
Appeal Decisions

Hearing Held on 26 to 28 October 2021

Site visit made on 29 October 2021

by Diane Lewis BA(Hons) MCD MA LL M MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Land at Plots 8, 9 and 10 Roydon Lodge Chalet Estate, Roydon CM19 5EF Appeals A and B Refs: APP/J1535/C/18/3215162 and APP/J1535/C/18/3215163

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr M O Connor and Mr M McCann against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 28 September 2018.
- The breach of planning control as alleged in the notice is:
Without planning permission: The material change in the use of the land from a recreational leisure plot use to a residential use including the stationing of static caravans and associated development, including the stationing of touring caravans, two sheds, installation of a cess pit and hardstanding.
- The requirements of the notice are:
 - i. Cease the use of the Land as a residential caravan site.
 - ii. Cease the residential use of the Land between 1 November and 31 March inclusive.
 - iii. Remove from the land all caravans, hardstanding, septic tanks and other structures on the land used in connection with the residential use of the Land.
 - iv. Remove from the Land all domestic paraphernalia and debris associated with the residential use of the Land and any debris resulting from compliance with paragraphs (i) to (iii) above.
- The period for compliance with the requirements is within 6 months after the notice takes effect.
- The appeal by Mr O Connor (Appeal A ref 3215162) is proceeding on the grounds set out in section 174(2)(a), (f) 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 as amended.
- The appeal by Mr McCann (Appeal B ref 3215163) is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: Appeal A succeeds in part and permission for that part is granted, Appeal B succeeds in part, the enforcement notice as corrected and varied is upheld as set out in the Formal Decision.

Appeal C Ref: APP/J1535/W/18/3204586

- 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 M O'Connor against the decision of Epping Forest District Council.
- The application Ref EPF/0632/17, dated 28 February 2017, was refused by notice dated 30 January 2018.

- The development proposed is: Continued use of site as a Traveller site comprising 8 mobile homes for single family group with ancillary touring caravans.

Summary of Decision: The appeal is dismissed.

Procedural matters

1. When the planning application was made in February 2017 Mr M O'Connor was certified to be the owner of the land. The site location plan identified the land as Plots 8, 9 and 10, with a boundary separating Plot 10 from the double plot comprising Plots 8 and 9. In September 2018 the enforcement notice was served on Mr Myles O'Connor and Mr Michael McCann as well as the Owners and Occupiers of each of the three plots. The Land related to the three plots and at the time Plot 10 was physically divided off by a fence.
2. By the time the hearing took place Plot 8 had been sold to the Moran family and was incorporated with Plot 7. Plots 9 and 10 appeared as separate plots. It is unclear whether ownership has changed. The McCann family continue to occupy Plot 10 which they now share with members of their extended family. Mr McCann's appeal continues in his name. Written consent was provided to enable the appeal by Mr O'Connor for Plot 9 to proceed in his name on behalf of the new land owner(s).
3. The appeals for Plots 8, 9 and 10 were heard together with a number of appeals concerning various plots at Roydon Lodge Chalet Estate (the Chalet Estate) in relation to enforcement notices issued by the Council and against refusals of planning permission.
4. The discussion at the hearing considered the site history, matters specific to the enforcement notices, planning merit issues, plot specific matters and concerns of the Parish Council and residents that formed no part of the Council's case. Even though certain issues were discussed in the round to avoid repetition, each appeal will be considered on its individual merits with a single decision letter addressing the appeal(s) for each plot. A summary of all Decisions is attached for information.
5. I carried out site visits to the Chalet Estate on 25 October and on 29 October 2021, as well as familiarising myself with the surrounding area at other times.
6. In relation to the Epping Forest Special Area of Conservation (the SAC), Natural England was consulted in order to comply with the requirements of the Conservation of Habitats and Species Regulations 2017. A response was received on 27 April 2022.

Appeal site and surroundings

7. The Chalet Estate is located to the north and east of the village of Roydon within the Metropolitan Green Belt. A number of plots of land are served by a central access road and the vehicle entrance is at the western end of the estate. A single track road and a network of public rights of way link the Chalet Estate to the village. A railway line follows the northern boundary, otherwise the plots are bounded by fields to the south and east.
8. In the late 1940s the land consisted of around 50 allotment plots, provided as part of the Dig for Victory campaign during World War Two. The allotments subsequently became leisure plots. On 18 May 1951 enforcement notices were issued requiring each plot to be cleared of all structures. At the same time the

Council stated that it was not the intention to stop the use of the land for gardening purposes or to prohibit weekend and holiday occupation of a suitable type of chalet during the summer months.

9. Thereafter a planning history has developed specific to each plot or combined plots, as outlined in the appeal documentation. A small number of plots are characterised by garden land with a small traditional chalet or appear vacant and overgrown. A number of plots are occupied as caravan sites. There are also plots with dwellings, including a few with very recently built chalet style dwellings.
10. Plots 8 to 10 are sited towards the centre of the Chalet Estate, to the north of the access road. The details of the planning history for the three plots are not entirely consistent across various documents but permissions were granted for the erection of a weekend chalet in 1952 and 1958 on Plots 8 and 9. On Plot 10 the reconstruction of an existing hut was granted permission in 1951. The use of the chalets/hut was restricted by condition to recreational purposes between April and October each year, with no use as permanent habitation.
11. The position in 2012 recorded by the Council was of landscaped plots with a weekend chalet on each plot. In April 2016 the site was laid to hardstanding and three static caravans were sited on the land. Images submitted by the Council and the appellants show that in 2018 and September/October 2019, on Plots 8 and 9 were six static caravans (2 rows of three), a kitchen trailer and small sheds and the ground was hardsurfaced. Plot 10 also was hardsurfaced and accommodated two static caravans, a touring caravan, a chalet and small sheds.
12. In October 2021 Plot 8 was occupied by two static caravans and a motorhome as part of the combined site with Plot 7. A static caravan and a touring caravan were stationed on Plot 9. On Plot 10, the original chalet was sited near to the rear boundary, with a static caravan, a touring caravan and a shed near the eastern boundary.

APPEALS A and B

Enforcement notice

13. The appellants raised concerns about the clarity of certain aspects of the enforcement notice and appealed on grounds (f) and (g) but did not go so far as to claim the notice was invalid. No appeals are made on grounds (b) and/or (c). Nevertheless, I have a duty to ensure that the enforcement notice tells the recipients fairly what they have done wrong and what they must do to remedy matters. The power under section 176 of the 1990 Act to correct or vary an enforcement notice may only be exercised if the correction or variation can be done without injustice to either the appellant or the Council. The issue here is not confined to whether the requirements are excessive, a matter for the ground (f) appeal.

Background

14. The wording and validity of enforcement notices related to changes of use of plots on the Chalet Estate have been the subject of much discussion and examination in the past. I have considered at some length the appeal decisions

issued in May 2012 and July 2015 regarding Plot 38¹. Disputed issues included the description of the previous lawful use in the alleged breach and the specification of the requirements, particularly in respect of allowing for the continuation of a lawful residential element. Both decisions referred to *Pitman* judgement², which confirmed that use of land as a leisure plot can exist as a separate use in its own right. In 2012 the notice was quashed for being invalid. In 2015 the Inspector concluded that the Council had exercised its power to under-enforce and the notice was not invalid. The previous lawful use of Plot 38 was a mixed use for leisure and residential occupation and therefore conclusions in 2015 on the wording of the notice do not necessarily apply in the current appeal.

15. In a pre-hearing note in April 2020 I asked the Council why the new use described in the allegation is not described as a residential caravan site, especially in view of the wording of the requirements³. I also questioned inconsistencies within the wording of the requirements. At the time the Council confirmed that it was satisfied that the breach described the use accurately and precisely. This position was reaffirmed at the hearing, although if I was minded to correct the notice the Council put forward an alternative form of wording: "The material change of use of the Land from a recreational leisure plot use to use as a residential caravan site".⁴ In addition, various amendments were put forward by the Council and the appellants during the appeal process.

Alleged breach of planning control and the Land

16. In accordance with Section 173(1)(a) of the 1990 Act an enforcement notice must state the matters which appear to the local planning authority to constitute the breach of planning control. A notice complies with this statutory provision if it enables any person on whom a copy of it is served to know what those matters are.
17. There is no doubt that the unauthorised development is a material change in the use of the Land. There is no necessity to state the previous lawful use in the allegation but it is generally better to do so. In this instance the former use as a recreational leisure plot is not disputed. In the absence of other more specific information the likelihood is that the land was used for pleasure and enjoyment during the owners' leisure time, bearing in mind the planning history of the plots and the Chalet Estate.
18. Furthermore, there is no dispute that the Land changed to a single primary use for residential purposes where the living accommodation is within caravans⁵. Despite the use of the word 'including' in the allegation, no other form of residential use is identified. The allegation also reasonably refers to the installation of hardstanding and other minor works as associated development, part and parcel of the change of use. The accuracy is questionable on the number of sheds in particular, although such minor misdescriptions could be corrected without injustice.

