The Planning Inspectorate

Appeal Decisions

Hearing Held on 15 October 2019

Site visit made on 15 October 2019

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2020

Appeal A, Ref: APP/X1545/C/18/3206383
Land at junction of Captains Wood Road and Maypole Road, Great Totham, Essex CM9 8PU

- 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 Bill Cooper against an enforcement notice issued by Maldon District Council.
- The enforcement notice was issued on 5 June 2018.
- The breach of planning control as alleged in the notice is the unauthorised erection of gates adjacent to the highway which exceed 1 metre in height, shown with a blue line on the plan attached to the notice.
- The requirements of the notice are either a. To reduce the height of the existing gate to a maximum of 1 metre high to accord with the permitted development limits set out in Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 or b. Remove from the land the unauthorised gate and any resulting materials, paraphernalia, detritus or debris.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.

Appeal B, Ref: APP/X1545/C/18/3206386
Land at junction of Captains Wood Road and Maypole Road, Great Totham, Essex CM9 8PU

- 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 Bill Cooper against an enforcement notice issued by Maldon District Council.
- The enforcement notice was issued on 1 June 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a dayroom and the creation of hard standing on the land.
- The requirements of the notice are to remove from the land the unauthorised dayroom, roadway, hard standing and any resulting materials, paraphernalia, detritus or debris.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal C, Ref: APP/X1545/W/18/3206391
Land at junction of Captains Wood Road and Maypole Road, Great Totham, Essex CM9 8PU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with

conditions subject to which a previous planning permission was granted.

- The appeal is made by Mr Bill Cooper against the decision of Maldon District Council.
- The application, Ref FUL/MAL/17/01389, dated 30 November 2017, was refused by notice dated 6 March 2018.
- The application sought planning permission for the proposed use of land for stationing caravans for residential purposes for one gypsy pitch, together with the formation of additional hard standing and utility/day room ancillary to that use, without complying with three conditions attached to planning permission, Ref FUL/MAL/13/00920, allowed on appeal, Ref APP/X1545/A/14/2220387, dated 28 May 2015.
- The conditions in dispute are Nos 3, 4 and 12 which state that:
  3. No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, of which no more than one shall be a static caravan, shall be stationed on the site at any time.
  4. The static caravan shall be sited in accordance with drawing number 13_5510_03 revision A. Any material change to its position, or its replacement by another in a different location, shall only take place in accordance with details that have been submitted to and approved in writing by the local planning authority.
  12. The development hereby permitted shall be carried out in accordance with the following approved plans: 13_551_001, 13_551_002, 13_551_003(Rev A) and 13_551_004A.
- The reasons given for the conditions are:
  In order to safeguard the character and appearance of the countryside and for the avoidance of doubt and in the interest of proper planning.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 20 January 2020.

Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by deleting the word 'gates' in the allegation and substituting the word 'gate'. Subject to this correction, the appeal is allowed and the enforcement notice is quashed and 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 gate adjacent to the highway which exceeds 1m in height on land at the junction of Captains Wood Road and Maypole Road, Great Totham, Essex CM9 8PU referred to in the notice.

Appeal B

2. It is directed that the enforcement notice be varied by the deletion of the requirement in paragraph 5.a. and the appeal is allowed and the enforcement notice is quashed insofar as it relates to the day room.

3. It is directed that the enforcement notice be corrected by the insertion of the words "an access drive and" before the words "hard standing" in the allegation and varied by the substitution of the following requirement in paragraph 5.a. "Restore the access drive and hard standing to their previous condition before the development took place and remove from the land any resulting materials, detritus or debris". The appeal is dismissed and the enforcement notice is upheld as corrected and varied in respect of the access drive and hard standing.

Appeal C

4. The appeal is allowed and planning permission is granted for the proposed material change of use of land for stationing caravans for residential occupation for two gypsy pitches, as an expansion to the existing gypsy site together with the formation of additional hard standing, the erection of two day rooms and the erection of stables and a hay store on land at the junction of Captains Wood Road and Maypole Road, Great Totham, Essex CM9 8PU, in accordance with the terms of the application, Ref FUL/MAL/17/01389, dated 30 November 2017, and the plans submitted with it, subject to the conditions set out in a schedule attached to this decision.

Application for costs

5. At the Hearing an application for costs was made by Mr Bill Cooper against Maldon District Council. This application will be the subject of a separate Decision.

