



Section 174

Appeal By Mr C Blyth

Against an Enforcement Notice issued by Winchester City Council

on 14th November 2023

in respect of the material change of use of the land and operational development

at

Land at Springbridge Farm, Highbridge Road, Highbridge,

Eastleigh, Southampton, SO50 6HN

STATEMENT OF CASE

(on behalf of the Appellant)

PINS ref: APP/L1765/C/23/3334938

LPA ref: 17/00212/USE

February 2023

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1.0 Introduction

1.1 Southern Planning Practice Ltd has been instructed by Mr C Blyth to appeal against an Enforcement Notice issued by Winchester City Council on 14th November 2023 in respect of Land at Springbridge Farm, Highbridge Road, Highbridge, Eastleigh, Southampton, SO50 6HN

A copy of the Enforcement Notice is attached at **Appendix 1**.

1.2 The alleged breach of planning control is:

Without planning permission:

- (i) The making of a **material change** of use of the Land from an agricultural use to a mixed used for:
 - a) a retail shop with associated freezer unit (Class E(a) of the Use Classes Order 1987, as amended (UCO));
 - b) siting and use of a food van/kiosk for the sale of hot and cold food (Class E(b) of the UCO);
 - c) storage, falling within class B8 of the UCO;
 - d) siting of generators to enable the unauthorised mixed use of the Land;
 - e) a campsite;
 - f) agriculture/horticulture;
 - g) (i) siting of two linked caravans/mobile homes for residential purposes shown in the approximate positions marked "X" and "Y" on Plan 1.
ALTERNATIVELY:
 - (ii) the construction of a dwelling house by the linking of the said two caravans/mobile homes and its use as a dwelling house;
 - h) siting of one caravan used for residential/associated residential purposes in connection with g) above shown in the approximate position marked Z on Plan 1;

AND

- (ii) The carrying out of **operational development** on the Land namely:
 - i) erection of buildings, outbuildings, toilet block, solar panels, and fencing used in connection with the unauthorised mixed use of the Land
 - j) erection of polytunnels and structures associated with the use of the Land for horticulture;
 - k) engineering operations to create a septic tank and cesspit(s) for use in connection with the unauthorised mixed use of the Land
 - l) the laying of hard-surfacing to facilitate the unauthorised mixed use of the Land.

1.3 The reasons for issuing the Notice are:

The Council considers it expedient to issue this notice because:

It appears to the Local Planning Authority that the above breach of planning control has occurred within the last ten years.

The Land is located in the open countryside outside any defined settlement boundary where development is limited to that which has an essential need to be located in the countryside including development which is necessary for agricultural, horticultural or forestry purposes, and certain types of open recreational uses which require a countryside location.

The formation of hardstanding and creation of a new access together with gates at the entrance to a track, the stationing of the mobile homes for residential purposes with associated link extension under construction, associated hardstanding and fencing and domestic storage, the separate caravan used for residential and recreational purposes, the siting of a toilet block with connected wooden entrance and storage areas and engineering works to include a septic tank, separate cess pits, the track and hardstanding areas, the erection of the solar panel array, the storage of vehicles, trailers, containers/portacabins, a boat, machinery and equipment, and building materials/rubble, polytunnels and housing for horticultural purposes, generators, the container used for retail shop and associated freezer unit, separate food kiosk which are all unrelated to the agricultural use of the Land constitute an intrusive, incongruous, unjustified, sporadic and inappropriate form of development on agricultural land within this countryside location for which there is no agricultural or other justification.

As such, the development is contrary to policies MTRA3 and MTRA4 of the Winchester District Local Plan, Part 1 - Joint Core Strategy, in that it results in inappropriate development within the countryside with no justification.

This unauthorised development and continued use of the Land for the above-mentioned purposes along with the associated operational development is causing substantial harm to the character and appearance of this rural location and the wider open countryside. It is considered to represent an inappropriate and unacceptable form of development in this sensitive countryside location and is harmful to the visual quality of the area. The unauthorised development is inconsistent with the provisions of the development plan as it fails to protect the natural and built environment and fails to meet the criteria set out in Policy DM 11 of the Winchester District Local Plan Part 2. As such it is also contrary to Policy MTRA4 and CP13, and CP20 of the Winchester Local Plan Part 1 – Joint Core Strategy, Policies DM1, DM10, DM11, DM15, DM16, DM17, DM18, DM20 and DM23 of the Winchester Local Plan Part 2, Winchester City Council's Supplementary Planning Document on 'High Quality Places' 2015, and 'Landscape Character Assessment' SPD 2022 and the National Planning Policy Framework 2023.