¹ Appeal ref APP/J1535/C/11/2160430 dated 25 May 2012 and Appeal ref APP/J1535/C/14/2211759 dated 30 July 2015

² *Pitman v Secretary of State for the Environment* [1989] JPL 831

³ Inspector's Pre-Hearing Note 2 dated 16 April 2020.

⁴ Document 1

⁵ A caravan site means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed. Section 336(1) of the 1990 Act states caravan site has the meaning given in section 1(4) of the Caravan Sites and Control of Development Act 1960.

19. The wording of the alleged breach of planning control, when considered on its face, is reasonably clear.
20. The plan attached to the notice confirms that the Land encompasses a double plot and a single width plot (three pitches), reflecting the site area in the earlier planning application (Appeal C). In 2017/2018 the Land was occupied by the extended O'Connor family (Plots 8 and 9) and the McCann family (Plot 10), with the two families related through marriage. After the departure of the O'Connor family and a change in ownership, Plot 8 appears to have been combined with the adjacent Plot 7 to form and function as a double plot.
21. A notice should reflect conditions and circumstances at the time of issue and the Land does not have to be equivalent to the planning unit. The appellants and the Council did not question the definition of the Land. I conclude there is no need to amend the area concerned.

Requirements

22. Section 173(3) of the 1990 Act states that an enforcement notice shall specify the steps to be taken or the activities that must cease in order to achieve, wholly or partly, any of the purposes set out in section 173(4). In summary, the purposes are to remedy the breach or to remedy any injury to amenity which has been caused by the breach. In specifying the steps a council may decide to under-enforce by not seeking to fully remedy the alleged breach. Case law has confirmed that the express requirements of an enforcement notice should not abrogate pre-existing rights.
23. The appellants maintained that the requirements should be clear on the level of residential use that would be acceptable, as it was understood that there were no restrictions on a residential use of a caravan for 7 months of the year. A similar argument was presented in the 2012 appeal decision on Plot 38, which the Inspector found on the evidence to be persuasive. The appellant also understood the Council accepted that the plots can be used for leisure purposes, including residential occupation, for 7 months each year from 1 April until 31 October. The Council's deletion of the phrase "including residential occupation" in the final version of the statement of common ground therefore was of concern.
24. As seen from the statutory provision, the function of the requirements is to achieve the purpose of the notice. Therefore, it should be possible to understand from the requirements what the purpose of the notice is. The requirements cannot require that a lawful use resumes, although the service of a notice may allow a landowner to revert to the previous lawful use through the provisions of section 57(4) of the 1990 Act. With these provisions in mind, I disagree with the appellants that the requirements should, as a matter of course, set out a level of residential use that would be acceptable. If the Council decided to do so, it would represent a decision to exercise its power to under-enforce.
25. Nevertheless, there appears to be a conflict in the wording of the Requirements. In short, steps (i), (iii) and (iv) are directed at ensuring the residential caravan site use ceases, whereas step (ii) indicates that a residential use is acceptable for seven months of the year. The report seeking authorisation for enforcement action does not assist in explaining this inconsistency.

26. In seeking clarification through the general discussion at the hearing the Council stated that the intention was step (ii) should require the recreational use of the land to cease between 1 November and 31 March⁶. I am not persuaded by this explanation because there is no tie to the chalet building and a recreational use of the land could lawfully take place all year round. The Council also stated step (ii) was an attempt to make clear enforcement action was not against the historical position where an occupier could pull on a caravan for leisure/recreation purposes outside the winter months. If that was the case substitution of recreational for residential would make more sense. Alternatively, the Council may have been seeking to under-enforce, as was the case in the enforcement notice on Plot 38⁷, although steps (iii) and (iv) do not reflect such an intention.
27. My conclusion is that in order to make the requirements consistent step (ii) should be deleted. Such a correction is possible only if it would not cause injustice to either the appellants or the Council.
28. A second option would be to delete the phrase "between 1 November and 31 March inclusive", remembering that the allegation states the material change of use is to "a residential use including". The notice would then ensure all residential use of the Land would cease and avoid any possibility of a residential use gaining permission through the operation of section 173(11).
29. Step (ii) implies that a residential use is acceptable for part of the year. If deleted the notice would be more restrictive than provided for originally. The appellants would be worse off and hence injustice would be caused. That being so, the uncertainty created by step (ii) is not able to be resolved by its deletion as a single amendment to the notice.

Alternative wording

30. An alternative is to follow the Council's proposal to correct the notice to allege a material change of use to a residential caravan site and require that use to cease with the removal of caravans, hardstanding, associated structures and residential paraphernalia. The Council maintained this approach would not cause injustice because it would narrow the scope of the notice. The appellants did not disagree with this proposed way forward.
31. The proposed amendments correct the identified defects in the enforcement notice. The scope of the notice would be narrowed in so far as the description of the alleged breach would become specific to a residential caravan site as opposed to the wider term of residential use. It follows that the corrections can be made without injustice to either the appellants or the Council.

Conclusions

32. For the reasons set out above the enforcement notice does not set out with sufficient clarity the alleged breach of planning control and the steps required for compliance. The appellants and the local planning authority agreed at the hearing that it was open to me to correct the allegation in the notice and also the requirements. I am satisfied that no injustice will be caused by doing so

⁶ See also the Council's response to Inspector's Pre-Hearing Note of 16 April 2020: Cease using the land for any recreational or leisure purpose annually between 1 November and 31 March the following year

⁷ For ease of reference the requirement as varied for Plot 38 was "To cease the use of the land as a residential gypsy and traveller caravan site by (i) ceasing the residential occupation of caravans on the land between the 1 November and 31 March inclusive; (ii) permanently reducing the number of caravans on the land to one."

and the enforcement notice will be corrected in those two respects. The correction to the allegation will clarify the terms of the deemed applications under section 177(5) of the 1990 Act as amended.

Appeal A on ground (a) and deemed planning application

Development

33. The description of the development in the deemed planning application is derived directly from the wording of the breach of planning control, as corrected. Therefore the development is a material change in the use of the Land from use as a recreational leisure plot to use as a residential caravan site with associated development, including the installation of hardstanding. As noted above the Land comprises a double plot and a single width plot, separate to Plot 7.
34. When the enforcement notice was issued in September 2018 eight static caravans were stationed on the site together with a trailer, a touring caravan and other small structures. The site was more intensively occupied than in October 2021, as set out in the site details above. At the hearing the appellants asked that the site be assessed as three pitches with three statics and three touring caravans. The Council raised no objection to this approach. I will proceed on this basis, taking into account the corrected description of the development as a caravan site and that a planning condition is the means to control the number of pitches and caravans.

Main Issue

35. With reference to Policy E of the PPTS the material change of use of the plots to a traveller caravan site is inappropriate development in the Green Belt, a matter which the main parties agreed in the statement of common ground.
36. The main issue is whether the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the caravan site, is clearly outweighed by other considerations to provide the very special circumstances necessary to justify the development.
37. The potential harms relate to the effect of the developments on:
- The openness and purposes of the Green Belt
 - The character and appearance of the Chalet Estate and the surrounding countryside and landscape
 - The safety of the site occupants and others in respect of flood risk
 - The integrity of the Epping Forest Special Area of Conservation
 - The amenity of the village and the settled community.
38. The carrying out of intentional unauthorised development is an additional matter to be considered.
39. Other considerations, potentially weighing in favour of the development, include the existing level of local provision and the need for sites, the availability (or lack) of alternative accommodation for the occupiers and their families and their other personal circumstances, including the best interests of the child.

40. Integral to my decision-making will be exercising duties under the Human Rights Act 1998. Article 8, a Convention Right⁸, affords a person the right to respect for their private and family life, their home and their correspondence. Article 8 is a qualified right that requires a balance between the rights of the individual and the needs of the wider community. There is a positive obligation to facilitate the Gypsy way of life to the extent that the vulnerable position of Gypsies as a minority group means that some special consideration should be given to their needs and different lifestyle in the regulatory planning framework and in reaching decisions on particular cases. I also will have due regard to the public sector equality duty (PSED) under the Equality Act 2010.