Background

6. All of these appeals relate to a corner of a triangular-shaped field in the countryside. Most of the land is used to graze ponies and to take a crop of hay and planning permission has been implemented to erect stables and a hay storage area, which are accessed from a drive leading to the north east corner of the site. Planning permission has also been given on appeal in 2015 (the 2015 Permission) for the use of land in the north east corner of the site for stationing caravans for residential purposes for one gypsy pitch, the formation of additional hard standing and the erection of a day room. A static caravan has been placed on site and the day room has been erected following this permission.

Procedural Matters

7. The National Planning Policy Framework (the Framework) current at the time of the application and the issue of the enforcement notices, was that of 2012. By the time of the Hearing, this had been revised as the February 2019 publication.

Notice A and the grounds of appeal

8. A notice must enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control. In this case the allegation refers to 'gates' in the plural when, in reality, there is only one gate. However, it is clear from the submissions from both parties that it is understood the allegation only relates to one gate and, as such, I could correct the allegation to 'gate' in the singular without causing injustice.

9. At the time the notice was issued the gate was 2.3m high. However, the appellant's agent believed it to be 2m high and lodged an appeal on ground (c). After the issue of the notice the gate was reduced in height to 1.9m and the ground (c) appeal was subsequently changed to a ground (b) appeal within the Statement of Case. The Council have addressed this in their Final Comments. I shall therefore proceed on the basis of the corrected notice and the appeal lodged on ground (b). I will also address ground (c) though, as the appellant's arguments concern both grounds.

Notice B and the grounds of appeal

10. The allegation in Notice B is, without planning permission, the erection of a day room and the creation of a hard standing. The requirements specify the removal of the unauthorised day room, *roadway* (my emphasis) and hard standing. The access drive into the site leads to the hard standing in the corner.

11. The appellant interpreted the allegation as applying to the access drive as well as the hard standing, due to what was specified in the requirements. The Council clarified that it was their intention to attack both the access drive and the hard standing as, in their view, the expression 'hard standing' applied to both. The parties are therefore under no misunderstanding about the scope of the notice. I can therefore correct the allegation so that it refers to the access drive and vary the requirement so that it refers to 'access drive', as opposed to 'roadway' for consistency, without causing injustice, even though this appears to widen the allegation.

12. The appellant confirmed that if the notice was corrected and varied as discussed, then he would withdraw his ground (f) appeal. I shall therefore proceed on the basis of the corrected and varied notice and the appeal lodged on grounds (a) (in relation to the day room only), (c), (d) and (g).

Appeal C, the planning application

13. The application the subject of Appeal (c) is described by the appellant as being a "hybrid" application. This is because he is seeking answers to two questions within the one submission. Firstly, whether he can vary a number of conditions attached to the 2015 Permission to allow him to place more caravans in the field and to relocate the stables and the static caravan. Secondly, as the additional caravans will be in an area of the site outside the boundary of the 2015 Permission, a material change of use of the adjoining land for stationing the additional caravans and to erect two further day rooms and lay a new area of hard standing.

14. This approach was questioned by me at the Hearing and subsequently in writing after the Hearing in the light of the Court of Appeal judgement: *Finney v Welsh Ministers & Carmarthenshire CC & Energiekontor (UK) Ltd [2019] EWCA Civ 1868*.

15. The Council has confirmed that the appellant applied for planning permission under section 78. Notwithstanding the appellant's view that the application could nonetheless be treated as being made under section 73, the substantive point made in my second letter to the parties was that the 2015 Permission relates to a different site and a different description of development than Appeal C. As such, condition 3 on the 2015 Permission cannot be varied to allow six caravans on either the 2015 site or the appeal site. The fairest and most straight forward approach is therefore to treat the appealed application as an expansion of the existing gypsy site for the stationing of four caravans for residential use and to leave the 2015 Permission in place. This change does not in any way materially change the proposal that was consulted upon during the application process.

16. Although the Council considered the application as a material change of use, their decision notice omitted any reference to it. At the Hearing this was

explained as an error. The parties agreed that it was necessary to include that part of the description as there is a new red line area. I shall therefore proceed on the basis that the description of the development for Appeal C is the proposed material change of use of land for stationing caravans for residential occupation for two gypsy pitches, as an expansion to the existing gypsy site, together with the formation of additional hard standing, the erection of two dayrooms and the erection of stables and a hay store.

