APPEAL BY MR LUKE LEE
AGAINST THE SERVICE OF AN ENFORCEMENT NOTICE BY
SOUTH STAFFORDSHIRE COUNCIL

ERECTION OF WOODEN CHALET AND ASSOCIATED PATION AREA, AND MATERIAL CHANGE OF USE OF LAND TO MIXED USE FOR AGRICULTURAL AND RESIDENTIAL USES, INCLUDING THE FOLLOWING NON-AGRICULTURAL USES: USE OF FIELD 1 FOR THE KEEPING OF /PONIES HORSES; USE OF FIELD 2 AS A SENSORY GARDEN/PLAYGROUND; USE OF FIELD 3 FOR THE KEEPING OF GOATS, ALL IN CONNECTION WITH THE RESIDENTIAL USE OF THE ADJACENT DWELLING

LAND AT SQUIRRELS REST, POPLAR LANE, HATHERTON, CANNOCK, STAFFORDSHIRE, WS11 1RS

LPA REF:
OUR REF: 24/LL/SQUIRRELS REST

STATEMENT OF CASE PREPARED ON BEHALF OF THE APPELLANT BY
PHILIP BROWN BA (HONS) URBAN & REGIONAL PLANNING

1.0 INTRODUCTION

1.1 This Statement has been prepared by Philip Brown. I hold a Bachelor of Arts degree with honours in the subject of Urban and Regional Planning. I am a member of the Royal Town Planning Institute with more than 40 years' experience of planning matters in local government and private practice.

1.2 I am Managing Director of Philip Brown Associates Limited, a firm of town planning and development consultants established in 2003. Apart from being the country's leading planning consultancy assisting Gypsies and Travellers, we have also been involved in obtaining planning permissions for housing development, big and small; industrial units; nursing homes; hot food take-aways; agricultural development; barn conversions; and equine development.

1.3 This statement is divided into four parts: firstly I describe the site and its surroundings; secondly I give a resume of relevant planning policies; thirdly I summarise the planning history of the appeal site; and fourthly I set out the case on behalf of the appellant.

2.0 SITE DESCRIPTION

2.1 Squirrels Rest comprises about 3.9 hectares of land, located north-west of Poplar Lane, Hatherton. The wooden chalet building, referred to in the Notice is set back by more than 50 metres from Poplar Lane behind a large, "L"-shaped stable building which has been converted into a 3-bedroomed bungalow. The bungalow and its residential curtilage occupy the south-western corner of the land holding, and does not form part of the appeal site.

2.2 Access to the appeal site is from Poplar Lane: a single-track rural lane with localised widenings where vehicles can pass each other. Poplar Lane leads to the Four Crosses junction with the A5, about 500 metres to the south-west, and into the urban boundary of Cannock, about 400 to the north-east. Access to the appeal site is via an entrance in the southern corner of the appellant's land and, a driveway which runs around the eastern side of the appellant's dwelling to a gateway in the northern corner of the residential curtilage.

2.3 The appeal site comprises of several fenced paddocks. The western paddock contains an all-weather horse-riding arena, and the wooden shed (referred to on the Notice as a chalet). The remaining paddocks are laid to grass for the grazing of ponies and a few goats. The paddock referred to as Field 2 in the Notice contains play equipment for the appellant's son.

2.4 The land slopes down from the western boundary, towards the east. As a result, the horse-riding arena has been cut into the slope of the ground to create a flat surface, with a grass embankment along its western and northern sides. The shed is located on this grass embankment, adjacent to the residential curtilage

2.5 The appellant's land holding is enclosed by mature hedgerows along the western and southern boundaries. There is a line of trees and intermittent hedgerow along the eastern boundary. The northern boundary is formed from post and rail timber fencing. The appeal site itself is enclosed, and sub-divided by post and rail timber fencing.

2.6 The appeal site adjoins open fields to the north and east, by the appellant's residential curtilage to the south and, by an authorised gypsy site to the west. A bridlepath runs from Poplar Lane, north-eastwards between the appeal site and "The Stables" traveller site. The bridlepath is bounded by dense hedgerows to either side.

3.0 PLANNING POLICY

Local Planning Policies

3.1 The Development Plan comprises of the Core Strategy Development Plan Document adopted in December 2012 and, the Site Allocations Document adopted in September 2018.

