
Appeal Decisions

Inquiry held on 28, 29 June 2016 and 11, 12 and 13 October 2016

Site visits made on 29 June and 13 October 2016

by Diane Lewis BA(Hons) MCD MA LL M MRTPI

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

Decision date: 15 March 2017

Appeal Refs: APP/N0410/C/15/3078099 & 3078100

Land adjacent to Alderbourne Cottage (Area 1), Fulmer Lane, Fulmer, Buckinghamshire SL9 7BL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Joseph Rooney (Appeal A) and Mrs Mary Rooney (Appeal B) against an enforcement notice issued by South Bucks District Council.
 - The enforcement notice, numbered E2/1229/AREA 1, was issued on 29 April 2015.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from a mixed use for (i) residential purposes and (ii) the use of the existing outbuildings on the Land shown in the approximate position coloured black on the Plan as a workshop and office and for storage and residential purposes ("the Outbuildings"), all ancillary to Alderbourne Cottage to a mixed use of the Land as:
 - i. A gypsy and traveller site;
 - ii. The use of the Outbuildings for residential purposes ancillary to the use as a gypsy and traveller site and
 - iii. The stationing, parking and/or storage of commercial vehicles and machinery on the Land("Unauthorised Uses") together with the associated works and operational development undertaken to facilitate these Unauthorised Uses.
 - The requirements of the notice are
 - i. Cease the Unauthorised Uses.
 - ii. Remove from the Land all caravans (including static caravans), mobile homes, structures including a utility block, domestic paraphernalia, gas tank and associated pipework and meter box, equipment, vehicles and machinery brought onto or erected on the Land in connection with these Unauthorised Uses.
 - iii. Remove from the Land all the associated works and operational development undertaken to facilitate the Unauthorised Uses including but not limited to the earth and materials, hard surfacing including gravel, concrete and brick bases, brick steps, fencing, entrance gates and pillars, CCTV poles and Cameras.
 - iv. Restore the Outbuildings to their condition immediately prior to the breach of planning control referred to in paragraph 3 above as outbuildings used for purposes ancillary to Alderbourne Cottage. Such restoration to include the removal from the Land of all associated works and operational development undertaken to the Outbuildings to facilitate the Unauthorised Uses including but not limited to the kitchen, bathroom, the internal alterations, the brick skirt, the alterations to the roof, the alterations to the roof to form an extension and a veranda.
 - v. Restore the Land to its condition immediately prior to the breach of planning control referred to in paragraph 3 above taking place as land used for residential purposes ancillary to Alderbourne Cottage.
 - vi. Remove from the Land all plant, equipment, debris and materials arising as a
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result of compliance with 5(i), (ii), (iii), (iv) and (v) above.

- The period for compliance with the requirements in steps (i), (ii), (iii) and (iv) is six months and for steps (v) and (vi) is eight months.
- The Appeals were made on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and variations.

Appeal Refs: APP/N0410/C/15/3129769 & 3129770

Land adjacent to Alderbourne Cottage (Area 2), Fulmer Lane, Fulmer, Buckinghamshire SL9 7BL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Felix Rooney (Appeal C) and Mrs Margaret Rooney (Appeal D) against an enforcement notice issued by South Bucks District Council.
- The enforcement notice, numbered E2/1229/AREA 2, was issued on 1 June 2015.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from use for residential purposes ancillary to Alderbourne Cottage to a mixed use of the Land as a gypsy and traveller site, the stationing, parking and/or storage of commercial vehicles and machinery and the storage of materials on the Land ("Unauthorised Uses") together with the associated works and operational development undertaken (including the importation of earth and materials for the purposes of re-profiling the Land and the construction of a vehicular access) to facilitate these Unauthorised Uses.
- The requirements of the notice are:
 - i. Cease the Unauthorised Uses.
 - ii. Remove from the Land all caravans (including static caravans), mobile homes, structures including but not limited to a septic tank and pipework, utility block and a shed, domestic paraphernalia, equipment, vehicles, machinery and stored materials brought onto or erected on the Land in connection with these Unauthorised Uses.
 - iii. Remove from the Land all the associated works and operational development undertaken to facilitate the Unauthorised Uses including but not limited to the earth and materials imported for the purposes of re-profiling the Land, hard surfacing including tarmac, gravel and shingle, concrete and brick bases, concrete and brick steps, fencing, vehicular access, entrance gates and pillars, wooden pedestrian gates, CCTV poles and Cameras.
 - iv. Restore the Land to its condition immediately prior to the breach of planning control referred to in paragraph 3 above taking place as land used for residential purposes ancillary to Alderbourne Cottage.
 - v. Reinstate the hedgerow on the Fulmer Land frontage.
 - vi. Remove from the Land all plant, equipment and debris arising as a result of compliance with 5(i), (ii), (iii), (iv) and (v) above.
- The period for compliance with the requirements in steps (i), (ii) and (iii) is six months and for steps (iv), (v) and (vi) is eight months.
- Appeal C is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal D is proceeding on the grounds set out in section 174(2) (b), (d), (f) and (g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period for Appeal D, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and variations.

Introduction

1. This decision document is in two parts. Part 1 deals with the common procedural, factual and planning policy issues, including need and provision of traveller sites. Part 2 focusses on the planning merits of each appeal, informed by the content and conclusions in Part 1.

PART 1

The Lands

2. In 2011 the grounds of Alderbourne Cottage were subdivided into three areas of roughly similar size. Area 1 is the south east third lying to the west of The Long Drive (a track to Alderbourne Manor). Area 2 is the south west third located to the east of Fulmer Lane and now with its own access onto the highway. Area 3 is the north western third that is retained by the owner of Alderbourne Cottage.
3. The appellant Mr Joseph Rooney was concerned that the plan attached to the enforcement notice in relation to Area 2 included land in his ownership. A separate appeal was submitted to ensure this matter was addressed (ref APP/N0410/C/15/3127865). The Council accepted that the plans attached to the two notices required amendment to accurately show the areas of ownership. Amended plans are attached to the statement of common ground. In view of this agreement the appeal ref 3127865 was withdrawn and I will take no action on it. I intend to correct the enforcement notices for Areas 1 and 2 accordingly.

The Appeals

4. A temporary planning permission, not a full permission, is being sought for Area 1 and for Area 2. A period of three years was put forward as being reasonable.
5. Area 1 is occupied by Mr Joseph Rooney, his wife and their four children. Area 2 is occupied by Mr Felix Rooney, his wife and their three children. The Council did not dispute the gypsy status of the appellants. The information about the families' background and pattern of travelling for work in their personal statements confirms that they are travellers for purposes of planning policy.
6. At the inquiry the oral evidence of the appellants Mr Joseph Rooney, Mr Felix Rooney, the Council's enforcement officer Mr Treen and interested parties Mr Wilkinson and Mrs O'Reilly was given under solemn affirmation.

Designations and heritage assets

7. The appeal sites are located in the Metropolitan Green Belt where inappropriate development should not be approved except in very special circumstances.
8. The sites, the garden area of Alderbourne Cottage (except an area to the north west) and the woodland beyond to the east and south is designated Ancient Woodland. Ancient woodland is an irreplaceable resource, important for its wildlife, soils, recreation, cultural value, history and contribution to landscapes. In South Bucks District about 8.5% of the woodland cover is identified as ancient semi-natural woodland, an indication of its value and scarcity.

9. The woodland adjoining Alderbourne Cottage is covered by a Tree Preservation Order (TPO) dating to 1991. The purpose of the Order is to safeguard the woodland as a whole, which depends on regeneration or new planting. Therefore trees and saplings of whatever size are protected including those growing naturally or planted after the Order was made.
10. The sites are also within a locally designated Biodiversity Opportunity Area, where the greatest opportunities for biodiversity gains both locally and within a regional network were identified through the Buckinghamshire and Milton Keynes Biodiversity Action Plan.
11. Alderbourne Cottage, a lodge to Alderbourne Manor, was listed Grade II in 1983. The building is described in the listing as an early 19th century cottage ornee, pebbledash with a thatched roof overhanging to form an open veranda on rustic posts. Additional features noted include a porch with a timber framed gable on the roadside elevation, leaded lights and a central chimney. At some date after the cottage was listed the building was extended by a flat roofed single storey addition to the rear and uPVC windows were inserted but there is no record of listed building consent for the works.
12. The appeal sites are located to the north east of the village of Fulmer, south of the residential and business development at Tatling End and very close to the M25 motorway corridor. Nevertheless the sites are located in the area of countryside east of the built up area at Gerrards Cross.
13. The surrounding area is characterised by a gently undulating landscape where the mosaic of farmland and woodland provides areas of openness and enclosure. The areas of woodland, including Gladwin's Wood, help to screen the major transport corridors. The limited settlement, rural lanes, woodland cover and areas of historic parkland with manor houses help retain a rural and peaceful character. The hedgerow network provides visual unity and a wildlife corridor¹. The undesignated Alderbourne Manor parkland has value and local significance in its surviving parkland features including the gardens, boating lake and historic tree and shrub specimens.
14. The Colne Valley Regional Park extends as far west as Fulmer Lane. The aims of the Colne Valley Park Action Plan include protection of the countryside from urbanisation, enhancement of the landscape and conservation of biodiversity.

Planning history

15. Over the period from July 2011 to August 2015 several proposals for change of use and operational development by the appellants were refused planning permission. Of particular note, Mr Joseph Rooney made a retrospective planning application following his occupation of Area 1 in July 2011. Planning permission was refused for a change of use of the land to two gypsy and traveller pitches and a change of use of existing buildings to utility building ancillary to the use, installation of gates, fencing and hard standing. Following an appeal and an inquiry held in July 2013, the Secretary of State agreed with the recommendation of the appointed inspector and dismissed the appeal on 3 June 2014.

¹ These key characteristics are identified in Landscape Character Area 22.4 Tatling End Mixed Use Terrace Type in the Landscape Character Assessment by the County Council and Buckinghamshire's District Councils.

16. The inspector's report and the decision are important considerations in respect of both appeals. The Council drew attention to the principle that like cases should be decided alike². Even so, circumstances have changed. In particular the development at issue on Area 1 is not exactly the same and has reduced in scale to a single pitch. The development on Area 2 was not considered in 2013/14. New evidence has been produced by the appellant, especially on heritage assets. Planning Policy for Traveller Sites (PPTS) has been revised and up-dated information has been produced on need and provision on traveller sites in the County.
17. In terms of enforcement, on 22 November 1999 action was taken against the use of land for the storage of motor vehicles and storage of motor vehicles for sale, not incidental to the residential use of the land. The notice is extant and applies to Areas 1, 2, and 3.
18. On 25 August 2011 an enforcement notice was issued in relation to Area 2 and extending to the southern tip of Area 1. The description of the breach of planning control stated engineering operations were being carried out on land, consisting of the importation of earth and materials and the movement of earth and materials for the purposes of re-profiling the land. An appeal against the notice was withdrawn and the notice took effect on 6 October 2011 with a one month compliance period. Work was undertaken in 2016 to remove materials in response to the requirements.
19. In April 2015 an enforcement notice was issued alleging a material change of use of the outbuilding on Area 1 to use as a single dwelling. An appeal was submitted and the notice was withdrawn by the Council in June 2015.
20. The history of enforcement investigations in the late 1990s through to 2003 provides helpful information through contemporaneous records about the use of land and buildings at Alderbourne Cottage. It appears that there was a timber cabin or chalet which was fitted out with water and electricity, a toilet, cooking facilities and furniture and capable of being used as residential accommodation. Residential occupation on a temporary basis was recorded in 2002 but in 2003 the cabin was found to be in use by the owner of Alderbourne Cottage as an office. Touring caravans were seen on the land in 2002 and 2003 and were used for ancillary accommodation by family members, with a larger uninhabited caravan said to have been on site for over forty years. At the time the Council decided no formal action was required. The old caravan on Area 2 may have been replaced with a static caravan, with porch and veranda, before July 2011.
21. The descriptions available in the documentation with the current appeals do not enable a conclusion as to the precise number or type of outbuildings in the grounds. Nevertheless, the records indicate on the balance of probability there was no separate independent use of the land as a caravan site and that any residential /office use of caravans or outbuildings was associated with the primary residential use of the cottage. Any other form of residential use was temporary. The Council's investigations indicated that the vehicle storage (up to 19 cars) was on land near to the cottage and did not extend into the areas of woodland further to south and west.

² *North Wiltshire DC v Secretary of State for the Environment* [1992] 65 P&CR 137

22. On the site visit I was able to see that the drive to Area 3 gave access to an area adjacent to Fulmer Lane/Area 2 that was occupied by a garage and stored vehicles. A polytunnel was filled with old furniture and vehicles. Closer towards the cottage was a timber summerhouse containing a washing machine, sink, fridge, toilet and various domestic items. This area is now fenced off from Areas 1 and 2. A gateway off the drive marked the entrance into the garden immediately associated with the extended cottage where there was a concrete patio and shingle covered parking area. These observations have similarities to the description of the areas nearer the cottage in 2009 by a neighbour Mr Wilkinson.
23. Consideration of the residential curtilage to Alderbourne Cottage³ has limited relevance to these appeals because it defines an area in relation to a building and not a use of land and it is distinct from the concept of a planning unit. There is no doubt that Areas 1 and 2 are new planning units in use as residential caravan sites. Nevertheless, in so far as 'curtilage' may inform issues related to the nature of development on the land as a fallback, the available information and observations on site indicates quite a tightly defined residential curtilage associated with the immediate garden around the historic cottage. The Council's assessment and reference to the small area identified on the Ordnance Survey map and the plan attached to the list description of the cottage is preferred to the wider area identified by Mrs Heine (the appellants' planning consultant).
24. As regards land use, before the sale of land and the formation of Areas 1 and 2 in the summer of 2011, the land parcel within the ownership of Alderbourne Cottage extended a fair distance along the boundaries with The Long Drive and Fulmer Lane towards Alderbourne Manor. It was a single planning unit. By all accounts the residential use was not contained within a physically defined area and structures, including outbuildings and caravans, in the woodland were used for hobbies and living accommodation. Nevertheless probably very little activity occurred in a sizeable area of the woodland. Therefore I am not satisfied with the Council's description of the former lawful use of Areas 1 and 2 as 'a use for residential purposes incidental to Alderbourne Cottage'. Mrs Heine referred to a leisure plot use but there is not the evidence to substantiate such a use being lawful. The conclusion I have come to is that there was a mixed residential / woodland use⁴.

