



Appeal Decision

Inquiry held on 12, 13 & 14 November 2019

Site visit made on 14 November 2019

by Mr J P Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 December 2019

Appeal Ref: APP/W1525/W/18/3217804

Land at the junction of Ongar Road West and Highwood Road, Writtle, Chelmsford, Essex CM1 3NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Lee against the decision of Chelmsford City Council.
 - The application Ref 18/01097/FUL, dated 18 June 2018, was refused by notice dated 14 September 2018.
 - The development proposed is the change of use of land to 4 Gypsy/Traveller pitches comprising 4 mobile homes, 4 touring caravans, hardstanding and associated works
-

Decision

1. The appeal is dismissed.

Procedural matters

2. No address but only a grid reference was given on the application form. The address I have used above is the one found on the decision notice and appeal form, and appears to identify the site accurately.
3. The first 3 main issues below were explored by means of a round table 'Hearing' format that I led. The final issue was considered by the formal presentation of evidence and cross-examination more commonly associated with an 'Inquiry' format.
4. At the Inquiry an application for costs was made by the Council against the appellant, and that application is the subject of a separate decision.

Main Issues

5. The main issues in this case are
 - a) the effect of the scheme on the character and appearance of the locality,
 - b) whether this is inappropriate development in the Green Belt, and its effect on openness and the purposes of including land in the Green Belt;
 - c) whether the development gives rise to other harms and,
 - d) whether the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations and, if so, whether this would amount to the very special circumstances required to justify the proposal.

Policy

6. The *Core Strategy and Development Control Policies* (the Core Strategy) was adopted in 2008, and in this gypsy and traveller development is subject to Policy DC34. That policy states 2 gypsy and traveller sites will be allocated (though this never happened), while other such development will be subject to a criteria-based approach. Of particular relevance to this appeal are criterion (iii), which requires development not to harm the character and/or appearance of the area and/or result in unacceptable impact, criterion (v), which says there must be a clearly established need for the site, and criterion (vi), which states the development must be outside the designated Green Belt.
7. In the emerging *Chelmsford Local Plan* (the emerging Local Plan), gypsy and traveller provision is addressed under Policy HO3. The criteria-based element of this policy is substantially the same as that found in Core Strategy Policy DC34, with the exception of criterion A(v) that seeks to ensure no 'significant' adverse impact on the intrinsic character and beauty of the countryside. This policy also proposes to address identified need through the allocation of a single site, which, elsewhere in the plan, is shown to be on Drakes Lane.
8. The emerging Local Plan is at an advanced stage, with the Examining Inspector having published her Main Modifications and the subsequent consultation period having expired in September. In her Main Modifications she advised that emerging Local Plan Policy HO3 be changed so that it allocated 'sites' within the Local Plan rather than just the one site proposed by the Council. Otherwise, no substantive changes pertinent to this case were proposed to the plan's approach to gypsy and traveller provision.
9. However, the appellant, through his agent, has objected to the Main Modifications by contending the supply upon which the policy approach is based is an underestimate and a greater provision should be made in the numbers of pitches and sites. He has also suggested the site subject of this appeal should be allocated in the emerging Local Plan for gypsy and traveller pitches. These were his first representations to the plan, and he made none at an earlier stage.
10. As I am aware of no outstanding representations concerning the criteria-based part of emerging Local Plan Policy HO3 I can afford that great weight. With regard to the section of the policy concerning site allocation and the necessary number of pitches, I do not know how the Examining Inspector will respond to the appellant's representation as it challenges the fundamentals of the policy rather than just the Main Modifications she has proposed. I am aware though that as part of those modifications she is seeking 'sites' be allocated rather than just the one put forward by the Council. It is also fair to assume that, apart from the limited Main Modifications she identifies, she found the Council's approach to gypsy and traveller provision in the emerging Local Plan to be sound.
11. Therefore, despite the appellant's representations, I would expect her position to remain broadly unchanged from that in the Main Modifications. Consequently, I afford substantial weight to the element of the policy relating to site allocations and the necessary pitch numbers. Moreover, as the Examining Inspector has found the Council's resistance to gypsy and

traveller sites in the Green Belt not to be unsound, and noting advice in Policy E of *Planning policy for travellers* (PPTS), I have no basis to consider that, even if she agreed with the appellant's position on pitch numbers, she would resolve this by allocating the appeal site in the emerging Local Plan.

