



**TOWN AND COUNTRY PLANNING ACT 1990**

**STATEMENT OF CASE**

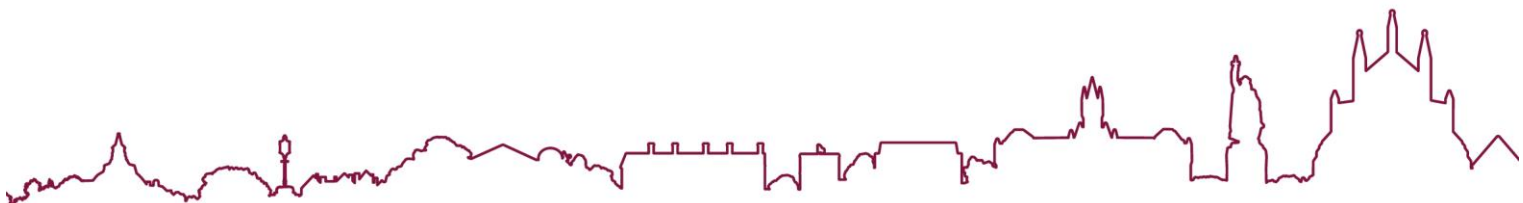
**SITE: SPRINGBRIDGE FARM, HIGHBRIDGE ROAD, HIGHBRIDGE,  
EASTLEIGH, HAMPSHIRE, SO50 6HN**

**APPEAL BY: MR C BLYTH**

**AGAINST ENFORCEMENT NOTICE**

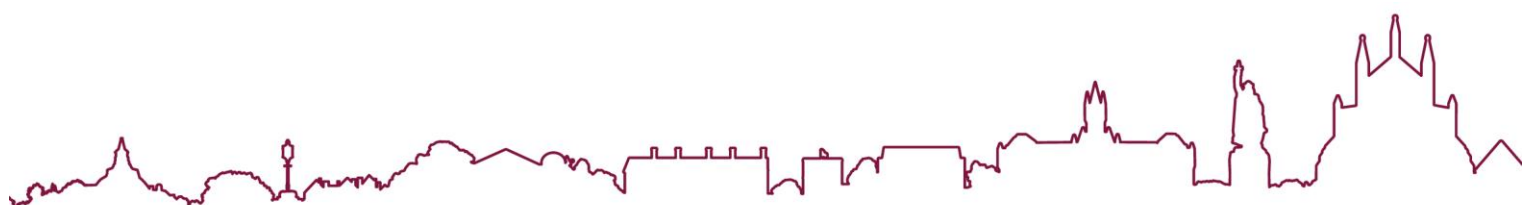
**DATE: FEBRUARY 2024**

**APPEAL REF: APP/L1765/C/23/3334938**



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## 1. INTRODUCTION

- 1.1 This Statement of Case is prepared on behalf of Winchester City Council ('the Council'), the local planning authority with jurisdiction over the appeal site at Springbridge Farm, Highbridge Road, Highbridge, Eastleigh, Hampshire, SO50 6HN (which has also previously been referred to as 'Land to the North West of Highbridge Road' and 'Land on the North side of Highbridge Road' but all descriptions refer to the same parcel of land) ('the Appeal Site').
- 1.2 This statement is produced in response to an appeal under s.174 of the Town and Country Planning Act 1990.
- 1.3 The immediate planning context giving rise to the appeal is as follows:
- 1.4 An Enforcement Notice (EN) (reference 17/00212/USE) was issued on 14<sup>th</sup> November 2023. A copy of the Notice is attached at Appendix A. The Enforcement Notice alleges a breach of planning control, namely

“without planning permission:

- (i) The making of a **material change** of use of the Land from an agricultural use to a mixed use 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

1.5 The EN relates to 'Land at Springbridge Farm, Highbridge Road, Highbridge Eastleigh, Hampshire, SO50 6HN' shown edged red on a plan attached to the EN (and see site description below).

1.6 The reasons for issuing the EN were set out at section 4 of the EN. In summary, the development is considered to be contrary to a raft of development plan policies, in conflict with the district's spatial strategy, with adverse impacts on ecology and diversity and the local landscape and adverse impacts on the countryside and neighbouring amenities.

1.7 The EN required the following actions:

- 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 Plan 1) 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) Reinstall 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.

