
Appeal Decision

Hearing Held on 26 to 28 October 2021

Site visit made on 29 October 2021

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Appeal Ref: APP/J1535/W/19/3222126

Plot 38 Roydon Lodge Chalet Estate, Roydon CM19 5EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr W Doherty and Ms A Price against the decision of Epping Forest District Council.
- The application Ref EPF/1633/18, dated 12 June 2018, was refused by notice dated 25 January 2019.
- The application sought planning permission for a material change in the use of the land from a mixed use for leisure and residential occupation of a caravan to the use of the land as a gypsy and traveller caravan site without complying with a condition attached to planning permission Ref APP/J1535/C/14/2211759, dated 30 July 2015 (LPA ref: ENF/0721/10).
- The condition in dispute is No 1 which states that: The use hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. At the end of this period the use hereby permitted shall cease, and any caravans on the land shall not be occupied for residential purposes except between 1 April and 31 October inclusive each year.
- The reasons given for the condition is: To reflect the likely period within which planning circumstances will have changed in meeting the need of the travelling community through the development plan process and to give the occupant and his family a realistic and reasonable opportunity to seek an alternative site in the light of those changed circumstances.

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

Procedural Matters

1. The appeal for Plot 38 was heard together with a number of appeals against enforcement notices and refusals of planning permission related to other plots at Roydon Lodge Chalet Estate (the Chalet Estate).
2. The discussion at the hearing considered the planning history of the Chalet Estate, 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 has been considered on its individual merits with a single decision letter addressing the appeal(s) for each plot. The planning history and appeal for Plot 38 is distinguished from appeals on all other plots in that it concerns removal of a planning condition attached to a

planning permission. A summary of the Decisions on all appeals is provided for ease of reference at the end of this document.

3. I carried out site visits to the Chalet Estate on 25 and 29 October 2021, as well as familiarising myself with the surrounding area on other occasions.
4. 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.

The Site and Surroundings

The Chalet Estate

5. The Chalet Estate is located to the north and east of the village of Roydon within the countryside and Metropolitan Green Belt. Two rows of plots are served by a central access road and a vehicle entrance 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.
6. 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. In 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.
7. Thereafter a planning history has developed specific to each plot or combined plots leading to a more varied appearance and character on the Chalet Estate. A small number of plots are characterised by garden land with a small traditional chalet, some appear vacant and overgrown. A number of plots are occupied as caravan sites, most of which are unauthorised. There are also plots with dwellings and two plots with very recently built larger chalets.

Plot 38 Planning History

8. Plot 38 is towards the western end of the estate, on the north side of the access road. The history and use have been explored at some length in two appeal decisions dated 25 May 2012 and 30 July 2015¹.
9. In summary the use of the small hut granted planning permission in 1951 and the chalet granted permission in 1960 was restricted to recreational purposes at weekends and holidays during the months of April to October inclusive.
10. The original hut was demolished and a caravan brought onto the land in the mid 1990s. The residential use of the caravan was of occasional residential occupation at weekends and holidays. The land was sold in July 2008 and the new owners, the appellants Mr Doherty and Ms Price, replaced the existing caravan with their own. The Inspector concluded in the 2015 decision that a material change in the use of the site to a single primary use as a gypsy and

¹ Appeals refs APP/J1535/C/11/2160430/32 and APP/J1535/C/11/2160433/34 dated 25 May 2012 and APP/J1535/C/14/2211759 dated 30 July 2015

traveller caravan site occurred in 2008 when the appellants moved onto the land and started occupying it as their home.

11. In August 2011 two enforcement notices were issued and were the subject of the appeal decisions dated 25 May 2012. The notice alleging a material change of use from a sui generis leisure use to use for permanent residential occupation was found to be invalid and was quashed. The second notice against operational development, involving the laying of hardstanding and the erection of sheds and fencing, was upheld.
12. In December 2013 the Council issued an enforcement notice alleging without planning permission the material change in the use of the land from a mixed use for leisure and residential occupation to use as a gypsy and traveller caravan site. In the appeal decision dated 30 July 2015 the appeal succeeded on ground (a) and a temporary planning permission was granted for a period of three years. At the end of the period the use was required to cease and any caravans on the land should not be occupied for residential purposes except between 1 April and 31 October inclusive each year².