12. It was suggested that I should issue my decision after the response of the Examining Inspector to the appellant's representations has been published. However, it is not uncommon for developments to be considered against an emerging policy context, and unnecessary and on-going delays could occur if decisions were held back as a result. Given the issues in this case, I therefore see no reason why my decision cannot be issued in advance of further actions by the Examining Inspector.

Reasons

Background

13. The appeal site covers about a third of what was a large paddock. However, in October 2018, soon after the application subject of this appeal was dismissed, it was occupied by the appellant and various members of his family (the family). They formed 4 pitches on the land, each with 2 touring caravans and a temporary day room structure in a fenced enclosure. All the pitches are accessed by means of a gravelled track through the gateway that served the paddock. This arrangement broadly reflects the situation shown on the submitted plan, with the most notable exceptions being the absence of the intended landscaping and the larger permanent day room buildings. The remainder of the paddock together with the associated stable block, is still used for the keeping of horses and alpaca.
14. It was accepted that the residents on the site fell within the definition of gypsies and travellers contained in Annex 1 of the PPTS, and I had no reason to find differently.
15. Following the occupation of the site the Council obtained an interim injunction order to prevent further unauthorised works from occurring. At a subsequent hearing for a mandatory injunction order, the Court accepted the undertaking from the appellant that if this appeal were to be dismissed, he would remove all caravans, structures and hardcore from the land to allow it to be used for its lawful purpose as a paddock. These undertakings were set out in a Final Order (the Order) dated 21 February 2019. As a result, unlike many appeals of this nature where, if refused, it would be subsequent enforcement proceedings that would require the occupiers to leave the site, in this case a dismissal of the appeal would, of itself, result in the residents having to move on.

a) Character and appearance

16. The site lies outside any designated settlement boundary in the countryside. To the north-east is the A414 while Highwood Road runs along the south-east side. These meet at a roundabout in the eastern corner of the site, and the settlement of Writtle lies beyond. A line of cottages of various styles and forms are on the opposite side of Highwood Road, along with a site for Travelling Showpeople, while a garden centre is to the north-west. A further traveller site called Little Paddocks lies to the south-west, and beyond to the

south, east and west is rolling countryside. Hedging runs around the eastern sides of the paddock, while trees are to the north-west and south-west.

17. The appellant contended that the site displays strong urban fringe characteristics, but this is not a view that I share. Visually the site appears separated from any settlement, with Writtle being a little distance away across intervening roads and open land. Moreover, although one can see the gable of a house, some signage and some close boarded fencing associated with the garden centre, that business is nonetheless concealed to a great extent by existing planting. In any event, the garden centre is mainly operating from polytunnels that are an accepted part of the rural character of the area. Similarly planting substantially conceals the Little Paddocks site to the south-west. The south-east side of Highwood Road has a more built-up character but rows of houses such as this are not uncommon in areas of countryside and do not necessarily undermine its rural nature. Furthermore, Highwood Road itself has limited pavements, kerbing and lighting, and on the north-west side is bounded by trees, giving it the distinct character of a country lane. I accept that the site for Travelling Showpeople is more at odds with the surroundings, but the overall impact of this is reduced by it being a rough continuation of the alignment of houses to the south. Taking all these factors together to my mind the appeal site is perceived as being in the countryside.
18. It sits at the north-eastern extent of the F7-Blackmore Wooded Farmland Landscape Character Type identified in the *Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessments* (the LCA). The undulating open wooded farmland to the south, west and east accords with the characteristics of this area found in the LCA, and in this regard the enclosed nature of the appeal site and remaining paddock means it is different. However, the LCA also accepts this landscape character type contains '*patches of smaller scale pasture fields and pony paddocks*' as well as '*mature hedgerows and deciduous treed field boundaries*'. I therefore consider that the site, before the introduction of the caravans, was not at odds with the landscape character type in which it sits, though even if it was that would not diminish its rural character described above.
19. I have assessed the scheme in relation to this issue taking into account what I consider its impact would be once the proposed planting had become established.
20. Coming from the south-west along Highwood Road the site is substantially hidden by trees until very near its southern corner, when views through to the caravans would be possible. As the road continues along the south-eastern boundary, the caravans would be concealed by the stables and hedging though nearer the roundabout they would be once again seen around the gateway. Indeed, further views would be possible in the short-term at least if the hedge had to be realigned and replanted to allow satisfactory visibility.
21. From the north, when approaching the site over the footpaths on the opposite side of the A414, the caravans would be seen, especially when using the styles. Furthermore, direct views into the site are apparent from the footpath running along the site's north-west boundary. As this footpath is clearly signposted, runs from the entrance to the garden centre, is a

continuation of the footpath running from Writtle and has a modern, stout footbridge, there is a strong likelihood that it will be well used.

