
Appeal Decisions

Inquiry Held on 5,6 & 7 January 2021

Site visit made on 7 January 2021

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10 February 2021

Land adjacent to St Theresa, Pudsey Hall Lane, Canewdon

Appeal A: APP/B1550/C/18/3209438

- 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 Jeremiah O'Connor against an enforcement notice issued by Rochford District Council.
- The enforcement notice was issued on 20 July 2018.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised formation of a hardstanding measuring approximately 24 metres x 32 metres to facilitate the use of the site as a Gypsy/traveller site (shown hatched on the plan attached to the notice).
- The requirements of the notice are:
 1. Remove the hard standing and any resultant debris and materials from the land.
 2. Remove any pipework or ducting to facilitate the use of the site for residential purposes.
 3. Return the land to its former condition by levelling and cultivating with grass seed.
- The period for compliance with the requirements is 10 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a)&(g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is allowed on ground (a).

Appeal B: APP/B1550/C/18/3209439

- 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 Jeremiah O'Connor against an enforcement notice issued by Rochford District Council.
- The enforcement notice was issued on 13 August 2018.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land (shown green on the plan attached to the notice) for:
 1. Residential use by Gypsy/Travellers.
 2. The stationing of caravans for human habitation (shown in the approximate positions C1, C2 & C3).
 3. The parking of vehicles in association with the use of the site as a Gypsy/Traveller site.
- The requirements of the notice are:
 1. Cease the residential use of the land.
 2. Cease the use of the land for the stationing of caravans for human habitation.
 3. Remove from the land all the caravans on the site (marked in the approximate positions C1, C2 & C3).
 4. Cease the use of the land for the parking of vehicles by removing the vehicles from the land.

- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a)&(g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected and planning permission is granted in the terms set out below in the Formal Decision.

Appeal C: APP/B1550/W/18/3209437

- 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 O'Connor against the decision of Rochford District Council.
- The application Ref: 18/00318/FUL, dated 29 March 2018, was refused by notice dated 9 July 2018.
- The development is described as a proposed gypsy/traveller pitch comprising two mobile homes and separate day room building together with the siting of two touring caravans and hardsurfacing.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Application for costs

1. At the Inquiry an application for costs was made by Mr Jeremiah O'Connor against the Council in respect of all three appeals. These applications are the subject of separate Decisions.

Preliminary Matters

2. The Inquiry related to three separate appeals: Appeal A is against an enforcement notice alleging unauthorised engineering operations; Appeal B is against an enforcement notice alleging a material change of use; Appeal C is against a refusal of planning permission. The operations in Appeal A facilitated the change of use alleged in Appeal B. The development in Appeals A and B taken together constitute the development applied for in Appeal C but with the addition of a day room building for toilet and utility facilities.
3. Various issues arose during the Inquiry stemming from the drafting of the enforcement notices. In closing submissions, Counsel for the appellant suggested that I deal with Appeal C first as a pragmatic approach. Then, if Appeal C is allowed with planning permission granted, the appellant would not require a determination of Appeals A and B. In that scenario, the notices would still exist but would not have come into effect. This might seem to be an option if the appeals were limited to grounds (a) and (g). However, at the Inquiry the appellant raised a case under ground (b) in relation to Appeal B and the content of the notice. This requires resolution particularly as the matters that flow from it potentially impact upon matters pertinent to the planning merits in terms of the evidence on landscape and visual effects relevant also to Appeal C.
4. The Council was given opportunity to address the new ground (b) argument and I heard from witnesses for both sides on this ground. As such, no prejudice arises from my consideration of this added ground of appeal.
5. Although it is necessary to determine each appeal in its own right, I shall deal with the appeals together as indicated below where the circumstances allow in order to avoid duplication.

The Enforcement Notice – Appeal A

6. The enforcement notice in Appeal A concerns the unauthorised formation of a hardstanding. The parties agreed at the Inquiry that the enforcement notice cannot require the removal of pipework and ducting which facilitates the residential use of the site when the notice is directed at operations only. This requirement (at paragraph 5, step 2) must be deleted. It cannot now be added instead to the notice for Appeal B without causing injustice to the appellant by widening the extent of the requirements.

Appeal B – the Enforcement Notice and ground (b) submissions

7. I have a duty to ensure that the notice is in order. Prior to the Inquiry, I queried with the parties whether there was duplication in the allegation within Notice B and if, in fact, there was a mixed use given the extent of land identified in the notice. The plan affixed to the notice shows an area coloured green at the front of the site where the hardstanding is laid and the caravans are placed. The notice also relates to a much larger parcel of land to the rear where no use has been identified or breach is alleged.
8. The appellant was keen to ensure that the breach is defined with reference to the whole site which he considers constitutes the planning unit. The significance of the planning unit in this case is twofold. Firstly, the appellant maintains that the landscape and visual impacts of the use as a gypsy site must be assessed in the context of the existing lawful use to the rear which includes caravan storage. Secondly, an argument unfolded during the appellant's evidence that part of the planning unit is previously developed land in light of a caravan storage use.
9. It is consistent with case law including the judgment in *Burdle*¹ that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and/or occupied for different and unrelated purposes. The whole area outlined on the enforcement notice plan is in single occupation and enclosed by hedgerow/fencing. The parties agree that the residential use is confined to the part shown in green.
10. It was put to me by the Council that the planning unit is limited to the green land although there was a difference in opinion on this point between the two Council Officers who gave evidence.
11. Whilst the Council relies upon the internal fencing to demonstrate physical separation, the relevant time is when the enforcement notice was issued. There was consensus that the post and rail fencing (with gate) which now separates the green land for the remainder of the land holding was erected after Notice B was issued. As a matter of fact and degree the laying of hard surfacing does not in this case suffice in my view to sever the land physically, albeit the residential use is physically confined to that distinct area.
12. The appellant's planning agent described how the land at the rear of the site was used for the keeping of horses. Council Officers had not seen any horses. Logically, the erection of fencing most likely occurred to contain the horses after the notice was issued. The land now appears as grassed pasture apart from the two derelict caravans. There is no longer any use for the keeping of horses.

