The Planning Inspectorate

Appeal Decisions

Hearing held and site visit made on 9 December 2014

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 28 January 2015

Appeal A: APP/V2255/C/14/2219797
Evaluna, Plum Pudding Lane, Dargate, Faversham, Kent ME13 9EY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr David Dighton against an enforcement notice issued by Swale Borough Council.
- The Council's reference is ENF/HER/13/009.
- The notice was issued on 16 May 2014.
- The breach of planning control as alleged in the notice is: 'Without planning permission the material change of use of the land from agricultural use to a use for the stationing of a caravan for residential use'.
- The requirements of the notice are:
  (i) Cease using the Land for the stationing of a caravan for residential purposes.
  (ii) Remove the caravan from the Land.
  (iii) Remove the store shed, kennels or dog housing, all hardstanding and all structures and enclosures and fencing from the Land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Appeal B: APP/V2255/A/14/2217679
Evaluna, Plum Pudding Lane, Dargate, Faversham, Kent ME13 9EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr David Dighton against the decision of Swale Borough Council.
- The application ref no SW/13/1447, dated 13 November 2013, was refused by notice dated 21 February 2014.
- The development is described on the planning application form as: 'Proposed sighting *[sic]* of caravan, store shed, dog housing and additional housings associated with smallholding'.

Summary of Decision: The appeal is dismissed.

Procedural issues

Preliminary matters

1. The Appellant's surname is given as Deighton on the Appeal B application and appeal forms. However, it is readily apparent that the correct spelling is that used in the above headings.

2. The postcode for the appeal site is given on both appeal forms as ME13 9EU. However, it is listed as ME13 9EY on the planning application form and, at the Hearing, the Appellant confirmed the latter as correct. This also tallies with Royal Mail records.

3. The Appellant suggests on the Appeal A form, in the context of the appeal against the enforcement notice on ground (a), that there has been no material change of use of the land in this case. However, no appeal on grounds (b) or (c) to this effect has been made and, at the Hearing, the Appellant confirmed that he would not be pursuing that line of argument.

4. The Appellant complains that planning advice he received from a Council officer in relation to his land was misleading. However, this is not a matter for me and falls to be pursued, if necessary, by means outside the scope of the appeal process. Nothing I have seen leads me to give credence to the Appellant's claim that such advice hindered him in presenting a thorough case at appeal regarding the future potential of his smallholding.

Differences between the appeal schemes

5. Appeal B relates only to the western part of the land subject to the Appeal A enforcement notice, the former being the extent of the original planning application. However, both main parties agreed at the Hearing that the whole of the Appeal A land comprises the relevant planning unit, the eastern part of which is grazing pasture in the Appellant's ownership.

6. It is also readily apparent that there are several differences between the schemes subject to Appeals A and B. Appeal A relates to the use of the land and the structures present thereon at the time that the enforcement notice was issued. I have no reason to believe that the situation on site at the time of my visit was any different to that which prevailed when the notice was issued some seven months earlier. I therefore consider that scheme to comprise a mixed use for the stationing of a residential caravan and an agricultural smallholding and the provision of a handful of buildings and shelters used for purposes incidental thereto, including storage and the keeping of dogs, pigs and emus.

7. The Appellant does not take issue with the Council's view that, the caravan aside, all structures presently on the land constitute operational development and, in the absence of cogent evidence to the contrary, I have no reason to conclude otherwise. He did, however, emphasise that he regards all stores and animal/bird shelters on the site at the present time as temporary.

8. He further confirmed that the far more intensive, alternative development set out in application drawing 131106 Rev:001, and thus subject to Appeal B, is aspirational and for the most part has yet to take place. This shows the caravan, dog kennels and store shed in positions different to those used at present, together with two emu houses and 40 houses for chickens, ducks and geese extending further eastward into the appeal site than existing built development. No pig shelters are included and, again, there is no suggestion that any of these items would not be operational development.

The description of development

9. Notwithstanding the description of development used in the enforcement notice and on the planning application form, the main parties agreed with me at the Hearing that the subject use is more accurately described in the case of

each appeal as a mixed residential/agricultural use. Determining the appeals on this basis is not prejudicial to the interests of any party, bearing in mind that the agricultural component of the mixed use does not in itself require planning permission.

