



Appeal Decision

Site visit made on 29 June 2021

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th OCTOBER 2021

Appeal Ref: APP/C1570/C/18/3219384

**Land to the north of Birchanger Lane, Birchanger, Bishops Stortford
CM23 5QA**

- 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 Uttlesford District Council.
 - The enforcement notice was issued on 26 November 2018.
 - The breach of planning control as alleged in the notice is the material change of use of the land for the stationing of caravans and mobile homes for residential purposes and ancillary works attached thereto without the benefit of a grant of planning permission.
 - The requirements of the notice are:
 - Cease the use of the land for residential purposes;
 - Remove the caravans and mobile homes from the site;
 - Remove any residential paraphernalia from the site;
 - Remove the earth bund;
 - Remove any waste from the site; and
 - Disconnect any services to the site.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal 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 Act as amended for the development already carried out, namely the use of the land north of Birchanger Lane, Birchanger, Bishops Stortford, CM23 5QA, as shown on the plan attached to the notice, for the material change of use of the land for the stationing of caravans and mobile homes for residential purposes and ancillary works, subject to the conditions in the Schedule attached to this decision.

Procedural Matter

2. The National Planning Policy Framework (the Framework) was revised on 20 July 2021 and the parties were given an opportunity to consider whether the revised Framework had any bearing on their cases. Both parties stated that they had no comments to make on the recent changes.

Background, site and surroundings

3. The appeal site comprises a large field in the order of 1.6ha with a short frontage to a roundabout junction to the south which serves the A120 road, the

A1250 road and Birchanger Lane. The site has a long frontage to Birchanger Lane, which borders its eastern boundary, and to the north and west the site borders the access road to a hotel and its grounds. Birchanger village is a linear settlement with sporadic development along Birchanger Lane which expands around the church and public house in the centre. The village is to the north of the site and is separated from it by open fields.

4. In addition to the hotel, also in the immediate vicinity of the appeal site is an ambulance station comprising two single storey buildings and a car parking area. Within the wider area of the site lies the M11 motorway and Stansted Airport to the east, accessed by the A120 road, and the town of Bishops Stortford to the south west, accessed by the A1250 road. The appeal site itself is accessed from Birchanger Lane via a new opening that has been formed in the boundary hedge. It is marked by solid entrance gates set well back from the lane.
5. Within the site there is currently an informal group of mobile homes and touring caravans sited mainly along the northern boundary, where a hard standing has been created. This area of occupation with the hard standing takes up approximately half the site and is separated from the southern portion by an earth bund. The southern half of the site is on higher ground, level with the roundabout, and remains as an open field. All of the site is bounded by hedgerow some of which lies adjacent to post and rail fencing but that nearest to the residential area, such as the northern boundary has been replaced by a higher solid fence.
6. The appellant and others began using the site in July 2018. This was brought to the attention of the Council who obtained an interim injunction on 27 July 2018. This prohibited any further people moving onto the land who were not already living on the site at the time of the service of the injunction.

The ground (a) appeal and the deemed planning application

Main considerations

7. It is agreed between the parties that the occupiers come within the definition of gypsies and travellers as set out in Annex 1: Glossary to the Planning policy for traveller sites 2015 (PPTS). I see no reason to take a different view, having regard to the statements from the occupiers of each pitch. I am satisfied that the heads of five of the households have a nomadic habit of life for economic purposes and that the other occupiers of the site are their dependents. The head of the remaining household has ceased to travel temporarily on the health grounds of one of their dependents. It is also common ground that the use of the site is inappropriate development in the Metropolitan Green Belt, in which it lies, as set out in paragraph 14 of the PPTS. On this basis I have identified the main considerations to be:
 - (i) the effect of the use on the openness of the Green Belt and the purposes of including land within it; and
 - (ii) whether the harm to the Green Belt and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Relevant planning policies