¹ *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207.

13. A functional relationship exists between the two areas. The pasture is accessed via the green land and it appears to be used in connection with the residential use. Without both physical and functional separation, a new planning unit is not created. On the balance of probabilities there is a single planning unit.
14. The ground (b) argument is that there is a mixed use of the entire site identified in the notice which I have established to be the planning unit. Ground (b) is that those matters alleged in the notice have not occurred. This ground is often used to raise issues with an enforcement notice because there is no specific ground of appeal under which such arguments can be raised.
15. The parties disagreed on where the burden of proof lies. The appellant's advocate maintained that the burden is with the Council as the ground of appeal arises from defects in the drafting of the notice. That is conflating two issues. The onus of proof in a ground (b) appeal rests on the appellant and the test of the evidence is the balance of probabilities. Similarly, if the appellant seeks to allege that a lawful use subsists, he also has the burden of proof.
16. The appellant does not want the notice quashed but seeks corrections to reflect the actual use that he states is taking place on the wider site. If there is a single mixed use, the allegation should refer to all the components of the mixed use across the site, even if it is considered expedient that only one should cease. It is not open to the Council to decouple elements of it.
17. Initially the appellant claimed there is a mixed use composed of a caravan site and a caravan storage and/or tyre storage use. As the Inquiry progressed this was modified to a mixed use as a caravan site and caravan storage after the appellant's agent acknowledged that there is no evidence of tyres being stored on the land throughout a 10-year period to become immune from enforcement.
18. The Council suggested that there may have been an historic leisure use. It accepts that two derelict caravans on the land at the rear were in situ from at least 2007 as shown in photographs. One is a static caravan, the other a touring type caravan. It is also recognised that used tyres were 'dumped' on the land which are now mostly stored within the derelict static caravan.
19. In oral evidence the appellant stated that apart from the tyres and two derelict caravans there were four ramps on the land when he bought it. He understood from a neighbour that the whole site had previously been used for banger racing although that use must have stopped some considerable time before the appellant's acquisition because the land was so overgrown. Over what period that use took place is unknown.
20. Whilst photographic evidence shows the physical presence of both caravans in 2007, it is unclear if they were being put to any use and what any such use might be. The stationing of a caravan is not in itself a use of land. If their use had been to facilitate a leisure use in exercise of temporary permitted development rights then there would need to have been reversion to the normal land use in between each period of temporary use. There is nothing to suggest that occurred, but it does not mean that there was no leisure use taking place at one time. Whether any such use was or had become lawful is wholly unclear.
21. The caravans are sited centrally within the considerable area of grassland which would seem an odd place if they were being stored. The position of the caravans appears to be unchanged since 2007. That alone does not suffice to denote a

storage use. It is but one of a number of possibilities and the situation could have changed over the years with other intervening uses, such as the banger racing. Put simply, it is not known.

22. No lawful development certificate has been issued pursuant to an application made under section 191(1)(a) to confirm that there is an existing lawful use for the storage of caravans or otherwise. From the limited information available on the history of the site presented, the lawful use of the land to the rear cannot be gleaned with any level of clarity. Therefore, I cannot be satisfied that there is a lawful caravan storage use on land at the rear. Even if there were, this does not necessarily mean that the land constitutes a previously developed brownfield site especially as the applications are for development at the front of the site which was previously undeveloped.
23. The single main purpose of the appellant's use of his land is residential, being a primary use. This is reflected in the wording of the allegation. From all the available evidence, whatever the grassed land is used for it is almost certainly ancillary to the residential use concentrated at the front of the site.
24. In a ground (b) appeal the precise wording of the allegation must be considered. Notice B describes the breach of planning control as "*the change of use of the land (shown coloured green on the attached plan) for....*" residential use by gypsy/travellers etc. Thus, the alleged breach is confined to the green coloured land only. To succeed on ground (b) it would need to be shown that there has not been a change of use of the green coloured land for the purposes alleged.
25. It is undisputed that the green land is in residential use as a gypsy/traveller site involving the stationing of caravans on the land and the associated parking of vehicles. Furthermore, it is undisputed that such use would amount to a material change of use of land irrespective of whether the planning unit was limited to the green area or encompassed the other land to the rear.
26. As a matter of fact, those matters as alleged in the notice have occurred on the land identified. That position would not change even if the breach had been described as a mixed use over the wider site (albeit the notice would have needed correction to include all uses). The use as a gypsy site has taken place within the green land only and that is how it is described. The ground (b) appeal is bound to fail although other issues with Notice B require consideration.
27. The appellant's advocate argued that the whole planning unit must be included in Notice B because a change of use is alleged. However, an enforcement notice does not have to be directed at the whole unit or even identify it². The primary activity complained of is the stationing of caravans for residential purposes which only takes place on part of the appellant's land i.e. the area shown green.
28. A local planning authority would be entitled to anticipate changes to defeat the operation of a notice by enforcing against the planning unit as a whole. Whether this motivated the Council to include all land within the appellant's ownership was not altogether clear.
29. The appellant resists any reduction in the area enforced against and claimed it would be an error of law to do so although the Council agreed that such an approach would resolve the dispute. In my view, if the area included in the notice is reduced to the green area only then that would reflect the area of

² *Hawkey v SSE* [1971] 22 P&CR 610

alleged breach. That would be consistent with the application in Appeal C for essentially the same development where the red line application site is limited to the area as shown green on the enforcement notice plan. The remainder of the land is edged blue to identify other land within the applicant's control. This followed invalidation of the application when the entire landholding was outlined.