Appeal A, grounds (b) and (c)

17. An appeal on ground (b) is that the matter alleged has not occurred as a matter of fact. The appellant submits that the alleged development has not occurred as the gate is not adjacent to the highway. However, this overlooks the operational development described in the allegation, which is the erection of the gate. There is no disagreement between the parties that a gate has been erected as a matter of fact. For an appeal to succeed on ground (b) there would have to be no gate, which is clearly not the case, and so I find the ground (b) appeal fails.

18. The ground (c) appeal is that those matters, if they occurred, do not constitute a breach of planning control. The appellant claims that the gate is not caught by the limitation in Class A.1.(a)(ii) of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO) as it is not adjacent to the highway. However, even if the gate met this limitation, as it was over 2m high when the notice was issued it is considered that it does not meet the limitation in Class A.1.(b). This states development is not permitted if the height of any gate erected would exceed 2m above ground level.

19. The appellant invites me to quash the notice as the gate is now 1.9m high and the matter is resolved from his point of view. He also suggests that the allegation could be corrected to refer to the unauthorised erection of a gate exceeding 2m in height and to follow through by varying the requirements of the notice to reduce the height of the gate to a maximum of 2m in order for it to be classed as permitted development (PD). All of this though, overlooks the Council's position, which is that a gate over 1m high has been erected adjacent to a highway and causes harm to the character and appearance of the area.

20. The parties disagree over the interpretation of the word 'adjacent' as it is not defined in the GPDO. The Council rely on case law and two previous appeal decisions to support their position. The principal case referred to is *Simmonds*[1]. The JPL[2] report on the case discusses PD as it was in the 1977 GPDO, which used the word 'abut' rather than 'adjacent' to a highway. Nevertheless, it considered that a gate can be set back from the highway but still be 'adjacent' to it. This was a matter of fact and degree, provided that the gate is clearly to define the boundary of the property concerned from the highway *and* (my emphasis) is perceived to do so.

21. The gate at the appeal site is set back[3] from the edge of the road by 9.9m. Although it appears to be a pair of gates, it is one structure operated electronically, sliding to one side behind the hedge when open. The boundary

[1] Simmonds v SSE and Rochdale MDC [1981] JPL 509
[2] Journal of Planning Law
[3] Dimension agreed on site

of the appellant's property is largely defined by mature hedging. It is my view that the gate continues the definition of the boundary as it is a significant visual and physical barrier marking the entrance to the site. However, due to the depth of the setback from the edge of the road, the gate is not perceived to define the boundary. This is because when driving past the site it is the hedge that is perceived to be the boundary. There are no pavements along Captains Wood Road outside of the village, which is a narrow rural lane providing access to the village from Maypole Road and which provides an alternative route from the village to Maldon that avoids the B1022 road. For most of its length the national speed limit applies and at the time of my site visit during the rush hour, I saw many cars travelling at speed. At other times of the day the road may be quieter but in my view, it is unlikely that there would be more than one or two pedestrians in the vicinity of the appeal site. The perception of the boundary is therefore gleaned from a moving vehicle from which the gate is barely glimpsed when passing the site in both directions.

22. I therefore find as a matter of fact and degree that the gate is not adjacent to the highway. Nevertheless, due to its height at the time the notice was issued it does not benefit from the planning permission within the GPDO. The appeal on ground (c) therefore fails.

Appeal A, ground (a)

Main Issue

23. The main issue is the effect of the development on the character and appearance of the area.

Reasons

24. The appeal site lies within a rural area near the edge of a village. To the north and west of the site there are arable fields bounded by hedgerows and to the south there is woodland. The site lies at the junction of Captains Wood Road and Maypole Road and along both roads there are isolated dwellings of varying designs, some situated in large plots. The surrounding area has an attractive appearance due in large part to its gently undulating terrain as well as extensive hedgerows and woodlands.

25. The appellant has erected an arched top, double metal black gate comprising a number of full height vertical bars interspaced with a horizontal straight line of shorter spear topped bars. The appellant reduced the height of the gate to 1.9m by removing the decorative spears from the full height vertical bars. Consequently, the gate is not overly decorative though it is not entirely plain. Nevertheless, the spacing between the bars permits a view through to the field beyond and the simple timber fencing around the paddock.