- 1.8 The time for compliance was nine months after the EN took effect on 14<sup>th</sup> December 2023.
- 1.9 The Enforcement Notice was appealed on 12<sup>th</sup> December 2023, reference APP/L1765/C/23/3334938. The s.174 appeal is proceeding under grounds (a), (b), (c), (d), (f), (g). Each of these grounds will be addressed in this statement.

## 2. SITE DESCRIPTION

The appeal site is located to the North West of Highbridge Road (OS Grid Ref: E446212, N121179) and is located in the countryside (outside the settlement boundaries of Highbridge, Allbrook and Brambridge). The application site is accessed from the Northern end of Highbridge Road via the B3335 carriageway. The site covers an area of approximately 2.95ha (7.29 acres). The site is bounded to the North West by the Itchen Navigation which is part of the Itchen Way, and provides a public towpath allowing access to walk alongside a chalk stream in the valley. The towpath is a very popular walking area for members of the public. The water course and banks are designated as a Site of Special Scientific Interest (SSSI) and the watercourse, both the River and the Navigation, have also been designated as a Special Area of Conservation (SAC).

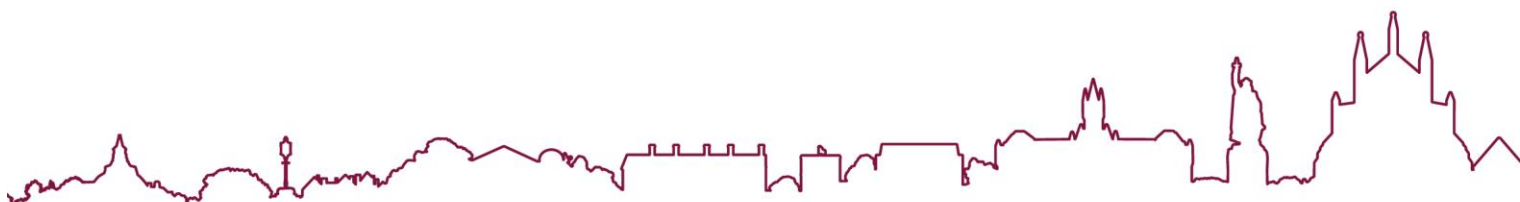


Figure 1 below illustrates the site in 2013 and Figure 2 illustrates the appeal site in 2023 showing the extent of the unauthorised development.



Figure 1- Aerial site view 2013



Figure 2- Aerial site view 25.06.2023

Site overview current WCC map



Winchester City Council has introduced a Landscape Character Assessment (LCA - adopted as a supplementary planning document by WCC Cabinet on 9<sup>th</sup> March 2022) which reflects the importance of the district's landscape and the pressures that are being placed upon it. This appeal site is located in the 'River Valley Floor' landscape type: which is described as a flat, low-lying area made up of pasture and wetland habitats bordering a meandering river and the Itchen Navigation. It is a type of landscape considered to have significant landscape and nature conservation value, and is noted for its tranquillity (LCA pp 73-75 ).

### 3. RELEVANT PLANNING HISTORY

<b>PLANNING APPLICATIONS</b>			
<b>Reference</b>	<b>Description of proposal</b>	<b>Decision Date</b>	<b>Decision</b>
16/02638/FUL	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	17/07/2017	REFUSED
16/01399/APN	Prior Approval, Steel Frame Barn	14/07/2016	PRIOR APPROVAL DEEMED NOT REQUIRED
13/02816/PREDIP	Proposed Hydro-Electricity Turbine; trout farm – new vehicular access	17/03/2014	PRE-APP ADVICE GIVEN
<b>PLANNING ENFORCEMENT</b>			
<b>Reference</b>	<b>Description</b>		
22/00168/WKS	Alleged unauthorised waste and sewage depositing next to river	21/09/2022	Referred to Hampshire County Council
17/00212/USE	1) Alleged that there is Unauthorised development on the site	Enforcement Notice served; appeal pending	

	2) Alleged unauthorised construction of toilet block and use of residential campers on site for permanent residential us		
16/00120/WKS	Alleged unauthorised engineering works, excavation to create pit.	13/05/2016	TEMPORARY STOP NOTICE SERVED
14/00409/COU	Mobile home (shed) on land positively being used as a dwelling	14/04/2016	EN SERVED 14/04/2016; WITHDRAWN 31/10/2016 PENDING SUBMISSION OF PLANNING APPLICATION  CASE SUBSEQUENTLY TRANSFERRED TO 17/00212/USE
14/00409/HEDGE	Alleged unauthorised hedgerow removal	23/01/2014	CASE CLOSED FOLLOWING ADVICE FROM PLANNING AGENT THAT HEDGEROW BEING WEDED AND REPLANTED AND PRE-APP TO FOLLOW