30. Corrections can only be made under section 176(1) of the 1990 Act if no injustice would arise to either party. Whilst the appellant argues injustice, that could only possibly be the case if it could be shown that there was an established lawful use for caravan storage. As it is, there is insufficient evidence to support that contention for it to be a consideration within the ground (a) appeal. In pursuance of section 176(1) I shall amend the notice so that it relates to the green land only.
31. There remain issues with the wording of Notice B which the Council's advocate readily accepted required tidying. It is important that the allegation is correct as the terms of the deemed planning application under ground (a) is derived from its wording. The alleged breach of planning control refers to a change of use without planning permission for residential use for Gypsy/Travellers, plus the stationing of caravans for human habitation. Only a 'material' change of use is an act of development. The development is the residential use of land rather than a specific number of caravans. A more succinct and accurate wording is:

"Without planning permission, the material change of use of the land for the stationing of caravans for residential purposes as a gypsy and traveller site and associated parking of vehicles".
32. There is also duplication in the requirements. There was no need to require the use of the land for the stationing of caravans for human habitation to cease at step 2 when the notice already requires the residential use of the land to cease at step 1. Therefore, step 2 can be deleted. For accuracy and clarity, the requirement at step 3 to *"Remove from the land all caravans at the site"* should refer solely to the land and not to the 'site' as well. Step 4 requires the use of the land to cease for the parking of vehicles, yet the allegation does not identify this as an additional use of the land but as an associated activity. There should be a single step to *"Remove all caravans and vehicles from the land"*.
33. I am satisfied all these corrections can be made without injustice to either party.

Appeal C

34. The application for planning permission in Appeal C was partly retrospective in that the use for a gypsy site had begun and the hardstanding laid. Section 73A of the 1990 Act allows permission to be granted for development carried out before the date of the application. The day room is yet to be built and the appellant confirmed that he wishes to lay a top dressing on the hardstanding without extending it further. To this extent the application is prospective.
35. The original application was for a single gypsy/traveller pitch comprising one mobile home together with a touring caravan and dayroom. The application was subsequently revised to refer to two mobile homes and two touring caravans along with the hardstanding. Corresponding revisions were made to substitute the site location plan (Rev A) and site plan (Rev B). The application was determined by the Council based on those revisions and I shall do likewise. Therefore, I have utilised the description of development from the Council's

decision notice as it also appears in the appellant's Appeal Form.

Gypsy/traveller status

36. The definition of "gypsies and travellers" to whom the government's Planning Policy for Travellers Sites, 2015 (PPTS) applies was changed in August 2015 and no longer includes those who have permanently ceased to travel.
37. No issue is taken by the Council over the gypsy/traveller status of those occupying the site. A proof of evidence was supplied by the appellant providing personal details for himself and his family living at the site. Those details were supplemented in oral evidence at the Inquiry. Based on all the details, including regularity of travel and stated intention to continue to do so, I have no reason to doubt that the appellant and his family are persons of nomadic habit of life who meet the definition within the PPTS.

Appeals A, B & C

The appeal under ground (a), the deemed planning application & Appeal C

38. Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. This ground is concerned with the planning merits of the case, and it raises the same issues as the deemed application for planning permission. It also raises similar issues on the linked section 78 appeal albeit there is additional development involved.

Background

39. The appeal site is composed of approximately 0.80 hectares lying within the Metropolitan Green Belt. It is located along Pudsey Hall Lane, a private road with scattered development.
40. The planning application in Appeal C had been recommended for approval by Officers subject to 5-year time limited and personal occupancy conditions. It was refused by the Council's Development Committee contrary to that recommendation. In giving evidence, the Council's Development Committee Planning Manager made clear that he was representing the Committee rather than expressing his own professional view.
41. For the purposes of these appeals, the deemed planning application in Appeal A is for the hardstanding as built at the time of issue of the enforcement notice whereas the application in Appeal C also includes proposed works to complete that development through the addition of a top surfacing. The day care building in Appeal C would be approximately 9.2m by 4.6m in size with a dual pitched roof and ridge height of 4m. It would be built towards the front of the site.
42. Following the issue of the enforcement notice in Appeal A the Council served on the appellant a 'stop notice' under section 183 of the 1990 Act. This prohibits the laying of any further area of hardstanding and associated activities including the importation of hardcore, aggregate or road planings for that purpose. It is an offence to contravene a stop notice. The stop notice does not prevent the subsequent grant of planning permission for those activities which have already taken place or those proposed.

Policy context

43. Policy GB1 of the Council's Local Development Framework Core Strategy, December 2011 ('CS') seeks to direct development away from the Green Belt as far as practicable and will prioritise the protection of Green Belt land based on how well the land helps achieve the purposes of the Green Belt.
44. Since the date of issue of the notices in all three appeals, national policy within the National Planning Policy Framework ('the Framework') has been revised. It is the updated policy which now applies. Paragraph 146 thereof confirms that material changes in the use of land within the Green Belt are not inappropriate development provided they preserve its openness and do not conflict with the purposes of including land within it. Policy E of Planning Policy for Traveller Sites ('PPTS') confirms that traveller sites (temporary or permanent) in the Green Belt are inappropriate development.
45. There is no dispute between the parties that the development represents inappropriate development in the Green Belt having regard to the Framework, PPTS and relevant development plan policies. I agree.
46. The appellant produced a proof of evidence from a Chartered Landscape Architect. None of the Council's notices identify harm to the character and appearance of the area and the Council confirmed that it was not intending to advance such a case. Paragraph 133 of the Framework explains that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. One of the Green Belt purposes identified within Paragraph 134 is to assist in safeguarding the countryside from encroachment. It is in this context that submissions were made by the parties.

Main Issues

47. Against the backdrop described above, the main issues are:
 - the effect on the openness and the purposes of including land within the Green Belt; and
 - whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development, on either a permanent or temporary basis.