26. The Council submit that the height, design and positioning of the gate results in an incongruous urban feature in the rural area. In addition, even if views of it are fleeting, it is still out of keeping with the soft landscaping along the road. It is considered that as the gate is arched, it is not uniformly 1.9m in height but tapers down at either end to just over the height of the concrete fence post approved in the discharge of conditions in 2015 (the 2015 Permission). There are no brick piers or splayed brick walls, which are often found in urban areas, and the design of the gate, now that the highest decorative spears have been removed, is rather muted. Having regard to the set back of the gate from the

road and its transparency, I find that the case for an incongruous feature is unsubstantiated. Furthermore, it is not unusual in a rural area to find lines of hedgerows broken by metal field gates, where once they may have been wooden; chain link fencing around utility bases and the like, which are now all part of the appearance of a rural area in the 21st century.

27. For the reasons given I therefore conclude that the development does not have an adverse effect on the character and appearance of the area. As such, it accords with Policies S1, S8 and D1 of the Council's Approved Local Development Plan 2014-2029, adopted July 2017 (LDP). These require amongst other matters, high quality design in all developments and the maintenance of the rural character of the district. As the development is substantially complete, no conditions are necessary and the appeal on ground (a) succeeds.

Appeal B, ground (c)

28. This ground of appeal is that the erection of the day room and the construction of the access drive and hard standing do not constitute a breach of planning control. I will deal with the day room first.

29. The appellant submits that this operational development is authorised by the 2015 Permission as he discharged all the relevant conditions attached to the 2015 Permission before development started on site. The day room was also constructed on the approved footprint as shown on drawing No 13_551_004 Rev A and in accordance with the approved dimensions. The Council do not disagree with those facts. In addition, the appellant submits that very little is needed to implement a planning permission.

30. The Council's position is that the 2015 Permission was implemented but as the development of the day room was not carried out in accordance with the approved drawings, as required by condition 12 of the 2015 Permission, it then either expired or became 'no longer extant'. This is because the day room differs in its appearance from the approved elevational drawings in that there are plastic windows and a door instead of wooden ones, a hipped roof instead of a gable roof and a higher brick plinth. In respect of the access drive and hard standing, these are considered to be new development as they have a tarmac finish.

31. It is considered that the Council have misunderstood the situation. Very little is needed to commence a development for the purposes of section 56 of the Act. The key point is that the work carried out has to be material and not *de minimis*. The appellant's view is that the 2015 Permission was implemented, in effect, as soon as it was granted as part of the development was retrospective. I will deal with the retrospective point when discussing the hard standing.

32. Following the grant of planning permission in May 2015, the appellant submitted details to discharge all the conditions that needed to be discharged before development could begin on site and these were duly approved in October 2015. Thereafter, the appellant states that he carried out various works on site in respect of those details, including the erection of the day room. The Council received a complaint about the day room in January 2017 and inspected it in July 2017 which shows that it was commenced within three

years of the 2015 Permission date. It is therefore considered that the 2015 Permission was commenced.

33. Furthermore, it is possible to commence a development and thereby meet a deadline forming a condition of the planning permission, and later to deviate from the permitted works or permission in a manner that consequently becomes an enforcement issue. This can be the case without retrospectively altering the fact that the commencement of the development has occurred for section 56 purposes. I believe that is the case in respect of the day room development.

34. I therefore find that the day room is not in breach of planning control. Rather, it is in breach of Condition 12, which is not the allegation before me and the ground (c) appeal succeeds in respect of the day room. It therefore follows that the appeal on ground (a) does not fall to be considered.

35. With regard to the access drive and hard standing, the Council submit that these are new developments on the site which are in breach of planning control as the 2015 Permission is 'no longer extant', for the reasons already discussed. They acknowledge that there was a previous access drive and hard standing on site but the development which is the subject of the notice is fundamentally different. The appellant's case is that the Council approved the use of tarmac and he has added that surfacing material to a development authorised in 2012 and 2015 without altering it.

36. The previous access drive and part of the hard standing were authorised by an earlier application (ref 11/00987/FUL) submitted by the appellant for the erection of a single storey two stable block and hay store on the 2 November 2011 (the stables permission). The drawings for this development showed an access drive running from the south east corner of the site to a hard standing and stables in the north east corner.

37. The application form and the Design & Access Statement stated that the hard standing would be formed from road scalpings and the access drive would have a pea shingle finish. The development received planning permission on the 4 April 2012 subject to six conditions. It was implemented shortly thereafter as there were no conditions precedent to discharge. Hard core and road scalpings were laid to construct the access drive and hard standing which was then substantially complete. When the Council granted planning permission, they therefore accepted a loosely surfaced finish as there was no condition imposed requiring the prior agreement of materials. I consider this was not in breach of planning control save for the area in the far north east corner of the site. The presence of the access drive and hard standing were recorded in a topographical survey undertaken by the appellant in May 2013. They are also visible in the photographs taken by the appellant's agent dated 4 July 2013.

