

**PROOF OF EVIDENCE OF THE COUNCIL OF THE BOROUGH OF
BROXBOURNE**

(THE LOCAL PLANNING AUTHORITY)

Appeals by Mr Billy Joe Saunders

Against Enforcement Notice ENF/23/0033 issued by the LPA on 5th July 2023 in relation to the following alleged breach of planning control: Without planning permission, the change of use of the land to residential by stationing caravans and mobile homes along with associated operational development (Appeal A)

And the refusal to grant planning permission (application reference 07/23/0119/F) for a retrospective change of use of land to residential, for members of the gypsy traveller community for 7no. static caravans, 6no. touring caravans, parking for 12 cars, hardstanding and associated development (Appeal B)

Relating to Land at Woodland Stables, Cock Lane, Hoddesdon, Hertfordshire, EN11 8LS

PLANNING INSPECTORATE REFERENCES:

APP/W1905/C/23/3334117

APP/W1905/W/23/3327012

LOCAL PLANNING AUTHORITY REFERENCES:

ENF/23/0033

07/23/0119/F

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1. INTRODUCTION

- 1.1. A Summary of this Proof can be found at Section 11.
- 1.2. The Enforcement Notice giving rise to this appeal was issued by Broxbourne Borough Council on 31st October 2023.
- 1.3. The reasons for issuing the Notice are as follows:

It appears to the Council that the development took place within the last 4 years.

Woodland Stables is located to the south of Cock Lane, located to the west of Broxbourne. The site is accessed via a single lane track, which is gated at its point of connection with Cock Lane. The site is within the Green Belt and in close proximity to Chestnut Grove Local Wildlife Site (72/034) to north and east.

The site falls within 250 metre buffer around disused landfill site. The property also falls within a 100m buffer around a power line. The site is located within Flood Zone 1, which has a low probability of flooding.

An application for planning permission was submitted in March 2023 to change the use of the land to “residential, for members of the Gypsy Traveller community for 7no. static caravans 6no., touring caravans, parking for 12 cars, hardstanding, and associated development. This application (reference 07/23/0119/F) was refused on 25 May 2023 for the following reasons:

1 The development does not safeguard the Green Belt countryside from encroachment. The very special circumstances do not outweigh the harm to the Green Belt in this case. Therefore, the development is contrary to Policy GB1 of the Broxbourne Local Plan (2018 - 2033), Policy E (paragraph 16) of Planning Policy for Traveller Sites (August 2015) and the aims and objectives of the National Planning Policy Framework (July 2021).

2 There are no footways leading to the site, and the highway is subject to 60mph restricted speed limit with no street lighting and limited grass verge to

walk on. Therefore, pedestrians would have to route on the carriageway, which represents a highway safety concern. The development fails to ensure that the safety of all movement corridor users is not compromised, therefore is contrary to Policy TM2 of the Broxbourne Local Plan (2018 - 2033) and the aims and objectives of the National Planning Policy Framework (July 2021).

It has also been identified that the site has been extended to another parcel of land on Cock Lane, within the same ownership, and is linked to this existing site by a hard surfaced road. It also benefits from an access via Cock Lane. Planning permission has not been sought for this additional area and there is no reason any such application would receive a different outcome to application 07/23/0119/F.

The Council do not consider that planning conditions could overcome the objections to the development.

1.3 The appeal grounds are:

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged
- (b) that those matters have not occurred
- (c) that those matters (if they occurred) do not constitute a breach of planning control
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters
- (e) that copies of the enforcement notice were not served as required by section 172
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or as the case

may be, to remedy any injury to amenity which has been caused by any such breach

(g) that any period specified in the notice in accordance with section 173(g) falls short of what should reasonably be allowed

- 1.4 The Council accepts that the Enforcement Notice incorrectly references 4 years as the appropriate time for consideration with regards to immunity and accepts that 10 years is the correct period of time.
- 1.5 The Council is not raising the issues of power lines, land contamination or flooding within its arguments. These matters are included as a statement of fact when describing the site.
- 1.6 The application giving rise to the s78 appeal was received with sufficient particulars on 22nd March 2023 and was subsequently refused on 25th May 2023 for the following reasons:

1The development does not safeguard the Green Belt countryside from encroachment. The very special circumstances do not outweigh the harm to the Green Belt in this case. Therefore, the development is contrary to Policy GB1 of the Broxbourne Local Plan (2018 - 2033), Policy E (paragraph 16) of Planning Policy for Traveller Sites (August 2015) and the aims and objectives of the National Planning Policy Framework (July 2021).