Whether Gypsy status should be considered

10. The Council has pursued an argument that the Appellant's status as a Romany Gypsy should not be a consideration to which I should have regard in determining either appeal. No reference was made by the Appellant in the context of these appeals to his status as a Romany Gypsy until April 2014, when Appeal B was submitted. Such status was not mentioned in the planning application, which the Council therefore determined without having regard to it. It also issued the Appeal A enforcement notice without considering Gypsy status, despite this occurring after Appeal B had been submitted.

11. The Council therefore contends that, pursuant to case law arising from the judgment in *Bernard Wheatcroft Ltd v SSE* [1982] 43 PC&R 233 and the Planning Inspectorate's Procedural Guidance for Planning Appeals (PGPA), published on 1 April 2014[1], having regard to the Appellant's claimed Gypsy status would cause injustice to other parties. However, having heard submissions on the matter at the Hearing, I disagree.

12. *Wheatcroft* addressed the question of whether amendments to planning proposals may be accepted at the appeal stage, and established that "the main criterion on which … judgment should be exercised is whether the development is so changed by the amendment that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation". Paragraph M.2.1 of the PGPA states that the appeal process should not be used to evolve a scheme and that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority and on which interested people's views were sought.

13. On my reading, the relevant elements of both *Wheatcroft* and the PGPA are concerned primarily with whether amendments to the physical detail of a proposed development can be accepted without prejudice. Clearly, interested parties are entitled to know with reasonable precision what might be built or what sort of use would be authorised in the event that an appeal is allowed and a planning permission granted, in order that they may comment accordingly. However, the Appellant confirmed unequivocally at the Hearing that he is not seeking planning permission for a general 'traveller site' that would be available for residential occupation by anyone other than himself and his immediate family.

14. The appeal scheme thus remains the same as at the planning application stage and the question of whether or not Mr Dighton enjoys personal status as a Gypsy or Traveller does not alter it. It is simply an additional material consideration, rather than an amendment. It is not uncommon for additional considerations to be introduced at the appeal stage. The essential procedural requirement is that everyone who was notified of the planning application must

[1] The Council refers to paragraph N.2.1 of the PGPA published on 6 March 2014. However, that document relates only to appeals where the subject planning application was determined by the Council prior to 30 September 2013. The version of the PGPA relevant in this case is the document published on 1 April 2014, the equivalent paragraph of which is M.2.1.

also be notified by the Council of the appeal and invited to read and comment on the revised arguments being presented in the appeal submission. I have no reason to believe that the correct procedures were not followed by the Council in this case.

15. I am therefore satisfied that the both local planning authority and potential objectors have had adequate opportunity to address the implications of the Appellant's Romany heritage. Accordingly, I conclude that consideration of the Appellant's potential status as a Gypsy or Traveller for the purposes of applying planning policy does not give rise to any injustice and I duly do so in my reasoning below under the subheading 'Other material considerations'.

The enforcement notice

16. The enforcement notice is addressed to the Appellant and his wife using the postcode ME13 9EU, which relates to elsewhere in Plum Pudding Lane, whilst the land subject to enforcement action is identified in section 2 of the notice as having the postcode ME9 9EU, this being an address in Teynham. The notice will be corrected by substituting the code used in the above headings.

17. As previously stated, the main parties agreed with me at the Hearing that the use of the Appeal A site at the time that the enforcement notice was issued was a mixed use including an agricultural smallholding component. Moreover, requirement (iii) of the notice specifies the removal from the land of 'the store shed, kennels or dog housing, all hardstanding and all structures and enclosures and fencing', all of which were confirmed by the Council at the Hearing as, in its perception, operational development that had solely facilitated the targeted material change of use. In accordance with *Murfitt v SSE* [1980] JPL 598, such items may be specified legitimately for removal as part of a change of use notice. It is therefore good practice, in the interests of consistency within the notice, to refer to them as facilitating development in the allegation.

18. The notice will be corrected accordingly at section 3 such that the allegation reads: 'Without planning permission, the material change of use of the Land from agricultural use to a mixed use comprising the stationing of a caravan for residential use and an agricultural smallholding and the provision as facilitating development of a store shed, kennels/dog housing, hardstanding and fencing and other structures and enclosures'. There is no need to amend requirement (i) to reflect the mixed use, given that the agricultural component thereof does not require planning permission in itself.