38. Although the Council were not aware, the extent of the hard standing not only skirted the stable block (as approved in the stable block permission) but also spread into the far north east corner of the site. When the appellant made his application that led to the 2015 Permission, this application was, in part, retrospective, for the larger area of hard standing that had been built and it was shown on the proposed plans as being existing. The appellant claims that this element of the development was retrospective, as shown on the plans, but the Council disagree. Unfortunately, it is not clear from the material before me whether the Inspector dealing with the 2015 appeal dealt with the additional

hard standing on a retrospective basis. Be that as it may, it was clearly shown on the proposed plans and would have been seen at the site visit. It was therefore before her.

39. A number of conditions were attached to the 2015 Permission and these were discharged in October 2015. However, there was no specific condition requiring the submission of details for any hard surfacing materials to be used in the layout of the site. Condition No 6 stated that no development should take place until various details had been submitted and approved '*together with details of any additional hard standing'*. (My emphasis)

40. The Council confirmed at the Hearing that one of the drawings[4] submitted to discharge these conditions showed the construction of a hard standing and was approved by them. This drawing is titled 'Hard standing' and is simply a cross section showing the layers of construction and the materials to be used in each layer. It does not show whether any layer is proposed or existing but it does show that the top layer is tarmac.

41. The proposed layout plan of the site listed in Condition No 12 (drawing No 13_551_003 Rev A) shows an access track and hard standing area that is the same as that in the stables permission plus an area that extends into the north east corner. There is no annotation on the plan to show what the proposed surfacing is to be as the legend indicates that it is all 'existing hard standing'.

42. From all this information it would appear that the Council dealt with an approval of details for *additional hard standing* and authorised the use of a tarmac surface for this area. I believe this to be the 'formation of additional hard standing' set out in the 2015 Permission description of development, namely the extra hard standing in the north east corner of the site. The north east corner hard standing therefore benefits from the 2015 Permission, which I have established has been commenced. As such, it is not in breach of planning control. However, it does appear to be in breach of Condition No 6 in that part of the area has been block paved, but as this is not the allegation before me, the ground (c) appeal succeeds in respect of the north east corner hard standing.

43. There is no evidence from the Council to show how the construction of the former access drive and remaining hard standing area is fundamentally different from the access drive and hard standing which is the subject of the notice. The nub of the issue appears to be the tarmac layer. From the information before me I find that the hard core and road scalping layers of the access drive and the rest of the hard standing are not in breach of planning control as they have been in existence for more than four years before the notice was issued. The ground (c) appeal therefore succeeds in respect of these aspects of the development.

44. Having regard to the tarmac layer, I find its application amounts to an engineering operation, due to the extent and scale of works involved in laying it and this is development within the meaning of section 55 of the Act. There is no specific planning permission for it, it is not classed as PD and it is not covered by the 2015 Permission. I therefore find that it amounts to a breach of planning control and the appeal on ground (c) fails in respect of the tarmac layer.

[4] Exhibited at Appendix 2 Appellant's Final Comments Document

Appeal B, ground (d)

45. Having regard to my findings on the ground (c) appeal, the ground (d) appeal is limited to the addition of the tarmac layer to the access drive and the majority of the hard standing area, the scope of which is shown on the approved plans accompanying the stables permission.

46. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, he needs to show, on the balance of probabilities, that the tarmac layer was added and was substantially complete more than four years before the notice was issued. The notice was issued on the 1 June 2018 so the appellant needs to show that the engineering works took place not later than the 1 June 2014.

47. From all the material before me, I find that this did not occur. The tarmac was only laid following the 2015 Permission, as confirmed by the appellant himself at the Hearing. The appeal on ground (d) therefore fails.

Appeal B, ground (g)

48. Having regard to my findings on the ground (c) and (d) appeals, this appeal is limited to a consideration of whether 28 days is a reasonable period to remove the tarmac surface to the access drive and hard standing area. The appellant's view is that it is not and that three months would be a more reasonable period.

49. The Council set the period for compliance with the requirements of the notice on the basis that the works required included the removal of the day room and the removal of all the access drive and hard standing construction. Given my findings on ground (c) and (d), it is considered that 28 days is a reasonable period of time to remove and dispose of the tarmac layer, as opposed to all of the access drive and hard standing construction. The appeal on ground (g) therefore fails and it will be necessary to vary the notice to require the restoration of the access drive and hard standing to their previous condition before the development took place.