Reasons

Openness and Green Belt purposes

48. The Council maintains that there would be further 'sprawl' of development into the vulnerable Essex plotland, harming the openness of the Green Belt and failing to safeguard the countryside from encroachment, in conflict with one of the purposes of including land in the Green Belt.
49. Openness is not defined in the Framework but in the context of the Green Belt it is generally taken to refer to freedom from, or the absence of, development.
50. The laying of hardstanding and the stationing of caravans, the parking of vehicles and items of outside equipment associated with a domestic use would all impinge upon openness. Similarly, the erection of a day room building in

Appeal C would add built form where none existed before thereby further reducing openness.

51. To the immediate north of the appeal site are farm buildings associated with Pudsey Hall Farm accessed via large metal electronic gates across the lane. To the south is a vacant plot beside the nearest residential dwelling at St Theresa. There are a number of other dwellings sited along the lane which are predominantly single storey with an assortment of front boundary treatments. Not far from the appeal site, there is public footpath leading off the lane in a westerly direction. Dense hedgerow lines much of the western side of the lane.
52. Along the front boundary is a 1.8m high timber fence set between concrete posts on either side of large solid metal gates. The parties agreed that the fence/gates had not been in situ for a period in excess of 4 years to become immune from enforcement action by the time the notices were issued. Nevertheless, the Council initially conceded that the fence/gates was lawful by virtue of the operation of section 173(11) of the 1990 Act because the structure was omitted from the enforcement notices. The effect of section 173(11) is to treat planning permission as granted under section 73A once the requirements of an enforcement are complied with if it could have required any buildings or works to be removed or any activity to cease but does not do so.
53. Had either notice attacked the fence/gates in the allegation but failed to require their removal, then section 173(11) would bite upon compliance with the requirements but that is not what has occurred. No mention of the fence or gates is made at all in the notices. Having re-considered the position in light of the judgment in *Fidler*³ the Council adjusted its position to maintain that the fence/gates are unlawful. In *Fidler* it was held that section 173(11) has effect only in relation to the works that are alleged by the notice to constitute a breach of planning control.
54. The appellant took a differing view citing *Hammond*⁴ as authority that section 173(11) applies on the basis that the Council could have required removal of the fence/gates but failed to do so. A key point emerging from *Hammond* was that section 173(11) does not operate to grant planning permission for other possible breaches or for anything else unmentioned by the notice which is left on the site once the notice is complied with.
55. Clearly the Council knew of the unauthorised fence because it is mentioned in the Officer's committee report. That does not trigger section 173(11) however obvious the breach may be. As operations, the fence constitutes development in its own right. It could have been subject to enforcement action as a separate breach and that remains the case as the immunity period has yet to expire. In applying the judgments, I consider that the fence/gates are not caught by section 173(11). As such, they should be dis-regarded when considering the baseline for spatial and visual impacts of the development applied for.
56. The landscape and visual impact ('LVIA') studies changes arising from the development which have been quantified. The author confirmed at the Inquiry that the assessment was undertaken on the basis that the land belonging to the appellant at the rear of the appeal site is open countryside. I heard how the derelict caravans and tyres have an urbanising effect which would have a 'slight

³ *Fidler v FSS & Reigate and Banstead BC* [2004] EWCA Civ 1295

⁴ *Maldon DC v Hammond* [2004] EWCA Civ 1073

change' in the assessment if the case on ground (b) succeeded and they were part of a lawful mixed use. As it is, I have not been satisfied that there is a lawful storage use and so that scenario does not arise. The baseline for the LVIA appears to be correct.

57. The appellant's Landscape Architect explained how the site lies within landscape character area 1: Sporadic Development which is considered to have Low Value and Low Sensitivity. Under cross-examination it was accepted that there is an inconsistency between the conclusion in Landscape Architect's proof of evidence and his own more detailed LVIA which should be applied. Whereas the proof states that the landscape effects from the developments and proposals are Low Adverse, the LVIA judges the effects as medium adverse and largely limited to the application site.
58. The LVIA confirms that the site itself is not discernible from long distance with it being visually contained by hedgerows and trees from the north and east. It suggests that appropriate landscaping could enhance biodiversity and help to enhance the area's hedgerow planting, much of which has degraded. These measures should include replacing the existing close boarded fence secured through planning conditions. With mitigation measures, it is the opinion of the Landscape Architect that the landscape effects would be neutral.
59. In terms of visual effects, the Landscape Architect advises that the development has potential to give rise to moderate adverse effects resulting in noticeable deterioration to the views from a limited number of receptors. Again, with appropriate landscaping these effects can, in his view, be reduced to slight adverse from public viewpoints.
60. The Council queried the likely effectiveness of landscaping when previous attempts by the appellant to plant the frontage had failed and whether this might be due to soil contamination. The Landscape Architect dismissed this as unlikely as the grass is growing. The success of planting would depend on the type, time of year and aftercare which is why a landscape management scheme would be required.
61. The appellant has offered to remove the derelict caravans (with tyres stored inside) upon the grant of permission. Paragraph 26 of PPTS states that when considering applications, weight should be attached to the effective use of previously developed land (brownfield), untidy or derelict land. As already established, I am not satisfied that any part of the appellant's landholding is previously developed land but the presence of the two derelict caravans which appear abandoned in the middle of the grassed plot, undoubtedly has an untidy appearance causing visual harm. It is also noted that the appellant has already taken steps to clear and tidy the site and re-seeded the land. Removal of the caravans would deliver an improvement to the area albeit a limited benefit.
62. The Council Officer explained how the Committee was concerned at the impact of piecemeal development undermining the Green Belt which has typically occurred over many years. A similar point about a precedent being set was raised by third parties. I heard how there are historic plotlands where the ownership may be unknown and which can be vulnerable to unauthorised development with harmful consequences. No specific examples along Pudsey Hall Lane have been brought to my attention to illustrate any legitimate concern over cumulative effects causing landscape erosion. In any event, each site must be assessed on its individual merits.