Planning Policy

41. The development plan for the area includes the saved policies of the Epping Forest District Local Plan adopted in 1998 and the Epping Forest District Local Plan Alterations adopted in July 2006 (the Local Plan).
42. The most important policies for determining the appeal are those related to the location of the appeal site and its use. The policies are Policy GB2A Development in the Green Belt, Policy RST10A Roydon Lodge Chalet Estate and Policy H10A Gypsy Caravan Sites. I note the supporting text to Policy H10A also sets out locational criteria. Additional relevant policies include Policy CP1 Achieving sustainable development objectives, Policy CP2 Protecting the quality of the rural and built environment, Policy GB7A Conspicuous development, Policy U2A Development in Flood Risk Areas and Policy NC1 Nature Conservation. The reasons for refusal and for issuing the notice also cite Policy LL3 Edge of settlement development. I consider this policy is not directly relevant because of the location of the Chalet Estate outside the settlement of Roydon.
43. Material considerations include the National Planning Policy Framework (the Framework), Planning policy for traveller sites (PPTS) and Planning Practice Guidance. At local level Roydon Lodge Chalet Estate Design Criteria was adopted in 2003 as Supplementary Planning Guidance (the SPG).
44. The most important policies identified above are generally consistent with the Framework and have full weight.
45. The Council is preparing the Epping Forest District Local Plan 2011-2033 (the EFDLP). Following the hearings stage of the examination into the soundness and legal compliance of the EFDLP the Inspector set out her interim advice in August 2019. In response, the Council carried out additional work and published a Schedule of proposed Main Modifications to the emerging plan. Consultation on the Main Modifications ended in September 2021. At the time of the hearing the Council was compiling its responses to go to the examining Inspector. The Council anticipated that once the Inspector's report is received the period leading to adoption would be relatively short.

Reasons

Green Belt

46. By definition, inappropriate development is harmful to the Green Belt. The essential characteristics of Green Belts are their openness and permanence.

⁸ Article 8 of the European Convention on Human Rights, enshrined into UK law by the Human Rights Act 1998.

The importance of openness is reflected in criterion (ii) of Policy H10A. In this instance before the change of use took place the site was a largely open landscaped plot with chalet buildings sited towards the rear boundary. Aerial photographs show the presence of mature trees and hedgerows and much of the site was covered in grass.

47. By the time the notice was issued in September 2018 caravans were stationed on the land and green space had been lost to hardstanding. The number of mobile homes alone resulted in a very harmful loss of openness. Even a lower number of static and touring caravans, as now proposed, would result in a harmful loss of openness when compared with the former leisure plot use and chalet buildings.
48. The site is contained within the boundary of the developed area of the Chalet Estate. No physical encroachment into the countryside has occurred and the development would not conflict with any of the stated purposes of the Green Belt.
49. Having regard to policy on protecting Green Belt land in the Framework the harm to the Green Belt by reason of inappropriateness has substantial weight, with additional weight to the loss of openness.

Character and Appearance

50. Traditionally the land use character of the Chalet Estate was for leisure use, which was reflected in the physical features such as the small timber chalets and the dominance of gardens and green space. The probability is that plot owners and family members visited to enjoy the amenity of a plot of land in the countryside with the benefit of a chalet or caravan on site for use when there. Low level activity and a quiet, even tranquil, environment prevailed.
51. The evidence indicates that change was gradual over the years through the replacement and extension of the chalets, the increase in mobile homes and caravans and an acceptance in policy of the use of the chalets and caravans for holiday accommodation for seven months of the year. The leisure use was regarded as complementary to the countryside location. Even by 2015 the Chalet Estate was a generally tranquil, green and relatively undeveloped environment with built development blending well with the vegetation and rural surroundings, as described by the Inspector in the 2015 decision.
52. However, by 2018 a number of plots were in use as caravan sites where greenery had been lost to extensive hard surfacing and the main structures were static and/or touring caravans. The trend continued so that by the time of my visit in 2021 the land use character and appearance reflected a greater intensity of residential use. The number of enforcement notices issued in September 2018 indicate much of the development taking place in the last few years has not been authorised.
53. The introduction of 8 mobile homes onto the appeal site resulted in an intense level of occupation and the appellant acknowledged that space standards required for a caravan site licence were not met on Plots 8 and 9. The regimented layout, the proximity of caravans to the boundaries and lack of green space and boundary vegetation was in sharp contrast to the leisure plots, the lawful residential plots and some of the more spacious caravan sites. Serious harm was caused to the character and appearance of the Chalet Estate.

54. The situation improved following the change in ownership in so far as the total number of caravans has reduced, leading to a slightly more spacious appearance. However, in part this has come about by Plot 8 combining with Plot 7 outside of the site. Similarly the proposed reduction in the number of caravans would help to provide a more spacious layout and some opportunity for planting. However, without a layout I continue to have concern about a somewhat regimented pattern over the three narrow pitches, the adequacy of space to function satisfactorily as three pitches and the ability to comply with the design criteria in the SPG. The character and appearance of the Chalet Estate would be eroded and there is conflict with Policy RST10A.
55. The Chalet Estate is within a landscape characterised by gently undulating arable fields within the valley of the River Stort⁹. Fields are lined with a network of mature hedgerows, often with hedgerow trees. Veteran trees are a feature that contribute to the historic landscape pattern and a strong sense of tranquillity is present throughout most of the rural area. The large nucleated village of Roydon is dominant in the settlement pattern.
56. The development of Plots 8, 9 and 10 has not encroached into the countryside or affected field patterns. The effect on the wider landscape character would be minimal and at the hearing the Council accepted that any harm would be localised. In local views from the footpath network the development on this site is not unduly noticeable or conspicuous, primarily because of its central location on the northern side of the estate. Planting on the rear boundary would soften views from the north. Views to the edge of Roydon village from adjacent fields are maintained. Accordingly there is no conflict with Policy GB7A.
57. These considerations lead to a conclusion that the visual harm and loss of character is very localised to the Chalet Estate. The development would not result in significant harm to the landscape character and appearance of the surrounding countryside and as such complies with Policy CP2.

Flood Risk

58. The Environment Agency Flood Map for Planning (Rivers and Sea) places the Chalet Estate in Flood Zone 3 and Flood Zone 2. Caravans and mobile homes intended for permanent residential use are classified as highly vulnerable in Annex 3 of the Framework. The Environment Agency advised in August 2017 the site is located entirely within Flood Zone 3b, and with reference to up to date modelling, it is within the 1 in 2 year flood extent where there is a 50% probability of flooding in any year.
59. A site-specific flood risk assessment dated 3 August 2017 (the FRA) was carried out on behalf of the appellant using data from the Environment Agency and site levels from a topographic survey undertaken in 2017. The land would be partly flooded in the 1 in 20 annual probability event to a maximum depth of 0.46m. In this event the land would be free from flooding for a distance of approximately 11m from the access road. The plots would be almost entirely flooded in the 1 in 100 annual probability event to a maximum depth of 0.55m. The FRA concluded that in practical terms the site lies in Flood Zones 3a and 3b. The site was also found to be potentially at risk from groundwater and pluvial flooding.

⁹ Key characteristics are taken from the Landscape Character Assessment January 2010, pages 96-99 C6: Roydon

60. The starting point under national planning policy and guidance is that the caravan site as a highly vulnerable form of development should not be permitted in Flood Zone 3a or 3b. The exception test does not apply. However, the FRA has put forward other factors for consideration in relation to avoidance and making the development safe.
61. The aim is to steer development to areas with the lowest probability of flooding. The Council accept that currently there are no alternative locations for traveller sites in areas at less risk of flooding, although suitable sites should come forward through the EFDLP.
62. The FRA proposes various measures to mitigate flood risk. These include ensuring the threshold level of the static caravan is above the flood level expected in the 1 in 100 annual probability plus 35% climate change event, anchoring the static caravan to the ground, requiring occupants to sign up to receive flood alerts and flood warnings and preparation of a flood plan. These measures would manage the risk of flooding rather than remove it. Planning Practice Guidance is that flood resistance and resilience measures should not be used to justify development in inappropriate locations.
63. The FRA explained that the western and eastern parts of the single access road serving the Chalet Estate are predicted to flood for all events including the 1 in 20 annual probability event. The only means of escape for occupiers of the site is westwards along the access road. A hazard analysis was undertaken based on the 1 in 100 annual probability plus 35% climate change event. The hazard rating within the site and along the access road is low risk. The deepest flood depths on the access road are found to be located at the eastern end where flood depths are predicted to be between 0.4m and 0.6m for around 40m.
64. The FRA considers that flash flooding is unlikely to occur because of the size of the River Stort catchment at this location, allowing time to respond to flood alerts and warnings and to leave the site safely.
65. The FRA reasoned that the development would make little difference to flood risk elsewhere because there are no proposals to modify ground levels and the Chalet Estate is located in an existing developed area. No contrary technical evidence has been produced.
66. The Parish Council drew attention to flooding events in the last few years and how the increase in hard surfaces had made matters worse by displacing some of the flooding onto the railway and farmland. Concern was expressed over works to the brook by the entrance to the estate. The appellants explained that works were done to clear out the brook and increase the height of the culvert so that conditions were improved.
67. In summary, the proposal is a highly vulnerable form of development. The use of the land as a caravan site would put the safety of the occupiers at serious risk and in a flood event to members of the emergency services. For these reasons Policy U2A does not support the use in this location. Based on the flood risk classification and the location of the site the Framework also indicates the use should not be permitted. There is a strong policy objection. The appellant has demonstrated that mitigation measures would improve safety, escape routes would present a low risk and flood risk would not be increased elsewhere. Overall, the issue of flood risk provides a significant amount of weight against the development.