Appeal C

Main Issue

50. The main issue is whether the development represents an acceptable form of development having regard to the following matters:

    - the objectives of the development plan in respect of gypsy and traveller development;

    - the character and appearance of the area; and

    - whether any harm arising from the above matters, is outweighed by any other material considerations.

Reasons

Appropriateness of development – Site location

51. The appeal site lies a few minutes drive from the village of Great Totham to the north east and its situation is as I have already described for Appeal A, ground (a). In addition to the isolated dwellings sited sporadically along the approach

roads to the village, there are also some gypsy sites further along Captains Wood Road, near to the village.

52. Policy S8 of the LDP sets out the Council settlement strategy and directs growth to named main settlements, larger villages, smaller villages and other villages. Great Totham is identified as a larger village within which the Council will support sustainable development within the defined settlement boundary. Outside the boundary, the countryside will be protected for its landscape, intrinsic character and beauty and planning permission will only be granted for development within it where there are no adverse effects on these identified attributes and for gypsy and traveller development that is in accordance with Policy H6.

53. Policy H6 sets out that the Council will protect existing lawful gypsy and traveller sites. Proposals for new gypsy and traveller sites will be considered against various criteria and must be either within an existing site, involve the expansion of an existing site, be within an existing development boundary or, if it is elsewhere in the district, that it would be sustainable development. All gypsy and traveller development must also comply with other policies in the LDP. They need to be appropriate in scale to the nearest settlement; well related to existing built up areas; not lie within any area liable to flooding; be safely accessible from the highway; be of sufficient size to house all amenities; and not result in harm to the character of the local area and the living conditions of local residents.

54. These policies were adopted before the current version of the Framework. The appellant submits that whilst Policy H6 is consistent with the new Framework, Policy S8 is not. He makes two points. Firstly, that the policy does not allow for housing in the countryside and as such, this is contrary to the approach set out in paragraphs 78 and 79 of the Framework. Secondly, that the policy goes beyond recognising the intrinsic character and beauty of the countryside by requiring that new development does not adversely affect it, without clarifying in what way.

55. The previous version of the Framework against which the LDF was considered sets out the same approach to rural housing as the current Framework. Principally, planning policies should avoid the development of isolated homes in the countryside and otherwise should be responsive to local circumstances. As such, I find that Policy S8 is consistent with the new Framework. In particular, it is consistent with paragraph 170 in that it sets out new development should not harm the attributes of the countryside as paragraph 170 requires policies to contribute to and enhance the natural and local environment.

56. National policy is contained in Planning policy for traveller sites (PPTS), which states that applications should be assessed and determined in accordance with the presumption in favour of sustainable development. In addition, councils should very strictly limit new traveller site development in the open countryside that is away from existing settlements.

57. The appellant submits that the site is approximately 0.5 km from the Great Totham settlement boundary and that the proposed development complies with Policy H6. This is because it involves the expansion of an existing authorised site as well as meeting the criteria set out in Policy H6 section 3. Although the Council agree that the development of the site falls to be considered under paragraphs 2(b) of Policy H6, it has concerns that the proposed expansion

would not be appropriate. However, Policy H6 does not define 'appropriate' and a gypsy site may be acceptable provided it meets the other criteria set out in the policy and complies with other policies in the LDP.

58. The proposal is for two additional pitches. The site is bounded by two roads and farmland. The nearest properties are about 158m to the south along Maypole Road and about 192m to the north east of the site, along Captains Wood Road, where there is a line of development comprising some gypsy sites and dwelling houses leading to Great Totham. The appellant states that there are two authorised gypsy sites on Captains Wood Road near to Great Totham, known as The Stables (one pitch) and Rose Stables (two pitches).

59. Great Totham is identified as a larger village by the Council and is in close proximity to Wickham Bishops, another identified larger village. There is a primary school at Great Totham and a doctors' surgery at Wickham Bishops. There are also village shops, public houses, a village hall and churches in these areas. The appellant identifies that all these are within reach of the appeal site. For example, he states that the site is 1km from the post office, 1.4km from the surgery and 1.6km from the primary school. The Council do not disagree with any of these figures. In addition, there are a number of bus routes that run through Great Totham serving Maldon and Colchester. As well as running Monday to Friday, some run into the evening and the No 75 runs on Saturdays as well. The nearest bus stop to the site is 500m away at the north eastern end of Captains Wood Road.

