
Appeal Decisions

Inquiry Held on 19 May 2021 and 13-14 July 2021

Site visit made on 16 July 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2021

Appeal A Ref: APP/B1550/C/18/3212763

Land opposite 2 Goldsmith Drive, Rayleigh, Essex SS6 9QX

- 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 Martin O'Brien 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 laying of hard-standing for the formation of an access roadway off Goldsmith Drive measuring approximately 72 metres long and 3.5 metres wide joined onto a further area of hard-standing measuring approximately 40 metres by 32 metres (all hardstanding shown in the approximate location hatched on the attached plan).
- The requirements of the notice are:
 1. Break up and remove all the hard standing, resultant materials and debris from the land.
Time: 9 months from the date the enforcement notice takes effect
 2. Level the land with topsoil and reseed with grass seed.
Time: 1 month after compliance with step 1 above.
- The period for compliance with the requirements is 10 months.
- The appeal is proceeding on the grounds set out in sections 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeal B Ref: APP/B1550/C/18/3215500

Land opposite 2 Goldsmith Drive, Rayleigh, Essex SS6 9QX

- 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 Martin O'Brien against an enforcement notice issued by Rochford District Council.
- The enforcement notice was issued on 8 October 2018.
- The breach of planning control as alleged in the notice is
 1. The unauthorised use of land for residential purposes as a gypsy and travellers site.
 2. The stationing of caravans (static and touring) for human habitation shown in the approximate position labelled S and T.
 3. The parking of vehicles in association with the use of site as a gypsy and traveller site.
 4. The installation of a septic tank on the land in the approximate position labelled A.
- The requirements of the notice are to:
 1. Cease the residential use of the site as a gypsy and traveller site.
 2. Cease the use of the land for the stationing of caravans (static and touring) for human habitation.
 3. Remove all caravans (touring and static) and associated vehicles from the land.
 4. Remove the portable toilet and shower from the land.

Time: 9 months from the date the enforcement notice takes effect.

5. Remove from the land, the septic tank then infill the resultant hole with soil to restore the land to the condition before the breach took place.
6. Remove all close boarded fence erected in the approximate position marked A to B
7. Remove all domestic paraphernalia from the site such as waste collection bins.

Time: 1 month after compliance with step 1 to 5 above.

- The period for compliance with the requirements is 10 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal C Ref: APP/B1550/W/18/3212735

Land opposite 2 Goldsmith Drive, Rayleigh, Essex SS6 9QX

- 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 Martin O'Brien against the decision of Rochford District Council.
 - The application Ref 17/01240/FUL, dated 21 December 2017, was refused by notice dated 19 September 2018.
 - The development is proposed use of land as family Traveller Site comprising of 2 mobile homes, a day room and touring caravans together with access, hardstanding and installation of cesspit on land opposite.
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Decisions

Appeal A

1. Appeal A is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act

Appeal B

2. It is directed that the enforcement notice is corrected by:
 - the deletion of the words 'septic tank' from the fourth alleged breach of planning control and the fifth requirement and their substitution with the word 'cesspit',
 - the substitution of the plan annexed to this decision for the plan attached to the enforcement notice,
 - the replacement of the reference to 'marked A to B' with 'marked XY' in the sixth requirement, and
 - the substitution of the phrase 'steps 1 to 4' for 'step 1 to 5' in section 5.
3. Subject to the corrections Appeal B is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely:
 - the use of land for residential purposes as a gypsy and traveller site;
 - the stationing of caravans (static and touring) for human habitation shown in the approximate position labelled S and T;

- the parking of vehicles in association with the use of site as a gypsy and traveller site; and
- the installation of a cesspit on the land in the approximate position labelled A.

and subject to the planning conditions set out in Annex 2.

Appeal C

4. Appeal C is allowed, and planning permission is granted for a material change of use of the land to use as a Traveller Site, comprising 2 mobile homes and touring caravans, the construction of a dayroom building together with access, hardstanding and cesspit at Land opposite 2 Goldsmith Drive, Rayleigh, Essex SS6 9QX in accordance with the terms of the application, Ref 17/01240/FUL, dated 21 December 2017 and the plans submitted with it, subject to the planning conditions set out in Annex 1.

Application for costs

5. Two applications for costs have been made by the appellant against Rochford District Council. These applications are the subject of a separate Decision.

Procedural Matters

6. At the inquiry I established that the correct spelling of the appellant's surname was with an 'e' and I have used this spelling in my Decision Letter.
7. The inquiry opened on 19 May 2021 but was subsequently adjourned to allow time for clear and complete notification of interested parties. The inquiry resumed on 13 July 2021.
8. The description of development as set out on the planning application form is not the same as used by the Council on its Decision Notice in respect of the refusal of planning permission. Nevertheless, the appellant has referred to the amended description in his appeal documents. However, it does not refer to a 'material change of use of the land' which needs to be included so as to accurately describe the development or clarify that the day room is a building and not another caravan. Thus, I shall amend the description further as follows:

'A material change of use of the land to use as a Traveller Site, comprising 2 mobile homes and touring caravans, the construction of a dayroom building together with access, hardstanding and cesspit'.

This amendment does not cause any injustice to the parties and I have used this description in my consideration of Appeal C.
9. I have referred to the notice issued on 13 August 2018 as Notice A and that issued on 8 October 2018 as Notice B in my decision.
10. On 20 July 2021 the Government published its revised National Planning Policy Framework (the revised Framework). The revised Framework replaces the previous version published in February 2019. Policies within the revised Framework are material considerations which should be taken into account for decision-making from the day of its publication. Consequently, I have given the

main parties the opportunity to make comments on the relevance of the revised Framework to the matters which have been raised by the appeals. I have not received any comments from either party.

11. The site would be occupied by people who meet the definition of gypsies and travellers as set out in the Planning Policy for Traveller Sites (PPTS) and that the PPTS is material to the consideration of the appeals. Matters relating to human rights, the public sector equality duty and the best interests of children are integral to my decision and I have concluded on them in my determinations of the appeals.

