The Planning Inspectorate

Appeal Decisions

Inquiry Held on 26 -29 January and 1-3 February 2021
Site visit made on 5 February 2021

by C Sherratt DipURP MRTPI

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

Decision date: 20 August 2021

Land at Haytop Country Park, Alderwasley Park, Whatstandwell, DE4 5HP (the "Land")

Appeal A - Ref: APP/M1005/X/19/3241549 ('LDC Appeal')

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Haytop Country Park Limited against the decision of Amber Valley Borough Council.
- The application Ref AVA/2019/0268, dated 18 March 2019 was refused by notice dated 10 September 2019.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is "Proposed siting of 30 static caravans for permanent residential occupation and 30 static caravans for 12 month holiday occupation".

Notice 1 ('Change of Use Notice')
Appeal Refs: APP/M1005/C/19/3226961 (Appeal A1), 3226962 (Appeal B1), 3226963 (Appeal C1), 3226964 (Appeal D1), 3226965 (Appeal E1), 3232250 (Appeal F1), 3232251 (Appeal G1), 3232252 (Appeal H1), 3232253 (Appeal I1)

- 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 Haytop Country Park Limited and others[1] against an enforcement notice issued by Amber Valley Borough Council.
- The enforcement notice was issued on 15 March 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land for the stationing of residential caravans that are not trailer caravans designed and constructed for drawing by car (aka "static caravans").
- The requirements of the notice are to:
  (i) Cease the use of the Land for the stationing of residential caravans that are not trailer caravans designed and constructed for drawing by car (aka "static caravans").
  (ii) Remove all static caravans from the Land.
- The period for compliance with the requirements is 6 months.

[1] Appeal A1 – Haytop Country Park (Mr Anthony Cooper Barney), Appeal B1 – Mr Oliver Barney, Appeal C1 - Mr Ian Scott, Appeal D1 – Mr Mark Showell, Appeal E1 – Mr Mark Gartside, Appeal F1 – Mrs Grace Barney, Appeal G1 – Mrs Helen Scott, Appeal H1 – Mrs Debora Showell and Appeal I1 - Mrs Juliet Gartside.

- Appeal A1 is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeals B1 – I1 are proceeding on the grounds set out in section 174(2) (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Notice 2 ('Operational Development Notice')

Appeal Refs: APP/M1005/C/19/3226967 (Appeal A2), 3226968 (Appeal B2), 3226969 (Appeal C2), 3226970 (Appeal D2), 3226971 (Appeal E2), 3232262 (Appeal F2), 3232263 (Appeal G2), 3232264 (Appeal H2), 3232265 (Appeal I2).

- 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 Haytop Country Park Limited (Mr Anthony Cooper Barney - Appeal A) and others[2] against an enforcement notice issued by Amber Valley Borough Council.
- The enforcement notice was issued on 15 March 2019.
- The breach of planning control as alleged in the notice is without planning permission:
  (i) Engineering operations and other operations to re-contour the Land, creating a series of terraced platforms.
  (ii) The construction of concrete bases, hardstandings, gabion retaining walls, lighting columns and service connections on the Land.
  (iii) The construction of a new roadway (approximate location identified by a hatched area on the attached plan) on the Land.
  (iv) The construction on the Land of raised wooden decking structures and brick skirting around the caravans.
- The requirements of the notice are to:
  (i) Reprofile the Land to restore it to its previous level and condition.
  (ii) Remove all concrete bases, hardstandings, gabion retaining walls, service connections and lighting columns from the Land.
  (iii) Remove the roadway (identified by a hatched area on the attached plan) from the Land.
  (iv) Remove all raised wooden decking structures and brick skirtings from the Land.
- The period for compliance with the requirements is 6 months.
- Appeal A2 is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeals B2-I2 are proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

The LDC

1. A revised Site Layout Plan (ref: 1053-0011-01) was submitted in advance of the Inquiry to reflect the correct ownership boundary associated with the LDC. The amendments relate to the land edged in blue only. I am satisfied I can determine the appeal on the basis of this revised layout plan without causing injustice.

[2] Appeal A2–Haytop Country Park (Mr Anthony Cooper Barney), Appeal B2 – Mr Oliver Barney, Appeal C2 - Mr Ian Scott, Appeal D2 – Mr Mark Showell, Appeal E2 – Mr Mark Gartside, Appeal F2 – Mrs Grace Barney, Appeal G2 – Mrs Helen Scott, Appeal H2 – Mrs Debora Showell and Appeal I2 - Mrs Juliet Gartside.

The Notices

2. The time for compliance with both notices is 6 months from when the notices take effect. A date of "18 October" is also specified in brackets which corresponds to the 6-month period from the date of issue of the notices. As the notices are effectively held in abeyance during the appeal process and so did not come into effect, the reference to a specific date of 18 October is now incorrect and should be deleted. No injustice would be caused as a result of this correction. The period for compliance will remain as 6 months subject to any consideration of the ground (g) appeals.

3. It was established that no lighting columns have been erected on the site. Rather CCTV columns have been erected. I shall correct the description of the alleged breach of planning control on the notice but also delete these from the requirements since it was conceded by the Council that planning permission should be granted for these given the lawful use of the site as a caravan site.

Decisions

Appeal A - Ref: APP/M1005/X/19/3241549 ('LDC Appeal')

4. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Notice 1 ('Change of Use Notice')

Appeal Refs: APP/M1005/C/19/3226961 (Appeal A1), 3226962 (Appeal B1), 3226963 (Appeal C1), 3226964 (Appeal D1), 3226965 (Appeal E1), 3232250 (Appeal F1), 3232251 (Appeal G1), 3232252 (Appeal H1), 3232253 (Appeal I1)

5. It is directed that the enforcement notice be corrected by the deletion of the words "(18 October)" from the period for compliance.

   Subject to this correction the appeals are allowed and the enforcement notice is quashed.

Notice 2 ('Operational Development Notice')

Appeal Refs: APP/M1005/C/19/3226967 (Appeal A2), 3226968 (Appeal B2), 3226969 (Appeal C2), 3226970 (Appeal D2), 3226971 (Appeal E2), 3232262 (Appeal F2), 3232263 (Appeal G2), 3232264 (Appeal H2), 3232265 (Appeal I2).

6. It is directed that the enforcement notice be corrected by:

   The replacement of the words "lighting columns" with "CCTV columns" in sub-section 3 (ii) of the description of the breach of planning control alleged;

   The deletion of "(18 October)" from the period for compliance; and

   Varied by the deletion of "and lighting columns" from sub-section 5 (ii) in the requirements of the Notice.

   Subject to these corrections and variations the appeals are dismissed and the notice upheld.

Application for costs

7. At the Inquiry an application for costs was made by Haytop Country Park Limited against Amber Valley Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

8. I heard all evidence from the main parties relating to the LDC appeal and the legal grounds of appeal (grounds (b), (c) and (d)) in respect of both notices first. This evidence, including that from interested parties, was given under oath.

9. The appeal site is subject to a Tree Preservation Order (TPO) protecting the woodland. A TPO is the mechanism for providing legal protection to trees of significant amenity value; that generally being here the trees' removal would have a significant negative impact on the local environment and its enjoyment by the public. In 2017, some 121 trees on the caravan site were felled in contravention of the TPO. The trees formed part of a woodland order defined as W1. The owner of the site was subsequently prosecuted and fined. A Tree Replacement Order (TRO) has since been issued requiring 100 trees to be planted as detailed in the Design Schedule and in the locations set out in Appendix C of the TRO. The time for compliance with the TRO is (was) 12 months from the date the notice takes effect, that date being 10 February 2021. I heard at the Inquiry that the TRO was to be appealed in so far as it specifies the precise locations of where each tree is to be replanted. The outcome of that particular process, if it occurred, is unknown.

10. The appellant submits that Notice 1 ('the Use Notice') could have required the removal of the operational development that facilitated the alleged change of use in the requirements of the notice; so even if the notice is upheld, planning permission would be treated as being granted as soon as that notice was complied with, having regard to the provisions of s173(11).

11. Although I accept that Notice 1 could have required any works that facilitate the alleged use of land to be removed, this does not appear to be a situation where the Council has under enforced. The alleged breach is specifically directed at the type of caravans stationed on the land and their occupation only. This is what the Council considers results in a material change of use by reason of an intensification of use. To remedy the actual breach alleged, it would be necessary for the activities that characterise the materiality of that change of use to cease; that being the stationing of residential static caravans and the removal of those caravans. Moreover, no caravans are yet stationed on the majority of the bases that have been created and so there can be no certainty about the future type or occupation of any caravans that might be stationed upon them. It seems to me, that the Council were entitled to address the operational development through a separate notice if they so wished.

12. The revised National Planning Policy Framework (the Framework) came into force on 20 July 2021. The main parties have been given an opportunity to comment on any changes that may be of relevance to their case. No comments were made.

Reasons

Background

13. The lawful use of the land that is the subject of Appeal A (the LDC) is agreed to be as a caravan site. It is the subject of two planning permissions, the interpretation of which is in dispute. It is common ground between all the main parties that the planning permission(s) permit the stationing of 60 caravans on this land. Both the type of caravans that can be stationed on the land and how some can be occupied is in dispute.

14. Around 2016, the appellant acquired the site and commenced the clearing and re-modelling works. Whilst some caravans (statics) remained when these works were being undertaken, these were subsequently removed from the site with the exception of one[3]. The breaches of condition(s) imposed on the 1966 permission that the Council had previously pursued, also ceased as a result of that site clearance and works.

15. The site has been laid out to provide 23 new caravan bases, accessed off a newly created internal road as identified on Notice 2. Terraces stepping up the hillside have been formed to provide a level platform associated with each base. These are retained by gabion walls of various heights. Services have been provided. The operational development carried out to date is to the south west of the historic wall within the caravan site. This development forms the basis of Notice 2. Twin-unit static caravans are stationed on some[4] of the 23 bases some of which are occupied. The dated, single unit static caravan, which is in a poor state of repair and that is unoccupied, remains on the site to the north of the wall.

16. I understand the site is being marketed as a Park Home site with pitches / plots available for purchase. An illustrative plan provided by the appellant[5] shows a layout accommodating 35 units, 26 of which would be to the south of the wall on the 'upper' part of the site to which Notice 2 relates.

17. The Council, in the reasons for refusing to issue a LDC, explains that the change from transient and seasonal use by touring type caravans to permanent use by static twin-unit caravans would amount to a significant material change of use arising from intensification of use.