Epping Forest Special Area of Conservation

68. The SAC is a large ancient wood pasture with a mosaic of habitats of high nature conservation value. By reason of the international designation, the SAC is afforded the highest level of protection through UK legislation and Government policy. Much of the SAC is in an unfavourable condition as a result of atmospheric pollution and also recreational pressure.
69. The reasons for issuing the enforcement notice made no reference to the effect on the SAC. However, the Council's understanding and approach to development has evolved considerably during the preparation of the EFDLP, informed by the appropriate assessment for the emerging plan. The Council issued a Position Statement in October 2019 and an Interim Air Pollution Mitigation Strategy in December 2020. In turn, the Council's position on the appeal site has been revised and updated during the appeal process.
70. The Council has now withdrawn its objection¹⁰, following the financial contribution made by the appellant towards mitigation measures to help avoid adverse impacts of development on the integrity of the SAC. In summary Natural England has advised that air quality should not be considered an impediment to a favourable determination of the deemed application provided that the proposed development is coming forward in accordance with the Strategy and mitigation is considered secure and certain to proceed.

Habitats Regulations Assessment

71. In terms of recreational pressure the appeal site is outside the zone of influence (6.2km) established through research and visitor surveys. In view of the distance of the site from the SAC it can be concluded that there is no pathway to affect the designated features and no significant effects are likely.
72. The same conclusion is not able to be reached in respect of vehicle flows and associated air pollution when the development of the site is considered in combination with other plans and projects. An appropriate assessment (AA) is necessary to establish whether there would be adverse effects on the integrity of the features of the European site and if there are, how could these be modified through mitigation.
73. The conservation objective for the SAC is to ensure the integrity of the site¹¹ is maintained or restored as appropriate and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features. These are Beech forests on acid soils, Northern Atlantic wet heathland with cross leaved heath, European dry heaths and Stag beetle (*lucanus cervus*).
74. The Strategy explains the growth proposed in the District would be the primary source of atmospheric pollution that would have an adverse effect on the integrity of the SAC. Vehicle flows and queuing traffic on roads bisecting the SAC have been identified as a key contributor to that atmospheric pollution, related to vehicle emissions including oxides of nitrogen, ammonia and nitrogen deposition. The SAC features are considered sensitive to changes in air quality and serious deleterious effects can occur to habitats and species

¹⁰ The Council has expressed a reservation in respect of Appeal C

¹¹ There is no definition of site integrity in the Habitats Regulations. The definition that is most commonly used is in Circular 06/2005: '(...) the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified'.

through changes in species composition of plant communities and associated animal communities, the loss of sensitive species, the promotion of competitive and invasive species.

75. The Strategy sets out a range of strategic and site specific mitigation measures to help avoid adverse impacts of development on the integrity of the SAC. Monitoring and review are integral to its implementation. The Strategy has been costed and a delivery framework has been developed. Funding of elements delivered by the Council and its Partners will be by means of financial contributions secured through planning obligations linked to development proposals. There is no evidence to indicate that the mitigation will not proceed.
76. The appellant has not demonstrated through the use of objective and robust evidence within a transport statement or assessment that the proposed development would not give rise to a net increase in average annual daily traffic within the district. Planning permission is required for the use. The little information that there is on the previous leisure use indicates less activity than the proposed use. Moreover, an aim is to restore the condition of the SAC, not to stop the condition deteriorating further.
77. The proposed use of the site alone probably would not adversely affect the integrity of the European site, but it would contribute to a cumulative adverse impact together with the other plans and projects.
78. To address this objection, the appellant has made a financial contribution towards the package of mitigation measures. The sum is based on 3 proposed static caravans, equivalent to three dwellings. Provided that a planning condition limited the number of caravans allowed on the site this sum is consistent and proportionate with the approach derived from the Strategy. The Council has confirmed in writing that the payment will only be used to implement the approved Strategy.
79. On the basis of the reduced level of development proposed for the site, I conclude the change of use and the contribution to mitigation is in accordance with the Strategy. An aim of Policy NC1 is met. Compliance is achieved with Policy DM 2 and Policy DM 22 of the emerging EFDLP. These emerging policies seek to ensure no adverse effect on the site integrity of the SAC from development proposals and to address potential effects on biodiversity from air pollution.

The settled community and village environment

80. PPTS under Policy H states that sites in rural areas should respect the scale of and not dominate the nearest settled community and avoid placing an undue pressure on local infrastructure.
81. A strong body of objection, supported by the local MP, was demonstrated in written representations, a petition and the case presented in person at the hearing. The objections expressed by the local community, latterly taken forward by the Parish Council, were directed at development on a number of plots at the Chalet Estate rather than specifically Plot, 8, 9 and 10¹². Objections included the change in land use, unauthorised activities and use, local flooding and drainage problems, negative effects on local character and amenity (with

¹² Objections were in response to the notification by the Council of seven planning applications submitted on the same date of 28 February 2017 and the notification covering the various appeals against the enforcement notices.

reference to anti-social behaviour, intimidation, rubbish and bonfires, Roydon Conservation Area and Lee Valley Regional Park), inadequate access and high concentration of the District's traveller sites in Roydon and Nazeing.

82. I have considered some of the objections in the main issues above. In terms of precedent, all the appeals considered at the hearing indicate pressure and a personal need for similar development on a number of plots over the Chalet Estate. The Chalet Estate is in a Green Belt location where planning policy places strict control on development and very special circumstances must exist to justify inappropriate development. Provided that this policy test is met to allow the appeal would not set a generalised precedent.
83. The appellant is attempting to regularise the planning position through the statutory process. There is no specific evidence to show either the first or the current occupiers and their families have not respected the settled community or that they have been responsible for anti-social behaviour.
84. As part of the local plan process, allocation of land within the estate for traveller sites was considered but rejected. Nevertheless, with reference to local criteria¹³ I consider that the site is in reasonable distance of a settlement for access to schools, shops and other services. Access to public transport services and to the main road network is convenient and safe. I assessed visibility at property access points at the southern end of the lane and concluded highway safety would not be compromised. I note that the Council raised no objections regarding accessibility and highway safety.
85. Factors contributing to the character of Roydon Conservation Area include the rural setting and the quiet residential character of the village¹⁴. The change of use of the plots would not impact significantly on these two factors because of its location within the Chalet Estate, the separation distance from the village and the moderate scale of the development. Increases in traffic movements would be relatively small when placed in the wider picture.
86. The access road linking the Chalet Estate with the village is not within the Conservation Area. Interested parties objected to the increased use of the then unmade track at the time of the planning application. The Character Appraisal for Roydon Conservation Area noted that the potholed gravel surfaced road on the eastern side of the Village Green (at the southern end of the access road) would benefit from being repaired or even resurfaced using an appropriate material. The resurfacing of the access road carried out by residents of the Chalet Estate is not objectional from purely a planning point of view. The objection from the Parish Council is also directed at the lack of responsibility or authorisation to do the work. This is a separate matter, which is not for my consideration.
87. In conclusion the proposed reduced scale development of the site would not dominate the local settled community or harm the character of the village. The contribution to the effects of cumulative change would be moderate.

Intentional Unauthorised Development

88. The Government policy on intentional unauthorised development was confirmed by a Written Ministerial Statement in December 2015 and remained

¹³ See criteria (ii) and (iii) of Policy H 4 Traveller Site Development in the emerging EFDLP

¹⁴ Roydon Conservation Area Character Appraisal September 2006 paragraph 3.2

in place after the publication of the Framework. The policy was in response to concern about the harm caused, particularly in the Green Belt, where development is undertaken in advance of obtaining planning permission. In such cases there is no opportunity to appropriately limit or mitigate harm that may be caused and a planning authority may have to undertake expensive and time-consuming enforcement action.

89. As a matter of fact the development occurred without the benefit of a planning permission. Information submitted with the 2017 planning application indicated that the extended family had to leave their previous site, that they needed a family sized site and that enquiries over the years had not resulted in an alternative site. Some members of the family suffered from health issues and the best interests of 12 children probably would have been a priority at the time.
90. Harm has been caused to the Green Belt and the opportunity to limit harm was lost. Because of the family connection with the then owner of Plot 7 there probably was an awareness that planning permission was required for the caravan site. However, the circumstances of the extended family and the probable avoidance of unauthorised roadside camping are relevant.
91. In conclusion intentional unauthorised development occurred, a consideration which has moderate weight.