22. Finally, when passing on the A414, it is likely an awareness of the caravans would remain through the planting.
23. Consequently, even after the planting has become established I consider the development would be particularly noticeable from points on Highwood Road and the footpath to the west, whilst it could be seen to a lesser extent from the road and footpath to the north. Indeed, even the filtered views would allow a clear perception of residential activity on what was previously land used for the keeping of horses.
24. Caravans can be part of the accepted rural landscape. However, in these views not only would the 8 bright caravans be highly visible, but the associated parked vehicles and domestic paraphernalia would also be seen. I consider that their number, form, finishing and arrangement mean they would constitute a strikingly discordant element in this rural landscape, that would significantly and harmfully detract from the character and appearance of the locality.
25. In the summer the prominence of the development may be lessened as the vegetation is in fuller leaf. However, whilst this may soften its visual presence it will still be apparent, especially when looking from the southern corner or the footpath to the north-west.
26. I accept that conditions could be imposed in the interests of the appearance of the locality to prevent any commercial activity on the site or the parking of lorries and vehicles greater than 3.5 tonnes. These controls though would not allay my wider concerns highlighted above.
27. Accordingly, I find the development would cause significant harm to the character and appearance of this rural landscape, in conflict with Policy DC34(iii) in the Core Strategy and emerging Local Plan Policy HO3A(v).

b) Green Belt

28. The appeal site lies within the Metropolitan Green Belt. The *National Planning Policy Framework* (the Framework) says that inappropriate development is, by definition, harmful to the Green Belt. PPTS Policy E, which was adopted in 2015, states that traveller sites in the Green Belt are inappropriate development, while in paragraph 146 the Framework, which is more recent, says changes of use of land are not inappropriate if they preserve the openness and do not conflict with the purposes of including land in the Green Belt.
29. The Framework also identifies keeping land permanently open as one of the fundamental aims of the Green Belt, while one of the stated purposes of the Green Belt is to assist in safeguarding the countryside from encroachment.
30. Core Strategy Policy DC34(vi) and emerging Local Plan Policy HO3A(i) both say gypsy and traveller sites should not be in the Green Belt.
31. By occupying what was previously an area of grassed paddock, for the reasons found in relation to issue (a) above, I consider the scheme even when landscaped, would harm the openness of the Green Belt. Moreover,

given its scale and nature it would constitute an encroachment of activity and development into the countryside that did not reflect the area's rural character. I accept that this impact would be visually contained to some extent by trees, hedging and the houses opposite. However, that is not uncommon with development in the Green Belt, and I see nothing in the Framework that means a geographically limited impact in this regard is acceptable. In any event, there are still various points from which, even with the additional planting, it would be visible.

32. Furthermore, openness has a spatial and a visual dimension. Therefore, even if there was an absence of visual intrusion this does not in itself mean there is no impact on the openness as a result.
33. Accordingly, I conclude that this would conflict with the Green Belt's fundamental aims by harming openness, and it would constitute encroachment into the countryside in conflict with the Green Belt's purposes. Therefore, whether based on Policy E in the PPTS or paragraph 146 in the Framework, I find it is inappropriate development, and so in this regard I agree with the parties.

