals[4] against EN1 (material change of use to a residential caravan site for approximately 100 caravans) each advanced on Grounds (a), (b), (d), (e), (f), and (g).

[4] 3296767 (Mr Freddie Loveridge), 3296771 (Mr Anthony O'Donnell), 3296776 (Mr Hughie Stokes), 3296778 (Mr Danny Carter), 3296781 (Mr Patrick Stokes), 3296783 (Mr Oliver Crumlish), 3296773 (Mr Patrick Flynn)

b. Seven appeals[5] against EN2 (breach of condition in respect of the limitation on the number of caravans on each pitch to 3 (condition 10), the limitation of the number of pitches to 9 (condition 11) and the limitation on the number of residents to condition 50 (condition 15)) each advanced on Grounds (a), (c), (d), (e), (f) and (g).[6]

c. Two appeals[7] against EN4 (material change of use to a residential caravan site for 10 caravans) both advanced on Grounds (a), (f) and (g).

8. The Inspector's powers in determining the appeal are statutorily provided: s.176(1) TCPA 1990. Prior to the inquiry, the Inspector circulated a list of proposed issues, which are summarised below:
    a. Whether the enforcement notice(s) have been served as required by the Act.
    b. Whether the appellants in relation to EN4 had a legal right of appeal (although the Council clarified prior to the start of the Inquiry that it does not take a point on this issue).
    c. The significance of referring to the breach in EN1 and EN4 as a material change of use to a residential caravan site.
    d. Whether the requirements in relation to EN2 need to refer to compliance with any other conditions in the original permission; and if so, whether this is possible without resulting in injustice.
    e. The effect of the development on the landscape/countryside.
    f. Whether the site is away from settlements.
    g. The effect of the development in terms of residual space for vehicle turning, storage (including wate and recycling) and children's play, and the requirements for drainage.
    h. Need for TSP and GT sites; and whether the site is occupied by persons who are neither TSP nor GT, and if so, whether this is acceptable.
    i. The personal circumstances of the Appellants.
    j. Whether a temporary permission would be appropriate.

9. In closing, the Council will seek to address each of these main issues whilst dealing with each of the grounds in turn.

[5] 3296782 (Mr Patrick Stokes), 3296768 (Mr Freddie Loveridge), 3296772 (Mr Anthony O'Donnell), 3296774 (Mr Patrick Flynn), 3296777 (Mr Hughie Stokes), 3296784 (Mr Oliver Crumlish), 3296779 (Mr Danny Carter)
[6] Mr Woods confirmed that no ground (b) was being advanced in relation to the appeals against EN2: ¶7.3 BW PoE.
[7] 3296503 (Mr Patrick Stokes) and 3296504 (Mr Bernie Stokes)

The Ground (e) appeals: Whether the enforcement notices had been served as required by the Act

10. Copies of an enforcement notice must be served on owners and occupiers and on any other person having an interest in the land which the authority believes will be materially affected by the notice: s.172(2) TCPA 1990. Statute provides that four methods which may be used by the Council to give or serve an enforcement notice: s.329(1) TCPA 1990; and section 329(2)-(3) TCPA 1990 makes further provision on effective service.

11. There is no real doubt that the enforcement notices were served as required by the Act.

12. The evidence of Mr Nigel Wicks and Mr Tom Wicks for the Council has shown that the notices were served in numerous ways in accordance with the statutory requirements and has rebutted specified allegations made by the Appellants that they were not served.

13. On Mr Nigel Wicks' evidence, on 1 March 2022, he handed notices to occupiers of plots 3, 4, and 7 and placed notices on the doorsteps of caravans where there was no response, or on the entrance posts where there was no caravan on a plot.[8] Nigel Wicks told this inquiry that he visited the site with over 100 copies of the ENs addressed to the owner, occupier and any person with an interest in the site. He and Tom Wicks had delivered those notices to the post boxes at the entrance to the site, and also attached those notices to the gates at the entrance to the site. They then walked around the site and delivered notices to caravans on the site, so far as accessible, and also displayed the notices at various points around the sites, mainly on access gate posts, and handed notices to persons on the site. When asked, as a matter of impression, was it possible anyone on site would have been aware, Mr Nigel Wicks considered that it would have been most unlikely for anyone on site not to know that notices had been served that day.

14. Mr Nigel Wicks said it is probable some people did not directly receive the notices on that day, since not everyone on site was in occupation that day. However, that is not what is required by the statute. He noted that the notices had been served to a number of people on the site; it had been sent to the relevant individuals via post and it had been posted conspicuously on site. Those alternate avenues were all good service. Mr Nigel Wicks noted that nobody seems to suggest that the notices were not served in accordance with the Act. He considered that there was no basis for a Ground (e) appeal since all the evidence suggested that the notices had been served in accordance with the Act.

[8] NW Rebuttal ¶11-14, 16-17

15. Mr Tom Wicks' evidence is equally unequivocal: the Council effected service in accordance with s.329 TCPA 1990.[9] He assisted Mr Wicks in posting enforcement notices to all letter boxes at the only entrance to the appeal site and affixing copies to both sides of that entrance.[10] He gives detailed evidence as to service in relation to each plot.[11]

16. Mr Tom Wicks said that, in addition to affecting the service of notices on the site itself, he was also responsible for service via recorded delivery to the owners listed on the land registry. While some of those letters were returned by the Royal Mail, the Appellants have not suggested that there was any defect in service on this basis. There has been no suggestion that any of the addresses on those letters were wrong, or more pertinently, different from the land registry records. It was obviously the responsibility of the site owners to ensure that the records were up to date.

17. In relation to service on gates, Mr Tom Wicks referred to the certificate of service. At p.338, there were pictures included in the certificate of service which was completed on the day of service, with photographs indicating notices on gateposts. Mr Wicks confirmed he did not photograph every notice served.

18. Considering the Appellants' evidence – and that the majority of the site occupiers, if not all, confirmed they did not dispute that the ENs had been served in accordance with the Council's evidence – Mr Tom Wicks considered there was no merit in the Ground (e) appeals, given that service had been effected on each plot in a number of different ways when one would have been sufficient to meet the statutory requirements.

19. Mr Tom Wicks also provided a series of Planning Contravention Notices dated c.12 October 2021 in respect of the site.

20. Contrast against this clear evidence of experienced enforcement practitioners well-acquainted with the site, the Appellants' evidence was incoherent.

21. Mr Woods frankly accepted that he could not attest to what happened when the notices were served. At most, he asserted that it seemed to him that a number of people were not directly handed enforcement notices in person and several of the older residents had difficulty reading

[9] TW Rebuttal ¶11
[10] TW Rebuttal ¶12 and LPA 26
[11] TW Rebuttal ¶13-40

and writing. That was the extent of his evidence on ground (e). In cross-examination, he confirmed he was not giving evidence of fact in relation to service. He also accepted that "strictly speaking", service could be effected by delivery by hand; by leaving it at the last known place or usual place of abode. He could not dispute the photographs of Mr Wicks posting notices through letterboxes at the front of Carousel Park.

22. The residents of Carousel Park did not give any more convincing evidence than Mr Woods. In no case where a witness said they owned the plot, had they taken any steps to register their interest in the land. When cross-examined, most witnesses did not dispute Mr Wicks' evidence that he had placed notices on doorsteps or handed them to those on site. Some of the Appellants (such as Mr O'Donnell of Plot 2C, who gave evidence on Day 1 of the inquiry) candidly accepted that they had received the notice. Others (such as Mr Hughie Stokes of Plot 6 pitch 1, who gave evidence on Day 2 of the inquiry) suggested that there was a "pile" of notices left at the site entrance. Others still (such as Mr Patrick Flynn of Plot 3, who gave evidence on Day 2 of the inquiry) went as far as to say that it was "not possible" to live on the site and not have known about the notices.

23. In any event, the Appellants advanced no credible evidence of any substantial prejudice arising. Even as late as in opening, and with the benefit of Messrs Wicks' rebuttal proofs, the Appellants sought to contend that the absence of appeals from plots 3, 4, 5A, 5B, 5C and 7 indicated that various individuals had not been served and had been deprived of the opportunity to appeal. In cross-examination of Mr Woods, each of these plots was taken in turn. It was clear that plot 3 and plot 7 were both TSP plots and so excluded from the notice; and that Patrick Stokes - the owner of plot 5 (i.e., plot 5A, 5B and 5C) – had in fact appealed. Only plot 4 had failed to appeal or attend the inquiry. Incredibly, Mr Woods sought to maintain that there was prejudice arising, despite accepting that there was a ground (a) appeal being pursued which includes that land. Mr Woods had no answer to the common-sense position that even if, for whatever reason, anyone had not been able to advance an appeal, there was no prejudice because those people were necessarily aware of the proceedings (as he had told them about the inquiry) and could have made representations during the course of the proceedings. It was telling that, even then, no-one attended the inquiry to claim that they had been prejudiced by the lack of service of the enforcement notice.