Main Issue

13. The appellants applied for removal of condition 1 attached to the 2015 permission to enable the site to be used as a caravan site for year round occupation by persons claiming Gypsy Traveller status, together with facilitating development. In the event permission is not granted on a permanent basis, variation of condition 1 is sought to allow occupation of the site for a further temporary period of at least three years.
14. The main issue is whether the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to provide the very special circumstances necessary to justify the development, whether on a permanent or temporary basis. Potential harms are related to the effects of the caravan site on the openness and purposes of the Green Belt, the character and appearance of the Chalet Estate and the wider landscape, flood risk, the SAC and the amenity of the village and the settled community. Other considerations, include the general need for traveller sites and the personal needs of the appellants and their family.
15. Exercising duties under the Human Rights Act 1998 will be integral to my decision-making. Article 8, a Convention Right³, affords a person the right to respect for their private and family life, their home and their correspondence. It 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. Under the Equality Act 2010 I will have due regard to the public sector equality duty.
16. The application was made before the end of the temporary three year period but the permission has now expired. Success on the appeal would result in a new planning permission being granted to allow the use to continue. National

² Condition 1 attached to the 2015 permission

³ Article 8 of the European Convention on Human Rights, enshrined into UK law by the Human Rights Act 1998.

Planning Practice Guidance states it will rarely be justifiable to grant a second temporary permission (except in cases where changing circumstances provide a clear rationale, such as temporary classrooms and other school facilities). Further permissions can normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning permission will then be granted permanently⁴.

17. Consistency in the planning process is recognised as important to maintaining confidence in the appeal process and like cases should be decided in a like manner. The July 2015 appeal decision is very relevant, although I am not bound by the Inspector's conclusions if there are sound reasons for coming to a different decision. Certain changes in the planning context have occurred including revisions to national planning policy and guidance, issues that have emerged through the preparation of the new local plan and development on the Chalet Estate.

Planning policy

18. 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).
19. The most important policies for determining the appeals are those related to the appeal site's location and 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 for proposed gypsy caravan. 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 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.
20. 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).
21. The most important policies identified above are generally consistent with the Framework and have full weight.
22. 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.

⁴ Planning Practice Guidance: Use of planning conditions Paragraph: 014 Reference ID: 21a-014-20140306

Reasons

Green Belt

23. The land is one of the single width plots on the Chalet Estate. At the time of the site visit in October 2021 the layout was similar to that approved by the Council in 2015⁵. There was a static caravan, one touring caravan, three sheds and a small block of kennels. Hardsurfacing extended across the plot and boundary treatment was mainly in the form of timber fencing.
24. With reference to Policy E of PPTS the use of Plot 38 as a traveller caravan site is inappropriate development in the Green Belt, a matter accepted by the appellants. By definition inappropriate development is harmful to the Green Belt.
25. An essential characteristic of Green Belts is their openness. When the land was sold in 2008 the estate agents sales details show that a static caravan was positioned near the rear boundary and occupied the width of the plot. The rest of the land was a garden with a lawn and good vegetation cover along the side and rear boundaries, at least one garden shed and a low timber fence and gates to the frontage. The plot had a generally open character, spatially and visually.
26. Following the 2015 permission the fallback is a mixed use for leisure and residential purposes. The approved restoration scheme⁶ allowed for the retention of one static caravan with one ancillary touring caravan. The kennels and sheds would be removed. An area of hardstanding would remain, sufficient for the caravans and the parking of a vehicle. A small area near the frontage would be replaced with grass. The fencing enclosing the site and the septic tank would be retained. The caravans could be occupied for residential purposes between 1 April and 31 October inclusive each year.
27. It is reasonable to expect that the site layout would continue much as it is now if the caravan site use became permanent, given the constraint plot size imposes on the layout. The number and type of caravans could be controlled by planning condition. In comparison with the fallback, the kennels and sheds are small structures with very little effect on the spatial aspect of openness, the main loss coming from the static caravan. The visual aspect of openness also would be little different bearing in mind that the site probably would not regain the appearance of a more landscape dominated plot seen back in 2008.
28. I agree with my colleague in 2015 that the more intensive year-round use of the site would have some impact on openness, taking into account day to day activity and vehicle movements. I also agree that the development would not offend any of the recognised purposes of including land within Green Belt, taking account of the position of the plot on the Chalet Estate and its history of use.
29. In conclusion, the main harm to the Green Belt is the inappropriate form of development. The harm by reason of loss of openness is very limited, bearing in mind the fallback. The development complies with Policy GB7A in that there would not be an excessive adverse impact upon the openness, rural character

⁵ The site layout was submitted by the appellants to comply with condition 6 attached to the 2015 permission.