8. The Council rely on the policies within the Framework and the PPTS to support their case. These documents are both material considerations with the PPTS to be read in conjunction with the Framework. Paragraph 137 of the Framework refers to the great importance of Green Belts and to their essential characteristics of openness and permanence.
9. Paragraph 147 explains that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Paragraph 148 requires substantial weight to be given to any harm to the Green Belt.
10. PPTS has the same policies and paragraph 16 says 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 so as to establish very special circumstances.
11. In addition, the Council rely on their development plan. This comprises the Uttlesford Local Plan adopted 20 January 2005 (LP) and subsequently saved on 27 December 2007. The LP was independently reviewed in 2012 to assess whether it was consistent with the Framework published in March 2012. The review was adopted by the Council in September 2012.
12. Two policies are relied upon in the reasons for issuing the notice, namely Policy S6 Metropolitan Green Belt and Policy S7 The Countryside. The consistency review found that there were no implications with the wording of Policy S6 but that Policy S7 was only partly consistent with the Framework. This is because the Framework takes a positive approach to development in the countryside whereas the wording of Policy S7 takes a protective approach.
13. I find policy S7 is not relevant to the consideration of the development that has taken place. This is because within the policy it states, "The countryside to which this policy applies is defined as all those parts of the plan area *beyond* (my emphasis) the Green Belt". Policy S6 implements the Council's spatial strategy set out in the LP on where development will take place.
14. In respect of the Green Belt, the spatial strategy states a belt of countryside needs to be retained between Bishops Stortford and Stansted Airport, amongst other places, as part of the original concept of containing the urban sprawl of London. Within this area, development will only be permitted if it accords with national planning policy on Green Belts. In addition, development permitted should preserve the openness of the Green Belt and its scale, design and siting should be such that the character of the countryside is not harmed.
15. However, the actual wording of Policy S6 does not incorporate these words and only deals with development, subject to caveats, in four named villages which are surrounded by the Green Belt and four other sites within the Green Belt, where a limited amount of development will be permitted. The appeal site lies outside these areas and, as such, I find that Policy S6 is also not relevant to the consideration of the development that has taken place.

16. The parties refer to an Emerging Local Plan (ELP) dated 2019. Following stage 1 hearings, the Examining Inspectors wrote to the Council on 10 January 2020 to say that they could not find the plan to be sound due to fundamental issues. The Council sent a holding response in February 2020 stating that an Extraordinary Full Council meeting was likely to take place in March 2020 to make a decision on how to proceed. I have received no further information from the Council on the status of the ELP suffice to say, that their Statement of Case states it has "very little weight" following the Examining Inspectors' letter. I have also not been referred to any policies within this document. The appellant though advises that the ELP has been withdrawn by the Council.
17. The Council refer to other policies within their Statement of Case described as General Planning Policies in the LP and I have received copies of GEN2-Design and GEN4-Neighbourliness, amongst others. Although these policies are not referred to in the reasons for issuing the notice, nevertheless I have had regard to them. Despite their age, I also find that they are broadly consistent with the Framework.
18. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. However, for the reasons given, I find that overall, the development plan is not relevant to the consideration of the deemed application.

Openness and Green Belt purposes

19. The Parish Council says that the appeal site was used as a temporary living area for the workforce building the M11 motorway between 1975 and 1979. It appears that evidence of this use had disappeared by the time of the officer report on the 2018 application for equestrian use. This describes the site as vacant with no existing structures.
20. Following the material change of use I find there is harm to the Green Belt openness from the introduction of mobile homes, touring caravans, hardstanding, fencing, gates, vehicles and domestic paraphernalia. This harm is largely unseen from the roundabout and from along part of Birchanger Lane due to the location of the structures within a dip in the site and the overgrown earth bund. Other than when seen from near the entrance and approaching from the south, the development is well screened by hedgerows, although during autumn and winter wider views may be possible. Whilst the earth bund is a man-made structure, I find its current appearance has little effect on the openness of the Green Belt.
21. There is scope through planning conditions to achieve additional planting and an orderly site layout to ensure that as far as possible the development is integrated into its surroundings. The development would then accord with Policy GEN2-Design. Landscaping measures could, in time, further reduce views into the site. Nevertheless, there is moderate harm to Green Belt openness. There is however a different degree of harm arising from conflict with the Green Belt purpose of assisting in safeguarding the countryside from encroachment, which I find is more significant for the following reasons.
22. The Council emphasise how important this area of Green Belt is to the management of development in the area, in particular the merging of Bishops

Stortford to the south west of the appeal site with Stansted Mountfitchet to the north of the appeal site.