## 4. DEVELOPMENT PLAN AND PLANNING POLICY/ GUIDANCE

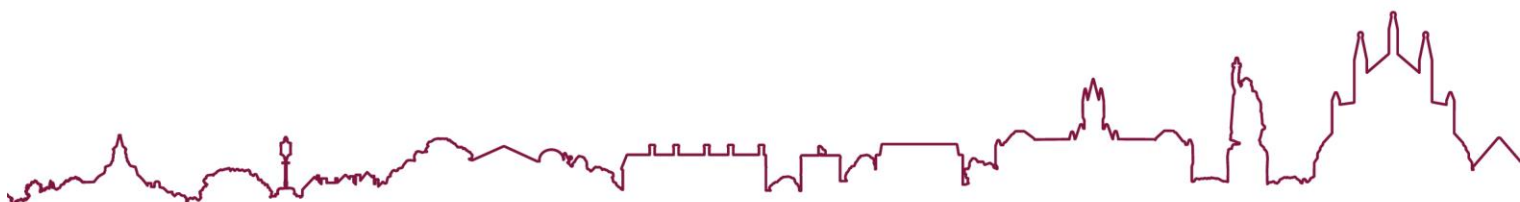
### The Development Plan

#### 4.1 The Development Plan currently comprises:

The Winchester District Local Plan Part 1: Joint Core Strategy – adopted March 2013

The Winchester District Local Plan Part 2: Development Management and Site Allocations – Adopted April 2017

The Winchester District Gypsy, Traveller and Travelling Showpeople Development Plan Document – Adopted February 2019





**4.2** The Development Plan policies of most relevance for the ground (a) appeal are as follows:

The Winchester District Local Plan Part 1: Joint Core Strategy – adopted March 2013

DS1 Development Strategy and Principles

MTRA4 Development in the Countryside

CP13 High Quality Design

CP16 Biodiversity

CP 17 Flooding, Flood Risk and the Water Environment

CP20 Heritage and Landscape

The Winchester District Local Plan Part 2: Development Management and Site Allocations – Adopted April 2017

DM1 Location of New Development

DM11 Housing for Essential Rural Workers

DM15 Local Distinctiveness

DM16 Site Design Criteria

DM17 Site Development Principles

DM18 Access and Parking

DM20 Development and Noise

DM23 Rural Character

DM24 Special Trees Important Hedgerows and Ancient Woodlands

### **4.3 The National Planning Policy Framework 2023**

This sets out government planning policy for England and how this policy should be applied. The Council will refer to the NPPF and in particular the following chapters:

Section 2 Achieving Sustainable Development

Section 4 Decision Making

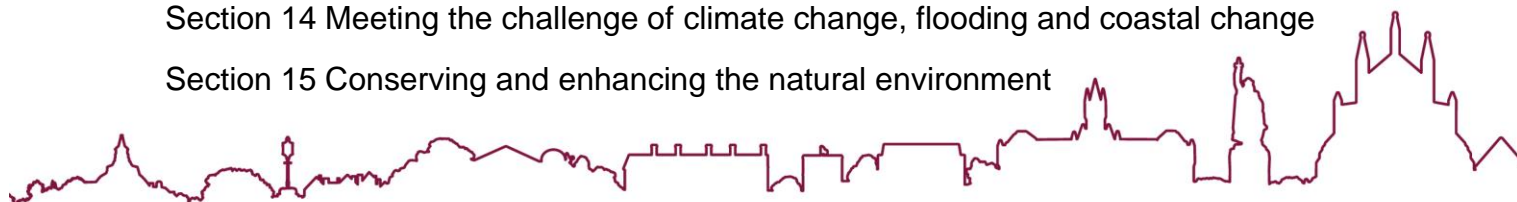
Section 5 Delivering a sufficient supply of homes

Section 11 Making effective use of land

Section 12 Achieving well-designed and beautiful places

Section 14 Meeting the challenge of climate change, flooding and coastal change

Section 15 Conserving and enhancing the natural environment



## 4.4 The Planning Practice Guidance

The Planning Practice Guidance provides a range of advice in respect of the Government's intention for the application of planning policy. The Council will principally refer to the following sections:

Climate change

Design: process and tools

Enforcement and post-permission factors

Environmental Impact Assessment

Flood Risk and Coastal Change

Natural Environment

Use of planning conditions

Water supply, wastewater and water quality

National Design Guide 2019

## 4.5 Supplementary Planning Documents

The following are supplementary planning documents and guidance that have been through public consultation and have been adopted, so carry weight in decision-making. The relevance of these documents and the weight they should be afforded will be set out in the Council's evidence.