18. Notice 1 ('the Use Notice') is directed at the stationing of residential caravans of a certain type (aka static caravans) only. By way of explanation, the reasons for issue of the notice state that the unauthorised use of the land for the stationing and permanent occupation of the static caravans represents a material change of use of the land due to the intensification of the use which has substantially changed the character and appearance of the caravan park. The previous touring caravan park use exhibited a degree of openness and transience, whereas the current use as a permanently occupied static caravan site has created an appearance of a hard-landscaped form of residential development which is characterised by its permanence.

[3] At the time of my site visit there was a dated and historic single-unit static caravan in the position indicated as caravan 64 on Appendix 34 of the appellants' SoC, although this was clearly no longer occupied but would require removal on the basis of the requirements of the notice. This is situated outside the 1966 permission area but inside the 1952 permission area.
[4] The main parties refer to there being 9 twin-unit caravans at the time the notice was issued.
[5] Figure 7 of the appellants' Statement of Case

19. It is clear from the reasoning that in the context of this notice 'residential caravans' is being used as a term for caravans occupied permanently. The parties have presented their cases on this basis. The requirements of the notice require both the cessation of the use of the land for the stationing of static residential caravans and all static caravans to be removed from the land. On that basis, no static caravans could be stationed on the Land irrespective of how they are occupied.

20. Of note is that the Council's base position, as set out in the notice, is predicated on a touring caravan park. However, the Council explained in opening that "the reality is that the breach which is enforced against in the change of use enforcement notice is the use of the site for the stationing of nine twin unit park homes". Although not expressly invited to correct the notice, the Council said it was open to me to do so. The appellant argued this would cause injustice and so was outside my powers of correction.

21. I have carefully considered the implications of this. It is on the one hand, a concession on the part of the Council since the term 'static caravan' encompasses both single-unit and twin-unit caravans. The notice would no longer therefore be directed at the stationing and permanent occupation of single unit static caravans. Furthermore, at the time the enforcement notices were issued, the residential caravans must have been 'the static caravans' referred to in the reasons for issue.

22. Nevertheless, the allegation still generalised 'statics' and concerns not only the type of caravan but their permanent occupation. By removing single unit static caravans from the wording of the allegation (in addition to consequential corrections to the requirements), this appeal would no longer address the lawfulness or otherwise of the use of the land for the stationing of any static caravans and their occupation. The appellants' cases are not presented on the basis of distinguishing between the materiality of any change between single and twin-unit statics. The appellants' cases on grounds (c) and (d) in particular may have been substantially different.

23. Bearing in mind the implications of correcting the allegation, I agree that injustice to the appellants would arise should I correct the description of the alleged breach to exclude single-unit static caravans without first considering the grounds of appeal. Depending on my findings on each ground and whether the notice is upheld, I will consider if the requirements of the notice should be varied to ensure any caravans that can be lawfully stationed on the site is not prevented as a result of the notice and / or to reflect the Council's position in relation to single-unit static caravans.

The planning permissions

24. In March 1952, planning permission was granted "to use seven and one half acres of land at Shiningcliff Wood, Whatstandwell for the siting of thirty (30) mobile dwellings and one (1) wooden bungalow". The permission is granted "In the manner described on the application and shown on the accompanying plan(s) and drawings(s)" and subject to a number of conditions (a) to (e) ('the 1952 planning permission).

25. The only plan the Council holds which relates to this permission is a location plan headed "PLAN REFERRED TO". This plan shows an outline of the site's area

and vague field numbers but does not provide specific details relating to footpaths and roads within the site. Unfortunately, therefore, whilst other plan(s) and drawing(s) that accompanied the application are part of the permission, they are not available.

26. The following conditions are pertinent to my consideration of these appeals:

    (a) The number of mobile dwellings shall not at any time exceed thirty.

    (b) The dwellings shall all be sited below, i.e. to the south and east of the footpath crossing the field no. 165.

    (e) Any structures other than approved above shall not be erected without the prior formal consent of the Local Planning Authority.

    The reason given for the conditions is in the interests of the amenities of the area.

27. After the conditions and the reasons for those conditions is a 'Note' which reads "For the purposes of this consent the expression "mobile dwelling" means trailer caravans specially designed and constructed for drawing by private cars, and motor caravans in full mechanical order, in all cases complying with Ministry of Transport Acts and Regulations, and horse dawn caravans of the gypsy type".

28. In June 1966, the Council granted planning permission for development described as "extension of existing caravan site from 30 to 60 caravans, ~~majority~~ for seasonal and towing use", subject to 11 conditions (the 1966 planning permission)[6]. It was agreed that the word 'majority' was struck out and forms no part of the description of the permission. The conditions imposed therein use the expressions caravans and mobile dwellings.

29. The following conditions are, in my view, of particular relevance to the determination of these appeals:

    1. This consent is supplementary to that granted on 27 March 1952 (Code No. BER/352/12) for the siting of 30 caravans. Not more than 60 mobile dwellings, including touring vans, shall be accommodated on the whole site at any one time.

    2. All caravan standings shall be sited within the areas shown as groups A – H on the attached plan, subject to compliance with the requirements of conditions 7, 8 and 9, and notwithstanding any requirement of the Town and Country Planning General Development Order, 1963, every standing and every caravan in groups C, D and H shall be orientated in a northeast to southwest direction. Groups A, B and F, shall be limited to a maxima of nine, eleven and three caravans respectively.

    3. Every standing for a mobile dwelling shall be sited below i.e. to the south and east of the roadway crossing field no. O.S. 165.

    5. The occupation of the caravans authorised by this consent shall be limited to seasonal use, no caravan shall be occupied as permanent residence.

[6] Permission reference: BER/964/39

8. The approval of the Local Planning Authority shall be required for the detailed disposition of any works authorised or required by this consent which involve the felling of any existing tree.

9. The central green on the site shall be maintained permanently open as recreational area and neither tents, caravans nor buildings shall be permitted to be sited thereon.

10. The area of filled land indicated on the attached plan as 'site for touring vans' shall be surfaced to the satisfaction of the Local Planning Authority and subsequently maintained solely for the purpose of allowing the siting of touring vans visiting the site for [a] period not greater than 72 hours.

30. The reasons given for imposing the conditions are made in the context of the site being one of great scenic importance in a stretch of the Derwent Valley. Four reasons, (a)-(d) are given. Reason (a) states "That the further concentration of caravans, otherwise than in the approved groupings, would be likely to expose them to view from the A6 Trunk Road and the Derby-Manchester railway line, from both at which they are at present effectively concealed, and from many vantage points in the surrounding area." Condition 2 specified areas within which caravans should be grouped, orientated and in what numbers. Reason (b) states "That this consent is granted, having regard to the acknowledged demand, for holiday and weekend caravan sites in this area. It is remote from any major settlement and is not therefore felt to be suitable for use as a permanent residential caravan site." Two plans are included in the evidence[7] but neither can be said by the parties with any certainty to be the application or approved plans.

31. A plan provided in the appellants' Statement of Case[8] (SoC) overlays the site boundaries relating to each permission. There is significant overlap in area with the 1952 and 1966 permissions, the main differences being that the 1966 area[9] extends north east down to the river and slightly further south beyond the bungalow and includes the Lodge. It excludes an area included in the 1952 permission in the lower part of the site, east of the Lodge. This plan also shows land identified as '1968 Site Licence Plan' and '2018 Site Licence Plan'. I shall return to the status of any Site Licence, if necessary, in due course.

32. The relationship between the LDC appeal site and the areas to which each notice relates is depicted on Figure 2 of the appellants' SoC. The LDC area broadly corresponds with the 1952 planning permission plan area. The plan attached to Notice 1 extends beyond the area to which the historic planning permissions relate. It includes land adjacent to the river to the north and north east of the planning permission land and an area to the west of the access road. It excludes land to the south east of the track leading down towards the river that was included in both the 1952 and 1966 permission ('the heel of the boot').

33. The appellants and the Council agree that the land shown on the plan attached to Notice 1 together with the excluded land that is included in the permissions are now part of a single planning unit; WACAG remains neutral on this point.

[7] Appendices 9 and 10 of the appellants' Statement of Case
[8] Figure 6 of appellants' Statement of Case
[9] According to the plan produced by Mr Thompson's tree injunction witness statement for the Council.

34. The appellants have, throughout their evidence, distinguished the areas into two; Area A (reflecting the area covered by the planning permissions) and Area B incorporating the areas beyond. Caravans have also historically been stationed in Area B although there were none at the time the notice was issued. This referencing was generally adopted throughout the Inquiry by all parties as a way to distinguish between these areas. I shall also adopt this referencing in my decision where appropriate.

35. The Operational Development Notice (Notice 2) relates to land that corresponds to the 1952 planning permission, overlapped by the 1966 permission, but also including the access to the west.

1968 Site Licence[10]

36. A site licence was granted to Mr W H George to use land at Haytop Farm as a caravan site on 27 July 1968. It contains 18 conditions. Condition 2 requires that the licenced site shall be occupied by no more than 60 caravans at any one time, and at least 30 of these shall only be occupied during the period 1 April to 30th September in each year. Condition 4 specified that caravans should be sited within Areas A-H on the plan attached to the Licence. Condition 5 requires the caravans occupying the licensed site to be of the trailer type. Condition 16 requires every standing used for siting a caravan for permanent residential purposes to have lockable covered storage space.

Interpretation of the planning permissions

37. It is necessary to interpret the planning permissions from the outset since it is central to these appeals and establishing the baseline position against which any changes are to be assessed. The use for which planning permission had been granted has to be ascertained by interpreting the words in the planning permission itself. The principles for doing so were well rehearsed by the parties.

38. In Trump International Golf Club Scotland Ltd v the Scottish Ministers [2015] UKSC 74, Lord Carnwath held that the process of interpreting a planning permission should not be regarded as differing materially from that appropriate to other legal documents which must be interpreted in a particular legal and factual context. A planning permission is a public document which may be relied on by parties unrelated to those originally involved. The approach is to consider what the reasonable reader would understand the words to mean in the context of the overall purpose of the planning permission and with common sense.

39. The basic rule is that a planning permission should stand by itself and the meaning should be clear within the four corners of the document. If something is not clear but the planning permission clearly incorporates the application and plans, they may be used as aids to interpretation or to understanding the scope of what is permitted. Generally, in order to resolve ambiguity, it is permissible to look at extrinsic evidence including but not limited to the application form and other documents, depending on the circumstances of the individual case.