19. The notice refers at section 4 to the four year time bar on enforcement action that applies to certain types of development. However, a ten year time bar applies to the subject material change use, in accordance with section 171B(3) of the 1990 Act as amended. The notice will be corrected accordingly. No injustice to any party arises from any of these corrections.

Main issues

20. The main issues in determining both appeals are:
    - the implications of the subject development for the effectiveness of local rural settlement policy;
    - its effect on the character and appearance of the surrounding countryside; and

- whether any harm arising from the above issues is outweighed by other material considerations, including the status of the Appellant and his family for the purposes of applying Gypsy and Traveller policies and the functional needs and financial viability of the smallholding at the appeal site.

Planning policy

21. The development plan for the area includes certain policies of the Swale Borough Local Plan 2008 (LP) which have been saved following a Direction made by the Secretary of State. Reference is also made to the *Swale Landscape Character and Biodiversity Appraisal* Supplementary Planning Document (SPD) 2011 and the emerging Swale Local Plan Part 1 (ELP).

22. Paragraph 215 of the National Planning Policy Framework (NPPF) advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. Paragraph 216 adds that decision-takers may also give weight to relevant policies in emerging plans according to certain criteria, including the stage of preparation of the plan and degree of consistency with the NPPF. National guidance contained in the DCLG publication *Planning policy for traveller sites* (PPTS), issued in March 2012, is also relevant. For the most part I find no inconsistency between the development plan policies cited in this case and either the NPPF or PPTS and therefore attribute full weight to them insofar as they are relevant to my decisions. The one exception is saved LP Policy H4 and the cross-reference thereto in saved LP Policy E6.

23. Amongst other things, Policy H4 provides for the granting of planning permission for the use of land for the stationing of homes for use by Gypsies or Travellers who can demonstrate a genuine connection with the locality of the proposed site and limitation of such permissions to no more than four caravans. The Council acknowledges that those particular criteria are not reflected in current national policy. I concur and, accordingly, this tempers the weight that I attach to Policy H4 and criterion 6 of Policy E6. I also attribute only limited weight to the draft ELP Policies drawn to my attention, given that the publication version of the emerging plan is not due to be subject to an Examination in Public until Spring 2015 and has drawn a number of relevant objections during public consultation.

Reasoning

Rural settlement policy

24. The appeal site is located in open countryside, well outside any defined settlement designated as suitable for new residential development by the development plan. Saved LP Policy E6 seeks to protect the wider countryside from development other than in specific exceptional circumstances. It follows that the granting of planning permission for the appeal schemes would seriously undermine the effectiveness of local rural settlement policy and thus have adverse implications for the character of the countryside, unless they satisfy at least one of the exception criteria listed therein or there are other material considerations that justify a departure from the development plan in this particular case.

25. Any significant compromise of local settlement policy carries very substantial weight. The only exception criteria that are potentially relevant in the context

of the current appeal are point 1, that the development is demonstrated to be necessary for agriculture and point 6, that it relates to a site for gypsies in accordance with saved LP Policy H4. I will explore both, together with other considerations that might weigh in favour of the appeal schemes, under the heading 'Other material considerations' below.

Character and appearance

26. Evaluna lies too far to the north of the Dargate Conservation Area to have a significant effect on its setting or any other heritage assets. Nor does it affect any area designated for wildlife protection. However, it falls within a designated Area of High Landscape Value, the integrity, character and local distinctiveness of which saved LP Policy E9 seeks to protect and enhance. It lies within the Hernhill and Boughton Fruit Belt Landscape Character Area, as defined by the SPD previously referred to. Saved LP Policy RC7, which seeks to safeguard the character of rural lanes, is also relevant, notwithstanding the Appellant's contention to the contrary.

27. The site fronts a twisting country lane which winds its way through an attractive swathe of rolling countryside interspersed with pockets of woodland and a scattering of buildings. I found this part of the lane to be characterised primarily by an absence of footways, high frontage hedgerows and, with the exception of Honeysuckle Villa to the south of the appeal site, an absence of significant built development. All in all, the appeal development occupies a very attractive, spacious and sylvan rural landscape.