Planning policy and statutory duties

Development plan and national policy

25. The development plan for the District includes the South Bucks District Local Plan adopted in 1999 (the Local Plan) and the South Bucks Core Strategy Development Plan Document adopted in 2011 (the Core Strategy).
26. Policy GB1 of the Local Plan controls development in the Green Belt, with Policy GB2 specific to the re-use of buildings in the Green Belt. Proposals affecting trees covered by a Tree Preservation Order are subject to Policy L10, which aims to protect the amenity value of protected trees and their contribution to the character of the locality. The construction of a new site access should meet the requirements of Policy TR5 (relevant to Area 2 only).

³ As opposed to the curtilage to the listed building

⁴ The 'use of land for woodlands' is a term cited in s336(1) of the Act.

27. Turning to the Core Strategy, Core Policy 4 sets out the criteria to guide the allocation of sites and the determination of planning applications for sites for gypsies and travellers and travelling showpeople. Core Policy 8 states that the protection and where appropriate the enhancement of the District's historic environment is of paramount importance. In particular, nationally designated historic assets and their settings, including Grade II listed buildings, will have the highest level of protection. In addition, all new development must be of the highest standard of design and make a positive contribution to the character of the surrounding area. Core Policy 9 identifies how the landscape characteristics and biodiversity resources within the District will be conserved and enhanced.
28. The Council is preparing a new Local Plan jointly with Chiltern District Council to cover the period 2014 to 2036. In view of the relatively early stage in the process the documents have little weight in these appeals. The Local Plan is expected to be adopted in 2018.
29. The National Planning Policy Framework (the Framework), Planning Policy for Traveller Sites (PPTS) and National Planning Policy Guidance are material considerations. At the heart of the Framework is a presumption in favour of sustainable development. PPTS states that the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates their traditional and nomadic way of life while respecting the interests of the settled community.
30. Policy GB1 is not consistent with the Framework, not least because there is no allowance for very special circumstances to justify inappropriate development. It has limited weight. Core Policy 4 pre-dated the Framework and PPTS. The criteria for assessing the suitability potential of new sites are generally consistent with national policy but the approach to meeting need and identifying a supply of deliverable sites is not up to date. Therefore it has significant rather than full weight.

Statutory duties: Environment

31. In considering whether to grant planning permission for development that affects a listed building or its setting, special regard must be given to the desirability of preserving the building or its setting in accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
32. The statutory basis for planning to seek to minimise impacts on biodiversity and provide net gains in biodiversity where possible is set out in section 40 of the Natural Environment and Rural Communities Act 2006.

Statutory duties: Human rights and Equality

33. There is no doubt that in these appeals the site residents' Article 8 Convention rights are engaged – the right to respect for private and family life and the home⁵. Article 8 is a qualified right that requires a balance between the rights of the individual and the needs of the wider community or state interest. In the context of Article 8, the best interests of a child must be a primary consideration and no other consideration can be treated as inherently more significant. However, a child's interest is not determinative of the planning issue and may be outweighed by the cumulative effect of other considerations.

⁵ The Human Rights Act 1998 enshrines into UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights.

Article 8 also imposes a positive obligation to facilitate the Gypsy way of life to the extent that the vulnerable position of Gypsies as a minority group means that some special consideration should be given to their needs and different lifestyle in the regulatory planning framework and in reaching decisions in particular cases⁶. This does not extend to having a right to be provided with a home.

34. In relation to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, the occupiers of the site as travellers have a protected characteristic. I will have due regard to the three equality principles in section 149 of the Equality Act in my assessment and decisions.

Need for traveller sites

35. The 2013 Gypsy and Traveller and Travelling Showpeople Accommodation Needs Assessment (GTANA) for Buckinghamshire was updated in 2014. The report identified a need for 129 extra new pitches across the County over the period 2013 to 2023, having taken into account anticipated supply, current need (42 pitches) and future needs from household formation (58 pitches) and temporary sites (29 pitches). Over the same period the need for South Bucks amounted to 33 additional pitches by 2023. Account was taken of the unauthorised developments at Fulmer Lane in the estimation of need.
36. Mrs Heine was concerned that a serious underestimate of need resulted from the use of a household formation rate of 2%, and the absence of allowances for in-migration and movement from bricks and mortar. In the report these matters were justified on the basis of local information tied to the site surveys. I consider the chosen approach was reasonable and consistent with policy in the PPTS.
37. The 2014 Update represents the most robust available source of information on need. Nevertheless, I recognise that the report is no longer up to date because no account is taken of the amended definition of gypsies and travellers in the 2015 PPTS or the implications of the Housing and Planning Act 2016 for needs assessments. Mrs Heine drew attention to additional sites that now have temporary consents and which could increase the level of immediate need. The Council advised that a further update is being carried out to form part of the evidence base for the new Local Plan but no details are available.
38. There was common ground between the main parties that there is an immediate need for 5 pitches to address unauthorised developments, including 3 pitches arising from the development on Areas 1 and 2 at Alderbourne Cottage and a need for 5 pitches to accommodate concealed or doubled up households. Mr Franklin, for the Council, described the unmet need as substantial.
39. The Council accepted that it is unable to demonstrate a five year supply of traveller sites. In officer reports this factor was recognised as weighing in favour of planning permission on the appeal sites. There were no vacancies identified on public sites. The Council was unable to suggest any suitable alternative site in the District for the families living on Areas 1 and 2.

⁶ *Chapman v the United Kingdom* [2001] paragraph 96

PART II

APPEALS: AREA 1

40. Ground (d) appeals were introduced linked to the ground (f) appeals in relation to the requirement to remove earth and materials. The Council was able to address the ground (d) issue and therefore its consideration causes no injustice.

Enforcement notice

41. A longstanding test as to whether a notice meets the statutory requirements is to ask whether an enforcement notice fairly tells the recipient what he has done and what he must do to remedy it⁷.
42. The Council initially requested that (i) the reference to the parking and / or storage of commercial vehicles and machinery be deleted from the description of the alleged breach of planning control, and (ii) an amended plan be substituted to correct the precise boundary between Area 1 and Area 2. These proposed amendments satisfactorily addressed some of the points raised by the appellants.
43. In response to additional matters raised and discussed at the inquiry the Council proposed an amended description of the alleged breach of planning control: "Without planning permission the material change of use of the Land from a use for residential purposes incidental to Alderbourne Cottage to use of the Land as a caravan site with the stationing of caravans used for residential purposes and the use of an existing outbuilding as a day room incidental to the use as a caravan site such uses being separate from the residential use made of Alderbourne Cottage (Unauthorised Use) together with the associated works and operational development undertaken (including the importation of earth and materials for the purposes of re-profiling the Land) to facilitate the Unauthorised Use."
44. The appellants generally agreed with this corrected wording. However, reservations were expressed about the failure to identify the associated and operational works in the allegation, which they said meant the notice did not clearly state what was being attacked and also what was required.
45. The associated works and operational development are stated to have facilitated the unauthorised material change of use. Describing the works in the allegation may assist clarity and inform the scope of the deemed planning application. However, it is not essential to refer to enabling works in the allegation. The logic by referring to them only in the steps required to be taken is that it is only their undoing that is material to the notice, as derived from section 173(4)(a) – restoring the land to its condition before the breach (namely the change of use) took place. Accordingly the Council's approach is acceptable and does not require correction.
46. However, the amended wording does require a further correction. An enforcement notice does not have to describe the previous use but where it does it should be correct. As explained above, I consider the Council's wording is a misdescription and I intend to delete it from the wording of the allegation.

⁷ *Miller-Mead v Minister of Housing and Local Government* [1963] 1 All ER 459

Ground (d) appeals

47. The ground (d) appeals are not directed at the material change of use but works to facilitate the new use, more specifically the alleged re-profiling of the land by the importation of earth and materials. A decision on the matter will inform the outcome on the ground (f) appeals as to whether the requirement to remove earth and materials, hard surfacing including tarmac and gravel is excessive.
48. The principle at issue is set out in the *Kestrel Hydro* judgement⁸. An enforcement notice directed at a breach of planning control by the making of an unauthorised material change of use may lawfully require the land or building in question to be restored to its condition before that change of use took place by the removal of associated works as well as the cessation of the use itself – provided that the works concerned are integral to or part and parcel of the unauthorised use. It does not apply to works previously undertaken for some other lawful use of the land in question and capable of being employed for that or some other lawful use once the unlawful use has ceased. But it can extend to unauthorised changes of use where the associated works if viewed on their own, would have become immune from enforcement under the four year rule on section 171B(1) or would be outside the scope of planning control.
49. In order to succeed on ground (d), the appellants have to show on the balance of probability that the importation of fill materials to form made ground over the natural woodland floor was carried out before and was not integral to the material change of use to a caravan site, but was undertaken for some other lawful use of the land.
50. In summary, at the inquiry Mr Rooney stated that in 2003 he put gravel down for Mr Spencer (the owner of Alderbourne Cottage). When the site was bought in 2011 much of the land was made ground comprising hoggin and gravel type materials. The operational development related to the change of use to a caravan site in 2011 was limited to laying gravel over existing hoggin and hard standing. He also relied on his statement made in November 2011 where he said the chalet and outbuildings had areas of hard standing for parking and their surroundings were very open. He estimated about 85 to 95% of the area had previously been surfaced with shingle or gravel which was old and uneven in places with depressions. To tidy up the site several loads of stone were brought in and spread out to a depth of between 150 mm to 300 mm where the depressions were. Apart from the additional layer of stone the general ground levels of the site were not altered.
51. The Council argued that there was only one possible explanation for the presence of imported materials on the woodland floor – Mr Rooney imported the earth and materials to re-profile the land to facilitate the change of use to a caravan site. The Council relied heavily on the evidence of Mr Wilkinson (an interested party), supported by aerial photographs and the evidence of its witnesses Mr Tolkovsky and Mr Franklin as to the nature of the material, when it was put down and the similarity of the operation with the works on Area 2.
52. This issue was considered in detail at the previous inquiry in 2013, although not within the context of enforcement action and a ground (d) appeal. The

⁸ *Kestrel Hydro v Secretary of State for Communities and Local Government & Spelthorne Borough Council* [2016] EWCA Civ 784 at paragraph 28

inspector concluded that following clearance of extensive areas of undergrowth and shrubs the land level was built up from the naturally undulating woodland floor to one uniform level. A large volume of fill was introduced, particularly at the end furthest from the cottage. The new gravel surface was laid on a considerable depth of hardcore fill, tapering from the original level close to the existing building to a depth of about 1 m at the furthest point⁹.

53. The new evidence submitted by the Council for the current appeals is the topographical survey and ground investigation carried out on 13 and 14 October 2015, which confirmed that the site is covered with fill material to varying depths. On the western half of the site the made ground attained a thickness of between 0.15 m and 0.60 m, increasing to a depth between 0.65 m and 0.90 m on the eastern half of the site. A shingle/gravel hard standing was present in the western half of site ranging in thickness from approximately 50 mm to 80 mm. The fill was described as a mix of natural soils and man-made materials. According to Mr Tolkovsky the materials were reasonably uniform in appearance and composition, which suggested that they were deposited in one operation, with no evidence of previous fill. However, he confirmed he was not able to date the materials, only describe what was found in content and depth. The calculated volume of fill on Area 1 was estimated to be equivalent to some 100 lorry loads of materials.
54. The substantial change to the site is indicated by a comparison of aerial photographs dated September 2010 and 27 May 2012. The earlier image shows an even amount of tree cover, with no obvious gaps or clearance. By contrast, the later photograph highlights a significant loss of vegetation and an obvious hard surfaced clearing in the woodland. There is no dispute that in order to form the caravan site land was cleared and a layer of gravel was deposited across the surface of the site. The main contention focused on the made ground above the woodland floor, a matter that is not assisted by the aerial images.
55. The Council's records of investigations connected with works at the site confirm that operations were carried out in two main stages, around July 2011 and May 2012. I have no doubt from the photographic evidence and contemporary records that the operations resulted in substantial quantities of materials being deposited on the eastern half of the site¹⁰. More specifically, a site inspection on 18 May 2012 found that Area 1 was filled with imported material up to 1.5 m. The borehole information obtained in October 2015 showed that the made ground was a mix of sands, gravels and brick fragments, concrete, clinker and ash, with occasional large brick pieces, plastic and wood fragments. The work clearly was in connection with the use of the land as a caravan site. This conclusion is consistent with the findings of my colleague who gave particular emphasis to the presence of a large volume of fill at the end the site furthest from the cottage. On the basis of the ground investigation evidence the probability is that the extent of the fill deposited was more extensive than the area identified by Mrs Heine¹¹.
56. The position as regards the made ground on the western part of the site is not so clear cut. Examination of various photographs, comparison of levels between Area 1 and the adjacent lands on Area 3 and observations on the site visit lend

⁹ Inspector's Report paragraphs 116 and 117.

¹⁰ Appendices to Mr Treen's proof pages 212 to 242

¹¹ The red hatched area on Document 9

some support to Mr Rooney's version of events, more particularly in terms of the area nearest to the site entrance and around the outbuilding and mobile home. For example, a photograph dating to 2001 indicates there was no sharp change in levels between what is now Area 1 and the access track serving Alderbourne Cottage. Whilst Mr Rooney's own evidence is not very precise and lacks detail, there is support for the key point at issue from the Council's documents and records of the Council's visits to the site¹².