⁶ The restoration scheme also was submitted by the appellants to comply with condition 6 attached to the 2015 permission.

and visual amenities of the Green Belt. The totality of the harm has substantial weight, having regard to the direction in the Framework.

Character and appearance

30. The Chalet Estate is within the Farmland Plateau Landscape Character Type and the Roydon Landscape Character Area (the LCA)⁷. The LCA is characterised by gently undulating fields of the arable farming plateau that overlook the valley of the River Stort to the north and the River Lea to the west. Fields are lined with a network of mature hedgerows, often with hedgerow trees whilst veteran trees are a feature that contribute to the historic landscape pattern. The large nucleated village of Roydon is the key feature in the settlement pattern. A sense of tranquillity is strong throughout most of the area.
31. The development of Plot 38 through the change of use has not encroached into the countryside or disturbed field patterns and other key landscape characteristics. The effect on the wider landscape character would be minimal and at the hearing the Council accepted that harm would be localised.
32. 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 went 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. 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 recreation purposes for seven months of the year. The leisure use was regarded as complementary to the countryside location.
33. Even by October 2014⁸ the impression gained by the Inspector was of a generally tranquil, green and relatively undeveloped environment with built development blending well with the vegetation and rural surroundings. Subsequently the aerial photographic evidence indicates a marked contrast between 2013 and 2018, which the Council described as a change from a leisure use set on a verdant, informally developed leisure estate to a highly developed urban form of development where hardsurfacing and caravans dominate. The impression I gained in 2021 was of a different character to that described in 2014, reflecting a greater intensity of residential use, the use of many of the plots as caravan sites and the replacement of green space by hardsurfacing. As indicated by the enforcement notices issued in September 2018 much of the development taking place in the last few years has not been authorised. The character and appearance of the Chalet Estate has changed significantly, emphasising the impact of cumulative development.
34. The change in land use character from a chalet estate with a predominantly leisure use to an estate in mainly permanent residential use is resisted by Policy RST10A. The Parish Council and many of the settled community regard the recent land use change as detrimental to the character of the village and its rural countryside setting, citing the increased daily activity, the increase in the

⁷ Landscape Character Assessment January 2010, pages 96-99 C6: Roydon

⁸ The date the Inspector made the appeal site visit

volume and speed of traffic, the visual impact, the loss of vegetation and light pollution.

35. In 2015 the Inspector concluded there was great merit in preserving the integrity of the estate for leisure use and that the effect of permanently occupied plots was minimal. Furthermore, to allow use of Plot 38 as a gypsy and traveller caravan site on a year round basis would consolidate the permanently occupied plots in this part of the estate with an accompanying loss of character and be contrary to Policy RST10A. In the long term the cumulative effect of such development would transform the fragile character beyond recognition. The presence of little used plots did not dissuade the Inspector from that view.
36. In my view it is not realistic to expect the character and appearance of the Chalet Estate to continue to reflect the scene of the 1950s. Plots have become derelict and overgrown. On a small number of plots permanent residential use has become lawful and dwellings have been built. Even on plots remaining in leisure use Policy RST10A allows for the construction of leisure chalets or the stationing of caravans and mobile homes. The development on Plots 47 and 48 indicates the type of built development the local planning authority finds acceptable, which is a more substantial and dominant building, patios and parking rather than a landscaped dominated plot with the traditional small timber chalet⁹. Consistency should be applied to re-use of plots by the traveller community. Looking ahead in the emerging EFDLP there is no equivalent policy to RST10A, although the estate remains in the Green Belt.
37. The appeal site was described in the 2015 decision as being unlike other plots, the unauthorised development appearing out of keeping with its immediate surroundings. Whilst the plot now appears strikingly different to the photo in the estate agent's particulars in 2008, the difference to the approved fallback is limited. Also, Plot 38 towards the western end of the estate, is near to plots that are developed with dwellings, which provide a more residential appearance¹⁰. The main structure on site, the static caravan, complies with design criteria in the SPG in so far as it is single storey in height with a shallow pitch to the roof and is set back within the plot with the shortest side facing the access road. By comparison, the more recently built chalets opposite on Plots 47 and 48 are of a considerably larger scale and permanent appearance. The caravan site at Plot 38 no longer appears incongruous alongside approved developments and it does not detract from the visual character and appearance of the Chalet Estate.
38. In local views from the footpath network I found that caravans and roofs of the sheds were visible but the development on this plot was not unduly noticeable or conspicuous. The caravan site has a short rear boundary, is located on the northern side of the estate and is seen very much in the context of the nearby larger permanent dwellings.
39. The conflict with Policy RST10A is by reason of the land use. Nonetheless I conclude that the development is compatible with the character and