40. It was held in *Cotswold Grange Country Park LLP v SSCLG & Tewkesbury BC [2014] JPL 981* that only a condition was capable of imposing a limitation on a

[10] Appendix 16 of appellants' Statement of Case

use in law; the grant identifies what is permitted and can be done in so far as the use of land is concerned, whereas any conditions identify what cannot be done - what is forbidden. Put simply, something that is expressly permitted in the grant does not mean that everything else is prohibited. Unless what is proposed (or in respect of Notice 1, alleged) is a material change of use, for which planning permission is required, it will only be things effectively prohibited by condition that cannot occur and that would be in breach of the relevant condition. In the Cotswold Grange case, planning permission had been granted for a holiday caravan park and the number of caravans was specified in the description but not any condition. The use of the land can be changed without any breach of planning control, so long as the change is not material, but a change of use in breach of a condition can be a breach whether or not the change is material.

The 1952 permission

41. Turning first to the 1952 planning permission. There is no dispute between the parties that this permission permits the stationing of mobile dwellings. There is also no dispute between the parties that the meaning of "mobile dwellings" in the description of the development permitted is as set out and clarified in the Note. It is therefore clear that the description of development sets out what the permission permits; that being the siting of thirty (30) mobile dwellings (as defined in the note) and one (1) wooden bungalow.

42. The siting of the mobile dwellings (caravans) is not of itself development. Rather, it is the purpose for which they are stationed on the land that determines the use to which the land is being put. The use of the land for which permission was granted in 1952 was clearly for residential purposes since the expression 'dwellings' is used. Indeed, this is consistent with the later 1966 permission described as 'the extension of a 'caravan site'[11] thus confirming the purpose is for human habitation. The conditions imposed on the 1952 planning permission therefore set out any restrictions on how the use can operate.

43. The stationing of more than 30 mobile dwellings is prohibited by virtue of condition (a). It is common ground that there is no condition restricting the way in which the mobile dwellings can be occupied. It may well have been the case, as has been suggested, that it was not considered necessary to restrict the nature of occupation in 1952 as there was unlikely to be much appetite to occupy a caravan all year round. Be that as it may, there would have been no breach of planning control if the mobile dwellings were stationed and occupied all year round on a permanent basis; the permission is unambiguous in this regard. Permanent residential occupation falls squarely within the scope of the 1952 permission.

44. The appellant argues that in the absence of a condition restricting the type of caravans to those described in the description of what is permitted, the stationing of other types of caravans is not prohibited and no material change of use would occur by doing so. The appellant relies on *I'm Your Man Ltd v SSE & North Somerset DC [1999] 4 PLR 107*. The appellant cites this case as

[11] The term 'caravan site' is defined in s1(4) of the CSCDA60 as meaning 'land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed'.

authority that if it was intended to restrict the type of caravans that could be stationed on the site, to the type defined in the note, then it would have been necessary to impose a condition to that effect. Provided that no material change of use would otherwise occur from that permitted, then I would agree.

45. The Council and WACAG consider condition (e) has the effect of controlling the type of caravans that can be stationed since it prevents any structures (plural) other than approved, from being erected without the prior formal consent of the local planning authority. If it is accepted that the reference to 'structures' in the plural is in relation to the mobile dwellings then, it is argued, that any other type of caravan is captured by this condition and requires formal consent to 'be erected'.

46. I consider the reference to structures in the plural is simply because a developer may wish to erect any number of structures in association with the use of the land. The relevant condition does not say 'other than those approved'.

47. I accept that the statutory definition contained in the CSCDA60 refers to caravans as being "any structure designed or adapted for human habitation" (my emphasis). The 1952 permission clearly pre-dates that definition but this, in my view, demonstrates that it would not have been unreasonable to refer to mobile dwellings as 'structures'. Structures in the plural were therefore approved in 1952, including, at the very least, the mobile dwellings and bungalow. I do not consider it is a reference to only one or the other as was suggested. Unfortunately, as the approved plans no longer exist there is no way of telling if any other structures associated with the use, such as toilet blocks, were shown on the approved plans that the condition may have been referring too.

48. More importantly, condition (e) only prohibits the erection of other structures. Caravans are not 'erected' but are rather stationed or sited on the land. The description of development permitted correctly refers to the 'stationing' of mobile dwellings and condition (b) states that the dwellings shall be 'sited'. The distinction was clearly apparent to the decision maker.

49. The Council say the bolting of two haves together is an act of erection but as this permission pre-dates the definition of a twin-unit caravan by some 16 years, I consider that condition (e) was not drafted with this in mind and should not be interpreted as such. In any event, even twin-unit caravans that meet the definition of a caravan would be better described as being 'stationed' on the land since they must be capable of being moved.

50. I consider a reasonable and ordinary reading of condition (e) in the context of the permission as a whole, is that it restricts only the erection of other structures, which cannot reasonably relate to the stationing of caravans. Condition (e) does not therefore prevent the stationing of other types of caravan, provided of course, no material change of use would occur from that permitted, a matter to which I shall return, if necessary, in due course.

51. I consider that the 1952 permission grants permission for the stationing of 30 mobile dwellings (as defined in the Note) with no restriction on occupation.

The 1966 permission & the relationship with the earlier 1952 permission

52. I now turn to the 1966 permission which permits the "*extension of existing caravan site from 30 to 60 caravans, for seasonal and towing use*". It is important to understand that this permission does not have the effect of adding an additional area of land to the site upon which 30 additional caravans can be stationed. Most of the area of the 1966 permission overlaps that of the 1952 permission although there are some differences in the precise boundaries as set out previously - the permission only extends the site in physical terms primarily by including some land to the north in the lower part of the site adjacent to the river.

53. I have carefully considered the various propositions about how the permissions relate to each and what the resultant permission(s) permit. These are:

- Permission for the stationing of 30 mobile dwellings as defined in the 1952 permission that can be permanently occupied all year round and 30 caravans of any type that can be occupied for seasonal purposes;
- Permission for the stationing of 60 mobile dwellings as defined in the 1952 permission that can be occupied for seasonal use only; or
- Permission for 60 caravans of any type, only 30 of which can be permanently occupied and 30 of which can be occupied for seasonal use.

54. As set out in well-established case law, it will be a matter of construction whether a later permission on the same piece of land is compatible with the continued effect of the earlier permissions. It is therefore necessary when interpreting the 1966 permission to also consider its relationship to the 1952 permission.

55. The description of what is permitted is poorly drafted as are some of the conditions in so far as understanding whether they are intended to relate to only 30 or all 60 of the caravans. I have sought to interpret the permission in a common sense and straight forward manner. It permits the 'extension' of the caravan site. In doing so it permits the stationing of an additional 30 caravans, thus granting permission for the stationing of 60 caravans in total. Conditions control the overall layout of the site for the stationing of all 60 caravans. In my view, this later permission prevails, but in doing so incorporates elements of the 1952 permission within it, where necessary, as discussed below.

56. It is accepted by the Council that if the 1966 planning permission when properly interpreted does grant permission for caravans as defined by statute, then the introduction of twin unit park homes on site is in accordance with that planning permission and not a breach of planning control . The description of what was permitted in 1966 clearly relates to unspecified 'caravans' and therefore in my view, 60 caravans as defined in statute unless any conditions stipulate otherwise.

57. No application documents are available. Nevertheless, it seems clear to me that the application was not made on the basis that all 60 caravans were intended to be for 'seasonal and towing use' since the word 'majority' was obviously included in the planning application description. The word 'majority' has not been deleted on the second page of the Decision Notice which sets out

how the application was described. I therefore agree with the submissions made for the appellant that it most probably would have been struck out from the description of what is permitted simply because 'majority' would not be an accurate description given 30 caravans (exactly half of the overall total permitted) could already be stationed for permanent residential occupation.

58. It was argued that condition 1 should be interpreted as restricting the type of caravans that can be stationed to 'mobile dwellings' as described in the 1952 description of development. Unhelpfully, condition 1 uses the terms 'mobile dwellings' and 'caravans'. Condition 1 is concerned with the number of caravans that can be stationed on the site. The informative contained in condition 1 that 'this consent' (the 1966 permission) is 'supplementary' to the 1952 permission for the siting of 30 caravans, should be read I suggest in that numerical context only. It does no more in my view, than clarify that the total number of caravans permitted as a result of the 1966 permission, includes 30 already permitted in 1952. It is a pre-cursor to the sentence that follows restricting the overall number of caravans that can be stationed to 60; that is the sole purpose of condition 1 on a sensible and ordinary reading of it.

59. Furthermore, unlike the 1952 permission, 'mobile dwellings' is not defined in the 1966 permission and condition 1 is not expressed in a way that restricts the type of caravans. Condition 1 only restricts the total numbers of caravans that can be stationed on the site such that a breach of condition 1 would only occur if in excess of 60 caravans were to be stationed on the land covered by the 1952 and 1966 permissions. I consider the reference to both caravans and mobile dwellings seemingly interchangeably, is no more than loose drafting. I do not therefore accept that condition 1 prohibits certain types of caravan from being stationed on the land or is intended to incorporate the definition of mobile dwellings from the 1952 permission.

60. Condition 5 does provide a limitation on the way in which caravans can be occupied. Occupation is restricted to seasonal use which is further clarified in the tail piece of the condition as preventing occupation as a permanent residence. The reasons for imposing the conditions of the 1966 permission clearly state that the location of the site is unsuitable for permanent residential occupation but recognise the demand for holiday accommodation.

61. The limitation applies to 'the caravans authorised by this consent'. Opinions differed on whether the phrase 'caravans authorised by this consent' means that condition 5 only applied to 30 caravans or all 60 caravans that could be stationed.

62. The 1966 permission permits an increase in the number of caravans that can be stationed on the land to 60; thus an extra 30 caravans. In my view, the limitation on the occupation of the caravans in condition 5 is only therefore in respect of the stationing of more than 30 caravans, those being the extra 'caravans' that the 1966 permission facilitates. It follows that Condition 5, as drafted, would only be breached if more than 30 caravans were stationed on the site for permanent residential occupation. This is because the condition is worded, in my view, so as not to prevent the unrestricted occupation of 30 of the 60 caravans, consistent with the former 1952 permission. In other words, it does not seek to restrict the occupation of 30 caravans on the site to any greater extent than the 1952 permission did. This approach also reflects the conditions of the 1968 site licence.

63. There was disagreement between the main parties on the meaning of 'Seasonal use'. Whilst the witnesses for the Council, WACAG and local residents considered seasonal to refer to specific seasons (months) of the year, generally March through to October, the appellants' witness explained that in the Caravan industry it is commonly understood to mean that the caravans could not be occupied for permanent residential occupation, in other words it should be a holiday home. On this basis, the tailpiece simply offers clarification of what is meant by 'seasonal use'.