c) Other matters

34. The distance to the houses on the opposite side of Highwood Road, the intervening hedge and the public roadway in between mean there would not be an undue loss of privacy for those residents. Although their view may be affected that in itself is not a reason to resist this planning application. Given there would be no commercial activity here, I also have no grounds to find there would be unacceptable noise from what is a residential use.
35. If sight splays were provided in line with the Highway Authority's advice, then I consider the site's junction could be used safely. Although relatively close to the roundabout, to my mind the separation is sufficient to avoid any driver confusion. The gates are also an adequate distance back to allow vehicles to pull clear of the highway.
36. On the evidence before me I have no basis to consider that, with suitable conditions, drainage cannot be satisfactorily addressed, or to find that the effect on ecology would be unacceptable.
37. A number of local residents expressed concern about what they saw as a proliferation of such development in the area, pointing to Little Paddocks, the Travelling Showpeople's site, and a gypsy and traveller site to the south at Littlefield. Additional proposals were also cited elsewhere in the wider area. The contention was that these sites, when taken together, were dominating the nearest settled community, in conflict with PPTS Policy C.
38. In my opinion though these sites are spread geographically, are not visually linked to a great extent, and do not provide a great number of pitches. Therefore, even if taken together, and even assuming the settled community is defined as the cluster of houses on Highwood Road to the south-east, I consider they cannot be seen to be dominating it in any harmful manner.
39. Reference was also made to the appellant undertaking intentional unauthorised development. In a letter to Chief Planning Officers dated 31 August 2015, the Chief Planner attached a planning policy statement advising that the Government was concerned about the harm to the Green

Belt caused by intentional unauthorised development. It therefore advised it should be a material consideration to be weighed in the determination of the appeal. Although at the Inquiry the parties offered reasons and suggestions as to the motives and intentions of this policy statement, I have taken it at its face value having regard to the various interpretations and applications by other Inspectors that were put to me

40. The development the appellant undertook on the site in October 2018 was unauthorised. However, when considering the Order His Honour Judge Dight CBE found that action was not flagrant, as he was satisfied that the appellant thought he was not in breach of planning control because the appeal had been submitted. Moreover, Judge Dight also found that the works were undertaken in an orchestrated manner over a weekend because the family had only a short window available. I have had due regard to the judge's findings, though at the Inquiry it was made clear the family had engaged a planning consultant at that time and so establishing whether or not such works were lawful could have been easily done. On balance, I therefore find that intentional unauthorised development has occurred, but mindful of the comments of the judge the weight afforded to this is limited.

Conclusions on Issues (a), (b) and (c)

41. Drawing together the above, I have found the development is inappropriate, which is by definition harmful to the Green Belt. Moreover, whether assessed by themselves or as part of the consideration of inappropriateness, it harms the openness of the Green Belt, and conflicts with its purposes. Under paragraph 144 of the Framework I afford this Green Belt harm substantial weight. The scheme also significantly detracts from the character and appearance of the area and I afford this significant weight. Furthermore, I have found it constitutes intentional unauthorised development, although given the circumstances that is a matter to which I attach only limited weight.

d) Other considerations to be weighed against the harm

42. The Framework explains that inappropriate development should not be approved except in very special circumstances. These circumstances will not exist unless the development's harm to the Green Belt by reason of inappropriateness and other harm is clearly outweighed by other considerations. In assessing this matter, I am mindful that circumstances could be ordinary in themselves but combine to result in something very special.
43. Core Strategy Policy DC34(vi) says that gypsy and traveller development should not be in the Green Belt, but it is reasonable to assume that if very special circumstances were demonstrated then the policy conflict would not stand in the way of a development proceeding – a fact accepted in the comparable criterion in emerging Local Plan Policy HO3.
44. The PPTS elaborates on this position in Policy E (and re-iterates it in Policy H) by saying, in relation to traveller sites,

'subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.'

45. In considering this guidance in the PPTS there are 4 particular points to note in connection with the arguments presented before me.
46. Firstly, by saying it is '*unlikely*' that personal circumstances and unmet need would outweigh harm in the Green Belt and other harm, it is not saying those factors would never outweigh the harm.
47. However, secondly this does not mean that the advice can be put readily to one side. Indeed, it is probably of greater note that so strongly a worded piece of advice is there at all. This advice was drafted with an appreciation of the general nature of personal circumstances and unmet need (however that is defined) that can be raised in connection with traveller developments and, mindful of that, it finds it unlikely or improbable that those circumstances would suffice. It also, no doubt, had regard to human rights issues and responsibilities under the Public Sector Equality Duty. It is therefore fair to assume that for unmet need and personal circumstances to clearly outweigh the harm in any particular case they have to be somehow particularly compelling.
48. Thirdly though, whilst personal circumstances and unmet need are '*unlikely*' to outweigh harm, there is nothing in the guidance in the PPTS to say that they could not contribute to outweighing the harm when taken with other material considerations.
49. Finally, the courts have held that, despite the guidance in the PPTS, the weight given to these matters remains for the decision-maker.