2There are no footways leading to the site, and the highway is subject to 60mph restricted speed limit with no street lighting and limited grass verge to walk on. Therefore, pedestrians would have to route on the carriageway, which represents a highway safety concern. The development fails to ensure that the safety of all movement corridor users is not compromised, therefore is contrary to Policy TM2 of the Broxbourne Local Plan (2018 - 2033) and the aims and objectives of the National Planning Policy Framework (July 2021).

- 1.7 The application sought full planning permission for - Retrospective planning permission for change of use of land to residential, for members of the Gypsy

Traveller community for 7no. static caravans 6no. touring caravans, parking for 12 cars, hardstanding, and associated development.

- 1.8 The appeals have been conjoined and are being dealt with by way of public inquiry.
- 1.9 Throughout this Proof, Appeal A relates to the Enforcement Appeal and Appeal B relates to the Planning Appeal, as per the Inspector's CMC Agenda.

2. WITNESS DETAILS

- 2.1. My name is Laura White and I am a consultant in the role of Senior Planning Enforcement Officer on behalf of Broxbourne Borough Council.
- 2.2. I have over 15 years of experience in planning, primarily within planning enforcement roles.
- 2.3. I hold a BSC (Hons) in Environmental Studies and completed an RTPI-accredited Planning Foundation Course in 2010.
- 2.4. My development management experience consists of permanent roles at Broxbourne Borough Council (2007-2011), Welwyn Hatfield District Council (2011-2013) and Warwickshire County Council (2014-2019). In late 2019 I founded LW Planning, a consultancy aimed at assisting householders to navigate the planning system and assisting Local Planning Authorities with resourcing issues. As a result of that consultancy, I have had planning or planning enforcement roles at the Canal & River Trust, New Forest District Council, South Staffordshire District Council and South Gloucestershire District Council. I have also worked with householders to resolve enforcement matters and submit planning and other applications.
- 2.5. In 2021 I began working at Broxbourne Borough Council within the planning enforcement team and remain in this role at present.
- 2.6. I have been a member of the RTPI since 2010. The membership class at that time was Technical Member. This classification was removed in 2017, at which time I became an Associate Member.
- 2.7. The evidence which I have prepared and provide for this appeal (in this Proof of Evidence) is true and I confirm the opinions expressed are my true and professional opinions.

3. SCOPE OF EVIDENCE

3.1. My evidence is given on behalf of Broxbourne Borough Council (hereafter referred to as “the Council” or “the LPA”) and concerns the following issues:

- Appeal A:
 - Ground (b)
 - Ground (c)
 - Ground (d)
 - Ground (e)
 - Ground (f)
 - Ground (g)

3.2 My evidence does not extend to Appeal B or Ground (a) of Appeal A including matters of planning policy or the processing or determination of the planning application 07/23/0119/F. This is addressed through the proof of evidence of Louise Hart.

4. RELEVANT PLANNING HISTORY

- 4.1. The land has been used as a horse livery since approximately 2008 with a cattery/rescue centre following a few years later. Subsequently, a single caravan was approved to allow the then landowners to live on the land in order to provide specialist care for the animals on the land.
- 4.2. Conversion of existing barn to residential (one bedroom) dwelling and extension of barn to form a cattery (planning ref: 07/17/0350/F). Approved 20 April 2018.
- 4.3. Replace existing residential mobile home with a single storey log cabin on existing footprint (planning ref: 07/16/1034/F). Refused 10 November 2016.
- 4.4. Continuation of temporary planning permission for existing use of mobile home as a residential dwelling in conjunction with horse livery and cattery/rescue centre for a period of 3 years (planning ref: 07/14/0674/F). Approved 12 September 2014.
- 4.5. Temporary planning permission for existing use of mobile home as a residential dwelling in conjunction with horse livery and cattery/rescue centre (ref: 07/13/0465/F). Approved 29 July 2013.
- 4.6. Certificate of lawfulness for an existing use of mobile home as a residential dwelling (ref: 07/11/0981/LDC). Refused 10 February 2012), appeal dismissed 13 May 2013.
- 4.7. Change of use of stables to livery yard (ref: 7/0596/08/F/HOD). Approved 6 October 2008.
- 4.8. Agricultural workers dwelling (ref: 7/645/1983). Refused 1993.