24. By contrast, the Council's consistent position has been substantiated in evidence. The Ground (e) appeals were always a confected distraction and must fail.

Ground (b) appeals: those matters have not occurred

25. Ground (b) appeals are only advanced in relation to EN1, and the onus of establishing Ground (b) rests on the Appellants even though the Appellants are responding to the Council's allegation of a breach of planning control.

26. In cross-examination, Mr Woods said that his ground (b) was based on his understanding of the law, with reference to Burdle. Mr Rudd interjected at this point and said that he had "other cases" and left it as a matter for submissions.

27. The Council's position is relatively straightforward and can be summarised as follows.

28. Whatever the planning unit (i.e., whether the entirety of the appeal site or each individual plot), the matters stated in the enforcement notice have occurred as a matter of fact.

29. Whilst it is essential to identify the planning unit in order to determine whether there has been a material change of use, a notice does not have to be directed at the whole unit, or even need to identify it: Hawkey v SSE [1971] 22 P&CR 610.

30. In accordance with the Burdle approach, the appropriate planning unit against which to assess whether there has been a material change in use is the entirety of the site. That is so even though the site is occupied as different plots: Rawlins v SSE [1989] JPL 439. Parts of the site have been excluded from the notice on the basis that the occupiers of those parts are TSP or because those parts are subject to an extant enforcement notice. That does not undermine the Council's approach or affect whether the breach specified in the notice has in fact occurred.

31. The enforcement notice would not be invalidated were the Inspector to conclude that individual plots on site were separate planning units against which the materiality of any change in use could be assessed. Nor would it mean that the ground (b) appeals should succeed. In that context, the Council maintains that there has been a change in use of that part of the site from use as a TSP site to use as a residential caravan site and nothing prevents the Council from serving its enforcement notice in the way it did.

32. Nigel Wicks and Tom Wicks both give unequivocal evidence that there has been, as a matter of fact, a change in the use of the land subject of the enforcement notice to use as a residential caravan site.

33. By Nigel Wicks' evidence, EN1 and EN2 were issued because the Council was concerned that the appeal site was not meeting a recognised need for TSP and traveller provision and was "*progressively being lost to non-traveller occupants*". The Council was not able to identify with precision who was occupying all caravans. There had been more than 10 years without enforcement action. The permanent loss of TSP provision was inevitable.[12] The issue of a single notice covering the whole site enables the planning merits to be considered more comprehensively, and consideration of the planning unit irrespective of how many planning units there are found to be.[13] Compared with the site as described on the land register and in the 2003 permission, with the exception of plot 7, the plots have been sub-divided.[14] On 1 March 2022[15], the site comprised 10 registered titles and he counted 62 static caravans on site, of which at least 24 statics were occupied by non-travellers.[16]

34. In oral evidence, Mr Nigel Wicks summarised his position as to whether the matters stated in EN1 had or had not occurred. He said nothing he had seen suggested otherwise than that the land was used as a residential caravan site. Other things went on from time to time – the keeping of horses, etc – but no one has described anything other than uses ancillary to the use of the land as a residential caravan site. Mr Nigel Wicks considered Mr Woods' position that the appropriate planning unit for assessing whether there has been a material change in use is an individual plot. He said it is difficult to identify individual units within the sites, and whilst there may be individual units of occupation; any change of use is best assessed with reference to the site as a whole. Activities of some caravan occupiers spread further afield than a caravan or a plot. The demarcation of individual plots is difficult to assess, either on a plan or on site, and those change over time.

35. By Mr Tom Wicks' evidence, in respect of EN1, occupation of the appeal site fluctuates consistently and is not reflected by the land register. Plot, pitch and yard identities are confused and fluid. The appeal site is used for substantially the same and related purposes, as a residential caravan site. The plans attached to enforcement notices do not identify planning units, but rather the land where a breach of planning control is said to have occurred and where the Council requires a breach to cease. Plots 3 and 7 were excluded from the EN1 plan because they are occupied by TSP (and plot 7 is subject to an effective enforcement notice).[17] Mr Wicks went

[12] NW Rebuttal ¶4
[13] NW Rebuttal ¶5
[14] NW Rebuttal ¶6, and see ¶15-27
[15] The date of the issue of the enforcement notices
[16] NW Rebuttal ¶7-9 and as marked on appendix NW1 and NW2
[17] See TW Rebuttal ¶44-59

on to address materiality in relation to the distinction between TSP use and use as a residential caravan site, and the issue of intensification.[18]

36. The Council considers that its approach is legitimate and that as a matter of fact, there has been a material change of use as alleged in EN1.

37. The Appellants have failed to advance an evidence-based case to the contrary.

38. Separately, in relation to EN1, Mr Woods suggested that, because the enforcement notice required the removal, among other things, of waste associated with the Unauthorised Use, that the enforcement notice raised a "county matter" about which the County Council should have been consulted. That contention was absurd. While paragraph 11 of Schedule 1 to the 1990 Act does require a district planning authority to consult the county planning authority where the enforcement notice relates to "county matters", county matters are defined, so far as relevant to the concern raised by Mr Woods, by paragraph 1(1)(j) by reference to Regulation 2 of the Town and Country Planning (Prescription of County Matters) (England) Regulations 2003 as:

> *(a) (i) the use of land;*
> *(ii) the carrying out of building, engineering or other operations; or*
> *(iii) the erection of plant or machinery used or proposed to be used,*
> *wholly or mainly for the purposes of recovering, treating, storing, processing, sorting, transferring or depositing of waste;*

39. EN1 quite obviously does not allege that the land is being used wholly or mainly for waste purposes.

40. In cross-examination, it was put to Mr Woods that he couldn't change what the enforcement notice said as a matter of law, and that neither enforcement notice referred to an allegation of waste processing. He had no credible response to this obvious proposition.

41. In cross-examination, Mr Woods confirmed that he did not pursue a ground (b) appeal in relation to EN2 (see section 7 of his evidence). Accordingly, that part of his evidence can essentially be discounted. For the avoidance of doubt, and insofar as there were any attempt to resurrect this avenue of challenge, Tom Wicks addresses these issues in his rebuttal proof.[19]

[18] And see TW Rebuttal ¶60-80
[19] TW Rebuttal ¶82-

42. The ground (b) appeals must fail.

Ground (c) appeals: those matters (if they occurred) do not constitute a breach of planning control

43. Ground (c) appeals are maintained only in relation to EN2, and the onus of establishing Ground (c) rests on the Appellants even though the Appellants are responding to the Council's allegation of a breach of planning control.

44. The Appellants' case on ground (c) is plainly misconceived. Mr Woods' evidence was that the erection of fences and walls was permitted development. The Council's position is that the Appellants are wrong to suggest any walls or fences benefit from planning permission, whether granted pursuant to the General Permitted Development Order or otherwise. The fencing granted planning consent via 05/01506/FUL no longer exists.

45. Irrespective of whether walls or fences are permitted development, the breach of planning control alleged relates to the sub-division of the plots. To erect walls or fences within the plots such that the plot was subdivided gives rise to a breach of condition 11 of the 2003 consent, and thus a breach of planning control.

46. There was no serious argument on this during the course of the inquiry. In his oral evidence, Mr Tom Wicks said that he thought Mr Woods was saying that because there are PD rights relating to fences and gates, the Appellants did not need to comply with the condition, although he considered that this was not a good basis for a Ground (c) appeal.

Ground (d) appeals: at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

47. Ground (d) appeals are raised in relation to EN1 and EN2. The onus of establishing ground (d) rests on the Appellants and again they have failed to make good their case on ground (d).