64. I am mindful that 'seasonal use' (my emphasis) would lend itself more to an understanding of how the caravan is to be used by its occupiers rather than when it can be used. Furthermore, it is unclear, if given the meaning the Council and / or WACAG suggest, how the Council would determine when occupation of the additional caravans to which condition 5 relates, may be in breach of any 'seasonal use', in the absence of the seasons or dates between which a caravan can or cannot be occupied being specified. The period of opening time for any site, if not specified through planning conditions or the relevant site licence, will depend on the individual preferences of the operator of the site – it could be a 12-month season that is offered. What may be regarded as seasonal use may therefore differ from site to site and is not specific. Whilst the Site Licence does specify months of occupation, that is not to say that the planning permission is to be interpreted in the same way.

65. In my judgement, condition 5, on a sensible and ordinary reading, must therefore relate to 'seasonal use' in the context of a holiday use only, rather than restricted occupation during certain times of the year, as clarified by the tailpiece of the condition. Otherwise, it would simply not be enforceable. This is also consistent with the reasons given for the various conditions where the location of the site, remote from a major settlement, was not considered to be suitable for a permanent residential caravan site but the demand for holiday and weekend caravan sites was acknowledged. Weekend use could be all year round.

66. There are no other conditions imposed on the 1966 permission that would restrict the type of caravan that can be stationed on the site except for in the specific area to which condition 10 relates. Condition 10 states "The area of filled land indicated on the attached plan as 'site for touring vans' shall be surfaced to the satisfaction of the Local Planning Authority and subsequently maintained solely for the purpose of allowing the siting of touring vans visiting the site for [a] period not greater than 72 hours."

67. I consider, for the reasons set out, that there is no restriction on the type of caravan that can be stationed on the land covered by the 1966 permission, or how 30 of the 60 caravans can be occupied.

68. To further support my interpretation of the 1966 permission, the enforcement of conditions controlling the type of caravans would present practical difficulties if the 1952 permission still governed the stationing of 30 caravans (mobile homes) and the 1966 only the additional 30. In circumstances where there were less than 30 caravans stationed on the site at any one time, it would not be clear under the scope of which permission they were being stationed. This would be problematic as only the 1966 permission controls the layout of the site by virtue of conditions. So, if they were not stationed in accordance with condition 2, 9 or 10 of the 1966 permission for example, then it could be

argued that there was still no breach of planning control because the caravans were being stationed within the scope of the 1952 permission. This could be said to be the case even if they did not meet the definition of 'mobile dwellings' as set out in the 1952 permission, as an argument could still be advanced that no material change of use had occurred.

69. Such an outcome would be entirely at odds with the reasons for imposing conditions that seek to ensure that the further concentration of caravans, otherwise than in the approved groupings (a reference to condition 2) would be likely to expose them from view.

70. The 1968 site licence also distinguishes between the occupation of 30 caravans. It imposes a greater level of control than my interpretation of the permissions in some respects i.e. it specifies dates between which 30 caravans can be occupied and limits all caravans to those of the trailer type. Those differences do not however lead me to reach a different view on how to interpret the planning permission(s) for the purposes of planning control.

Appeal A - The LDC

71. On the basis of my interpretation of the 1966 permission above, the development described in the LDC application would not have been in breach of conditions of the 1966 permission relating to the type and occupation of caravans. It was therefore lawful on the date of the application. Only an 'illustrative' layout plan accompanied the application so the LDC will simply establish the numerical situation and type of caravans permitted; nothing else is being certified. Whether 60 static caravans could physically be accommodated on the site, whilst still complying with other conditions of the 1966 permission, in particular condition 2 concerning layout, and the TRO, would be a separate consideration that I am not been asked to certify.

Overall Conclusion on Appeal A

72. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed siting of 30 static caravans for permanent residential occupation and 30 static caravans for 12 month holiday occupation was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Notice 1 – the Use Notice

Ground (b)

73. For the ground (b) appeal to succeed, the onus is upon the appellant to show that the use alleged has not occurred as a matter of fact. The crux of the appellants' case as set out in the grounds of appeal, is that not all the caravans stationed on the land on the date the notice was issued were occupied for permanent residential use.

74. There is no dispute that the caravans stationed on the land are static caravans some of which were occupied for permanent residential purposes. The matters alleged in the notice have therefore occurred as a matter of fact. There was no suggestion that the remainder of the static caravans already brought on to the site, are not intended for permanent occupation. Whether or not the

requirements should relate to all of the caravans stationed on the land on the date of issue of the notice would be a matter more appropriately argued under ground (f).

75. The appellant also seeks, under ground (b) to distinguish those areas of the land referred to in the notice where no 'permanent residential' caravans were stationed at the time the notice was issued; those being the lower part of Area A (i.e. from the internal wall that crosses the site down to the River Derwent) and in Area B. There is no dispute that this was indeed the case, but it is not part of the appellants' case that there have not been static caravans stationed in these locations prior to the notice being issued, such that it has not occurred in the past. Furthermore, it is the view of both the Council and the appellant that the land referred to in the notice represents the current planning unit and so, notwithstanding whether caravans were stationed on the wider site on the date of issue of the notice, it was reasonable to expand the land to which the notice relates to that beyond Area A to ensure that the notice could not be defeated by simply moving the caravans elsewhere on the wider site.

76. To conclude, on the balance of probability, the development alleged has occurred. The appeal made under ground (b) fails.

Ground (c)

77. For the appeals made under ground (c) to succeed it would be necessary to find that the development alleged, that being the change of use of land by the stationing of residential static caravans, does not constitute a breach of planning control. S57(1) of the 1990 Act provides that planning permission is required for "*the carrying out of any development*", which is defined in s55(1) as including where there is a "*material change in the use of any buildings or land*."

78. The onus is again upon the appellants to demonstrate that no breach of planning control (a material change of use) has occurred; the burden of proof being on the balance of probability. The planning merits of the development proposed cannot be considered in relation to these particular matters as the test, on the balance of probability, is solely one of legal interpretation of the relevant facts.

79. Case law establishes that if a change of use is alleged in an enforcement notice, in the absence of any condition prohibiting the use of the site, the question in every case would be whether the alleged change of use had taken place and, if so, whether it is a material change of use for planning purposes. If not, there will have been no development. If the answer to both of these questions is 'yes', there will have been development and planning permission will be required.

80. The notice, in alleging a material change of use, does not set out the number of twin-unit caravans stationed on the land, but as previously stated 9 are referred to in addition to the 1 historic single-unit static remaining (pitch 64)[12].

81. There are additional bases that were in place at the time the notices were issued. However, notwithstanding the marketing of the site, a notice cannot anticipate what type of caravan may be subsequently stationed on them or how

[12] Site 64 as depicted on the Historical Overlay Plan at Appendix 34 of the appellants' Statement of Case.

any caravan will be occupied. The twin-unit caravans are clearly within the area referred to by the appellants as Area A (and within the confines of the 1966 permission) although the notice relates to a wider area, considered by the Council and appellant to be the planning unit.

82. The case put for the appellants is that there would be no material change of use of land as alleged, when assessed either against what the permissions permit or against how the site, including Area B, has been used for more than 10 years.

83. The materiality of any change in the character of an activity is appropriately assessed having regard to the planning unit and the use occurring, a matter to which I shall return, should I find the use alleged is outside the scope of the permissions.

The permissions

84. Given my findings on the interpretation of the permissions, the stationing of the residential static caravans, twin or otherwise, within the area covered by the 1966 permission is within the scope of that permission and not prohibited by it.

85. For the avoidance of doubt, I have necessarily confined my consideration of the scope of the permissions to the type of caravans permitted and their occupation, and whether a material change of use of land has occurred on this basis, as this reflects the description of the alleged breach defined in Notice 1. I have not therefore considered whether any conditions of the 1966 permission, unrelated to the type and occupation of those caravans, are also complied with since that would stray beyond the remit of this appeal. I have not, for example, considered whether or not the caravans can be stationed in the precise and current locations having regard to the conditions of the permission or the requirements of the TRO as the wording of the allegation is simply directed at a change of use arising from the type of caravans stationed and their occupation rather than any breach of conditions.

86. The single-unit static caravan I saw, that remained in the location I have referred to as pitch (site) 64, is outside the area of the 1966 permission. It is within the area covered by the 1952 permission. As I have found the 1952 permission is for the siting of caravans meeting the definition of mobile dwellings only (as set out in the note), the stationing of a static caravan here, is not what the permission grants. However, it was clearly not occupied for any residential purpose.

87. In any event, having regard to the Historic Layout Plan[13], aerial photos and the evidence of witnesses familiar with the site, the evidence before me demonstrates, on the balance of probability, that some 60 caravans of which around 28 were static caravans were stationed on the site for a continuous period in excess of 10 years. This includes a caravan stationed in the approximate location I have identified as pitch 64.

88. How each of those caravans, including that on pitch 64, have been occupied throughout this time is unclear. In respect of the one that remains on site, it

[13] Appendix 34 of appellants' SoC

appears not to have been occupied for any residential purpose, seasonal or otherwise, for a long time. As such, the continued existence of this caravan in Area A (in addition to the twin-unit caravans), was not contributing to any intensification of the pre-existing lawful use of the site, on the date of issue of the notice.

Conclusions on ground (c)

89. On the basis of my interpretation of the 1966 planning permission and the historic use of the site, no breach of planning control comprising a material change of use by "*the stationing of residential caravans that are not trailer caravans designed and constructed for drawing by car (aka "static caravans")* has occurred on the balance of probabilities. The appeal made on ground (c) succeeds and the notice will be quashed.

Overall Conclusions on Notice 1 Appeals

90. For the reasons given above I conclude that the appeals should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Notice 2 – Operational Development

91. The notice is directed at operational development carried out without the benefit of planning permission only. Accordingly, the deemed planning application, under ground (a) is for the operational development described in the alleged breach, notwithstanding the 1966 permission[14].

Ground (c)

92. For this ground of appeal to succeed the onus is upon the appellant to demonstrate that the operational development alleged in Notice 2 is not a breach of planning control. The appellants' case is that the works are permitted development granted planning permission by virtue of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).

93. Part 5 of Schedule 2 of the GPDO relates to Caravan Sites and recreational campsites. Class B permits 'Development required by the conditions of a site licence for the time being in force under the 1960 Act'. There are no conditions or limitations that must be satisfied. The appellants consider that most of the operations to which Notice 2 is directed, are development required by the 1968 site licence.