Planning Enforcement History

- 4.9. The Council received a complaint, in September 2021, about “fresh tarmac” being laid on the above land. Unfortunately, due to resourcing issues and a change in staff, no site visit was carried out at that time. In November 2022, contact was made with the Appellant who was unable to facilitate a site visit due

to being away at a training camp and a death in the family. The site visit took place on 24 February 2023. During that visit it was evident that the use of the land had changed and further operational development beyond the laying of tarmac had taken place. Officers observed a number of buildings including a barn, gym, kennel, and stables as well as 7 mobile homes and a number of vehicles including one horse box. The stable block was occupied by two horses and one dog at the time of the visit. Appendix 9 consists of photographs from this site visit. The planning application that is the subject of the co-joined appeal was submitted in March 2023 and the enforcement investigation was put on hold until the outcome of that application.

4.10. Following the refusal of the application on 25 May 2023 the matter was referred back to the Planning Enforcement Team. Authorisation was sought and granted to issue an Enforcement Notice. Following the withdrawal of two previously issued Notices, this Enforcement Notice was issued on 31st October 2023. The authorisation report, which set out the reasons for seeking authority to issue an Enforcement Notice is provided at Appendix 16. Two further reports were produced regarding the withdrawal and re-issuing of the Notice and there are at Appendix 17 and Appendix 18, respectively.

5. APPEAL A – GROUND (B)

- 5.1 An appeal under Ground (b) considers whether the matters alleged in the Enforcement Notice have occurred.
- 5.2 The Appellant's case is that there is not a material change of use of the land because there are horses on the land. It is contended that, as a result, there remains a mixed use of the land.
- 5.3 The starting point when considering this matter must be the previous known lawful use of the land.
- 5.4 As set out in the planning history (Section 3 of this Proof), the site began operating as a livery yard following the grant of planning permission 7/0596/08/F/HOD in October 2008. The Decision Notice is provided at Appendix 1.
- 5.5 The use was subsequently expanded to incorporate a cattery/rescue centre which was not subject of its own permission but incorporated into subsequent permissions.
- 5.6 In 2013 planning permission was granted for a mobile home to be used as a residential dwelling (reference 07/13/0465/F). The Decision Notice is provided at Appendix 2.
- 5.7 It is important to highlight conditions 2 and 3 of the planning permission which state:

Condition 2:

That this permission shall be for a limited period expiring on 29th July 2014 and that the use hereby permitted shall be discontinued on or before that date and the mobile home and the use of the mobile home carried out under this permission shall be removed and the land reinstated to its condition before the development took place.

Reason –

1. *To enable to Local Planning Authority to review the situation in light of the circumstances then pertaining.*
2. *To enable the Local Planning Authority to retain control over this structure which is constructed of short-lived materials which may deteriorate to the detriment of the visual amenities of the area.*
3. *Permission is only given to meet the special needs of the applicant.*

Condition 3:

This permission shall enure (sic) for the benefit of Mr Alan Barnes and Mrs Anne Barnes only and shall not enure(sic) for the benefit of the land.

Reason – In granting this permission the Local Planning Authority have had regard to the special circumstances of the applicant.

- 5.8 These conditions were imposed as the Council recognised the circumstances of the applicant and the needs of the animals in their care as set out in the Officer Report for that application which is provided at Appendix 15.
- 5.9 The mobile home was permitted to remain on the land for a further temporary period (permission reference 07/14/0674/F) and the above conditions were carried forward as condition 1 (temporary period) and condition 2 (personal permission). The Decision Notice is provided at Appendix 3.
- 5.10 No further permissions were granted for the mobile home which was subsequently removed from the land. It is not known when it was removed, only that it no longer remains on the land now.
- 5.11 Planning permission was then granted in 2018 for the “*Conversion of existing barn to residential (one bedroom) dwelling and extension of barn to form a cattery*” (planning reference 07/17/0350/F). This permission was, to the Council’s knowledge, not implemented. This is based on the lack of detail submitted to discharge condition 5 of that permission, which required the submission of details in relation to land contamination prior to commencement of development.

