The Planning Inspectorate

Appeal Decision

Hearing Held on 22 October 2019

Site visit made on 22 October 2019

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th December 2019

Appeal Ref: APP/H1515/C/19/3221514
Land known as Twin Oaks, Willow Park, Stock Lane, Ingatestone, Essex CM4 9QL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Ben Lowe against an enforcement notice issued by Brentwood Borough Council.
- The enforcement notice, numbered ENF: 16/00060/UNOPDE, was issued on 18 December 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a dwelling.
- The requirements of the notice are:
  i. Take down the unauthorised dwelling, including foundations; and
  ii. Remove from the land all debris arising from action (i) above; and
  iii. Restore the surface of the land to the condition it was in prior to the commencement of the unauthorised works.
- The period for compliance with the requirements is 6 calendar months for step (i) and 7 calendar months for steps (ii) and (iii).
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice as corrected is quashed and planning permission granted in the terms set out below in the Formal Decision.

The Site and Planning History

1. Twin Oaks is one of six pitches on the Willow Park gypsy caravan site, which is located in the Green Belt just to the south east of the railway line that marks the edge of the built-up area of Ingatestone.

2. The planning history of Willow Park goes back to 2003 when an enforcement notice was issued against unauthorised development. In brief, appeals against the notice were dismissed. Subsequently in 2008 temporary planning permission was granted for three years on appeal. In 2011 the gypsy site was granted a further time limited permission until September 2013 (ref 11/00096/FUL). The most recent planning permission ref 13/00423/FUL was granted on 29 June 2015 (the 2015 permission). The development is described as "Removal of condition 1 (to make permanent permission) and change to

condition 6 (to allow 3 caravans on both Plot 2 and Plot 6) of planning permission ref 11/00096/FUL (retention of use of land as a residential gypsy caravan site with ancillary buildings, hard standing and access)".

3. The current position is that Willow Park is an authorised gypsy caravan site under the 2015 permission. Planning conditions impose restrictions on occupancy (both to named people and to gypsies and travellers[1]) and on the number of pitches and caravans. Mr Lowe and his wife, Miss Lucy Smith, and their children are included as named occupiers of the site[2]. Development is required to be in compliance with approved plans and in all other respects to accord with the 2011 permission. From my observations on site each pitch is physically defined as a separate pitch but shares a common means of access serving the site as a whole. With reference to the appellant's evidence, functional links between the pitches occur as a result of the site being occupied by members of an extended family, who rely on one another to differing degrees for mutual support.

4. Turning particularly to Twin Oaks (plot 5), the number of caravans is limited to two caravans, only one of which should be a static caravan[3]. The appellant confirmed at the hearing the dwelling was ready for occupation around October 2016. In addition, there is one touring caravan on the site occupied by Mr Lowe's adult son but no static caravan.

5. An appeal against the refusal of planning permission for the dwelling was dismissed by a decision dated 12 December 2018 (the 2018 decision). This appeal decision is an important consideration and I understand the need for consistency in the planning process.

The Enforcement Notice

6. In view of the planning history and following discussion at the hearing about whether a material change of use of land has occurred, I consider that the alleged breach of planning control should be corrected and described as the erection of a single storey dwelling on a gypsy caravan pitch.

7. Through discussion at the hearing it also was agreed that the approximate position of the dwelling should be identified on the plan attached to the notice.

8. I am satisfied that no injustice will be caused to the appellant or the local planning authority by addressing these matters. I will therefore correct the enforcement notice in those two respects, in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended.

Appeal on ground (a), the deemed planning application

9. The development for consideration in the deemed planning application is derived directly from the corrected description of the breach of planning control and is therefore the erection of a single storey dwelling on a gypsy caravan pitch.

[1] The occupancy controls relate back by way of condition 4 to conditions 2 and 3 of the 2011 permission. The gypsy and traveller definition cited is the definition in paragraph 15 of ODPM Circular 01/2006, not the definition set out in the Annex to the Planning Policy for Traveller Sites August 2015.
[2] Mr Lowe confirmed at the hearing that in the alternative the use of the term Mrs Lowe is acceptable.
[3] Condition 1 attached to the 2013 permission.