23. As part of the ELP preparations, the Council commissioned a review of the Uttlesford Green Belt in 2016. The review¹ found that the Green Belt separating Bishops Stortford from Stansted Mountfitchet met the three purposes of Green Belt policy. It prevented the outward sprawl of Bishops Stortford and Stansted Mountfitchet into the open area and it formed an essential gap between Birchanger, Bishops Stortford, Stansted Mountfitchet and Stansted Airport, preventing those areas from merging. It also assisted in safeguarding the countryside from encroachment. Uttlesford is a large rural district and the Metropolitan Green Belt only covers 6% of its area. Nevertheless, I find that the area of land designated as Green Belt is crucial given the pressure for development arising from the location of Stansted Airport.
24. The appellant submits that the grant of planning permission for the erection of stables and an equestrian use of the appeal site in 2018 results in "urban creep" as it includes a building and a hard standing. It demonstrates that this area of the Green Belt is of no greater value than other parts, contrary to the Council's position.
25. I find the development permitted in 2018 is consistent with the Framework in that the proposed small scale facilities comprising a tack room and three stables are appropriate for the change of use. They also preserve the openness of the Green Belt being located near the northern boundary, which abuts the long access road to the hotel, and do not conflict with the purpose of including land within it.
26. As I have already found, the same cannot be said for the existing use of the appeal site in terms of openness. The Council's Green Belt review does acknowledge that in the area of Green Belt between Bishops Stortford and Birchanger there is a hotel but despite this, the area of Green Belt in the vicinity of the appeal site has a largely rural character. As such, it performs an important role in safeguarding the countryside from encroachment and fulfils its Green Belt purpose. However, the harm to this purpose of the Green Belt is limited in scope as the southern portion of the site is unaffected by the development. This area retains its Green Belt purpose, especially as it borders the A120 road, which forms a robust Green Belt boundary.
27. Overall though, I find that the development conflicts with the Framework and the PPTS with regard to the effect of it on openness and Green Belt purposes.

Other considerations

The need for sites for gypsies and travellers

28. The PPTS provides national policy guidance for considering matters of the need and supply of traveller sites with an emphasis on a robust assessment being carried out at the local level.
29. The Uttlesford District Council Gypsy, Traveller and Travelling Show People Accommodation Assessment (GTTSA) was carried out in 2017. Those carrying out the assessment were unable to interview the Council's existing 39

¹ Uttlesford Green Belt Review 24 March 2016

- households to see if they met the new definition of gypsy and traveller set out in the PPTS. However, on the basis that they had and assuming a household formation rate of 1.5% per year, they concluded there would only be a need for 11 further pitches. Assuming that some people may leave the area or move into bricks and mortar, the future need was settled on at 8 pitches. This was for the period through to 2033 with a zero need in the five years of the study up to 2021. I have not been provided with a copy of the GTTSAA and it has not been demonstrated in the Council's Statement of Case why the need was zero up to 2021.
30. The appellant provides more details on events leading up to the publication of the GTTSAA, the assessment itself and the current situation. He submits that an appeal decision² made in 2012 stated there was a need for 17 extra pitches. In 2015, the Council stated that there was a need for 8 pitches, as set out in an officer report on an application in the district for two additional pitches. A Consultation on Gypsy and Traveller Issues and Options (the Consultation) was carried out in Uttlesford between 8 December 2014 and 2 February 2015. As part of the Consultation, all the residents on gypsy and traveller sites in Uttlesford were contacted by the consultants and asked whether or not they had a need to expand the number of pitches on their site.
 31. Question 4 in the Consultation stated that the Council had identified a need for 26 pitches for gypsies and travellers, which was derived from a Gypsy and Traveller Accommodation Assessment (GTAA) published by the Council in 2014. In 2016 the Council instructed consultants to undertake a GTTSAA for the period 2016 to 2033. The baseline data for the assessment was September 2016 and the final report is dated June 2017.
 32. Notwithstanding the report's finding of a zero need up to 2021, there have been no annual reports since 2017 setting out the five year supply position for gypsy and traveller sites. The appellant provides examples of these from East Hampshire District Council to demonstrate that the situation on need and supply can change each year and as such, the Council should review its figures. In addition, he submits evidence of recorded enforcement investigations by the Council for the last couple of years, which show a number of unauthorised encampments in the district, and states this is evidence of unmet need.
 33. Whilst the Consultation was carried out before the 2015 update to the PPTS with its Annex 1 Glossary, it nevertheless recognises that there is some existing need for sites in the district. I note also that those carrying out the Consultation managed to interview all gypsy and traveller households in the area. This contrasts with the 2017 GTTSAA where no interviews were carried out. The appellant suggests this should reduce the weight given to the 2017 GTTSAA, especially as an Examining Inspector on a new local plan in London asked consultants to carry out re-surveying work in a similar situation of lack of engagement to obtain more robust evidence. I find, in addition to the appellant's submissions, that limited weight should be afforded to the GTTSAA in any event, as it has not been tested through any examination process.
 34. The officer response to most of the questions in the Consultation was that gypsy and traveller issues "will now be dealt with in the new local plan". That was 2014 and while significant work has been undertaken over an extremely long period to update the existing LP adopted in 2005, this task remains