48. The Appellants' case on ground (d) was initially vague and eventually unsubstantiated:

a. In openings, the Appellants somewhat cryptically said they would demonstrate through "*evidence of site residents and other documentary evidence that elements of the enforced development were immune from enforcement at the date of issue in March 2022*". As the inquiry progressed, however, it became increasingly apparent that the Appellants' ground (d) appeals were another diversionary tactic that took up valuable inquiry time and resource.

b. In relation to EN1, it is common ground that the relevant time limit is 10 years beginning with the date of the breach (i.e., the material date in this case is 1 March 2012).[20] The Appellants' case was that the appeal site was occupied by TSP only in eleven caravans until 11 December 2011 but then in the eleven weeks to 1 March 2012, there was a material change of use to the residential caravan site described in EN1, including the stationing of approximately 100 caravans for residential use.

c. In cross-examination, Mr Woods accepted that none of the current occupants had suggested that they had been living permanently on site since March 2012, and that the parties could agree that even on the Appellants' own evidence, the commencement of the appellants' occupation was not before March 2012. As set out in **Annex 1**, only Hughie Stokes has purported to give evidence stretching back to 2011. All other witnesses came to the site significantly more recently. Mr Stokes himself could not offer any specific detail, aside from to claim that he had been on site since 2011 (and even the exact point at which he occupied the site is imprecise). The Appellants have provided no real evidence that the change of use the subject of the EN commenced until after the relevant date and none identified as TSP (with the exception of Mr Loveridge's reference to TSP heritage).[21]

d. In cross-examination, Mr Woods accepted that there was no evidence in the Ground (d) appeal but refrained from withdrawing it, relying on counsel. In re-examination, Mr Woods was taken to p.165 of the Council's bundle, which showed a plan from a previous inspector's site visit in October 2011 which showed operational development. However, as Mr Wicks confirmed in his oral evidence, given Mr Woods' concessions, no issue arose in relation to operational development (as opposed to the allegation in the notice of a material change of use). The enforcement notice required the removal of operational development to the extent that it was associated with the Unauthorised

[20] See TW Rebuttal ¶90-92
[21] TW Rebuttal ¶92

Use. Given that the parties are in agreement that the use is not immune from enforcement, the enforcement notice can properly require the removal of any operational development which is part and parcel of that use: Kestrel Hydro v Secretary of State for Communities and Local Government [2016] EWCA Civ 784.

49. By contrast, the Council's position is straightforward. Although the onus to establish ground (d) rests on the Appellants, they have provided no evidence, let alone evidence which is sufficiently precise and unambiguous, that the breach of planning control alleged occurred by 1 March 2012 and has been active and continuous since that time.

50. In relation to EN2, the relevant time limit is 10 years beginning with the date of the breach (i.e., the material date in this case is 1 March 2012). Again, the Appellants must demonstrate with sufficiently precise, unambiguous evidence that the breach of planning control alleged in the notice occurred by 1 March 2012 and that breach has been active and continuous ever since. The Appellants do not meet that case.

Ground (a) appeals: planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.

51. The ground (a) appeals are an application for planning consent, save for the EN2 appeals, which amount to an application for the discharge of conditions.

EN1 and EN4 – ground (a)

52. Under s.177(1)(a) TCPA 1990, on the determination of an appeal under s.174 TCPA 1990, the Secretary of State may "grant planning permission in respect of matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters, or in relation to the whole or any part of the land to which the notice relates" (emphasis added).[22] Section 177(1)(a) cannot be read as empowering the grant of permission for a development which is not the whole or part of the alleged breach.[23]

53. The Council's principal position remains as it was in opening: that the ground (a) appeals are fundamentally misconceived and contrary to the development plan as a whole, with material

[22] See Ahmed v SSCLG [2014] EWCA Civ 566 at [32], which refers to Richmond-upon-Thames LBC v SSE [1972] 224 E.G. 1555
[23] See Iannou v SSCHLG [2013] EWHC 3945

considerations not outweighing that conflict. Accordingly, planning permission should not be granted in any case and each appeal on ground (a) should be dismissed.

54. In determining the appeals, regard must be had to the development plan and the appeals on ground (a) must be decided in accordance with the development plan unless other material considerations indicate otherwise: s.177(2) TCPA 1990; s.38(6) PCPA 2004. Whether planning permission should be granted is a matter of judgment for the decision-maker, having regard to all material considerations.

55. Turning first to consider the up-to-date development plan, the Council's position is that the proposal conflicts with numerous policies in the Development Plan to such an extent that there is an overall conflict with the plan, taken as a whole.

56. Mr Tom Wicks' planning evidence laid bare the extent of conflict with the local plan, which consists of the Winchester District Local Plan Part 1 – Joint Core Strategy (2013) ("LPP1"), the Winchester District Local Plan Part 2 ("LPP 2") – Development Management and Site Allocations (2017), and the Gypsy and Traveller Development Plan Document ("Traveller DPD") 2019, as summarised at ¶145(i)-(ix) of his main PoE on the basis of the application forms submitted by the Appellants:

    a. The site is safeguarded for TSP use by policy TR1 of the Traveller DPD and has been specifically allocated for TSP use by policy TR3.[24] The unlawful use of the land as a residential caravan site is contrary to policies TR1 and TR3 of the Traveller DPD 2019 in that the site is allocated for TSP use and should be occupied by people meeting the definition of TSP in order to meet an identified need; and the unlawful use includes occupation by people who do not meet that definition: ¶145(i) TW PoE. Relatedly, the grant of planning permission would not meet the accommodation needs for the area in that it is not limited to occupation by GT/TSP (cf. DM4).[25]

    b. The site is outside any defined settlement and subject to policy MTRA4 which resists residential development in the countryside except in certain circumstances which do not apply in these appeals: ¶145(ii) TW PoE (and see LPP1, MTRA4 and LPP2, DM1).[26] No specific circumstances which provide for general residential development

[24] TW PoE ¶116
[25] TW PoE ¶139
[26] TW PoE ¶113

in the countryside apply in this case.[27] In any event, the proposed development in the location would be inappropriate and unsustainable.

c. The visual impact on the adjacent Black Wood SINC and its locality is not contained appropriately (cf. TR3, TR7 of the Traveller DPD and policies DM1, DM16 and DM23, LPP2: ¶145(iii) TW PoE.

d. Due to its layout and density the site does not provide sufficient parking and vehicle turning space and does not minimise conflict between pedestrians and vehicles, cf. policies TR7 of the DPD and DM18 of the LPP2: ¶145(iv) TW PoE.

e. The density of the site does not allow for mixed-use yards that would accommodate space for the storage of equipment associated with the needs of TSP cf. policy TR7 of the DPD and policy F para. 19 DCLG PPTS 2015: ¶145(v) TW PoE.

f. The site lacks an adequate area of open space for safe children's play, cf. policies TR7 of the DPD and DM17 of the LPP2: ¶145(vi) TW PoE.

g. Details of wastewater infrastructure, including a foul drainage assessment and surface water drainage have not been provided cf. policy TR7 of the DPD: ¶145(vii) TW PoE.

h. Adequate and appropriate provision for the safe storage of waste and recycling is not provided cf. policies TR7 of the DPD and DM17 of the LPP2: ¶145(viii) TW PoE.

i. Commercial activities take place on the land cf. policy TR7: ¶145(ix) TW PoE.

j. Among other things, the unauthorised use is also non-compliant with design policy, connectivity, and parking (cf. LPP2, DM16, DM17 and DM18, and see also TR7 of the Traveller DPD).[28]

57. During the course of the inquiry, it became clear that the planning application sought by the Appellants was not for a general residential caravan site, but rather for "part of" the allegation in the notice – namely for gypsy/traveller use; and that, in addition to an amended description of development, a condition restricting the use was necessary in planning terms.

[27] TW PoE ¶115
[28] TW PoE ¶145

58. In oral evidence, Mr Tom Wicks considered his proof of evidence with reference to that more limited consent sought. He confirmed that his policy objection on the principle of use in ¶145(i) was unchanged. He said that it was wrong to make a simple numerical comparison between the need for TSP pitches and GT pitches as a basis for according limited weight to conflict with TR1 and TR3; and that it was irrelevant that the Appellants asserted they would not permit the use for TSP. Mr Wicks memorably said that it could not and should not be that a developer can hold the development plan to ransom in that way. Mr Woods' assertion is also belied by the evidence before the inquiry that the owners of the site are quite prepared to rent out caravans on the site to non-gypsies and travellers for financial gain. Mr Wicks also noted that TSP sites have different requirements, with greater yard storage and better accessibility for large vehicles. Likewise, the nature of the application did not alter his objection raised in ¶145(ii).

59. Mr Tom Wicks' oral evidence on ¶145(iii) in the light of the new position was that the objection remained but that it could be overcome by condition. There should still be a bund if permission was granted. A bund and landscaping would serve the function of reducing visual impact and facilitating spatial containment of the site, which had been and remained a concern. In re-examination, following questions from the Inspector, Mr Wicks identified previous examples of bunding arising from the 2003 consent as an example.

60. With one exception, Mr Tom Wicks' oral evidence on ¶145(iv)-(ix) was that his objections remained, but that in each case, those matters could be overcome by condition. That exception was ¶145(v); on that matter, Mr Wicks confirmed that he would not maintain an objection were permission granted.