The Notice (Appeal B only) and Appeal B – Ground (b)

12. Following the adjournment of the inquiry in May the Council contacted the appellant and suggested two changes to enforcement Notice B which is the subject of Appeal B. The Council accepted that, as the appellant argued, a cesspit and not a septic tank has been installed at the site and it suggested that the notice be amended to refer to this facility.
13. The Council also noted that although there is reference to the removal of a close boarded fence at requirement 6 of the notice the fence was not shown on the enforcement plan and not identified using the A to B annotation as set out on the notice. An amended plan has been submitted, which identifies the fence by an X-Y annotation.
14. The appellant said he would adopt a neutral stance in respect of these suggested changes to the notice, but he accepted that they needed to be made and that he would not be prejudiced by me making the changes.
15. There is also an inconsistency in section 5 of the notice where 'step 1 to 5 above' is stated but there are four steps. This appears to me to be a typographical error which can be corrected.
16. I consider that neither of the main parties would be prejudiced by my making corrections to the notice as suggested by the Council and to address the inconsistency in section 5. Furthermore, from my consideration of the issues raised by interested parties none of them would be prejudiced either. On this basis I shall make the corrections and consider Appeal B in respect of the notice as corrected.
17. The appellant's appeal under ground (b) relates only to the reference to the installation of a septic tank in Notice B. As I have referred to above the Council has accepted that Notice B is incorrect in this regard and I have corrected Notice B accordingly. On this basis, I conclude that Appeal B succeeds on ground (b) but Notice B can be corrected without injustice therefore it is not necessary for the notice to be quashed.

Appeal C

Main Issue

18. There is no dispute between the parties that the site is in the Green Belt and, in accordance with Policy E of the PPTS, the development is of a form which constitutes inappropriate development in the Green Belt. Given the evidence before me in respect of the location of the site and the nomadic way of life,

which is being carried out by the appellant, I also conclude that the appeal relates to inappropriate development in the Green Belt. Therefore, the main issue is:

- The effect of the development on the openness of 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

Background

19. The Council refused planning permission for the use of the land and the stationing of two mobile homes, day room and touring caravans together with access, hardstanding and cesspit. From my observations during my site visit, although the use of land has commenced and an access drive and cesspit installed, the two mobile homes are not in the locations shown on the submitted plans, there is only one tourer on the site but it too is not in the location shown on the plan, the hardstanding is more extensive than is indicated on the plans and the day room has not been constructed.

The effect on the Green Belt

20. The revised Framework identifies the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence. The openness of the Green Belt can have a visual as well as a spatial aspect.
21. Policy GB1 of Rochford District Council – Local Development Framework Core Strategy Adopted Version (2011) (the Core Strategy) seeks to direct development away from the Green Belt as far as practicable and prioritises the protection of Green Belt land based on how well the land helps achieve the purposes of the Green Belt. This policy is in broad accordance with the revised Framework.
22. The appellant's witness who dealt with the Landscape and Visual Effects of the development (the landscape witness) carried out a Landscape Visual Impact Assessment (LVIA) and he concluded that the development would not harm the character and appearance of the appeal site or the surrounding area. However, this is not the test which is required to be considered in the light of the Council's reasons for refusing the planning application.
23. The reason for refusal relates only to the introduction of inappropriate development in the Green Belt in the absence of exceptional circumstances for doing so. A consideration of the effect of the development on the character and appearance of the site and its surroundings is unnecessary to address the reason for refusal. However, the LVIA does refer to the openness of the Green Belt being adversely affected by the introduction of mobile homes and a dayroom onto the land. This is the relevant test and the LVIA provides confirmation that the appellant accepts that there will be harm to the openness of the Green Belt as a consequence of the development.

24. There is a dispute between the parties in relation to the baseline condition of the land against which any impacts on the openness of the Green Belt should be assessed. The appellant alleges that there was some fly tipping on the site, while the Council says that it is not aware that that was the case. Also, the appellant argues that as the fencing which has been erected around the perimeter of the site is not referred to in the enforcement notices, and could be permitted development, it should also form part of the baseline condition of the land.
25. Whilst the Council officer said that she regularly visited Goldsmith Drive her notes and photographs relating to her visits to the appeal site are dated from 16 July 2018 when the development had commenced. The aerial photographs are not sufficiently detailed to establish whether or not there had been any fly tipping on the land. The LVIA was carried out in December 2020 and the only reference to fly-tipping does not relate specifically to the site.
26. Given the level of local interest, it is more likely than not that any significant levels of fly tipping or other activities would have been drawn to the attention of the Council by local residents. There is no evidence of this, and fly tipping is not an issue raised by interested parties in their submissions.
27. Drawing these strands together, whilst the absence of fly tipping has not been shown categorically, there is no substantive evidence to demonstrate that the site was anything other than an open, undeveloped site containing natural features such as hedges prior to the alleged unauthorised development being carried out.
28. In respect of the boundary treatment, a close boarded fence has been erected along the rear boundary and part of the side boundaries and post and rail fences have been erected along the side and front boundaries and to define the edges of the access track. To the rear of the site the close boarded fence is positioned in dense undergrowth adjacent to a bridleway. In the summer months the trees and shrubs themselves screen the site from this direction but in the winter months the solid fence would be more visible and take on a more active role in screening the caravans and associated activities from view.
29. The close boarded fence along the side boundaries would have a more enclosing effect year round but it is set back from Goldsmith Drive and is not a prominent feature. The post and rail fences which are the predominant form of boundary treatment on the site, by virtue of their design, allow open views into the site.
30. In this case the fences which have been erected would not have had an adverse visual effect on the open, undeveloped land which I consider likely to have been the condition of the site prior to any development.
31. The plans which accompanied the planning application show two mobile homes, touring caravans and a day room with a pitched roof. A 1.8 metre high close boarded fence is shown perpendicular to the side boundary to separate the caravans from the retained open area fronting Goldsmith Drive. A driveway is shown on the plan as running close to one of the side boundaries providing access to the caravans which would be positioned parallel to the rear boundary.