² APP/C1570/A/11/2160858

outstanding following the withdrawal of the ELP in 2020. In such a situation the requirements of paragraph 10 of the PPTS are therefore most pertinent. These are to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against locally set targets.

35. I attach significant weight to this requirement as the PPTS also states where there is no identified need, as the Council currently maintain, criteria-based policy should be prepared to provide a basis for decisions in case applications nevertheless come forward. In the absence of an up to date LP there are no such policies in Uttlesford.
36. What I do have from the appellant are details of the enforcement investigations carried out since 2018. These indicate to me that the conclusions reached on need in 2017 are ripe for review and, whilst I am unable to arrive at any figure of need, the significant number of enforcement investigations suggest there is some evidence of unmet need.

Availability of alternative sites

37. PPTS paragraph 24 requires consideration of the availability of alternative accommodation for the appellant (this would also include the other occupiers of the appeal site). Alternative sites must be available, affordable, acceptable and suitable. To be available a pitch must have planning permission, be vacant and be actually available to the proposed occupier.
38. I set out below a summary of the circumstances of the occupiers of each pitch and their previous movements before purchasing the appeal site. Pitch 1 is occupied by a family with four children. Prior to occupying the appeal site, the family travelled for about 10 years stopping occasionally on other family sites. They were unable to remain permanently due to a lack of space.
39. Pitch 2 is occupied by a family with seven children of which two are now adults. Prior to occupying the appeal site, the family in the past occupied a lawful site but they were moved on and they have been travelling ever since, often occupying various car parks, before leaving early in the morning.
40. Pitch 3 is occupied by a family with four children of which two are now adults. Prior to occupying the appeal site, they have never had a settled base. They have previously lived with family but have had to move on due to overcrowding.
41. Pitch 4 is occupied by a young couple and child and another family member. Prior to occupying the appeal site, they doubled up on other sites but only for about a month at a time and then moved on, mainly due to overcrowding. They have also lived on transit sites and at the roadside.
42. Pitch 5 is occupied by a family with one child. Prior to occupying the appeal site, the family "doubled up" on other sites for a month or so before moving on, often to the roadside.
43. Pitch 6 is occupied by a family with two children. Prior to occupying the appeal site, they also "doubled up" on other sites but only for about a month at a time and then moved on, mainly due to overcrowding. In addition, they have lived on transit sites and at the roadside.

44. Given the number of adult children, the actual need for alternative pitches to the appeal site is probably greater than six. The appellant submits that he has not been offered any alternative sites or been directed to any such sites by the Council. Most of the occupiers state that due to their extensive traveling they have not been able to put their names down on a Council waiting list for a public pitch. However, the occupiers of Pitch 2 have had their name on a list in the past but have found that publicly owned sites are always full, or they become so run-down they are in need of repair and are emptied and left vacant.
45. Notwithstanding paragraph 24 of the PPTS, availability has not been addressed in the Council's Statement of Case. The Council have also not advised whether there are any publicly owned sites in their area and whether there are any vacancies and how long the waiting list may be. It is also clear from the occupiers' statements that the appeal site is their first settled base. Eviction from this site would necessitate a return to a largely roadside existence.