⁹ Planning permission refs EPF/1630/14 and EPF/20121/14. Planning conditions restrict the buildings to use for recreational purposes only from April to October, domestic storage the remainder of the year and require no use for permanent residential accommodation.

¹⁰ The Statement of Common Ground confirms that Plot 36 has immunity from enforcement action due to the passage of time, Plot 37 and Plot 41 have lawful development certificates for permanent residential use.

appearance of the Chalet Estate and of the surrounding countryside. In this respect there is compliance with Policies H10A and CP2.

Flood risk

40. 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.
41. A site-specific flood risk assessment (the FRA) was carried out on behalf of the appellants using data from the Environment Agency and site levels from a topographic survey undertaken in 2017. The majority of the plot was shown to be flooded in the 1 in 20 annual probability event with a maximum depth of flooding of 0.29m. The entire plot would be flooded in the 1 in 100 annual probability event with a maximum depth of flooding of ranging from 0.10m to 0.40m. Based on this information the FRA places Plot 38 in Flood Zone 3b, the functional flood plain. Historical data shows that the plot was flooded to varying amounts in the flood events of 1947, 1974, 2000 and 2001. The site is also found to be potentially at risk from groundwater and surface water flooding.
42. With reference to national policy and guidance the caravan site as a highly vulnerable form of development should not be permitted in Flood Zone 3b. The exception test does not apply. However, there are other factors to take into account in relation to avoidance and making the development safe.
43. The aim is to steer development to areas with the lowest probability of flooding. The Council accepted 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.
44. The FRA proposes various measures to mitigate flood risk. These include ensuring the threshold level of the caravan remains 300mm 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 the occupants to sign up to receive flood alerts and flood warnings and the preparation of a flood plan.
45. The fallback allows for seasonal residential occupation of the caravan as part of a mixed use. Reported flood events in the area have not been confined to the winter months, such as the flooding that occurred in July 2020. No planning conditions would be in place to require flood mitigation measures.
46. The FRA explained that the western portion of the single access road serving the Chalet Estate and more particularly Plot 38 is shown to be flooded in all events. Within Plot 38 the hazard rating for most of the area is low risk and the rating along the western part of the access road is low risk. The FRA considers that flash flooding is unlikely to occur because of the size of the River Stort catchment at this location. That being so, there would be time to respond to flood alerts and warnings and to leave the site safely.
47. 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.

48. The Environment Agency when consulted had no comments on the application to vary the condition. An in principle policy objection was received from the Council's Engineering, Drainage and Water Team. The 2015 appeal decision did not address flood risk in detail, although the Inspector attached very great significance to the provision of a flood risk management scheme when considering planning conditions. A scheme was subsequently approved by the local planning authority that included tethering of caravans and a flood evacuation plan.
49. The Parish Council, with reference to all appeals, 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.

Conclusions

50. The proposal is a highly vulnerable form of development. The use of the land as a caravan site in the functional flood plain would increase the safety risk to the occupiers and in the event of 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. Also weighing in the balance are the measures which have been identified to manage flood risk and to make the development flood resistant. The site probably could be brought back into use after a flood event without significant refurbishment. Escape routes would present a low risk and an emergency plan was approved previously. Flood risk would not be increased elsewhere. Importantly under the fallback flood risk would be similar or even greater. Weighing all these factors, the issue of flood risk provides a small amount of weight against the development.

