



Appeal Decisions

Hearing Held on 1 December 2020

Site visit made on 1 December 2020

by K R Seward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 December 2020

New Redgates Farm, Fambridge Road, Purleigh, Essex CM9 6NL

Appeal A: APP/X1545/X/19/3224272

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development ('LDC').
- The appeal is made by Mr P Saunders against the decision of Maldon District Council.
- The application Ref LDE/MAL/18/01158, dated 24 September 2018, was refused by notice dated 17 December 2018.
- The application was made under sections 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The use and development for which a certificate of lawful use or development is sought is described in the application as 'residential'.

Summary of Decision: The appeal is dismissed.

Appeal B: APP/X1545/W/19/3229323

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A 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 P Saunders against the decision of Maldon District Council.
- The application Ref: FUL/MAL/18/01153, dated 20 September 2018, was refused by notice dated 4 December 2018.
- The application sought planning permission for the continued use of land for the permanent stationing of a mobile home as a single residential property, retention of hardstanding, decking and 300mm high brick wall without complying with conditions attached to planning permission Ref FUL/MAL/08/01319, dated 9 February 2009.
- The conditions in dispute are Nos 3 and 5 which state that:
 - 3. *The permission shall enure for the benefit of Mr. W Lee and his dependants.*
 - 5. *When the site ceases to be occupied by Mr W Lee and his dependants the use hereby permitted shall cease and all materials and equipment brought onto the site in connection with the use shall be removed.*
- The reason given for the conditions is: *In order to ensure that the site is occupied by persons who are recognised gypsies having regard to the special circumstances under which planning permission is granted in accordance with policy H16 of the adopted Maldon District Replacement Local Plan.*

Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. A site visit took place after the Hearing had closed. The Council Officer was present but no-one for the appellant attended as anticipated. No discussion took place on the merits of the appeals. Unfortunately, access to the whole site could not be secured due to the presence of bolted gates. I was able to see the

structure which is the subject of Appeal A through the slatted gates. With the additional aid of photographs supplied during the course of the appeal I am satisfied that I have sufficient information to make a determination. Both parties confirmed that they are content for me to proceed to a decision.

Appeal A

2. The LDC application in Appeal A was made under section 191 of the 1990 Act for an existing 'residential' use. The Council's decision refusing the LDC describes the application as being for 'the existing use of a mobile home to a permanent bungalow'. The Appeal Form gives the description as 'Use of building as a permanent dwelling house'. It is unclear from these descriptions whether the application is for an existing use or operations or both. The Council's decision states that a LDC was refused because 'insufficient evidence has been submitted to substantiate the claim that, on the balance of probability, the mobile home at the site constitutes a permanent dwelling'. A 'dwelling' denotes a purpose to which the mobile home is put but the way the reason is framed could suggest that the Council had considered whether building operations have taken place.
3. Having raised the matter with the parties, it was confirmed at the Hearing that the application was made and decided on the basis of both operations and use under sections 191(1)(a) and (b). The parties agreed that the appeal should proceed on that basis. After some detailed discussion it was further agreed that a more accurate description of the LDC sought is 'the erection of a single storey building and its permanent residential use'. Section 191(4) of the Act allows modification of the description and I have considered the appeal on the basis of the revised description as agreed by the parties.

Appeal B

4. The Council dealt with the application in Appeal B as having been made under section 73 of the Town and Country Planning Act 1990, to carry out the development without complying with conditions 3 and 5 on planning permission FUL/MAL/08/01319. The appellant's description and response to question F on the Appeal Form confirms that the appeal is against a refusal to vary the conditions. If the permission has been implemented and the site occupied in breach of those conditions, then the application was retrospective. It is section 73A which applies where development has already been carried out without compliance with conditions rather than section 73. If the wrong section was applied that would not invalidate the appeal as it is clear that section 73A is available to apply to a section 73 application.
5. Following discussion, the parties agreed that the application and determination should be treated as though made under section 73A.
6. That would be correct provided the permission was extant when the application was made. Clearly, an application could only be made to vary the conditions if the permission still subsisted. Condition 3 made the permission personal to Mr W Lee, as the owner at the time, and his dependants. Condition 5 requires the use to cease and all materials and equipment removed from the site when the site ceases to be used by Mr Lee and his dependants. It is agreed that Mr Lee implemented the permission. He has since sold the site to the appellant.