57. In March 2003 the outbuildings were noted as a log cabin and a garage which is consistent with a photograph dated 6 September 2001. The Council's enforcement officer visited the site in 12 July 2011 after receiving notification of an unauthorised change of use and the laying of hard standing. The contemporaneous record of the visit described how a clearing had occurred in 2001 and with that in mind the officer saw some minor land clearance had occurred adjacent to that area and along the site of the access lane. It had recently been laid to hard core rubble. This observation is illustrated by the photographs taken on 12 July. Photographs dated 18 July 2011 suggest that the fill material below the new layer of gravel was freshly laid. On the cleared site gravel was seen which had been freshly laid as an extension to the existing gravel to the rear of Alderbourne Cottage.
58. The details of a site inspection on 18 July 2011 described that "a substantial amount of earthwork had been carried out and it appeared the ground level had been raised towards the edge of the new area to level the ground for easier use with what can be described as mulch/leaf litter and then finished off with a layer of gravel". The raising of the ground levels had covered the base of three protected trees. The site plan indicated that the affected trees were more towards the east and on the south west boundary of the site. One photograph in particular shows a marked drop in levels to the woodland area to the south.
59. On 28 July 2011 tipper trucks loaded with hard core were reported at the site, the day after works started on Area 2. A temporary stop notice was served. The photographs all appear to relate to Areas 2 and 3, rather than Area 1. In fact over the period from 2011 to when the notices were served in 2015, the records and photographic evidence on the works to Area 2 indicate that the scale of operations was greater than on Area 1. Therefore they provide limited assistance in deciding the extent of the made ground deposited by Mr Joseph Rooney on Area 1.
60. At the 2013 inquiry Mr Spooner, the Council's Arboriculturalist at that time, gave evidence and his proof is included in the documents for the current appeal (although the supporting appendices were not provided). This written evidence, whilst not tested at my inquiry, is deserving of very significant weight because Mr Spooner was very familiar with the land and protected trees on Area 1, he attended the site when works were in progress and he carefully examined the chronology and available photographic evidence and site records to inform his conclusions. He estimated that prior to occupation by the appellant the area of land that was hard standing was approximately 640 m², whereas the area of hard standing following the appellant's occupation was approximately 950 m². The Council did not address the inconsistency of this evidence with its conclusion that the presence of imported materials on the woodland floor could only be the result of Mr Rooney's actions to develop a caravan site. If there

¹² See the chronology of events in Mr Treen's proof and appendices.

was hard standing, the likelihood is that Mr Rooney would add materials on top.

61. Mr Spooner's evidence on existing hard standing was not supported by the evidence of Mr Wilkinson who was very familiar with the woodlands surrounding Alderbourne Cottage and had reason to travel along the track to Alderbourne Manor several times a week over a period of ten years or so. He stated the only event of importation of material he witnessed before July 2011 was in 2009 when the owner of the cottage resurfaced his driveway and deposited gravel on the track. He did not recall any clearance of woodland or levelling of the land and his recollection was of no extensive incursion into the woodland. The collection of outbuildings was described as resting 'on the natural soil level', not imported material and the topography around the outbuildings was very uneven. He recorded that on 11 July 2011 he was alerted by his mother that woodland was being levelled. On investigating he found a scene which he described as 'something like a military operation' with aggregate lorries and heavy machinery. He was sure that the work was being carried out on Area 1 and not Area 2 and that his dates were accurate.
62. There were shown to be some slight inaccuracies in the details of Mr Wilkinson's statement but he was clear about the events on 11 July and the days following. If he is correct on the date of 11 July it would be unlikely that the events he described were on Area 2 because it was not until 21 July that Area 2 was bought from Mr Spencer.
63. The main parties agreed that the cabin was the same building present in 2001 but the Council's site visit notes and photographs strongly suggest that the workshop and office were erected at a later date. They are not minor additions in their context. The probability of them being raised up to allow for the importation of fill/laying of hard standing and gravel in July 2011 is unlikely, given that the boreholes around the existing outbuilding show made ground to a depth of 0.5 m or so. The presence of breeze blocks, staining on the timber cladding and a nearby piece of equipment, seen in one of the photographs was reasonably explained by Mr Rooney. I find it difficult to accept that the outbuildings rested on the natural woodland floor. The written reports of residents on the activities between 11 and 18 July 2011 primarily concern observations of trees being cleared and removed by truck and the presence of tons of gravel rather than numbers of lorries delivering aggregate to the site. In a normally tranquil woodland setting, clearance and the laying of quantities of gravel alone would appear like a military operation.

Conclusions

64. The site is covered with fill material to varying depths. There is a marked difference between the depth under the existing layer of 'new' gravel deposited by Mr Rooney to form a flat surface around the static caravan and outbuildings compared to the area to the east which is now covered in grass.
65. I do not accept that about 85 to 95% of the site area had previously been surfaced with shingle or gravel. Substantial quantities of earth and materials were deposited in order to re-profile the land to facilitate its use as part of the caravan site. However, the probability is that on at least part of the western area of the site there was a pre-existing hard standing/area of made ground. In order to facilitate the use as a caravan site an additional hard surfaced layer consisting of some new fill, hard core rubble or stone topped by a shallow

surface layer of gravel/pea shingle was deposited. To this limited extent the appeals on ground (d) succeed.

Appeal on ground (a), deemed planning application

66. The deemed planning application is derived directly from the description of the breach of planning control as proposed to be corrected. There is common ground between the main parties that the caravan site is inappropriate development in the Green Belt.
67. The main issues are:
- The effect of the development on the openness and purposes of the Green Belt.
 - The effect of the development on: (i) the amenity and character of an area of protected ancient woodland; (ii) woodland habitat and objectives for enhancing local biodiversity resources; (iii) the character and appearance of the surrounding countryside and Colne Valley Park.
 - The effect of the development on the setting of the grade II listed building Alderbourne Cottage.
 - The existing level of local provision and need for traveller sites.
 - The availability (or lack) of alternative accommodation for the appellant and his family.
 - Other relevant personal circumstances of the appellant and his family, including consideration of the best interests of the children.
 - Whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations to enable the development to be justified by very special circumstances.
 - In the event the Green Belt balance is against the development, whether requiring the use to cease would be necessary and proportionate.

Effect on the Green Belt

68. Before the unauthorised development took place the land was in a low level incidental residential use to Alderbourne Cottage in a woodland setting. Timber framed and clad outbuildings comprised a workshop, cabin (possibly used occasionally as living accommodation) and an office.
69. When the land was acquired by Mr J Rooney a new planning unit was created. The material change of use has involved the stationing of caravans on the land (including a static caravan), additional hard standing and gravel surface, a utility building and shed, new entrance gates and brick pillars, the erection of close boarded fencing, the installation of a gas tank and pipework, external lighting and CCTV. These changes occurred primarily on the northern part of the land. To the south of a post and rail fence, beyond the gravel covered surface, is an area where material was deposited but which is now covered by grass and vegetation and trees have been planted. Permission is being sought for one pitch with two caravans, a level of use which reasonably could be secured by planning conditions.

70. Permission is also being sought for the renovated outbuilding and its use as a dayroom incidental to the caravan site. The renovation works included construction of a brick base, the alteration, extension to and tiling of the roof, minor infill, a white render finish to the external walls, the erection of a veranda, the insertion of uPVC windows and installation of new heating, lighting and domestic facilities¹³.
71. The caravan site is inappropriate development in the Green Belt, based on Policy E of PPTS and paragraph 90 of the Framework. By definition the site is harmful to the Green Belt and should not be approved except in very special circumstances. The introduction of various structures, the additional means of enclosure and the harsh appearance of the expanse of hard surfacing, parked vehicles and the day to day domestic activity have had a significant and detrimental effect on openness, when compared to the previous use. Even when allowing for control on the number of caravans by planning condition and securing potentially more sympathetic boundary treatment the loss of openness would be serious. Encroachment into the countryside has occurred, in conflict with a purpose of the Green Belt.
72. The re-use of the outbuilding complies with Policies GB1 and GB2 and the Framework in so far as the composite building was of substantial and permanent construction and major reconstruction has not had to take place. However, the building now has the appearance of a single permanent dwelling, not a linked group of incidental outbuildings. Its re-use associated with the caravan site would not preserve openness and a degree of encroachment would result. All matters considered, this element conflicts with Policies GB1 and GB2 and national policy.
73. In conclusion, the totality of the harm to the Green Belt in this location has a degree more than substantial weight, taking into account the scale of the development, the harm to openness and the temporary permission sought.

Ancient woodland

74. There is a high level of policy protection both through the development plan and national policy. The Framework in paragraph 118 states that planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland, unless the need for, and the benefits of, the development in that location clearly outweigh the loss.
75. The main parties expressed contrasting opinions on issues such as the fragmentation, condition, character, human influences and longevity of the ancient woodland near Alderbourne Cottage and associated with Alderbourne Manor. The assessment of the Landscape Collective, on behalf of the appellant, was that the ancient woodland ecosystem in the area was in decline and the lack of management as a whole was limiting the longevity and condition of the woodland. Informed by the Council's evidence I consider that the appellants' assessment and report was too negative and should not detract from the policy protection afforded to ancient woodland and the impacts that have occurred on the site. In addition, the amenity value of the woodland is highlighted by the TPO.

¹³ Appendix 4G to Mrs Heine's proof has photographs of the outbuilding in 2015.

76. The development has damaged the ancient woodland by physical works, such as the clearance of vegetation and ground flora, the severance of roots, the importation of quantities of fill and the laying of hard surfacing. Damage also has occurred through the increase in human influence and activities. The soil compaction and extensive area of hard surfacing extending up to the base of trees is likely to be causing direct and longer term damage. Mature trees are showing signs of stress. The natural cycle of regeneration is being prevented. The absence of a buffer area between the development and woodland edge has increased the likelihood of damage to the trees, understorey and ground flora. The Council also considered that the development was changing the hydrology of the area, causing damage within the immediate site and to a wider area of woodland. Furthermore, the changes in the management of the woodland and maintenance of cleared areas for parking and circulation have reduced the value of the site by adversely impacting on the soil communities and deadwood. The Landscape Collective's evidence accepted that the planting undertaken to date is tokenistic and would not contribute to mitigate the impact already suffered by the ancient woodland.
77. The proposed mitigation included the creation of a 15 m buffer zone and a set of clear guidelines for the occupiers of the site, detailing the activities that should and should not occur in ancient woodland. The mitigation is aimed at helping to prevent and limit any future impact and would not undo the damage already caused, as accepted by the appellant's consultants. I also have concern that the stress on the woodland and individual mature trees would continue, perpetuating the decline in their health and stability. Trees which are very close to living accommodation, including the day room, would be under particular threat as a result of daily domestic activity and potential fears over personal safety. In the context of the history of the ancient woodland a few years either way in securing cessation of the use could be insignificant but a firm preference is to enable regeneration to start as soon as possible.
78. In conclusion, the development has resulted in the loss and deterioration of an irreplaceable habitat. The harm is serious and ongoing. The effect of the proposed mitigation would be limited. The development conflicts with the protection sought by Core Policy 8 and Local Plan Policy L10. In assessing the amount of weight that should be given to the identified harm, it is relevant that the harm potentially would be short term and the woodland is expected to regenerate over time. With those factors in mind the harm has significant weight.

Biodiversity

79. The importance of the conservation and enhancement of biodiversity is confirmed by paragraphs 117 and 118 of the Framework. Consistent with the Framework, Core Policy 9 of the Core Strategy seeks a net gain in local biodiversity resources within a Biodiversity Opportunity Area.
80. The ancient woodland within the appeal site is categorised as the UK Biodiversity Action Plan (UK BAP) priority woodland type known as 'lowland mixed deciduous woodland'. In 2013 the inspector reported that based on a survey there was no evidence of protected species or significant or protected ground flora within the site, although there was no consideration of the effect of the hard standing and development that had taken place.

81. In this appeal Dr Newell's evidence, on behalf of the Council, drew attention to the loss of a relatively diverse woodland habitat with a mixed flora and fauna and the replacement with features which are entirely lacking in biodiversity value. The change in land use and the associated disturbance of wildlife features of the site was not considered to be compatible with the Biodiversity Action Plan, which seeks enhancements to woodland and connectivity in the area. In a County where the proportion of woodland cover is low and sparsely distributed the loss of any area was considered significant. Attention was also drawn to the potential impact on bats, given the likelihood of bat roosts across the whole of the site. All bat species are European Protected Species.
82. In the statement of common ground Mrs Heine accepted that the present state of the site is ecologically poor and that the unauthorised development has detracted from and harmed the biodiversity of the site. Otherwise, she disputed that there would be an adverse effect on bats because of the survey information, the ability to control external lighting and the proposed provision of bat boxes. Attention was drawn to the fallback, whereby the continued residential use of the land would be unlikely to safeguard the Biodiversity Opportunity Area.
83. The proposed mitigation consists of the planting of a 15 m buffer zone and the allowance for bird and bat boxes, having first obtained advice from an ecologist as to their appropriate siting and location. The inspector concluded in 2013 that there was little to show that the mitigation and enhancement proposed at that time would be sufficient to provide a net gain in biodiversity.
84. In the light of the evidence my conclusions are that the development has resulted in a locally significant loss of biodiversity. A reversion to the former less intensive lawful use would be less likely to have such an adverse effect on the habitat and therefore the fallback has little weight. The proposed mitigation would do little to offset the harm over a three year period. A net gain in biodiversity would not be achieved. There is conflict with Core Policies 4 and 9 and national policy in the Framework to conserve the natural environment. The harm has significant weight.

Character, visual amenity and Colne Valley Park

85. The woodland on Area 1 made an important contribution to the landscape character of the locality, meriting the protection afforded by the TPO for its amenity value.
86. The loss of woodland cover and the creation of an open clearing detract from the sense of enclosure, a negative effect that is well illustrated by the aerial photographs in the evidence. The insertion of caravans, hard surfaced areas, close boarded fencing and other domestic features have an urbanising effect, causing harm to the rural landscape character and the parkland setting. Aims of the Colne Valley Park Action Plan to protect the countryside would not be promoted.
87. The caravan site is well screened from public view on Fulmer Lane by the hedgerows, woodland and Alderbourne Cottage. Views of the site from the track serving Alderbourne Manor are primarily of close boarded fencing and a gated entrance formed by tall brick piers and solid double gates, features that are insensitive to the woodland setting and listed cottage. These forms of boundary treatments also are strongly discouraged by the PPTS because of the

impression of deliberate isolation of the occupants from the rest of the community. Replacement by a more visually pleasing form of entrance and boundary could be secured by means of planning condition but any visual improvement would not be immediate.