Planning Policy

10. The development plan includes the Brentwood Replacement Local Plan adopted in 2005. Policies GB1 and GB2 very strictly control development in the Green Belt. Policy GB2 is directed at development that is not inappropriate. The criteria also apply in cases of inappropriate development where it is considered very special circumstances exist.

11. Policy GB6 is specific to replacement dwellings in the Green Belt but is not intended to apply to the replacement or substantial rebuilding of mobile homes, holiday chalets or similar temporary or insubstantial buildings, or the other circumstances stated in the policy. This policy therefore does not assist the appellant.

12. The National Planning Policy Framework (the Framework) includes a number of policies on proposals in the Green Belt. In view of the site's planning history Planning Policy for Traveller Sites August 2015 (PPTS) is a consideration and should be read in conjunction with the Framework. Relevant paragraphs of Planning Practice Guidance (PPG) should also be taken into account.

13. The emerging Local Development Plan is progressing through consultation before being submitted to the Secretary of State for examination. Consequently it has little weight at present.

Main Issue

14. The construction of the dwelling amounts to inappropriate development in the Green Belt because this building is not one of the exceptions set out in paragraph 145 of the Framework. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. These conclusions are not contested by either the Council or the appellant.

15. In this policy context the main issue is whether the harm of the inappropriate development, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances necessary to justify the dwelling.

16. Potential harm may arise from the effect of the dwelling on the openness and purposes of the Green Belt and, secondly, from its effect on the stock of gypsy and traveller pitches within the Borough. At the hearing precedent was raised as a concern by the Council. Other considerations, which are likely to weigh in favour of the development, include the personal circumstances of the appellant. In addition, the ability to impose planning conditions, with a view to overcoming any identified harm, is very relevant. Consideration of human rights and having due regard to the public sector equality duty are integral to my decision.

Reasons

Effect on the Green Belt

17. The Framework confirms the great importance of Green Belts and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. Planning Practice Guidance identifies factors

which can be taken into account when considering the potential impact on openness, which include but are not limited to (i) the spatial and visual aspects of openness, (ii) the duration of the development and its remediability, and (iii) the degree of activity likely to be created.

18. The dwelling at Twin Oaks is a brick built bungalow with a tiled roof and timber windows and doors. The building's footprint is essentially rectangular and is about 92 or 93 m^2. The use of a hipped roof moderates the overall height (4.77 m to the ridge) but slightly increases the bulk of the building. The bungalow is sited on the front part of the site adjacent to a concrete driveway and garden. Towards the back of the site, around a hard surfaced yard, is a barn, stable and workshop, and a dayroom plus a touring caravan.

19. The bungalow appears as a permanent building because of its form, external materials and fixed relationship with the ground. Its construction and resultant physical presence have led to a loss of openness when considered in isolation. Several factors need to be taken into account in assessing the materiality and degree of any harm caused.

20. The 2015 planning permission covering the site allows a static caravan and a touring caravan to be stationed on the land (plot 5), as set out in condition 1 of the permission. In effect the bungalow has replaced a static caravan. A realistic fallback, if the bungalow had to be demolished, is the siting of a twin unit caravan on the pitch. This would have a larger footprint (136 m^2) but as discussed at the hearing the more relevant factor is the volume of the living unit. In that respect a rough calculation indicated that a mobile home would have a larger volume. However, I agree with my colleague in the 2018 decision that a key factor is the fixed nature of the bungalow and its characteristic quality of permanence. That being so I conclude that the bungalow has a slightly greater effect on the openness of the pitch than a static caravan.

21. Plot 5 has a central position within the Willow Park site and is surrounded by a number of static caravans of varying appearance and size, a variety of day room buildings and stables, boundary walls and fences in and around the site, areas of hardstanding and access roads, parked vehicles and mature planting. Willow Park lies immediately to the north of Stock Lane. However, the banking, vegetation and fencing largely screens the caravan site from public view. There are no public rights of way nearby. Also the vicinity of the caravan site is characterised by mature vegetation and development associated with nearby farms, residences, commercial premises and fixed infrastructure. With these factors in mind the bungalow has very little, if any, effect on the visual dimension of openness.