7. On the application form seeking a variation in the conditions it is stated "*Mr Lee no longer lives there and the property is occupied by Mr Patrick Saunders and his family*". Despite this statement the parties agreed during the discussion that the residential use had probably been continuous and the permission subsists. The application and appeal had been made on that basis. That being so, I shall proceed to determine Appeal B as though made under section 73A.
8. Whilst it is described as an application to vary the conditions, there is no power under section 73A to vary or remove a condition on an existing permission. Whatever the outcome of a section 73A application or appeal, the original permission will remain unaltered with all its original conditions intact. If the appeal is allowed a second separate planning permission is created.
9. The Council confirmed that it no longer disputes Appeal B having received further information on the personal the appellant's personal circumstances during the course of the appeal. The Council emphasised that it considers there is some harm in terms of the sustainability of the site in relation to the accessibility to local services and facilities. On balance, the Council accepts that the personal circumstances and best interests of the children living at the site outweigh any development plan conflict.
10. Having received that concession, the appellant's agent argued at the Hearing that permission should be granted on a different basis and without condition 5. Instead of a personal permission to the appellant and his dependants, it was argued that the permission should limit occupation to gypsies and travellers generally. The Council opposed the suggested revisions.
11. Appeal B is therefore uncontested save to the extent of the variations sought.

Background

12. The appeal site lies outside any defined settlement boundary and is therefore located within the countryside for planning purposes. It has been the subject of a relatively long planning history with a time limited permission first granted on appeal for the siting of a mobile home for a gypsy family in 1995. Another temporary 3 year permission was granted on appeal in 2000 which was personal to one gypsy family.
13. Of more relevance to these appeals, a planning permission was granted on 8 May 2003 for the "use of land for the stationing of a mobile home on a permanent basis". Whilst described as 'permanent' as per the application, the permission was granted subject to a condition requiring the use to discontinue and the mobile home removed from the site by 15 December 2008. An appeal against that condition was dismissed in 2005¹.
14. There followed on 9 February 2009 the grant of permission under Council ref: FUL/MAL/0801319 for the: '*Continued use of land for the permanent stationing of a mobile home as a single residential property, retention of hardstanding, decking and 300mm high brick wall*'. This was subject to a number of conditions including one restricting occupation to the occupant at the time and his dependants and another requiring cessation of the use upon the site being vacated by the family. It is this permission which is the subject of Appeal B.

¹ Appeal ref: APP/X1545/A/1148826

15. In relation to Appeal A, it is the appellant's case that a building was erected on the land in 2003 rather than a mobile home as referenced in the 2003 and 2009 permissions and 2005 appeal.

Appeal A

16. In order for a LDC to be granted under section 191 of the 1990 Act, the burden of proving relevant facts in this appeal rests on the appellant, and the test of the evidence is the balance of probability.
17. Paragraph 006 of the *Lawful Development Certificates* section of the national Planning Practice Guidance ('PPG') advises in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
18. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well-founded. That turns on whether the appellant can demonstrate, on the balance of probabilities, that the structure constitutes a building involving 'building operations' for the purposes of section 55 of the 1990 Act, and, if so, whether the development and its permanent residential use has become immune from enforcement action.

Reasons

19. The Council disputes that there is building and considers it more likely to be a mobile home. The word 'structure' is a neutral term which encapsulates both and so I shall utilise this word to the development for which a LDC is sought.
20. The question of whether or not the structure is a building falls to be determined at the date of the LDC application, being 24 September 2018.
21. Pursuant to section 55 of the 1990 Act 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land. 'Building operations' includes operations normally undertaken by a person carrying on business as a builder. A 'building' is defined within section 336(1) of the Act to include 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.'
22. There is not an exhaustive test of what amounts to a 'building', but the main characteristics found in the *Cardiff Rating Authority* case², as endorsed by the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No 2)*³, as a matter of fact and degree, are (a) physical attachment (b) permanence and (c) of a size to be constructed on site, as opposed to being brought onto the site. The Courts have made clear that no one test is conclusive.
23. Whilst the pertinent point is whether or not the structure is a building, a helpful starting point is to consider whether it would meet the definition of a caravan. In *Measor v SSETR*⁴ the Deputy Judge said he would be wary of holding, as a matter of law, that a structure which satisfies the definition of, for example, a