5.12 Condition 5 reads, in full:

Prior to the commencement of the development, hereby approved, a scheme to address the risk associated with the contamination of the site shall be submitted to the Local Planning Authority for approval in writing. The scheme shall include:

- A) A Phase 1 Desk Study*
- B) A Phase 2 - Site Investigation*
- C) A Remediation Strategy*
- D) A Verification/Validation Report*

Reason – To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property, and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors. The Condition is in accordance with Policy H6 of the Local Plan Second Review 2001-2011, the NPPF, the council's adopted supplementary planning guidance. This information is required prior to commencement as the development, due to possible contamination risks, may have a harmful or adverse impact to human habitation.

5.13 In the event that the 2018 planning permission was implemented, the Decision Notice and Legal Agreement would again be relevant as they limit the amount of residential occupancy of the land:

5.13.1 Condition 8 of permission 07/17/0350/F requires the removal of the mobile home, which had been subject to two temporary planning permissions, upon occupation of the residential unit approved by that permission.

5.13.2 The Legal Agreement states, at Clause 4,

“the occupation of the one bedroom dwellinghouse (the subject of the Application) shall be limited to a person solely or mainly employed at the

Owner's related cattery business (also the subject of the Application) and his or her spouse/partner who may only occupy the dwellinghouse for so long as that person is so employed"

- 5.14 The Decision Notice is provided at Appendix 4 and the Legal Agreement is provided at Appendix 5.
- 5.15 It is clear that any approval for residential occupancy of the land, as illustrated by the planning permissions referenced above, was limited to a single dwelling or caravan and that it was connected to the cattery and livery uses of the land.
- 5.16 In any event, the last lawful use of the land consisted of a mixed-use comprising horse livery, cattery/rescue centres and associated residential occupation.
- 5.17 The use that is the subject of this appeal is the use of the land for residential occupation by the stationing caravans and mobile homes along with associated operational development.
- 5.18 The Appellant says the use of the land, insofar as it relates to horses, is the keeping of horses on the land and therefore there is a mixed use and a continuation of the previous use of the land.
- 5.19 A livery is a different use to keeping horses on the land. A livery use would involve the keeping of horses on the land as a commercial enterprise, with people who do not live on the land keeping their horse(s) in stables/on the land in paddocks. The horses would be mucked out, fed, potentially exercised, or ridden, on behalf of their owners. The owners would likely attend the site multiple times per week to undertake some of this themselves. A livery yard would typically include paddocks and either an indoor or outdoor arena for horses to be ridden/exercised in. These facilities have not been seen, either by officers on site or in aerial photographs, or detailed in planning application 07/23/0119/F (see subsequent paragraphs).
- 5.20 The Council has seen no evidence of a cattery/rescue centre or a livery.

- 5.21 Two horses have been seen on the land, during a site visit in February 2023, but this does not indicate a livery use or any other horse-based use. There are no horses seen in the aerial photographs taken by the Council in May 2023. Council officers have witnessed and reported orally to me on multiple occasions, that the Appellant drives a pony and trap which indicates that any horse or pony kept on the land is for the personal use of the Appellant or another occupier of the land, in a manner that is incidental to the unauthorised residential use.
- 5.22 In addition, one of the stables was being used as a kennel for a dog at the time of the site visit in February 2023, which further suggests the use of that building as related to the residential occupancy rather than for any separate equine use.
- 5.23 As horse-related uses do not benefit from permitted development rights, and there is no indication of the horses being kept on the land in association with any agricultural use of the land, the keeping of horses on the land would require planning permission. The Council would have therefore expected that the planning application submitted in 2023, to which Appeal B relates, to have referred to horse keeping or the stables. It did not do so.
- 5.24 The application form submitted for application 07/23/0119/F, which is provided at Appendix 12, states that the existing use is *“Residential caravan site and equine use”* and the proposed use as *“Permission is sort for change of use of land to residential, for members of the Gypsy Traveller community. The proposed development to contain 7 static caravans, 6 touring caravans, parking for 12 cars, hardstanding, and associated development. This application is part retrospective.”*
- 5.25 Based on that application form, and with a lack of any contradictory information within the other submitted documents, it is not unreasonable for the Council to have assumed that the equine use had ceased. The equine use is not referred to as a proposed or ongoing use of the land and no infrastructure, such as paddocks, riding school, stables, or similar, mentioned or indicated on any drawing, Design and Access Statement, or other document, submitted with that application.