The aforementioned 'Landscape Character Assessment' for the area seeks to reflect the importance of Winchester's landscape and aims to protect and enhance the strong identity of the landscape whilst accommodating necessary development and change. The character of this area (Lower Itchen Valley) has been strongly influenced by the presence of the river which has resulted in a mixed landscape of pasture, settlement and woodland set within a varying topography. The Land the subject of this Enforcement Notice is surrounded by Sites of Special Scientific Interest in a strongly rural area influenced by the historic water meadows and their associated water mills, locks, carriers and drains from the flood meadow system. It is an area rich in ecology with habitats of national and European ecological importance. Key issues within this landscape character area include the 'suburbanisation and loss of tranquillity' and the 'visual intrusion of detractors such as industrial buildings.' 'Built Form Strategies' for this area include 'conserve the rural character of the landscape and resist development that would result in further suburbanisation of the character area'. The features introduced into this Land are clearly visible and conspicuous from the busy B3335 and from the adjacent and well used Itchen Way National Trail public footpath and detract from the special rural character of the Lower Itchen Valley. Taken together these features have an unacceptable effect on the rural character of the area by means of visual intrusion, the introduction of incongruous features and by impacts on the tranquillity of the environment. It is in conflict with Policy DM23 -Rural Character, DM17(ii) - Site Development Principles and DM16(i) - Site Design criteria.

The development is contrary to Policy CP15 and CP16 of the Winchester District Local Plan Part 1 - Joint Core Strategy, in that it fails to protect and enhance biodiversity across the District by failing to make appropriate provision for the Solent Disturbance and Mitigation Charge Zone. As a result, it is considered that the development would result

in significant harm to the Special Protection Area (SPA) and the species that it supports, therefore contravening the legal requirements of the Wildlife and Countryside Act 1981, and the Habitat Regulations.

The development is contrary to Policy CP15 and CP16 of the Winchester District Local Plan Part 1 - Joint Core Strategy, in that it fails to protect and enhance biodiversity across the District by failing to make appropriate mitigation in regard to increased nutrients (nitrates and phosphates) into the Solent SPAs. As a result, it is considered that the development would result in significant harm to the Special Protection Area (SPA) and the species that it supports, therefore contravening the legal requirements of the Wildlife and Countryside Act 1981, and the Habitat Regulations.

The Land is surrounded by SSSIs, and part of the Land is within the SSSI Impact Risk Zone and hence is extremely sensitive to change including changes to surface water runoff quantities and quality. Any development must demonstrate how the site is draining and that no additional volumes nor increased rates are leaving the site, no such information has been provided. As such the development is contrary to policies CP11 and CP17 of the Winchester District Local Plan Part 1 – Joint Core Strategy, DM5 of the Winchester District Local Plan Part 2, the Strategic Flood Risk Assessment 2007 and the NPPF 2023.

One of the polytunnels is situated in a Flood Risk Zone 3 which fails to accord with Policy CP17 of the Winchester District Local Plan Part 1 – Joint Core Strategy and Policy DM17(iii) of the Winchester District Local Plan Part 2 and Paragraph 167 of the NPPF 2023 in that it increases the risk of flooding through additional surface water accumulating adding to the cumulative impact of flooding in the local area.

The Council does not consider that planning permission should be granted because planning conditions could not overcome these objections to the development.

1.4 The requirements of the notice are:

WHAT YOU ARE REQUIRED TO DO

- i) Cease the use of the Land as a retail shop, for siting a food van/kiosk for sale of hot and cold food and B8 storage.
- ii) a) Cease the use of the Land for siting caravans/mobile homes for residential or associated recreational purposes; OR
b) Cease the use of the Land as a dwelling house and the use for siting caravans/mobile homes for residential or associated purposes;
- iii) Cease the use of the Land as a camp site except in accordance with permitted development rights for temporary campsites under The Town and Country Planning (General Permitted Development) (England) Order 2015 or any amending or subsequent legislation.
- iv) Remove from the Land the retail shop and associated freezer container, food van/kiosk, outbuildings, toilet block, solar panels, vehicles, boats, trailers, generators, storage containers, polytunnels and similar structures, fencing, building materials and rubble and all other paraphernalia brought onto the land to facilitate the unauthorised mixed use.
- v) a) Remove from the Land the two caravans/mobile homes and the wooden structure linking the mobile homes, and the separate caravan, (shown marked X,Y and Z on Plan 1); OR
b) Remove from the Land the dwelling house comprising two linked caravans/mobile homes units, and the separate caravan (shown marked X,Y and Z on Plan 1);
- vi) Remove the storage container (including sanitary facilities housed within), wooden structure, and cesspit(s)/septic tank from the Land (as shown in photographs A & B attached); fill in the excavated area and re-level the Land in line with the directly adjacent land.
- vii) Dig up and permanently remove from the Land the hardstanding (shown outlined in blue on the attached Plan 1 and tarmac (shown coloured green on the attached Plan1 both of which facilitate the unauthorised mixed use of the Land.
- viii) Remove from the Land all materials, rubble, rubbish and debris arising from steps (iv) to (vii)
- ix) Reinststate the field gate at the entrance to the Land onto Highbridge Road with a boundary treatment and gate similar in appearance to the one shown in photograph C attached.
- x) Reseed the Land to grass.

1.5 The compliance period is:

TIME FOR COMPLIANCE

9 months from the date on which this notice takes effect.

Grounds of Appeal

- 1.6 The appeal against the notice is being pursued under the following grounds (in the order of consideration):
- (b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
 - (c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").
 - (d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice
 - (a) That planning permission should be granted for what is alleged in the notice.
 - (f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
 - (g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why.