Strategic Flood Risk Assessment 2007

High Quality Places 2015

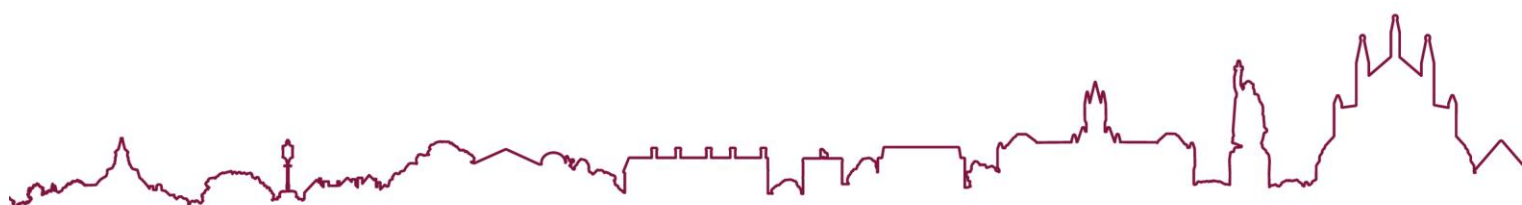
WCC Landscape Character Assessment 2022

Nutrient Neutrality – WCC adopted position statement on nitrate neutral development 2022

## 4.6 Other documents and guidance

The Council may also refer to the following documents. The relevance of these documents and the weight they should be afforded will be set out in the Council's evidence.

Habitats and Species Regulations 2017



## 4.7 Case law

The Council have set out some case law in relation to issues and may make reference to further case law which will be set out in its evidence or legal submissions as appropriate.

The case law referred to in this Statement is as follows:

*Bendles Motors Ltd v Bristol Corporation [1963] 1 WLR 247*

*Murfitt v SoS for the Environment [1980] JPL 598*

*Kestrel Hydro v SoS for Communities and Local Government [2016] EWCA Civ 784*

*Welwyn Hatfield BC v SSCLG & Beesley [2011] UKSC 15*

*James v Secretary of State for Environment [1990] 61 P&CR 234*

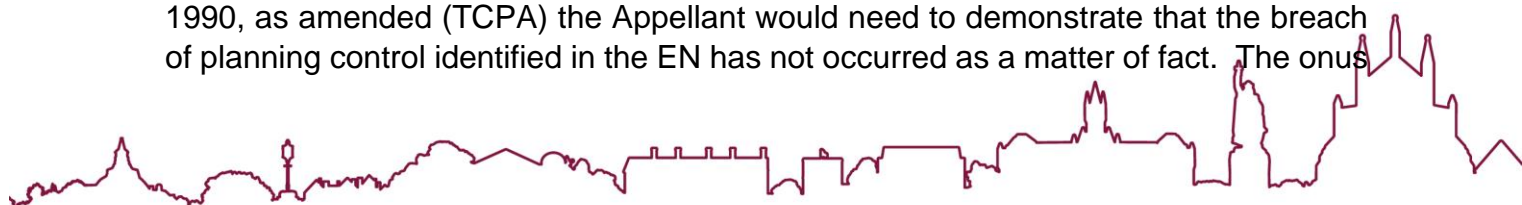
## 5. THE COUNCIL'S CASE ON THE GROUNDS OF APPEAL

The Council will set out its case in relation to the various aspects of the Appellant's appeal below:

- (i) Ground (b): that there has not been a material change of use of the land to all of the mixed uses alleged
- (ii) Ground (c): that items referred to on the land in the EN are ancillary to agricultural use or, in respect of the fencing, is Permitted Development and therefore does not amount to a breach of planning control
- (iii) Ground (d): that at the date when the EN was issued no enforcement action could be taken in respect of the current use of the land and various structures on the land, and in respect of the widening of the access
- (iv) Ground (f): that the requirement to remove the former portacabin unit/mobile home from the land is excessive
- (v) Ground (g): that the time given to comply with the EN is too short given the personal situation and health of the appellant
- (vi) Ground (a): that planning permission should be granted for all the matters stated in the EN as all the structures/storage items are required either ancillary to agriculture or ancillary to residential occupation

## 6. RESPONSE TO GROUND (b) – That those matters have not occurred.

**6.1** To succeed in an appeal under s. 174(2)(b) of the Town and Country Planning Act 1990, as amended (TCPA) the Appellant would need to demonstrate that the breach of planning control identified in the EN has not occurred as a matter of fact. The onus



of establishing Ground (b) rests on the Appellant even though the Appellant is responding to the Council's allegation of a breach of planning control.

**6.2** The Council will demonstrate that the matters stated in the EN have occurred as a matter of fact. The Council will produce aerial photographs and photographs/reports from site visits undertaken over the years to indicate the increased paraphernalia brought onto the land to indicate the material change of use of the land which has occurred.

**6.3** The Appellant appears to limit his argument to his allegation that the residential units on the land are dwellings and that under Ground (d) claims 4 years immunity and that otherwise all other alleged uses are ancillary to agriculture.

**6.4** As regards the allegation that all other uses of the land are ancillary to agricultural use, this is not an argument in support of a ground (b) appeal but under ground (c). The Appellant does not state that, as a matter of fact, the breach of planning control has not taken place and it is evident from an inspection of the land that, as a matter of fact, the alleged development has taken place. The issue is whether or not these represent a breach of planning control, which should properly be raised under ground (c). The Appellant is invited to withdraw the ground (b) appeal.

**6.5** The Council will contend that Ground (b) should be dismissed.

to observe that this is not the case. It seems that anything and everything has been brought onto the land including vehicles, a boat, builders' rubble, old trailers, a freezer unit that clearly from internal inspection can not now be used for agricultural purposes and a retail unit and kiosk that from the Appellants own admission has not been used for some considerable time. It is a matter of fact and degree but following caselaw the stationing of various items referred to in the EN on the land in the Council's view constitutes a material change of use.

## **7. RESPONSE TO GROUND (c) – That those matters (if they occurred) do not constitute a breach of planning control**

**7.1** The Appellant maintains that there has not been a breach of planning control in respect of some stated matters and that in respect of some matters permitted development rights allow aspects of the alleged breach. The onus of establishing Ground (c) rests on the Appellant even though the Appellant is responding to the Council's allegation of a breach of planning control.

**7.2** The Appellant maintains that the retail shop/butcher's shop is a trailer that can be moved and is ancillary to the agricultural use of the land, though currently empty. By the Appellant's own admission this unit has not been used for a number of years and hence is clearly not required as part of the limited agricultural use that is taking place.

**7.3** Further, the Council will maintain that even when the aforesaid trailer was in use (and as evidenced by the list of products advertised as being sold from the trailer) the products being sold did not, or substantially did not, emanate from this agricultural land. It is therefore not ancillary to the agricultural use being carried out on the land.



**7.4** A similar situation to the above exists in respect of the food van/kiosk. The menu advertised when it was in use does not indicate that a substantial amount of what was for sale had emanated from this agricultural land. This unit has also been unused for a considerable period of time and therefore cannot be said to be required for agriculture on the land. The fact that the unit is mobile is irrelevant (see Bendles case above). It is therefore not ancillary to the agricultural use of the land.

**7.5** The huge extent of the B8 storage cannot possibly be argued as all ancillary to the agricultural use of the land. The land is strewn with items, rubbish, used bricks and timber, rubbish bags, tyres, rusted corrugated metal and paraphernalia that is unrelated to agricultural use and in fact substantially reduces the amount of land available for agricultural use. Photographic evidence will be produced indicating the extent of storage of items on this site. Equally, it cannot be argued that there is any residential curtilage to the makeshift accommodation existing within agricultural land. Reliance can be placed on the 3 criteria for determining whether land is within the curtilage of a 'building' as set out in *James v SoS for Environment* [1990] 61 P&CR 234. In addition, the Council will maintain that if the residential dwelling unit(s) are not lawful then any associated uses are equally unlawful.