32. The appellant pointed out during the inquiry that the layout of the site is not necessarily fixed by the submitted plans and that a planning condition to secure a site development scheme would allow flexibility. The Council has no objections to the imposition of such a condition. The landscape witness put forward an alternative layout for the site (the alternative layout) and confirmed that the configuration of caravans and the day room and the landscaping features shown could be accommodated on the site.
33. The development which has been carried out on the site differs from that shown on the submitted plan and the alternative layout for the site, and for which planning permission is sought. However, a material change of use has occurred, and I saw during my site visit that the development has a significant visual impact on the site. The proposed development would involve the erection of a day room and a more extensive area of hardstanding is shown on the alternative layout. The removal of the close boarded fence to the rear of the site and the additional landscaping proposed would have a beneficial effect on views of the site particularly when seen from the bridleway in the winter months. However, it would not overcome the fact that the hardstanding, access, caravans and a building would introduce a footprint and volume of development onto the site where previously there was none. In doing so the development, which would occupy a substantial area of the site, would have a significant harmful effect on the openness of the Green Belt.
34. The retention of the field to the front of the site, the additional native planting belt to the rear and the fence and hedging in the central part of the site shown on the plans, in combination with the separation distance between the caravans/dayroom and Goldsmith Drive would reduce the visual impact of the development.
35. It was accepted at the inquiry by the appellant that it would not be completely screened and that there would be glimpsed views of the development. Whilst I agree that this is consistent with the need to ensure that gypsy and traveller sites are integrated with the local community, the development would nevertheless introduce caravans and a building, car parking and hardstanding and domestic features onto a site which was previously of a natural, albeit possibly overgrown, appearance. Such an impact would be harmful to the openness of the Green Belt.
36. From my consideration of the LVIA and other evidence provided to the inquiry, and my observations during my site visit, I conclude that the development would have a significantly harmful effect on the openness of the Green Belt.

Other considerations

The need for gypsy and traveller sites

37. The Council is not disputing that there is a need for gypsy and traveller sites in the district and whilst the officer could not readily provide a figure relating to the level of need, he described it as significant. On this basis the need for gypsy and traveller sites attracts significant weight in favour of the appeal scheme.

The supply of gypsy and traveller sites

38. The PPTS states that, in producing their Local Plans, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.
39. Policy H7 of the Core Strategy says that the Council will allocate 15 gypsy and traveller pitches by 2018. Subsequently a site for gypsy and traveller accommodation was identified in the Rochford District Council – Local Development Framework – Allocations Plan (2014) (the Allocations Plan). The relevant policy in the Allocations Plan is Policy GT1 and the allocated site was referred to as the Michelins Farm site at the inquiry.
40. The Council witness confirmed that although he had recently learned that there was potential for the Michelins Farm site to be the subject of a compulsory purchase order, there was no certainty that the site would move forward. He explained that options were going to be considered, potentially in September 2021, for addressing the supply of sites, and that this has been hampered by other factors including staff availability in the Council's planning policy team. In summary while the Michelins Farm site, which is the only allocated site, has not been ruled out by the Council, there is no certainty that it will deliver the necessary supply of sites and there are no other options currently available.
41. The Council officer also confirmed that the Council has no criteria based policy which would address 'windfall' sites, neither had it had such a policy for several years. Taken together with the significant and as yet unresolved delay in bringing forward the Michelins Farm site, this amounts not only to an absence of supply of sites but also a failure in terms of policy provision. These factors also weigh significantly in favour of the development.

Availability (or lack) of alternative accommodation

42. The appellant explained that prior to his occupation of the site he had been staying at his brother-in-laws site at Hogbar Farm, Romford. However, despite more pitches coming available at that site, he could not move back there as the newly authorised pitches are needed by his brother-in-law's immediate family and occupation by his family as well would lead to overcrowding. Similarly, there is insufficient space for him and his family at sites occupied by two of his daughters.
43. The appellant's business requires him and his son to drive pick-ups and tow tipper trailers. These vehicles, combined with two private cars, result in a shared site being undesirable and the appellant wishes to find a site of suitable size to meet his family's needs. He says that the appeal site meets his needs.
44. In terms of affordability of an alternative site, the appellant explained that initially he was going to purchase the appeal site jointly with a family member but that this fell through and he borrowed money from his family to be able to complete the purchase. He confirmed at the inquiry that he could not afford to go through the process of purchasing another site even were one to become available.
45. The Council do not dispute the appellant's claims that it is 'pointless' going on the waiting list for public sites as such sites in Essex are overcrowded and there is no likelihood of getting a pitch.

46. No specific alternative sites have been drawn to my attention by the Council and although interested parties refer to the availability of space on other sites there is no substantive evidence of this. I do not find that any of the options before the appellant are suitable, affordable, acceptable, or available such as to amount to a realistic alternative. On this basis, as he says, if the appellant and his family could not remain on the site, he would have no alternative than to adopt a roadside existence.
47. The lack of available alternative accommodation attracts significant weight in favour of the appeal scheme.