Opening comments

- 1.10 Southern Planning Practice was first contacted by the appellant in late November 2023 after the EN had been issued and first visited the site in December 2023. Prior to that, they had not had any dealings with the site.
- 1.11 The appellant had previously been represented by another planning consultant (Stephen Andrews of SDA Planning), although due to ill health he was not able to continue to deal with this matter.
- 1.12 Very little paperwork existed or was available to view. A FOI request was therefore made to WCC on behalf of the appellant. This was returned in two parts – on 31 Jan and 1 Feb (site visit photos, many of which are undated) and 13 Feb (emails and correspondence, totalling 168 pages). A request was also made to see the Enforcement Notice that was issued and withdrawn in 2016 and also the case officers report for the refused planning application in 2017 (see Planning History in Section 3.0).

- 1.13 The appellant suffers with ill-health (diabetes type 2 and sleep apnoea). He is literate, but due to the sleep apnoea has a short attention span and is not therefore able to read long passages of text and also struggles with lengthy discussions and can sometimes lose his train of thought.
- 1.14 The appellants ability to be able to run and develop his farm over the last 5 - 6 years or so has been severely hampered by bird flu and also Covid. Hence why some parts of the site have become neglected and untidy.
- 1.15 He runs the farm himself, although some local volunteers assist him (Susan Middleton and John Hall).
- 1.16 The appellant lives on site with his son (aged 16). The best interests of the child will therefore be relevant in these appeal deliberations and is therefore a material consideration.

2.0 Description of the site and its surroundings

- 2.1 Springbridge Farm is located on the north side of Highbridge Road (B3335) on the western edge of Winchester City Council's administrative area, close to the boundary with Eastleigh Borough Council, between the areas of Highbridge and Allbrook (which is with Eastleigh Borough Council's administrative area).
- 2.2 It is situated approximately 2 miles north of the town of Eastleigh and 1.5 miles south east of Colden Common.
- 2.3 The application site comprises 7.29 acres (2.95 ha) of level pasture land.
- 2.4 The western boundary of the land abuts the Itchen Navigation (a man-made canal) that forms part of the River Itchen. Beyond that is the railway line. A public footpath runs along the eastern side of the navigation / western boundary of the site, although views into the site are partially obscured due to intervening vegetation along the western boundary of the land.
- 2.5 To the south and west of the site on the other side of Highbridge road is farmland. To the east are horse paddocks and neighbouring dwellings (Roselea and Dunoon)..
- 2.6 Mature trees screens views from the north.
- 2.7 The key views of the site are short distance views from Highbridge Road, the boundary to which the site aligns itself as it curves around the bottom of the site and passes from west to east. There is an established hedgerow which screens views of the land for most of the year, although is patchy in a few places.
- 2.8 The land is relatively flat and not prominent in the wider landscape. The length of the site is such that areas further from the road cannot be said to be prominent; land near to the road is more so.

- 2.9 The River Itchen (including the Itchen Navigation) is designated as a SSSI and a SAC.
- 2.10 The site itself has no nature or landscape designations.
- 2.11 According to the Flood Risk map for Planning, the western edge of the site (adjacent to the Itchen Navigation) and an area in the south western corner of the site is located within of Flood Zone 3 (high probability of flooding). The majority of the site, including where the residential units are located, is within Flood Zone 1 (low or no risk).
- 2.12 The site is situated with the River Itchen and Solent SPA catchment, where new development involving overnight stays has to demonstrate nutrient neutrality.

3.0 Planning History

3.1 On 14th April 2016, the LPA issued an EN in respect of:

- A) Use for the siting of two caravans/ mobile homes (with extension) for residential purposes and associated formation of hardstanding.
- B) Class A3/ A5 of the Town and County Planning (Use Classes) Order 1987, and the siting of a vehicle selling hot food with associated seating area.
- C) General open storage Class B8 of the Town and County Planning (Use Classes) Order 1987, including for the siting and storage of portacabins, containers and the storage of non agricultural vehicles and machinery.
- D) Laying of hardstanding and creation of new access onto the land.
- E) Erection of timber building and storage of wood and other non agricultural items and installation of two tanks.

3.2 The EN was subsequently withdrawn on 31 October 2016. It is understood that the notice was withdrawn to allow the submission of a planning application.

3.3 On 21 Jun 2016, an agricultural prior notification was submitted for a steel framed barn on the land (application ref: 16/01399/APN) – at that stage the site was known as Land To The North West Of Highbridge Road Highbridge Hampshire. On 14 July 2016, the LPA confirmed that prior approval was not required.

3.4 The appellant has advised that work on the barn was commenced within the relevant 3 year period, but has not yet been built. There are materials on site for its construction. Works have recently re-commenced for its construction.

3.5 On 7th October 2016, a planning application was submitted for “Retrospective consent for the continued siting of a mobile home to serve as a temporary agricultural workers accommodation, retention of existing ancillary structures, and vehicular hardstanding areas”. This is the description detailed on the application form.

3.6 The description of the development was changed by the LPA and appears on their website and on the decision notice as: “Retrospective consent for the continued siting of a mobile home to serve as a temporary agricultural workers accommodation, retention of existing structures (hot food kiosk and the freezer unit and shop) and vehicular hardstanding areas“ (application reference 16/02638/FUL).