² *Cardiff Rating Authority v Guest Keen Baldwin's Iron & Steel Co Ltd* [1949] 1 KB 385

³ [2000] 2 PLR 102

⁴ [1999] JPL 182

mobile home under section 13(1) of the Caravan Sites Act 1968 ('CSA') could never be a building for the purpose of the 1990 Act. However, it would not generally satisfy the well-established definition of a building, having regard to factors of permanence and attachment. It would be contrary to the purposes of the 1990 Act to hold that because caravans were defined as "structures" in the Caravan Sites and Control of Development Act 1960 ('CSCDA') they fell within the definition of "building" in the 1990 Act.

24. The terms 'mobile home' and 'caravan' are interchangeable. For planning purposes, section 336(1) of the 1990 Act adopts the definition of 'caravan site' in the CSCDA. When determining whether a structure is a caravan it is necessary to have regard to all material elements of the statutory definition.
25. Section 29(1) of the CSCDA provides that 'caravan' means any structure designed or adapted for human habitation, which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include (a) any railway rolling-stock, which is, for the time being, on rails forming part of a railway system or (b) any tent.
26. Under section 13(1) of the CSA a twin-unit caravan is a structure designed or adapted for human habitation which:- (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the CSCDA by reason only that it cannot lawfully be so moved on a highway when assembled.
27. Section 13(2) of the CSA sets out the size dimensions of a structure that can be defined as a twin-unit caravan. Thus, there are three tests that must be met for a structure to constitute a caravan (i) construction test (ii) mobility test and (iii) size test.
28. There is no suggestion the size limitations for a twin-unit mobile home are exceeded. By the same token the structure is large enough to be regarded as a building. There is no dispute that it is used for human habitation.
29. It is common ground that the structure has been present on the site in its existing form since 2003 as is apparent from the photograph produced by the Council from August of that year. The parties further agree that it is likely that the structure was in that completed form by the time that planning permission was granted in May 2003 to Mr Lee for the stationing of a mobile home on a permanent basis to be used as a permanent/sole residential property.
30. The appellant also openly accepts that the structure has been called a mobile home in the past, most recently in an application in 2008 for its permanent retention which was granted in 2009.
31. The appellant has produced a typed witness statement signed by Mr Lee, the former owner of Redgates Farm to whom planning permission was granted for use of the land as a gypsy and traveller site. Mr Lee states that he originally occupied a static caravan on the site. Temporary planning permission was

eventually granted in 2000 for a 3 year period and renewed in 2003 before a personal permission was granted in 2009.