94. The 1968 site licence was issued by Belper Rural District Council to Mr W H George. It was granted 'in respect of the said land' that being Haytop Farm. There is disagreement between the parties in respect of the status of the 1968 site licence and whether it can be regarded as 'being in force'. It is agreed that

[14] The 1966 permission was granted conditionally for the use of land as a caravan site "in the manner described on the application and shown on the accompanying plan(s) and drawings". Some of the conditions control the layout of the site and prohibit the removal of trees all of which have a bearing on where bases can be located in accordance with that permission; most notably conditions 2, 3, 8 and 9. I have no powers to remove, vary or discharge those conditions through this appeal process since the notice is not directed at a breach of any condition.

it has not been revoked but nor has it been transferred to the appellant. The refusal of the Council to grant a new site licence was the subject of an appeal; the matter is 'stayed', awaiting the outcome of the appeal against Notice 1 and in particular, whether twin unit caravans can lawfully be stationed on the site.

95. Section 1 of the Caravan Sites and Control of Development Act 1960 (CSCDA) states that: "*Subject to the provisions of this Part of this Act, no occupier of land shall after the commencement of this Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence (that is to say, a licence under this Part of this Act authorising the use of land as a caravan site) for the time being in force as respects the land so used*". As the planning permission granted in 1966 is not a temporary planning permission, the site licence is not to be regarded as time limited in this respect as set out in section 4 'Duration of site licences'.

96. It was Mr W H George who made the application for a site licence and it was therefore to him that it was originally granted. Section 10 of the CSCDA deals with transfer arrangements and s10(4) specifically in respect of circumstances where any person becomes, by operation of law, entitled to an estate or interest in land in respect of which a site licence is in force, and s3(6) demonstrates the personal nature of the application since an applicant who has had any site licence revoked within the previous 3 years cannot be issued with another one. There is also a fit and proper person test in the case of applicants.

97. Notwithstanding the personal nature of a licence, I have been referred to the publication 'Mobile Homes Act 2013 - Advice to local authorities on the new regime for applications for the grant or transfer of a site licence.' Paragraph 10 confirms that:

> It is an offence under section 1 of the 1960 Act for anyone to own and run a park home site on their land without holding a licence. Thus, if a person purchased a site and a licence was subsequently refused that person could be prosecuted and face an unlimited fine on conviction. In the meantime the licence granted to the previous owner would continue in force. This is because (subject only to such restrictions relating to planning permission) a licence continues in perpetuity until it is transferred or revoked by a court or tribunal *(my emphasis)*. The licence holder remains liable for any obligations and liabilities arising out of the licence or any enforcement action.

98. The guidance appears to be clear that the 1968 licence therefore remains 'in force'. Nevertheless it still remains necessary to consider whether the development is required by the conditions of the site licence such that Class B would grant planning permission for them. The appellants referred me in particular to condition 7 of the licence that requires 'each caravan and toilet block to be not more than 150 feet from a road and shall be connected to a carriageway by a footpath with a hard surface'; condition 8 that requires 'each caravan must stand on a hard standing of concrete, tarmacadam or other approved material which shall extend over the whole area occupied by the caravan, and shall project not less than 3 feet outwards from the entrance of the caravan'; and condition 17 that 'the licensed site shall be provided with suitable surfaced parking places for at least 20 cars'.

99. The Council argued that what has occurred goes well beyond what is authorised by the site licence since it contains conditions that, amongst other things,

govern the location of caravan hardstandings (condition 4) and restrict the type of caravans that can be stationed to those of the trailer type (condition 5). Notice 2 is not concerned with the type of caravans that may be stationed on the hardstandings provided and neither the permission nor the licence limits the size of the hardstandings that must be provided.

100. However, condition 4 of the 1968 licence is in effect the same as condition 2 of the 1966 permission, requiring caravan hardstandings to be sited within the areas shown as groups A-H on the plan attached to the licence. To my mind, it must follow that the location of any roads and hardstandings required would need to also reflect where the caravan hardstandings must be grouped to also satisfy this condition. The location of roads and services would in turn, have to be guided by this.

101. Notwithstanding the views of the appellant, I consider the development permitted by the GPDO must only relate to development that would be required to satisfy the conditions of a licence when read as a whole rather than to satisfy any single condition in isolation whether or not that development would be contrary to another condition of the licence. I consider that would be entirely counter-productive.

102. The evidence demonstrates that prior to permission being granted in 1966 that in addition to the roads that provided access beyond the site (past the Mill House and The Bungalow), the internal road layout wrapped around the recreational green. A further internal road branched into the site to the south west of the wall, and these were linked by a narrower access way of some description. This appears to have been retained post 1966 with the link being more formalised and an additional loop added to provide access to caravan 'sites' 21 – 25[15].

103. The plan contained in Appendix 9 '1966 Layout Plan' appears to be an extract of that provided in the Statutory Declaration of Sarah Stevens[16]. This plan is clearly denoted as that referred to in the site licence. I note that the Areas A-H are all depicted on the plan. In addition, the numbers of caravans shown in Areas A, B and F correspond with the numerical limitations of nine, eleven and three set out in condition 2 of the planning permission. The caravans depicted in areas C, D & H are broadly orientated in a NE to SW direction as required by condition 2. Whilst the location of only 57 caravans is shown, that is not surprising since there is a further area for touring vans and the overall limitation of 60 caravans includes touring vans. A 'lay by' as referred to in condition 4 is indicated on this plan. It also shows a 'site for touring vans' as referred to in condition 10 albeit this appears to be outside the extent of the application site.

104. Furthermore, the internal road layout on this layout plan broadly corresponds in my view with that shown on the 'Caravan Park Layout Plan'[17] and the 'Historical Overlay Plan'[18]. The link I referred to previously is shown with a dotted line and the additional loop would have provided access to that depicted as Area D. From the aerial photos provided it appears likely that this road layout remained in the upper part of the site, south west of the wall, until

[15] Historic layout plan Appendix 34 of appellants' SoC
[16] Appendix 33 of Statement of Case.
[17] Caravan park Layout plan - Appendix 10 of appellants' SoC
[18] Historical Overlay Plan Appendix 34 of appellants' SoC

the re-modelling works commenced to provide the layout seen today. In my view, and in the absence of anything to the contrary, it is more probable than not that this historic road layout corresponded with the layout required by conditions 2 and 4 of the planning permission and site licence respectively and reflects that shown on the '1966 Layout Plan'.

105. Whilst it may be perfectly reasonable to upgrade or provide new caravan hardstandings, roads and other operational development within the scope of the 1966 permission and 1968 site licence, the location of some of the concrete bases, hardstandings, gabion retaining walls and service connections may not, on the balance of probability, be in locations consistent with condition 4 of the licence. The engineering operations and other operations to re-contour the land to create a series of terraced platforms are all associated with the provision of hardstandings and bases and so, again, it has not been demonstrated on the balance of probability that these are required by the licence.

106. As can be seen on the plan attached to the notice, the alignment of the road that is the subject of Notice 2 materially differs from that which previously existed and bears little resemblance to the site licence plan. Rather than continue to wrap around the former green and wind down to the break in the wall, it takes a far more direct alignment. It seems unlikely, based on the evidence before me, that a road of the alignment constructed is required to ensure that each caravan would be not more than 150 feet from a road whilst also satisfying condition 4 of the site licence (and condition 2 of the planning permission).

107. For these reasons, I consider it is more probable than not that the development that has occurred is inconsistent with the conditions of the 1968 site licence when read together. This is further reinforced by the apparent need to remove protected trees to accommodate the current layout. I do not therefore consider, on the balance of probability, that the matters alleged (the operational development) is development required by the conditions of a site licence irrespective of whether the 1968 licence could be said to be "for the time being in force". There is no requirement in the licence for raised wooden decking structures and brick skirtings (item (iv) of alleged breach).

108. The appellant also suggests that the retaining gabion walls are permitted development under Class A of Part 2 of Schedule A of the GPDO. In my view the gabion walls are an integral part of the platforms and cannot be artificially separated to claim they individually benefit from permitted development.

109. To conclude, I consider that it has not been demonstrated, on the balance of probability, that the operational development is permitted development. Accordingly, the appeal on ground (c) fails.

Ground (a)

110. Based on my findings in relation to Notice 1, the act of stationing twin unit static caravans for residential purposes is within the scope of the 1966 planning permission. No breach of condition notice was issued and so whether or not the caravans are currently stationed in compliance with the conditions is not a matter for me to consider as part of that appeal.

111. There was much discussion at the Inquiry about the baseline position against which any deemed planning application should be considered and in particular having regard to the tree removal. Trees that are the subject of a TPO have been illegally removed, without first seeking the proper consent to do so. The TRO requires the re-planting of some 100 trees. Whilst the developer has already been prosecuted in separate proceedings for the felling of some 121 protected trees, the fact that it was necessary for at least some of the trees to be removed to enable the development to occur, cannot be set to one side and ignored when considering the effect of the unauthorised development.

112. I consider that the baseline position for the land identified in Notice 2 is one reflecting the scope of the 1966 planning permission having regard to the constraints of the appeal site prior to the felling of the protected trees and earth re-profiling.

113. Both the 1966 planning permission and site licence require the caravans to be stationed within areas referred to as A-H, with condition 2 of the permission specifying numbers and orientation of caravans in some of those areas. As previously referred to, the reasons for the imposition of conditions on the 1966 permission acknowledge the site is situated in an area of great scenic importance in a stretch of the Derwent Valley indicated in the approved Development Plan as an area of great landscape value. Reason (a) explains that the further concentration of caravans, otherwise than in the approved groupings, would be likely to expose them to view from the A.6 Trunk Road and the Derby – Manchester railway line, from both at which they are at present effectively concealed, and from many vantage points in the surrounding area.

114. Even though the parties cannot point to a plan that they consider to be the layout plan referred to in the planning permission, the reasons for imposing the conditions clarify that the locations described in condition 2 are locations that would not expose the caravans from various views and vantage points. This puts in context, as a starting point, what I consider to be "the baseline position". This is consistent with the evidence from various witnesses who are familiar with the site and who described it as a caravan site largely nestled in woodland and relatively inconspicuous. Conditions imposed on the 1966 permission sought to retain that position notwithstanding the greater concentration of caravans permitted in 1966. I consider some weight can be afforded to the '1966 Layout Plan' in so far as it seems to reflect the description of what may have been considered an acceptable layout and the site licence plan.

115. An aerial photograph of the site in September 2016, taken from the north, shows the caravan site as it existed prior to the works that have been carried out. The landscape character of the site at that time was relatively informal, although it was accepted by the Council that some degree of harm had already occurred. However, sufficient numbers of mature trees remained within the northern area of the site, which together with the retention of semi-mature trees to the east and north of the central green, supported a sustained woodland character within the site, notwithstanding the open central area.