61. Stepping back, Mr Tom Wicks maintained his objection based on the principle of the use (in relation to MTRA4) and locational sustainability, and with the exception of ¶145(v) considered that all other objections could be dealt with by condition. He considered that the proposal remained contrary to the development plan as a whole, by reference to the matters set out in ¶145(i)-(ii).

62. In respect of the deemed applications arising under ground (a) in relation to both EN1 and EN4, Mr Wicks' careful analysis of the development on site against the policies of the development plan can be contrast with Mr Woods' bald finding that "the development is generally compliant with policies within the Development Plan".[29]

[29] BW PoE ¶20.3

63. Other material considerations including national policy support the Council's case. Mr Wicks refers to NPPF ¶80 (in relation to policies and plans avoiding the development of isolated homes in the countryside).[30]

64. The evidence of Mr Opacic, as endorsed by Mr Tom Wicks[31], set out the following:

    a. The Council's principal position is that it can demonstrate a housing land supply of 5.6 years and, for the purpose of the PPTS, can demonstrate an adequate 5-year supply of sites for GT as against adopted development plan targets, which is not the case for TSP. He noted paragraph 10a required the Council to identify 5-years supply against locally-set targets, which must mean the target in the adopted plan.

    b. However, he acknowledged that the October 2022 GTAA, which forms the evidence base for the emerging local plan[32], demonstrates that there is a need for both GT and TSP sites and that this may have changed the 5-year supply picture in the district. Mr Opacic provided a qualification that the GTAA is an evidence study which may or may not find its way into an adopted local plan. Nevertheless, he accepted that if the Inspector used the latest GTAA to assess 5-year supply, the Council could not deliver a 5-year supply in respect of TSP or GT; and the Traveller DPD could not demonstrate how that need could be met. Mr Opacic noted that policy DM4 was out of date due to the 2022 GTAA; and that these matters would need to be addressed in the emerging local plan.

    c. Mr Opacic said that it was an important material consideration that there was a disparity between the adopted local plan position and the 2022 GTAA position, with the latter showing that there was a shortfall of both GT and TSP pitches.

    d. Overall, in re-examination, Mr Opacic assessed that it was more difficult to meet the need for TSPs than GT, since more sites came forward for the latter; and that if a site had consent for TSP use, the Council ought to hang onto it because such sites were hard to find. He considered that the reasons for this related to the requirements of the site: to accommodate TSP equipment; to provide good road access; and because of the

[30] TW PoE ¶146
[31] And see TW PoE ¶166-184
[32] Which has a timeline for adoption of 2025

size of the site. The relative absence of complaints about loss of capacity by the TSP, or applications for such uses, did not provide good evidence on the need position.

65. In oral evidence, Mr Tom Wicks also noted that this site is particularly well-suited to TSP, given that it is large, with good access off a suitable highway: and re: location, see ¶192 TW PoE. The fact that an updated GTAA shows a greater numerical need for GT pitches than TSP plots does not mean that GT provision should "take priority"; and whilst both groups have unmet needs, it has proved particularly challenging in practice to meet TSP needs: ¶109-112 TW PoE.

66. There is no genuine dispute that there is an identified unmet need for TSP in the 2022 GTAA. Mr Woods position was effectively that the needs of each and every one of the TSP households identified as in need of a plot in the 2022 GTAA should be trumped by the fact that there is also a need for GT sites in the district, even in circumstances where there is a site safeguarded for TSP use and there are TSP households where there is an unmet need. This is wrong. It is easy to forget the particular needs of those TSP families who appear to this inquiry to be just 'a number' in the GTAA. That is the whole purpose of the safeguarding policy, to ensure that sites like this are not lost for the purpose for which they have been designated.

67. There was some argument between the parties as to whether the appeal site could be characterised as previously developed land, as defined by the NPPF as land occupied by permanent structures. Mr Wicks' position was that the land is not occupied by permanent structures, with the only permission for permanent buildings being a workshop; and other hardstanding only remaining on site under the 2003 consent, with condition 13 requiring removal upon cessation of that use. Mr Wicks considered that PPTS para.26 referred to the effective use of previously developed (brownfield), untidy or derelict land, however he considered that the site is not PDL and therefore para. 26 is not relevant in the determination of the deemed application.

68. Mr Tom Wicks accepted that the "best interests of the child" was a primary consideration, and that the best interests of children were served by those children having a permanent and stable home.

69. As summarised in Annex 1, this inquiry has heard at length from a range of residents at Carousel Park for whom these proceedings are of great import. The Council has not sought to challenge these personal circumstances:

a. Before residing at Carousel Park, most witnesses had lived itinerantly on the roadside, travelling around and being moved on regularly; and had never benefitted from a permanent pitch or owned land of their own elsewhere. Many had settled at Carousel Park to make a more permanent home for their growing families. Several had registered with the nearest GP or attended appointments at the local hospital, and there were a number of children on site who had enrolled at the local school and benefitted from an improved level of education and socialisation as a result. Likewise, there is no dispute that there are a number of vulnerable people living on site with often complex and multi-faceted health issues, and that living in a more permanent arrangement is beneficial in accessing consistent treatment. The Appellants' evidence is summarised in **Annex 1**.

b. That being said, there is no dispute that the site is occupied by persons who are neither TSP nor GT. Many of the witnesses accepted as much. For example, Mary Stokes said that there was a person who lived in a separate caravan on the same plot (8C) that she occupied with her three children. Although she had been living on the plot since late 2021, and the other person had been there when she arrived, she said that she did not know them and did not think he was a traveller. Lorraine Doyle could not say who lived in the ten static caravans situated on the south-western edge of the site (and neither could anyone else).

c. Although not advanced by any of the witnesses of fact, and although he did not condone it, Mr Woods acknowledged some of the appellants had been willing to rent land out on site, and remarkably said that they had done so to fund the inquiry. Incredibly, and somewhat absurdly, he suggested that the current owners would let the land fall into disuse rather than permit the land be restored to the lawful TSP use.

d. The bottom line is that there are several families of GT / TSP living on site, but there are many non-travellers also occupying the site and accommodation is being rented out to non-travellers on the general market. For example, the Appellants' first witness, Anthony O'Donnell, denied having rented out any caravans on Plot 2C via Gumtree and proceeded to deny any knowledge of the matter when he was confronted with documentary evidence obtained by the Council. Hughie Stokes addressed the issue more generally: he accepted that there were non-travelling families on site, but "*who they are and what they are, I don't know.*" When asked whether the front plot of plot 6 was being rented out at a market rate, Mr Stokes replied "*if you think that's not travelling people, that's got nothing to do with me*".

70. It was disappointing that none of those who so clearly derived a considerable financial gain from the renting out of caravans on the site were willing to be candid about their involvement. On the one hand, the Appellants have repeatedly and consistently raised concerns about the availability of gypsy/traveller sites in the district whilst at the same time the owners of the site have shown themselves to be more than willing to let out caravans in wholly unsuitable conditions[33] for financial gain.

71. Of course, this underlying context is vital to the determination of these appeals. There has been extensive discussion as to the need position in respect of both GT and TSP within the district. It has become increasingly apparent during the course of this inquiry that in no world should planning consent be granted for a generalised residential caravan site use.

72. Mr Tom Wicks gave evidence on the planning balance in relation to the ground (a) appeals. The pre-existing use as a travelling showpeople's site forms the baseline for the assessment of this balance. In exercising his judgement, he accounted for conflict with the development plan; an identified TSP need and the safeguarding of the appeal site for such need; and the need for GT sites identified in the new GTAA, among other things.

73. On a standard balance, Mr Tom Wicks' clear position is that planning harms arising from the proposal outweigh any material considerations weighing in favour of the grant of consent. Even if, however, the 'tilted balance' in ¶11d NPPF is engaged by reason of the lack of a five-year supply of gypsy/traveller sites in the district, the lack of such a supply for TSP sites would equally need to be weighed in the balance. The Council submits that the practical effect of there being a 5 year supply deficit on both sides of the scales (i.e. for the type of site that would be permitted – gypsy/traveller sites - and for the type of site that would be lost – TSP sites), which states that if the most relevant local plan policies for determining a planning application are out of date (or the local plan is silent on a matter), the application should be approved unless it is in a protected area or the harms caused by the application significantly outweigh its benefits.

74. Overall, Mr Wicks confirmed the Council's principal position that the proposals as advanced on ground (a) should be refused.

The Council's alternate position in circumstances where Inspector minded to grant deemed applications

[33] e.g. with insufficient separation between caravans

75. As a secondary position, Mr Wicks considered circumstances where the Inspector might be minded to grant permission for part of the allegation, namely for GT use (as a narrower residential caravan site use).