32. Mr Lee confirms that the structure was constructed on the site from many constituent parts rather than being brought there in ready-made sections. He describes the structure as timber framed with the external walls clad with horizontal timber boarding. The entire structure sits on a concrete slab foundation. A 0.3m high brick plinth was erected to retain the edges of the slab before concrete was poured into the void. There is a suspended wooden floor supported on wooden joists laid directly into the concrete base. Mr Lee explains in his statement how the pitched roof was constructed using conventional timber roof trusses covered with roofing felt before timber battens were nailed to the trusses and tiles laid.
33. The description provided by Mr Lee is consistent with building operations undertaken whilst on-site as opposed to a mobile home having been brought in one or two parts onto the site and bolted together.
34. The appellants agent argued that the means of construction is also relevant to the extent of the physical integrity of the structure and its manoeuvrability. Logically, I accept that the more components that make up a structure the more difficult it may be to move, depending on the facts.
35. Externally the pitched roof overhangs the front walls to provide a veranda supported by four pillars affixed to the brick plinth by cement. I also observed that there is a brick step built on top of the base to lead into the front door.
36. Mr Lee does not explicitly identify when the pitched roof was built e.g. whether it was present at the outset or added later on, but the photographic evidence shows that it was in place by August 2003. Internal photographs of the roof trusses are supplied although it is difficult to gauge the means of affixation. During the Hearing the appellant's agent highlighted how a light fitting can be seen coming through the wooden ceiling. In itself, this does not demonstrate that the roof was built as an integral part of the structure. As the Council Officer pointed out, it was still possible that there was another existing flat roof to which the pitched roof had been added which might be why the photographs appear to show internal gaps at the roof edges.
37. Notably, there is a drawing of the roof structure for the LDC application. The sketch is annotated "Beam bolted to roof of former mobile home". This clearly indicates that the roof is an addition to a mobile home. It appears to contradict the statement of Mr Lee that the whole structure was built on site from many constituent parts. It lends credence to the Council's stance that additions have been made to an existing mobile home. That would also tie in with the description within the appellant's Planning Statement which accompanied the LDC application. This refers to the 'works carried out to this former mobile home' and how 'the property is no longer a mobile home and has been converted to a bungalow' which 'no longer looks like a mobile home'. The Planning Statement summarises that 'the conversion works that have been carried out to convert the property to a bungalow'.
38. If there was a mobile home originally to which 'conversion works' have been undertaken, the end product could still amount to a building. However, the apparent contradictions between the statement of Mr Lee and other evidence, diminishes the weight that I can ascribe to his version of events.

39. If a caravan/mobile home remains mobile then the likelihood is that a use of land is involved. "Mobility" does not require a caravan to be mobile in the sense of being moved on its own wheels and axles. It is sufficient that the unit can be picked up intact (including its floor and roof) and put on a lorry by crane or hoist. In *Carter v SSE*⁵ the Court of Appeal upheld the view that a structure must be capable of being moved *as a structure* (that is, in one piece). Therefore, the transportation criterion applied to the whole caravan structure and not to its component parts. It was accepted in that case that the stationing of a mobile home without wheels, which satisfied the definition of a caravan in section 29 CSCDA, would not amount to a building operation.
40. Whilst contesting that the pitched roof is of separate construction, the appellant argues that it makes no difference in terms of whether the structure is capable of being moved as a single structure in its assembled form.
41. Taken as a whole it is plain that the structure could not be readily transported in its current state, if at all. At the very least the pillars would need to be removed. Nevertheless, it is relevant to ascertain what elements amount to a single structure in a consideration of the statutory definition of a caravan.
42. The pitched roof with overhang and supporting columns gives the appearance of a degree of permanence and no doubt contributes to the quality of the accommodation as a home. However, the drawing of the roof structure casts significant doubt upon the appellant's submission that there is a building constructed as a single structure when it shows a 'former mobile home' which has a pitched roof bolted to the flat roof and with a supporting column.
43. The Council suggested that the main section of the structure could presumably be unbolted from the roof similar to the scenario in *Howard v Charlton*⁶. In that case an extension described as a 'porch' had been added and the flat roof of the main home was altered with the addition of a tiled covered pitched roof. In the County Court, the Judge had found that the porch could be unbolted and disregarded as an addition not absolutely crucial or vital to the occupant's way of living. The original structure remained a mobile home. The Court of Appeal found that the County Court Judge had reached the right conclusion (i.e. that it was a mobile home) but started from the wrong point. The question was not whether it remained a mobile home but whether the agreement to station a mobile home had been validly terminated in accordance with its terms. The Court of Appeal concluded it unnecessary to deal in detail with the submissions on the proper interpretation of the definition of a caravan within the 1960 and 1968 Acts and the relevance of being able to move the structure. That being so, parallels cannot be drawn with this appeal as the issue was not addressed.
44. Nevertheless, it is not uncommon for other structures to have been added to a mobile home. Provided those structures can be easily detached, mobility of the main unit may not be affected. The appellant's drawing suggests that the structural pitched roof frame is a bolted on addition which raises the prospect that it can be unbolted much in the same way that a porch or other forms of additions may be disconnected from the remainder. The agent argued that if the roof were to be removed then the structure would leave an exposed ceiling and no longer be water-tight. That is not reflected in the drawing which depicts the flat roof remaining in place.