22. There is unlikely to be a greater degree of activity generated when account is taken of the existing pitch and the ability to have a static caravan on the land.

23. My initial consideration leads me to conclude that the effect on openness is limited primarily to the permanency of the building and the slight harm to the spatial aspect of openness.

24. At the time of the 2018 appeal hearing the possibility was raised of removing the stable or collectively the stable, barn and dayroom. These possible scenarios were effectively discounted by the Inspector because they were not reflected in the proposal refused by the Council and had not been presented to Mr Lowe. In this appeal, the appellant proposes as a compensatory measure

the removal of the stable, which he stated was not much used at present. The submitted aerial photograph indicated the building in question.

25. The site visit established that the building outlined on the photograph comprises the stable and the attached workshop. The stable building is in the rear corner of the site and is a low, small building clad in timber boarding and with a metal roof covering. The measurements taken on the site visit of the length, depth and height indicate that the stable building is much smaller in size than the dwelling. It does not have the same visible degree of permanency when compared to the bungalow. I attach moderate weight to its removal as a compensatory factor in reducing the effect on openness caused by the erection of the bungalow, bearing in mind its less prominent position on the site, its form of construction and, most importantly, its size.

26. Green Belt serves five purposes. In this case the development is sited on an established and well contained gypsy caravan site. As indicated above, the bungalow does not have a significant effect on the visual aspect of openness and I agree with my colleague that the dwelling does not encroach upon the wider countryside. Furthermore, the site is not in a sensitive location as regards restricting urban sprawl, preventing neighbouring towns merging into one another or protecting the setting of a historic town. In this instance there is no conflict with the purposes of the Green Belt and hence no harm attributable to this factor.

27. In summary and conclusion, the harm to the Green Belt primarily is as a result of the inappropriate development. The harm to openness is minor.

28. Policy GB2 requires account to be taken of the precedent created by allowing even an individually innocuous or well merited proposal which would undermine Green Belt objectives. The Council's expressed concern is that success in this appeal would lead others to follow suit as a means of getting around the strict control on new permanent dwellings in the Green Belt. The appellant relied on the very special circumstances in this case.

29. The cumulative effect on the openness of Green Belt could be harmful if similar development was encouraged nearby. The Council did not identify any similar developments that have taken place or have been proposed in the Borough or in the wider area. In general, gypsies and travellers have a cultural aversion to living in bricks and mortar. Also there are quite specific medical and family issues that led to the appellant pursuing the course he did, that have a low probability of being repeated often. These factors indicate there is not a reasonable prospect of similar actions being repeated nearby. I conclude precedent has little weight and on this matter there is no conflict with Policy GB2.

30. Turning to the other matters raised by Policy GB2, the dwelling has no effect on public rights of way or existing landscape features. The building is satisfactorily located in respect of the surrounding landscape and any adjoining buildings. In summary the one conflict with Policy GB2 is the slight harm to openness.

Gypsy and traveller sites

31. The Brentwood Borough Council Gypsy, Traveller and Travelling Showpeople Accommodation Assessment Need Summary Report October 2017 (the GTAA) indicates the stock of traveller sites in the Borough. The study identified 14

private gypsy and traveller sites (30 pitches), 1 temporary site (2 pitches), 2 tolerated sites (7 pitches) and no public sites[4]. Willow Park (6 pitches) was included in the list of private sites.

32. In the past Willow Park was identified as one of the five preferred sites when the Council was considering where to allocate and provide for a need of at least 15 new residential pitches in Brentwood for the period 2006 to 2011. The then emerging Development Plan Document was not progressed.

33. For the period 2016 to 2033 the GTAA identified a need for 12 additional pitches for travellers who meet the definition in PPTS (now updated to 13 pitches)[5]. The total need from all gypsy and traveller households was assessed as 78 additional pitches[6]. In the emerging Local Plan Willow Park is shown as a permitted site to be safeguarded, rather than as an allocation.