Epping Forest Special Area of Conservation

51. The SAC is a large ancient wood pasture with a mosaic of habitats of high nature conservation value. The SAC, by reason of the international designation, 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.
52. The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') require competent authorities before granting planning consent for a plan or project to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in combination with other plans and projects¹¹.
53. The Council's understanding and approach to development that is likely to have a significant effect on the SAC has evolved considerably during the preparation of the EFDLP, informed by the AA for the emerging plan. The Council issued a Position Statement in October 2019 and an Interim Air Pollution Mitigation

¹¹ A significant effect should be considered likely if it cannot be excluded on the basis of objective information and it might undermine a site's conservation objectives. A risk or a possibility of such an effect is enough to warrant the need for an AA.

Strategy in December 2020 (the Strategy), both documents post-dating the determination of the appeal application.

Habitats Regulations Assessment

54. In terms of recreational pressure the appeal site is outside the zone of influence (6.2km) established through research and visitor surveys. Therefore in view of the distance of the site from the SAC there is no pathway to effect the designated features and no significant effects are likely.
55. The same conclusion does not apply in respect of vehicle flows and associated air pollution when the development of the site is considered in combination with other plans and projects. There is not the objective information to exclude the possibility of a significant effect. An appropriate assessment is necessary to establish whether there would be adverse effects on the integrity of the features of the European site and if there are, whether they could be modified through mitigation.
56. The conservation objective for the SAC is to ensure the integrity of the site¹² is maintained or restored as appropriate and to ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features¹³. These are Beech forests on acid soils; Northern Atlantic wet heathland with cross leaved heath; European dry heaths and Stag beetle (*lucanus cervus*).
57. 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 through changes in species composition of plant communities and associated animal communities, the loss of sensitive species, the promotion of competitive and invasive species.
58. 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, including the introduction of a Clean Air Zone. Monitoring and review are integral to the implementation of the Strategy. 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.
59. The appellants have 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. Notwithstanding the previously developed nature of the site the use as a residential caravan site was required to have ceased no later than 30 July 2018. Planning permission is required for the continued residential use and occupation. The little information that there is on the previous actual mixed use indicates a less intensive use than either the

¹² 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'.

¹³ The Citation for the SAC details the qualifying habitats and qualifying species

proposed use or the appellants' fallback use. An aim is to restore the condition of the SAC, not to stop the condition deteriorating further. The proposed use of the small site alone probably would not affect the integrity of the European site, but it would contribute to a cumulative adverse impact together with the other plans and projects.

60. The current position is that mitigation has been secured in line with the Strategy. The mitigation is in the form of a financial contribution to help fund a package of measures outlined above. The amount of the contribution equates to the sum sought through the Strategy for a single dwelling. This sum is proportionate given that one static caravan acts as the main living accommodation for the site. The Council has confirmed in writing that the payment will only be used to implement the approved Strategy.
61. The Council has withdrawn the SAC based reason for refusal. Natural England has advised, in summary, that air quality should not be considered an impediment to the determination of the application provided that the proposed development is in accordance with the Strategy and mitigation is considered secure and certain to proceed.
62. The Strategy has been costed and a delivery framework has been developed. There is no evidence to doubt implementation of the Strategy. I conclude that the mitigation is in accordance with the Strategy and would be effective in respect of this specific proposal for Plot 38. The proposal is in accordance with an aim of Policy NC1. I also attach very significant weight to the proposal's compliance with emerging Policies DM 2 and DM 22. Policy DM2 seeks to ensure there is no adverse effect on the site integrity of the SAC from development proposals and requires mitigation as appropriate in line with the Strategy. Policy DM 22, on air quality, includes provisions to address potential effects on biodiversity from air pollution.

Effect on settled community and village environment

63. 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.
64. 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. Objections expressed by the local community are not directly related solely at Plot 38 but rather the development at the Chalet Estate as a whole, including the change in land use, unauthorised activities and use, local flooding and drainage problems, negative effects on local character, amenity (with reference to anti-social behaviour, intimidation, rubbish and bonfires, effects on Roydon Conservation Area and Lee Valley Regional Park), inadequate access and high concentration of the District's traveller sites in Roydon and Nazeing.
65. I have addressed some areas of objection in the main issues above. As to precedent, the current appeals indicate pressure and a personal need for similar development on a number of plots over the Chalet Estate. In this Green Belt location planning policy places strict control on development and very special circumstances must be demonstrated to justify inappropriate development. To allow the appeal would not set a generalised precedent provided that this policy test is met.