⁵ [1991] JPL 131 & [1995] JPL 311

⁶ [2002] EWCA Civ 1086

45. The agent argued that whether the pitched roof is an integral part of the structure is irrelevant as the test of mobility concerns whether the structure can be moved once assembled rather than requiring dismantling. That is the correct test for mobility, but if the roof is a bolted on frame which comprises an additional element then it does not form part of the single structure to which the mobility test should be applied.
46. As it is, there is some doubt as to whether the pitched roof is part of the structure for the purposes of the definition in section 29(1).
47. The appellant cites *Byrne v SSE & Arun 1997* where it was held that account can be taken of the fact that although capable of being moved the structure could be damaged in the process. There are no lifting points for the structure to be lifted by crane. The appellant maintains that there is not the structural rigidity required for the structure to be hoisted in one piece onto the back of a lorry. Even if it could be lifted then the appellant believes that the length and weight would make it likely to break.
48. No assessment has been carried out to establish how the structure has been formed and whether it is capable of being moved. On the other hand, there is no evidence to show that the structure can be moved. This might be enough to demonstrate the permanence of a building in the absence of contrary evidence. The parties agree that the structure has at all times remained in the same spot. It has not been moved within the site which could indicate permanence.
49. The appeal site had been visited by an Inspector in November 2004 when considering an appeal against the Council's refusal to grant permission without the time limitation condition attached to the 2003 permission. In the decision dated 10 January 2005 the Inspector describes how she saw "the mobile home and its associated operational development". The appellant points out that there is no evidence that the Inspector entered the structure or inspected it. There may well have been no reason for the Inspector to do so if there was no suggestion that it was anything other than a mobile home. The role of the Inspector was to determine the disputed matters before her rather than raise issues on matters where there appeared to be consensus. Indeed, the application and appeal were made in relation to a mobile home and the Inspector was entitled to assume that was what was before her.
50. From outward appearances the structure could be either a building or mobile home. There are no obvious differentiating features. Clearly, there are elements, such as the base, which have involved operations as recognised by the previous Inspector. It is not untypical for additions to be made to a mobile home and this can be done without changing the core nature of the structure. This is not a case where the structure is patently a building to alert the Inspector to an obvious disparity between the application as described and what she saw on site.
51. A mere description does not make the structure a mobile home. However, there is no explanation as to why various planning applications and an appeal all described the structure as a 'mobile home' if it was not indeed a mobile home. Whilst not conclusive, it makes no sense for the structure to have been repeatedly described as a mobile home if in fact it was a building from the time of the 2003 permission.

52. The statement from Mr Lee describes construction of the structure on site in 2003 which suggests he was undertaking building operations around the same time as pursuing his application for a mobile home. It is difficult to reconcile his description with the references in the LDC application to conversion works of a mobile home. In addition, the drawing of the roof structure gives further reason to question whether there is in fact a single structure.
53. The overall picture is unclear and inconsistent. In these circumstances, it is not possible to ascertain with any clarity whether the structure is a building rather than a mobile home in the absence of a report from a structural engineer or other suitably qualified person. The only examination that had been conducted was by the appellant's planning agent who does not profess to have any specific knowledge in this field. Whilst I have considered his points and analysis, it does not carry the weight of an expert.
54. The appellant has the burden of proof and I simply cannot be satisfied on the evidence presented that the structure is, as a matter of fact and degree, a building on the balance of probabilities. In consequence of this finding, there cannot be a permanent residential use of the structure as a building.
55. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a single storey building and its permanent residential use was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended

Appeal B

56. The appeal site is identified as a privately owned Traveller site within the Maldon District Council Gypsy, Traveller and Travelling Show People Accommodation Assessment dated December 2016.
57. It is located along Fambridge Road, being a classified 'B' road which links Maldon with Cold Norton which is the nearest settlement lying less than 2km away via the road network. Less than 3km away are the villages of Mundon and Purleigh. There are several dwellings and farmsteads in the vicinity but the surroundings are predominantly rural in character.
58. Disputed condition No 3 made the 2009 permission personal to Mr W Lee, as the occupier at the time, and his dependants. Condition 5 requires the use to cease and all materials and equipment removed from the site when the site ceases to be used by Mr Lee and his dependants. Mr Lee has since sold the site to his step-son, the appellant, and no longer resides there.
59. The application sought variation of the conditions to allow the appellant and his family to continue to reside there by substituting the appellant's name for that of Mr Lee. As already set out, if the appeal is successful a new permission would be granted with the same conditions except for those varied.
60. The stated reason in the 2009 permission for both conditions was to ensure the site is appropriate within the rural area having regard to the special circumstances under which planning permission is granted in accordance with policy H16 of the adopted Maldon District Council Replacement Local Plan. Since then the development plan has been updated and policy H16 has now been replaced although the Council confirms that replacement policy H6 of the Maldon District Local Development Plan ('DP') contains the same provisions.

61. In refusing permission pursuant to the application, the Council stated that insufficient information had been submitted to demonstrate the personal circumstances of the applicant to warrant the variation. The application was therefore considered to be contrary to DP Policies S8 and H6 and latest Government advice in the National Planning Policy Framework and Planning Policy for Traveller Sites ('PPTS').
62. Among other changes, the definition of "gypsies and travellers" to whom the PPTS applies was changed in August 2015 i.e. after the grant of the planning permission. The definition no longer includes those who have permanently ceased to travel. The Council accepts that the appellant and his family are persons of nomadic habit of life who meet the definition within the PPTS. I have no reason to disagree. It follows that the reasons for conditions 3 and 5 would continue to be met by substituting the name of the appellant for Mr Lee from the viewpoint that the site would still be occupied 'by persons who are recognised gypsies.'
63. The issue turns to whether there would be special circumstances for permission to be granted to the appellant.
64. Having received further particulars of the appellant's personal circumstances and those of his family, the Council now accepts that those circumstances outweigh any conflict with the development plan such that the appeal, as originally pleaded, should be allowed.
65. However, at the Hearing the appellant's agent sought to argue that there was in fact no need for condition 3 to make the permission personal to the appellant and that it should be varied to simply limit occupation to gypsies and travellers as defined within the PPTS. If varied in that manner, condition 5 would no longer be relevant and should thus be removed. The effect would be to grant a new permanent permission for a gypsy and traveller site and the use would not cease once the appellant and his dependants vacate the site.
66. The appellant's agent accepts that was not the basis upon which the application was made nor the case argued on appeal up to the time of the Hearing. To support this change in stance the point was made that the conditions must still be necessary and reasonable. The appellant considers that they are not when DP Policies S8 and H6 would be met without it being a personal permission.
67. The Council raised no objection to the lateness of the argument but resists any widening of condition 3 and removal of condition 5. The Council emphasised that its concession had been made having regard to the individual circumstances of the appellant and his family. This included their human rights and in particular the prospect of a return to a roadside existence if permission were not granted which would not be in the best interests of the children currently occupying the site and who are registered at local schools.
68. In response the appellant's argued that Policy H6 would be met irrespective of who lives on the site provided the occupiers meet the definition of a gypsy and traveller. However, had the appellant wished to secure a permission for a permanent gypsy site rather than one limited to the period of his occupation then an application should have been made on that basis.
69. The PPG makes clear that in deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the

subject of the application – it is not a complete re-consideration of the application. Likewise, on appeal only the conditions in question can be considered.