76. In such circumstances, the guidance is clear that the Inspector should not quash the notice or alter any of its requirements (subject to correcting any defects in the notice). The appeal would be allowed in part and planning permission granted in part subject to conditions. The remaining part of the appeal would be dismissed and planning permission refused for that part and the notice otherwise upheld. Section 180(1) TCPA 1990 would ensure that the enforcement notice ceases to have effect so far as the planning permission is concerned.

77. Aside from the fact that the law requires such an approach, Mr Wicks explained that there would be practical advantages. In particular, it would mean that if there were non-compliance with the conditions attached to the planning permission, there would already be an extant enforcement notice in place pursuant to which further enforcement action could be taken without the need to issue further enforcement notices by reference to the breach of conditions. The Council is keen to avoid returning to 'square one' in that respect. The Council also remains concerned about the risk that any planning consent might never be implemented, such that the conditions did not bite and so the site would remain as it is now, albeit with no EN in place and no new conditions because consent had not been implemented: see Butcher v SSE [1996] JPL 636. In those circumstances there would be no incentive whatsoever for the Appellants to change the status quo. That is particularly the case where, as here, permission would only be granted for 'part of' the use enforced against, i.e. the ongoing use of the site for the purposes the subject of the allegation in the enforcement notice would not be in accordance with any deemed permission granted.

78. If the Inspector is minded to grant planning permission, the Council is not in favour of a personal or a temporary permission, as Mr Tom Wicks confirmed. If the Inspector were considering the grant of a temporary consent, it was broadly common ground between the parties that the weight attributed to harms would be less because of its temporary nature. Mr Wicks said that in these circumstances, an extended compliance period would be preferable to the grant of a temporary consent.

Consequential matters arising under ground (a): nitrates

79. In the event the Inspector was minded to grant permission on ground (a), there is a further issue that arises in respect of the potential impact of the development on the Solent SAC and SPA, and the River Itchen SAC. Given the potential for overnight accommodation to have harmful impacts on the SACs and the SPA due to nitrate loading, an appropriate assessment under the Conservation of Habitats and Species (Amendment) Regulations 20111 is required.

80. The Planning Inspector would be required to be the Appropriate Assessor of the Competent Authority and would be compelled to undertake an Appropriate Assessment in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Article 6 (3) of the Habitats Directive and having due regard to its duties under Section 40(1) of the NERC Act 2006 to the purpose of conserving biodiversity. Consideration of the Ramsar sites is a matter of government policy set out in the National Planning Policy Framework.

81. As was set out in opening, the potential impact from the development may be capable of mitigation by way of an offsite contribution and a Grampian condition imposed to secure a legal agreement for a mitigation package addressing the additional input which is then submitted and approved by the Council. Accordingly, throughout the inquiry ongoing discussions between the Council and the Appellants have sought to resolve the issue by proposing a suitably worded Grampian condition or a unilateral undertaking.

82. Further information was required from the Appellants in order to determine whether there would be any impact by reason of additional net nitrate loading and, if so, what the likely level of that additional loading would be.

83. The Council is, in principle, content for the matter to be dealt with by condition. It was confirmed at Inquiry that Eastleigh B.C. were able to provide credits and that there was a mitigation scheme in place for the proposal.

84. As was set out in the Council's opening, ultimately it is a matter for the Appellants to establish to the Inspector's satisfaction (i.e. as the competent authority) that the grant of permission would either not be harmful or that any harms would be fully mitigated in order to ensure the integrity of the European Sites.

EN2 – ground (a)

85. If permission is granted on the deemed applications arising in the EN1 appeals, then the EN2 ground (a) appeals fall away.

86. Otherwise, on the ground (a) appeals arising from EN2, the Inspector has to decide whether the conditions under the 2003 permission should be removed or varied.

87. In opening the Appellants complained that the deemed consent would be use of the site as a TSP site without compliance with some or all of the three conditions said to be breached; and that condition 15 was "Kafkaesque" in its nature.[34]

88. Mr Woods sought to maintain his position at inquiry, although in reality it became apparent that his maintained objection was mostly procedural – that without an appeal, the notice would be valid, and it would "come into play". It is unclear what he meant by this or what consequences that would have for the appeal. When pushed, he ultimately suggested that there should be no limit on the number of family pitches on site; no limit to the number of caravans on each pitch; and no limit to the number of occupants on site in direct contrast to his position regarding the EN1 ground (a) appeal and conditions.

89. In reality, as Tom Wicks explained, condition 15 is the threshold at which planning consent is required and not at which enforcement action would be taken. The condition seeks to protect the amenities of site residents in circumstances where occupation exceeds acceptable levels and is intended to prevent the overcrowding of the appeal site, leading to poor living conditions, a lack of amenity and inadequate service provision.[35]

90. Tom Wicks also explained that conditions 10 and 11 similarly aim to prevent the overcrowding of the appeal site leading to poor living conditions, a lack of amenity and inadequate service provision.[36] His evidence was that conditions 10 and 11 are necessary to prevent the appeal site from becoming over-concentrated; to maintain space for TSP to store and maintain equipment; and to ensure adequate provision for parking, turning and safe manoeuvring within the site.[37]

91. In the face of the intention and purpose behind those conditions, even Mr Woods appears to accept that the site is over-concentrated at present[38], irrespective of his stated approach in oral evidence.

[34] See BW ¶11.3
[35] TW Rebuttal ¶93-96.
[36] TW Rebuttal ¶98
[37] TW Rebuttal ¶99, LPP1 CP5 and Traveller DPD TR7
[38] BW ¶13.20

92. The Council's position on the ground (a) appeals in respect of EN2 can therefore be summarised succinctly. The conditions are necessary to safeguard the living conditions of occupiers of the appeal site and local amenity by controlling the occupation, density and layout of the appeal site. Moreover, the conditions are consistent with policies TR3 and TR7 of the Traveller DPD, and policies DM6, DM17 and DM18 of LPP2, and policy F, para. 18 of the PPTS. It would be contrary to the development plan and other policy to discharge the conditions.

Ground (f) appeals: the steps required to be taken, or the activities required to cease, exceed what is necessary to remedy any breach of planning control

93. There are ground (f) appeals in relation to each enforcement notice.

94. In relation to EN1, the Appellants take issue with all three requirements, although this is based upon a misreading of the wording of each requirement. The steps are necessary to remedy the breach of planning control.

95. In relation to EN2, the Appellants take issue with requirements 2 and 3, which would seek to restore the position anticipated by Condition 15 (cease the use of the Land for occupation by more than 50 people) and Condition 11 (restore layout of the Land to comprise no more than 9 family pitches). The Council remains of the view that the steps specified go no further than to remedy the breach of planning control.

96. In relation to EN4, the Appellants' ground (f) case is based on the mistaken premise that the relevant area of the appeal site benefits from planning permission through the quashed appeal decision of 9 December 2011. The Council's position is that there is no such authorisation for use as a residential caravan park. The steps required are necessary to remedy the breach of planning control.

97. At inquiry, Mr Tom Wicks confirmed in response to the Inspector's question that the Council was not requiring the restoration of the site to a greenfield site.

98. The ground (f) appeals must fail.

Ground (g) appeals: the period specified for compliance falls short of what should reasonably be allowed

99. The Council maintains that 6 months is sufficient to comply with the steps in each of the three notices. No cogent or particular evidence was advanced by the Appellants to meaningfully call that position into question.

100. In relation to EN1 and EN2, the Appellants have respectively asked for 2 years and 12 months to comply with the notices, without advancing any circumstances justifying such an extension.

101. In opening, the Appellants' contended that if the Council pursued the case that 6 months is an adequate time to remedy the breach, then the Council will need to demonstrate the alternative accommodation that will be available to those residing on site in an area where there is already an overwhelming need for more G&T accommodation. The Council disputes that it needs to require this in order for ground (g) to be dismissed; on the evidence provided by the Appellants, there is no basis for extending time to comply with the steps in the notices.

102. The Council will continue to seek to engage with occupants of the Site whatever the outcome of these appeals and if circumstances arose that justified an extension to any compliance period the Council would exercise its powers under s173A(1)(b) to extend that period.

103. The ground (g) appeals must fail.

CONCLUSION

104. The appeals should be dismissed. The enforcement notices should be upheld. As was reiterated in the Council's openings and earlier in these closings, in the event that EN1 is upheld, the Council will withdraw EN2 and EN4.

JACK PARKER
JACK BARBER
Cornerstone Barristers
28 November 2023.

ANNEX 1 – Summary of Witnesses of Fact

1. In the first week of the Inquiry, the Appellants called fifteen witnesses. Below, their evidence is summarised in the order which they gave it.