66. As the planning history shows, the appellants have occupied this plot since 2008 and they attempted to regularise the planning position through various applications and appeals. Since July 2015 they have occupied the land with the benefit of planning permission and in 2018 they applied to continue their occupation on a permanent basis, following the statutory process open to them. The 2015 decision gives no indication of any harmful effect on local amenity resulting from their occupation. Similarly, there is no evidence the appellants have not respected the settled community since planning permission was granted. Two non-traveller residents of the Chalet Estate and who live very near to Plot 38 spoke in support of the travellers at the hearing.
67. As part of the local plan process, allocation of land within the estate for traveller sites was considered but rejected. Nevertheless, with reference to criteria in the Local Plan and in the emerging EFDLP¹⁴, I consider that the site is in reasonable distance of a settlement for access to schools, shops and other services. There is convenient and safe access to public transport services and by vehicle to the main road network via the lane linking the Chalet Estate with the village. More specifically on my site visits 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.
68. Factors contributing to the character of Roydon Conservation Area include the rural setting and the quiet residential character of the village¹⁵. The change in the use of Plot 38 would not impact on these two factors because of its location within the Chalet Estate, the separation distance from the village, the small scale of the development and the fallback comparison. Increases in traffic movements would be very small when placed in the wider picture.
69. The road to village is not within the Conservation Area. 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 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.
70. The policy indicators show that there is the potential for successful integration between the occupiers of the plot and the settled community. The small scale development of Plot 38 would not dominate the local settled community or harm the character of the village. Any contribution to a cumulative effect would be very limited.

Need and Supply

71. 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 appellants in particular made reference to the scale of need in adjoining authorities such as Brentwood. The Framework expects that the housing needs for different groups in the community should be reflected in planning policies.

¹⁴ Part B criteria of Policy H 4 Traveller Site Development

¹⁵ Roydon Conservation Area Character Appraisal September 2006 paragraph 3.2

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.

72. 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 does not have a 5 year supply of deliverable sites at the current time, which is not disputed and an objective in Policy CP1 (ii) has not been achieved. Providing for identified need will be through the EFDLP.
73. The emerging EFDLP (Submission Version December 2017) 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 definition¹⁶.
74. 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.
75. 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.
76. 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 appellants' documents included a copy of a letter submitted through the 2021 consultation on the Main Modifications, which argued that the pitch assessment is out of date and based on a methodology that has been found not to be robust.
77. 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

¹⁶ Table 2.4 in the Submission Version December 2017. The figure of 64 includes 4 pitches that represent 10% of the estimated need from the 'unknowns' in respect of the PPTS definition.

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. The Council confirmed at the hearing that the requirement of 64 pitches included 'new' need from unauthorised sites, including pitches on the Chalet Estate¹⁷. 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.

78. 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. In the absence of more specific evidence considerable uncertainty remains over the timing of delivery of these pitches.
79. 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 traveller sites that come forward are likely to be in the Green Belt, not least because a very high proportion (92%) of the District is Green Belt land. 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.
80. The lack of gypsy and traveller sites Travellers in many other areas was recognised in Government policy back in 2006 in Circular 1/2006. PPTS 2012 and the current PPTS set out how the likely need for permanent and transit-site accommodation should be addressed in plan-making. The continuing shortfall in delivery has led to the 'failure of policy' argument being cited in support of proposed traveller sites.
81. In Epping Forest District the development plan made no site allocations and reliance has been on private site provision to help in catering 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 now has only a small degree of weight, given the Council's commitments to move forward through the EFDLP.
82. In addition to general need, the availability (or lack) of alternative accommodation for the applicants is identified as a necessary consideration by the PPTS.