3.7 The application was refused on 17 July 2017 for the following reasons:

- 1 *In the absence of any overriding justification or specific identified need on agricultural grounds, the proposal constitutes an undesirable intensification of sporadic development in the countryside, and represents an undesirable intrusion in the countryside, prevalent to the characteristics of the locality and principles of sustainable development. Therefore, the proposal is inconsistent with the provisions of the development plan as it fails to protect the natural and built environment and would reinforce unsustainable transport patterns contrary to policies 'DS1, MTRA 4, CP20' from the 'Local Plan Part 1, Joint Core Strategy' 2013; and policies 'DM1, DM11, DM23' from the 'Local Plan Part 2'.*
- 2 *The proposal having regard to the individual circumstances of their case and its relationship with adjacent development is considered to represent an inappropriate form of development in this sensitive countryside location. The proposal by virtue of its built form and location is considered to represent an unduly intrusive and obtrusive impact in the landscape and is considered unacceptable in these individual circumstances. Therefore the proposal fails to represent an appropriate form of a development which would be harmful to the visual quality of the area contrary to policies 'DM15', DM16, DM17, DM18, DM20, DM23, DM24' from the 'Local Plan Part 2; and policies 'CP13, CP20' from Winchester City Councils 'Local Plan Part 1 - The Joint Core Strategy' 2013; and Winchester District Councils Supplementary Planning Document on 'High Quality Places' 2015; and 'Landscape Character Assessment' 2004; and Paras 17 and 118 from the 'National Planning Policy Framework' 2012.*
- 3 *The proposal, having regard to the individual circumstances of the case, has failed to justify in*

the case any level of safeguard or measure of mitigation which preserves or enhances the sites ecological setting and/or represents the best arboricultural practice on the health of the hedgerows. Therefore the proposal would result in adverse impact the fauna and flora of the area and fail to preserve or enhance the intrinsic landscape character of the area contrary to 'Policy CP16' from the 'Local Plan Part 1, Joint Core Strategy' 2013; and 'Policy DM23' from the 'Local Plan Part 2'; and 'Policy CP20' on from the 'Local Plan Part 1, Joint Core Strategy' 2013; and Paras 117-118 from the 'National Planning Policy Framework' 2012.

Note: In the case officers report, it states: *“The unauthorised mobile home in the centre of the site is classified as planning Use Class ‘C3 - Residential’ in accordance with the Town and Country Planning (Use Classes) Order 1987 (as amended). It has been determined on site as a permanent dwelling because the mobile structure has been altered and extended.”* (underlined for emphasis)

- 3.8 An appeal was never lodged against the refusal of 16/02638/FUL, although it is unclear why not.
- 3.9 It is understood that further work was undertaken on a further submission, along with an updated Agricultural Appraisal in 2018, but for reasons unknown an application was never submitted.
- 3.10 The EN notice subject of this appeal was issued on 14 November 2023.

4.0 Background / chronology

- 4.1 The applicant purchased the site in December 2013 and began operating an agricultural enterprise (poultry and pigs, as well as sheep). He also began living on the site around this time (initially staying overnight in vehicles).
- 4.2 A portacabin was brought on to the site in 2014 and used as living accommodation by the appellant. The portacabin is bolted to concrete pads. A ridge tiled roof was built over its flat roof. It is also extended at one end (containing the boiler and electrics). These works were undertaken in 2015 – as can be evidenced on Google Earth and Google Streetview. The unit comprises a bedroom and bathroom and also has limited kitchen facilities.
- 4.3 A large concrete apron was laid immediately to the west of the portacabin. Concrete was also laid at the northern end of the portacabin on which the extension (to the portacabin) was built.
- 4.4 In 2015 a mobile home was brought onto the site. The appellants mother was in an abusive relationship and had been in hospital. When she left hospital, the appellant brought her to the site to look after her. He moved into the mobile home and his mother occupied the portacabin.
- 4.5 A conservatory was attached to the side of the mobile home in 2016, which became an extended living area with a log burner and an additional bedroom.
- 4.6 In May 2015, a trailer and food kiosk were brought on to the site and sited just inside the entrance on a newly created hardsurfaced area. The trailer was used for butchery operations / shop to sell meat reared on the land, while the latter food kiosk was used for the sale of produce and hot food predominantly generated by the holding.
- 4.7 It was around this time that the access was widened (as evidenced on Google Streetview).
- 4.8 In April 2016, the LPA issued the Enforcement Notice (see 3.1 above). An appeal was lodged against the notice.

- 4.9 The appellants mother passed away in June 2016, which for a time affected the appellant greatly. Most of the furniture was removed and so it became empty. For a while it was utilised as an incubator unit for the appellants poultry business.
- 4.10 In July 2016, the LPA raised no objections to the erection of a steel framed barn (application ref: 16/01399/APN).
- 4.11 In October 2016, a planning application was submitted for 'Retrospective consent for the continued siting of a mobile home to serve as a temporary agricultural workers accommodation, retention of existing ancillary structures, and vehicular hardstanding areas'. The description was subsequently changed by the LPA to "Retrospective consent for the continued siting of a mobile home to serve as a temporary agricultural workers accommodation, retention of existing structures (hot food kiosk and the freezer unit and shop) and vehicular hardstanding areas" (application ref: 16/02638/FUL).
- 4.12 The EN issued in April was subsequently withdrawn on 31 October 2016.
- 4.13 Application ref: 16/02638/FUL was refused on 17 July 2017. No appeal was lodged.
- 4.14 At this time, the appellant was living on site (in the mobile home) with his girlfriend Trudy, her son, and his own son. The boys slept in the conservatory. .
- 4.15 It is understood with the support / encouragement of the Enforcement Team, work was undertaken on a resubmission, which included an updated Agricultural Appraisal in 2018, although for reasons unknow the application was never submitted.
- 4.16 The last internal correspondence in the FOI information provided by the LPA in relation to the submission of a further planning application is dated February 2018. The next entry after that was in August 2022, when the Council received a complaint about the campsite (a 4 and half year gap).