63. The appellant's agent referred to the appeal site as an infill plot among ribbon development and contested that it is open countryside. In policy terms the site is in the countryside but this cannot be described as an isolated location. There is other development in close proximity. As the Landscape Architect acknowledged, the mobile homes are not in keeping with the nearby residential properties and so there is an adverse effect in visual and spatial terms from the introduction of caravans on the land and an expanse of hardstanding. This will be exacerbated to some degree by further built form if Appeal C is allowed and the day room is erected. However, the development is contained to the front of the appeal site where it is reasonably well screened. When viewed in the context of its surroundings the scale of existing development is respected and the developments in totality would not dominate the rural setting.
64. When considered overall, there would be Green Belt harm to openness and one of the Green Belt purposes but it is capable of being mitigated to an extent and when considered in context the effect is very limited.

Other considerations

The need for and supply of gypsy sites

65. Pursuant to CS Policy H7 (2011) the Council was to allocate 15 pitches by 2018 for gypsy and traveller accommodation. The site allocated for these purposes within Policy GT1 of the Council's Local Development Framework Allocations Plan (adopted February 2014) is at Michelin's Farm in Rayleigh. Delivery of this allocated site has encountered difficulties because the land does not belong to the Council and the current landowners are unwilling to release the land for gypsy and traveller accommodation.
66. Indeed, the landowner has secured a committee resolution (on 27 June 2019) from the local planning authority to grant planning permission for a business park on adjacent land, subject to completion of a planning obligation deed⁵. The appellant's agent suggested that this scheme makes it even less likely that Michelin's Farm will come forward given the potential incompatibility of residential and general industrial uses alongside each other, a point not contested by the Council.
67. The Council recognises that it cannot compel the landowner to bring forward a planning application for a gypsy/traveller site nor can it compel the sale to a third party who might be willing to do so. The Council confirms that it does not at this time intend to exercise its powers of compulsory purchase and operate Michelin's Farm as a public site.
68. As such, the Council accepts that the delivery of Policy GT1 has not materialised in the manner anticipated by the CS and Allocations Plan.
69. For that reason, the Council decided in November 2018 to prepare a single-issue Gypsy and Traveller Development Plan Document to further consider how the needs of the gypsy and traveller community could be met. Having made 'no practical progress' the Council has now decided that gypsy and traveller provision would be best met through a comprehensive new Local Plan. A draft site allocation plan for Gypsy/Traveller sites has not yet been published by the Council for consultation.

⁵ Council ref: 18/01022/OUT

70. The Council acknowledges that no other sites have been identified or allocated. In consequence, the Council has not delivered on CS Policy objective H7.
71. In the meantime, the Rochford District Council Gypsy and Traveller Accommodation Assessment Need Summary Report, June 2017 ('GTAA') identified a need of 19 additional pitches by 2033. There followed the South Essex GTAA Update in 2019 which concluded that there was a need for 18 additional pitches for households meeting the PPTS definition. This is only a snapshot in time and the appellant's agent opined that by taking a precautionary approach the need is nearer to over 30 pitches. There is no evidence before me to support that. Nevertheless, whilst the parties disagree on the precise level, it is clear that there is significant unmet need, and they agree that the Council cannot currently demonstrate a 5-year supply of pitches.
72. As the appellant was living in the district at the time of the last survey, it is possible that his need was included within the figures. Even if the appellant's need is additional to that already identified, delivery of this pitch would contribute towards the Council's supply of pitches albeit to a limited degree. It carries corresponding weight in favour of the appeals.
73. Despite the difficulties encountered with bringing forward Michelin Farm, the Council states that "the 15 pitch allocation of GT1 would be sufficient to accommodate the needs for all households within the district over the next five years.". That does not tally with the figures and there is no sign in any event of that allocation coming forward.
74. The fact remains that the Council has an under supply of pitches and that position has not improved since permissions were granted on appeal for other gypsy sites within the district. In particular, the permanent permission at 'The Pumping Station' on 2 November 2017⁶ and temporary permission for land adjacent to Woodville on 28 February 2018⁷. In fact, the position is worse in that the 2018 timescale in which the 15 pitch allocation was to be delivered has long since expired with no realistic prospect of an application coming forward as things currently stand. At the time of the 'Woodville' decision a replacement local plan was programmed for adoption by 2020 which intended to identify future gypsy and traveller sites, but this has not emerged.
75. Paragraph 27 of PPTS makes clear that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. There are exceptions to this and they include development on land designated as Green Belt.
76. Nonetheless, it remains for the decision-maker to attribute such weight as is considered appropriate in the given circumstances. In this particular case, the absence of a 5 year supply does warrant significant weight in light of the appreciable deficit in supply which has remained unchanged for some years and with no sign of the shortfall being remedied within the foreseeable future.

⁶ Appeal refs: APP/B1550/C/16/3162651 & APP/B1550/W/16/3162649

⁷ Appeal ref: APP/B1550/W/17/3174424

Lack of alternative sites

77. Against this backdrop, the Council confirms that no pitches have been delivered through its policy provision and there are no public sites currently available. Therefore, whilst third parties suggest that the west of the district would be preferable with more accessibility to services, no other suitable and available sites accessible to the occupiers of the appeal site have been identified. Indeed, the Council accepts there are no alternative sites within the district that would be available to the appellant and his family in the event that the appeals fail.
78. The lack of any alternative provision weighs heavily in favour of the development attracting very significant weight.