Unmet Need

50. Whilst mindful of the PPTS guidance above, the appellant nonetheless described this as '*a crunch issue*' in this case. He contended that the level of unmet need for Chelmsford should be higher than found in the *Essex, Southend-on-Sea and Thurrock Gypsy and Traveller Accommodation Assessment* (the GTAA) and its associated documents, with the figure provided by those documents being an underestimate. Moreover, as the GTAA informed the emerging Local Plan, that too was based on an under-estimation of need. Therefore, instead of the 8 pitches the GTAA said were needed, 15-20 pitches were required. It was also contended that the emerging Local Plan failed to allocate sites for pitches of a sufficient range of sizes or tenures, instead identifying only one at Drakes Lane. As a result, there was an absence of alternative sites for the family to pursue.
51. The GTAA was based on 2016 data, and so is now some 3 years old. Given the constantly changing nature of this topic, it is inevitable that its figures may not reflect the situation as of today and so it might not be truly 'up-to-date' as required by the PPTS. I consider that the household on the pitch at Littlefield should be added to the Council's figure as their temporary permission will expire in near future, and there may be further household formation needs arising from that family. Moreover, there is also need for the 4 households on the appeal site. However, I am not persuaded that all on the waiting list for pitches in Chelmsford should be added as they could well be on lists elsewhere, or may now have pitches and have not removed themselves. Similarly, while injunctions against gypsy and traveller developments are on various fields nearby, I have no evidence that those who sought to occupy those sites are still without a pitch.

52. There were a number of gypsies and travellers who were not interviewed for the GTAA and so it is unknown whether or not they fell under the definition given in the PPTS (these are termed the 'unknowns'). It is possible that all of these 'unknowns' could be defined as gypsies and travellers under the PPTS, but I have no reason to expect that to be the case and consider it extremely unlikely. As such, allocating sites for all of them would not be justified and would probably result in an over-provision for those who fell under the definition. Rather, it seems reasonable that only a proportion of the 'unknowns' should be assumed to be gypsies and travellers under the PPTS definition. There are a number of possible approaches to calculating what this proportion should be, each of which could be considered acceptable. To my mind though a reasonable method is for it to be comparable with the proportion of those interviewed in Chelmsford who fell under the definition, and I can see no justification for favouring the greater proportion suggested by the appellant. Using the figure for Chelmsford produces a higher percentage than used in the GTAA, but I understand it has no effect on the number of pitches the GTAA considers are required in the Borough. As a result, it is not correct to consider there is no provision for at least some of the 'unknowns' who may fall under the definition in the PPTS.
53. Therefore, although the gypsy and traveller need probably exceeds that given in the GTAA, on the evidence before me I consider it is unlikely to be as high as the 20 pitches suggested by the appellant.
54. With regard to the level of provision in the emerging Local Plan, allocating just one site does not allow for a mix of tenures or sizes. I have had regard to the Public Sector Equality Duty arising from the *Equality Act 2010*, as well as Article 14 in the *European Convention on Human Rights* as I realise this situation would not reflect the diversity of options available for those wishing to live in bricks and mortar. Moreover, the only alternative site in the Borough highlighted by the Council was Drakes Lane, but at the moment that is not established, and there is an uncertainty and delay over its deliverability due to the registered provider no longer wishing to proceed. It seemed clear from the submissions that, if I were to dismiss this appeal, the Drakes Lane site would not be available for the family to move directly onto, even if they applied to live there and their application was successful.
55. Furthermore, while the delivery of Drakes Lane appears to be delayed, it is a relatively recent permission and I consider it continues to fall under the definition of being considered deliverable that is found in the PPTS. I have not been persuaded that it could not still come forward at a later date by other means.
56. As the identified need is relatively small, allocating sufficient sites to accommodate the possible range of tenures and sizes that may be sought would, inevitably, result in an over-provision. I am also aware that if the Main Modifications are adopted in the form on which they were consulted then the policy will establish a need for more than one site to be allocated and, even being mindful of the appellant's representations to that consultation, I have no reason to consider the Examining Inspector will step back from this position. I accept though that the size, location and tenure of any further sites does not appear to be stipulated. Despite that, the criteria-based element of both Policy DC34 in the Core Strategy and emerging Local Plan Policy HO3 can also be used to accommodate any additional need of the

magnitude I have identified that arises over the plan period, or to allow opportunity for sites of differing sizes or tenures to be established.