**7.6** It seems that anything and everything has been brought onto the land including vehicles, boats, builders' rubble, old trailers, a freezer unit that clearly from internal inspection can not now be used for agricultural purposes and a retail unit and kiosk that from the Appellant's own admission has not been used for some considerable time. It is a matter of fact and degree but following caselaw the stationing of various items referred to in the EN on the land in the Council's view constitutes a material change of use.

[*Bendles Motors Ltd v Bristol Corporation* [1963] 1 WLR 247]

**7.7** It is the Council's case that the generators would not be required on this land should the unauthorised mixed use of the Land not be occurring.

**7.8** Whilst the Council accept that the campsite is permitted development within Class BC provided it operates for not more than 60 days per annum (during which time it appears a large part of the Land set aside for agriculture is used) the Council wish to ensure that the campsite is limited to the duration under permitted development and when not in use the, alleged temporary, toilet block which has been erected and all provision for sewage collection are removed from the Land.

**7.9** The Council's concern with regard to fencing is in regard to health and safety measures when visitors to the campsite are present. The fencing concerned comprises wooden pallets placed on end and supposedly separates the Appellant's accommodation from the use of the campsite. However, such fencing is not stable and particularly is unsafe when children visiting the campsite are playing in this area. Such matters will be raised at the Inquiry.

**7.10** There are a number of aspects of operational development alleged in the EN which have not been referred to in the Appellant's Appeal Form and the Council



therefore suggest such matters of enforcement are not alleged to be permitted development.

7.11 The Council will contend that Ground (c) should be dismissed.

## **8. RESPONSE TO GROUND (d) – that at the date of issue of the EN no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.**

8.1 The Council maintain the relevant time period is 10 years beginning with the date of the breach: s.171B(3) TCPA. If the residential units are caravans, they are subject to an immunity period of 10 years. If, as the Appellant alleges, the units have become a dwelling house the immunity period for the use is still 10 years (*Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15). There is no suggestion that there has been a change of use of a building to a dwelling house which is subject to the 4 year immunity period under s.171B(2) of the TCPA.

8.2 The Appellant's contention appears to be that the residential units and various named structures on the Land are immune from enforcement as they have been in situ for more than 4 years. There is nothing in the Appellant's appeal ground that suggests he maintains the breaches alleged have been continuing for more than 10 years.

8.3 The onus of establishing Ground (d) rests on the Appellant.

8.4 The EN alleges breach of planning control in paragraph 3 (i) **the making of a material change of use of the Land** from an agricultural use to a mixed use. The relevant time period for immunity is 10 years.

8.5 The EN alleges in paragraph 3(ii) various operational development. In respect of the units of accommodation, the Appellant appears to argue that a portacabin and a mobile home both brought onto the land (which may or may not now comprise a dwelling though in this respect the Council would argue this is not substantially completed) and unlawfully used and now converted for accommodation is given immunity after 4 years under s171B(2). However, for this section to apply there must have been a change of use which has not occurred on the Appellant's grounds as stated here. Therefore, the Council will contend the time limit for enforcement action against the use is then 10 years under s171B(3). (See APP/L1765/X/22/3294907)

8.6 The Council will rely on the Murfitt Principle [*Murfitt v SoS for the Environment* [1980] JPL 598, confirmed in *Kestrel Hydro v SoS for Communities and Local Government* [2016] EWCA Civ 784] to maintain that an EN can properly require the undoing or removal of any incidental operational development where it forms an integral part of the development enforced against, even though the operational development may by itself not constitute a breach of planning control, and even where the operational development is by itself immune from enforcement action by virtue of the 4 year immunity (s171B(2)) or development which has been carried out as permitted development.



8.7 The Council will contend that Ground (d) should be dismissed.

## **9. RESPONSE TO GROUND (a) - That, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.**

9.1 The site description and planning history of the site are set out above and are relevant to the determination of the S.174(2)(a) appeal.

9.2 Under s.174(2)(a), the Appellant seeks planning permission for the matters alleged in the notice.

9.3 The Appellant contends that all of the structures/storage items are required either ancillary to agriculture or for purposes ancillary to the residential occupation of the land.

With regard to the residential unit the appellant would argue that there is a need for the appellant to live on the land.

The Appellant in the appeal form states that an updated agricultural appraisal will be submitted.