28. Any significant residential and agricultural presence is currently limited to the westernmost part of the Appellant's land. Nonetheless, the various items on the site at present (and subject to Appeal A) are highly prominent in views from the public highway, particularly from the north where intervening vegetation is sparse. The utilitarian design and appearance of the caravan and temporary structures provided by the Appellant are a particularly jarring visual presence in such a sensitive rural setting and detract markedly from the character and appearance of the immediate locality and wider landscape designations, contrary to saved LP Policy E19.

29. Whilst I do not question the Appellant's assertion that a gate and gateposts marked the site entrance prior to his involvement, the additional close boarded fencing he has since erected close to the road frontage for security purposes draws the eye as an incongruous, harsh feature in the rural land and reads as an unwanted element of urban intrusion. Further means of enclosure erected within the site subdivide the land to a noticeable degree and are directly at odds with the provisions of Article 4(1) Directions[2] which, on the Council's evidence, was made for the express purpose of safeguarding the open character of this particular area.

30. The Appellant's longer term aspirations for the site, as represented by the Appeal B scheme, concern a development which would be more regular and tidy in layout but which, on the other hand, would extend much further to the east than at present. It would thus erode to an even greater degree the characteristic openness of the landscape. It is impossible to tell whether the

[2] Two Directions made by the Council on 7 April 2008 under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 as amended, which remove certain permitted development rights from land which includes the appeal site.

envisaged permanent structures would be in keeping with the rural vernacular of the locality, as the Appellant's submissions lack any detail thereof other than location and proportions.

31. Indigenous planting, proposed by the Appellant in the form of an orchard and boundary hedgerows, would not provide sufficient mitigation in either case. It would take several years to establish an effective screen and, even then, by its very nature would offer only a temporary and partial visual solution. Whilst such planting can have ecological benefits I have seen nothing to suggest that important wildlife habitats occurring naturally in the area are under threat.

32. I have no reason to question the Appellant's claims to have carried out only limited tree removal and to have cleared the site of unsightly fly tipping. However, there are other means by which the relevant authorities could have remedied the adverse impacts of the latter, whilst the retention of much of the site's established vegetation does not in itself render the appeal schemes acceptable.

33. I conclude that both schemes have serious adverse implications for the character and appearance of the countryside and fail to protect and enhance the visual qualities of this sensitive and otherwise attractive landscape and rural lane. The appeal developments are therefore contrary to saved LP Policies E1, E9, E19 and RC7 and the relevant provisions of the NPPF. This finding carries very substantial weight.

Other material considerations

Gypsy matters

34. The Appellant states in his written submissions that he is a Romany Gypsy and contends that, consequently, the appeal schemes must be considered under saved LP Policy H4. This provides for the provision of accommodation for Gypsies and Travellers in the open countryside in certain circumstances. However, for the reasons I have already explained, I find current national policy in the PPTS to carry greater weight. Annex 1 thereof states that, for the purposes of the PPTS, 'gypsies and travellers' means: '*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently…*'.

35. Mr Dighton has provided limited documentary evidence of his Romany heritage. Whilst this is by no means comprehensive, his claims in this regard have not been challenged by the Council or others and, in the absence of cogent evidence to the contrary, I find no sound reason to question them. Nonetheless, on his own evidence, it seems that neither he nor his wife and son, who reside with him on the appeal site, have ever pursued a nomadic lifestyle. Until late 2013, when he moved onto the land at Dargate, the Appellant had resided for 25 or 26 years in a conventional dwelling in Elm Grove, Sittingbourne. Before that he grew up living with his grandparents in a caravan located in an orchard. However, this was stationary and, despite their heritage, the family did not travel as a way of life.

36. Although at the Hearing Mr Dighton expressed a preference for caravan living, this falls far short of a significant cultural aversion to bricks and mortar in the light of his residential history over recent decades. It was also confirmed that

Mrs Dighton grew up in a conventional dwelling and had never occupied a caravan as her principal home until moving to the appeal site. Moreover, on the evidence before me, the family's sole caravan has not left the site since being based at Dargate and neither Mr nor Mrs Dighton has travelled so extensively for work or other purposes that they have been unable to return on a nightly basis. Nor is there any stated intention to embark on a nomadic lifestyle in the future.