88. In conclusion the development conflicts with Core Policies 4, 8 and 9 and is not consistent with Local Plan Policy L10. Even taking account of the potential short term nature of the harm, the weight is significant.

Effect on listed building

89. With reference to the listing description Alderbourne Cottage was identified as an early 19th century cottage ornee, a lodge to Alderbourne Manor. The expert witnesses had carried out their own research into the history of the cottage, its relationship to Alderbourne Manor and its surroundings.
90. Mr Tite (the Council's witness) explained that Alderbourne Cottage was a gate lodge standing at the edge of the highway where The Long Drive leads into the estate towards the manor house, of a classical style and parkland. The cottage ornee style was at the peak of popularity in the early 19th century, consistent with the listing description. Alderbourne Cottage was believed to be a good and the only surviving example of a cottage ornee in South Bucks District. For the appellant, Mr Edis's evidence cast doubt on the early 19th date of construction. In particular the Langley Marish tithe map provided strong evidence that the cottage was built post 1845 in the early-mid Victorian period in association with Alderbourne Manor. I consider that even if that was so, the significance of the designated asset lies in its architectural, historical and social interest and its survival, along with the manor house it served, within the District.
91. Both witnesses offered their own thoughts on listing – Mr Edis suggesting a post 1840 date could disqualify the Cottage for statutory listing, whilst Mr Tite found it difficult to understand why Alderbourne Manor was not included on the statutory list. The relevant fact in this case is that Alderbourne Cottage is listed and as such enjoys statutory and policy protection.
92. The setting of a heritage asset is defined in the Glossary to the Framework as "*The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve*". Mr Tite considered the setting includes The Long Drive, the woodlands and lake forming the surroundings to Alderbourne Manor and the manor house buildings. Mr Edis highlighted the significant changes to the setting, most notably as a result of the construction of the M25 motorway and the growth of woodland in the field to the north of the Cottage. The Inspector in 2013 focused on the characteristics and various features of the immediate setting, the natural woodland being the most visually significant.
93. I consider all these appraisals and the varying aspects highlighted by them inform an appreciation of the setting to the listed building because they take account of the physical surroundings and the experience of the asset. Advice in the Planning Practice Guidance also is worth reiterating - the contribution a setting makes to the significance of the heritage asset does not depend on there being public rights or the ability to access or experience that setting.
94. The caravan site is in close proximity to Alderbourne Cottage and importantly the site has its access off and a long boundary to The Long Drive. There is also

a common boundary to the south of the cottage. Clearance of vegetation, consolidation of hard surfacing, the introduction of visually discordant caravans, the erection of close boarded boundary fences and the creation of a secure gated site entrance have combined to erode the sylvan woodland setting and interrupt the relationship between the cottage and Alderbourne Manor. This change has had an 'urbanising' effect.

95. The negative effect would not necessarily be permanent because a time limited permission is being sought, which would enable the woodland to regenerate in time. Also, with reference to the evidence of Dr Edis, the development's neutral effects on the setting must be weighed in the balance. The course of the mid-19th century approach drive to the manor remains unchanged. There has been no noticeable effect on views of the better preserved elevation of the cottage seen against a wooded backdrop at the entrance from Fulmer Lane, nor has the woodland to the front and to the north of the cottage been reduced. There is still the ability to appreciate the surviving Picturesque ornee character of the cottage.
96. The Framework makes a distinction between substantial harm and less than substantial harm to the significance of a designated heritage asset. Significance derives not only from the heritage asset's physical presence but also from its setting. The Planning Practice Guidance further advises that in general terms substantial harm is a high test, so it may not arise in many cases. It is the degree of harm that has to be assessed, not the scale of the development. Dr Edis drew attention to the *Nuon* judgement¹⁴, which assists in the understanding of the meaning of 'substantial'.
97. Taking account of the negative and neutral effects described above, I conclude that the degree of harm on the significance of the cottage resulting from the caravan site is less than substantial. In this conclusion I differ from my colleague but that should not be regarded as inconsistent when I have had the benefit of the analysis in the expert evidence of Dr Edis and the assistance of the Planning Practice Guidance. The Framework requires the less than substantial harm to be weighed against the public benefits of a proposal. In this case the public benefits centre on the development's very limited contribution to the supply of traveller sites (by reason of the time-limited personal permission sought) and the avoidance of the family having to resort to unauthorised encampment and the possible associated environmental, social and economic costs. The less than substantial harm to the setting of the heritage asset is not outweighed by the public benefit.
98. The identified harm has to be placed within the context of the considerable importance and weight to be attached to the desirability of preserving the setting of the designated asset. In addition, Core Policy 8 states that the protection of the District's historic environment is of paramount importance. On that basis the harm has significant weight.

Meeting Need

99. The level of need for additional pitches quantified within the County by the GTANA is not exceptionally high. Nevertheless, in the County and South Bucks District there is a pressing immediate need for additional pitches in order to

¹⁴ *Bedford Borough Council v Secretary of State for Communities and Local Government & Nuon UK Ltd* [2012] EWHC 4344 (Admin)

respond to unauthorised developments or encampments and to cater for concealed households. Unless new pitches are brought forward the need will escalate as a result of household formation and the expiry of temporary permissions.

100. In South Bucks identification of sufficient sites for the traveller community has been outstanding for a number of years and no traveller sites have been allocated through the development plan process. The Council accepts that currently it does not have an up-to-date 5 year supply of deliverable sites, a position that has not changed since the inquiry in 2013.
101. The appellants' personal need for a site was recognised in the GTANA. Mr and Mrs Rooney have long connections with the area and their families have a history of stopping on local sites, such as Waspey's Wood in Gerrards Cross. They have always travelled and have never lived in housing. They have lots of family in the area, who have pitches in Iver, High Wycombe and elsewhere. They have tried to secure a settled base for over 10 years, unsuccessfully applying for planning permission and for a pitch on a local authority run site. They have considered a site in Greater London but found all sites to be full. When the opportunity came to acquire land at Alderbourne Cottage they did not anticipate any problems or expect to have to obtain planning permission because of the existing outbuildings and caravans. At the time of the last appeal Mr Rooney's sister and her family were living on the site. In order to reduce the scale of development they have returned to living on the road, despite serious health issues.
102. Most of the land in the District outside the main settlements is designated as Green Belt. As experience has shown the family has had great difficulty in securing an acceptable site. The Council is unable to suggest any suitable alternative site in the District and no vacancies exist on public sites. Consequently there is no alternative available site that is acceptable, affordable and suitable.
103. All these factors lend support to allowing the development for a temporary period whilst the Council progresses work on bringing forward land allocations through a new Local Plan in order to address national policy requirements in the PPTS. In determining their weight I have had regard to the PSED and the Government policy aim to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure. A settled base is important in order promote equality of opportunity for the traveller community and to avoid possible environmental damage associated with unauthorised encampment and the attendant social and economic costs. Also relevant is the conclusion of the Secretary of State on need related matters in 2014 and the subsequent direction in PPTS that land designated Green Belt is an exception to regarding the absence of a 5 year supply as a 'significant material consideration'.
104. I conclude that the lack of an alternative available site for this family has considerable weight and unmet need has moderate weight. On that basis and the policy direction in PPTS I attach moderate weight to a lack of a 5 year supply of deliverable sites associated with the Council's longstanding lack of progress in land allocation.

Personal circumstances, best interests of the child

105. Mr and Mrs Rooney have four children now. The inability to secure a settled pitch appears to have been disruptive to the education of their two oldest children and neither has attended secondary school because of being well behind their peers. Their younger daughter, who suffers from poor health, attends Denham Green Primary School. The principal of the school has confirmed the importance of achieving a high level of attendance and the likelihood of the schooling she does receive disappearing in the event that her family are unable to stay at their current site. Their fourth child was born last year, which increases the need for a settled base due to the vulnerability of a child at this very early age. All the evidence indicates that it would be in the best interests of the children to continue living on the site with their parents and close to their extended family. The starting point is that their best interests have substantial weight.
106. No additional personal circumstances were identified that have not already been taken into account in considering availability of alternative sites. The focus is therefore on the best interests of the children.

Other considerations

107. The Core Strategy acknowledges that the Council may have to consider releasing one or two very small areas of land from the Green Belt in order to meet the requirement for additional pitches. Core Policy 4 also allows for suitable sites already with a temporary permission to become permanent. Therefore the difficulty of finding suitable non-Green Belt sites is recognised. In fact a number of pitches granted a temporary planning permission over the last 5 years were in the Green Belt. Nevertheless it does not follow that the appeal site should be considered favourably, when account is taken of the environmental constraints present.
108. Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for the reversion to its previous lawful use (s57(4)). Whilst it is not possible to ensure the land would be left to regenerate naturally, there is a better prospect of this happening than where the unauthorised use is allowed to continue. The fallback is not a factor that weighs in favour of the caravan site.
109. The ability to address concerns by planning condition has been taken into account in the reasoning throughout.
110. With reference to the criteria in Core Policy 4 and issues identified in PPTS, the site has good access to the highway network and the low level of traffic generated from a single pitch would have no significant effect on the locality. The site is not in an area at high risk of flooding and the development would not place undue pressure on local infrastructure. There are adequate levels of privacy and residential amenity for the occupiers and local residents. The single pitch is of a scale that would respect and not dominate the settled community. On site there are adequate facilities for parking, storage, play and water supply. Consequently there is no harm attributable to these considerations. Compliance with these policy criteria is not sufficient to demonstrate the overall suitability of the site.

Balancing exercise

111. The site is heavily constrained by the Green Belt designation, its habitat and proximity to a listed building, where there are high standards of policy and statutory protection. The need for and the benefits of the development located adjacent to Alderbourne Cottage do not clearly outweigh the temporary loss and deterioration of ancient woodland when account is taken of its importance and value for biodiversity, its cultural value and social history, its contribution to the distinctiveness of the landscape character and visual amenity of the area. The total weight against the development as a result of the environmental harm, albeit for the temporary period sought, is very substantial and weighs heavily against the acceptability of the caravan site.
112. As to the main factors weighing in favour of the development, personal need together with the lack of an alternative, available site for the family that is acceptable, affordable and suitable, has considerable weight. In this context the best interests of the children have significant weight, unmet need has moderate weight, as does the absence of an up-to-date 5 year supply of deliverable sites in South Bucks District.
113. The harm to the Green Belt by reason of inappropriateness, and the other identified harm, is not clearly outweighed by other considerations when they are weighed in the balance collectively. Very special circumstances do not exist to justify the development for a time limited period.

Proportionality assessment

114. The land is the home of the appellants and their children and if they are unsuccessful in their appeal they will be required to leave the site in order to comply with the enforcement notice. The interference with their home, private and family life would be serious, especially as no alternative site has been identified. The Article 8 rights of children are involved and will be a primary consideration. The consequences for the family's wellbeing would be of such gravity as to engage the operation of their Article 8 Convention rights.
115. There has been no suggestion to date that the interference would be against the law provided that planning policy is lawfully applied. The interference would be necessary to regulate land use in an area that is environmentally sensitive and has a high level of protection in the public interest.
116. A proportionality assessment is required in order to undertake the fair balance set out in Article 8(2). Its purpose is to determine whether the protected rights of the appellants and their family would be disproportionately interfered with if the rights of the community are upheld by protecting the Green Belt and natural and historic environment. The assessment will draw on the limited factual information provided by the appellants and the community interests that have been considered above. I note the Council's reference to the observation in *Stevens* judgement that in an area of social policy the cases likely to succeed under Article 8 will be few in number because of the importance of having coherent control over town and country planning to serve the public interest and also to protect the rights and freedoms of other individuals¹⁵.

¹⁵ *Jane Stevens v Secretary of State for Communities and Local Government & Guildford Borough Council* [2013] EWHC 792 Admin at paragraph 68.

117. As a general rule it is highly relevant whether or not the home was established unlawfully in considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued. In this case the background is of an unsuccessful search for sites over a period of time. Mr Rooney stated he did not realise planning permission would be needed because of the history of residential use and the presence of caravans on the Alderbourne Cottage land. Nevertheless the development involved engineering operations, where some works took place after the Council had made clear the site was unauthorised. The appellants' position is slightly weaker as a result. However, the rights of the children are not affected by such actions.

All relevant considerations relating to the rights of enjoyment of family life and the home

118. Mr Rooney has owned the appeal site since July 2011. By all accounts it is the only land available to them as a settled base where they are able to station their caravans. They have lived all their lives in caravans. They have travelled widely but have close connections to the area, dating back to childhood. A lot of their family continue to live within the wider area. At the time of the last appeal Mr Rooney's sister and her family were living on the site. In order to reduce the scale of development they have returned to living on the road, despite serious health issues. In 2013 reference was made to the family being practising Catholics and attending the church at Gerrards Cross.

119. To earn a livelihood Mr Rooney does block paving, driveways and landscaping mostly around Buckinghamshire and Hertfordshire. He also travels looking for work in other parts of the country, when the rest of the family may travel too. In the last year or so the family travelled less because of the uncertainty with the enforcement notice and because Mrs Rooney was pregnant. The indication is that the appellants have limited means, do not have the funds to purchase land elsewhere and therefore are reliant on social provision of an alternative site. No local authority pitch is known to be available. An alternative of moving to bricks and mortar is unlikely to be acceptable in view of their cultural and family tradition of living in caravans. Taking account of past experience in the event the family are unable to stay on the site for a temporary period they are likely to return to living on the road, stopping in car parks and on waste ground, or doubling up with others.