The Appellant suggests there may be opportunities to improve the visual appearance of some of the structures/items or to provide landscaping to mitigate any perceived landscape harm.

9.4 The Council reserves its position to update its Statement of Case in circumstances where the Appellant provides a further Statement of Case in respect of the s.174 appeal.

9.5 A planning application for retrospective consent for the continued siting of a mobile home to serve as a temporary agricultural works accommodation, retention of existing structures (hot food kiosk and the freezer unit and shop) and vehicular hardstanding areas was submitted to the Local Planning Authority on 7<sup>th</sup> October 2016. Planning Reference number 16/02638/FUL. This application was refused on 13<sup>th</sup> July 2017. No appeal was submitted as a result of the decision.

Whilst this s.174 appeal does not include an appeal against this decision it does form part of the relevant site history.

The application was refused for three 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, MTRA4, 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 District 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 on 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 from the Local Plan Part 1, Joint Core Strategy 2013; and Paras 117-118 from the National Planning Policy Framework 2012.

**9.6** An agricultural appraisal was submitted with the planning application which was assessed by the Council's agricultural consultant who concluded that the applicant had failed to provide clear evidence of the ability to develop with business as proposed, that the proposed enterprise was planned on a sound financial basis or that there was a functional need for accommodation on site and therefore was contrary to points a), b) and c) policy DM11 for a temporary dwelling.

**9.7** Material Considerations since application determined:

The NPPF has been updated latest revision 19<sup>th</sup> December 2023.

Winchester City Council's Landscape Character Assessment has been updated and adopted March 2022

Nutrient Neutrality Winchester City Council adopted a position statement on nitrate neutral development February 2020.

**9.8** The Council will demonstrate that the proposed development is contrary to the development plan, taken as a whole, and would give rise to a range of planning harms. Material considerations do not indicate that permission should be granted.





### Main Issues

- whether the development has an identified agricultural need to justify its location in the countryside;
- whether the development constitutes 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.
- Whether the development detracts from the special features of the landscape character of this rural area
- Impact on ecology and biodiversity in the area in particular on the River Itchen SAC, SSSI and Solent SPA.
- whether the polytunnel is within Flood Risk Zone 3 and impact of the development on drainage and flooding in the local area.

The Council's case on each of the main issues:

- Principle of development – Site located in the Countryside no agricultural justification to live on site contrary to policies MTRA4, DS1 and DM11
- Intensification of sporadic development and an undesirable intrusion in the countryside contrary to policies CP13, CP20, DM1, DM10, DM11, DM15, DM16, DM17, DM18, DM20 and DM23
- Effect on landscape and rural character contrary to policies DM10, DM15, DM16, DM17, DM23
- Effect on ecology and biodiversity – Nitrates/Phosphates contrary to policies CP15 and CP16
- Effect on flooding within SSSI Impact Risk Zone and Flood Risk Zone 3 – Contrary to policies CP11, CP17 and DM17
- 

The Council's evidence will establish that the proposal will result in a series of harms:

- Substantial harm to character and appearance of this rural location and wider open countryside
- Inappropriate and unacceptable form of development in this sensitive countryside location harmful to the visual quality of the area.
- Fails to protect the natural and built environment
- Visual intrusion from incongruous features and impact on tranquillity of the environment
- Ecology and biodiversity lack of mitigation for additional nitrogen and phosphorus caused by additional residential accommodation within the Solent SPA.
- Impact on drainage and flooding in sensitive at risk areas.



## 9.9 Material Considerations by the Appellant

The Appellant has stated that there are circumstances outside of his control which have impacted the development of the agricultural business such as Avian Flu and Covid 19.

There are also personal circumstances which will be put forward for consideration.

- Ill health of applicant
- Diversification of business

**9.10** The Council reserve the right to comment on these issues raised by the appellant as they have not formed part of the submitted documents to date.

**9.11** In conclusion the Council will demonstrate that the material considerations advanced by the Appellant do not outweigh the harm identified arising from the proposed development.

## 9.12 Planning Balance

Section 70 of the Town and Country Planning Act 1990 provides that where an application is made to a local planning authority, they may grant planning permission, either conditionally or subject to such conditions as they think fit, or they may refuse planning permission. In dealing with an application for planning permission, the LPA shall have regard to the provisions of the development plan, so far as material to the application.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

The Council will demonstrate that the proposed development does not accord with the development plan because of a conflict with various development plan policies and therefore the “tilted balance” in paragraph 11(d) of the NPPF is not engaged.