Need and supply of traveller sites

92. There is a generally accepted national need for more traveller sites. The level of need will vary between regions and at district or local authority level. The Framework expects that the housing needs for different groups in the community should be reflected in planning policies. PPTS sets out how travellers' housing needs should be provided for in plan-making for those covered by the definition in Annex 1. Local planning authorities should make their own assessments of need and working collaboratively should develop fair and effective strategies to meet need through the identification of land for sites. More specifically 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.
93. The development plan does not identify land for sites and Policy H10A is confined to setting out the tests to apply when determining applications for gypsy caravan sites within the Green Belt. The policy wording indicates the expectation that sites will come forward and be located in the Green Belt, rather than elsewhere in the District. The Council accepts that it does not have a 5 year supply of deliverable sites at the current time. Provision of sufficient traveller accommodation has not been secured and an objective in Policy CP1 (ii) has not been achieved. Providing for identified need will be through the EFDLP.
94. The emerging EFDLP sets out the components of the traveller and travelling showpeople requirement over the period 2011-2033. I will refer only to the traveller requirements. Based on the 2016 Gypsy and Traveller Accommodation Assessment and update (the GTAA) 64 pitches are required. Taking account of the new pitches completed coming forward between 2011 and 2017 the

remaining requirement is 32 pitches, not including provision for known ethnic traveller households who do not meet the planning definition¹⁵.

95. In the emerging EFDLP Policy SP 2 provides for an additional 38 pitches through the allocation of sites, which are to be delivered through a sequential approach. Policy SP 5 requires land to be provided for 15 traveller pitches at the proposed Garden Town Communities and another 23 pitches on various site allocations. Policy H 4 confirms the provision of pitches as part of strategic allocations and sets out criteria for determining applications for the development of pitches elsewhere.
96. The proposed Main Modifications includes minor updates to Table 2.4, whereby the remaining requirement is reduced to 31 pitches. The wording of Policy H 4 is subject to changes through the Additional Main Modifications but the fundamental provisions and criteria are not changed.
97. In the examination of the EFDLP to date the Inspector has not questioned the evidence base of the GTAA or the strategic and sequential approach to traveller site provision. The appellant included in the appeal documents a copy of a letter submitted through the 2021 consultation on the Main Modifications arguing that the pitch assessment is out of date and based on a methodology that has been found not to be robust.
98. It would not be appropriate in these appeal decisions to conclude in any detail on matters that are being considered through the examination of the EFDLP. It is clear however, that currently there is an unmet need for sites in the District. Based on the GTAA, which is the best available evidence, over 30 additional pitches are required in the next 10 years for gypsies and travellers who have PPTS status. The GTAA also recognised that need from households that may not have PPTS status (the unknowns) could range from 4 to 41 pitches.
99. The Council confirmed at the hearing that the requirement of 64 pitches included 'new' need from unauthorised sites, including pitches on the Chalet Estate¹⁶. However, I note that the identified unauthorised sites contributing to this total do not include all the pitches at issue in the current appeals and it appears that the GTAA was not informed by interviews with any of the residents of the Chalet Estate. To that extent there is probably an underestimate of need.
100. Supply of sites will be through strategic allocations and windfalls. The updated trajectory has moved forward the provision of 5 pitches at Latton Priory to the 2019-2023 time period and those in the Water Lane Area and East of Harlow to the 2024 to 2028 time period. At the hearing the Council explained why in its view the updated trajectory for delivery of pitches is not over-optimistic, referring to increased confidence of developers to bring strategic housing sites forward as the EFDLP nears adoption. Nevertheless, details on a number of matters, including phasing, have yet to be submitted and resolved and in the absence of more specific evidence considerable uncertainty remains over the timing of delivery of these pitches.
101. Over the last five years or so private site provision has been an important source of additional pitches. The wording of Policy H10A recognises that

¹⁵ Table 2.4 in the Submission Version of the EFDLP December 2017. The figure of 64 includes 4 pitches that is equal to 10% of the estimated need from the 'unknowns' in respect of the PPTS definition.

¹⁶ Hearing Document 4

traveller sites that come forward are likely to be within located in the Green Belt not least because of a very high proportion (92%) of land in the District is designated Green Belt. The appellants have drawn attention to gypsy sites that have received permission over the last five years or so, such as 3 pitches at Willingale. The shortfall of available sites and the relatively high level of need were important factors weighing in favour of a grant of permission. The EFDLP too relies on windfall private sites (including those already delivered) to make up the supply of pitches to meet the identified requirement to 2033. Some of the proposed allocations are on Green Belt land.

102. The shortfall in sites for Gypsies and Travellers was recognised in Government policy back in 2006. Since then, PPTS 2012 and the current PPTS set out how the likely need for permanent and transit-site accommodation should be addressed in plan-making.
103. In Epping Forest District the development plan made no site allocations and reliance has been on private site provision to help cater for increasing accommodation needs. The Submission Version of the EFDLP dates back to 2017, although work commenced 2010/2011. The time taken to progress the plan towards adoption has been increased by the essential work on the SAC, during which time there was a moratorium on new residential development. The lack of site allocations is reflected to an extent in the existing level of need and the lack of available alternative sites for those travellers on unauthorised sites. The 'failure of policy' argument has a small amount of weight, given the Council's commitments to move forward through the EFDLP.
104. In addition to general need, the availability (or lack) of alternative accommodation for the applicants is as a relevant consideration, as indicated by the PPTS. The Council was not able to suggest an alternative acceptable, affordable and available site(s) for the family to move to if their appeal is not successful.
105. There is no requirement in planning policy, or case law, for an applicant to prove that no other sites are available or that particular needs could not be met from another site. Likewise, there is no obligation on a local authority to provide a site. The probability is that finding a suitable alternative pitch would be difficult bearing in mind the site search undertaken by the Council as part of the local plan process, the extent of Green Belt in the District and the wider shortfall in traveller site provision.
106. In conclusion, the challenging order of need, the absence of a supply of five years' worth of sites and the lack of a suitable alternative pitch provide substantial weight in support of the development.

Personal Circumstances

107. Most of the original occupiers have left the site. Plot 8 is now owned by the Moran family and is occupied as a combined plot with Plot 7. The couple now living on Plot 8 were expecting their first child in November 2021. The couple now occupying Plot 9 have lived there two years or more. As explained at the hearing they are caring for their very young baby, who is having ongoing hospital treatment.
108. Mr and Mrs McCann have lived on Plot 10 since 2016 and have 5 children. They have specific health and education needs that were outlined in their

supporting statement. Mr McCann's niece and her husband are sharing the plot and were expecting a baby late 2021.

109. I have no reason to doubt the PPTS status of the families. Based on human rights law there is a positive obligation to facilitate the gypsy way of life. The families share a protected characteristic and under the PSED I must have due regard to the need to remove or minimise disadvantages and advance equality of opportunity between persons.
110. The plot facilitates the occupiers' traditional way of life as travellers. The benefits of health, education and community services are accessible and enable improvement to the quality of life. Proximity to members of their extended family and other travellers may be expected to provide support and be important to their way of life. No available alternative pitch has been identified to meet their personal needs for a site. There are very vulnerable children and parents on the land, who are in particular need of a stable base. Resorting to a roadside existence would cause hardship and be detrimental to home and family life. The best interests of the children are a primary consideration. The potential environmental costs of unauthorised camping are also a factor that supports their continued occupation of the plot. The personal circumstances provide substantial weight in support of the caravan site.

Planning Balance

111. The overall assessment is based on the site as defined in the enforcement notice, not the current position of occupation in conjunction with Plot 7. In addition, there is the ability to impose a planning condition to require no more than three static caravans and three touring caravans on three pitches.
112. There are several factors which weigh against the development and which raise policy objections. To recap, the harm to the Green Belt by reason of inappropriateness has substantial weight, with an additional element of weight to the loss of openness. The visual harm and loss of character to the Chalet Estate and the concern over site design, layout and space has significant weight. The location of the vulnerable development where there is a high risk of flooding has significant weight, taking account of the proposed mitigation measures. The probability that the unauthorised development was carried out intentionally has moderate weight.
113. Considerations that are neutral in the planning balance are the compliance with policies to protect the surrounding countryside and landscape character and the compatible scale of the development with the nearest settled community. Importantly, having secured appropriate mitigation, the development would not have an adverse effect on the site integrity of the SAC.
114. In support of the development the outstanding level of need in the District and more widely and the absence of a 5 years' worth supply of specific deliverable sites, has substantial weight. The failure of policy argument adds very little additional weight. The personal need for a pitch and other family circumstances, including the best interests of the children has substantial weight. I have in mind the serious interference with home and family life that would follow a refusal of planning permission.
115. The totality of the identified harm is not clearly outweighed by other considerations. Very special circumstances do not exist. That being so the

development fails to comply with Policy H10A and Policy GB2A. Conflicts also exist with Policies U2A and RST10A. Notwithstanding the compliance with Policies NC1, GB7A and CP2 the material change of use is not in accordance with the development plan when read as a whole. The conflicts with national policy on protecting the Green Belt, securing good design and ensuring sites are well planned to enhance the environment and promote a safe place to live provide a strong reason for following the direction of the development plan. The three pitch caravan site is not acceptable on a permanent basis.