Personal circumstances of the appellant

48. The development allows for a family to live together and in close proximity to other family members enabling them to provide support for each other, which is acknowledged as of importance to the gypsy and traveller community. The site also provides a stable base from which the residents can access essential services such as education and healthcare.
49. In terms of education the appellant is keen that his family have better access than he and his wife and their older children have experienced. His youngest child is approaching adulthood and she is being home-schooled by a tutor. There are no plans for her to attend school locally, however the appellant said that the tutor would not be able to visit if the family were on the road. The only other child on the site has not yet reached school age but the appellant aspires to have his grandchild access early years education so as to be in a better position to then attend mainstream school.
50. The appellant's daughter could access the tutor from another site, therefore it is not necessary for her to live in this particular location to receive support from her tutor or to attend a local school. As there are no other school age children on the site at the moment, access to a school in the area is not a key consideration in terms of the current best interests of the children, although that need will change over time.
51. With regard to access to healthcare services both the appellant and his wife have health conditions which mean it would be beneficial for them to have access to a GP. The appellant's wife has been registered with the doctor for some time but the appellant more recently. There is no evidence before me to suggest that the appellant's son and his wife who also live on the site require regular access to health services, but they have a young baby, who though not having any particular health issues, like all small children would benefit from access to healthcare.
52. It would be beneficial for all the residents of the site to be able to access healthcare. However, in terms of the specific needs of the children, there is no evidence before me that as a consequence any health conditions they need regular or specialist access to a particular doctor or hospital.
53. The residents of the site do not have any special requirements in terms of access to education and healthcare. However, given that no alternative, available and affordable sites have been identified the likelihood is that the family would have to resort to life on the road in the event that they were unable to stay on the site. Such an existence in itself presents challenges in

terms of maintaining a good standard of health and wellbeing and is not in the best interests of the children.

54. Taking account of all of these factors, the personal circumstances of the appellant and his family, including the best interests of children, weigh significantly in favour of the development.

Other appeal decisions

55. The appellant referred to a number of other appeal decisions which he considered to be of relevance to my decision on the current appeal. Of particular relevance are three appeal decisions relating to other proposals for gypsy and traveller sites within Rochford district. Two of these decisions were also referred to in the Council's committee report of August 2018 (Appeal Ref. APP/B1550/C/16/3162651 at The Pumping Station, Watery Lane, Rawreth and Appeal Ref. APP/B1550/W/17/3174424 at Land south of Woodville, Hullbridge Road, Rayleigh).
56. The third appeal decision (Appeal Refs APP/B1550/W/18/3209437, C/18/3209438 and C/18/3209439 at Pudsey Hall Lane, Canewdon), was issued on 10 February 2021, well after the Council determined the planning application, which is the subject of the current appeal, and was not, therefore referred to in the committee report. The appellant subsequently asked the Council if it would be open to a fresh application being submitted in the light of the Pudsey Hall Lane decision. The Council response was that the appeal should proceed as planned.
57. All three of the appeal decisions referred to by the appellant related to cases in the Green Belt where other considerations outweighed harm to the Green Belt. A common factor in each case was the failure of the Council to provide for gypsy and traveller sites. As such these decisions illustrate that previous inspectors were considering the same issues which are before me.
58. The Inspector in the Pudsey Hall Lane decision, which was considered in detail at the inquiry, refers to the Council's acknowledgement that it has not delivered on CS Policy objective H7. It will be seen from the foregoing that, although there may be signs of some movement the Council's position in terms of meeting the need for sites, the situation has not fundamentally changed since the Pudsey Hall Lane decision was made.
59. The Inspector in the Pudsey Hall Lane decision also concluded that in order to meet the need for gypsy and traveller sites in the district Green Belt will have to be de-allocated. The Council confirmed at the inquiry that the Green Belt washes over the whole district bar a Ministry of Defence site, thus it is reasonable for me to reach the same conclusion.
60. In the same vein, the Inspector in the Pudsey Hall Lane decision concluded that there has been an unequal approach to site delivery between the settled population and the gypsy and traveller community. The Council's witness confirmed at the inquiry that although permission has recently been refused against officer recommendation for residential development in Ashingdon the district can still identify a five year supply of housing land. By contrast the Council's witness said that the Council has never had a five year supply of

gypsy and traveller sites. Consequently, the disparity between the provision of bricks and mortar houses and pitches for gypsies and travellers persists.

61. The Council did not challenge the decisions made by those previous inspectors and has not provided any contrary decisions where the appeal was dismissed. It has also not presented any substantive arguments to counter the appellant's argument that those appeals are comparable with the appeal before me and that the appeal decisions should be afforded weight in favour of his appeal.
62. I do not have the same detailed information before me as was before the other Inspectors and it is essential that each decision is made on its own merit. I can also see from the appeal decisions that there are differences in terms of the personal circumstances of the appellants. Nevertheless, the circumstances set out in the three appeal decisions referred to by the appellant are closely aligned to those which are before me in the current appeal.
63. There is no other evidence before me to lead me to reach different conclusions on the issues than those reached by other inspectors. As such allowing the appeal would be consistent with those previous decisions.
64. The other appeal decisions referred to by the appellant are in other parts of Essex and further afield. As such while they demonstrate that in other cases gypsy and traveller sites have been permitted in the Green Belt and that there is wider need for sites across Essex, the context in terms of need and supply of sites and planning policy is not fully comparable to the situation in Rochford District. Nevertheless, there is again no evidence to suggest that I should not reach the same conclusions as those inspectors where the issues are the same.

Matters raised by interested parties

65. There were no interested parties in attendance at the inquiry, but a significant number of local residents wrote to the Council in relation to the application for planning permission.
66. I have already addressed some of the issues raised by third parties in terms of the availability of alternative sites, the need for and supply of gypsy and traveller pitches and the effect on the Green Belt. I have considered the 'other matters' raised by interested parties below.
67. Some interested parties point out that works were carried out on the site in advance of planning permission being granted and reference is made to intentional occupation of land without planning permission being a material consideration. Although the Council have not pursued an argument in relation to intentional unauthorised development (IUD), this matter is referred to in the Council's committee report and the appellant has had the chance to explain his actions.
68. A Written Ministerial Statement (WMS) dating from August 2015 establishes that IUD is a material consideration to be weighed in the determination of planning applications and appeals. The WMS relates to all forms of development not just that relating to gypsy and traveller sites and places particular emphasis on IUD in the Green Belt.
69. In this case the appellant had submitted a planning application prior to commencing work on the site. The application had been under consideration by

the Council for over six months when the appellant started work on the site. Under cross examination the appellant admitted that he was frustrated by the length of time which the application was taking to be dealt with but that he was chiefly motivated to occupy the site because he urgently needed a site for his family and new laws meant that there were more restrictions over the occupation of other places.