Delivery against local and national policy objectives

79. As already set out, the Council cannot demonstrate a 5-year supply of pitches for gypsies and travellers as required by paragraph 10.a) of the PPTS. Looking forward it has also failed to identify a supply of specific deliverable sites, or broad locations for growth, for years 6-10 as contemplated by paragraph 10.b).
80. There has been a failure of Policy GT1 to deliver the 15 pitches at Michelins Farm by 2018 as identified in CS Policy H7. Those policy objectives have not been met despite the identified need for 15 pitches dating back to the time of adoption of the CS in 2011. That need has since increased with no sites at all available to address the need.
81. In placing reliance wholly upon the Michelins Farm allocation in GT1, the Council has failed to promote more private traveller site provision in accordance with the Government's aim in paragraph 4.e of the PPTS. It also failed to provide any choice particularly as there are no specific criteria based development plan policies that allow for unallocated gypsy and traveller sites to come forward. All of this has resulted in what is now a long standing failure to meet the needs of the gypsy/traveller community. There is no clear forecast as to when the Council might be in a position to bring forward any sites through a new local plan. It must be anticipated that this will be some way off. The Council confirmed that there has been no policy update or change.
82. With the exception of a Ministry of Defence establishment, the Green Belt designation covers the entire district. It follows that any new development will inevitably be within the Green Belt which will need to be released from the designation for these purposes.
83. The Council's housing land supply for the settled community is between 4.9 to 5.1 years. It has identified a minimum of 4.9 years supply but subject to an uplift depending on the outcome of pending planning applications. In comparison, gypsy and traveller provision has come nowhere near delivering on the identified need. This inconsistency has not advanced equality of opportunity for the gypsy/traveller community and weighs further in favour of the development. The appellant's agent suggested that this factor should be given substantial weight and expressed surprise at the limited weight attributed in a similar situation arising in the 'Highview'⁸ appeal in another Council area. The weight to be attributed is a matter of judgement in the circumstances. In this instance there is clear disparity between the delivery of housing sites for the

⁸ Appeal Ref: APP/M3645/W/18/3205027 dated 8 July 2018 relating to the Tandridge District Council area

settled community and the severe ongoing failure to make gypsy/traveller provision. Accordingly, I give the inequality of treatment moderate weight.

Personal need for a site and alternative accommodation options

84. The appellant's family includes children the youngest of whom is in local education and has been settled in school for some while now. Should the child need to leave school then this will cause major disruption and potentially interfere with their education.
85. Details were provided of the healthcare needs of the occupying members of the family such as the need to access specialist services. These include ongoing hospital appointments located outside of the district.
86. Much in the same way as the Inspector found in the 'Twyford' Appeal Decision⁹ where an application for a gypsy site in the Green Belt was dismissed, the Council argued that education and healthcare could be accessed from another location outside of the Green Belt. Given the extent of Green Belt covering most of the Rochford administrative area, this would mean identifying a site outside of the district. Whilst education and healthcare could be accessed elsewhere it would be easier to register for those facilities with a fixed residence. The appellant has in the past utilised a family address in London as a postal address but it is not a reliable or satisfactory way to receive communications and does not assist with registrations at local education and GP facilities.
87. For a short while, the appellants wife had lived in conventional housing but had not settled. The appellant himself expressed an aversion to living in bricks and mortar. At one time the appellant's family had stayed at a site belonging to a close relative but this site is no longer large enough to accommodate them all and the appellant had been asked to leave. The appellant explained how he had been forced to vacate a plot that he purchased in another county which led to the move back to Essex where they have family and the appellant has had links since childhood. Culturally such family ties are important.
88. Dismissal of both Appeals B and C would give the family no option but to resort to a roadside existence with welfare and safety issues for all the family and the children in particular. In that scenario it is likely that the youngest child who has settled in school and is progressing well would no longer have that same access to schooling when the family would be constantly moving on.
89. The appeal site would provide stability and enable consistent access to medical and educational services through a settled base in an area not far from other family members. It would be in the best interests of the children to remain on the site.
90. In the circumstances I am satisfied of the need for a site in the Green Belt.

Intentional unauthorised development

91. The written ministerial statement issued on 31 August 2015 announced that it is national planning policy that intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals. The appellant's advocate submitted that the statement has never been reviewed as anticipated and has failed to keep pace with the Framework and

⁹ Appeal ref: APP/X0360/W/17/3174161 dated 13 February 2018

PPTS, both of which have been revised in the interim. Nevertheless, the ministerial statement has not been replaced or revoked and it remains a material consideration.

92. The appellant moved onto and has continued to occupy the site in the knowledge that it is without planning permission having taken professional planning advice. The appellant explained that he was willing to take the risk of potentially not gaining planning permission because he had nowhere else to go having lived a roadside existence for some months previously.
93. The planning application in Appeal C was submitted immediately before Easter 2018 and the appellant moved onto the site over that long weekend. The Council maintains that the timing was deliberate to take advantage of the public holiday when its offices were closed and action could not be taken immediately against the breach of planning control. The appellant's agent denied advising the appellant to utilise this window of opportunity or indeed that the appeal site was a 'good bet' in light of the Council's absence of a 5 year supply of sites.
94. The Council's arguments are speculative and do not demonstrate bad motive on the appellant's part to increase the severity of the intentional unauthorised development. Knowingly acting in breach of planning control is clearly a factor against the grant of planning permission which cannot be ignored. In this instance, it carries limited weight only given the circumstances in which the appellant and his family had no alternative site available.