(1) ANTHONY O'DONNELL

2. Mr Anthony O'Donnell gave evidence on Day 1, 26 September 2023.

3. Mr O'Donnell had not provided written evidence but said that he was the Appellant[39] at Plot 2C[40], which he did not own but which he rented from a Mrs Black. He said that he had been on the site for 6-7 years. He could not be any more specific than saying that he had been on site since about 2016.

4. Mr O'Donnell said that there were four static caravans and two day rooms on his plot, occupied by a total of six people:

   (i) He lived in the first static caravan with his partner Kate Ward and her daughter Ann Ward (17). He had lived in that static for approximately 7 years.

   (ii) Ms Winnie Ward (mid-50s), the second cousin of Kate Ward, lived in a second static caravan by herself. Mr O'Donnell said that Ms Winnie Ward had been on the site for about 4 years.

   (iii) His son Anthony [Junior] (26) lived in a third static caravan with his partner Lisa. He said his son had been living there for about 4 years, and that before that he had lived with his mother in West London. Anthony [Junior] and Lisa have no children.

   (iv) A fourth static caravan was presently empty because it had been used in the past but it had to be repaired. Mr O'Donnell claimed that his son-in-law, a Mr William Monglan and his partner Lina (both c.30) lived there, but were staying in Liverpool until the static was repaired. William and Lina had no children.

[39] Appeals 329677 and 3296772. In RX, Mr O'Donnell confirmed he had given evidence in the 2019 inquiry.
[40] Although when he was handed a plan of the site, he identified the plot as Plot 1A.

5. Mr O'Donnell gave brief evidence on the personal circumstances of those living on his plot. He alluded to Ms Winnie Ward not always being able to "get around" and "sometimes isn't able to go places", but also that there were no health issues or health concerns in relation to those living on the plot. Nobody on his plot had anywhere else to live or another place to go permanently.

6. Mr O'Donnell confirmed that he had received the enforcement notice. He said that the enforcement notices were "all over the place" on the day that they were served.

7. During cross-examination, Mr O'Donnell denied any knowledge of any of the caravans being rented out on Gumtree. Following a short adjournment, the Council obtained permission to adduce documentary evidence of a Gumtree advert for a 1-bedroom chalet in Winchester, Hampshire, being rented out for £500/month, which included photographs of a day room on his plot. Mr O'Donnell denied any knowledge of the advert and denied that the day room, or other caravans on Plot 2C, had been rented out for the purposes of making money.

(2) <u>HUGHIE STOKES</u>

8. Mr Hughie Stokes gave evidence on Day 2, 27 September 2023.

9. Mr Stokes had provided an unsigned statement prior to the inquiry. In XIC, he confirmed that the Council gave him Plot 6.[41]

10. He said that he had been on site since 2011, when he had bought the plot off a Jimmy Lee. About 3 or 4 years before moving on, he had been renting elsewhere, and after other family members had moved on, he had stayed at the Site for 2-3 weeks at a time.

11. Mr Stokes accepted that there had been several changes on the plot since he had moved on site. For example, he said that there had been a shed

12. Mr Stokes' family comprised the following:

    (i) Mr Hughie Stokes and his partner, and two single sons (Dennis and Michael) – who live with Mr Stokes.

[41] He referred to Plot 6 pitch 1 and said that it was identified on the plan in NW2 as Plot 6. He separately referred to Plot 6, Pitch 2, and said that Patrick Stokes lived on that plot.

(ii) Four married sons who currently live in four further, separate caravans on the plot:

a. Patrick (with wife Charlene and three children aged 7, 5 and 3 years)
b. Martin Joseph (with wife and three children aged 5 years, 2 years and 10 months old)
c. Christopher and wife Margaret.
d. Hughie (23/24), with wife Josephine and one child aged 9 months

13. As of the time of the photograph in NW2 (November 2021), there were four caravans on site. Mr Stokes said that:
    (i) The first caravan was occupied by Mr Stokes with his wife and four sons.
    (ii) The second and third caravan were each occupied by his married sons.
    (iii) The fourth caravan was occupied by his sister (who is no longer on site).

14. On service, Mr Stokes said that his son had collected the enforcement notices from the front gate of the site.

15. In relation to personal circumstances, Mr Stokes said that Patrick's wife Charlene had issues with her nerves, and that Martin Joseph's daughter had an incurable kidney condition which required regular treatment. Patrick's eldest two children attended Micheldever Primary School. Martin Joseph's eldest was also at the school.

16. Although distinct from his one plot, Mr Stokes also gave evidence in relation to neighbouring and adjacent Plot 6 pitch 2. He said that his cousin, Patrick Stokes, lived there. He identified three structures on the plot (with reference to the NW2 exhibit) as caravans, with a fourth structure being a day room. He said Patrick had previously had a partner, Rosaline Stokes, but they had separated. He noted that the former couple had two young children. In cross-examination, he avoided any speculation as to whether plot 6 pitch 2 was being rented out commercially and said, "*you'd have to take that up with Patrick... if you think that's not travelling people, that's got nothing to do with me*". He accepted that there are non-travelling families on the site, in more general terms.

(3) <u>MR TOM CONNORS</u>

17. With reference to the NW2 satellite image, Mr Connors identified his plot as 8B. He said that he had lived on that plot for about 2.5 years, since the start of 2021. Before that, he said since 2016 he had been travelling and moving back and forth, staying in carparks and lay-bys, etc. In

2021 he bought the plot because his family had got bigger and could not cope with being on the road.

18. He described what was on the plot in 2021, with reference to the November 2021 aerial photograph. There was a static caravan on the plot, with a camper van, a caravan, a second caravan, a motorhome and a tipper truck. He said that all that remained now was a static caravan and a caravan which the elder children play games in. With reference to a fence in the photograph, he said that was just a partition in the middle.

19. He said that he and his wife Ina Connors had been living in a static with their four children, aged 12-13, 10, 7 and 4 years. The eldest child had come out of school to be home tutored, but the other three attended Micheldever Primary School. Mr Connors said that all children participated in extra-curricular activities. For example, the eldest three had joined a local boxing club in Basingstoke. Neither he nor his wife had any health issues, and his family were registered with the local GP. He referred to his wife and children undergoing tests, but did not particularise or specify any further.

20. In relation to service, Mr Connors said that he did not have a notice handed to him. He said that there were three people involved when he purchased the plot – Joe Carter, Dan Carter and Jimmy. He accepted he had not taken any steps to register his ownership since purchasing the plot. He did not dispute that the Council had served the enforcement notices on the registered owners. In re-examination he disputed that he had received a hard copy of the enforcement notice. He did not dispute Mr Tom Wicks' evidence that he had put the enforcement notices on the doors of Plot 8.

(4) <u>PATRICK STOKES ON BEHALF OF ROBERT STOKES</u>

21. Mr Patrick Stokes gave evidence on behalf of his father Robert Stokes. He said that he lived on the site with his family on Plot 2B. Mr Stokes said that he had been on the plot since mid-2020. Prior to living on the Site, he had been on the road, mostly between London and Southampton.

22. The plot had previously been owned by a Maggie Cash. The Stokes family had purchased the plot from a cousin who had acquired it from Ms Cash.

23. With reference to the November 2021 aerial photograph, entering from the gates to the plot, Mr Stokes described three caravans on the left-hand side and three caravans and a tent to the righthand side, with a dayroom across the back.

24. In terms of who was on site in 2021:

    a. In the three caravans on the right:

        (i) The first was occupied by Robert (Bob) and Hughie (brothers, late teens/early 20s).
        (ii) The second was occupied by a sister (unnamed, aged 26).
        (iii) The third was occupied by a sister, Ann, with children aged 3 and 4 years.

    b. In the three caravans on the left:

        (i) The first was occupied by Robert (Father, 55) and Matilda (Mother, 58)
        (ii) The second was occupied by Maureen (33) and Edward (33) and their two children (aged 4 and 5)
        (iii) The third was occupied by Patrick (no partner, no children).

25. Mr Stokes confirmed that the family had moved on Site together in mid-2020 and that the living arrangements as of November 2021 were the same as of September 2023.

26. In relation to personal circumstances, the men in the family work on markets and car boot sales, whilst the women do not work. Mr Stokes' mother has a knee condition. The family accesses healthcare via the nearby GP. Maureen and Edward's eldest child, and Ann's eldest child, are either at or about to join Micheldever Primary School.

27. On service, Mr Stokes said that he had not received any enforcement notice. He had not sought to register any interest in, or ownership of, the plot since he had purchased it.