Personal circumstances

46. As with all those who travel, a settled base would enable them to have regular access to medical care and education. In particular, the head of the household on Pitch 1 has ceased to travel temporarily due to the medical, educational and support needs of a child with significant special educational needs (SEN). A second child is also being assessed for the same condition. These details are supported by letters from the relevant health professionals. Notwithstanding difficult family circumstances, all the children currently attend nearby schools that meet their specific needs. There is evidence that the two older children have good attendance rates and are making good progress. The parents' aspirations for all their children is that they do better than them.
47. The occupiers of Pitch 2 have no health problems but those of school age have enjoyed a continuity of education not available to the parents. In particular, one child has now moved onto a local secondary school and two attend primary school.
48. The occupiers of Pitch 3 also have a child with SEN who requires regular access to healthcare and struggles with the constant travelling. Until moving onto this site, none of the children were in continuous education.
49. One of the adults on Pitch 4 has a medical need that requires regular medication and management so access to a pharmacy is critical. Whilst the child on this pitch is currently too young for formal schooling, pre-school children on the appeal site attend nursery, which educationalists recognise as an important stepping stone to achieving success in formal schooling.
50. Whilst the occupiers of Pitch 5 state they have no particular health or welfare needs, nevertheless they state that one occupier has an on-going medical issue.
51. Two of the occupiers of Pitch 6 have each had in the last couple of years life-saving major surgery, which has resulted in a need for on-going regular medical care. Details from the relevant health professional for one of the occupiers is included with their statement. Whilst the name of the patient is slightly different from the site occupier and the recorded medical diagnosis is slightly different from that set out in the statement, I am satisfied that the

letter from the hospital does relate to the occupier of this site. This is because the address within the letter is the same unusual name the occupiers have chosen for their site and it is not uncommon for people to use two given names interchangeably. In addition, the adults on site recognise the benefit of continuous education and would like this for their children. As until now, the peripatetic lifestyle has meant the education of their children being supplemented by a family member who is a settled former teacher.

52. What is clear from all the personal statements is that this group of people have travelled together in various combinations for several years and are a close knit family. Given their various personal circumstances, mutual support is much relied upon and a letter from The Gypsy Council confirms that the elder generations of the family have travelled together for many years. Help has been provided by The Gypsy Council in the form of arranging with various Councils for the family group to be allowed to stay.
53. The best interests of children are a primary consideration in my decision and there are 15 (non-adult) children living on this site. The children's best interest is to have a secure and settled site. This would give them the best opportunity for a stable family life, safe play and access to education, health and other services.
54. If this appeal is dismissed there would be an infringement of the occupiers' human rights under Article 8 of the European Convention on Human Rights. This deals with the right to respect for family life and the home.

Other matters

55. I have not included highway safety as a main issue. This is because it was not a reason for issuing the enforcement notice and the Council submit "provisionally" that the use of the access would not have an adverse effect on either safety issues or the road network.
56. The appellant submits that the design of the access accords with the grant of planning permission in 2018 for equestrian use of the land. This development comprised the erection of stables, the creation of a hard standing as well as a new access from Birchanger Lane.
57. Since the submission of their Statement of Case and receiving the same from the appellant, the Council has not responded with any formal comments from the County Highway Authority, though there has been time to seek their views. At the site visit I saw that there is good visibility in both directions from the access point. The design of the access was found to be acceptable for an equestrian use which, no doubt, would include from time to time the movement of horse boxes and trailers and vehicles delivering hay and supplies. This is not dissimilar to vehicles towing caravans. In the absence of any expressed concerns, I am satisfied that the design and use of the new access by the appellant is not an issue that needs to be considered as part of the deemed planning application before me. As such, I have not had regard to Policy GEN1-Access, which sets out various criteria regarding new accesses.
58. The appellant submits that the appeal site is previously developed land (PDL)³ by virtue of the 2018 planning permission for equestrian use and the creation of the vehicular access into the site in accordance with the approved drawings.

³ Appeal form

PDL is defined in the Framework as land which is, or was, occupied by a permanent structure. However, it has not been demonstrated that this is the case in respect of the appeal site.