57. Overall, although I accept there may be many other ways to undertake such a study, I have no reason to consider the GTAA is not a suitably robust assessment of need in the Borough. Its validity has been affected primarily by the passage of time that has elapsed since it was prepared. As a result, on the evidence before me I have found there is a greater need in gypsy and traveller provision than identified in the GTAA and a deficiency in the number of specific deliverable sites identified, but numerically this is not large, and I consider that the adopted and emerging policy framework can respond to this increased need. As such I only attach limited weight to this shortfall and to the lack of identified alternative sites.
58. It was also contended that the Council had made and would continue to make inadequate provision for those who culturally chose not to live in bricks and mortar but nonetheless fell outside of the PPTS definition (including those amongst the 'unknowns'). Policy HO1 in the emerging Local Plan lays down circumstances where there could be some provision made for this sector of the housing market, and the evidence submitted did not demonstrate that such an approach would have a material effect on my decision in this case.

Personal circumstances of the adults

59. The family wants to live together in a settled existence on a private site. I understand this desire, and it is one that I would expect to be commonly expressed by members of the Gypsy and Traveller community. However, I see nothing in the policy framework that means that is not achievable through the criteria-based approach, or that the appellant's need cannot be met in the majority of the Borough that lies out of the Green Belt.
60. I have had regard to the evidence submitted concerning the health issues of the adult members of the family, and I fully accept the severity of these. However, while there is a need for medical care, I was told of nothing that specifically meant they had to live on the site itself or even in and around Chelmsford.
61. In particular I was told that dismissing the appeal would lead to a roadside existence, and I appreciate that with this must come pressures of finding pitches and the very real threat of being moved on, as well as difficulties associated with accessing medical care.
62. The judgement said though that the members of the appellant's family
- 'are a well-organised, dynamic, self-sufficient group who could have found somewhere else to stay. They are hardworking and resourceful, and I have no doubt they are all well able to look after themselves: they are survivors'.*

From what I saw and heard of the appellant's family I was given no basis to refute this view. However, despite the real threat of leaving the site if the appeal was dismissed, I was also offered very little evidence to show that they had looked in a thorough and meaningful way for alternative accommodation since the judgement, and it was confirmed they had put themselves on no waiting lists for sites. Moreover, the family members do

not appear to have often had an involuntary roadside existence in the recent past. I appreciate that the Council identified no alternative sites other than the delayed Drakes Lane, and so a roadside existence may be a possibility. I accept too that this would have its consequences for the adults' health. However, it has not been shown that, in the medium or long-term, such an existence is an inevitable consequence of having to leave the site. I therefore attach moderate weight to the personal circumstances of the adults.

Best interests of the children

63. Turning to the best interests of the children, this is a primary consideration in this case. At the outset no consideration must therefore be regarded as more important or, in advance of the subsequent assessment of the individual circumstances, be given greater weight. However, these best interests will not always outweigh other considerations including those that impact negatively on the environment. I have nonetheless kept the best interests of the children at the forefront of my mind in reaching my decision.
64. Remaining on the appeal site would provide a settled, stable lifestyle for the family's children. It would enable them to receive education most easily and they could develop socially as they engaged with clubs and activities in the area. It would also allow a continuity of health care. These matters tend to be common to most children on gypsy and traveller sites. They are also not specific to this site, but could be applied to any site that would provide them with a settled base. However, I nonetheless appreciate that this stability and all that flows from it would be lost, at least in the short-term, if the appeal were to be dismissed.
65. On the other hand, all but one of the children do not attend school as they are too young or are home tutored. As such, moving elsewhere would not have a disruptive effect on their education by requiring their formal schooling to cease or change, although it is appreciated that a roadside existence would make it more difficult for a tutor to visit their caravans to educate them. The child who does go to school has had a significant medical condition, but that has now been resolved and they are 'catching up' in areas where their condition impaired their developmental progress. However, whilst that child still needs some support that does not seem so specialised as to mean it can only be accessed in a few particular places.
66. In the light of these points and after considering the circumstances of the case, I am aware of the best interests of the children arising from remaining settled, especially taking into account the possible (but not certain) roadside existence that could ensue. However, balanced against this it has not been shown the site before me is necessary to serve their medical, social or educational needs.
67. Overall, I note that in the judgement it states

'[the family's] needs, including their medical needs, educational needs and lifestyle needs have all been considered and taken into account by the local authority. They were not exceptional and could still continue to be met, in my judgement, if they did not live on the site.'