- 5.26 Whilst the application site did not encompass the entire site covered by the Enforcement Notice and therefore the drawings did not need to encompass all structures or uses outside of the red line, this combined with the aerial and site photographs indicates an absence of any other defined uses of the land and as such a single use is taking place.
- 5.27 The cattery is not referred to at all in any application or appeal documentation other than as a previous use of the land.
- 5.28 I have been informed, by Yvonne Phang, Senior Environmental Health Officer, that the Council's Environmental Health team do not have any license or applications for licenses for either use.
- 5.29 The current use of the land is materially different to the last known lawful use of the land for the following reasons:
- a) No livery use is taking place
 - b) No cattery/rescue centre is in operation
 - c) The residential occupancy is not intrinsically linked to any other use of the land
 - d) The residential occupancy exceeds what would be reasonable for the care of the animals known to be present on the land
- 5.30 The operational development, namely the provision of buildings and expanse of tarmac hard surfacing, has been provided in sole connection with the residential use of the land as there is no other identified use of the land.
- 5.31 The Aerial Photographs taken in 2023, provided at Appendix 6, show that the operational development referred to has clearly been provided to facilitate the residential use of the land.
- 5.32 There is no indication that the gym, stable/kennel, or buildings adjacent to the mobile homes, are used for any other purpose than in association with the residential occupancy or that their use would continue if the residential use ceased.

5.33 On that basis, there is a material change of use in the land for which no planning permission exists and the ground (b) appeal should fail.

6 APPEAL A – GROUND (C)

- 6.1 An appeal on ground (c) considers whether the breach of planning control as set out in the Enforcement Notice has taken place.
- 6.2 The Appellant's case is that the use of the land is a mixed use, consisting of stationing of caravans for residential use and the keeping of horses, which is not the breach described in the Enforcement Notice of a single use. The Council's response to this is set out in Section 5, above.
- 6.3 As set out in Section 5 in relation to the Ground (b) appeal, it is the Council's position that there has been a material change of use in the land from a mixed use consisting of livery, cattery/rescue centres and associated single unit of residential accommodation to a use for residential occupation through the stationing of caravans, along with associated operational development.
- 6.4 The Appellant contends that Section 57(4) of the TCPA 1990 (as amended) provides a fallback position.
- 6.5 Section 57(4) provides that planning permission is not required for development that was lawful prior to the issue of an Enforcement Notice stating:
- Where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.*
- 6.6 This, therefore, means that the Appellant views at least some of the development as lawful either by virtue of a previously granted permission or through the passage of time.
- 6.7 The stationing of caravans, as discussed in Section 5 above, for residential use does not benefit from planning permission. The previous, single mobile home benefited from planning permission on a temporary basis, that was personal to the previous applicants/owners of the land and connected to the livery and cattery/rescue centre uses which are no longer taking place.

- 6.8 Even if the livery and cattery/rescue centre uses were still in operation, planning permission would still be required for any number of caravans in residential occupation to overcome the expiry of the previous temporary permission, which meant permission ceased in 2017, and to overcome the permission being limited to specific persons who are not the Appellant. There is, therefore, no fallback position available to the Appellant in relation to stationing of caravans for residential occupation.
- 6.9 In the event that the livery and cattery/rescue centre were still in operation, the provision of several caravans to be permanently occupied to persons unconnected with the other uses of the land would constitute a material change of use in the land because the only caravan permitted related to those other uses of the land.
- 6.10 The fallback position does have some relevance in relation to the hard surfacing on the land. The Council is aware that the previous, lawful uses of the land incorporated an amount of hard surfacing. The Council is not seeking the removal of this lawful hard surfacing. The Council has specifically used the word “tarmac” to avoid any suggestion that the removal the “hard surface” is required. There is a large expanse of new tarmac across much of the site and it is this that does not benefit from the fallback position and that is to be removed under the terms of the Enforcement Notice.
- 6.11 The livery and cattery/rescue centre operated from a smaller part of the site. By looking at the aerial photographs from 2017 and 2018 (pages 1 and 2 of Appendix 8), it is clear that the previous lawful use occupied a small strip of land, terminating at the outdoor riding arena. The tarmac has been laid across the site covering, not only the area formerly occupied by the last lawful use but also encompassing a small area to the east, the land where the riding arena was situated, an area of land to the west of that same riding arena, an access road demarcated to the Enforcement Notice.
- 6.12 Photographs taken of the land by the Council in 2017 show the difference between the original hard surface and the new tarmac. These photographs are provided at Appendix 7.