59. An aerial photograph of the site submitted by the appellant (Google Earth, undated but before the existing use took place) appears to show an enclosed uncultivated parcel of land with no sign of any buildings. The appellant also completed an Essex Biodiversity Validation Checklist to accompany his application for the current use and in answer to the question, "Is the site PDL?" answered "No".
60. The appellant also refers to paragraph 26 of the PPTS which sets out further relevant considerations to which weight should be attributed to, including the effective use of previously developed (brown field), untidy or derelict land. There is no definition for this description in the PPTS but the definition of brown field land is the same as PDL in the Framework. Whilst definitions generally only apply to the documents they are found in, I consider again that it has not been demonstrated that the appeal site falls within this category. I therefore give little weight to the appellant's conflicting submissions on this point.
61. Submissions have been made by third parties that the current appearance of the site causes harm to the character and appearance of the area. This has not been raised as an issue by the Council and the appellant submits the appearance is temporary as a result of the injunction, which prevents any further work from taking place. The Council also submit that the development accords with Policy GEN4-Good Neighbourliness. I agree in that the residential use does not involve the generation of smell, dust, noise or vibrations.
62. Before the service of the injunction and the issue of the enforcement notice, the appellant submitted a planning application for the residential use of the land as a caravan site. This application was withdrawn⁴ by the Council but the appellant submits the proposed drawings with this appeal to show how the site could be laid out.
63. He now suggests two options. One could be to use the whole of the site with three pitches each laid out north and south of the earth bund that bisects the site, as per the application. The second option would be to confine all six pitches to the northern part of the site where it is claimed there is space to develop a layout that accords with appropriate standards.
64. I find there is merit in option two, having regard to my findings on openness and Green Belt purposes. With both options the individual pitches would have space for two mobile homes and a tourer. Both schemes would also include a children's play space. Should I be minded to grant planning permission for the development, this would be subject to a condition requiring the submission of a drawing to show the formal layout of the site and other such details as per option two.
65. It is the view of some third parties that deception should not be rewarded. It is national policy that if there was intentional unauthorised development, that should be a material consideration in planning decisions. The change of use of land was clearly done in the knowledge that planning permission was required and appears to have occurred after the application for the development was

⁴ The legality of this action was questioned by the appellant but no appeal was lodged and the Council's decision was not challenged in the courts.

submitted. However, there was no attempt to hide the fact or evade the need for permission. It was though intentional unauthorised development to which I attach some weight against the grant of planning permission.

66. Finally, the appellant has submitted several other appeal decisions. Some concern sites that are in the Green Belt and some do not. They are material considerations which I have taken into account. However, I find that they each can be distinguished from the current appeal in that each case had its own individual set of circumstances and thus each planning balance and each decision reached was different. I therefore only give limited weight to these various decisions.

Planning balance

67. It is clear that a refusal of planning permission would interfere with the Article 8 rights of those living on the appeal site. Indeed, the Courts have held that Article 8 imposes a positive duty to facilitate the gypsy way of life, as defined by race and ethnicity rather than planning policy. Any interference in this regard must be balanced against the public interest in upholding planning policy to protect the environment generally.
68. Both the Framework and PPTS state that inappropriate development in the Green Belt is harmful and should not be approved except in very special circumstances. There is harm on this basis and also moderate and significant harm caused due to the loss of openness and the encroachment of development into the Green Belt. Substantial weight is to be afforded to this combined level of harm. In addition, some weight is added from my finding on intentional unauthorised development.
69. Set against this harm, I consider the general need situation leans in favour of the appellant. I question the robustness of the 2017 GTTSAA and there is also the failure of the Council to carry out annual reviews. The PPTS states this "should" take place. This is especially important in the absence of an up to date development plan. Notwithstanding the Council statement on the matter, I consider there is unmet need which merits significant weight.
70. As well as the general needs situation, I consider that the personal accommodation needs of all of the occupiers are considerable and I have not been advised of any potential alternative sites. The health needs of some of the occupiers, including a child, are significant and in the absence of any obvious short term alternative location, I conclude there is a strong possibility that they would have to resort to an unauthorised encampment. This would be likely to be seriously detrimental to their health and this merits significant weight.
71. The PPTS states the best interests of the children are a primary consideration and, in this case, I conclude this merits substantial weight due to the number of children involved. In particular, three of them have SEN and as such it is important to safeguard not only their welfare and well-being but that of all the children.
72. My conclusions on need and supply, the availability of alternative sites and the best interests of the children point to a grant of planning permission. I have considered whether this should be a temporary planning permission, having regard to the harm to the Green Belt and the Council's LP situation. However,

it appears in the absence of any information, that these matters are unlikely to be resolved in the short or medium term. This is even taking into account the Government requirement that all Councils should have an up to date local plan in place by 2023. As such a temporary planning permission would not be proportionate as it would not balance the protection of the public interest against the families' human rights.