116. It is important to remember that the notice does not include any land in the lower part of the site to the north east of the wall that was included in the 1966 permission, and so it would not be appropriate to make a direct comparison to

the potential to accommodate operational development associated with the stationing of 60 caravans when assessing the ground (a) appeal. There is no evidence before the Inquiry that 60 twin unit caravans could be physically accommodated on the site in any event. Some 20 out of 60 caravans are shown outside the appeal site, in the area between the wall and river, on the '1966 layout plan'. The 'historic layout plan' shows that there have been around 27 caravans in the area defined on the notice plan, most of which were single unit static caravans. The 8 or so touring caravan 'sites' historically stationed to the west of the drive are outside the appeal site. The numerical baseline position would, I consider, be up to around 40 caravans on the appeal site, of which no more than 30 could be occupied permanently. Some 23 bases have been provided to date and are the subject of the notice along with the other operational development cited. An illustrative plan shows 26 bases within the appeal site area.

117. The policy context has changed since the last permission granted for the caravan site in 1966. The Derwent Valley Mills were inscribed on the World Heritage Site (WHS) list by UNESCO in 2001. The appeal site is situated within the buffer zone to the WHS. It also forms part of the setting of Alderwasley Hall, a Grade II Listed Building (designated in 1967). It lies within the extensive historic parkland to the Hall, which in turn forms the basis for the designation of Alderwasley Conservation Area. The development plan now includes the Amber Valley Adopted Local Plan 2006 (LP).

118. This ground of appeal is to be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework ('the Framework') is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

Main issues

119. The main issues are the effect of the operational development on:

(a) the setting of Derwent Valley Mills World Heritage Site given the location of the appeal site within its Buffer Zone;

(b) the character or appearance of the Alderwasley Conservation Area;

(c) the setting of Alderwasley Hall, a Grade II Listed Building; and

(d) the character and appearance of the surrounding area designated a Special Landscape Area (SLA).

Heritage Assets

120. The Framework confirms that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

121. Any harm to, or loss of, the significance of a designated heritage asset (including from development within its setting), should require clear and

convincing justification. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or other criteria apply. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

122. The Planning (Listed Buildings and Conservation Areas) Act 1990 contains the following statutory duties in relation to listed buildings and conservation areas:

Section 66(1) – "In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

Section 72(1) – "In the exercise, with respect to any buildings or other land in a conservation area, of any [functions under or by virtue of] any of the provisions mentioned in subsection (2)3, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

Derwent Valley Mills World Heritage Site Buffer Zone

123. WHSs are defined as designated heritage assets in the Framework and they are inscribed for their Outstanding universal Value (OUV). The Planning Practice Guidance (PPG) explains that the cultural heritage within the description of the OUV will be part of the WHS's significance and the policies of the Framework will apply to the OUV as they do to any other heritage significance they hold. As the Framework makes clear, the significance of the designated heritage asset derives not only from its physical presence, but also from its setting.

124. The DVMWHS, like all WHSs, is of global significance and is protected for humanity as a whole. The Council, when issuing the notice, stated that the operational development, in association with the loss of mature protected trees, has resulted in an enlarged and prominent gap in the natural woodland which has introduced extended views of the developed caravan park. The unauthorised development is therefore, the Council considers, harmful to the OUV of the DVMWHS due to loss of the rural landscape setting.

125. LP Policy EN29 states that "*Within the Derwent Valley Mills World Heritage Site Buffer Zone, as shown on the Proposals Map, the Borough Council will require all development proposals to preserve or enhance the setting of the World Heritage Site, including views into and out of the site. In considering proposals, the Borough Council will have regard to the aims and objectives of the Derwent Valley Mills World Heritage Site Management Plan*."

126. The Council considers that Policy EN29 is now out of date, having regard to the Framework, which requires that any harm from development to a

designated heritage asset needs to be weighed against any public benefits from that development as set out previously. I agree that the LP policy approach is inconsistent with the Framework. Planning Practice Guidance endorses the principle of protecting WHS from minor changes which have a significant impact when seen as a whole.

127. The background and reasons for the WHS designation were well rehearsed at the Inquiry. In brief, as set out in the DVMWHS Management Plan 2020-2025, "the most significant attribute which spills out of the WHS and into the buffer zone and beyond is the relict landscape, the green cradle in which the factory system was established for the first time in the eighteenth century. The Statement of Outstanding Universal Value (SOUV) emphasises that the relationship of the industrial buildings and their dependent urban settlements to the river and its tributaries and to the topography of the surrounding rural landscape has been preserved. In addition, the SOUV recognises that much of the landscape setting of the mills and the industrial communities, which was much admired in the eighteenth and early nineteenth centuries, has survived and it is therefore very important this landscape is protected from and not undermined by spreading urbanisation.

128. The River Derwent links a series of key physical attributes in order that they can be understood as a single site. The DVMWHS boundary is defined by the limits of the river floodplain (in 2000), in addition to the key mill and community sites, and their conservation areas. The buffer zone extends from skyline to skyline at the northernmost part of the WHS, at Matlock Bath and through Cromford. As the valley's steep sides flatten out towards the south the extent of the buffer zone is reduced. It contributes to the setting of the DVMWHS as it enables an understanding of how the factory system was inserted into a 'hitherto rural landscape' and is therefore, an element of an attribute to OUV, thus supporting the OUV of the WHS.

129. The wooded valley side is clearly read as being part of the surviving relict landscape setting. It is experienced by users of the A6 road within the WHS, as an unchanged rural backdrop to a transport link created to enable the easier movement of cotton goods through and out of the valley. Setting is of a particular importance for the DVMWHS as UNESCO has cited one of the reasons for inscription was because the mills and their associated settlements remain in a largely rural landscape. The prevailing characteristic within the vicinity of the appeal site is of one of wooded sides to the valley.

130. I was able to experience and appreciate the rural setting of the WHS during my site visit from the A6, the canal towpath and on descending the steep hillsides from Crich, Whatstandwell and Alderwasley.

131. The appeal site is situated within this rural setting, on the valley side to the south west of the river. Regrettably the loss of mature protected trees has undoubtedly diminished the wooded landscape in this location, compared to that which existed previously. Protected trees have been removed from both the appeal site to which Notice 2 relates and the area between the wall and the river into which the planning unit of the caravan site extends.

132. From the valley floor, within the WHS, intervisibility to the upper part of the caravan site is still, I observed, limited. However, from vantage points across the valley the caravan site is quite clearly visible. The loss of tree canopy has

exposed the development on the site to a greater extent than may have been the case prior to tree removal. Significantly, the overall, length and alignment of the newly constructed road is particularly harmful in those views. The historic caravan pitches that were previously accommodated in gaps between mature trees, have been replaced with regimented rows of bases following that road alignment. These are formed on substantial terraced platforms supported by gabion retaining walls some of which are double height.

133. Whilst I appreciate a desire to upgrade the site, it seems that little regard has been had to the importance of the site's location and from where it can be viewed in the context of the WHS buffer zone. The removal of trees, the resultant layout comprising engineered platforms retained by gabion walls and newly constructed tarmac roads with formal kerb edgings which display urbanising characteristics, has paid little regard to the global importance of the WHS and its supporting attributes displayed within the buffer zone within which it sits. It results in an incongruous and urbanised development at odds with the otherwise rural relict landscape.

134. Whilst the historic caravan site had some hardstandings and associated infrastructure and so caused some harm, the layout was informed by the constraints of the woodland site, thereby better integrating the development. As confirmed in the reasons for imposing the conditions on the 1966 permission, control over the location of any caravan (and by association the standings on which they are to be stationed) was necessary even at that time, before the WHS inscription. That desire to preserve the relict landscape is of even greater importance now in the context of the significance of the setting of the WHS.

135. The appellants argue that 23 bases for caravans would be preferable to the number lawfully permitted by the 1966 permission. That may have been so had the reduction in numbers corresponded with a sympathetic layout and design that paid due regard to the protected trees, surrounding landscape, and character of the area together with a consideration of viewpoints into the site. However, what has occurred in the creation of the current layout is the clearance of protected trees in and around the site, together with the substantial alterations to levels resulting in the need for significant retaining structures and little consideration overall to the length and alignment of the access road, or the use of sympathetic materials for the access roads and hard standings. I heard at the Inquiry that replacement trees cannot be re-planted in the same locations (as specified in the plan attached to the TRO); and the ability to plant trees between and in front of bases has, I consider, been seriously compromised.

136. Furthermore, whilst the appellants' witness was of the view than twin unit caravans (and therefore by association, bases to station them on) could have been accommodated on the site without the removal of trees, that is not what has occurred, and the current bases do not have the benefit of any trees and associated canopy cover to reduce their impact. Their current locations also correspond to the alignment of the prominent new internal road. Whilst the historic layout in the vicinity of the green was also one of static caravans stepping down part of the hillside, the continuation of this linear form for the full extent of the appeal site adds to the urbanising and harmful appearance of the development. Amongst the wooded surroundings, your eye is drawn to the

site when viewed from across the valley. It appears as a harsh and discordant feature in a sensitive landscape setting.

137. I consider the changes that have occurred as a result of the operational development, impact negatively on the ability to appreciate the relict landscape which is an important attribute of the WHS buffer zone. Whilst it can be argued that the appeal site is a small part of the identified buffer zone and already had a negative impact, I agree that even relatively minor changes, on a cumulative basis, would have a significant effect on the WHS and its OUV. Harm should not therefore be under-rated when considering the effect on the WHS as a whole.

138. I agree with the assessment of the Council's witness that the development that has occurred to date is 'large adverse' harm. That harm is, using the language of the Framework, less than substantial.

139. I consider that the unauthorised operational development of the land at Haytop Country Park, having regard to the baseline position, does not preserve or enhance the setting of the WHS, including views into and out of the site, nor is it consistent with the aims and objectives of the DVMWHS Management Plan. The unauthorised use and development of the land is therefore contrary to saved LP Policy EN29.

140. I shall return to a consideration of whether the public benefits outweigh the harm identified in accordance with the Framework.

Alderwasley Conservation Area and Alderwasley Hall

141. LP Policy EN27 states that "Planning permission will only be granted for development proposals within and adjacent to Conservation Areas, as shown on the Proposals Map, if they would contribute to the preservation or enhancement of the Conservation Area. Special consideration will also be given to proposals for development adjacent to and affecting the setting of a Conservation Area. Proposals involving the change of use, alteration or conversion of existing buildings must respect the character and design of the existing building and, in the case of extensions, be clearly subordinate to the original building." The Council accepts that Policy EN27 is now out of date, having regard to the Framework.