60. Taking all these into account, it is my view that an additional two pitches at the appeal site would be appropriate. This is because having regard to other gypsy sites within the area, the expansion of the appeal site would not dominate the nearest settlement and there are facilities nearby that are reasonably accessible to the occupiers of the site.

61. The Council submit that the location of the site would not represent a sustainable form of development as it would not be possible to access services by sustainable means of transport, an objective set out in Policy T2 of the LDP. The appellant and his family though are gypsies who travel by motor vehicle for work purposes. Whilst it would be possible for them to make linked trips, and thus be more sustainable, I find in all likelihood that the occupation of the site would be dependent on a private car for most trips, which would be similar to nearby occupants in the settled community. The PPTS also does not rule out sites in rural areas.

62. The Council advised that the site is not at risk of flooding, can be accessed safely by vehicles from the public highway and is of sufficient size to provide amenities and facilities for the planned number of caravans. As I consider that there would be no conflict with the remaining criteria of Policy H6, bar one, nor Policy T2, I give this finding substantial weight and will deal with the remaining relevant criteria next.

Character and appearance

63. Criteria 3(f) of Policy H6 requires that gypsy and traveller sites are located, designed and landscaped to avoid unacceptable harm to the character of the local area. Policies S8, S1 and D1 seek to maintain the rural character of the district and that development should make a positive contribution in terms of landscape setting.

64. The rural area in the vicinity of the appeal site has no specific landscape designation in the LDP. In 2006, a Landscape Character Assessment was carried out and it was found that the appeal site lies within the Totham Wooded Farmland landscape character area. This area has rolling hills with small to medium sized agricultural fields enclosed by woods and copses. Toward Great Totham, the field pattern is irregular and there are periodic views through gaps in the trees. It was identified that the character area has a high sensitivity to change.

65. Within this context I find that the appellant has carefully considered the expansion of the existing use. He has already bolstered the landscaping in the far north east corner of the site following the 2015 Permission, which restricts views of the day room. Hedging along Captains Wood Road has also been supplemented with indigenous species. Consequently, the site is well screened from this direction. Passing traffic might catch glimpses into the site when there are no leaves on the trees but the road is at a slightly lower level than the level of the field, which restricts visibility.

66. The hedgerow along Maypole Road contains many trees. The traffic tends to travel faster along this straight road, which is also slightly lower than the field in which the appeal site is situated. I find views into the site would again be restricted and limited through the hedgerow along this boundary. In addition, there are no public footpaths in the area which provide a view over the site.

67. Within the site itself there is a copse of trees towards the north east corner that has been fenced and protected from the ponies by the appellant. He proposes to expand his existing pitch towards this copse. This layout would take advantage of this natural screening, which could also be supplemented with additional planting on the southern side. The presence of two mature oak trees and a mature hedgerow line on the northern boundary would further screen the site from that direction.

68. The new area for the proposed two pitches would be approximately square in shape and would be accessed from the existing drive and hard standing. It would contain two day rooms and would have space for two tourers and two caravans. The proposed day rooms would have a simple design, namely a rectangular footprint, about 5m by 8m in area, with brick walls and a gable end roof. The development would also involve the relocation of the stables further west along the northern boundary. The Council raised no concerns about this aspect of the development and as the stables would benefit from existing screening, neither do I.

69. The Council are concerned that the proposed level of new built form urbanises the site and harms the character of the area. The extension of the use would also result in greater visual impact with the inevitable greater number of vehicles and domestic paraphernalia.

70. The proposed expansion of the site into an area where such a use did not exist before hand would result in a modest impact on the character and appearance of the area. I find that the level of harm would be limited but not unacceptable due to the existing natural screening around and within the site. The character of the site would also not differ markedly from others in the area as many dwellings nearby have hard standings and outbuildings. The proposed day rooms would be small in scale and would cause little harm to the character and appearance of the area due to their distance from the access and the level of

natural screening. Should I be minded to allow the appeal, then conditions requiring the submission of facing materials and landscaping would be reasonable and necessary in the interest of the appearance of the site.

71. Overall, I conclude on this issue that the development would not have an adverse effect on the character and appearance of the area, subject to the imposition of the conditions as discussed. Accordingly, this aspect of the development would not conflict with Policies H6, S8, S1 or D1 of the LDP. I therefore give this finding substantial weight.