The Council will demonstrate that material considerations do not indicate that the proposal should be determined otherwise than in accordance with the development plan.

The Council’s evidence will consider all matters in proper context and undertake a careful planning balance. For the reasons set out above, and as will be evidenced at the Inquiry, the Council will demonstrate that the proposals would be contrary to the development plan and that there are no material



considerations which would outweigh the conflict. The s.174(2)(a) appeal should be dismissed.

The Council will seek to agree a relevant list of core documents to be referred to at the Inquiry.

**10. RESPONSE TO GROUND (f) - That the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.**

**10.1** The Appellant argues the requirement to remove the former portacabin/mobile home is excessive as one will need to be kept for use as a mess/tea room and the other will be needed for storage, and possibly other items.

**10.2** The Council do not consider this necessary to the limited agricultural use which is taking place on the Land and from an amenity perspective such structures are both unsightly and out of keeping with the area. They are not in line with those under the Wealden Principle.

**10.3** If, however, the Inspector deems the requirements to be excessive, the power to amend those requirements is conferred on the Inspector to do so. It is the Council's position that they are not excessive and are necessary to remedy the breach of planning control and return the land to its lawful use as agricultural land in the countryside.

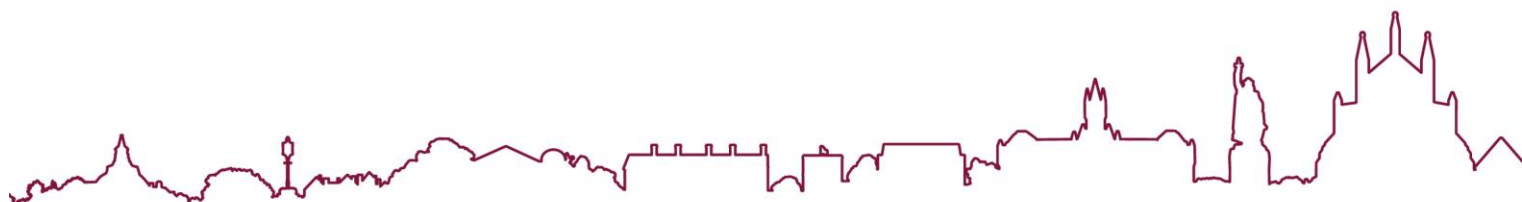
**10.4** The Council will demonstrate that Ground (f) should be dismissed.

**11. RESPONSE TO GROUND (g) - That any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.**

**11.1** The time given for the enforcement in the EN is nine months which is considered by the Council reasonable for what is required.

**11.2** The Appellant seeks 18 months to comply with the Enforcement Notice. It is the Council's view that the sooner the Appellant finds satisfactory alternative accommodation the more conducive it will be to the well-being of himself and his son.

**11.3** The Council maintains that 9 months is sufficient time to comply with the steps in the EN and will contend that Ground (g) should be dismissed.



## 12. PLANNING CONDITIONS, CONTRIBUTIONS, AND LEGAL TESTS

Without prejudice to its position on the appeal, the Council has to date considered whether in respect of this appeal site unacceptable development could be made acceptable through the use of conditions. However, without pre-empting further discussions at the Inquiry the Council do not consider that planning conditions can overcome the unacceptable development at this site.

If, however, a Ground (a) appeal were to succeed there would need to be a suitable condition or s.106 condition to address nitrates and phosphates, such wording to be discussed and agreed in the absence of a s.106 agreement.

If the Planning Inspector is minded to allow a Ground (a) appeal and if some agricultural justification was made out, albeit the Council maintain this is not the case and the agricultural business is clearly not viable, then the Council would seek:

- an agricultural occupancy condition and temporary consent.
- a Landscaping condition

To the extent that the campsite operation is not Permitted Development, further conditions may be required and this aspect requires clarity before further consideration of this aspect.

## 13. CONCLUSION

For the reasons given above and in the attached appendices, the Inspector is respectfully requested to dismiss this appeal and uphold the enforcement notice in its entirety.

## 14. APPENDICES

Appendix A – Planning Refusal Decision Notice 16/02638/FUL

Appendix B – Enforcement Notice and Plan

Appendix C – Aerial imagery over the years

Appendix D – Site visit photographs 9<sup>th</sup> August 2023