142. Policy EN24 (c) states that "Development proposals for - new buildings and other structures, or alterations and extensions to existing buildings or other structures, within the setting of a Listed Building will only be permitted where the proposals contribute to the preservation of the Listed Building and its setting, having regard to the elements which make up its special interest, including the character, appearance, scale and its original function".

143. Whilst saved policy EN24 remains consistent with Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Council considers that Policy EN24 is now out of date, having regard to the Framework, which requires that any harm from development to a designated heritage asset needs to be weighed against any public benefits from that development.

144. I agree that in relation to both Policy EN24 and EN27, that the wording and requirements are inconsistent with the Framework requirement to weigh harm

against public benefits. However, the policies are consistent with the statutory duties arising under s66 and s72 of the Act.

145. There is no character appraisal relating to Alderwasley Conservation Area which was designated in December 1991. The conservation area encompasses a sizeable portion of the Alderwasley Hall Estate, managed by the Hurt family, on the west side of the Derwent Valley, focused on its Parkland within which Alderwasley Hall is at its heart. As well as Alderwasley Hall and its associated parkland, it includes the private chapel of the Hurt family, the hamlet of Alderwasley, the historic Chapel of St. Margaret and a series of estate farms. It incorporates carriage drives which ran through Shining Cliff Woods and Haytop (the wooded knoll). The character of the conservation area is diverse and wide-ranging views are afforded across it including distant views from Crich Carr.

146. The parkland is considered to be of national importance. I was directed to the description from The Derbyshire Historic Environment Record that states "Alderwasley parkland is a unique place of outstanding historic and landscape value. It is most particularly important because it is a designed historic landscape of interest in a national and regional context; it provides the setting for a number of nationally important listed buildings including Alderwasley Hall and its associated structures; it contains habitats of biodiversity interest and wildlife value; and it retains a valuable archaeological record that helps us better understand its past uses and the development of the landscape."

147. The significance of the conservation area is derived from its location in the WHS buffer zone, the diverse and well-preserved parkland, mature trees and associated estate buildings. The appeal site contributes to the significance of the conservation area due to its inclusion in the parkland associated with Alderwasley Hall estate, the formal carriage drive entrance, and wooded slopes. The historic park and estate were highly valued by the Hurt family. The Hurt family are not as famous as the Arkwrights and the Strutts in the development of the Derwent Valley, but they had a significant part to play in the industrial development of the valley and they married into the Strutt and Arkwright families.

148. The appeal site also forms part of the setting of Alderwasley Hall which derives its significance in part from its parkland and estate setting. The house was designed to overlook its park and the landscape of the Derwent Valley across to Crich Stand on the other side of the valley which was erected by the owner of the Hall as a prospect tower. The carriageway to the hall which runs through the caravan site was designed to 'thread' through a woodland approach until opening out for a grand reveal of the Hall.

149. The Hall was designed to be seen from a distance. As I observed during my site visit, it can be clearly viewed on the hillside from the opposite side of the valley within its parkland setting and a wider backdrop of a rural agricultural landscape. The Council's heritage witness describes the effect of the loss of trees as having a negative effect by drawing attention to the discordant features of the unauthorised development which compete with Alderwasley Hall at the expense of its setting. I agree this is a harmful impact of the development that has occurred.

150. Notwithstanding that the baseline position would allow for a greater number of caravans and thus infrastructure associated with them, I am not satisfied, based on the evidence before me, that the operational development that has occurred preserves the character and appearance of the Alderwasley Conservation Area or setting of Alderwasley Hall. I refer to my assessment of the harm caused by the alignment of the road and regimented layout of bases that corresponds with that alignment in particular. The terraced platforms are an alien feature, clearly at odds with the parkland setting. The wooden decking, brick skirts and the like all sit on those substantial terraced platforms and cannot therefore be viewed in isolation.

151. I agree with the evidence of the Council's heritage witness that the impact of the operational development as a whole, is large adverse on the setting of Alderwasley Hall and the character of the Alderwasley Conservation Area. In reaching this conclusion, I have had regard to the development that can reasonably occur within the scope of the 1966 permission whilst having regard to the constraints of the site prior to the felling of protected trees.

152. To conclude, I consider that the unauthorised development of the land at Haytop Caravan Park, which is subject of this appeal, does not contribute to the preservation or enhancement of Alderwasley Conservation Area and is therefore contrary to saved policy EN27 and does not meet the expectations of the Act. I consider that the development has led to less than substantial harm to the significance of Alderwasley Conservation Area.

153. In respect of Alderwasley Hall, I conclude that the unauthorised development of the land at Haytop Country Park, which is the subject of this appeal does not contribute to the preservation of Alderwasley Hall and its setting and is therefore contrary to saved Policy EN24 and does not meet the expectations of the Act in this respect. I consider that the unauthorised development has led to less than substantial harm to the significance of Alderwasley Hall.

Character and Appearance

154. The Council's reasons for issuing the notice refer to the urbanising effect of the associated infrastructure such as roadways, hard standings and raised wooden deckings, to the detriment of the visual appearance and character of the area contrary to LP Policy EN6 regarding the SLA and Paragraph 170 of the Framework.

155. In preparing the current LP (adopted 2006), the single Special Landscape Areas (SLA) policy in the 1994 Local Plan was updated in line with the Derby & Derbyshire Joint Structure Plan (adopted 2001). Saved policy EN6 of the LP states that '*Planning permission for new development, including conversions of and extensions to existing buildings, will only be permitted in Special Landscape Areas, if it does not have an adverse effect on the landscape quality or character'.*

156. I consider that saved policy EN6 remains up to date, having regard to the Framework, which requires that '*Planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other criteria:*

a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.

157. The document 'The Landscape Character of Derbyshire', produced by Derbyshire County Council in 2003, provided a comprehensive assessment of the landscape across the county, with its primary purpose being to underpin landscape planning, policy and decision making within Derbyshire. The document was subsequently refreshed and updated in 2013. The assessment identifies a range of Landscape Character Types (LCT) within each of the National Character Areas (NCA) (as defined by Natural England) within Derbyshire.

158. The assessment identifies 13 LCTs which relate wholly or partly to Amber Valley, with Haytop Country Park being within the 'Wooded Slopes and Valleys' LCT, as part of the 'Derbyshire Peak Fringe and Lower Derwent' NCA. Much of this LCT corresponds to the designated SLA within this part of Amber Valley. The assessment summarises the 'Wooded Slopes and Valleys' LCT as '*…a landscape of small pastoral fields on undulating, rising ground. Woodlands on steeper slopes along with hedgerows and watercourse trees contribute to a strongly wooded character*.'

159. In the immediate vicinity of the site, the SLA is characterised by the narrow and deep sided Derwent Valley. The valley sides remain densely wooded, standing above the grazed riverside meadows and below the broad valley of Alderwasley Park. Tree cover diminishes as the land rises changing to distinctive parkland planting and boundary tree planting with sparser planting found beyond that. I consider, having regard to the significance of the landscape to the WHS and conservation area it is appropriate to assess it as a valued landscape that should be protected and enhanced.

160. The baseline position adopted by the appellants' landscape witness is one following the removal of trees. A VIA survey in 2013 showed that there had been little change since it was designated a SLA. The appellants' landscape witness acknowledges in his proof that the removal of trees in 2017 has lowered the landscape quality "*very locally and within Haytop Country park*". Following the prosecution for these actions, the baseline landscape quality at the local level (Haytop Country Park) is, he considers, to have been reduced and judged to be medium. The case is advanced that "the proposed tree planting within Area A as part of the proposals will enhance the wooded character locally by extending the tree canopy over Area A and part of the man-made clearing which is part of the baseline, thus increasing the natural appearance and landscape quality of this part of Haytop Country Park and the SLA".

161. For the reasons I have already set out, I disagree with the baseline position adopted on behalf of the appellants. I note that the caravan site at Haytop was operational at the time of both of these studies and formed part of the SLA designation within this part of Derbyshire and Amber Valley. The 2013 VIA

study concluded that visual quality had not declined since the original study in the 1970s and that the SLA designation was still appropriate. This demonstrates, consistent with the evidence of a number of witnesses for WACAG, that the caravan site was reasonably well integrated into the 'wooded valley side' prior to the operational development that has occurred. This is consistent with the appraisal of the Council's Landscape Witness and what I consider the conditions of the 1966 permission sought to achieve.

162. Policy EN8 states that "Planning permission will not be granted for development that would damage or destroy significant trees, woodlands, hedgerows, dry stone walls or other landscape features, unless exceptional circumstances can be demonstrated to justify the proposals." That is clearly what has occurred here without, in my view, any exceptional circumstances and so in conflict with Policy EN8.

163. The landscape witness for the appellants acknowledges the proposed development is a more formalised and permanent layout but does not consider that it exhibits characteristics typically associated with introducing 'urbanising impacts'. I have already described what I consider to be the urbanising impacts of the operational development. The site has become more pronounced and conspicuous as a result of the re-design of the layout of the site and the operational development within the SLA. I agree that the site now interrupts the transitional character of the landscape in this part of the SLA. This is notwithstanding the retention of some features, most notably the internal stone wall boundary. I have also previously addressed why I think the reduction in the numbers of caravans that the operational development will accommodate is not a factor weighing in favour.

164. Notwithstanding the evidence I heard on the availability of various techniques to ensure root growth etc is not compromised as a result of the development, I am not assured by the evidence before me that there is scope for planting between or near the existing bases or if there is, that any planting will not be compromised by the development that exists. The resultant layout offers little scope in my view for effective tree planting, irrespective of the baseline position adopted.

165. I do not accept that from the more direct views on the other side of the valley opposite Haytop Country park, which are elevated, as identified on behalf of the appellants, that the separation distance is such that these features are not easily discernible. The alignment of the road in particular, in combination with the extent of the regimented layout of the bases and loss of trees, draws the eye to the appeal site, which appears as an incongruous feature on the wooded hillside. The result is that the operational development has an adverse effect on the landscape quality on this part of the SLA contrary to Policy EN6 and the Framework.

166. Furthermore, the adverse impact of the development on the intrinsic character and beauty of the countryside, including the trees and woodland within and adjacent to the site, significantly and demonstrably outweighs any economic and social benefits contrary to Policy EN1.

Public benefits

167. The Framework requires that 'where a development proposal will lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.'