37. In the light of this, and bearing in mind the Appellant's confirmation that permission is not sought for a site that could be occupied by Gypsies and Travellers in general terms, it is not necessary for me to address the question of need for such accommodation within Swale Borough. I conclude that neither the Appellant's Romany heritage nor any demand there may be for Gypsy and Traveller sites in the Borough carry significant weight in this case. Accordingly, neither saved LP Policy H4, emerging ELP Policies DM9 nor DM10 nor the PPTS assist me in reaching my decisions.

The needs of the smallholding

38. The Appellant attempts to present a case to the effect that the presence of residential accommodation on the site is essential in order to cater for the needs of his smallholding. He advised at the Hearing that he owns over 300 ducks, chickens and turkeys, 20 pairs of ornamental pheasants, 20 guinea fowl, 11 pigs, 11 dogs, five emus, four goats, three sheep and a peacock. Due in part to ongoing enforcement action, very few of these animals and birds are present on the appeal site. Mr Dighton explained that the vast majority are instead kept within easy walking distance on a neighbour's land, which enables him to tend to them on a daily basis, with a few accommodated further afield.

39. The Council promotes the methodology set out in Annex A to Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS7), published by the Government in 2004, as the best means of assessing whether there is justification for a residential presence on the appeal site. This sets a 'functional test' to establish whether it is essential for the proper functioning of an agricultural enterprise for one or more workers to be readily available at most times. It further indicates that new permanent accommodation cannot be justified on agricultural grounds unless the farming enterprise is economically viable, such that a 'financial test' must be met. It also advises that even temporary accommodation, such as a caravan, should be justified by clear evidence of a firm intention and ability to develop the enterprise concerned.

40. PPS7 was cancelled in March 2012 and, this being so, the guidance within it carries no weight in itself. Nonetheless, no replacement methodology having been published either locally or nationally, it remains a valuable tool in assessing cases such as this. Moreover, it chimes to a significant degree with current advice in the NPPF concerning the economic and environmental roles of sustainable development. I have therefore had regard to the Annex A methodology in the absence of anything more pertinent, whilst bearing in mind that it is not binding on the Appellant or the decision maker.

41. The Appellant owns a substantial amount of livestock and poultry, which must require much care and attention. Although I have not seen this for myself, other than the animals and birds currently on site, I find no sound reason to question Mr Dighton's claims in this regard. He identifies a functional need to

live on the appeal site based on the amount of livestock and poultry he looks after, the need to be present at all hours of the day and night when animals are giving birth and site security, given the supposed financial value of some species kept, or intended to be kept, on the land.

42. However, the Appellant's case in this regard lacks substance. The need for someone to be present at births and times of sickness is not disputed. However, whilst I have taken into account the Appellant's advice regarding the needs of pigs, goats and sheep in this regard, it has not been explained to my satisfaction why a functional requirement of this kind could not be met in this case by one person staying overnight in makeshift sleeping accommodation, such as a small touring caravan, when the occasion demands. Nothing before me suggests that birthing or sickness is likely to occur on such a scale or with such frequency and regularity as to justify a continuous residential presence.

43. Moreover, Mr Dighton has readily acknowledged that, whilst there is a low-key business component to the smallholding, it is not run on a commercial basis, nor is there any intention on his part to do so. His agriculturally-related activity is essentially portrayed as a hobby, with income derived primarily from other work. Nothing resembling a business plan, in the form of a methodology and timetable for future expansion or financial projections, has been provided. At most the Appellant, on his own evidence, aspires to self-sufficiency rather than the operation of a profitable enterprise.

44. A personal desire to carry out what is essentially a hobby on the scale envisaged carries far less weight than a structured plan to establish a viable agricultural business that could contribute to the local rural economy. Furthermore, the absence of financial justification raises the question of why the Appellant's activity need be carried out on this particular site rather than somewhere less sensitive in landscape and settlement policy terms. Nothing before me suggests that a comprehensive search for alternatives was undertaken before the appeal site was acquired.