Other matters

72. Concerns were expressed by third parties and the Parish Councils that the site lies outside the settlement boundary of Great Totham and the district does not have a deficit of gypsy and traveller sites. However, Policy H6 sets out the criteria to be considered for gypsy and traveller sites in the rural area and I find no conflict with this policy. Furthermore, there is no limit on the supply of gypsy and traveller sites.

73. I also find due to the distance from the site of neighbouring occupiers, that any perceived effect on their living conditions, as claimed, has not been substantiated. Local residents have also expressed concern about traffic and highway safety. No capacity issues have been identified and, subject to a number of conditions, the Highway Authority has raised no objection. There is no evidence which shows that highway safety would be compromised by the proposed development.

74. Finally, it is submitted that the development would result in a loss of property values. However, the control of development exists to consider whether proposed development would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.

Planning balance

75. I have found no conflict with the development plan read as a whole. For decision taking this means approving development proposals that accord with the development plan. Within their submissions and at the Hearing the parties addressed other material considerations including the need for gypsy and traveller sites, personal circumstances, Human Rights and equality considerations. These are not matters that I need to address as I have concluded that the proposal accords with the development plan.

Conditions

76. I have considered the need for conditions put forward by the parties in the light of the Planning Practice Guidance and the discussion at the Hearing. Having regard to my findings on the development plan, I do not consider that it is necessary for temporary planning permission to be granted and the standard implementation condition will be imposed. It is necessary though to restrict the occupation of the site to gypsies and travellers, to limit the number of caravans to four as well as to require the development to be carried out in accordance with the approved plans.

77. In the interests of the appearance of the site, it is necessary to require the submission and approval of: finishing materials to be used in the construction of the external surfaces of the day rooms; hard and soft landscaping including

fencing details and surfacing materials; the design and location of refuse storage facilities; details of surface water drainage from the new hard standing; and to control lighting; to prevent commercial activities on the land and the stationing/storage of vehicles over 3.5 tonnes; and that the erection of the stables shall not occur until the existing stables have been removed.

78. It is also necessary for the proper planning of the site to require that the new pitches shall not be occupied until details of the package sewerage treatment to serve those pitches have been submitted, approved and implemented.

Conclusions

Appeal A

79. 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.

Appeal B

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

81. For the reasons given above I conclude that the appeal should not succeed in respect of the access drive and hard standing. I shall uphold the enforcement notice with corrections and variations.

Appeal C

82. For the reasons given above I conclude that the appeal should be allowed.

D Fleming

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

M Green BA	Director, Green Planning Studio Limited
B Cooper	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

M Leigh MA MRTPI	Lead Specialist Place
D Hearnah BSc (Hons) MSC	Planning Officer

INTERESTED PERSONS:

Documents

1. Copy of report on Simmonds and Others v SSE and Rochdale MDC
2. Copies of third party representation omitted from the Questionnaire
3. Signed and dated witness statements from Mr Bill Cooper and Ms Elizabeth Cooper
4. Copy of response from the Council's Environmental Health service.

Schedule of Conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).

3) No more than four caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than two shall be static caravans) shall be stationed on the site at any time.

4) The development hereby permitted shall be carried out in accordance with the following approved plans: 13_551A_001, 13_551A_002, 13_551A_003 and 13_551A_004 except in respect of the non-stippled red line area on plan No 13_551A_001 and the re-location of the existing mobile home shown on plan number 13_551A_003.

5) No development shall commence until details of the materials to be used in the construction of the external surfaces of the day rooms hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

6) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:

   i) means of enclosure and boundary treatment for the new pitches;

ii) vehicle parking layout;
iii) hard surfacing materials;
iv) the design and location of a refuse storage area;
v) details of all existing trees and shrubs within/adjacent to the new pitches, identifying those to be retained and set out measures for their protection throughout the course of development;

The landscaping works shall be carried out in accordance with the approved details before any part of the development is brought into use in accordance with the agreed implementation programme.

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

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

9) No external lighting shall be put in place or operated on the site at any time other than has been previously submitted to and approved in writing by the local planning authority.

10) The site shall not be occupied until details of the package sewerage treatment plant for the new pitches and details of surface water drainage for the new hard standing have been submitted to and approved in writing by the local planning authority and thereafter implemented.

11) No development shall take place in respect of the approved stables until the existing stables have been removed from the north east corner of the wider field in which the application site is positioned.