70. The appellant was clearly aware of the need for planning permission as he had submitted a planning application. He has not constructed the day room and the facilities available to him and his family on the site are the minimum necessary to provide for a habitable environment for his family.
71. Bringing all of these points together I find that IUD has occurred but the weight which I attach to this is reduced by the fact that the appellant had submitted a planning application which had been under consideration for some months, he had no alternative site and that he has limited the amount of development which he has carried out. Consequently, IUD attracts limited weight against the appellant's case that planning permission should be granted.
72. Some of the interested parties referred to drainage issues on the site and the unsuitability of a cesspit in this regard. However, there is no substantive evidence to support these contentions. Others referred to services being accessed via land which is not in the control of the appellant. However, this is a civil matter.
73. Interested parties also raised concerns about the suitability of the access and highway network for caravans and commercial vehicles and also access by emergency vehicles. However, there is no substantive evidence of an adverse impact arising in highway safety terms or to demonstrate that emergency vehicles would have difficulty accessing the area and I note that the Highway Authority did not raise any concerns when the Council considered the application. In the event that planning permission is granted a planning condition could be included to restrict the size of vehicles which can access the site to protect the amenity of local residents.
74. The development has introduced activity onto the site and resulted in the removal of vegetation. Some interested parties are concerned about the impact of this on wildlife including nesting birds and protected species such as slow worms and newts. However, the Council did not raise any concerns in this regard and the appellant confirmed at the inquiry that there was no evidence of protected species being present on the site. On this basis, while there may have been some adverse impact on wildlife as a result of the development there is no substantive evidence before me to establish that protected species have been affected or that wildlife generally has not or would not successfully relocate to other plots within the vicinity of the site.
75. With regard to the objections raised by interested parties on the grounds of reduction in property values, the courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be a material consideration.
76. Taken together the 'other matters' raised by the interested parties do not attract weight either for or against the proposal.

Green Belt balance

77. I have found significant harm to the Green Belt in relation to openness and I am mindful that, by virtue of paragraph 148 of the revised Framework substantial weight should be given to any harm to the Green Belt. Furthermore, in accordance with the WMS, I have also found that intentional unauthorised development (IUD) has taken place, but I have concluded that in this case the IUD factor attracts limited weight.
78. In favour of allowing Appeal C, I attach significant weight individually to the need for gypsy and traveller sites, the lack of supply of sites particularly the uncertainty in bringing forward the only allocated site, the policy failure, the lack of available alternative accommodation for the appellant and his family and the accessibility to health and education services which a stable base provides in contrast to a roadside existence.
79. I arrived at the same conclusions as the Inspector in the Pudsey Hall Lane decision with regard to the inevitability of the loss of Green Belt to accommodate the need for sites and the unequal approach to site delivery between the settled population and the gypsy and traveller community. The other appeal decisions relating to cases in the District also reaffirm the ongoing policy failure and lack of sites/supply.
80. The best interests of the children are a primary consideration, and no other consideration is inherently more important, however, they are not a determinative factor. In this case the best interests of the children who reside on the site weigh significantly in favour of allowing the appeal and granting planning permission.
81. The revised Framework establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development, such as the appeal scheme, is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Policy E of the PPTS states that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm.
82. The revised Framework also makes it clear that the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the development must be clearly outweighed by other considerations for planning permission to be granted. In this case I find that there are a number of matters which weigh significantly in favour of the appellant together with the outcome of relevant appeal decisions with which my conclusions are consistent. Thus, the cumulative weight of these other considerations clearly outweighs the substantial harm arising from inappropriateness and loss of openness in the Green Belt in combination with the IUD.
83. Taking the case as a whole, I find that the combined weight of the 'other considerations' clearly outweigh the totality of the harm, such that very special circumstances exist in this case which lead me to consider that the appeal should be allowed. The very special circumstances derive from my duty to have regard to the needs of the gypsy and traveller community which are protected characteristics and also that in terms of the effect on this family their forced relocation from the site would be a disproportionate response in this case.

84. My conclusion is that the very special circumstances that are necessary to justify inappropriate development in the Green Belt exist in this case. It follows that in terms of Policy GB1 of the Core Strategy it is not practicable to direct this particular development away from the Green Belt and in this respect the development accords with Policy GB1.

Conditions

85. The appellant provided a draft list of planning conditions which was discussed at the inquiry and the Council indicated its agreement to the conditions if I am minded to allow any of the appeals. Any planning conditions which I impose must also meet the tests set out in the revised Framework, which includes that they are necessary. I have made alterations to the suggested conditions to ensure that they meet those six tests.
86. The development has commenced by virtue of the change of use of the land therefore a time limit condition has not been suggested and is not necessary in this case.
87. My decision has been made on the basis that the future occupiers of the site will be gypsies and travellers. Therefore, it is necessary to control the occupancy of the site (Condition 1). I have also placed weight on the personal circumstances of the appellant and his family therefore it is necessary and reasonable to attach a 'personal' condition which also limits occupation of the site (Condition 2). Condition 3 addresses the need to restore the site to its condition before the development took place if it ceases to be occupied by those named in Condition 2.
88. The advantages of including a condition to secure a site development scheme were discussed at the inquiry and agreed by the parties. In the light of the potential for an alternative layout such as that produced by the appellant's landscape witness, I have included such a condition (Condition 4). This condition addresses the internal layout of the site, including any amenity or open areas, boundary treatment, external materials for the day room, drainage and landscaping. Allied to condition 4 is condition 5 which secures the maintenance of the landscaping.
89. Since the grant of planning permission is for use of land as a caravan site it is necessary to condition the maximum number of caravans and types of caravans on the site (Condition 6).
90. As there is an extensive open area within the site and hard standing for parking and turning it is necessary to control the potential for adverse effects arising from the use of these areas on the amenity of neighbouring residents and users of Goldsmith Drive and its junction with Hullbridge Road. For that reason, I have included a condition to limit the size of any vehicles kept on the land (Condition 7). The suggested condition to preclude, with the exception of the buying and selling of horses, any commercial, industrial, commercial, or business activities on the site is unnecessary because planning permission would be needed if there was any material change from the use granted planning permission. Consequently, I have not included that condition.