Based on the submissions made to this Inquiry I have no reason to come to a different view in relation to the family as a whole or the children in particular.

Other cited considerations

68. The site has relatively good access to services, though that is not uncommon for locations in the Green Belt that are outside of but near to settlements. Whilst it can therefore be afforded weight in favour of the scheme this weight is only limited. It also accords with, or at least does not conflict with, 5 of the 7 'active' criteria in Core Strategy Policy DC34 (so excluding criterion viii), and with 7 of the 9 criteria relevant to new gypsy and traveller sites that remain after the Main Modifications in Policy HO3A of the emerging Local Plan. Appeal decisions have been put forward that have taken differing approaches to the weight to be attached to the compliance with some of the criteria in policies of this type. However, the adopted and emerging policies require compliance with all their stated criteria for a development to be acceptable. Moreover, the criteria with which there is conflict in the 2 policies are of fundamental importance to the acceptability of the scheme, and if the harm they stated was outweighed by the non-conflict with the remaining criteria it would undermine the approach of the policy as a whole. Accordingly, compliance with these matters adds only limited weight in favour of the development.

Do other considerations outweigh the Green Belt harm so as to amount to very special circumstances?

69. In the appellant's closing submissions, a bar graph was submitted to show the other considerations against the Green Belt harm. To my mind though this was too simplistic a tool, as it apportioned equal weight to many factors.
70. In line with the Framework I have attached substantial weight to Green Belt harm. I have also attached significant weight to the harm to the character and appearance of the area and limited weight to it being intentional unauthorised development. Collectively these weigh heavily against the proposal.
71. Against this, for the reasons given the weight I afford to the apparent shortfall in the need in the GTAA and the personal circumstances of the adults on site (including the likelihood of a roadside existence and the effect that would have on health) do not clearly outweigh the Green Belt harm and other harm. Other factors also weigh in favour of the scheme, namely the lack of conflict with many of the criteria on the adopted and emerging policies, the site's proximity to services and, most importantly, the best interests of the children. However, even when these are added to the need in the GTAA and the personal circumstances of the adults, the resultant cumulative weight does not clearly outweigh the cumulative effect of the harm I have identified.

Temporary permission

72. It is open to me to grant a temporary permission in an instance where it is expected that planning circumstances will change in a particular way at the end of that period. The appellant has suggested a temporary permission in line with the Littlefield decision, which was granted for a period of 4 years.

73. The appellant has offered a number of reasons why a temporary period would be appropriate, and these broadly revolve around the GTAA being updated and the examination into the emerging Local Plan taking on board his late representations to reconsider the extent, nature, number and location of site provision for Gypsies and Travellers. I am not confident though that the route of the Local Plan examination will be affected in the way suggested.
74. Moreover, the development would still be inappropriate, harming openness and the purposes of including land in the Green Belt, while it also would still harm the character and appearance of the area and constitute intentional unauthorised development. Substantial weight should still be given to the harm by reason of inappropriateness and other Green Belt harm, while the development would still be causing significant harm to the character and appearance of the locality. However, the consequent impact of this harm would be reduced as the development would be on site for a limited period only. I am mindful too that if a temporary permission were to be granted the existing smaller day rooms would remain rather than the larger brick ones proposed. It could well be unreasonable though to require the full landscaping scheme now proposed if the development was to be there for so short a duration.
75. I am nonetheless aware that no alternative sites have been identified by the Council other than at Drakes Lane, and, whilst I have found that could be delivered, given the existing situation that seems not to be imminent. Similarly, it is likely the Main Modification in the emerging Local Plan would provide a requirement for at least one further site to be allocated, and whilst this could take some time it is reasonable it would be forthcoming in due course.
76. The Order means the family will lose its home if the appeal is dismissed, and the effect of this on the human rights of family members weighs in favour of a temporary permission as that would give them time to seek alternative accommodation.
77. However, the other considerations raised by the appellant (including, most importantly, the best interests of the children) would not clearly outweigh the Green Belt harm and other harm, even accounting for the fact that the harms would be for a limited period only. Accordingly, I find that a temporary permission would not be suitable.