- 4.17 The conservatory attached to the mobile home started to leak in 2017 and was causing the boys bedroom to get damp. The appellant therefore tried slept in the conservatory, but it was making him ill. Around this time his relationship with Trudy broke down and she left. The appellant therefore moved into the portacabin, leaving his son to live in the mobile home. From that point, this is how the two units were occupied. Meals tended to be cooked in the mobile home, although at time there have been limited cooking facilities in the portacabin as well.
- 4.18 Because of the problem with the conservatory continually leaking the appellant set about building a roof structure over the conservatory between the portacabin and the mobile home. This started in 2020. The conservatory was retained during the period and was only removed in August 2023 when the roof was finally made watertight. The new roof is supported on a steel frame and is attached to the roofs of the mobile home and portacabin. The structure is not quite finished internally but has created a usable central living space between the two residential units.
- 4.19 Continued bouts of bird flu in 2018, 2019, 2020 and 2021 caused a significant disruption to the appellants agricultural business and also affected his mental health / motivation.
- 4.20 During Covid in 2020 and 2021, when the Government extended the temporary use rights to 56 days, the appellant starting operating a 'pop-up' campsite to generate some additional income., which was a life saver.

5.0 Appeal under Ground (b)

“That the breach of control alleged in the enforcement notice has not occurred as a matter of fact”

5.1 The EN alleges that a material change of use of the land has taken place.

5.2 It will be argued that there has not been a material change of use of the land to the mixed uses alleged and that – setting aside the issue of whether the residential units on the land are caravans or permanent dwellings – the primary use of the land remains agricultural.

Retail shop / butchers

5.3 The retail shop / butchers shop is a trailer that is resting on the ground and can be picked up / moved. It was brought onto the land so that the appellant could sell meat reared on the land – as ‘farm gate sales.’ The case of *Millington v SSETR & Shrewsbury & Atcham BC [2000] JPL 297* applies – this established that produce can be processed off site but still sold on site (ancillary to the agricultural use of the land).

5.4 The trailer was last used for an event last year, but apart from that has been empty for a few years.

5.5 It has (and could) be used for the sale of produce from the land – as farm gate sales, incidental to the agricultural activity on the land.

5.6 It is not therefore a material change of use of the land.

Note: if the structure is deemed to be operational development then it has been in situ for more than 4 years (with no enforcement notice in force) so would be immune.

Food kiosk

5.7 The food van/kiosk is a mobile unit on wheels and can be moved.

5.8 It was also used for purposes ancillary to the agricultural use of the land – for the sale of produce from the land, although is currently empty. Any additional items such as burger rolls, etc would be de minimis. In the 2016 agricultural appraisal it states that between 75%-85% of the products sold through the Café (sic) are produced on the holding

5.9 It is not therefore a material change of use of the land.

Storage (B8)

5.10 The items stored on the land are all used / needed / incidental to the agricultural operations on the land. There is no 3rd party or commercial storage taking place. The appellant will admit that he hangs on to things and is slow to clear discarded or disbanded things away and that the site is therefore untidy in places, but all of the items that are on the land can be accounted for and are incidental to the agricultural operations that have either previously taken place or will take place.

5.11 This is no different to how lots of farmers operate. They don't like to throw things away in case they have a use. Many farm sites are untidy.

5.12 The only exception is the boat, which is the appellants hobby. However, it is sited to the rear of the residential units, in an area that could be considered to be their curtilage, so would be ancillary residential storage.

5.13 The alleged material change of use of the land to storage has not therefore occurred as matter of fact.

Generators

5.14 The generators on site are used to power the incubator units (for the poultry rearing business) and also as back up for the solar panels.

5.16 Although sizeable, they are movable and therefore constitute chattels.

- 5.17 They are incidental to the agricultural use of the land and are not therefore a material change of use of the land.

Siting of two linked home / caravans for residential purposes

- 5.18 It will be argued that due to the alterations and modifications made to both the mobile home and the portacabin that they are both now lawful dwellings (or at least one of them is a lawful dwelling).
- 5.19 If it is held that the two units are not lawful dwellings and are still caravans then it is not contested that their siting for residential use is a material change of use of the land.