- 6.13 The Aerial Photographs taken in 2023 (Appendix 6) show this additional, new hard surface which is clearly not visible in the Google Earth Aerial Photographs of the site prior to the Appellant's development of the land. The historic aerial photographs from Google Earth are provided at Appendix 8.
- 6.14 The site did also previously include a stable building. This was a rustic, small-scale, timber building which is shown in the photographs at Appendix 7. The new stable block is, as can be seen from the Photographs from 2023 at Appendix 9, an entirely new building for which there is no planning permission or fallback position.
- 6.15 The stable building is an act of new development. The previous building was removed in its entirety and replaced with the current building. It is, therefore, development as defined by Section 55 of the TCPA 1990 (as amended) which includes rebuilding within the definition of building operations that are classed as development (Section 55 (1A) (b)).
- 6.16 The stable building does not benefit from any Permitted Development Rights. There is no provision within the General Permitted Development Order for buildings associated with keeping horses for any purpose. The land is not the curtilage of a dwelling house and therefore the right to build an outbuilding under Schedule 2 Part 1 of the GPDO 2015 (as amended) is not applicable in this case. The use of the land means that the provisions of Schedule 2 Part 5, which allows for development at caravan sites, also does not apply as there is not only no site license but a site license would not include a requirement for a stable building.
- 6.17 The stables shown in the 2008 at the time of the planning permission for the change of use to livery, were already present on the land. Whilst the previous stables therefore benefited from permission, the new stables are not considered to do so.
- 6.18 Based on the above and associated Appendices, it is evident to the Council that a breach of planning control has occurred as a matter of fact.

7 APPEAL A – GROUND (D)

- 7.1 This appeal ground requires the lawfulness of the development, as described in the Enforcement Notice, to be considered.
- 7.2 Section 174 of the TCPA 1990 (as amended), states that an appeal can be brought on the ground that “at the date when the notice was issued, no enforcement could be taken in respect of any breach of planning control which may be constituted by those matters”.
- 7.3 The Appellant clarified, at the CMC in January, that this appeal ground relates to the hard surfacing only and there is no suggestion that the use is lawful through the passage of time.
- 7.4 The photographs, both on site and aerial, provided at Appendices 6 – 9 show the clear change in the development of the site. It is clear from these images that there was a small amount of hard surfacing present for a number of years. This hard surface is lawful.
- 7.5 However, the new tarmac, which covers a far greater area of the land, is not lawful and it is this new tarmac that the Council seeks to remove. The Council used the word “tarmac” specifically, rather than the broader term “hard surfacing,” to draw a distinction between the hard surface on the land as a result of the previous lawful use of the land and the new tarmac surface.
- 7.6 Planning application 07/23/0119/F, which is the subject of Appeal B, sought permission for not only the use of the land but for hard surfacing.
- 7.7 The application form and the Design and Access Statement describes the proposed development as including hard surfacing. These are provided as Appendices 12 and 13, respectively. It is clear from these that the Appellant considers the tarmac over the area of the land to which the application relates to be new development.
- 7.8 Based on the evidence, there is no lawfulness through the passage of time insofar as it relates to either the use of the land or the operational development and as such the ground (d) appeal should fail.

8 APPEAL A – GROUND (E)

- 8.1 The Appellant contends that the Enforcement Notice has been improperly served by virtue of the lack of service on an unidentified occupier of the land.
- 8.2 Section 172 (2) requires an Enforcement Notice to be served on the owner and occupier of the land and on any person having an interest in the land where that interest is materially affected by the Notice.
- 8.3 The Appellant states that the Council did not serve the Notice on the occupiers of the land.
- 8.4 As set out in the Council's Inquiry Statement, the Enforcement Notice was served on every known landowner and occupier identified through Land Registry documents, the planning application and investigation. The full list of those persons is included within the Enforcement Notice.
- 8.5 In addition, the Council served to "The Occupiers" by leaving additional copies of the Enforcement Notice, at the site. This can be seen in the photographs and Certificate of Service provided at Appendices 10 and 11, respectively.
- 8.6 A Planning Contravention Notice could have been served by the Council. However, the Council took into account the information supplied in the planning application and obtained through the Land Registry and the Council's investigation and considered that reasonable inquiries had been made. Officers did not enter the site at the time of serving the Notice due to the Appellant's aggressive behaviour during previous contact.
- 8.7 In June 2023, during a telephone conversation between myself and the Appellant, regarding another piece of land owned by the Appellant, he was aggressive in tone, made threats regarding the use of social media to publish officer details, and made accusations regarding the Council's investigation. At the time of service of an Enforcement Notice in relation to the same land, in mid-October 2023, the Appellant told the serving officer to stay away from his land. This was reported to me verbally following that visit. The Council therefore considered it unsafe to undertake further site visits, particularly to facilitate the

service of this Enforcement Notice and this safety concern, therefore, is why Notices were not left on individual caravans. Appendix 20 provides screenshots of the Appellant's social media posts direct at the Council, particularly at me, while Appendix 21 is an email I wrote following my telephone conversation with the Appellant in June 2023.