Human Rights

78. Dismissing this appeal, whether for a permanent or a temporary permission, would interfere with the family's rights under Article 8 of the *European Convention on Human Rights* in that the Order would then require them to leave the site. However, such rights are qualified and interference may be permissible when the rights of the individual are balanced against those of the community. In this instance I consider such interference would be proportionate on the rights of the adults and the best interests of the children given the public aim of safeguarding the Green Belt and the effects on the countryside.

Conclusions

79. Accordingly, I conclude that the development is inappropriate development that detracts from the openness of the Green Belt and conflicts with the purposes of including land in the Green Belt. Moreover, it would harm the character and appearance of the area and constitutes intentional unauthorised development. The other considerations offered by the appellant, including the best interests of the children, do not clearly outweigh this harm, whether for a permanent or a temporary permission, and so the development is contrary to Core Strategy Policy DC34 and the Framework.

80. For the reasons given I conclude the appeal should be dismissed.

J P Sargent

INSPECTOR

APPEARANCES – ROUND TABLE ‘HEARING’ ELEMENT

FOR THE LOCAL PLANNING AUTHORITY:

Mr W Beglan	Advocate
Ms K Dougal	Senior Planning Officer with the Council

FOR THE APPELLANT:

Mr S Cottle	Advocate
Mr R Crandon	Landscape consultant
Dr S Ruston	Agent

INTERESTED PERSONS:

Mr Cracknell	Writtle Parish Council
--------------	------------------------

APPEARANCES – ‘INQUIRY’ ELEMENT

FOR THE LOCAL PLANNING AUTHORITY:

Mr W Beglan	Instructed by William Butcher, Principal Solicitor to the Council
He called	
Ms K Dougal	Senior Planning Officer with the Council
Mr S Jarman	Planning consultant

FOR THE APPELLANT:

Mr S Cottle	Instructed by Dr S Ruston
He called	
Mr P Hogan	Member of the appellant’s family
Mr B Lee	Member of the appellant’s family
Mr H Lee	Member of the appellant’s family
Mr J Lee	Appellant
Mrs S Lee	Member of the appellant’s family
Dr S Ruston	Agent

DOCUMENTS

SUBMITTED BY THE LOCAL PLANNING AUTHORITY

- LPA1 *Chelmsford City Council v Lee & Others* 2019 EWHC 756 (QB)
- LPA2 Document entitled *Speaking Note Closing on behalf of the Claimant* (dated 1 February 2019)
- LPA3 Secretary of State decision APP/A4710/A/14/2215561 concerning West View Stables, West View, Holywell Green, Halifax (dated 2 December 2014)
- LPA4 Appeal decision APP/J1535/A/14/2228944 concerning land at Woodside, Thornwood, Essex (dated 29 July 2015)
- LPA5 Appeal decision APP/G2245/W/17/3170535 concerning land north-west of Eagles Farm, Crowhurst Lane, West Kingsdown, Kent (dated 27 November 2018)
- LPA6 Appeal decision APP/C3430/W/18/3201530 concerning 122 Streets Lane, Cheslyn Hay (dated 22 March 2019)
- LPA7 Details of land around the appeal site with a recent planning history involving caravans and similar
- LPA8 Comments of the Head of Highways and Transportation concerning the appeal scheme (dated 3 September 2018)
- LPA9 Policy HO1 from *Chelmsford Local Plan Pre-Submission Document*
- LPA10 Appeal decision APP/M3645/W/19/3228261 concerning land adjacent to caravan site, Beech Farm Road, Warlington (dated 22 October 2019)
- LPA11 *Dear Chief Planning Officer* letter concerning Intentional unauthorised development (dated 31 August 2015)
- LPA12 Note on the status of the Drakes Lane site
- LPA13 *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd)* [2013] UKSC46
- LPA14 *Opening Summary Observations on Behalf of the LPA*
- LPA15 *Closing on Behalf of the LPA*

SUBMITTED BY THE APPELLANT

- APP1 Letter from Provide dated 21 October 2019
- APP2 Letter from Mid Essex Hospital Services dated 1 November 2019
- APP3 Title Number EX760485
- APP4 Letter from Darren Madle (undated)
- APP5 Document entitled *Appellant's note on need*
- APP6 *Appellant's Submissions to the Hearing*
- APP7 *Appellant's Opening Statement*
- APP8 *Appellant's Closing Submissions*

JOINTLY SUBMITTED BY THE LOCAL PLANNING AUTHORITY & THE APPELLANT

- J1 *Statement of Common Ground* signed by the parties on 8 & 12 November 2019