34. The information demonstrates that for planning and development plan purposes Willow Park has been accepted as a gypsy caravan site for a number of years and the probability is that it will continue to contribute to the stock of caravan pitches to at least 2033.

35. The probability is that Willow Park will continue to be occupied by the extended family group in view of the length of their occupation dating back to 2003, the existing need for pitches and the difficulty of finding new/alternative suitable sites. The dwelling functions as a replacement for the static caravan and provides flexibility in accommodation for Mr and Mrs Lowe as part of the family group. The bungalow is compatible with the stationing of a touring caravan on the pitch for a close family member. Consequently, in this case the erection of a building has not resulted in the loss of a caravan pitch. I conclude there is no significant effect on the stock of gypsy and traveller sites in the Borough.

Personal circumstances and human rights

36. The reasons behind the construction of the dwelling were set out in the 2018 decision and were reiterated by the appellant in this current appeal. I do not doubt that Mr and Mrs Lowe for health reasons require a very warm home, taking into account the personal evidence of the appellant, the letters from the local GP practice, the support they have from a local Councillor and the acceptance of this factor by the Council.

37. In view of the lack of any technical evidence, at the hearing I explored with the parties an issue raised in the 2018 decision. This concerned whether a mobile home could provide suitable living conditions, bearing in mind the specified standards for modern mobile homes and their widespread use as a form of accommodation on park home sites. The appellant emphasised that a caravan because of its single skin construction and single glazing has lower insulation qualities and hence does not provide a long term solution to ensure their reasonable comfort. The bungalow has 9 inch thick walls that are insulated, as is the roof. He emphasised that a high ambient temperature is able to be maintained throughout the home.

[4] GTAA paragraph 4.2
[5] Update provided by the Council at the hearing
[6] This figure includes 66 pitches to provide for households not meeting the planning definition (59) or whose status is unknown (7).

38. The probability is that the bungalow is built with higher insulation and thermal performance qualities than a mobile home, having regard to the form of construction, materials and absence of a void. The home would provide the necessary warmth and comfort, now and into the future and hence peace of mind for the occupiers. It is a more sustainable solution than modifying a mobile home by the use of external cladding. Furthermore, dependent on the works carried out, adapting a mobile home could as a matter of fact and degree result in a structure that is a building when account is taken of size, the degree of physical attachment to the ground and permanence.

39. An additional very important consideration is that daily care and support are provided by members of the family living at Willow Park, which is of particular assistance and value to Mrs Lowe. For this reason the appellant ruled out moving to bricks and mortar accommodation elsewhere. I agree that a pathway available to the settled community is not a desirable or realistic option for the appellant, having due regard to the fact that Mr and Mrs Lowe are Romany Gypsies and race is a protected characteristic under the public sector equality duty. The realistic alternative to a bungalow on the appeal site would be a static caravan in view of the lack of traveller sites and choice of accommodation for gypsies and travellers in Brentwood and the surrounding area.

40. Article 8, a Convention Right[7], affords a person the right to respect for their private and family life, their home and their correspondence. Article 8 also imposes a positive obligation to facilitate the Gypsy way of life to the extent that the vulnerable position of Gypsies as a minority group means that some special consideration should be given to their needs and different lifestyle in the regulatory planning framework and in reaching decisions on particular cases. However, Article 8 is a qualified right that requires a balance between the rights of the individual and the needs of the wider community.

41. In the event the appellant is unsuccessful in his ground (a) appeal, the notice requires the demolition of the bungalow. It follows that the appellant and Mrs Lowe would lose their permanent brick built home. Under the terms of the 2015 permission they would be able to live on the land in a static caravan. The appellant did not seek to argue that a replacement mobile home would not be affordable. Accordingly, they would have a place to live where care would be on hand from their family on neighbouring pitches. Nevertheless, because of the probable lower standard of thermal insulation their quality of life would suffer and in the appellant's view their life span would be reduced. The interference would have such gravity as to engage the operation of Article 8.