The best interests of the children

120. The appellants have four children – the eldest daughter is 15/16 years old, their son is a few years younger, Lily is of primary school age and their youngest child was born last year. The two oldest children were unable to have a stable education and did not proceed to secondary school. The principal of Denham Green Primary School noted that Lily has lots of friends in school and was of the view that she needs to be able to attend school every day to receive the education she needs and deserves. A member of the church visits 2 to 3 times a week to offer home tutoring.

121. To be able to continue living on the site would enable Lily to continue with her education in a familiar school environment and the older children to have assistance in their learning. Very little information was forthcoming about the health or more general interests and family ties. However, a reasonable expectation is that they benefit from living near to relatives and having access to health and medical services.

Public or community interests to be balanced against the individual or family interests

122. The purpose of the planning system is to contribute to the achievement of sustainable development by fulfilling economic, social and environmental roles. Positive improvements should be sought in the quality of the built and natural environment as well as in people's quality of life in order to meet not only present but importantly future needs. The regulation of land use is in accordance with the statutory framework. The interference with the exercise of the Article 8 right may be necessary in the interest of the well-being of the country, a legitimate aim that includes protection of the environment. In this case the environmental resources of the site and its surroundings have a high level of policy protection because of their value to the area's heritage, landscape and amenity.
123. The very substantial harm caused by the development is fully explained in the reasoning on the planning issues. In brief, the development encroaches into the Green Belt, ancient woodland and the diverse habitat has suffered from land clearance and the pressures of daily human activity, distinctive characteristics of the landscape have been eroded and the setting of a designated heritage asset has not been preserved. The proposed mitigation would not adequately offset the harm and natural regeneration would be delayed.

Fair balance

124. The ability to stay on the site would enable the family to have safe accommodation with the essentials for daily living, from where they could, when needed, conveniently access health and welfare facilities and essential services. Importantly Lily would have the opportunity to continue with her education, avoiding the disruption and lack of stability in schooling experienced by her older siblings. The youngest child is likely to be vulnerable by reason of age alone. The best interests of the children would be served by their existing home. Existing strong family ties would be supported.
125. The importance of a home to health and well-being is recognised by the Framework and more particularly a healthy living environment is identified as meeting the needs of children and young people to grow and develop. The family have endeavoured to provide a stable home for themselves, taking the opportunity of land becoming available next to Alderbourne Cottage. The interference with the family's Article 8 rights would be serious if they are not allowed to remain. The social, cultural and equality considerations are strong.
126. Balanced against these conclusions is the damage and harmful impact on the local environment where there is a high level of protection because of the value society places on irreplaceable habitats, familiar landscapes, heritage assets and keeping land open and free of development. The development plan places high priority on protecting and conserving such a resource.
127. A time-limited permission is being sought and the Council accept that the land will be able to regenerate in time. Nevertheless serious harm to the environment and the public interest is continuing. My conclusion is that the interference with the private rights of the family is necessary and proportionate. The compliance period will be considered under the ground (g)

appeals to ensure that the planning policy objectives are achieved with the least interference necessary to the family's rights.

Conclusions on ground (a) and the deemed planning application

128. The initial Green Belt balancing exercise indicated that the development is not acceptable for a time-limited period. The proportionality assessment demonstrates that interference with the family's Article 8 rights would be necessary and proportionate. The totality of the harm is not clearly outweighed by the combined weight of the other considerations. There are not the very special circumstances to justify planning permission even for the temporary period sought.
129. In this case the social benefits to the family are insufficient to overcome the very strong environmental harm. The caravan site is not in an appropriate location and taking all relevant matters into account it is not a sustainable form of development. Consequently the proposal is contrary to the Framework.
130. A grant of planning permission is not supported by Policy GB1 of the Local Plan. The renovation works to the outbuilding conflict with Policy GB2. The land is not suitable for a traveller site when assessed against all the factors in Core Policy 4. The development is contrary to highest level of protection afforded to the District's designated historic assets by Core Policy 8. The harm caused to landscape character, of which ancient woodland is an essential component, is not outweighed by the importance of the development and no net gain in biodiversity would result. The rural/urban fringe would not be improved contrary to the aims of the Colne Valley Park Action Plan. For these reasons the development fails to comply with Core Policy 9. The development is not in accordance with the development plan when considered as a whole.
131. Given my findings on the sustainable development matters there are no material considerations that warrant a decision other than in accordance with the development plan. The proposal is unacceptable.
132. For the reasons stated above, and having taken account of all other matters raised, I conclude that the appeal on ground (a) should not succeed.

Appeals on ground (f)

133. The issue is whether the steps required by the notice exceed what is necessary to remedy the breach of planning control, namely the unauthorised material change of use.
134. The Council accepted that the steps should be varied. The proposed amendments included deletion of step (v). I agree that step (v) is excessive in that it goes beyond restoring the land to its condition before the breach took place by requiring restoration of the land to land used for residential purposes ancillary to Alderbourne Cottage. Therefore a variation is necessary.
135. Mrs Heine was concerned that the phrase "including but not limited to" in steps (iii) and (iv) resulted in the appellants not knowing exactly what they had to do to comply with the requirements. The Council's aim was to capture works that may take place after the notice was issued.
136. Section 173(3) states that an enforcement notice shall specify the steps which the authority requires to be taken or the activities which the authority

requires to cease. The Planning Encyclopaedia notes that the use of the term 'specify' connotes a greater degree of particularity than the word 'state' and draws attention to the criminal liability that attaches where an enforcement notice is not complied with. In that context the phrase "including but not limited to" in step (iii) indicates a degree of uncertainty. However, the phrase has to be read together with the wording of the requirement as a whole. In step (ii) the phrase is used to expand on what is required to be removed as a result of the unauthorised use. In step (iii) the link is with the requirement to remove all associated works and operational development undertaken to facilitate the unauthorised use or as in step (iv) the use of the outbuilding. The appellants are best placed to know what has been brought onto the land in connection with the caravan site use. The deletion of 'not limited to', as proposed at the inquiry, would be appropriate because the phrase is embraced by the word 'including' and is unnecessary. In step (ii) minor changes to the wording will ensure the requirement is specifically directed at use of the land as a caravan site.

137. The appellants partly succeeded on ground (d). The wording of step (iii) with the variation proposed by the Council distinguishes between the earth and materials imported for the purposes of re-profiling the land and the hard surfacing. To reflect my findings the wording shall be slightly amended to reference the imported materials to the eastern part of the site and the inclusion of stone and new fill material in relation to the hard surfacing.
138. The appellants took issue with the requirement to remove domestic paraphernalia, vehicles, hard surfacing, fencing, entrance gates and pillars. The view taken was that these features would also support and be expected on land where there is a lawful residential use of a previously developed site. I disagree because the Council is properly enforcing against a material change of use where that development has entailed physical works to facilitate and support it. The works are thus integral to the unauthorised use and the statutory scheme allows the enforcement notice to require the removal of such works as well as the cessation of the use itself. The domestic paraphernalia and vehicles to be removed are specific to the unauthorised use and the requirement does not infringe on lawful use rights.
139. The appellants raised more specific points regarding the removal of fencing. They considered that where fencing is now the boundary of the land that they own it should be allowed to remain because it does not exceed 2 m in height and it could be erected in association with the lawful use of the land for residential purposes.
140. As an initial observation the fencing in question is not described or identified by means of a plan. The matters raised are whether fencing was integral to the use to a caravan site or whether it would benefit from permitted development rights, so that it could be re-erected in conjunction with the lawful use (akin to a fallback consideration).
141. Close boarded fencing exists along the common boundary with the cottage, the boundary fronting The Long Drive, the boundary with Area 2 and the southern boundary with the woodland at Alderbourne Manor¹⁶. The probability is that fencing was erected around June/July 2011 at the time the change of use occurred to provide privacy and enclosure and to define property

¹⁶ The fencing is marked on the site plans submitted with Mr Tolkovsky's evidence.

- boundaries. The fencing to the rear of the workshop was probably erected at a later date in conjunction with the renovation to the outbuilding. The solid nature of the fencing indicates its function is more than just to define the extent of land ownership. On that basis the fencing would be integral to the unauthorised use and its removal is not excessive.
142. In the alternative, there are permitted development rights in respect of minor operations¹⁷. Class A of Part 2 of Schedule 2 to the relevant Order permits development of 'the erection, construction, maintenance, improvement or alteration of a gate fence, wall or other means of enclosure'. A.1 specifies development that is not permitted by Class A, where the restrictions on height and development within the curtilage of a listed building are particularly relevant.
143. The best available information on the height of the fencing is on the site survey plan. The fencing along the ownership boundaries is above 2 m high and along The Long Drive the height is given as 1.75 m. Furthermore the appellant has not considered the fencing in relation to the curtilage of the listed building or whether the fencing on the eastern boundary is adjacent to a highway. In the absence of a detailed case to show otherwise, I am not persuaded that the fencing is permitted development. The probability is that the fencing was not substantially complete before 29 April 2011. Consequently the fencing is not immune from enforcement action. Therefore even if the fencing did not facilitate the change of use a breach of control occurred against which enforcement action can be taken.
144. The timber rail fence through the centre of the land would have to be removed in any event in conjunction with the removal of the hardstanding and imported materials.
145. In conclusion the requirement to remove fencing is not excessive.
146. Step (iv) is concerned with restoring the outbuilding to its condition immediately prior to the making of the unauthorised material change of use. Mrs Heine initially argued that the requirement should be restricted to the cessation of the use and questioned why the Council took issue with any kitchen, bathroom or internal alterations when these were all done by the previous owner. At the end of inquiry the concern more particularly focused on the removal of a bathroom.
147. The evidence shows that in July 2011 there was an outbuilding comprising three elements, referred to at the inquiry as a workshop, cabin and office¹⁸. It appears from the OS Map and the reports of the Council's investigations in the late 1990s up to 2003 that the outbuilding (at least the workshop and office elements) had been rebuilt at some time. In July 2002 the cabin was described by the Council's investigating officer as having running water, electricity, flush WC, cooking facilities and furniture. A washing machine was in a shed next to the cabin. In June 2003 a 'log cabin' was said to be capable of being used as ancillary accommodation but at the time it was being used as an office.
148. Mr Rooney stated that when they first moved onto the site he renovated the chalet/sheds. The works included repairs and staining the external timber

¹⁷ The rights are contained in the Town and Country Planning (General Permitted Development) Orders of 1995 and 2015. In both Orders Part 2 of Schedule 2 relates to Minor Operations.

¹⁸ Appendix 4E to Mrs Heine's evidence are photographs taken by Mr Rooney in July 2011.

cladding green¹⁹. He also stated that he formed a kitchen in the old office. The kitchen and bathroom in the chalet were kept and used as a utility room. At that time the owner of the cottage was allowed to use the workshop for furniture restoration and storage. The Council brought forward no detailed evidence to the contrary, although there are photographs of the interior dated 18 July 2011, where the cooking facilities consisted of perhaps a microwave or very small cooker and an electric hob on a table.

149. Mr Rooney stated that following the last appeal he decided to renovate the outbuilding, with a view to providing a day room for use in association with the mobile home. The workshop use ceased, the double door opening off the driveway to the Cottage was closed off and infilled and a fence erected. The composite structure was extended to form a single building. The works comprised an infill extension, the erection of a dummy pitched roof and overhang to form a veranda, the addition of a brick skirt/plinth, insertion of new uPVC windows, re-tiling, a white render finish to the external walls, and internal alterations to reconfigure the room layout and install heating, lighting and domestic facilities. In 2015 the building was said to be a shell. By the time of the appeal site visit central heating, a boiler and bathroom was installed but no kitchen.
150. Therefore the works to the outbuilding took place in two stages, the first was a modest refurbishment and the second phase involved more substantial alterations and fitting out. Mr Franklin's evidence shows the objection is to the more substantial renovation because the works fundamentally altered the appearance of the outbuilding so that it looks like a separate dwelling internally and externally. As seen from the planning history this concern prompted an enforcement notice alleging a change of use of the building to use as a single dwelling.
151. I consider that the wording of step (iv) should be varied so as to ensure restoration of a lawful use is not read into the requirement. The external works required to be removed should be specified in the requirement and be limited to those works carried out in later renovation. To require restoration further back to the condition immediately prior to the breach would not be necessary to prevent a resumption of the unauthorised use and goes beyond what is necessary to remedy the breach. This approach would not cause any injustice to the appellants and would address their wish for certainty.
152. As regards the internal works, the Council relied on the *Kestrel Hydro* case²⁰ which stated that "the judgement in *Bowring* does not warrant an approach in which works carried out after the breach of planning control and integral to the unauthorised use of the land must be considered as potentially available for the resumption of a previous lawful use, or for some other use that is lawful".
153. The proposed use as a day room on a traveller caravan site is distinct from a residential use incidental to the principal dwelling house. Dayrooms usually incorporate kitchens and bathroom facilities, which are not always appropriate or acceptable to have in the main caravan with living and sleeping accommodation. In this instance the intention was for the bathroom installation to replace the utility block on the site. Undoubtedly the works carried out within the outbuilding were to facilitate and would be part and parcel of the

¹⁹ See Appendix 4F to Mrs Heine's proof which reproduces the Council's photographs dated June 2013.

²⁰ Op cit paragraphs 43 and 52

unauthorised use. To require their removal to remedy the breach is not excessive. Furthermore, the appellant has not provided any detailed information about the kitchen and bathroom facilities in the chalet. The description in 2002 suggested that the facilities were minimal and not comparable to the new bathroom installation. No new kitchen was installed. However, to require the removal of new lighting, heating and windows would be disproportionate.

154. The appeals on ground (f) succeed to the extent described above and the requirements will be varied accordingly.

Appeals on ground (g)

155. The issue is whether the compliance periods of six and eight months are reasonable. The appellants are seeking at least 12 months to cease the use with a further two months to carry out the remedial works.

156. Compliance with the requirements will mean the loss of their home and no alternative site has been identified. The serious implications for the family have been considered in the proportionality assessment. A maximum period should be allowed to limit the impact on and disruption to family life as much as possible. A compliance period of 12 months to cease the use and remove the caravans (steps (i) and (ii)) strikes the right balance, with a further two months to remove the associated works. To this extent the appeals on ground (g) succeed.