168. The provision of caravans for permanent residential occupation is a public benefit due to the contribution it would make to an increase in housing land supply. Whilst the Council could demonstrate a five-year supply at the time of the inquiry, the appellant suggested the surplus was small. It could also contribute towards meeting the specific needs of a particular age group subject to appropriate conditions. I also acknowledge the economic benefit arising from construction jobs and from increased local expenditure. However, the 1966 permission would not prohibit such use of the site or the upgrading of the site in accordance with the terms and conditions of that permission. I therefore afford the public benefits advanced little weight since they do not rely on the operational development that has taken place and for which permission is sought.

Conclusion on ground (a)

169. I find that the operational development is contrary to LP policies EN1, EN6, EN8, EN24, EN27 and EN29 for the reasons set out above. However as stated previously, some policies relevant to heritage considerations are inconsistent with the Framework and thus out of date. They are nevertheless aligned with the statutory duties. I therefore afford the conflict with these policies only modest weight. These are the most important policies in my determination of this appeal. Nevertheless, I find conflict with the development plan as a whole.

170. Even though I have found that the harm to the significance of the heritage assets is less than substantial this is not to be treated as a less than substantial objection to the development. The public benefits attributable to the operations are limited and in my judgement their weight would not outweigh the great weight to be given to the harm to the heritage assets. As such, the proposal would not comply with the Framework.

171. Whilst I have found that the most important policies are out-of-date, the Framework requires planning permission to be granted unless the application of policies in the Framework that protect areas or assets of particular importance, provides a clear reason for refusing the development proposed. As the public benefits do not outweigh the harm to the significance of heritage assets, the Framework provides a clear reason for refusing development in this case. Consequently, the presumption in favour of sustainable development contained in the Framework does not weigh in support of this case.

172. To conclude overall, whilst there are some benefits associated with the development, I find very little justification for the harm that flows from the operational development that has occurred. I consider that there are no material considerations, including the provisions of the Framework, of such weight to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan.

173. The appeal on ground (a) fails.

Ground (f)

174. The purpose of Notice 2 is clearly to remedy the breach of planning control since the operational development referred to is to be removed in its entirety and the land is to be restored to its previous level and condition.

175. The appellants argue that the requirements are excessive since the works would be permitted in any event in association with the lawful use of the site. This argument is therefore aligned with the ground (c) appeal. I have not found in favour of the appellants in respect of ground (c), finding that any permitted development is development aligned with all the site licence conditions. No lesser steps have been advanced that would restore the land to its condition prior to the breach.

176. The appeal made under ground (f) fails.

Ground (g)

177. The Council conceded at the Inquiry that a longer period would be required to comply with the notice in respect of the operational development as it would be necessary to comply with Notice 1 (the 'Use' Notice) first. However, I have quashed Notice 1 on the basis that the stationing of twin unit caravans for permanent occupation is not a breach of planning control. The caravans themselves can thus remain on site.

178. The TRO cannot be complied with in the appeal site area until such time as the land is restored or an alternative layout is agreed having regard to both the requirement to replace trees and the conditions of the 1966 permission. Whilst discussions between the appellants and the Council should be encouraged, given the harmful effect of the development on the significance of the heritage assets, including the WHS, I do not consider the period of 6 months should be extended; rather any discussions should be progressed as a matter of urgency.

179. The appeal made on ground (g) fails.

Overall Conclusion on Notice 2 Appeals

180. For the reasons given above I conclude that the appeals against Notice 2 should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

C. Sherratt

Inspector

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 18 March 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in **red** on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development is within the scope of a conditional planning permission reference BER/964/39, granted in June 1966 for 'extension of existing caravan site from 30 to 60 caravans for seasonal and towing use'.

Signed

C Sherratt
Inspector

Date: 20 August 2021
Reference: APP/M1005/X/19/3241549

First Schedule

Proposed siting of 30 static caravans for permanent residential occupation and 30 static caravans for 12 month holiday occupation

Second Schedule

Land at Haytop Country Park, Alderwasley Park, Whatstandwell, DE4 5HP

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

The Planning Inspectorate

Plan

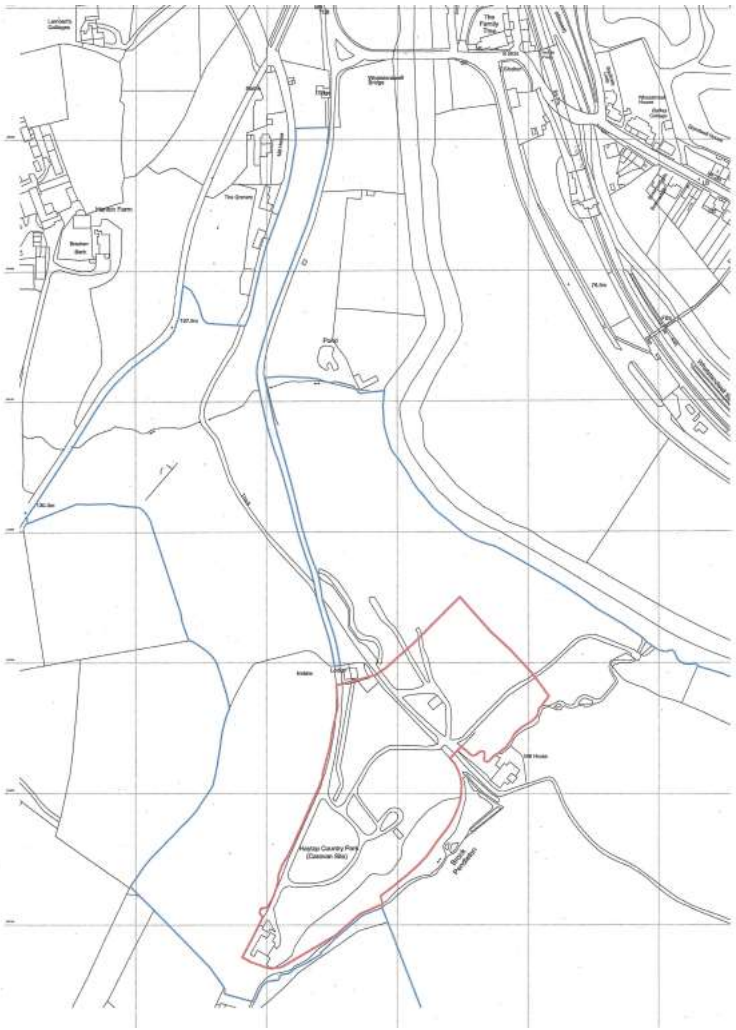
This is the plan referred to in the Lawful Development Certificate dated: 20 August 2021

by C Sherratt DipURP MRTPI

Land at: Haytop Country Park, Alderwasley Park, Whatstandwell, DE4 5HP

Reference: APP/M1005/X/19/3241549

Scale: Not to Scale



APPEARANCES

FOR THE APPELLANT:

Richard Harwood QC	Instructed by Nick Laister of RPS Planning Consultancy (RPS)
He called	
Nick Laister	Senior Director of RPS
Thomas Copp	Of RPS Heritage
Brian Wallis	Technical Director – Arboriculture of RPS
Mark Wilson	Senior Landscape Architect for RPS (Landscape and Visual matters)

FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Mitchell of Counsel	Instructed by Venice MacDonald, Principal Solicitor and Deputy Monitoring Officer of Amber Valley Borough Council (AVBC).
He called	
Phil Thompson	Enforcement Officer of AVBC.
Deborah Evans	Director of DE Landscape & Heritage Ltd (Landscape Witness)
Melanie Morris	Of Mel Morris Conservation (Heritage Evidence).
Derek Stafford	Assistant Director (Planning) of AVBC.

FOR WHATSTANDWELL & ALDERWASLEY COMMUNITY ACTION GROUP (WACAG):

Alex Shattock	Instructed by WACAG
He called	
Joseph Green	Local resident
Sara Gaynor	Local resident
Lee Harris-Redfern	Local resident

FOR DERWENT VALLEY MILLS WORLD HERITAGE SITE PARTNERSHIP (DVMWHSP):

Adam Lathbury	Head of Conservation, Heritage and Design at Derbyshire County Council Instructed by DVMWHSP, acting in the capacity of both Advocate and Witness

INTERESTED PERSONS:

Don Smartzy	Local resident
Lindsay Fogg	Local resident
Peter Yates	Local resident
Peter McCartney	Local resident
Quentin Hannant	Local resident

DOCUMENTS

1 Witness Statement from the Forestry Commission Woodland Officer (to be added to Appendix 13 pf P Thompson's proof for the Council).
2 Tree Replacement Notice dated 11 January 2021.
3 Upper Tribunal Decision in the matter of an appeal against the First Tier Tribunal between Amber Valley Borough Council v Haytop Country Park Limited [2020] UKUT 0068 (LC)
4 Court of Appeal Decision dated 14 August 2020 (Ref: 2020/1016) refusing permission to appeal the decision of the Upper Tribunal concerning the grant of a license.
5 Position Statement of AVBC.
6 Updated aerial photographs showing (1) the whole enforcement Notice 1 site (ref:1053-0008-004-R) and (2) zoomed in version (ref: 1053-0012-002-R) submitted on behalf of the appellant.
7 Opening Statement for WACAG.
8 Opening Statement for AVBC.
9 Opening Statement for Haytop Country Park Limited.
10 Draft Statement of Common Ground.
11 Note on Historic Use.
12 Planning Contravention Notice and Response.
13 Suggested viewpoints from AVBC & WACAG.
14 Prosecution response to Haytop Country Park's submissions on Prosecution Evidence / Basis of Plea Document dated 27 September 2017 (submitted on behalf of the appellant).
15 Defendant's Submission on Prosecution Evidence dated 27 September 2017 (submitted on behalf of the appellant).
16 Letter from AVBC to Haytop Country Park Limited dated 27 Match 2017 re: County Court Injunction / TPO Protected Trees.
17 Statement of L Fogg.
18 Statement of Quentin Hannant.
19 Email correspondence from Peter McCartney.
20 Woodland Management Plan.
21 Himalayan Balsam Management Plan.
22 Draft Conditions (as subsequently updated) from AVBC.
23 Extract from Derbyshire County Council Part One: Landscape Character Descriptions, Section 3 – Derbyshire Peak Fringe and Lower Derwent (Character Area 50).
24 Email correspondence from RPS on behalf of the appellant confirming which units are currently occupied, dated 2 February 2021.
25 Various authorities referred to for the Council in Closing Submissions.
26 Various authorities referred to for WACAG in Closing Submissions.
27 Various authorities referred to for the appellant in Closing Submissions.
28 Written Closing Submissions for DVMWHSP.
29 Written Closing Submissions for WACAG.
30 Written Closing Submissions for AVBC.
31 Written Closing Submissions for the Appellant.
32 Revised Illustrative Layout Plan incorporating plot numbers and a Central Green Area.