¹⁷ Hearing Document 4

83. The grant of a temporary permission in 2015 was in expectation that the Council would have by then adopted a new Local Plan that addressed the need for pitches and identified a five year deliverable supply of sites. The family could then pursue the provision of an alternative site through the grant of planning permission in accordance with the relevant policies. Clearly this expectation has not come about. The family remains in the same position as in 2015, and earlier, in that potential alternative sites have not been identified through the local plan process. 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.
84. As a means of supporting their case the appellants did not explain what efforts they have made to look for an alternative site in the knowledge that the permission was temporary. However, 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 them with a site. The probability is that finding a suitable alternative pitch would be very difficult bearing in mind the site search undertaken by the Council as part of the local plan process.
85. 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 for the appellants provide substantial weight in support of the development

Personal circumstances and need for a site

86. The appellants occupy the plot with their two daughters aged 12 and 14 as their settled base. They have been there since they bought the land in 2008. The appellants' eldest son currently occupies Plot 25-26 and other family members stop there in the summer months. Their eldest daughter occupies Plot 21A together with her partner and child. Mr Doherty's brother and his family have occupied Plot 23-24 for several years.
87. The appellants are persons of nomadic habit of life and in particular Mr Doherty travels for an economic purpose seeking landscape/gardening/tree work in places such as Devon and Suffolk. They have PPTS status for the purposes of applying planning policy. The appellants share a protected characteristic and under the Public Sector Equality Duty I must have due regard to the need to remove or minimise disadvantages and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
88. Having a settled base at Plot 38 has enabled the children to attend primary school and to receive home education. Access to health services also is facilitated. Ms Price explained at the hearing that before moving to the Chalet Estate they lived by the roadside for many years. However, the plot has been their home base for a number of years and their daughters have not known anything else. Their wellbeing has improved dramatically and to return to a roadside existence would be "terrible".
89. The length of time the family has occupied the plot supports their case that they rely on this site as their stable base and they have no alternative available site to move to. This is not a case where the plot has changed hands over time. The land facilitates the family's traditional way of life as travellers whilst enabling the benefits of health, education and community services to be

accessible and improve the quality of life. To have to return to a roadside existence would be against the best interests of the children and could have serious consequences for their education and wellbeing. The potential environmental costs of unauthorised camping also support continued occupation of the plot.

90. The probable scenario associated with the mixed use fallback, whereby the family could occupy their plot and static caravan during the summer months and visit during the day during the winter months, would be a very unsatisfactory arrangement with considerable personal and environmental disbenefits.
91. As a result of these considerations I attach very significant weight to their personal circumstances and need for the site.

Planning Balance

92. The harm to the Green Belt by reason of inappropriateness and slight loss of openness has substantial weight. The issue of flood risk adds a small amount of weight against the development.
93. The development results in no harm to the wider landscape character of the area. Having considered the localised effects, I conclude the development would be compatible with the character and appearance of the Chalet Estate and its surroundings. Having secured appropriate mitigation the development would not have a significant effect on the site integrity of the SAC. The impact on the settled community is neutral.
94. In support of the development, the various aspects of need and supply of deliverable sites have substantial weight, taking account of the acknowledged national, regional and local need for additional traveller pitches. The failure of policy argument adds little additional weight. The personal need for a site and other family circumstances, including as a primary consideration the best interests of the children, have very significant weight. The fallback comparison is an important consideration too.
95. The potential harm to the Green Belt by reason of inappropriateness and the additional identified harm is clearly outweighed by other considerations. A single pitch would contribute to pitch provision in the District and would facilitate the gypsy way of life, promoting equality and opportunity, of particular importance to the children. In view of the planning history to refuse a full permission would be disproportionate. I am satisfied that to grant permission would not result in a harmful cumulative impact when taking account of the outcome on the other appeals. Very special circumstances exist to justify the development.

Planning conditions

96. Planning Practice Guidance states that 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. 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.