Alternatives

116. There are two main alternatives to a permanent planning permission for the three pitches – a temporary planning permission and permission for part of the land.

Time limited permission

117. Planning permission may be granted for a temporary period, for example where it is expected that circumstances will change in a particular way at the end of that period. Furthermore, where there would be an interference with an individual's rights the interference should no more than is necessary and proportionate. The length of a possible temporary period was discussed at the hearing, the Council arguing for a two year period and the appellants for five years.
118. The potential change would be the provision of sites through the EFDLP and more particularly the strategic site allocations identified in emerging Policies SP 4 and SP 5. As considered in the section on Need above, there is much uncertainty over the timescale for delivery of these sites. The probability is that a period of four years is more realistic, remembering that it will rarely be justifiable to grant a second temporary permission and there is no presumption that a temporary grant of planning permission will then be granted permanently¹⁷.
119. Adjustments are required to the weights attached to the various harms and considerations in the planning balance to take account of the use over a time-limited period. Harm to the Green Belt would not be permanent. The level of flood risk would be the same but again would be for a specified period. The implications of proper planning of the Chalet Estate would continue to be very real constraint and argue strongly against the grant of a permission, as indicated by the change in layout configurations since the notice was issued.
120. PPTS at paragraph 27 states the absence of an up-to-date five year supply of deliverable sites should be a significant material consideration, except where the proposal is on Green Belt land. The pressing need in Epping District for sites, the extent of the Green Belt, the local plan process, the location of proposed allocations and the confidence over future site delivery are good reasons for attaching weight to the considerations of need and supply of traveller sites. In addition, the best interests of the children on the site, including the very young, must be a primary consideration and the very serious consequences of the families losing their home have substantial weight all matters considered.

¹⁷ Planning Practice Guidance: The use of planning conditions, paragraph: 014 Reference ID: 21a-014-20140306; PPTS paragraph 27

121. Even with suitable adjustments, I conclude that the totality of the identified harm is not clearly outweighed by other considerations. Very special circumstances do not exist. That being so the use fails to comply with Policy H10A and the material change of use is not in accordance with the development plan when read as a whole. The conflicts with national policy on protecting the Green Belt, securing good design and ensuring sites are well planned to enhance the environment and promote a safe place also weigh against the development. The caravan site is not acceptable for a temporary period.

Part of the Land

122. Secondly, in determining an appeal under ground (a), it is possible to grant planning permission in respect of the matters described as constituting the breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the enforcement notice relates¹⁸. The obvious alternative lesser form of development is Plot 10. Such an approach takes account of the differentiation of this plot since the material change of use took place in 2016 and the more recent change in ownership and pitch layout over plots 7, 8 and 9.

123. Green Belt and flood risk are the main policy objections. Plot 10 is a self-contained defined pitch that retains a chalet and has sufficient space for a static and touring caravan. Design and visual concerns are not so strong as with the combined plot. The varying aspects of need are a strong factor in favour of the caravan site, more especially the lack of an alternative site for the vulnerable McCann family. In view of the contribution made by the appellant towards mitigation in the Strategy no objection applies in relation to the SAC.

124. The potential loss of their home would be a very serious interference with their right for private and family life. The parents have challenging health issues, one of the children needs specialist support and their other four children were found school places nearby. They have lived on the site since 2016, which is a good indicator of the importance of a stable base for their health and well-being. Reliance on a road side existence or other temporary stopping places would result in particular hardship in the circumstances. The submitted updated information (September 2021) stated that the McCann family is sharing the plot with relatives, Mr and Mrs McCarthy, who were expecting a baby at the end of 2021.

125. The public interest centres on protection of the environment and public safety. The families are vulnerable and need a safe place to live that respects their lifestyle and caravan living. The risk from potential flooding events can be managed. In my view it would be disproportionate to deprive them of their home. A temporary permission would provide certainty of a home in the short term until the position becomes clearer on alternative site provision and delivery, rather than the inherent uncertainty and associated anxieties that would occur during a compliance period.

126. In conclusion a temporary planning permission in respect of part of the Land strikes a fair balance between the rights of the individuals concerned and the interests of the community.

¹⁸ Section 177(1)(a) of the 1990 Act.

Proportionality assessment

127. The failure to secure planning permission for all the land would require the use as a caravan site to cease on the remainder of the land. Dismissal of the appeal would lead to the prospect of the current occupiers losing their home, with the potential serious consequences for their well-being. However, the interference would be in accordance with the law and in the public interest to protect the environment and public safety. In the circumstances refusal of planning permission is necessary and proportionate, provided that the compliance period is reasonable. This is a matter for the ground (g) appeal.

Planning conditions

128. I have considered what planning conditions would be appropriate for Plot 10 in light of the discussion at the hearing and Planning Practice Guidance. Conditions should only be used where they satisfy the following six tests: necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. When used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects.
129. The development is acceptable for a temporary period and so a time limit must be imposed through a condition, together with requirements for the use to cease at the end of the stated period and restoration of the land to an agreed scheme. A personal condition is justified in view of the importance of the family welfare and the best interests of the children in the planning balance and proportionality assessment. That being so it is not necessary to additionally restrict occupation to gypsies and travellers with PPTS status.
130. The approved land use is a caravan site and a condition is necessary to control the number and type of caravans and to specify a single pitch. Two caravans – a static and a touring caravan – reflect the caravans present around the time of the hearing. Such restrictions are to safeguard the appearance of the plot and the Chalet Estate and amenity on the plot. Conditions to prevent commercial activity and restrict the parking of commercial vehicles are necessary to protect the amenity of the residential and leisure uses on the estate.
131. Notwithstanding the use being for a time limited period, submission and approval of a site development scheme is necessary to maintain the appearance of the plot and estate. The details should include a site layout plan, site drainage, external lighting, a flood evacuation plan and means of enclosure. A planting scheme is not required given the constraints of the plot and the temporary consent. Details of the means of enclosure is considered sufficient in this instance. The scheme and details required should be proportionate to the size and location of the plot and the temporary time period. If approval of the details is not obtained in a reasonable timescale, as set out in the condition, the use must cease.
132. The FRA identified mitigation measures which are important to reduce risk and improve safety should a flood event occur. These measures are reproduced as a condition to secure their implementation.

133. The Council accepted that provision of an electric vehicle charging point and superfast broadband would not be reasonable if a temporary, planning permission is granted. I agree.

Conclusion on ground (a)

134. The direction of the development plan is that the caravan site on the combined plot is unacceptable. The welfare of the occupiers of Plot 10, including the best interests of the children, justify a temporary permission on part of the land. The appeal on ground (a) succeeds in part.

Ground (f)

135. The requirements must not be excessive to achieve the purpose of the notice, which is to remedy the breach of planning control.
136. As explained when considering the validity of the notice, corrections to the description of the breach are necessary and the requirements must be consistent with the corrected wording. However, I have disagreed with the appellant in relation to specifying details of an acceptable leisure use and ancillary residential use. The proposed wording is specific to a primary use as a residential caravan site.
137. The Council's proposed wording of step (ii) requires the removal of all caravans, hardstanding, structures on the Land in association with the residential use. The planning history confirms that the chalet building predated the change of use by a number of years and therefore to require its removal would be excessive. The requirement to cease the use of the land as residential caravan site is sufficient to control the use of the chalet.
138. There is partial success on ground (f) and the wording of the requirements will be varied accordingly. The requirements in relation to Plot 10 will not be deleted from the notice so as to avoid any possibility of a grant of an unconditional planning permission through the operation of section 173(11).

Ground (g)

139. The compliance period must be reasonable and proportionate. The period for compliance is 6 months. The appellants requested a period of 12 months because the residents have nowhere else to live in their caravans. The Council initially resisted an extension to the period.
140. Effective enforcement is important to maintain the integrity of the decision-making process and to tackle breaches of planning control that have an unacceptable impact on the amenity of the area. Within this context a period of longer than 12 months usually has to be justified by some exceptional circumstance. Consideration must be given to what would have to be done in practice to carry out all the remedial steps. The level and type of harm is also relevant.
141. The occupiers who will not benefit from a planning permission will need time to explore and consider the options open to them. In view of the family circumstances and children involved maximum opportunity should be given to them to find an alternative site or solution in order to avoid the hardship of a roadside existence. In this respect the change in plot configuration may be very relevant and present a way forward.