Conclusion

157. For the reasons given above the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations, and in respect of the appeal by Mr Joseph Rooney I refuse to grant planning permission on the deemed planning application. I am satisfied that this outcome is necessary and proportionate and no violation of the appellants' human rights would result.

APPEALS: AREA 2

Enforcement notice and grounds of appeal

158. The Council accepted that a new plan should be attached to the notice in order to correct the precise boundary between Area 1 and Area 2. The Council also requested that the description of the alleged breach of planning control should be corrected to delete reference to the alleged unauthorised commercial and storage uses. On this understanding the ground (b) appeals were not pursued.

159. At the inquiry the appellants withdrew the ground (d) appeals in respect of the retention of a caravan on the site, recognising that the breach only concerned caravans occupied for residential purposes. The ground (d) appeals were also withdrawn in respect of the hard standing after the Council produced evidence that the work was done at the time the appellants purchased the site. The appellants accepted that the works facilitated the change of use of the land to a caravan site and not, as previously understood, for the use of the land for the storage of cars. I will take no further action on the ground (d) appeals

160. The Council's proposed amended description of the alleged breach of planning control is: "Without planning permission, the material change of use

of the Land from a use for residential purposes incidental to Alderbourne Cottage to use of the Land as a caravan site with the stationing of caravans used for residential purposes separate from the residential use made of Alderbourne Cottage (Unauthorised Use) together with the associated works and operational development undertaken (including the importation of earth and materials for the purposes of re-profiling the Land and the construction of a vehicular access) to facilitate the Unauthorised Use.”

161. The description of the alleged breach should fairly tell the recipient what he has done. Similar matters arise from this description as with the notice for Area 1. The reference to the previous use will be deleted because I am not satisfied that residential use incidental to Alderbourne Cottage is accurate. The notice is directed at an unauthorised material change of use and also the operational development facilitating the use as a caravan site. It is not essential to specify all the enabling works in the allegation and the Council’s approach is acceptable.
162. As set out in the planning history an enforcement notice issued in August 2011 against the importation of earth and materials onto the site came into effect. The 2015 notice also includes a similar operation in the description of the allegation. To delete this element of the breach would cause injustice because it would deny the appellants the benefit of a new compliance period which would come into effect in the event the 2015 notice is upheld.
163. The proposed amended wording to the requirements is appropriately considered under the ground (f) appeals.

Appeal on ground (a) and the deemed planning application

164. The deemed planning application is derived directly from the description of the breach of planning control as proposed to be corrected. The statutory provisions allow for planning permission to be granted in respect of the whole or part of the breach or in relation to the whole or any part of the land. In this respect, the appellant is seeking permission for a single pitch together with their twin unit mobile home with steps, a touring caravan, a portacabin shower /toilet block and a small utility shed. The new entrance is also necessary in order to gain access to their land. They would like to retain the tarmac hard standing but have indicated that the rest of the site can be returned to woodland. Planning conditions could reasonable control the number and type of caravans, ancillary structures, site layout and extent of hard surfacing to reflect the level of development sought.
165. The main issues are:
- The effect of the development on the openness and purposes of the Green Belt.
 - The effect of the development on (i) the amenity and character of an area of protected ancient woodland; (ii) woodland habitat and objectives for enhancing local biodiversity resources; (iii) the character and appearance of the surrounding countryside and Colne Valley Park.
 - The effect of the development on the setting of the grade II listed building Alderbourne Cottage.

- The effect of the new access on highway safety on Fulmer Lane, with particular regard to visibility.
- The existing level of local provision and need for traveller sites.
- The availability (or lack) of alternative accommodation for the appellant and his family.
- Other relevant personal circumstances of the appellant and his family, including consideration of the best interests of the children.
- Whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations to enable the development to be justified by very special circumstances.
- In the event the Green Belt balance is against the development, whether requiring the use to cease would be necessary and proportionate.

Effect on the Green Belt

166. Before the unauthorised development took place a static caravan, with associated porch and decking was stationed on the land. There was good woodland cover and the land was not distinguishable from the wider woodland area associated with Alderbourne Cottage and Alderbourne Manor.
167. When the land was acquired by the appellants a new planning unit was created. The material change of use has involved the stationing of a static caravan on a concrete base and touring caravans, installation of utility services and the siting of a utility block and the introduction of additional domestic features. Between 2011 and 2015, substantial ground works were carried out including land clearance, the importation and deposit of materials such as hard core and rubble, and the laying of extensive hard surfaces. A new site entrance was formed onto Fulmer Lane and close boarded fencing erected. The new residential unit has resulted in a very significant increase in activity and parked vehicles when compared to the former limited incidental residential use.
168. The caravan site is inappropriate development in the Green Belt, based on Policy E of PPTS and paragraph 90 of the Framework. By definition the site is harmful to the Green Belt and should not be approved except in very special circumstances. The effect on openness has been severe. A purpose of Green Belt is to assist in safeguarding the countryside from encroachment. The development conflicts with that purpose, notwithstanding the previous use. In this case the totality of the harm to the Green Belt has a degree more than substantial weight, bearing in mind the scale of the development, the proposed remedial works and the temporary permission sought.

Ancient woodland

169. There is no doubt that the woodland by Alderbourne Cottage has been subject to varying levels of human influences over recorded history. However in these appeals the focus is on the impact of a particular development on a small but valuable area of ancient woodland. Ancient woodland has a high level of policy protection both through the development plan and national policy. The importance of the woodland resource is very much linked to the issues on biodiversity and local character.

170. The series of photographs taken by the Council illustrate the large scale change to the woodland through the clearance of trees and vegetation, the raising of round levels by the importation of materials, the laying of hard standing and tarmac surfaces and the erection of close boarded fencing. The probability is that trees that have not been removed have suffered direct and longer term damage from the severance of roots, soil compaction and the extension of hard surfacing up to the base of the trunks. Mature trees are showing signs of stress.
171. A settled base with regular daily activity and parking has increased the level of human influence and activities. The absence of a buffer area between the development and woodland edge increased the likelihood of damage to the trees, understorey and ground flora. Dr Newell also considered that the development was changing the hydrology of the area, causing damage within the immediate site and to a wider area of woodland. The change in the management of the woodland and maintenance of cleared areas for parking and circulation has adversely impacted on the soil communities and deadwood thereby reducing the site's value. Natural regeneration is being prevented.
172. The proposed mitigation included the creation of a 15 m buffer zone and a set of clear guidelines for the occupiers of the site, detailing the activities that should and should not occur in ancient woodland. The mitigation is aimed at helping to prevent and limit any future impact and would not undo the damage already caused. I have concern that the stress on the woodland and individual mature trees would continue, perpetuating the decline in their health and stability. I agree with the Council that regeneration should be enabled as soon as possible.
173. In conclusion the development has resulted in the loss and deterioration of an irreplaceable habitat. The harm is serious and ongoing. The effect of the proposed mitigation would be limited. The development conflicts with the protection sought by Core Policy 8 and Local Plan Policy L10. In assessing the amount of weight that should be given to the identified harm, it is relevant that the harm potentially would be short term and the woodland is expected to regenerate over time. With those factors in mind the harm has significant weight.

Biodiversity

174. The importance of the conservation and enhancement of biodiversity is confirmed by paragraphs 117 and 118 of the Framework. Consistent with the Framework, Core Policy 9 of the Core Strategy seeks a net gain in local biodiversity resources within a Biodiversity Opportunity Area. The Biodiversity Action Plan seeks enhancements to woodland and connectivity in the area.
175. The development has resulted in the loss of a relatively diverse woodland habitat with a mixed flora and fauna and its replacement with characteristics and features which lack any biodiversity value. In addition a length of boundary hedgerow was removed to create a new site access. The Council also drew attention to the potential impact on bats, given the likelihood of bat roosts across the whole of the site. All bat species are European Protected Species.
176. The proposed mitigation consists of the planting of a 15 m buffer zone and the erection of bird and bat boxes, based on advice from an ecologist as to their appropriate siting and location. These proposals could be secured

through a planning condition requiring the implementation of an approved site development scheme, which may take time to resolve.

177. In a County that is not well served in terms of its biodiversity resources, the loss of even a small area of priority habitat is significant. The proposed mitigation would do little to offset the harm over a three year period. A net gain in biodiversity would not be achieved. There is conflict with Core Policies 4 and 9 and national policy in the Framework to conserve the natural environment. The harm has significant weight.

Character, visual amenity and Colne Valley Park

178. The land contributed to distinctiveness of the local landscape character by reason of the woodland cover and the boundary hedgerow. Woodland has been lost. In addition the creation of a wide site entrance with visibility splays has resulted in the loss of a good length of hedgerow on the site frontage. The gateway marked by high stone clad piers and gates is an unnecessarily strong feature. The development has caused harm to the rural character of Fulmer Lane and reduced the sense of enclosure and visual unity. The insertion of caravans, hard surfaced areas, close boarded fencing and other domestic features have an urbanising effect, causing harm to the rural landscape character and the parkland setting and disturbing the settlement pattern on Fulmer Lane.
179. The harmful effect on visual amenity has been very significant because of the position of the site close to Fulmer Lane and the creation of a new access. In particular the break in tree cover is very noticeable and has a harmful effect on local views and the visual attractiveness of the lane.
180. The development detracts from and causes harm to the distinctive character of the surrounding area and is visually intrusive. Even allowing for the particular requirements of a traveller site and the proposed changes to the layout, the development would not achieve a sufficiently good standard of design. Aims of the Colne Valley Park Action Plan to protect the countryside would not be promoted. There is conflict with Core Policies 4, 8 and 9. Taking account of the potential short term nature of the harm, the weight is significant.

Effect on listed building

181. The expert evidence of Dr Edis was in support of the appeal by Mr J Rooney. However, my reasoning and conclusions on the history and significance of the Cottage, its relationship to Alderbourne Manor and its surroundings apply equally to Mr Felix Rooney's site. The statutory and policy requirements that have to be applied are the same. These considerations inform my conclusions on the effects that arise from the site specific effects but to save repetition I do not repeat the historical and policy context here.
182. The caravan site is in close proximity to Alderbourne Cottage and historically the land shared a common access off The Long Drive. A new access was constructed to give direct access onto Fulmer Lane and the site is now separated by close boarded fencing from the land remaining within the same ownership as the Cottage. The sylvan woodland setting to the Cottage and the visual unity with Alderbourne Manor has suffered from the clearance of trees and vegetation, the loss of hedgerow along Fulmer Lane and its replacement by

an insensitive form of access and boundary features. On site extensive hard surfacing, including tarmac, and the introduction of visually discordant caravans and incidental structures have had an 'urbanising' effect.

183. The negative effect would not necessarily be permanent because a time limited permission is being sought, which would enable the woodland to regenerate in time. Also, the development's neutral effects on the setting must be weighed in the balance. The surviving Picturesque ornee character of the cottage may still be appreciated and the course of the mid-19th century approach drive to the Manor remains unchanged. However, unlike Area 1, the impact of Area 2 is more publicly evident and as a result there is a more harmful effect on the wider appreciation of the setting to the listed building.
184. My conclusion is that the development has resulted in less than substantial harm to the significance of a designated heritage asset. The Framework requires the less than substantial harm to be weighed against the public benefits of a proposal. In this case the public benefits centre on the development's very limited contribution to the supply of traveller sites (by reason of the time-limited personal permission sought) and the potential avoidance of the family having to resort to unauthorised encampment and the possible associated environmental, social and economic costs. The less than substantial harm to the setting of the heritage asset is not outweighed by the public benefit.
185. The identified harm has to be placed within the context of the considerable importance and weight to be attached to the desirability of preserving the setting of the designated asset. In addition, Core Policy 8 states that the protection of the District's historic environment is of paramount importance. On that basis the harm has significant weight.

Highway safety

186. Policy TR5 of the Local Plan, which is specific to proposals that involve a new or altered access onto the highway, requires regard to the effect on safety and the environment. The Local Transport Plan and the policies of the highway authority aim to improve road safety. Manual for Streets 1 points out that frontage vehicle access should be considered from the viewpoint of people passing along the street as well as those requiring access.
187. Fulmer Lane is an unclassified rural road connecting to the A40 Oxford Road to the north. In the vicinity of the site the carriageway is not sufficiently wide to allow opposing vehicles to pass. There are no footways or street lighting and the national speed limit of 60 mph applies. Nevertheless in practice the character of the highway acts to reduce vehicle speed. Survey data produced for the 2013 appeal indicates that at a point close to the site access the 85th percentile speed for northbound vehicles was 37.8 mph and for southbound vehicles 36.1 mph. There is a 7.5 tonne weight restriction except for access which is effective in limiting the number of heavy goods vehicles using the lane.
188. Based on the guidance in Manual for Streets the highway authority is seeking visibility splays of 2.4 m x 56 m to the north of the access junction and 2.4 m x 73 m to the south of the access junction. There is agreement that the visibility splay achieved to the south (left on exit), 2.4 m x 118 m, is in excess of the guidance. However, to the north the highway authority considered

visibility to be below the requirement, measuring 2.4 m x 14 m to the nearside edge carriageway or 2.4 m x 18 m to the centre of the carriageway. At a distance 2 m back from the nearside edge of the carriageway a slight increase in visibility was achieved to a maximum of 20 m, a distance which remained significantly below the requirement of 56 m. A hedge in the highway verge adjacent to the access was identified as the reason for the restricted visibility. The local planning authority considered removal of hedge would be unacceptable because of the detriment to the local environment.