Other matters

95. Various other matters have been raised by individual objectors which I have taken into consideration.
96. There is no specific evidence before me to suggest that occupation of the appeal site by the appellant's family would be likely to lead to anti-social behaviour, diminution in property values or unreasonable levels of noise and disturbance. Concerns over the number of caravans can be addressed by way of a planning condition. The removal of trees and hedges can also be protected by condition and planting supplemented through a landscape and management scheme.
97. There would be increased traffic movements along the lane generated from the residential use of the gypsy site but there is no reason to suppose that these would be excessive when the concentration of caravans, and thus occupiers, would be restricted. Maintenance of the lane is a separate private matter. No objections have been raised by the local highway authority.
98. A septic tank is connected on site and so concerns over foul drainage are unfounded. The costs to the Council in handling the appeals are not pertinent to the planning merits and fall outside the scope of my considerations.
99. Inconsistency in decision-making is raised by local residents who have had planning applications refused. They include a refusal of planning permission in 2016 for the erection of a two bedroom mobility accessible bungalow on the neighbouring paddock which was upheld on appeal¹⁰. The bungalow was to provide accommodation for a disabled person and the applicant considers it discriminatory to allow this appeal when his was dismissed. Whilst I understand those concerns, the point remains that the Council has a specific duty to deliver

¹⁰ Appeal ref: APP/B1550/W/17/3171540 dated 11 July 2017

sites to meet the needs of the gypsy/traveller community which it has failed to achieve and this is an important consideration not arising in those other cases. The Public Sector Equality Duty within section 149 of the Equality Act 2010 sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity. It does not mean that this appeal must be dismissed because permission was refused for residential development on the adjacent plot for a person with a protected characteristic when different considerations come into play.

100. The circumstances in which the Inspector dismissed an appeal in the Green Belt in the Twyford Appeal Decision, as referenced above, are not comparable. Unlike this appeal, there were in that case local policy criteria for the grant of new gypsy and traveller pitches and those criteria were not met. That failure to comply with policy was attributed substantial weight against the scheme.

Green Belt Balance

101. Each development comprises inappropriate development in the Green Belt which is harmful by definition. Substantial weight must be given to any harm to the Green Belt and this is a major factor against the developments. There is also harm to openness and to the purpose of the Green Belt in assisting in safeguarding the countryside from encroachment. Even though the openness and purposes harm are limited, and capable of further reduction, I still attach substantial weight to them. There has been intentional unauthorised development but it carries limited weight in the absence of any availability of alternative sites within the District.
102. Contrary to the appellant's claim, the lack of drainage and highways objections and the agreed gypsy status of the appellant are not benefits. They are neutral factors weighing neither for nor against the developments.
103. Policy E of PPTS makes it clear that unmet need is unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. However, the unmet need for traveller sites is only one of several considerations which support the appeals.
104. Not only is there a clear general and significant need for gypsy and traveller accommodation in the district which carries significant weight but there is also an ongoing failure to meet policy objectives and an absence of local policies to facilitate future pitch provision which adds further significant weight.
105. When contrasted with the settled population there has been an unequal approach to site delivery. In addition, the Council must accept that land within the Green Belt will have to be de-allocated if it is to meet the identified need for gypsy and traveller sites. No matter where that might be there will inevitably be some harm. Indeed, this is recognised by CS Policy GB1 which does not preclude development from the Green Belt altogether but seeks to direct development away 'as far as practicable' and prioritise protection based on how well the land helps achieve the purposes of the Green Belt. In many ways it is difficult to envisage a more suitable site than this which is agreed to be in a sustainable location and has only limited Green Belt harm. The visual and landscape impacts would be low with mitigation given the relatively small scale nature of the development, its containment and position among scattered development. All of these factors carry moderate weight. There would be limited weight from the delivery of a gypsy site.

106. Taking account of the weight that I have attributed to the various factors the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by these considerations. Having regard to the case as a whole, I conclude that very special circumstances exist which justify the developments as a gypsy site on an indefinite basis without a time-limiting condition. As such, it is not necessary to go on to weigh the personal circumstances and best interest of the children into the balance.

Conclusion on ground (a), the deemed planning applications and Appeal C

107. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeals on ground (a) and the applications for deemed planning permission should succeed.

Conditions

108. The parties agreed that no conditions are necessary in respect of the hardstanding forming the development in Appeal A. The addition of a top dressing to the surface can be controlled through a site development scheme ('SDS') which was one of the agreed conditions for Appeals B and C.
109. The list of draft conditions for Appeals B and C was discussed at the Inquiry and modifications agreed. I have considered those revised draft conditions in accordance with Paragraph 55 of the Framework and the national Planning Practice Guidance. Where appropriate, I have adjusted the conditions for greater clarity and precision.
110. As the balance in favour of the appeals is dependent upon the accommodation needs of gypsies/travellers a condition limiting occupancy accordingly is necessary. There is no need to restrict occupancy to the appellant personally as I have found the existence of very special circumstances without the need to consider the personal circumstances of the occupants.
111. To ensure the satisfactory development of the site various details require approval including its layout, external lighting and boundary treatments through a SDS. The Council does not wish to approve details for surface water drainage as the existing hardstanding is semi-permeable and a ditch extends along its northern edge.
112. In order to mitigate the impact of the development upon the Green Belt, it is necessary to implement and maintain an approved landscaping scheme. This can be achieved as a component of the SDS. A specific condition is necessary to require the retention of the hedgerow along the northern boundary.
113. Compliance with the condition for the SDS needs to be pursuant to a strict timetable because it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters when development has already taken place. The purpose and effect of the condition is therefore to ensure that the use of the land authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.
114. To minimise the effect of the development on the surroundings, conditions are necessary to restrict the number of caravans, the presence of large vehicles and commercial uses. However, an exception should be made for the

buying/selling of horses which can be part of the gypsy way of life, and clearly is in the case of the appellant.

115. A condition is appropriate to require removal of the derelict caravans from the appellant's land as a benefit offered to mitigate the landscape and visual harm. This should include the tyres stored inside the static caravan and the loose tyres which I saw discarded behind the caravans.

116. The development in Appeal C is incomplete. It includes the additional construction of a day room which must be carried out in accordance with the submitted plans for the avoidance of doubt. It is noted that the site location plan shows the front boundary fence which is to be removed. Approval of the plans is therefore subject to the SDS being the means by which this shall be achieved. The submitted plans do not form part of the deemed planning application in Appeal B which is for the use enforced against.