(5) <u>GEORGE DURAN</u>

28. Mr Duran said that he lived on Plot 3C. He said that he acquired the land in 2020 from the Black family, and moved in earlier in 2023. Before that, he had lived on the road. Some time ago, he had had a pitch in Leeds, but had nothing more permanent in the recent past.

29. Mr Duran initially said he was not the owner of the plot at the time of the November 2021 aerial photograph but clarified that he was the owner by then but had not done any work on the plot by that time due to the Covid-19 pandemic. With reference to the November 2021 aerial

photograph, he identified three static caravans, a small picket fence and brick-built day room, and a shed with washers and driers. Counsel for the Appellant indicated to the Inspector that they will be placing reliance on the drawing plan produced by Inspector Morgan following a 2011 site visit.

30. He said that there was a "bit of a process" until exchange of the plot, and that initially one caravan was derelict, another was unliveable, the Black family were in a third caravan and he was not sure how the fourth caravan was used.

31. Mr Duran said that he lived on the plot with his wife Aishling (28) and their daughter (2 years). Aishling is related to the Stokes family. Mr Duran said that his younger brother Charles also lives on the plot with his wife Rosaline and their daughter (9 months). Mr Duran indicated that the first time he visited the site was around 2012, and that the first time he could remember the four caravans being on the site was around that time.

32. In relation to personal circumstances, Mr Duran is a roofer and his brother does the same with a bit of horse trading. He said that health issues were "all OK", although he disclosed that his daughter is attending doctors (albeit without any official diagnosis). His daughter is not yet in nursery.

33. On service, Mr Duran initially said that he had not received the notice and that he had not registered any interest in, or ownership of, the plot since he had purchased it. He acknowledged that he had found out about the enforcement notice because people were talking about it.

(6) <u>PATRICK FLYNN</u>

34. Mr Patrick Flynn said that he was speaking to his father James Flynn's evidence. His father had provided a proof via his planning representatives. Patrick Flynn said he lived on Plot 3.[42] He said he bought the plot at the end of 2020 from the Black family and started living on the site straight away. Patrick Flynn described how he had been coming to the Site since 2011 since the Stokes are his family.

35. With reference to the November 2021 aerial photograph, he described a large timber shed with toilets and a wash-room, a van and two caravans.

[42] Described as Plot 3a in Mr James Flynn's evidence.

36. In cross-examination, he confirmed that as of September 2023, there were two statics and two campers on the site, plus a shower block. The timber building in the November 2021 aerial photograph had gone. He said that there were two statics and two campers on site. One of the statics is his mother's and sister's; and one of the statics is for him and his family; that another caravan was his sister's and that no one lives in the two camper vans.

37. Mr Flynn said he lived on the plot in one caravan with his wife Caroline (37) and six children (19, 17, 13, 10, 4, 3 years). Patrick Flynn said he is a roofer. His mother Maureen (58) lived in another caravan on the plot with his father James (63) who was away at the time of the Inquiry and is said to no longer work; and his sister Maureen (27). Mr Patrick Flynn said his sister looked after his sick mother. He said his mother had nerve problems and issues with her brain. One of Patrick's children (aged 10) has Type 1 diabetes. There were no other health issues reported. In terms of schooling, his 10-year-old child had been enrolled at Micheldever Primary for a couple of years, and the youngest three children would be joining over the next couple of years. The eldest two children were no longer enrolled.

38. On service, he said that he had known about the enforcement notices because his uncles had told him; and that it was not possible to live on the site and have not known about the notices.

(7) <u>STACEY STOKES</u>

39. Ms Stacey Stokes confirmed that she lives on Plot 1 pitch 1, and had been living on site for about 6-7 years (i.e., since around 2016). She said her father had bought the plot and they had moved on couple of weeks before his first grandson was born on 7th November 2016 (i.e., around 6-7 years ago). Before that, the family had lived on the road.

40. Ms Stokes confirmed that she and her family had lived on the plot at the time of the November 2021 aerial photograph. With reference to the plan, she described two static homes, a day room, a towing caravan and her father's stables, with a little shed containing washing facilities.

41. She described who was living on the plot as of 2021. In the first static caravan, her brother Patrick and his pregnant wife Sharon/Shannon, with 4 children (5, 4, 1 and 1 year old). In the second static caravan lived her mother, father, brother Tommy (24) and sister (13). Ms Stokes (25) lived in the third caravan with her 6-year-old son. She confirmed that was mostly the same as of September 2023, except that her two sisters Maureen and Philomena came and went from the plot intermittently and two further caravans occupied the plot. She said Philomena (26) did

live on the site with travelling husband and her children (aged 4 years, 2 years and 4 months) in a touring caravan. Maureen (25) was Ms Stokes' twin, and has no partner and no children.

42. Ms Stokes said her brother Patrick was a roofer, and her father was not working full time but attended horse fairs. She said none of her siblings had attended school, but that Patrick and Shannon's two eldest were enrolled in Micheldever Primary School and that her son attended part-time. She described how her son and Patrick's eldest son had health difficulties. Patrick's son had Down's Syndrome and learning difficulties. Her son had asthma, blackouts and respiratory problems and epilepsy, and was undergoing tests for autism. His health issues had been caused at least in part due to complications during childbirth. Her mother had suffered from depression since a shooting towards the plot a couple of years ago.

43. On service, Ms Stokes said that she would not dispute that the Council put notices on doorsteps of caravans.

(8) <u>PATRICK HEGARTY</u>

44. Patrick Hegarty (25) said that he lived on Plot 5C. He said that he moved on in 2020. In his statement to Mr Woods, he referred to occupying the site for 5 years. In cross-examination, he said that he had been there since around 2020, but that his uncle Patrick Stokes[43] had been there since 2018/19.

45. When he moved on to the plot, Mr Hegarty said there was nothing on site except the fencing and the stables. He said that he owned the plot having purchased it from his uncle, Patrick Stokes, who had acquired the land from the Cole family. Before coming to the site, he and his family had lived on the road. In cross-examination, Mr Hegarty was shown LPA27, which indicated that in 2020, there were no stables and these must have come later. Mr Hegarty said that he thought his uncle had put the stables on the plot shortly before he had moved on.

46. He confirmed he had been living on site at the time of the November 2021 aerial photograph. With reference to the photograph, he said that there were two statics and two touring caravans, and wooden stables with a horse trailer with a van to one side and a children's trampoline.

47. In November 2021, he said that he lived in the first static caravan with his wife Sienna (23) and three children (6, 4 and 1 years). His brother Cornelius (24) lived in the second static with his

[43] Of Plot 5a, aged mid-40s.

wife Lucky (23) and three children (5, 3 and 1 years). His brother-in-law Paddy (23) and Mr Hegarty's sister Britney (19) lived in the first tourer (with no children). His sister Mary (21) lived in a second tourer (no partner, no children).

48. As of September 2023, the position was that there were three caravans and two statics and horse stables on site. Mr Hegarty confirmed that the ages given for those on site were for the ages now rather than as of November 2021.

49. Mr Hegarty said that he, Cornelius and Paddy all worked as landscape gardeners together. His eldest two children were enrolled in school at Micheldever Primary. Cornelius's eldest was also enrolled at the same school. Mr Hegarty said that everyone was healthy and that the family was registered with the local GP.

50. On service, Mr Hegarty accepted that he did not have a live appeal and said he did not receive any notice. Mr Hegarty accepted in cross-examination that he had not taken any steps to register any interest in, or ownership of, the land. He did not dispute Mr Wicks' evidence that he left notices on the doorstep to the plot.

(9) <u>PATRICK STOKES</u>

51. Mr Patrick Stokes (24) said that he lived at plot 6B. He said he had purchased the plot in late August 2020 and moved in at the same time. He said he purchased the plot from an uncle William. Before that, he said he had only been to the site a couple of times, and had been travelling around, living on the road. He said that he had not done anything on the site in terms of building works since he had owned it. He had sought to live on the site because he had extended family living there.

52. With reference to the November 2021 aerial photograph, he described three static caravans and a day room, with various vehicles on site. He said that the day room was on site when he bought the plot, and said that the day room was like a static caravan inside, with a kitchen, bedroom, toilet and shower facilities. In re-examination, he described how the day room had been a stable originally, and was then cladded. He said that he lived in the day room and also had a Fendt touring caravan there as well. Although somewhat uncertain, he indicated that he had initially moved on in a touring caravan and had moved to live in the day room around 6 months after he moved on (i.e., in early 2021). In cross-examination, he denied that he had never occupied the day room as his home. As for the caravans, he identified one static with reference to the red roof and said that had been occupied by squatters on his arrival, was vacant as of September

2023, and had also been occupied by James Stokes and his wife (although detail on this point was scant). He said that two people – Christopher and Nigel – live in another static on the plot and had been there since he arrived. He said that both were non-travellers and live rent-free but pay for electric and look after the land. He was ignorant on the point in the Council's evidence that when officers visited the plot in September 2021, one of the statics was occupied by a non-traveller woman; and denied what a man occupying one of the statics had told officers (i.e., that all caravans were occupied by non-travellers, who each paid rent to a Patrick Stokes).