42. In conclusion the personal circumstances of the appellant and Mrs Lowe have substantial weight.

Planning conditions

43. Planning Practice Guidance advises that when used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to

[7] Article 8 of the European Convention on Human Rights, enshrined into UK law by the Human Rights Act 1998.

ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls. Conditions should only be used where they satisfy the six tests and are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.

44. The appellant and the Council identified a number of potential conditions and clarified where there was disagreement between them.

45. The stable. Demolition of the stable building could be secured but, as explained above, its removal would assist but not fully compensate for the adverse effect on openness resulting from the development.

46. Occupancy restriction and demolition of building. The appellant proposed a condition that restricted occupancy of the bungalow to Mr Lowe and Mrs Lowe and required its demolition within 3 months of them ceasing to occupy it. The appellant volunteered the condition because the development was intended to respond to their health and care requirements during their lifetime, conditions that would not be present after they cease to live in the dwelling. A condition worded in this way would make a permission personal and time limited. Such a condition was not supported by the Council. Moreover, in the 2018 decision the inspector gave it little weight because it would not pass the test of reasonableness.

47. The 1990 Act in section 72 provides that conditions may be imposed on the grant of planning permission 'for requiring the removal of any building or works authorised by the permission, or the discontinuance of any land so authorised at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period'. Consequently, a time limit may be applied in relation to operational development as well as a material change in the use of land.

48. The PPG identifies circumstances when a temporary permission may be appropriate, such as where a trial run is needed, where it is expected that the planning circumstances will change in a particular way at the end of the period or to enable the temporary use of vacant land or buildings prior to any longer-term proposals coming forward (a 'meanwhile use'). PPG advises that a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness.

49. In addition, the PPG confirms planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need.

50. Therefore a temporary permission, requiring the permanent building to be demolished, would be within the provisions of the 1990 Act. The justification provided for the dwelling rests on the personal needs of the appellant and Mrs Lowe. The current planning permission for Willow Park already restricts occupation to named individuals, including the appellant and Mrs Lowe and hence imposes a time limitation on the caravan site. The demolition of the

dwelling would be consistent with that element of the permission applying to the site as a whole. To that extent the harm from the building would have an end date. The enforcement notice requires its demolition within 6 months if the ground (a) appeal is not successful. In that context the building resource, if accepted, would be put to beneficial use until the circumstances that justify its construction change.

51. On the other side of the balance the dwelling is inappropriate development and is harmful to the Green Belt. To allow the dwelling for a defined period, rather than permanently, would not remedy the harm and the breach of planning control in the short term. The PPG does not support a personal temporary condition which requires the demolition of a permanent building because of the likelihood that it would fail the test of reasonableness. To impose such a condition would be inconsistent with the 2018 decision.

52. Traveller occupancy. The Council proposed that occupation be restricted to gypsies and travellers, as defined by Annex 1 to the PPTS. At the time of the 2018 decision it was common ground that Mr and Mrs Lowe had gypsy status. The appellant has accepted that whilst he is ethnically a Gypsy he no longer travels for work purposes, due to ill health. Similarly, the information provided at the hearing confirmed that Mrs Lowe has ceased to travel permanently on grounds of poor health. In my view Mr and Mrs Lowe do not fall within the PPTS definition and so could not comply with such a condition. This form of occupancy restriction would in effect take away the benefit of the permission. It follows that to impose the condition would not be reasonable and relevant to the development to be permitted, given the purpose and reason why the bungalow was erected.

53. Permitted development rights. In order to protect the openness of the Green Belt conditions are proposed to remove the ability to extend the dwelling and to erect buildings incidental to its enjoyment. The appellant maintained that they would not be necessary because the site would have a mixed use and permitted development rights would not apply. PPG advises that conditions restricting the future use of permitted development rights may not pass the tests of reasonableness or necessity.

54. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) under article 3 grants planning permission for the categories of development in Schedule 2. Part 1 of Schedule 2 applies to development within the curtilage of a dwelling house. A curtilage defines the area of land in relation to a building and not a use of land. Hence the dwelling would enjoy permitted development rights. There would be scope to significantly extend the bungalow, including alterations to its roof. Removal of those rights would be justified to protect the openness of the Green Belt and on account of the very special circumstances that would have to be demonstrated to permit the dwelling.