142. Balancing all the considerations, a period of 12 months is reasonable and proportionate to cease the use, with an additional two months to carry out the works to remove the hardstanding and clear the site. The appeals on ground (g) succeed.

Conclusions

143. Appeal A: For the reasons given the appeal should succeed in part only and I will grant planning permission for part of the Land, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of section 180 of the Act.
144. Appeal B (grounds (f) and (g) only): For the reasons given I conclude the requirements are excessive and the period for compliance falls short of what is reasonable. I will vary the enforcement notice accordingly prior to upholding it.

APPEAL C

The development

145. The development proposed in Appeal C is similar to that in Appeal A in so far as it is described in the application as a Traveller site and relates to the same area of land. However, the description also states a level of development comprising 8 mobile homes for a single family group with ancillary touring caravans. A plan of a site layout with eight mobile homes on a double and single pitch formed part of the application. No reference was made to the laying of hardstanding. The planning application was considered, consulted on and decided on the basis of the submitted details.
146. In discussion at the hearing the appellant expressed a willingness for the proposal to proceed on the basis of a caravan site that comprised three pitches and a total of three static caravans and three touring caravans. No revised plans were submitted. The Council drew attention to the original application and prejudice from an amendment to the description.
147. In accordance with Procedural Guidance an appeal should not be used to evolve a scheme. The change in land ownership and occupation does not amount to exceptional circumstances. Even though the level of development would be reduced I consider that the new description is a substantial amendment and departure from the application details. It is not one that should be accepted.
148. A different approach is able to be followed with the appeals against the enforcement notice where the description of the breach was not specified in such detail and powers of correction are able to be applied. Appeal A is the appropriate means of considering the lower level of development.
149. Therefore Appeal C will be determined on the submitted application details. To avoid undue repetition, I will adopt the planning policy context and much of the reasoning on the main issues set out above in Appeal A and focus on conclusions. There is no need to consider the implications of the proposal on the SAC in any detail because the use is unacceptable for other reasons. It is also the case that the sum received towards mitigation equated to three

pitches and did not adequately address the level of development and number of caravans proposed.

150. In summary, Appeal C will be determined on the submitted application details within the planning policy context set out above in Appeal A.

Reasons

Green Belt

151. The proposed use as a traveller caravan site is inappropriate development in the Green Belt. The eight mobile homes, touring caravans, parked vehicles, domestic paraphernalia and the activity generated by this level of residential use would cause a serious loss of openness when compared to the former leisure plot use and chalet building.
152. The harm to the Green Belt, by reason of inappropriateness has substantial weight, with additional significant weight to the loss of openness.

Character and Appearance

153. The introduction of 8 mobile homes onto the appeal site resulted in an intense level of occupation and the appellant acknowledged that space standards required for a caravan site licence were not met on Plots 8 and 9. The regimented layout, the proximity of caravans to the boundaries and lack of green space and boundary vegetation would be in sharp contrast to the leisure plots, the lawful residential plots and some of the more spacious caravan sites. The probable high level of activity from a single site would not help to integrate the use within the quiet rural surroundings. Achieving a well-planned site is severely constrained. The design criteria in the SPG would not be met and little scope would exist to address the harm through planning conditions.
154. The development would result in serious harm to the character and appearance of the Chalet Estate and contribute significantly to the cumulative effect of adverse change there. There is conflict with Policy RST10A.
155. Plots 8, 9 and 10 are fairly centrally located within the previously developed Chalet Estate. Development would not involve encroachment into the countryside or directly harm key landscape characteristics. The effect on the wider landscape character would be minimal. In local views from the footpath network the development on this site would not unduly noticeable or conspicuous. In these matters compliance is achieved with Policy GB7A and Policy CP2.

Flood risk

156. The proposal is a highly vulnerable form of development located in Flood Zones 3a and 3b where there is a high probability of flooding. Groundwater and pluvial flooding also are potential causes of flood events. Based on initial occupation the site accommodated 11 adults and 12 children.
157. The use of the land as a caravan site would put the safety of all the occupiers, especially the more vulnerable, at serious risk. Members of the emergency services also would be at risk in carrying out their duties in the event a flood incident occurred. For these reasons Policy U2A does not support the use in this location. Based on the flood risk classification and the location of the site the Framework also indicates the use should not be permitted.

Measures have been identified to manage risk and make the development flood resistant. The FRA concluded that escape routes would present a low risk and flood risk would not be increased elsewhere.

158. Balancing all the factors I conclude flood risk provides a considerable amount of weight against the development.

The settled community and the village environment

159. Objections related to anti-social behaviour were not directly attributed to the site occupiers, which reduces the weight that may be attached to such concerns. Nevertheless, because of the harms I have identified the proposed development of this site is of particular relevance when thinking of the potential cumulative effects on local amenity.

Intentional Unauthorised Development

160. I have concluded that this matter has a moderate degree of weight.

Need

161. The GTAA demonstrates an unmet need for traveller sites in the District. Over 30 additional pitches are required in the next 10 years for gypsies and travellers who have PPTS status. Need from households that may not have PPTS status (the unknowns) could range from 4 to 41 pitches. Information on the unauthorised pitches on the Chalet Estate suggests that this level of need may be an underestimate.
162. Supply of sites will be through strategic allocations coming forward through the emerging EFDLP and windfalls will continue to be an important contribution. Land in Green Belt forms part of proposed future supply. The Council is unable at the present time to demonstrate a five years' worth supply of deliverable sites and uncertainty remains over the timing of delivery of pitches on strategic sites.
163. The site search undertaken by the Council as part of the local plan process, the extent of Green Belt in the District and the wider shortfall in traveller site provision all indicate that finding a suitable alternative pitch for the current occupiers of the site would be difficult. The Council was not able to help in suggesting an alternative acceptable, affordable and available site(s) for the families to move to if their appeal is not successful.
164. The 'failure of policy' argument has a small amount of weight in Epping Forest District given the Council's commitments to move forward through the EFDLP.
165. In conclusion, the challenging order of need, the absence of a supply of five years' worth of sites and the lack of a suitable alternative site or pitches provide substantial weight in support of the development.

Personal Circumstances

166. The level of occupation on the site has decreased since the change in land ownership, such that 8 mobile homes are no longer present. The personal circumstances of the current occupiers are a very important consideration, not least because the best interests of the children are a primary consideration and

the potential serious interference with home and family life. I attach significant weight to this consideration.

Planning Balance and Conclusion

167. The potential harm to the Green Belt by reason of inappropriateness, and the other identified harm resulting from the proposal, is not clearly outweighed by other considerations. Very special circumstances do not exist. That being so the development fails to comply with Policy H10A and Policy GB2A. Conflicts also exist with Policies U2A and RST10A. Notwithstanding the compliance with Policies CP2 and GB7A the material change of use is not in accordance with the development plan when read as a whole.
168. The conflicts with national planning policy on protecting the Green Belt, securing good design and ensuring sites are well planned to enhance the environment and promote a safe place to live provide a strong reason for following the direction of the development plan. The caravan site with eight mobile homes and ancillary touring caravans is not acceptable on a permanent basis. Even allowing for some adjustment within the balance, the conclusion is the same in respect of a temporary planning permission.
169. I am satisfied that to grant temporary planning permission on part of the land through Appeal A provides a necessary and proportionate response in relation to the human rights and PSED considerations.
170. For the reasons given above I conclude Appeal C should be dismissed. This outcome does not violate the human rights of the occupiers.

DECISIONS

Appeals A and B

Refs: APP/J1535/C/18/3215162, APP/J1535/C/18/3215163

171. It is directed that the enforcement notice be corrected by the deletion of the wording below the heading to paragraph 3 and the substitution of the wording "Without planning permission, the material change in the use of the Land from use as a recreational leisure plot to use as a residential caravan site and the carrying out of associated development including the installation of hardstanding."
172. Appeal A is allowed insofar as it relates to the land known as Plot 10 shown hatched black on Plan 1 annexed to this decision 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 material change in the use of the land to use as a residential caravan site and the carrying out of associated development including the installation of hardstanding, subject to the following conditions:
- 1) The use hereby permitted shall be carried on only by the following: Michael McCann and Mary (Melanie) McCann and their resident dependants and Noreen McCarthy and Martin McCarthy and their resident dependants and shall be for a limited period being the period of 4 years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.
 - 2) When the land ceases to be occupied those named in condition 1 above, or at the end of 4 years, whichever shall first occur, the use hereby

permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place in accordance with the scheme approved in compliance with condition 7 below.