189. The Area 2 access would not be safe on the basis of the visibility measured initially by the highway authority. However, on the site visit measurements were taken that indicated a vehicle at the access would be able to be seen by drivers travelling south at a distance of around 80 m. A visibility splay in the order of 50 m could be achieved by nudging forward. Also, probably because of the characteristics of the carriageway, it was noticeable that southbound drivers tend to brake twice on the approach to the new entrance, which has significance for vehicle speed and stopping distance. Despite the long established accesses to the north and the south having restricted visibility the accident record going back some 10 years shows that there have been few accidents on Fulmer Lane. Those that have occurred did not involve means of access or turning movements and were not on the stretch of road near the site access. These factors lead me to conclude that the new access would not have a significant effect on highway safety.
190. The development may be expected to generate in the order of 6 to 8 vehicular movements (two way) per day. The number of caravans on site could reasonably be controlled by planning condition, limiting the potential of an increase in traffic generation. The highway authority expressed concern that the new access and associated additional vehicle movements would exacerbate the potential for vehicle conflict on a narrow road that is unable to safely and conveniently cater for the two way movement of vehicles. In my view this is very much a secondary issue to visibility because the low number of vehicle movements would not be significant within the day to day variability in traffic flow on Fulmer Lane. I also observed that the new access assists by providing a passing place, which reduces potential for vehicle conflict.
191. Manual for Streets emphasises the importance of context. Whilst I was referred to the reported statistically significant relationship between collision occurrence and access provision on rural roads, the text indicates the research was undertaken on all purpose trunk roads. There is no direct applicability of the finding to Fulmer Lane. The position differs to that considered by the Inspector in 2013, not least because a new access is involved and site conditions at the site entrance are not exactly the same to those at the access to The Long Drive. Nevertheless my conclusion is consistent with her pragmatic approach, supported by Manual for Streets 2. The new access is not contrary to development plan, national and local policy on promoting highway safety. The main objection is on grounds of its harm to local character and visual amenity.

Need, personal circumstances, best interests of children

192. The GTANA confirmed a pressing current need and continuing need for additional pitches into the future. The appellants were identified as having an immediate need for a settled base. This personal need for a pitch, together

with the general need for new pitches in the District, the County and more widely are factors that lend support to the development for a temporary period, as proposed.

193. The Council accept that it is unable to demonstrate a 5 year supply of deliverable sites. In view of the location of the appeal site in designated Green Belt, this consideration may not have the significant weight applied to a site outside Green Belt. However, no traveller sites have been allocated through the development plan process. Identification of sufficient sites for the traveller community has been outstanding for a number of years and to date the Council has made little progress in identifying suitable additional provision to meet the need set out in Core Policy 4. In view of the continuing shortfall of available pitches in the District, County and Greater London area and I attach moderate weight to the absence of an up-to-date 5 year supply of deliverable sites in South Bucks District.
194. The appellants have strong local connections. They have lived and travelled in Buckinghamshire for most of their lives and family members currently live within the County and surrounding area. After trying unsuccessfully to obtain planning permission for a site in Bedfordshire around 2008, they travelled extensively and latterly stopped in a yard of a relative in Welwyn. They began to occupy the land in their caravan in August 2012. They usually buy a touring caravan family for the summer months and then sell it when they have finished travelling for the year.
195. The appellants have three teenage children. They no longer attend school for various reasons and the two girls have health problems requiring varying levels of treatment and care. The starting point is that their best interests have substantial weight. In addition Mr Felix Rooney has health problems, which in the past have necessitated hospital care.
196. If they are unsuccessful in their appeal they know of no other site and therefore expect they would return to a roadside existence, doubling up with others when and where possible. The Council is unable to suggest an acceptable alternative site either.
197. An aim of Government policy is to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure. The circumstances of the family indicate the importance of a settled base in order to promote equality of opportunity and to safeguard the best interests of the children. Accordingly I attach significant weight to the lack of an alternative available site that is affordable and acceptable. Little additional weight applies to the known personal circumstances. Given the information on the specific and relevant factors in this case, their best interests of the children have significant weight.

Other considerations

198. Most of the land in the District outside the main settlements is designated as Green Belt. A number of pitches granted a temporary planning permission over the last 5 years were located in the Green Belt. The Core Strategy acknowledges that the Council may have to consider releasing one or two very small areas of land from the Green Belt in order to meet the requirement for additional pitches. Core Policy 4 also allows for suitable sites already with a temporary permission to become permanent. Therefore the difficulty of finding

suitable non-Green Belt sites is recognised. However, the very special circumstances test still has to be met. The appeal site may be more heavily constrained by environmental issues than other sites and consequently the grant of time-limited permissions elsewhere do not set a precedent that should be followed.

199. Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for the reversion to its previous lawful use (s57(4)). Whilst it is not possible to ensure the land would be left to regenerate naturally, there is a better prospect of this happening than where the unauthorised use is allowed to continue. The fallback is not a factor that weighs in favour of the caravan site.
200. Addressing concerns by planning condition has been taken account of in the reasoning throughout.
201. With reference to the criteria in Core Policy 4 and issues identified in PPTS, the site has good access to the highway network and the low level of traffic generated from a single pitch would have no significant effect on the locality. The site is not in an area at high risk of flooding and the development would not place undue pressure on local infrastructure. There are adequate levels of privacy and residential amenity for the occupiers and local residents. The single pitch is of a scale that would respect and not dominate the settled community. On site there are adequate facilities for parking, storage, play and water supply. Consequently there is no harm attributable to these considerations. Compliance with these policy criteria is not sufficient to demonstrate the overall suitability of the site.

Balancing exercise

202. The site is heavily constrained by the Green Belt designation, its habitat and proximity to a listed building, where there are high standards of policy and statutory protection. The need for and the benefits of the development located adjacent to Alderbourne Cottage does not clearly outweigh the temporary loss and deterioration of ancient woodland when account is taken of its importance and value for biodiversity, its cultural value and social history, its contribution to the distinctiveness of the landscape character and visual amenity of the area. The total weight against the development as a result of the environmental harm, albeit for the temporary period sought, is very substantial and weighs strongly against the acceptability of the caravan site.
203. As to the key factors weighing in favour of the developments, all aspects of general need has moderate weight as does the lack of an up-to-date 5 year supply of deliverable sites in South Bucks District. The lack of an alternative available site that is affordable and acceptable has significant weight. Very little additional weight applies to the known personal circumstances. Given the information on the specific and relevant factors in this case, the best interests of the children have significant weight.
204. Taking all matters raised into account, the harm to the Green Belt by reason of inappropriateness, and the other identified harm, is not clearly outweighed by other considerations, even when their positive contributions are taken together. Very special circumstances do not exist to justify the development for a time limited period.

Proportionality assessment

205. The land is the home of the appellants and their children. As a result of a lack of success on the ground (a) appeal the use of the land as a caravan site will be required to cease and in effect they will lose their home. To date no alternative site has been identified. Unquestionably there would be interference with their home and their right to respect for their private and family life. The consequences for the family's wellbeing would be of such gravity as to engage the operation of their Article 8 Convention right.
206. The interference with the exercise of the Article 8 right would not be against the law provided that planning policy is lawfully applied. The interference would be necessary to regulate land use in an area that is environmentally sensitive and has a high level of protection in the public interest.
207. A proportionality assessment is required in order to undertake the fair balance set out in Article 8(2). Its purpose is to determine whether the protected rights of the appellants and their family would be disproportionately interfered with if the rights of the community are upheld by protecting the Green Belt and natural and historic environment. The assessment will draw on the very limited factual information that was forthcoming from the appellants and the conclusions on the issues of public interest that have been considered above.
208. Mr Rooney thought that they would be able to live on the site because there was already a caravan connected to essential utilities where people had lived. Previously they had been unsuccessful in gaining planning permission for a site in Bedfordshire and had been living on the road and doubling up with family. However it appears that development continued despite advice from the Council. The fact the home was established unlawfully is relevant when considering whether the requirement to leave the site is proportionate to the legitimate aim pursued. The appellants' position is weakened as a result. However, the children have their own individual rights which are not affected by such actions.

All relevant considerations to the rights of enjoyment of family life and the home

209. At the inquiry it was confirmed that Mrs Rooney bought the site on 21 July 2011 and that the title was subsequently transferred into her name later in the year. By all accounts it is the only land available to them as a settled base where they are able to station their caravans. They are Irish Travellers and have never lived in conventional housing. They have strong connections with the area, dating back to childhood. They have travelled more widely but a lot of their family continue to live within the wider area.
210. To earn a livelihood Mr Rooney has a paving business and gets work by leafleting. The indication is that the appellants have limited means, do not have the funds to purchase land elsewhere and therefore are reliant on social provision of an alternative site. No local authority pitch is known to be available. An alternative of moving to bricks and mortar is unlikely to be acceptable in view of their cultural and family tradition of living in caravans. Taking account of past experience in the event the family are unable to stay on the site for a temporary period they are likely to return to living on the road, stopping in car parks and on waste ground, or doubling up with others.

211. Mr Rooney does not enjoy good health and was intensive care at the local Wexham Park Hospital in 2015.

Best interests of the children

212. Mr and Mrs Rooney have three children aged 14, 13 and 11²¹. The children attended school for a short while the family stayed on the site in Bedford in 2008. Their youngest daughter Bernadette attended Denham Green Primary School but in view of particular circumstances her parents decided to take her out of school in December 2015. They have found a home tutor for her. The older children do not attend school.

213. Two of the children have health issues and Bernadette receives treatment in Uxbridge, which is relatively local to the site.

Public interests to be balanced against the family's interests

214. The Framework sets out that the purpose of the planning system is to contribute to the achievement of sustainable development by fulfilling economic, social and environmental roles. Positive improvements should be sought in the quality of the built and natural environment as well as in people's quality of life. The regulation of land use is in accordance with the statutory framework. Interference with the exercise of the Article 8 right may be necessary in the interest of the well-being of the country, a legitimate aim that includes protection of the environment. In this case the environmental resources of the site and its surroundings have a high level of policy protection because of their value to the area's heritage, biodiversity, landscape and amenity.

215. The very substantial harm caused by the development is fully explained in the reasoning on the planning issues. In brief, the development encroaches into the Green Belt and ancient woodland. The diverse habitat has suffered from land clearance and the pressures of daily human activity, distinctive characteristics of the landscape have been eroded. The setting of a heritage asset has not been preserved. The proposed mitigation would not adequately offset the harm and natural regeneration of the woodland is being prevented.

Fair balance

216. The ability to stay on the site would enable the family to have safe accommodation with the essentials for daily living, from where they could, when needed, conveniently access health and welfare facilities and essential services. The importance of access to medical help was well illustrated in the recent past. A stable home environment would provide the opportunity for the children to receive an education or in the alternative to receive regular home tuition. The best interests of the children would be served by their existing home. Existing strong family ties would be supported.

217. The importance of a home to health and well-being is recognised by the Framework and more particularly a healthy living environment is identified as meeting the needs of children and young people to grow and develop. The family have endeavoured to provide a stable home for themselves, taking the opportunity of land becoming available next to Alderbourne Cottage. The

²¹ The ages were given in the statement submitted in mid 2016

interference with the family's Article 8 rights would be serious if they are not allowed to remain. The social, cultural and equality considerations are strong.

218. Balanced against these conclusions is the damage and harmful impact on the local environment where there is a high level of protection because of the value society places on irreplaceable habitats, familiar landscapes, heritage assets and keeping land open and free of development. The development plan places high priority on protecting conserving such a resource.
219. A time-limited permission is being sought and the Council accept that the woodland would be able to regenerate in time. Nevertheless serious harm to the environment and the public interest is continuing. My conclusion is that the interference with the private rights of the family is necessary and proportionate. The compliance period will be considered under the ground (g) appeals to ensure that the planning policy objectives are achieved with the least interference necessary to the family's rights.

Conclusions on ground (a)

220. The initial Green Belt balancing exercise indicated that the development is not acceptable for a time-limited period. The proportionality assessment demonstrates that interference with the family's Article 8 rights would be necessary and proportionate. The totality of the harm is not clearly outweighed by the combined weight of the other considerations. There are not the very special circumstances to justify planning permission even for the temporary period sought.
221. In this case the social benefits to the family are insufficient to overcome the very strong environmental harm. The caravan site is not in an appropriate location and taking all relevant matters into account it is not a sustainable form of development. Consequently the proposal is contrary to the Framework.
222. A grant of planning permission is not supported by Policy GB1 of the Local Plan. The land is not suitable for a traveller site when assessed against all the factors in Core Policy 4. The development is contrary to highest level of protection afforded to the District's designated historic assets by Core Policy 8. The harm caused to landscape character, of which ancient woodland is an essential component, is not outweighed by the importance of the development and no net gain in biodiversity would result. The rural/urban fringe would not be improved contrary to the aims of the Colne Valley Park Action Plan. For these reasons the development fails to comply with Core Policy 9. The development is not in accordance with the development plan when considered as a whole.
223. Given my findings on the sustainable development matters there are no material considerations that warrant a decision other than in accordance with the development plan. The proposal is unacceptable.
224. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeal on ground (a) should not succeed.

Appeals on ground (f)

225. The issue is whether the steps required by the notice exceed what is necessary to remedy the breach of planning control.