- 8.8 In addition, it was considered that regardless of the service of a Planning Contravention Notice, the occupation of the Land could change very quickly without the Council's knowledge and the best approach was therefore to serve "The Occupier(s)" with additional copies of the Enforcement Notice being left at the site. The Council considered that the number of caravans that were sought permission for under application 07/23/0119/F were greater than the number of caravans seen on site, either by officers or on the aerial photographs, it was clear that the Appellant intended to increase the occupancy of the site. The application sought permission for 7 static caravans and 6 touring caravans whereas there were 6 static caravans and 1 touring caravan present.
- 8.9 The Council's case is that the Enforcement Notice was properly served, and the appeal on ground (e) should fail.

9 APPEAL A – GROUND (F)

- 9.1 The Appellant considers that the steps to comply with the Enforcement Notice are excessive, in particular the removal of the building referred to as the stables.
- 9.2 As detailed in Section 5 of this Proof of Evidence, the Council's case is that the keeping of horses is incidental to the residential occupation of the land rather than a separate use.
- 9.3 The stable building is an act of new development. The previous building was removed in its entirety and replaced with the current building. It is, therefore, development as defined by Section 55 of the TCPA 1990 (as amended) which includes rebuilding within the definition of building operations that are classed as development (Section 55 (1A) (b)).
- 9.4 The stable building does not benefit from any Permitted Development Rights. There is no provision within the General Permitted Development Order for buildings associated with keeping horses for any purpose. The land is not the curtilage of a dwelling house and therefore the right to build an outbuilding under Schedule 2 Part 1 of the GPDO 2015 (as amended) is not applicable in this case. The use of the land means that the provisions of Schedule 2 Part 5, which allows for development at caravan sites, also does not apply as there is not only no site license but a site license would not include a requirement for a stable building.
- 9.5 As set out throughout this Proof of Evidence, there is a material change of use of the land, so the stables do not benefit from any fallback position or claim for immunity.
- 9.6 As this new stable building is associated solely with the residential use of the land and is therefore part and parcel of the residential use, it is entirely appropriate that the Council seek its removal.
- 9.7 The removal of all caravans is not excessive as no caravans are lawful on this land as the previous permissions cannot be relied upon as set out in Section 5

of this Proof. This does not prevent the Appellant using permitted development rights in relation to caravans in the future.

- 9.8 The removal of the tarmac, which is also new development, is similarly required. The previous, lawful hard surface is not required to be removed. It is not excessive to require the removal of a large area of new tarmac in the Green Belt as it is detrimental to the Green Belt by urbanising the appearance of the area.
- 9.9 The requirement to restore the land by seeding with native grass seed is not excessive as it remedies the injury to amenity caused by the removal of the tarmac in that it assists in the ability of the land to recover from the development carried out.
- 9.10 The purposes of the steps set out in the Notice are, as required by Section 173(4), either for remedying the breach of planning control or remedying the injury to amenity caused by the breach of planning control.
- 9.11 Step (i) requires the permanent cessation of the use of the land as a residential caravan site. This remedies the breach of planning control insofar as it relates to the use of the land.
- 9.12 Step (ii) requires the removal of all caravans and mobile homes from the land. This remedies the injury to amenity by improving the physical appearance of the land which restores the openness of the Green Belt.
- 9.13 Step (iii) requires the removal of all buildings and structures, except one identified on the plan accompanying the Notice, from the land in order to remedy the injury to amenity by restoring the openness of the Green Belt.
- 9.14 Step (iv) requires the removal of the tarmac from the land in order to remedy the injury to amenity by restoring the openness of the Green Belt.
- 9.15 Step (v) requires the removal of any resultant debris from compliance with steps (i) – (iv) in order to remedy the injury to amenity.

9.16 Step (vi) requires the restoration of part of the land by seeding the land with native grass seed to remedy the injury to amenity.