Comments of others

- 5.20 When the previous planning agent dealing with the site applied for planning permission in 2016 (16/02638/FUL) he described the proposal on the application form as: "Retrospective consent for the continued siting of a mobile home to serve as a temporary agricultural workers accommodation, retention of existing ancillary structures, and vehicular hardstanding areas". It is understood to be the LPA that changed the description to: "Retrospective consent for the continued siting of a mobile home to serve as a temporary agricultural workers accommodation, retention of existing structures (hot food kiosk and the freezer unit and shop) and vehicular hardstanding areas".
- 5.21 In his Planning Statement, the agent states that the trailer which is used as a Butchers Shop and a refrigeration unit are removable from the site and are not considered by the applicant as permanent features. Although should the LPA disagree then consent is sought for them under this application. The hot food sales van was also argued to be ancillary. Clearly it was in the interests of the planning agent to smooth the passage of the application and therefore may well have been happy to concede on this point at the time if it helped the application.

5.22 Within the FOI information, there is an email from the LPA's Enforcement Manager, David Townsend, dated 6 February 2018, in response to a query from a local ward councillor, that states: "The owner of the site is entitled to farm the land (no planning permission is required). The owner has claimed the farm shop and café are ancillary to the farm (selling predominantly produce grown on the land). We could not close the site ..."

6.0 Appeal under Ground (c)

“That there has not been a breach of planning control (for example because permission has already been granted, or it is “permitted development”)”

Camping – alleged change of use

- 6.1 The allegations in the EN include that the land is being used as a campsite. However, the operation of a temporary / ‘pop up’ campsite on the land during the summer months has been undertaken under permitted development rights under The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 4, Class B (as amended).
- 6.2 The number of days per calendar year that temporary uses were allowed to take place under this permitted development right were extended from 28 days to 56 days during 2020 and 2021 (due to Covid). It returned back to 28 days in 2022 and 2023, before being extended to 60 days (and up to 50 pitches) in July 2023 (Part 4, Class BC), subject to prior notification to the LPA of the site location and arrangements for WC’s, which the appellant has now done.
- 6.3 As such, it will be argued that the camping activity that takes place on the land is permitted development and is not therefore a breach of planning control.
- 6.4 The camping has been undertaken as a form of diversification, to generate income, due to the impact of Covid and also bird flu, which has severely affected his ability to operate his poultry rearing business.
- 6.5 Notwithstanding the outcome of this appeal, the appellant would be able (and fully intends) to continue operating the temporary campsite under the permitted development rights available.

Fences

- 6.6 The appellant is entitled to erect fencing on his land, provided that it complies with the height limitations and acts as means of enclosure – under The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 2, Class A (as amended).
- 6.7 All fences or fencing on the land are not more than 2m in height and are therefore permitted development

7.0 **Matters in the notice that are unauthorised (uncontested)**

7.1 In order to assist proceedings and to save inquiry time, the following items of operational development alleged in the EN are agreed to be breaches of planning control:

- A. Toilet Block (erected for camping)
- B. Polytunnel and chicken sheds on the front part of the site
- C. Any other buildings / structures that have not been in situ for more than 4 years (prior to the EN being issued) – to be confirmed with the LPA as part of the Statement of Common Ground.

7.2 The toilet block will not be contested and will be removed (mobile / temporary toilets will be used for the pop-up campsite).

7.3 Planning permission is being sought under the Ground (a) appeal for the polytunnel and chicken sheds on the front part of the site, as these are necessary for the appellants business going forward.

8.0 Appeal under Ground (d)

“That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice”

Permanent dwellings

- 8.1 Section 3.0 sets out the chronology of when the residential units were brought onto the land, how they have been used / occupied and when they were altered and modified.
- 8.2 Whilst the LPA took enforcement action in April 2016, this was in respect the siting of two caravans / mobile homes (with extension). However, the works to alter and extend both units had already taken place by that time. The EN was, in any case, withdrawn on 31 October 2016. So, from that date there was no EN in force.
- 8.3 The portacabin is bolted to concrete pads, has had a ridge roof constructed over and also an extension* sat on its own concrete pad. This all took place in 2015. As a result of these alterations and modifications it therefore comprises operational development. It has been used as living accommodation continuously by the appellant since at least 2017 and comprises a bedroom and bathroom and has had some basic kitchen facilities – there is a small bank of cupboards and a counter top. There is an old pop-up hob and drainage sink that is still in situ, although is not currently connected. It therefore has the attributes of being a separate self-contained unit of accommodation. While there have been occasions when the appellant has fed himself in the portacabin, more often than not he has cooked meals with his son in the mobile home.
- *the extension houses the boiler that supplies central heating and hot water to both units and also houses the electrics for both units.
- 8.4 The mobile home had a conservatory extension built soon after it was brought onto the site. It was a sizeable extension that was used as sleeping accommodation and also had a log burner

installed. It was therefore an integral element of the accommodation unit giving it permanency – notwithstanding that the chassis and wheels on the mobile home still remained in situ.

8.5 It is of note that the case officer dealing with 16/02638/FUL notes in his officer report that: “The unauthorised mobile home in the centre of the site is classified as planning Use Class ‘C3 - Residential’ in accordance with the Town and Country Planning (Use Classes) Order 1987 (as amended). It has been determined on site as a permanent dwelling because the mobile structure has been altered and extended”.

8.6 As explained, the conservatory continually suffered from leaks. In 2020 the appellant therefore set about constructing a roof over the conservatory covering the area between the mobile home and the portacabin. The conservatory remained attached until August 2023, until the new linked roof structure was constructed and was watertight, at which point it was removed.