97. Draft conditions were discussed at the hearing and the conditions attached to the 2015 permission are also relevant.
98. Occupation of the caravan site shall be restricted to gypsies and travellers with PPTS status because of the weight attached to the general unmet need for traveller sites to which the personal need of the appellants and their family contributes. Such a condition also would facilitate the gypsy way of life, promote equality and reduce disadvantages experienced by the traveller community. The development is acceptable on a permanent basis and therefore there is no necessity to impose a time limit on the permission.
99. On the caravan site it is necessary to control the number and type of caravans and to specify a single pitch to preclude sub-division. Such restrictions would safeguard the appearance of the plot and the Chalet Estate and control increased intensity of use. Employment activity would be incompatible with the residential/leisure character of the estate and cause a loss of amenity, which justifies conditions to prevent business use and restrict the parking of larger vehicles.
100. A site layout plan was not submitted with the application. Other details of site development were not specified. Reliance should not be placed on the details approved in compliance with a condition on the temporary permission in 2015. The recommendations in the FRA provide a suitable benchmark in respect of a flood risk management scheme. Approval and confirmation of these matters through the submission of a site development scheme and a flood risk management scheme is necessary in the interests of public safety, protection of the local environment, visual and general amenity. If approval of the details is not obtained in a reasonable timescale, as set out in the conditions, the use would have to cease. A separate condition requires a schedule of maintenance of the planting to encourage its establishment and longer term enhancement, albeit the amount of landscaping on the plot is likely to be small scale.
101. The provision of an electric vehicle charging point (EVCP) and superfast broadband were agreed by the appellants to be reasonable and necessary in the event a permanent, as opposed to a temporary, planning permission is granted. An EVCP would promote sustainable transport choices in the move to a low carbon future and be consistent with the strategy to reduce air pollution in the vicinity of the SAC. However, the wording of the draft condition is suited to a new housing development where EVCP(s) would serve a number of houses, where usage would be subject to an operation/management strategy and where the electricity supply is anticipated not to require upgrading. I do not see how the wording of the condition could be amended to be reasonable and enforceable in relation to this caravan site.
102. Superfast broadband at the development would contribute towards wider objectives to improve digital connectivity across the District, which in turn would support aims to improve the health and wellbeing of residents and increase opportunities available to them. The wording of the draft condition, as with the EVCP, is suited to a development of new housing on a site without existing infrastructure, not a single caravan plot where an existing use is to continue. I do not see how the wording of the condition is able to be amended to be reasonable and enforceable.

Conclusions

103. The caravan site complies with Policy H10A and Policy GB7A and hence there is compliance with Policy GB2A. There is no conflict with Policies NC1 and CP2. Notwithstanding an element of conflict with Policy RST10A and Policy U2A the use of the land as a caravan site is in accordance with the development plan when read as a whole.
104. The Green Belt balance demonstrates that the development is acceptable when assessed against the relevant policies in the Framework and the PPTS. In terms of the emerging EFDLP, the traveller site scores well in respect of the criteria set out in Part B of Policy H 4. The proposal complies with emerging Policies DM 2 and DM 22. I have not identified any serious conflict with the emerging EFDLP. The other considerations do not indicate a different decision to the direction given by the development plan.
105. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission subject to planning conditions. The permission will take effect from the date when the previous permission expired.

DECISION

106. The appeal is allowed and planning permission is granted for the use of land as a gypsy and traveller caravan site at Plot 38 Roydon Lodge Chalet Estate, Roydon CM19 5EF effective from 30 July 2018 in accordance with application Ref EPF/1633/18 dated 12 June 2018 subject to the following conditions:
- 1) 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 2015 (or its equivalent in replacement national policy).
 - 2) There shall be no more than one pitch on the site and on the single pitch hereby approved 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 at any time, of which only one caravan shall be a static caravan.
 - 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
 - 4) No employment activities, including the storage of materials, shall take place on the land.
 - 5) 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 (hereafter referred to as the scheme) 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, parking and amenity areas; the means of foul and surface water drainage of the site; proposed and existing external lighting; tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; means of enclosure; provision for the

storage of waste and recyclables; a timetable for the scheme's implementation.

- ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

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

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

- 6) At the same time as the site development scheme required by condition 5 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting, beginning at the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.
- 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 scheme for flood risk management, including the tethering of caravans on the site and a flood evacuation plan, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

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

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

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANTS:

Alison Heine BSc MSc MRTPI	Heine Planning Consultancy
Anna Price	Appellant
Christopher Moran	An Appellant (Plot 32B and C)

FOR THE LOCAL PLANNING AUTHORITY:

Phillip Hughes BA Hons MRTPI MCMJ	Principal PHD Chartered Town Planners
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

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 Halfron 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.