3.2 Core Strategy Policy GB1 – Development in the Green Belt – sets out a presumption in favour of a list of categories of appropriate development, in accordance with national Green Belt policy.

Government Advice

3.3 Section 13 of the National Planning Policy Framework (NPPF), December 2023, sets out the presumption against inappropriate development in the Green Belt, which is only to be permitted in very special circumstances (paragraph 152). Inappropriate development is, by definition, harmful to the Green Belt and it is for the applicant to show why permission should be granted. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Substantial weight is to be accorded to the harm to the Green Belt when carrying out this balancing exercise (paragraph 153).

3.4 Paragraph 154 of the NPPF states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

a) buildings for agriculture and forestry;

b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;

c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;

d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;

e) limited infilling in villages;

f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and

g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

– not have a greater impact on the openness of the Green Belt than the existing development; or

– not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

3.5 Paragraph 155 of the NPPF makes clear that certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

a) mineral extraction;

b) engineering operations;

c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;

d) the re-use of buildings provided that the buildings are of permanent and substantial construction;

e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and

f) development, including buildings, brought forward under a Community Right to Build Order or Neighbourhood Development Order.

3.6 The NPPF is intended to reinforce the importance of up-to-date plans and due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development (paragraph 11).

3.7 Paragraph 180 seeks to protect and enhance valued landscapes and, in paragraph 181, requires that plans should distinguish between the hierarchy of international, national and locally designated sites. Paragraph 182 makes clear that great weight should be given to conserving landscape and scenic beauty in, *inter alia*, Areas of Outstanding Natural Beauty. Development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

4.0 PLANNING HISTORY

4.1 Planning permission was granted in 1991, under application No. 91/00028, for the erection of stables and feed store. Planning permission was granted in 1994, under application No. 94/00530, for a feed store.

4.2 Planning permission was granted in 2000, under application No. 00/00656/COU, for a horse exercise arena, together with erection of post and rail fencing.

4.3 Planning permission was granted on appeal, under planning application No. 14/00074/COU, for conversion and change of use of the stable building to use as a single dwelling.

4.4 Planning application No. 20/00801/COU was submitted in September 2020 for the change of use of land to a mixed use for the keeping of horses and as a residential gypsy caravan site for the stationing of 3 caravans, together with laying of hardstanding, erection of amenity building, stable and hay barn. Planning permission was refused and an appeal dismissed on 25 August 2023 under PINS reference No. APP/C3430/W/21/3282975.

5.0 STATEMENT ON CASE

Ground (c)

5.1 Appeal is made under grounds (a), (c), (d) and (f). The appeal under Grounds (c) and (d) specifically relate to the use of Fields 1 and 3 as depicted on the Notice.

5.2 The definition of agriculture includes the use of land for the grazing of livestock because it is the growing of grass to feed animals. The use of Fields 1 and 3 for the grazing of animals, be it horses, ponies or goats, is an agricultural use and does not require planning permission. There are no stables or other structures on the land whereby livestock can be kept on the land independently from its use for grazing.

5.3 The appellant may keep ponies, horses and goats for pleasure but, the definition of agriculture does not require use for business purposes. The definition is concerned with the character of the use and, it makes no difference to the character of the use whether horses, ponies and goats are eating grass to be reared for sale, or for any other purpose. They are still only grazing, as is to be expected on grazing land.

5.4 The ponies in question are miniature ponies and, are not intended to be ridden. As with the goats, it is unclear what the Council regards as being domestic use when all that is happening is the grazing of animals on the land.

5.5 Ponies/horses and goats are not domestic pets. They are not invited into the family home, or played with as one might play with a dog. Most domestic pets would be living in buildings, or structures of one kind or another, located within the residential curtilage and, not grazing in an adjacent field. The Council's allegations with regard to Fields 1 and 3 are patently ridiculous.

5.6 Clearly, when granting planning permission for stables in 1991, and a horse exercise arena in 2000, the Council could have been in no doubt that the remainder of the land holding was being used, as it is now, for the grazing of horses/ponies and yet, the Council did not consider that such

use required planning permission. Indeed, the Council is not taking enforcement action against the use of fields to the east of Fields 1, 2 and 3 for the grazing of horses/ponies: exactly the same use alleged to be taking place on Field 1.