117. The parties agreed that there are no permitted development rights that warrant removal. I agree on the basis that there will be a SDS.

Formal Decisions

Appeal A

118. It is directed that the enforcement notice be corrected by deleting step 2 at paragraph 5 and renumbering step 3 as step 2.

119. Subject to that correction, the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the formation of a hardstanding measuring approximately 24 metres x 32 metres to facilitate the use of the site as a Gypsy/Traveller site (shown hatched on the plan attached to the notice) at land adjacent to St Theresa, Pudsey Hall Lane, Canewdon.

Appeal B

120. It is directed that the enforcement notice be corrected by:

- deleting the words "*outlined in bold*" in paragraph 2 and substituting "*coloured green*".
- deleting the text at paragraph 3 and substituting: "*Without planning permission, the material change of use of the land for the stationing of caravans for residential purposes as a gypsy and traveller site and associated parking of vehicles*".
- inserting the words "*and the associated parking of vehicles*" at the end of step 1 in paragraph 5.
- deleting steps 2-4. at paragraph 5 and substituting a new step 2 to read: "*Remove all the caravans and vehicles from the land.*"

121. Subject to these corrections, the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the use for the stationing of caravans for residential purposes as a gypsy and traveller site and associated parking of

vehicles on the land shown coloured green on the plan attached to the notice, at land adjacent to St Theresa, Pudsey Hall Lane, Canewdon, subject to the conditions in Annex A at the end of this Decision.

Appeal C

122. The appeal is allowed and planning permission is granted for a gypsy/traveller pitch comprising two mobile homes and separate day room building together with the siting of two touring caravans and hard surfacing at land adjacent to St Theresa, Pudsey Hall Lane, Canewdon in accordance with the terms of the application, Ref 18/00318/FUL, dated 29 March 2018, subject to the conditions set out in Annex B at the end of this Decision.

KR Seward

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Alan Masters Of Counsel, instructed by W S Planning

He called:

Jeremiah O'Connor Appellant

Robert Petrow Chartered Landscape Architect

Brian Woods Planning consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Charles Streeten Of Counsel, instructed by Legal Services

He called:

Yvonne Dunn Planning Manager

Mike Stranks Team Leader Development Control (North)

DOCUMENTS submitted at the Inquiry

- 1 Ground (b) submission for the appellant
- 2 Opening submission for the Council
- 3 Appeal Decisions refs: APP/B1550/C/16/3162651;
APP/B1550/C/17/3169878 & 3169879; APP/B1550/W/16/3162649 for 'The
Pumping Station'
- 4 Letter dated 20 April 2018 from the Council to WS Planning & Architecture
invalidating planning application ref: 18/00318/FUL
- 5 Supplemental proof of evidence - Yvonne Dunn
- 6 Agreed list of draft conditions
- 7 Council's closing submissions
- 8 Appellant's closing submissions and addition to costs application

ANNEX A: SCHEDULE OF CONDITIONS

Appeal B:

1. 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 any subsequent definition that supersedes that document).
2. No more than four caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended, shall be stationed on the site at any one time, comprising no more than two static and two touring caravans.
3. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within 3 months of the date of this decision a scheme with details for:
 - (a) the internal layout of the site including the extent of the residential pitch/es, the location of the caravans and vehicle parking, any buildings, hard standings and external lighting;
 - (b) all boundary treatments and all other means of enclosure (including internal sub-division) and incorporating the retention (and augmentation where necessary) of the existing hedgerow around the entirety of the site;
 - (c) hard and soft landscaping and screen planting including details of species, plant sizes and proposed numbers and densities;(hereafter referred to as the 'site development scheme') shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

4. At the same time as the site development scheme required by condition 3 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.
5. The existing hedgerow and/or treeline along the northern boundary between Pudsey Hall Farm and the land outlined in bold on the enforcement notice plan shall be retained in its present form and not removed.
6. Within 6 months of the date of this Decision, the two caravans (including the tyres) positioned within the area outlined in bold on the enforcement notice plan shall be removed in their entirety from the landholding.
7. With the exception of the buying and selling of horses and ponies, no other commercial, industrial or business activities shall take place on any part of the site, including the storage of materials and goods.
8. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

ANNEX B: SCHEDULE OF CONDITIONS

Appeal C:

1. 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 any subsequent definition that supersedes that document).
2. No more than four caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended, shall be stationed on the site at any one time, comprising no more than two static and two touring caravans.
3. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within 3 months of the date of this decision a scheme with details for:
 - (a) the internal layout of the site including the extent of the residential pitch/es, the location of the caravans and vehicle parking, any buildings, hard standings and external lighting;

- (b) all boundary treatments and all other means of enclosure (including internal sub-division) and incorporating the retention (and augmentation where necessary) of the existing hedgerow around the entirety of the site;
- (c) hard and soft landscaping and screen planting including details of species, plant sizes and proposed numbers and densities;

(hereafter referred to as the 'site development scheme') shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved site development scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

4. Subject to the details of the site development scheme required by condition 3, the development hereby permitted shall be carried out in accordance with the following approved drawings: J002933-DD01 REV A, J002933-DD02, J002933-DD03 REV B, J002933-DD04.
5. At the same time as the site development scheme required by condition 3 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.
6. The existing hedgerow and/or treeline along the northern boundary between Pudsey Hall Farm and the site and the land edged in blue on the site location plan (drawing no: J002933-DD01 REV A) shall be retained in its present form and not removed.

7. Within 6 months of the date of this Decision, the two caravans (including the tyres) positioned within the area edged blue on the site location plan (drawing no: J002933-DD01 REV A) shall be removed in their entirety from the landholding.
8. With the exception of the buying and selling of horses and ponies, no other commercial, industrial or business activities shall take place on any part of the site, including the storage of materials and goods.
9. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

-END-