45. In any event, it is difficult to envisage how a hobby use of this kind might in itself justify residential accommodation in the countryside, irrespective of the precise location, other than in the most exceptional circumstances. The acceptance of such a principle carries with it the potential for abuse of the planning system, whereby a large amount of livestock might be acquired simply for the purpose of securing a new dwelling in a rural area as a departure from settlement policy. I do not suggest that this is, or has ever been, the Appellant's plan. Nonetheless, a grant of planning permission in this case would set a most unfortunate precedent that could cumulatively undermine local rural strategy.

46. A perceived need to guard against trespass, vandalism and theft on the appeal site cannot in itself justify a residential presence in the non-commercial scenario presented by Mr Dighton, irrespective of the value of the livestock and poultry kept on the land and the apparent sensitivity of emus to intrusion. The same applies to unsubstantiated claims regarding a reduction in theft and fly-tipping on neighbouring land since the Appellant took up residence.

47. I am also mindful that Mr Dighton was still able to look after a large quantity of poultry for hobby purposes when residing in Sittingbourne. Moving to the appeal site has merely facilitated the expansion of that hobby and, on the evidence before me, is not essential to its continuation on a lesser scale whilst

living elsewhere. I conclude that the needs of the smallholding at Evaluna are not sufficient to justify residential accommodation in the countryside in the terms of saved LP Policy E6, draft ELP Policy ST3 or the NPPF.

Additional matters

48. I have considered all the other matters raised. The Appellant asserts that, having sold his former residence in Sittingbourne, there is no alternative accommodation to which he and his family could relocate. The Appellant has a young son and I am mindful that the Supreme Court, in the case of *ZH (Tanzania) v SSHD* [2011] UKSC 4, established that the 'best interests' of children should be a primary consideration, reflecting Article 3(1) of the United Nations Convention on the Rights of the Child. In this regard I am mindful that ready access to medical services is desirable and of the educational needs of the Appellant's young son.

49. However, although Mr Dighton expresses a preference for caravan living, his long tenure at Elm Grove does not signal a significant aversion to bricks and mortar. Accordingly, it has not been demonstrated that purchasing or renting a conventional house or flat, where the welfare of the family would be assured, is not a reasonable option in this case. Nor has it been shown that such accommodation is not available locally at an affordable price, or that any other personal circumstances should be taken into account. I therefore give limited weight to claims that alternative accommodation is not available.

50. Article 8 of the European Convention on Human Rights affords the right to respect for private and family life. It is clear that upholding the enforcement notice would interfere with the family's Article 8 rights. However, I am satisfied that, as alternative accommodation is in all probability available, the family would not be made homeless through the dismissal of the appeals and the removal of the caravan from the site. Dismissal would therefore be proportionate in the context of Human Rights if other considerations indicate that it is necessary.

51. Should the appeals fail, it would still be possible to carry out low key agriculture on the appeal site without the need for planning permission. By reason of the limited extent of the Appellant's land and the effect of the Article 4(1) Directions, this could not include the erection of buildings or means of enclosure without the Council's approval. Nonetheless, it could involve the siting of moveable shelters and other items, including a non-residential caravan, provided these were used solely for purposes integral or ancillary to agricultural activity on the land.

52. This provides the Appellant with a lawful fallback position which, necessarily, is a material consideration for the purposes of these appeals. I have no sound reason to believe that the use of the land for such purposes would be unlikely should the enforcement notice be upheld and therefore attribute significant weight to this possibility. Nonetheless, it is improbable that, in the absence of a residential presence on site, agricultural use would be as intensive and visually intrusive as it is at present.

53. The Appellant seeks to justify the unsightly fencing along the road frontage by reference to child safety and the need for site security. However, the importance of these considerations is diminished in circumstances where a residential presence on the site and the need to keep valuable livestock and

poultry there has not been demonstrated. I have noted the Appellant's contention that his is not the only caravan or mobile home in the vicinity. However, such features are far from typical of the wider landscape. In any event, each scheme must be assessed primarily on its own merits and I am not aware of the circumstances associated with any other accommodation of this kind on other sites.