- 3) There shall be no more than one pitch on the site and no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed on the site at any time, of which no more than one shall be a static caravan.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No commercial or business activities, including the storage of materials, shall take place on the land.
- 6) At all times (i) the floor level of the static caravan hereby approved shall set at 33.79 metres Above Ordnance Datum (AOD), and (ii) the static caravan shall be anchored to the ground.
- 7) 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 60 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 and a timetable for its implementation shall have been submitted for the written approval of the local planning authority. The scheme shall include details of the internal layout of the site, including the siting of caravans, hardstanding and amenity area; the means of foul and surface water drainage; external lighting; a flood evacuation plan; means of enclosure; provision for storage of waste and recyclables and a scheme for restoration of the site to its former condition at the end of the period for which planning permission is granted for the use or the site is occupied by those permitted to do so.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

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

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.

173. It is directed that the enforcement notice be varied by:

- the deletion of steps (i) to (iv) in paragraph 5 and the substitution of the wording:
 - i. Cease the use of the Land as a residential caravan site.
 - ii. Remove from the Land all caravans, all hardstanding and all structures on the Land erected and used in association with the use of the Land as residential caravan site, except the chalet building.
 - iii. Remove from the Land all domestic paraphernalia associated with the use of the Land as a residential caravan site and any debris resulting from compliance with steps (i) and (ii) above.
- the deletion of the words in paragraph 6 under the heading Time for Compliance and the substitution of the words "Step (i) 12 months after this notice takes effect. Step (ii) and Step (iii) 14 months after this notice takes effect."

174. Appeal A is dismissed and Appeal B succeeds in part and the enforcement notice is upheld as corrected and varied insofar as it relates to the land known as Plots 8 and 9, shown edged black and outside the black hatching on Plan 1 annexed to this decision. In Appeal A planning permission is refused in respect of the use the land known as Plots 8 and 9 as a residential caravan site with associated development on the application deemed to have been made under section 177(5) of the 1990 Act as amended

APPEAL C Ref: APP/J1535/W/18/3204586

175. The appeal is dismissed.

Diane Lewis

Inspector



Plan

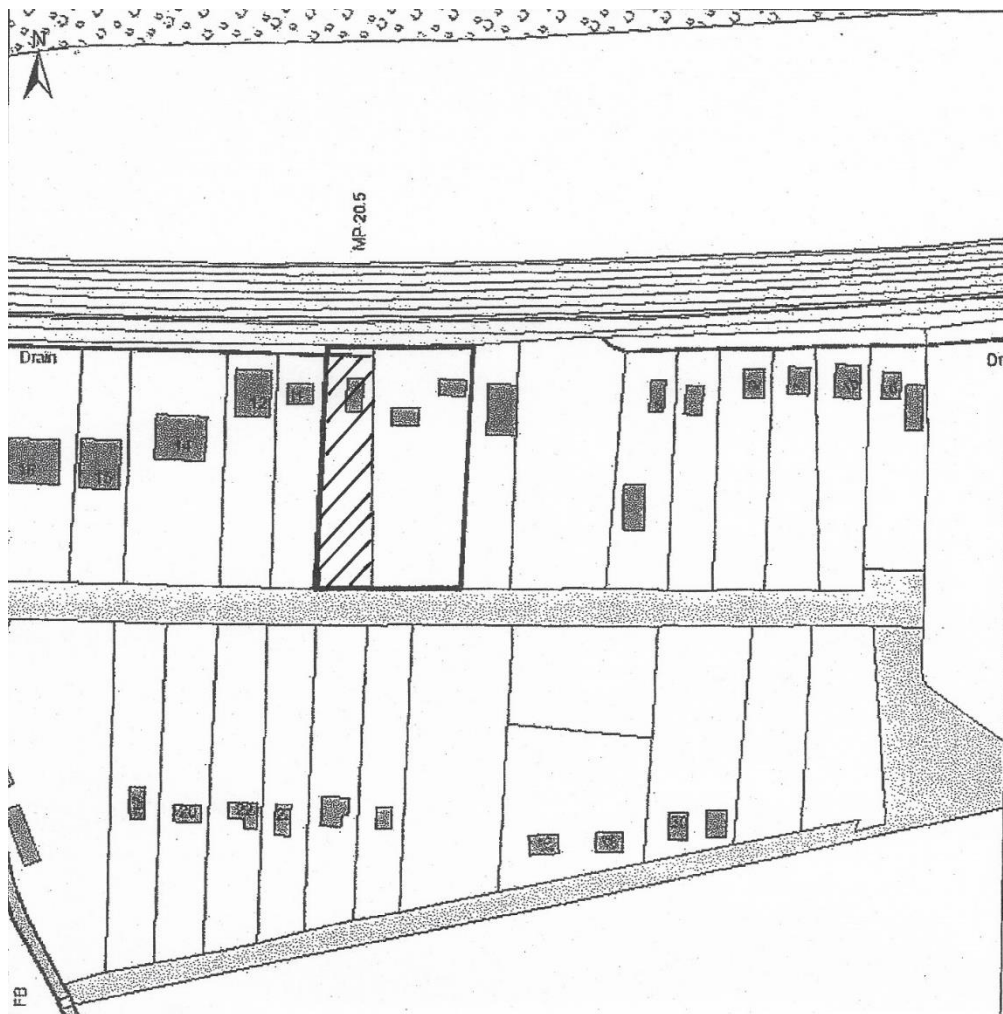
This is Plan 1 referred to in my decision dated: 13 May 2022

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

Land at: Plots 8, 9 and 10 Roydon Lodge Chalet Estate, Roydon CM19 5EF

References: APP/J1535/C/18/3215162 and APP/J1535/C/18/3215163

Scale: NTS



APPEARANCES

FOR THE APPELLANTS:

Alison Heine BSc MSc MRTPI	Heine Planning Consultancy
Christopher Moran	An Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Phillip Hughes BA Hons MRTPI	Principal PHD Chartered Town Planners
MCMi	
Mark Beard of Counsel	Instructed by the local planning authority

FOR ROYDON PARISH COUNCIL:

Angelica Rokad of Counsel
Kathryn Claydon

INTERESTED PERSONS:

Canon Anthea Cannell
Councillor Mary Sartin
Vince Parker
Wayne Matthews
Jamie Fitzgerald

DOCUMENTS submitted at the hearing

- 1 Proposed corrections to the enforcement notices
- 2 Draft Deed of Unilateral Undertaking
- 3 Letter of consent
- 4 Document EB402A Tables 1 and 2
- 5 Letter dated 14 December 2016
- 6 Proposed planning conditions
- 7 Representation by Rt Hon Robert Halfon MP
- 8 Roydon Conservation Area Appraisal
- 9 Revised list of planning conditions
- 10 Planning history of plots

ROYDON LODGE CHALET ESTATE APPEALS: SUMMARY OF DECISIONS

Plot number	Appeal refs	Decision Enforcement appeal	Decision s78 appeal
1B	C/18/3215158 W/18/3204576	Appeal allowed, enforcement notice corrected and quashed, temporary planning permission granted	Appeal allowed, temporary planning permission granted
5 & 6	C/18/3215159, C/18/3215160 W/18/3204582	Appeals allowed, enforcement notice corrected and quashed, temporary planning permissions granted	Appeal allowed, temporary planning permission granted
7	C/18/3215161	Appeal dismissed, enforcement notice as corrected and varied upheld	
8, 9 & 10	C/18/3215162, C/18/3215163 W/18/3204586	Temporary planning permission granted for part of the land, enforcement as corrected and varied upheld	Appeal dismissed
11	C/18/3215164	Appeal dismissed, enforcement notice as corrected and varied upheld	
21A	C/18/3215165, 3215166, 3215167 W/18/3204590	Appeals allowed, enforcement notice as corrected quashed, planning permissions granted	Appeal allowed, planning permission granted
25 & 26	C/18/3215169 W/18/3204593	Enforcement notice quashed	Appeal dismissed
29	C/18/3215171	Appeal allowed, enforcement notice as corrected quashed, temporary planning permission granted	
30 30A	C/18/3215172	Enforcement notice quashed	
32	C/18/3215174	Appeal allowed, enforcement notice as corrected quashed, temporary planning permission granted	

32B 32C	C/18/3215175 C/18/3215176 W/18/3204595	Enforcement notice quashed	Appeal allowed, temporary planning permission granted
33 & 34	C/18/3215177	Enforcement notice quashed	
38	W/19/3222126		Appeal allowed, planning permission granted
49	C/18/3215178 C/18/3215179 W/18/3204596	Appeals allowed, enforcement notice as corrected quashed and temporary planning permissions granted	Appeal allowed, temporary planning permission granted

Note: This summary is for information only and reference should be made to the Appeal Decision(s) for details.