91. Condition 8 requires the development to be carried out in accordance with the submitted plans, which provides certainty, but is phrased to permit the flexibility allowed for by condition 4.

Conclusion on Appeal C

92. For the reasons set out above I conclude that Appeal C should succeed, and planning permission should be granted, subject to conditions.

Appeal A – Ground (a) and the Deemed Planning Application (DPA)

93. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted. The DPA is derived from the breach of planning control as set out in the notice. In this case if I were to allow Appeal A and grant the associated DPA, planning permission would be granted for the following development:

‘the laying of hard-standing for the formation of an access roadway off Goldsmith Drive measuring approximately 72 metres long and 3.5 metres wide joined onto a further area of hard-standing measuring approximately 40 metres by 32 metres (all hardstanding shown in the approximate location hatched on the attached plan)’

94. The description of development set out in the notice and forming the basis for the DPA does not refer to the use of the land for a gypsy and traveller site or state that the works are to facilitate such a use of the land. On this basis I have considered the hardstanding as an engineering operation in its own right, whilst in practical terms it now serves as access to a Traveller site.

Main issues

95. The site is within the Green Belt therefore the main issues are:

- Whether the proposal would be inappropriate development in the Green Belt having regard to the revised Framework and any relevant development plan policies.
- The effect on the openness of the Green Belt.
- 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.

Reasons

96. The revised Framework identifies the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence. The openness of the Green Belt can have a visual as well as a spatial aspect.
97. Policy GB1 of the Core Strategy seeks to direct development away from the Green Belt as far as practicable and prioritises the protection of Green Belt land based on how well the land helps achieve the purposes of the Green Belt. This policy is in broad accordance with the revised Framework.

Whether inappropriate development/effect on openness

98. Paragraph 150 of the revised Framework sets out that engineering operations are not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. In this case, of itself the hardstanding does not affect the spatial aspect of the Green Belt. However, it does have a visual impact.
99. I concluded in my consideration of Appeal C that there was no substantive evidence to demonstrate that the site was anything other than an open, undeveloped site containing natural features such as hedges prior to the alleged unauthorised development being carried out. The hardstanding which forms the access to the rear part of the site is clearly visible from Goldsmith Drive and appears at odds with the open green space on the site frontage and has introduced a hard urban form into what was a natural area. The screening effect of the fence which has been erected in the middle of the site reduces the visual impact of the hardstanding area on the rear part of the site. However, this does not overcome the visually harmful effect of the access driveway or the sense that the driveway serves a larger area of hardstanding behind the fence.
100. I conclude that the hardstanding has a significantly harmful effect on openness, consequently it amounts to inappropriate development in the Green Belt.

Other considerations

101. The other considerations which applied to Appeal C generally do not apply in the case of Appeal A because of the absence of a link between the provision of the hardstanding and the use of the land as a gypsy and traveller site. The exception is the commencement of works prior to the determination of the planning application, which included the hardstanding.
102. I consider the hardstanding which is the subject of Appeal A to be a freestanding development. Consequently, without the justification associated with the gypsy and traveller use, the fact that the hardstanding amounts to intentional unauthorised development (IUD) attracts significant weight against the appellant's case that planning permission should be granted.

Green Belt balance

103. I have found significant harm to the Green Belt in relation to openness, consequently the engineering works which have been carried out amount to inappropriate development in the Green Belt. I am mindful that, by virtue of paragraph 147 of the revised Framework that inappropriate development is by definition harmful to the Green Belt and that under paragraph 148 substantial weight should be given to any harm to the Green Belt. Furthermore, I have also found that intentional unauthorised development (IUD) has taken place which attracts significant weight.
104. I have not found any factors in favour of allowing Appeal A, consequently the harm which I have identified is not clearly outweighed by other considerations, therefore the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in this case. It follows that the development is also contrary to Policy GB1 of the Core Strategy.

Conclusion on Appeal A – Ground (a) and the DPA

105. For the reasons set out above I conclude that Appeal A should not succeed on ground (a) and that the DPA should not be granted.

Appeal B – Ground (a) and the Deemed Planning Application (DPA)

106. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted. The DPA is derived from the breach of planning control as set out in the notice. In this case, as I have corrected the notice, if I were to allow Appeal B and grant the associated DPA, planning permission would be granted for the following development:

- '1. The use of land for residential purposes as a gypsy and traveller site.
2. The stationing of caravans (static and touring) for human habitation shown in the approximate position labelled S and T.
3. The parking of vehicles in association with the use of site as a gypsy and traveller site.
4. The installation of a cesspit on the land in the approximate position labelled A'

107. With the exception of the omission of the day room, access and hardstanding the development which is the subject of Appeal B is the same as that which I considered under Appeal C.

108. Because the development includes change of use to a gypsy and traveller site, the PPTS is relevant in this case. Consequently, the main issue is the same as was the case for Appeal C, as follows:

- The effect of the development on the openness of 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

The effect on the Green Belt

109. The revised Framework identifies the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence. The openness of the Green Belt can have a visual as well as a spatial aspect. Policy GB1 of the Core Strategy is in broad accordance with the revised Framework.

110. The omission of the day room building from the Appeal B development reduces the spatial and visual impact on the Green Belt to a limited degree compared with the Appeal C scheme. Therefore, I shall adopt the reasoning set out above in relation to Appeal C. It follows that the Appeal B development, by virtue of the fact that it would introduce caravans and vehicle parking onto a previously undeveloped natural appearing site, would have a significantly harmful effect on the openness of the Green Belt.