54. I agree with the Appellant that saved LP Policies RC3 and T3, which concern rural housing needs and parking provision and are cited by the Council, are of little relevance to my decisions. I also find that concerns regarding highway safety could be addressed by improving visibility at the site access which, in the absence of cogent evidence to the contrary, I accept as long-established. Nonetheless, this would involve removing substantial swathes of vegetation on both sides with adverse implications for the rural street scene, at least in the short term. The fact that the Appellant pays Council Tax has no relevance to my decision, the need for such payments being assessed with reference to factors other than planning criteria.

55. I acknowledge that most of those who have objected to the appeals live some distance from the site. I also accept that the living conditions of even the nearest neighbours are unlikely to be compromised by the Appellant's activities, either existing or proposed, and that the site is adequately served by utilities and sewage/refuse collection services. Nor have I seen any cogent evidence that the Appellant's developments have adverse implications for flooding. Nonetheless, as passive, 'absence of harm' considerations these all carry very little weight.

Summary

56. The appeal site's location in the countryside outside any designated settlement militates strongly against residential accommodation, whether temporary or permanent, being approved unless exceptional circumstances apply. This alone carries very substantial weight. Moreover, I have found that the appeal development, both existing and proposed, has detrimental implications for the character and appearance of the surrounding countryside. This also carries very substantial weight.

57. Nothing of substance that counters the harm thus identified emerges from the Appellant's references to Gypsy and Traveller policy or the needs of the smallholding, given that the latter operates as a hobby rather than on a commercial footing and would continue to do so. Whilst the lawful fallback position carries more weight, any visual harm arising therefrom would, in all likelihood, be far less significant than that associated with the appeal schemes. All other matters raised by the Appellant in support of his case carry very little weight.

58. I therefore conclude that, on balance, harm to the effectiveness of rural settlement policy as set out in saved LP Policy E6, draft ELP Policy ST3 and the NPPF and the character and appearance of the countryside is not avoided or outweighed in this case by any positive attributes of the appeal schemes, either individually or cumulatively. I have taken into account the DCLG's Planning Practice Guidance, published in March 2014, insofar as it is relevant. However, on the facts of this case, neither this nor any other matter is of such significance as to outweigh the considerations that have led to my conclusions.

It follows that consequent interference with the family's Human Rights is both necessary and proportionate.

Conclusions

59. For the reasons given above I conclude that neither appeal should succeed. I will uphold the Appeal A enforcement notice with corrections and refuse to grant planning permission on the deemed application associated therewith and on Appeal B.

Formal decisions

Appeal A: APP/V2255/C/14/2219797

60. It is directed that the enforcement notice be corrected by:
    (i) in the address at the beginning of the notice immediately after the heading 'MATERIAL CHANGE OF USE', the deletion of the postcode 'ME13 9EU' and the substitution therefor of the postcode 'ME13 9EY';
    (ii) in section 2, the deletion of the postcode 'ME9 9EU' and the substitution therefor of the postcode 'ME13 9EY';
    (iii) the deletion of the wording of section 3 in its entirety, with the exception of the heading, and the substitution therefor of the words: 'Without planning permission, the material change of use of the Land from agricultural use to a mixed use comprising the stationing of a caravan for residential use and an agricultural smallholding and the provision as facilitating development of a store shed, kennels/dog housing, hardstanding and fencing and other structures and enclosures.'; and
    (iv) in section 4(1), the deletion of the number '4' and the substitution therefor of the number '10'.

61. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/V2255/A/14/2217679

62. The appeal is dismissed.

Alan Woolnough

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr D Dighton	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms T-A Day BA(Hons) MRTPI	Senior Planning Officer, Swale Borough Council
Ms S Rouse BSc(Hons) MRTPI	Senior Planning Policy Officer, Swale Borough Council

INTERESTED PERSONS:

Mr G Hart	Local resident
Mr D Keane	Local resident
Mrs P Keane	Local resident
Mr F Krish	Local resident
Mr C Maciejewski	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1 Appeal decision ref no APP/V2255/A/07/2034424, submitted by the Council
2 Appeal decision ref no APP/V2255/A/07/2047417, submitted by the Council

PLANS

A	Plan attached to the Appeal A enforcement notice
B.1 & B.2	Appeal B application plans comprising location plan and drawing no 131106 Rev:001