70. Whilst there is more scope within section 73A for the planning merits of the whole of a development to be considered that does depend upon what was being sought in the application. In this instance, the application was made on a narrow basis (citing section 73) for a variation of the two conditions. In effect, it sought the mere substitution of the name of one gypsy family for another.
71. It seems to me that there is a clear distinction between the variation of the conditions in the manner originally sought and the wider planning merits of a permanent gypsy site which has not been considered in detail through the application and appeal process or subject to public consultation.
72. I am not satisfied that at this late stage in the process the nature of the application can be altered in the manner raised during the Hearing.
73. The appellant is correct that the conditions must remain reasonable and necessary and in accordance with Paragraph 55 of the Framework and the PPG. It was not until the Hearing that the appellant raised any concerns in this regard. Both conditions 3 and 5 were imposed to reflect the fact that special circumstances had been demonstrated by Mr Lee to warrant the grant of the permission as a gypsy site limited to him personally.
74. Policy can only be considered in relation to the disputed conditions. Outside the defined settlement boundaries, DP Policy S8 provides that planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and in the case of gypsy and traveller accommodation it must accord with DP Policy H6.
75. Policy H6 concerns provision for travellers. It sets out four criteria under part 2, one of which must be met and then a further seven criteria under part 3 against which proposals for new traveller sites are to be considered. In part 2, the key provision applied by the Council was the need for the site to form sustainable development having regard to the sustainability/site suitability criteria in the 'Traveller Site Allocations Development Plan Document Draft Background Paper: Methodology and Site Selection', August 2016.
76. Whilst both parties have made submissions in terms of the sustainability of the appeal site these policies go to the heart of the permission. The position on the sustainability of the location in local policy terms appears to be no different from when the conditions were originally imposed. Whether there is a case for a permanent gypsy site free from the same limitations as imposed by conditions 3 and 5 is not before me. If the appellant wishes to explore that possibility further then another application would need to be made. The point in issue is whether there is a case for the appellant to benefit from a personal permission as previously granted. Given the appellant's personal circumstances as demonstrated through the course of the appeal, that matter is no longer in dispute and I am satisfied that a new personal permission should be granted.

Conditions

77. The Council requested an amendment to condition 5 to add the words 'within six months' to the requirement to remove all materials and equipment from the site upon cessation of the use. The appellant agreed that a time limit ought to

be specified for enforcement purposes and that 6 months is reasonable. I agree that the requested amendment brings greater clarity and precision.

78. Aside from conditions 3 and 5, there are three other conditions imposed on the 2009 permission. They should all continue to have effect but a discussion took place on whether the conditions are appropriately worded. The parties agreed that to reflect the gypsy lifestyle condition 1 should not specify a limit of 1 static caravan and 1 caravan for travelling but be expressed as a restriction of no more than 2 caravans of which no more than 1 shall be a static caravan/mobile home. I agree that this is a standard approach which would be appropriate in this case.
79. No issue was taken with the wording of condition 2 which restricts the caravans to the eastern part of the existing fence, which is still in situ.
80. With regard to condition 4, it was agreed that there is no need to prohibit all commercial vehicles being kept at the site especially as it would not be uncommon for gypsies to have a vehicle associated with their work. Indeed, I noted that there was a commercial vehicle parked at the site. The parties agreed an alteration in the wording so that 'no vehicles above 3.5 tonnes' can be kept at the site rather than a strict prohibition on 'no commercial vehicles'.

Conclusion on Appeal B

81. For the reasons given above I conclude that the appeal should succeed and I shall exercise the powers transferred to me accordingly. I will grant a new planning permission without the disputed conditions but substituting others and restating those undisputed conditions (with modifications) that are still subsisting and capable of taking effect.

Formal Decisions

Appeal A

82. The appeal is dismissed.

Appeal B

83. The appeal is allowed and planning permission is granted for the continued use of land for the permanent stationing of a mobile home as a single residential property, retention of hardstanding, decking and 300mm high brick wall at New Redgates Farm, Fambridge Road, Purleigh, Essex CM9 6NL in accordance with the application Ref LDE/MAL/18/01158 made on the 24 September 2018 without complying with conditions Nos 3 and 5 set out in planning permission Ref FUL/MAL/08/01319 granted on 9 February 2009 by the Maldon Council, but otherwise subject to the following conditions:

1. No more than two caravans shall be stationed on the site of which no more than one shall be a static caravan/mobile home.
2. The caravans/mobile home shall only be stationed on the eastern part of the site behind the existing enclosing fence.
3. The permission shall enure for the benefit of Mr Patrick Saunders and his dependants.

4. No business activities shall take place within the site and no vehicle above 3.5 tonnes shall be based or parked overnight at the site.
5. When the site ceases to be occupied by Mr Patrick Saunders and his dependants the use hereby permitted shall cease and all materials and equipment brought onto the site in connection with the use shall be removed within six months.

KR Seward

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Philip Brown

Planning consultant

FOR THE LOCAL PLANNING AUTHORITY:

Julia Sargeant MSc

Specialist: Development Management