Other considerations

111. The other considerations which were before me in terms of my determination of Appeal C apply equally to my consideration of Appeal B. Consequently, I shall adopt the same outcome in relation to the Green Belt balance and conclude that, in respect of Appeal B, that the very special circumstances that are necessary to justify inappropriate development in the Green Belt exist in this case. It follows that in terms of Policy GB1 of the Core Strategy it is not practicable to direct this particular development away from the Green Belt and in this respect the development accords with Policy GB1.

Conditions

112. Generally, the same conditions which I have concluded are required in relation to Appeal C are necessary for the DPA for Appeal B and the conditions must pass the tests set out in the revised Framework.
113. There are no approved plans on a DPA therefore a compliance condition is not required. The detailed layout of the site can be secured by a condition to require the submission, approval and implementation of a Site Development Scheme (SDS), condition 4 addresses this requirement.
114. The SDS can also address the details of an access driveway and hard standings which it is reasonable to assume would be required to facilitate the change of use. However, the SDS cannot address the appellants requirement for a day room as this is not referred to on the notice.

Conclusion on Appeal B – Ground (a) and the DPA

115. For the reasons given above, I conclude that Appeal B succeeds on ground (a). I shall grant planning permission for the development as described in Notice B as proposed to be corrected. The appeal on ground (g) of Notice B does not fall to be considered.

Appeal A – Ground (g)

116. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of 10 months is too short in respect of the requirements of Notice A and Notice B because there is no alternative site available to him and his family. He suggests that a compliance period of 24 months would be more appropriate.
117. The Council, comments on both the appropriateness of the compliance period of Notice A individually and in conjunction with Notice B. It argues that the hardstanding was installed over a single weekend and the works could be undone in a similar period of time.
118. The lack of an alternative site is a matter which has been resolved by my determination of Appeal B and Appeal C which gives the appellant the opportunity to stay on the site. Furthermore, in the event that the hardstanding which has been constructed is agreed to be retained as part of the approved site development scheme, then it would become lawful, and the requirements and compliance period set out in Notice A would cease to have effect.

119. There is no substantive evidence to suggest to me that the unlawful status of the hardstanding could not be resolved within the 10 month compliance period. But, in any case, given that the issue of the lack of an alternative site has been resolved I do not find that there is any justification for extending the compliance period.
120. For the reasons set out above, I find that the 10 month compliance period afforded by the notice does not fall short of what is reasonable, and I conclude that Appeal A fails on ground (g).

Human Rights and the Public Sector Equality Duty (PSED)

121. The occupiers of the caravans are members of the gypsy and traveller community which is recognised as having special needs which are protected through positive obligations in terms of their human rights. Furthermore, the caravans are occupied as residential accommodation which are the homes of the appellant and his family. However, as I am allowing Appeal B and Appeal C there will be no interference with the appellants rights under the Human Rights Act 1998.
122. My determinations provide the appellant and his family with the option of remaining on the site. This advances equality of opportunity and the potential for continuing to foster good relationships with the settled community, which addresses my duty to have regard to the PSED.

Sarah Dyer

Inspector



Plan

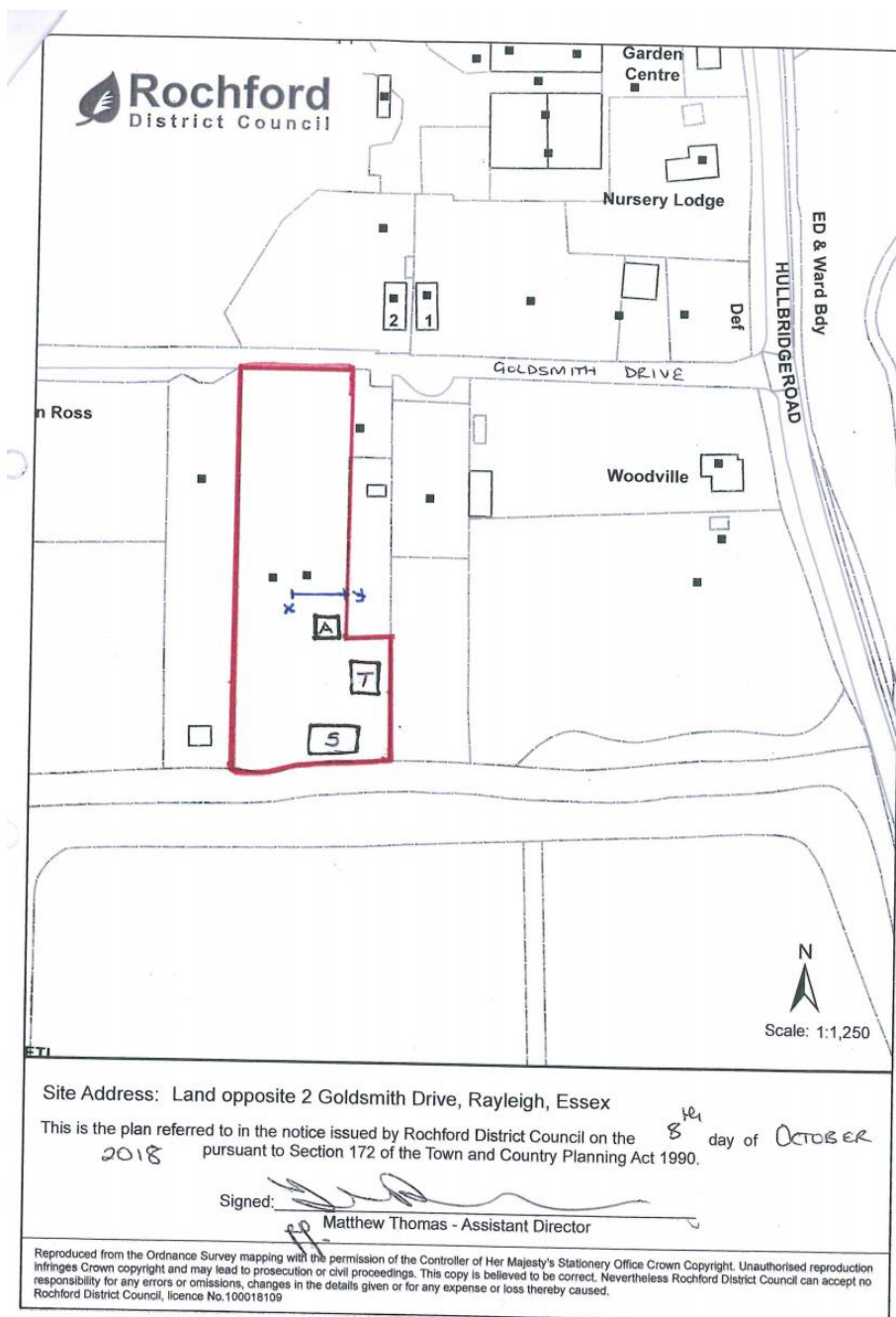
This is the substituted enforcement notice plan for that attached to the enforcement notice referred to in my decision in respect of Appeal B dated:

by Sarah Dyer BA BTP MRTPI MCMi

Land opposite 2 Goldsmith Drive, Rayleigh, Essex SS6 9QX

Reference: APP/B1550/C/18/3215500

Scale: Not to scale



Annex 1 - 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 its equivalent in replacement national policy).
2. The occupation of the site hereby permitted shall be carried on only by Martin and Mary O'Brien and William and Mary O'Brien and their resident dependents.
3. When the land ceases to be occupied by those named in condition 2 the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
4. 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 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 Site Development Scheme (SDS) shall be submitted for the written approval of the local planning authority. The SDS shall include details of:
 - The internal layout of the site, including the extent of any amenity or open areas, the position of the access driveway and the locations of caravans, vehicular parking, any buildings and hardstandings;
 - Proposed and existing external lighting on the boundary of and within the site;
 - The provision of visibility splays at the site access;
 - Foul water drainage, a programme of works and the location of the cesspit, if retained;
 - The external facing (including windows and doors) and roofing materials to be used on the proposed day room building;
 - All boundary treatment and other means of enclosure, incorporating the retention (and augmentation where necessary) of the existing planting around the entirety of the site, and including details to identify any existing boundary fencing which is to be removed;
 - Tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities. Unless identified to be removed, all existing trees and hedgerows on the land, shall be retained and the scheme shall include measures for the protection of these features throughout the course of the development; and
 - A timetable for the implementation of the SDS.
 - (ii) If within 11 months of the date of this decision the local planning authority refuse to approve the SDS 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 SDS shall have been carried out and completed in accordance with the approved timetable for the implementation of the SDS.

Upon implementation of the approved SDS 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.

5. At the same time as the Site Development Scheme required by condition 4 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of (i) the proposed planting beginning at the completion of the final phase of implementation as required by that condition and (ii) the trees and hedgerows to be retained beginning at the practical completion of the development. 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. 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 caravans and two touring caravans.
7. Save for one vehicle not exceeding 7.5 tonnes in weight, no vehicle over 3.5 tonnes in weight shall be stationed, parked or stored on the land and all vehicles shall be for use by the occupiers of the development hereby permitted only.
8. The development hereby permitted shall be carried out in accordance with the following approved plans, except where details are required to be submitted under condition 4: J002890/DD 01A, J002890/DD 03A and J002890/DD 04.

Annex 2 - 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 its equivalent in replacement national policy).
2. The occupation of the site hereby permitted shall be carried on only by Martin and Mary O'Brien and William and Mary O'Brien and their resident dependents.
3. When the land ceases to be occupied by those named in condition 2 the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
4. 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 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 Site Development Scheme (SDS) shall be submitted for the written approval of the local planning authority. The SDS shall include details of:
 - The internal layout of the site, including the extent of any amenity or open areas, the position of the access driveway and the locations of caravans, vehicular parking and hardstandings;
 - Proposed and existing external lighting on the boundary of and within the site;
 - The provision of visibility splays at the site access;
 - Foul water drainage, a programme of works and the location of the cesspit, if retained;
 - All boundary treatment and other means of enclosure, incorporating the retention (and augmentation where necessary) of the existing planting around the entirety of the site, and including details to identify any existing boundary fencing which is to be removed;
 - Tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities. Unless identified to be removed, all existing trees and hedgerows on the land, shall be retained and the scheme shall include measures for the protection of these features throughout the course of the development; and
 - A timetable for the implementation of the SDS.
 - (ii) If within 11 months of the date of this decision the local planning authority refuse to approve the SDS 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 SDS shall have been carried out and completed in accordance with the approved timetable for the implementation of the SDS.

Upon implementation of the approved SDS 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.

5. At the same time as the Site Development Scheme required by condition 4 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of (i) the proposed planting beginning at the completion of the final phase of implementation as required by that condition and (ii) the trees and hedgerows to be retained beginning at the practical completion of the development. 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. 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 caravans and two touring caravans.
7. Save for one vehicle not exceeding 7.5 tonnes in weight, no vehicle over 3.5 tonnes in weight shall be stationed, parked or stored on the land and all vehicles shall be for use by the occupiers of the development hereby permitted only.

APPEARANCES

For the appellant:

Mr Alan Masters	Counsel instructed by WS Planning and Architecture
Mr Brian Woods	WS Planning and Architecture
Mr Robert Petrow	Petrow Harley Chartered Landscape Architects
Mr Martin O'Brien	Appellant

For the Council:

Mr Michael Brett	Barrister instructed by Rochford District Council
Mr Mike Stranks	Rochford District Council
Mrs Talent Masuku	Rochford District Council

DOCUMENTS SUBMITTED TO THE HEARING

By the appellant:

1. WS Draft conditions
2. Closing submissions

By the local planning authority

3. Letter dated 21 May 2021 addressed to the appellant and attached revised plan for Notice B.
4. Opening submissions
5. Closing submissions