55. An additional condition is proposed to remove permitted development rights granted by the GPDO for the erection of means of enclosure (Schedule 2 Class A of Part 2 Minor Operations). These rights are not related to a curtilage and this type of minor development has the ability to erode openness. The 2011 permission did not remove these permitted development rights. They were removed through a condition attached to the 2015 permission that controlled additional means of enclosure, both in relation to the Willow Park caravan site

and the adjoining land. In this appeal the suggested wording of the condition also refers to 'additional' but in order to be enforceable the existing walls and fences would have to be identified. I consider that this condition is not necessary because of the existing boundary features within and around the plot and the extent of the control exercised through the 2015 permission for the wider caravan site.

56. 2015 permission. Two conditions are proposed that would preclude industrial and commercial activities and the parking of vehicles over 3.5 tonnes taking place on the site. These conditions are derived from the 2015 permission and would ensure consistency with the permission for the rest of the Willow Park site. They would protect amenity and the character and appearance of the Green Belt.

57. In conclusion, conditions would limit the harm to openness by requiring the removal of the stable building and the removal of permitted development rights in relation to the bungalow and incidental development, together with controls on commercial activities and parking. Restricting occupation of the dwelling to gypsies and travellers would be unreasonable and deny the ability of the appellant and Mrs Lowe to live there. A personal, temporary permission (that would eventually involve the demolition of the bungalow) would be justifiable only if it would be reasonable in the very specific circumstances of the case.

58. No condition or other mechanism was proposed to address the possibility of a static caravan being stationed on the site in addition to the bungalow and touring caravan. Following discussion at the hearing, it seems to me that a condition would be required to limit the residential accommodation to that currently on site to prevent harm to the openness of the Green Belt.

Planning Balance

59. The dwelling is inappropriate development in the Green Belt, which is harmful for this reason alone. The harm to openness is minor, taking into account the permanency of the building (whether or not a condition requires its demolition), the slight harm to the spatial aspect of openness, the demolition of the stable and the mitigation of potential adverse effects that could be secured through planning conditions. There is no conflict with the purposes of including land within the Green Belt. I attach substantial weight to the harm to the Green Belt. The other considerations of precedent and the effect on the stock of gypsy and traveller sites in the Borough do not add weight to the harm side of the balance.

60. The personal circumstances of the appellant and Mrs Lowe have substantial weight in favour of allowing the development.

61. The identified harm is not clearly outweighed by other considerations and my initial conclusion is the development is not acceptable.

Proportionality assessment

62. The operation of Article 8 is engaged. I have to be satisfied that the refusal of planning permission would be no more than necessary to achieve the objective of protecting the environment through the regulation of land use. Whether the interference with the appellant's rights, and the rights of Mrs Lowe, is necessary is dependent on it being proportionate. In the context of Article 8 the

aim is to ensure a fair balance between the demands of the general interest of the wider community and the protection of the individual's fundamental rights.

Relevant considerations relating to the enjoyment of private and family life and the home

63. Mr Lowe has had a settled base at Willow Park for a number of years where his caravan pitch has been the home for himself, his wife and son. The other pitches at Willow Park are occupied by members of his family, including his two brothers and their families. The caravan site is authorised for occupation by the family group, providing them with stability and certainty. The caravan site has become an accepted development within the local community.

64. The view I gained at the hearing is that the family is close knit, offering strong and much valued support to one another. In addition, Mr Lowe has built up local ties within the surrounding area and both Mr and Mrs Lowe attend a GP surgery nearby. As explained above, the brick built bungalow is regarded by Mr Lowe as essential to the health and well-being of himself and Mrs Lowe and their quality of life. In Mr Lowe's words, a return to living in a caravan would be like a death sentence. They are highly dependent on assistance from their family. Mrs Lowe, because of her cultural background, would not be able to tolerate living in a conventional care home. This strongly held belief and the serious commitment of gypsies and travellers to family caring responsibilities is a generally recognised and accepted characteristic. Mr Lowe did what he thought was best in order to look after his wife without relying on others to provide an alternative suitable home. To move to an alternative, permanent bricks and mortar home elsewhere would severely disrupt the ability of family members to provide daily care and to be close at hand and supportive whenever needed. In turn this would have a serious adverse impact on the quality of their lives.