9.17 These steps are wholly proportionate to remedy the breach as described in the Enforcement Notice and its injury to amenity. Lesser steps would not achieve both the cessation of the use and the removal of the associated operational development because these are the minimum steps required to return the land to a pre-development condition following the cessation of the previous lawful use of the land.

9.18 On this basis, the appeal on ground (f) should fail.

10 APPEAL A – GROUND (G)

- 10.1 The time allowed for the compliance with each step of the Enforcement Notice is set to allow a phased, sequential approach to compliance with the Notice and provides a proportionate amount of time for each step.
- 10.2 Step (i) requires the cessation of the use within 3 months, and it is this step that is the focus of the Appellant's appeal on this ground. There has been no issue raised with the timescales for the remaining steps.
- 10.3 The Appellant requests a period of 2 years to comply with Step (i) which is effectively a temporary planning permission.
- 10.4 For the reasons set out by Louise Hart in response to Appeal B and Appeal A – Ground (a) it is not considered appropriate to grant planning permission, temporary or otherwise, on this land.
- 10.5 In any event, a period of two years exceeds the time necessary to cease the use and a shorter period would be more realistic.
- 10.6 The Appellant has not approached the Council's Housing Team regarding alternative accommodation. The occupier Julie Froom made contact in 2017 but this contact was resolved in 2018 when she found alternative accommodation within the Borough. There has been no subsequent contact. Appendix 19 is an email from Housing to confirm this information.
- 10.7 The planning application (07/23/0119/F) did not set out any details of the occupiers and their need for the Council to assess. The Council expected this information would be reasonably expected for such an application, particularly for a new site in the Green Belt, and the lack of this information suggested that there were no particular needs to consider.
- 10.8 The site visit in February 2023 did not result in any information regarding the needs or details of the occupiers. This initial visit was in response to a report about new tarmac and as such the Council were not expecting to find an occupied site or the extent of the development that was present. The extent of occupation was not clear as some caravans did not appear occupied and whilst

there were some persons present they remained in their caravans for the duration of the Council's visit. On that basis, officer focussed on establishing the general layout and photographing the development carried out, in order to determine next steps.

10.9 However, the planning application followed within a month of that site visit which resulted in insufficient time to carry out further steps in this matter.

10.10 Following the subsequent behaviour of the Appellant, as detailed in paragraph 8.7, further site visits were not carried out.

10.11 Whilst children were on site, it was not clear if they permanently reside on the site. In any event, no particular needs or circumstances were made known to officers during the site visit. In considering the needs of the children, their access to education is not prohibited by their relocation to an alternative site.

10.12 Personal circumstances are unlikely to outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. Supporting letters were received during the consideration of application 07/23/0119/F regarding one site occupier, identified as the Appellant's father, as being vulnerable due to mental health needs. The two letters are provided at Appendix 22 and 23. These explain that the Appellant's father is under the care of an NHS facility in Ware, which is approximately 5 miles from the appeal site resulting in a 15-minute car journey. Whilst proximity to the site in Ware is relevant, it does not change the weight given to the Council's assessment because access to healthcare is not prohibited by relocation to an alternative site.

10.13 The Council, therefore, considers the time set out in the Enforcement Notice to be proportionate.

11 SUMMARY AND CONCLUSION

- 11.1 The use of the land as a single use residential caravan site is unauthorised and, with the exception of one building and some existing hard surfacing, all of the associated operational development is similarly unauthorised as it is on the land in association with the residential use and for no other purpose. The horse and stable block are incidental to the residential use of the site and do not constitute a mixed use.
- 11.2 The development has plainly taken place and does not, except for where otherwise specified, benefit from immunity, lawfulness through previous planning permissions or any other fallback position. Previous permissions for residential use of the land were granted due to the livery and cattery/rescue centre uses only; these, or similar uses, are not taking place on the land so the same considerations do not apply.
- 11.3 The Council has demonstrated that the Enforcement Notice was correctly served, with copies left on site for 'The Occupier' to ensure any unknown occupier was made aware of the Notice, and it includes the necessary steps, within proportionate timescales, to remedy the breach of planning control and resultant injury to amenity.
- 11.4 The Council therefore respectfully requests that the Enforcement Notice is upheld in full.
- 11.5 The Council's response to the matters raised in the CMC in January 2024 are appended as Appendix 14. These have previously been sent to the Appellant.

Laura White (Ms)

Senior Planning Enforcement Officer

Broxbourne Borough Council