5.7 The sub-division of agricultural land, using post and rail timber fencing, or other forms of stock-proof fencing, is normal farming practice. In the case of horses, it is necessary to restrict the amount of grass available for the animals to eat. Grass, particularly in Spring, is high in sugar and, if horses are allowed to overeat, can result in them suffering from laminitis. Fencing may also be necessary to separate male animals from females and, in the case of goats, keep them separate from the horses/ponies. The fencing erected is under 2.0 metres high and is, therefore, "permitted development".

Ground (d)

5.8 Even if the case under ground (c) is not accepted, as set out in paragraph 5.6 above, use of the appeal site, including Field 1, began in at the latest in the year 2000 (when the horse exercise arena was constructed) and has been in continuous use for the keeping/grazing of horses/ponies for well in excess of 10 years prior to service of the enforcement notice.

Ground (a)

5.9 The National Planning Policy Framework (NPPF) puts the presumption in favour of sustainable development at the heart of both plan-making and decision-taking. For decision-taking this means approving development proposals that accord with the development plan without delay; or, if the policies which are most important for determining the application are out-of-date, granting planning permission unless, *inter alia*, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.

5.10 In the latter regard, the appeal site is not located within a SPA, SSSI, Conservation Area, Local Green Space, AONB or, National Park.

Furthermore, the proposed caravan site is not located within an area shown on the Environment Agency's flood maps as being at high risk from flooding. The appeal site is located within an area designated as Green Belt. However, the Court of Appeal [***Barwood Strategic Land LLP v. East Staffordshire Borough Council and Secretary of State for Communities and Local Government, 2017, EWCA Civ. 893***] clarified that the identification of policies in Footnote 6 of the NPPF (now Footnote 7 of the NPPF 2023) does not shut out the presumption in favour of sustainable development, rather the specific policy or policies have to be applied and planning judgement exercised.

Green Belt

5.11 The appeal site lies within the Green Belt, which the NPPF makes clear will be protected from inappropriate development. However, the NPPF makes clear that there are certain developments which are not considered to be inappropriate in Green Belts. These include the change of use of land for purposes which may include outdoor sport or recreation, provided that they do not affect openness or conflict with the purposes of the Green Belt.

5.12 The use of Fields 1 and 3, even if considered to be a material change of use from agriculture, can only be for recreation/hobby use, which is a form of development which is clearly appropriate in the Green Belt. Such use maintains openness and, does not prejudice any of the 5 purposes of including land in Green Belts. It cannot, for example, represent the encroachment of urbanising development into the open countryside.

5.13 The use of Field 2 as a sensory garden/playground is also a recreational use which maintains the openness of the Green Belt and, in itself does not prejudice any of the 5 purposes of including land in the Green Belt. Such use retains the field as grass land, of similar character and appearance to the other paddocks. Paragraph 155 (e) of the NPPF does not distinguish between public and private recreation and, therefore, its use by the appellant's son as a safe play area is, if retained as grass, an appropriate use of land in the Green Belt.

5.14 If what I have stated in paragraph 5.13 is accepted, then, as set out in paragraph 154 (b) of the NPPF, the provision of appropriate facilities (in

connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments is also not inappropriate as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

5.15 Clearly any building or structure will have a spatial and visual effect on openness and openness in Green Belt terms cannot mean freedom from any development. Sports grounds will often be accompanied by a clubhouse and, such structures as goalposts and floodlights. The NPPF does not require these buildings and structures to be "essential" to the use of the land for outdoor sport and recreation but, merely to be "appropriate". Sports pavilions, goalposts and floodlights are urban, and urbanising, features and, therefore, Paragraph 154 (b) cannot be requiring a rural design and appearance when it talks of "appropriate" facilities.

5.16 In my opinion, it is referring to the function of the structure being appropriate to the use being made of the land, and requiring that the structure be of a size commensurate with the open recreational use it is intended to facilitate, i.e. a large stable block would not be appropriate on a piece of land unable to sustain the number of horses capable of being accommodated in the stable block.

5.17 In this case, the sensory garden/playground contains a climbing frame. This is an appropriate structure in a playground and, is not overly large and does not take up a disproportionate area of the playground. In my opinion, its erection on the land is appropriate development in the Green Belt.

Inappropriate Development

5.18 The appeal site lies within the Green Belt, which the NPPF makes clear will be protected from inappropriate development. There is no dispute that construction of the wooden shed ("chalet") constitute inappropriate development in the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt. In deciding whether to approve such development, substantial weight must be attributed to the harm to the Green Belt.