73. My overall conclusion on the planning balance is in respect of a permanent planning permission. The harm to the Green Belt is clearly outweighed by other considerations. Having regard, in particular, to the best interests of the children, I find that there are very special circumstances which would justify the granting of planning permission on a permanent basis in this case. The appeal on ground (a) therefore succeeds and the appeal on ground (g) does not need to be considered.

Conditions

74. I have considered the need for conditions put forward by the parties in the light of the Planning Practice Guidance. The permission should be personal to the named families on the site as their personal circumstances and the rights and best interests flowing from them are considerations of some weight in the planning balance. A condition limiting occupation to gypsies and travellers is also required as my decision relies on unmet need.
75. In the interests of the appearance of the site it is necessary to limit the number of caravans, control external lighting, prevent commercial activities on the land and the stationing/storage of vehicles over 3.5 tonnes. It is also in the interests of the appearance of the site necessary to remove permitted development rights in relation to means of enclosure. The Council suggest other permitted development rights should be removed pertaining to dwelling houses but that is not appropriate in respect of the current development.
76. As the material change of use has already occurred, it will also be necessary to impose a condition requiring the submission of a site development scheme in the interests of the use and appearance of the site. The condition is drafted in such a way as to require the appellant to comply with a strict timetable.
77. The condition is drafted in this particular form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective granted permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of outstanding detailed matters as the development has already taken place. The condition therefore provides for the loss of the effective benefit of the granted planning permission where the detailed matters in question are not submitted for approval during the time set by their condition, approved (either by the local planning authority or by the Secretary of State on appeal) and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Conclusion

78. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

D Fleming

INSPECTOR

Schedule of Conditions

1. The use hereby permitted shall be carried on only by the following: Mr Thomas Delaney and Mrs Angie O'Connor and their resident dependants; Mr Patrick O'Connor and Mrs Roseanne O'Connor and their resident dependants; Mr John O'Connor and Mrs Bridie O'Connor and their resident dependants; Mr Anthony O'Connor and Mrs Alison O'Connor and their resident dependants; Mr Jeremiah O'Connor, Mr. John Connors and Mrs Alice Connors and their resident dependant; and Mr Paul O'Connor and Mrs Mary O'Connor and their resident dependant.
2. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of Planning policy for traveller sites, August 2015 (or its equivalent in replacement national policy).
3. The use hereby permitted shall be limited to six pitches. No more than three caravans, as defined in The Caravan Sites and Control of Development Act 1960 and The Caravan Sites Act 1968 shall be stationed on any pitch at any time and no more than two caravans per pitch shall be static caravans.
4. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
5. No commercial activity shall take place on the land, including the storage of materials, plant or equipment.
6. No external lighting shall be put in place or operated on the site at any time other than has been previously submitted to and approved in writing by the local planning authority.
7. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting or amending that Order, no additional gates walls or fences or other means of enclosure, including bunding, shall be erected or placed within/to the boundaries of the site.
8. 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 three months of the date of this decision, submit details of
 - (a) The internal layout of the site, hereafter referred to as the Site Development Scheme (SDS), which shall show a site layout

confined to the area north of the existing bund on the site, the layout of the pitches, hard standings, access road, the siting of the caravans, the design and layout of a play area, amenity areas, parking and manoeuvring areas and the proposed materials to be used;

- (b) Details of foul and surface water drainage;
- (c) Details of waste disposal including collection point and storage areas;
- (d) Proposed external lighting on the boundary and within the site;
- (e) A tree, hedge and shrub supplemental planting scheme for the Birchanger Lane boundary, 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. The scheme shall set out measures for their protection throughout the course of the development.

The SDS shall have been submitted for the written approval of the Local Planning Authority and shall include a timetable for its implementation.

- (ii) Within 11 months of the date of this decision, the SDS should have been approved by the local planning authority or, if the Local Planning Authority refuse to approve the SDS or fail to give a decision within the prescribed period, an appeal should 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 should have been finally determined and the submitted SDS should 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.
9. The works comprised in the SDS pursuant to condition 8 shall be retained for the duration of the use of the site and development.

END