Public and community interests

65. The regulation of land use is in accordance with the statutory framework. Planning law requires that applications for planning permissions must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework confirms that planning decisions should play an active role in guiding development towards sustainable solutions, helping to deliver on three interdependent social, economic and environmental objectives. The protection of the Green Belt is of great importance and has been a long standing and consistent aim of land use planning. Permanence and openness are essential characteristics. Public confidence in the planning system is, in part, derived from consistency in decision making and effective enforcement. The bungalow in question is inappropriate development that causes harm to the Green Belt.

66. Even though the caravan pitch is authorised, the bungalow was not established lawfully. This is a factor in considering whether a requirement that the individual leave or remove his or her home is proportionate to the legitimate aim pursued. The health and cultural issues that prompted the decision to erect the dwelling also have to be weighed in the balance. In this instance the unauthorised nature of the dwelling weighs against the appellant to a small degree.

Fair balance

67. In all probability a lack of success in the appeal would cause considerable distress to Mr and Mrs Lowe and be detrimental to their health and quality of life. In turn this would increase the demands on and support from the members of their extended family. The interference with home and family life would be very serious, to which I attach very considerable weight.

68. In deciding on the weight to give the public and community interests, the planning history of the appeal site, including the extant planning permission and the fallback of a static caravan, are highly relevant when considering the harm to the Green Belt. On a site-specific basis, no significant harm has been identified to other planning considerations.

69. In view of the particular circumstances in this case my conclusion is that the interference with the Article 8 convention rights of Mr and Mrs Lowe in requiring the demolition of their home through the enforcement notice would not be proportionate. Such an outcome would be more than is necessary in pursuit of the legitimate aim of regulating land use.

Conclusion

70. The proportionality assessment turns the balance in favour of the development, whereby the harm to the Green Belt and other harm is clearly outweighed by other considerations. The human rights dimension, informed also by having due regard to the public sector equality duty, provides the very special circumstances necessary to grant planning permission and allow the appeal on ground (a).

71. Clearly this is a different conclusion to the decision reached by my colleague in 2018. The policy context is the same and the proposed demolition of the stable has not been a decisive compensatory factor. The greater and in the end the determining influence on the planning balance is the weight I have attached to the proportionality assessment within the context of the enforcement notice.

72. Planning conditions, worded to meet the six tests, would enable the development to be controlled to protect the Green Belt, as explained in more detail above. In particular, a condition to make the development personal to Mr and Mrs Lowe[8] and requiring its demolition is considered in this instance to be reasonable and to be justified in view of the very strong specific personal and family reasons that have tipped the balance in favour of the appellant. The planning history of the Willow Park caravan site is also a very important factor in this regard. A personal condition is the only way of reasonably restricting occupancy, as the more usual gypsy and traveller condition does not work in this case.

73. The development, by reason of the very special circumstances, complies with Policy GB1. Apart from the minor harm to openness there is compliance with all other criteria of Policy GB2 of the Local Plan. The development is in accordance with the development plan when read as a whole and with national planning policy in the Framework.

[8] It was agreed at the hearing that Miss Lucy Smith, rather than Mrs Lowe, should be the name used in the condition.

74. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation. The appeal on ground (g) does not therefore need to be considered.

DECISION

75. It is directed that the enforcement notice be corrected:

- by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice, and
- by the deletion of the words in paragraph 3 and the substitution of the words "Without planning permission, the erection of a single storey dwelling on a gypsy caravan pitch, in the approximate position shown on the attached plan."

76. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the erection of a single storey dwelling on a gypsy caravan pitch on the land shown edged red on the plan annexed to this decision, subject to the following conditions:

1) The stable building in the north east corner of the pitch (measuring approximately 8.05 metres long by 4.26 metres deep and 3.12 metres high) shall be demolished and all resultant materials shall be removed from the site within 28 days of the date of this decision.

2) The dwelling hereby permitted shall be occupied only by Mr Ben Lowe and Miss Lucy Smith and shall be permitted for a limited period. The dwelling including the foundations shall be demolished, all resultant materials shall be removed from the site and the land shall be restored to its former condition within three months of the date Mr Ben Lowe and Miss Lucy Smith cease to occupy the dwelling.

3) No caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed on the pitch at any time, except for one touring caravan.

4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

5) No commercial activities shall take place on the land, including the storage of materials.

6) Notwithstanding the provisions of Schedule 2 Part 1 Classes A, B, C and D of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that Order with or without modifications), no alterations, enlargement or improvements shall be carried out to the dwellinghouse, which shall include no alterations or enlargement to the roof.

7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that Order with or without modifications), no development falling within Schedule 2 Part 1 Class E (buildings etc

incidental to the enjoyment of the dwellinghouse) shall be carried out on the site.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Brian Woods BA(TP) MRTPI	WS Planning and Architecture
Ben Lowe	The Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mike Ovenden MRTPI	Associate Planning Consultant, Brentwood Borough Council
Andrea Pearson	Planning Policy Officer, Brentwood Borough Council
Richard Bates	Planning Enforcement Officer, Brentwood Borough Council

INTERESTED PERSONS:

Jon Cloke	Councillor, Ingatestone Fryerning and Mountnessing Ward
Caroline Russell	Councillor, Ingatestone and Fryerning Parish Council

DOCUMENTS submitted at the hearing

1 Letter of notification of the hearing and list of people notified
2 Plan showing Green Belt boundary near Ingatestone
3 Land Registry details, Willow Park
4 Planning Statement, Planning application ref 13/00423/FUL
5 Application site plans ref 13/00423/FUL
6 Planning permission dated 29 June 2015 ref 13/00423/FUL
7 Brentwood Borough Council Gypsy, Traveller and Travelling Showpeople Accommodation Assessment Need Summary Report October 2017
8 Planning application ref 17/01605/FUL: Plan titled ' Plans, elevations, site/block plan & location plan' Plan ref 001 rev A

Plan

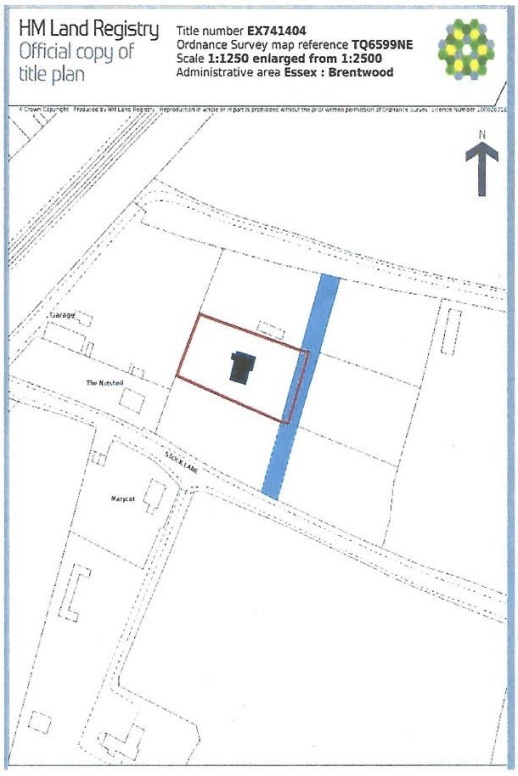
This is the plan referred to in my decision dated: 17th December 2019

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

Land at: Twin Oaks, Willow Park, Stock Lane, Ingatestone, Essex CM4 9QL

Reference: APP/H1515/C/19/3221514

Scale: Not to Scale



Dwelling (shaded black) at Twin Oaks, Willow Park, Stock Lane, Ingatestone, Essex, CM4 9QL