5.19 Notwithstanding the above, the NPPF allows for the approval of inappropriate development in the Green Belt where very special circumstances can be demonstrated. It is accepted that it is for the appellant to demonstrate that very special circumstances exist to justify approval. Very special circumstances will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

5.20 The Courts have clarified the meaning of "very special circumstances". In Regina v. Secretary of State and Temple, Justice Sullivan made the following ruling:

> "***In planning, as in ordinary life, a number of ordinary factors may when combined together result in something very special. Whether any particular combination amounts to very special circumstances for the purposes of PPG2 [now section 13 of the NPPF] is a matter for the planning judgement of the decision-taker.***"

5.21 The upshot of this decision is that material considerations which weigh in favour of allowing inappropriate development do not have to be very special, or even special, in themselves. In my experience, very special circumstances rarely comprise of a single factor but, this case is an exception.

5.22 The wooden shed, on the area coloured green on the enforcement plan is not moveable and, it does not contain any facilities for day-to-day living. It is not a chalet, as the enforcement notice states. It is just a large shed used as a sensory room for the appellant's son, who suffers from severe autism. He attends a special needs school in Stafford but, is tutored at home 2-3 days per week. He needs one-to-one tuition and, the provision of a sensory room allows him to receive tuition separate from the appellant's other children and, separate from the distractions of being in, or adjacent to, the family home.

5.23 If it is decided that the sensory garden/playground and/or small item of playground equipment is inappropriate in the Green Belt, then John's need for somewhere safe to play outside is a material consideration which should weigh heavily in favour of approval being granted. The residential

curtilage to the appellant's dwelling is completely hard-surfaced and, has nowhere soft where the appellant's son can play safely without falling and hurting himself. Likewise, there is nowhere within the residential curtilage where play equipment can be safely installed.

5.24 In terms of harm to the Green Belt, apart from the harm by reason of inappropriateness, the wooden shed would result in some loss of openness in spatial terms but, visually, is well-screened from public vantage points by the existing dwelling to the south-east and adjacent hedgerow along its south-western flank. There are no public views available from the north-west and, in long range views from the north-east, from Public Footpath 2 about 250 metres away, the shed would be seen in conjunction with the appellant's bungalow and, against a background of trees. The shed is made from natural materials and, at distance, would not appear dissimilar from a stable building. The Council concedes that there would only be a limited loss of openness caused by the wooden shed. There would also be some minor encroachment into the countryside. No other harm is alleged by the Council.

5.25 The erection of a climbing frame in Field 2, if found to be inappropriate would cause very minor harm to openness and, corresponding little encroachment into the countryside. It is not visually prominent and, when viewed from the north-east, would be seen from long-range, in the foreground to the existing dwelling.

5.26 Against these harms, should be weighed the special need for safe play, both indoors and out, and somewhere for the appellant's son to learn away from the distractions of his family. It is impossible for the appellant's son to receive the help he needs within the family home where others are watching television or playing games.

5.27 The Courts have established that the best interests of the children must be at the forefront of the decision-maker's mind in cases such as this. In Zoumbas v. Secretary of State for the Home Department, the Court found that: the needs of the children must be treated as a primary consideration, but not always the only prime consideration; when considering the cumulative effect of other considerations, no other consideration could be treated as inherently more significant; but, that

the best interests of the children might point only marginally in one, rather than another, direction. In this case, the likely outcome of a refusal of planning permission would be that a child's physical, social and educational development would be severely prejudiced by a lack of adequate facilities for receiving specialist tuition and safe play. The best interests of the appellant's son are clearly served by retention of the existing facilities catering for his special needs.

Balance of Considerations

5.28 The harm to the Green Belt by reason of inappropriateness, loss of openness and encroachment into the countryside would be clearly outweighed in this case by the personal accommodation needs and personal circumstances of the appellants' family and, the needs of the children. Very special circumstances therefore exist to justify the granting of planning permission in this case.

Ground (f)

5.29 Requirement (iii) cannot require use of agricultural land for the grazing of horses and goats to cease. Such use does not, of itself, require planning permission.

5.30 Requirement (vi) is unnecessary because the existing and past condition of the land are one and the same: the land is, and was previously, laid to grass.