226. The Council accepted that the steps should be varied. The proposed amendments included deletion of step (iv) requiring restoration of the land to land used for residential purposes ancillary to Alderbourne Cottage and greater precision in the wording of step (v) requiring reinstatement of a hedgerow on the Fulmer Lane frontage. I agree that these variations are necessary in that step (iv) was excessive and step (v) was not specific.
227. As with the notice for Area 1 the appellants took issue with the lack of specificity of the phrase 'including but not limited to' in steps (ii) and (iii). As a result there was uncertainty as to what had to be removed. In my view the phrase should be read in the context of the requirement as a whole. Step (ii) is specific in that the caravans, structures, domestic paraphernalia, equipment and vehicles to be removed are those connected with the unauthorised use. The appellants are best placed to know what has been brought onto the land in connection with the caravan site use. The requirement does no more than prevent the resumption of the unauthorised use. It does not impinge on lawful use rights. These comments apply to equally to step (iii). It was agreed at the inquiry that the septic tank and pipework should be in step (iii). The wording of the steps will be varied accordingly.
228. Step (iii) requires the removal of fencing, although the fencing in question is not described or identified by means of a plan. The matters for consideration are whether fencing was an integral part of the change of use to a caravan site or whether it would benefit from permitted development rights.
229. To recap, originally access to the site was taken via the driveway to Alderbourne Cottage but the provision of a new entrance was a condition of sale of the land. The access was created around the beginning of 2014. Fencing was erected on the Fulmer Lane frontage in order to define the visibility splays and vehicle entrance. Mr Rooney stated that the gap to the cottage was filled in with fencing to match. Mr Rooney also confirmed in his statement that timber panel fencing was erected along the boundary to the woodland when ground works were carried out. This fencing had gone by the time of the inquiry and there was an open boundary. Close boarded fencing was erected along the boundary with Area 1, although it is not clear whether Mr Joseph Rooney or Mr Felix Rooney was responsible for this. On the basis of reasons for issuing the notice, there is no doubt that the Council is seeking the removal of all the close boarded fencing.
230. The physical works were of a nature and scale to enable them to be truly integral to the material change of use. The fencing works do facilitate and support the use by marking the access serving the caravan site and by providing privacy and enclosure for the occupants. The close boarded panel fencing, by reason of its height and solidity, does more than define a property boundary. Therefore to require the removal of the fencing is not excessive.
231. The other aspect to consider is whether the fencing could be erected under permitted development rights in association with the lawful use of the land for residential purposes. Arguably, if so, it would be punitive and unreasonable to require its removal. A case has not been presented to demonstrate the fencing on the site frontage as a matter of fact would be permitted development bearing in mind that the fencing exceeds 1 m in height and could be said to be adjacent to a highway used by vehicular traffic. No consideration has been given as to whether the fence along the boundary with Area 3 infringes into the

curtilage of the listed building or whether it complies with the height limitation. Along the woodland boundary the removal of fencing indicates that such a physical form of boundary treatment is not necessary. The re-erection of a similar form of fencing would be unlikely. Again to require the removal of the fencing is not excessive.

232. I concluded that the new access did not have a significant effect on highway safety. Nevertheless its closure is still justified by reason of the harm to local character and visual amenity. On a matter of detail, the Council confirmed that the wooden pedestrian gates cited in step (iii) gave access into the woodland. There is no need to delete reference to them on the basis that the gates were present when the notice was issued.

233. The appeals on ground (f) succeed to the extent described above and the notice will be varied accordingly.

Appeals on ground (g)

234. The issue is whether the compliance periods of six and eight months are reasonable. The appellants proposed at least 12 months to cease the use with a further two months to carry out the remedial works.

235. Compliance with the requirements will mean the loss of their home and no alternative site has been identified. The serious implications for the family, especially the children, have been considered in the proportionality assessment. A maximum period should be allowed to enable the impact and disruption to be limited as much as possible. A compliance period of twelve months to cease the use and remove the caravans (steps (i) and (ii)) strikes the right balance, with a further two months to remove the associated works and operational development, reinstate the hedgerow and remove plant and debris. To this extent the appeals on ground (g) succeed.

Conclusion

236. For the reasons given above the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations, and in respect of the appeal by Mr Felix Rooney I refuse to grant planning permission on the deemed planning application. This outcome is necessary and proportionate in the public interest and no violation of the family's human rights would result.

DECISIONS

Appeal Refs: APP/N0410/C/15/3078099 & 3078100 (Area 1)

237. The enforcement notice is corrected by:

- The substitution of Plan 1 annexed to this decision for the plan attached to the enforcement notice.
- The deletion of the description of the alleged breach of planning control in paragraph 3 and the substitution of: Without planning permission, the material change of use of the Land to use as a caravan site with the stationing of caravans used for residential purposes and the use of an existing outbuilding as a day room incidental to the use as a caravan site, such uses being separate from the residential use of Alderbourne Cottage ("Unauthorised Use") together with the associated works and operational development (including the importation of earth and

materials for the purposes of re-profiling the Land) undertaken to facilitate the Unauthorised Use.

238. It is directed that the enforcement notice is varied in paragraph 5 by:

- In step (i) delete the word 'Uses' and substitute the word 'Use'.
- Delete the wording of step (ii) and substitute: Remove from the Land all caravans (including static caravans), structures including a utility block and shed, domestic paraphernalia, gas tank and associated pipework and meter box, and equipment and vehicles brought onto or erected on the Land in connection with the Unauthorised Use.
- Delete the wording of step (iii) and substitute: Remove from the Land all the associated works and operational development undertaken to facilitate the Unauthorised Use, including the earth and materials imported for the purposes of re-profiling the Land (approximately east of the entrance, internal driveway and outbuilding); hard surfacing including stone, new fill material, gravel and tarmac; concrete and brick bases, brick steps; fencing; entrance gates and pillars; CCTV poles and cameras.
- Delete the wording of step (iv) and substitute: Remove from the Land all the associated works and operational development undertaken to renovate the Outbuilding to facilitate the Unauthorised Use, comprising an infill extension, all alterations to the roof, a veranda, brick skirt, white render to all external walls, internal alterations to reconfigure the room layout and bathroom installation.
- Delete step (v).
- Renumber step (vi) as step (v) and at the end of the step substitute the wording '5 (i), (ii), (iii) and (iv) above.'
- In step (i) and step (ii) substitute 12 months as the time for compliance.
- In step (iii), step (iv) and renumbered step (v) substitute 14 months as the time for compliance.

239. Subject to these corrections and variations the appeals are dismissed and the enforcement notice is upheld, and in the appeal by Mr Joseph Rooney planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal Refs: APP/N0410/C/15/3129769 & 3129770 (Area 2)

240. It is directed that the enforcement notice is corrected by:

- The substitution of Plan 2 annexed to this decision for the plan attached to the enforcement notice.
- The deletion of the description of the alleged breach of planning control in paragraph 3 and the substitution of: Without planning permission, the material change of use of the Land to use as a caravan site with the stationing of caravans used for residential purposes, separate from the residential use made of Alderbourne Cottage ("Unauthorised Use")

together with the associated works and operational development undertaken to facilitate the Unauthorised Use, including the importation of earth and materials for the purposes of re-profiling the Land and the construction of a vehicular access.

241. It is directed that the enforcement notice in paragraph 5 is varied by:

- Delete the wording of step (i) and substitute: Cease the Unauthorised Use.
- Delete the wording of step (ii) and substitute: Remove from the Land all caravans (including static caravans), structures including a utility block and a shed, domestic paraphernalia, equipment and vehicles brought onto or erected on the Land in connection with the Unauthorised Use.
- Delete the wording of step (iii) and substitute: Remove from the Land all the associated works and operational development undertaken to facilitate the Unauthorised Use, including the earth and materials imported for the purposes of re-profiling the Land; hard surfacing including tarmac, gravel and shingle; concrete and brick bases; concrete and brick steps; septic tank and pipework; the vehicular access, entrance gates and pillars; fencing; wooden pedestrian gates; CCTV poles and cameras.
- Delete step (iv) and renumber steps (v) and (vi) as steps (iv) and (v).
- In the renumbered step (iv) add after "frontage" the words "with plants of a native hedgerow species between the points marked "X" in the approximate position on the Plan."
- In the renumbered step (v) delete the list of steps and substitute "5(i), (ii), (iii) and (iv) above."
- In steps (i) and (ii) substitute 12 months as the time for compliance.
- In step (iii) and renumbered steps (iv) and (v) substitute 14 months as the time for compliance.

242. Subject to these corrections and variations the appeals are dismissed and the enforcement notice is upheld, and in the appeal by Mr Felix Rooney planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Mrs Alison Heine BSc MSc MRTPI	Heine Planning Consultancy, Advocate and witness
She called	
Dr Jonathan Edis BA MA PhD MCIFA IHBC	Director of Heritage Collective
Mr Joseph Rooney	Appellant
Mr Felix Rooney	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr David Lintott	Of Counsel
He called	
Mr Graham Tite MA(Cantab) MSc IHBC	Conservation and Design Advisor (BEAMS) to South Bucks District Council
Mr Tim Thurley BEng (Hons) MIHE	Principal Consultant, Origin Transport Consultants Ltd
Mr Gavin Treen	Enforcement and Conservation Manager, South Bucks District Council
Mr Richard Garnett ND Arb	Arboriculturalist, South Bucks District Council
Dr Simon Newell BSc PhD	Environment Team Leader, Buckinghamshire County Council
Mr Opher Tolkovsky BSc MSc DIC FGS CGeol	Director at Soil Consultants Limited
Mr Tony Franklin BA MRTPI	Area Team Manager, Sustainable Development South Bucks District Council

INTERESTED PERSONS:

Mr Robert Wilkinson	Resident, Company Secretary of Alderbourne Manor Ltd
Mrs Katherine O'Reilly	Resident

DOCUMENTS submitted at the inquiry

- 1 Note on application for adjournment
- 2 Opening submissions on behalf of South Bucks District Council
- 3 Opening submissions on behalf of the Appellants
- 4 Statement of common ground
- 5 The Setting of Heritage Assets [2015] Historic England
- 6 Heritage Maps
- 7 Heritage rebuttal proof by Dr Edis
- 8 Enforcement officer's site visit notes 19 March 2003
- 9 Plan of cleared areas of land on Area 1
- 10 Planning statement Area 1 ref 12/00153
- 11 Plan of Area 2 ref 12/00162
- 12 Arboricultural note by Mr Garnett
- 13 Note on dating of Ancient Woodland status by Dr Newell
- 14 Amendments to enforcement notice Area 1

- 15 Photographs of old caravan Area 2
- 16 Further amendments to enforcement notice Area 1
- 17 Annotated aerial photographs
- 18 Magic map Ancient Woodland
- 19 *Kestrel Hydro v Secretary of State for Communities and Local Government & Spelthorne Borough Council* [2016] EWCA Civ 784
- 20 Closing submissions on behalf of South Bucks District Council
- 21 Closing submissions on behalf of the Appellants



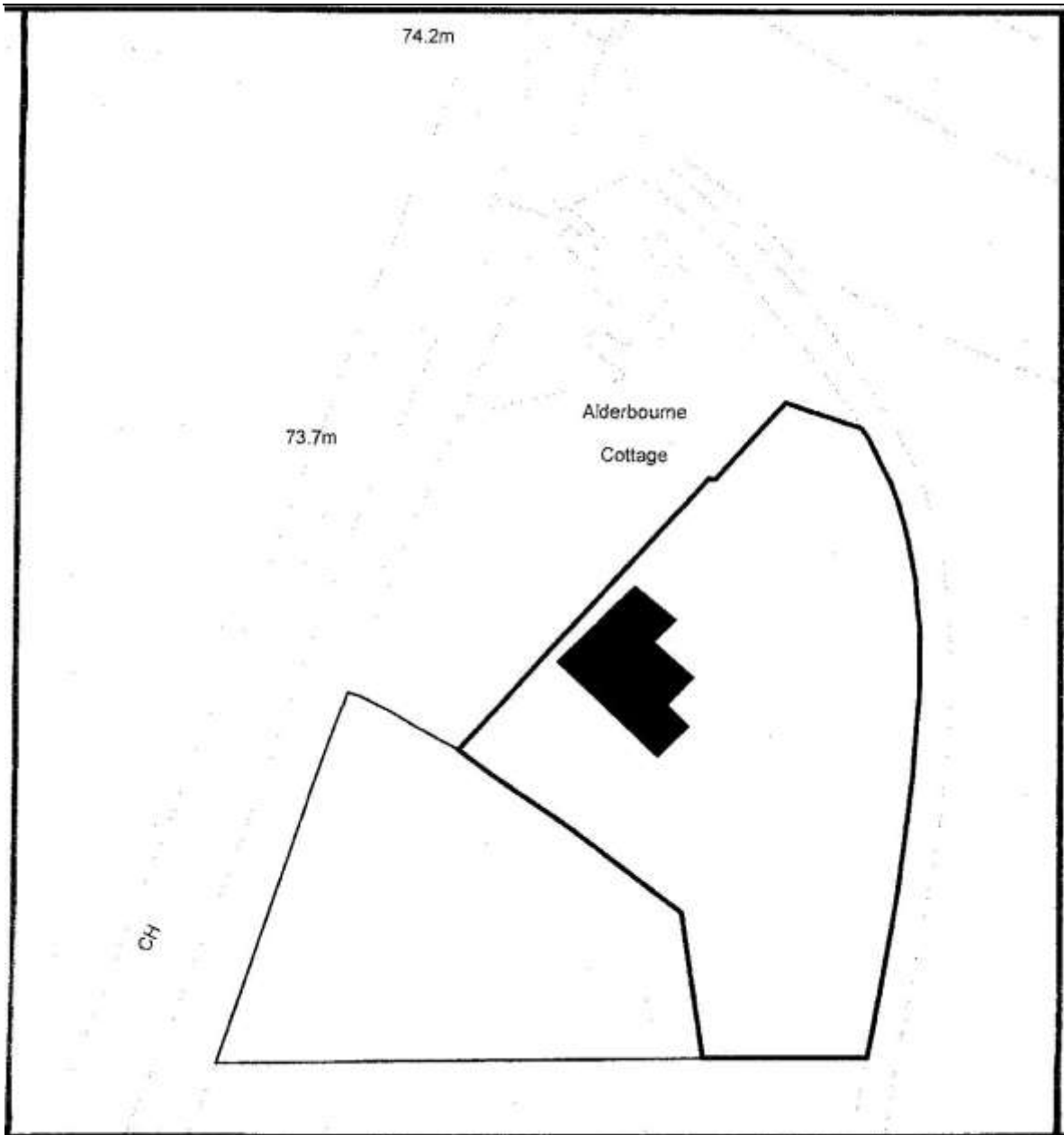
Plan 1

This is the plan for Area 1 referred to in my decision dated: 15 March 2017

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

Land adjacent to Alderbourne Cottage (Area1) Fulmer Lane Fulmer SL9 7BL

References: APP/N0410/C/15/3078099, APP/N0410/C/15/3078100





Plan 2

This is the plan for Area 2 referred to in my decision dated: 15 March 2017

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

Land adjacent to Alderbourne Cottage (Area 2) Fulmer Lane Fulmer SL9 7BL

References: APP/N0410/C/15/3129769, APP/N0410/C/15/3129770