53. In XIC, Mr Stokes said that on the plot there was a day room, three statics, a white tow van and a vehicle. He said that he occupied the day room with his wife Rosaline (21) and their two children (2 and 1 years). He worked in the motor trade, buying and selling vehicles. He confirmed that there were no health issues in his family.

(10) FONO HEGARTY

54. Mr Hegarty (28) told the Inquiry that he lived at plot 9A. He said that he moved on to the plot around the end of 2019 or beginning of 2020. Before, he had lived on the road. He had purchased the plot from the Carter family and had moved on straight away.

55. With reference to the November 2021 aerial photograph, he identified a chalet, with a day room and a fence, kennels, ancillary sheds, child's play equipment and sandstone paving. He said that the chalet was on the plot when he bought it, and the day room was there as well. He had put the kennel on it.

56. In November 2021, he said that he lived on site with his partner Christine (24) and his children. Together, they have four children (aged 8, 6 and 3 years, and a 3-month-old). Since 2021, another caravan had been added to the site, used for horse fairs.

57. Mr Hegarty said he worked sporadically as a gardener over summer, and traded horses year-round. He said that his family's health was perfect, and that they were registered with the local GP. His eldest children attended Micheldever Primary School.

(11) PATRICK STOKES

58. Mr Stokes (71) told the Inquiry that he lived on plot 5B with his wife Ann (69). He said that he did not own the plot but that his grandson Fono Stokes did. He said that he had been living on the plot for between 18 months and 2 years. He said that his grandson Fono Stokes (22) and his

wife Mary (18) had also been living on plot 5B since 2019. Fono and Mary had a 4-5-month-old child. Mr Stokes' son, Patrick, lives on plot 5A and bought the land on plot 5B and sold it to Fono Stokes.

59. With reference to the November 2021 aerial photograph, he identified two caravans and a shower room (which had now gone), a further touring caravan and motor van, and stables. He said that as of September 2023, he lived in his own mobile caravan on the site, and there was another mobile occupied by someone else.

60. In terms of personal circumstances, Mr Stokes said he had diabetes and high blood pressure, and his wife had diabetes. Both were registered with the local GP. He said his wife was quite sick. He said that Fono and his family were healthy.

61. On service, he said that no notices came to the site, and that he had been told the morning before the inquiry. He acknowledged the plot was registered to a Mr Cole. In cross-examination, he said that he didn't dispute that Mr Wicks put notices on doorsteps or handed copies to occupiers but did dispute that he received them.

(12) MARY STOKES

62. Ms Stokes (26) told the inquiry that she lived at plot 8C. She said she had lived on the plot since late 2021 – either in November or December. She said she did not own the land, but rather Danny Carter did. She said she did not pay rent; her father-in-law, Patrick Crumlish, knows Mr Carter. Before 2021, she had been to the site once or twice but did not know much about it.

63. With reference to the November 2021 aerial photograph, she identified a caravan and battery unit, a stable, and a mobile. She said that when she moved on site, she moved on in a caravan and now lived in a different mobile caravan. She said that the one in the photograph remained, and someone else lived in it but that she did not use it. She could not identify who lived in that caravan, but said that he had been there since she moved in. In cross-examination, she said that she didn't think the person was a traveller.

64. Ms Stokes said she was a single mother of three children (aged 8 years, 5 years, and 9 months respectively). She said that she had been home-schooling her elder children. She said there were no health issues. Her father-in-law, Patrick Crumlish, lived next door on plot 9B.

(13) LORRAINE DOYLE

65. Ms Doyle told the inquiry she lived on plot 5A. She said she had been living on the plot since 2019 and had lived there permanently since then. In cross-examination, she confirmed she had not been to the site before 2019 and did not know anything about the site before then. She said her husband Patrick Stokes bought it off Mr Cole. Before then, her family lived on the road travelling.

66. With reference to the November 2021 aerial photograph, she identified a portable toilet, and a static caravan.

67. Ms Doyle said she lives on the plot with her partner, Patrick Stokes, and their five children, three of which live with her (aged 17, 12, and 2 years respectively). Another son, Alfonso Stokes, lived elsewhere on the site with his wife, child and grandparents.[44] Another daughter is married and lives elsewhere. Ms Doyle said that she had low blood pressure and heart difficulties, and had to attend Basingstoke Hospital regularly for heart scans. She said that she had bladder difficulties and a lack of energy. She said her children were healthy. Her youngest was enrolled in the local nursery.

68. On service, she said that she was not aware of the enforcement notice but was aware of the need to attend the inquiry.

(14) <u>ELLEN MARIE CRUMLISH</u>

69. Ms Crumlish told the inquiry that she had lived at plot 9B permanently since 2019. Before that, she had lived on the road travelling.

70. With reference to the November 2021 aerial photograph, she identified a static caravan, a horsebox (which had since been removed), another horsebox, a camper van, a second static caravan and a stable. As of September 2023, she said that two statics and a stable remained on site.

71. Ms Crumlish said that she lived in one static with her three children (aged 12, 11 and 7 years respectively). Her father-in-law, Patrick Crumlish (mid-50s), lived in the other static with his wife Christina. The stables were occupied by horses.

[44] On plot 5B?

72. Ms Crumlish explained that she had formerly lived in Rainham but had left after completing a course of chemotherapy to treat breast cancer in 2016. She had moved to join her father-in-law on a permanent site, with a view to a more settled life assisting her routine of ongoing medical appointments. She continued to suffer from lymphedema and brittle bones and had ongoing and frequent treatment for these conditions. Her children were said to be healthy. The family were registered with a local GP. Her youngest two children attended Micheldever Primary School whilst her eldest was home-schooled.

(15) JOSEPHINE MAUGHAM

73. Josephine Maugham (18) told the inquiry that she had moved onto plot 9B about 6 months ago (i.e., Spring 2023). She lived on plot 9B with her husband Patrick Crumlish (22) and was pregnant with a baby due in April 2024. She said that the plot was owned by Danny Carter. She explained that the plot was presently accommodating a shed, a trailer caravan and some 4-5 mobiles. She said that the shed had facilities such that it served as a day room. She lived in the caravan with Patrick. As for the mobiles, she said that she did not know who lived in them; did not have anything to do with them; and did not think they were travellers. She said that her partner Patrick had been on site since 2021, before they married and she came to the site. He worked as a roofer with his brother Vincent, who also lived in Carousel Park. She said there were no health issues.

(16) FREDDIE LOVERIDGE

74. Mr Freddie Loveridge attended the inquiry on day six (22 November 2023). He mostly confirmed his statement which had been provided to the inquiry in advance. He lived on plot 1 with his five children and their offspring and had resided there since 2013 With reference to the November 2021 aerial photograph, he said that entering from the gates, the chalet on the left hand side was occupied by his son Freddie (26) and his wife Cathleen, who had two boys and a girl aged 6 years, 4 years and 2 weeks. Next to that was a day room and an empty day room. In the middle of the plot, there was a chalet occupied by Mr Loveridge himself, his wife Rosemary, their daughter (18) and another son (15).[45] Elsewhere on the plot – apparently towards the back of the plot on the rough back yard area – another son (17) and his wife occupied another mobile home with no children; and another daughter (21) lived in another mobile home. Accordingly, there were four mobiles on site. Mr Loveridge said that he had

[45] Although in his statement there was reference to three children – it is not clear whether the 17-yo was double-counted in that statement.

some TSP heritage and considered that he met the planning definition of traveller. He had never had a lawful pitch. In terms of personal circumstances, he had type-1 diabetes, and his son had an illness too. Two grandchildren were enrolled at the local school.

Other site occupants (not represented): Norman McGinchley

75. On day 3[46] of the inquiry, Mr McGinchley attended to address the Inspector. He said he lived at plot 4, which he said belonged to his son, Patrick McGinley. He was not represented and did not have an outstanding appeal against either EN1 or EN2 (both of which affected his plot). He said that he was unaware of the appeal process until September 2023. He said that he lived on the plot across two touring caravans with his wife, his granddaughter (16) and his son Patrick, his wife and their 1-year-old child, who travelled as a unit. He said that there were sometimes three caravans on the plot, and that these came and went. Mr McGinchley said that he suffered from mental illness, and that his granddaughter had autism and diabetes and required refrigerated medication.

[46] 28th September 2023.