8.7 The new link roof is tied into the roofs of the mobile and the portacabin. To remove the mobile home, a significant part of the link roof would need to be removed.

8.8 Whilst the link roof was constructed less than 4 years before the EN was issued, the fact that the conservatory remained in situ can be interpreted as the construction of the link roof followed by the removal of the conservatory as being undertaken in one continuous operation, with the mobile home continually rendered permanent and immobile during this time. Therefore, the mobile home has continually been extended for a period of more than 4 years, during which time it has been rendered permanent and immobile, and therefore constituting a permanent dwelling.

8.9 In addition, the mobile home has had a central heating system installed, with radiators, linked to the boiler in the extension of the portacabin (as well as a linked electrical system also relaying back to the control box in the extension of the portacabin). This arrangement has been in operation for well over 4 years and provides further evidence of the adaptations that have been made to the mobile home, along with the physical extensions, that have rendered it as a permanent dwelling and no longer a caravan.

Structures that have been in situ for more than 4 years

8.10 Any structures that have been in situ for more than 4 years (prior to the issuing of the EN on 12.11.23), so since 12.11.19, would be immune from enforcement action. This would include:

- Solar panel array
- Egg incubator unit
- Structures adjoining the mobile farm shop trailer

8.11 There is a Google Earth aerial photo dated September 2019, which can be used to determine what was in situ on that date (4 years prior to the issuing of the EN).

Access

8.12 The widening of the access was an engineering operation in its own right. It has been in situ since at least 2016. It is therefore too late for the LPA to take action against this aspect of the development (or require its restoration).

9.0 Appeal under Ground (a)

“That planning permission should be granted for what is alleged in the notice”

9.1 The appeal under ground (a) is mainly in respect of the residential unit(s), in the event that they are not deemed to be lawful operational development / dwellings. In which case, the inspector is asked to grant a temporary planning permission for a period of 3 years on the basis that accommodation is required to house an agricultural worker (the appellant) who needs to live on site to run the agricultural business.

9.2 The case for the temporary rural workers dwelling will be made by the appellants rural consultant, Henry Brice of Ian Judd and Partners.

9.3 Mr Brice prepared the Agricultural Appraisal in 2016 and also worked on an updated Appraisal in 2018 (which was never submitted). Mr Brice has recently been out to see the appellant to review the current activities on the site and to discuss his plans moving forward. He has provided the following initial advice:

- He believes there is an essential need for Mr Blyth to live on site to tend to the livestock on the holding, particularly the poultry hatching, which is all powered by solar/batteries and an on-site generator.
- His livelihood has been significantly affected by the government's Bird-flu restrictions (between 2018 – 2022) and has relied on other enterprises, such as the pop-up campsite to diversify his income
- He remains solely employed on the holding, although does have some volunteer help.
- He remains entrepreneurial and willing to attempt different enterprises.
- He plans to expand his poultry business in 2024 (now that the bird flu restrictions have been lifted and have not been imposed for over a year)
- He would also like to resurrect the farm shop and food van.

9.4 In addition to reviewing the previous agricultural activity on the site and the impact of bird flu on the business, he will set out a business plan going forward which the appellant intends to put in motion – now that the bird flu restrictions have finally lifted – in order to demonstrate that there is a functional requirement to live on the site and underpinned by a viable agricultural business which will achieve the minimum agricultural wage – to support the grant of a 3 year temporary planning permission.

9.5 There has been some inertia on the appellants part over the last few years due to the repeated bird flu outbreaks and his own health and also uncertainty with the planning situation. However, he now realises what is at stake and what he needs to do in order to move forward and resolve the planning uncertainty on his land.

National Planning Policy Framework (19 December 2023)

9.6 The National Planning Policy Framework paragraph 84 allows for isolated homes in the countryside where “there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;”.

9.7 Paragraph 88 states “Planning policies and decisions should enable the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings and the development and diversification of agricultural and other land-based rural businesses.

Development Plan

9.8 The Development Plan (relevant to this appeal) comprises :

- Local Plan Part 1 - Joint Core Strategy (March 2013)
- Local Plan Part 2 - Development Management & Allocations (April 2017)

9.9 An examination of the most relevant planning policies will be undertaken, including:

- MTRA4 – Development in the Countryside
- DM11 – Housing for Essential Rural Workers
- DM16 (Site Design Criteria) and DM23 (Rural Character)
- CP16 – Biodiversity

Policy MTRA4 - Developing the Countryside.

9.10 Supports development, which has an operational need for a countryside location such as for agriculture and supports the expansion and redevelopment of existing buildings to facilitate the expansion on site of established businesses.

9.11 It will be shown that the agricultural dwelling has an operational need to be located in the countryside to allow the appellant, the farmer / rural worker, to ensure that his stock is healthy, secure and to be on site to deal with any emergencies or illness within his stock. It is proposed the retention of the mobile home will meet the needs of the appellants expanding business.

Policy DM11

9.12 With reference to the updated agricultural appraisal, it will be shown that there is:

- a. Clear evidence of a firm intention and ability to develop the enterprise concerned
- b. Clear evidence that the proposed enterprise has been planned on a sound financial basis
- c. A functional need for the accommodation which cannot be satisfied by existing nearby accommodation

Appearance of residential units

9.13 It is acknowledged that the residential unit is of poor form and appearance, which is causing some detriment to the local area. The appellant is therefore prepared to agree to a scheme of

improvement works to improve the appearance of the unit, which could, for example, include cladding and some additional reinforcement / plugging of boundary hedging. A condition could be imposed requiring a scheme to be submitted and agreed within 2 months, and then implemented within 'X' months, of the date of the decision.

Nitrate Neutrality (Policy CP16)

- 9.14 As the proposal is for temporary planning permission, the requirement for the development to be nutrient neutral should not be required in this case. The foul drainage from the site currently discharges to an old septic tank. A nutrient budget will be provided, although will show a net increase in nitrate and phosphate.
- 9.15 The cost of mitigating this either on site or off-site, for only a temporary period, would be prohibitive and disproportionate. For example, the cost of acquiring phosphate credits, in particular, are incredibly high at present (£100K per £1kg).
- 9.16 If it is deemed necessary that the temporary development still has to be nutrient neutral, then the options for achieving that through on-site mitigation could include:
- The temporary setting aside of intensively managed agricultural land within the landholding, which would serve to reduce nitrogen / phosphate pollution at catchment-level as a result of the discontinuation of fertilisation and cultivation;
 - Having the foulwater 'tankered' off site by a licenced operator (on the understanding that this would not have water quality impacts elsewhere)
- 9.17 The situation will be discussed with the LPA and an update provided in proofs of evidence and /or at the inquiry.

Personal circumstances

- 9.18 The appellants personal circumstances, ill health and set backs that he has experienced (beyond his control), as well as the best interests of his son, who lives with him on site, are additional matters that will need to be taken in to account when considering the grant of planning permission for a dwelling on the site.

Other unauthorised buildings that could be granted planning permission

- 9.19 Planning permission is also sought for the polytunnel and chicken shed buildings at the front of the site, which have been erected within the last 4 years. It will be argued that they are needed to support the appellants agricultural business and are typical of the types of agricultural buildings that you find in the district.

- 9.20 It is noted that these structures are located within / partly within a flood zone. 3. A FRA will therefore need to be provided.

Conditions

- 9.21 We will work with the LPA (as part of the SoCG) to draw up a list of agreed conditions in the event that the appeal under Ground (a) is allowed.

10.0 Appeal under Ground (f)

“The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.”

- 10.1 The requirement to remove the mobile home and former portacabin unit from the land is excessive as the appellant will need a shelter / mess / tea room whilst he is working on the land and the other can be utilised as storage (under the Wealden Principle).
- 10.2 If the appellant is required to remove them from the land, they could be brought back on again afterwards for ancillary use as described above and would not need planning permission.
- 10.3 The fencing that has been erected on site acts a means of enclosure (for animal welfare), so will continue to provide a function. Similarly, if they are required to be removed, a similar form of fencing could be erected under permitted development.

11.0 Appeal under Ground (g)

“The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why”

11.1 In the event that the appeal is dismissed and the notice is upheld, the appellant will need more time to comply.

11.2 In terms of the removal of items from the land, a period of at least 12 months is requested.

11.3 In terms of the cessation of the residential mobile homes, a period of 18 months is requested. By that time the appellants son will be 18. It will also give the appellant sufficient time to find alternative accommodation. If he cannot live on the land, then this will severely affect his ability to be able to run his agricultural business, so he will need to time to re-examine his options and restructure his business so that he can still operate it remotely. This will need time to sort out.

12.0 List of witnesses

12.1 The list of persons expected to give evidence on the appellants behalf are as follows:

1. Neil March, Planning Consultant (Director of SPP) – all grounds, except for agricultural justification
2. Henry Brice, Rural Consultant (Partner at Ian Judd and Partners LLP) – agricultural appraisal / justification for temporary dwelling (Ground A)
3. Colin Blyth, Appellant – will produce a general statement covering all grounds
4. Susan Middleton, friend / acquaintance who volunteers on the farm – general statement / testimony in support of the appellant and his agricultural operations
5. John Hall, friend / acquaintance who helps out on the farm – general statement / testimony in support of the appellant and his agricultural operations
6. Emma Davies, ex-partner (mother of appellants son) – will provide a general supporting statement

13.0 Supporting Documents / Documents that will be referred to

1. Copy of Enforcement Notice (Appendix 1)
2. Documents for planning application 16/01399/APN – PROVIDED
3. Documents for planning application 16/02638/FUL (includes 2016 Agricultural Appraisal) - PROVIDED
4. DCP extract – Sales of processed or adapted produce (which includes reference to Millington judgement) – PROVIDED
5. Other relevant cases related to the sale of farm gate produce
6. Google Earth aerial photos (from 2013 to present)
7. Google Earth aerial photo (Sept 2019) - PROVIDED
8. Google Streetview photos (from 2014 to present)
9. Nitrate Neutrality calculations
10. Site photographs (currently being compiled)
11. FOI information obtained from LPA (relevant documents)
12. Drawings / sections (to be provided by appellant) showing the works undertaken to the mobile home