



Appeal Decisions

Site visit made on 14 September 2022

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2022

Appeal A: APP/V1505/C/19/3243848

Land at Hillview, Southend Arterial Road, Nevendon, Wickford, Essex SS12 9HZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Swaylie Cooper against an enforcement notice issued by Basildon Borough Council.
- The enforcement notice was issued on 6 December 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the land for the storage of caravans.
- The requirements of the notice are i) Cease the use of the Land for the stationing caravans for storage purposes; ii) Remove the caravans from the land; iii) Remove all fencing from the land, including all associated fixtures fittings and detritus therefrom; iv) Remove all non-organic matter forming the hardstanding within the Land from the Land, including all associated detritus therefrom, restoring the level of the ground to its former natural topography.
- The period for compliance with the requirements is Four (4) months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (e) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal B: APP/V1505/C/20/3265821

Land at Hillview, Southend Arterial Road, Wickford, Essex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Swaylie Cooper against an enforcement notice issued by Basildon Borough Council.
- The enforcement notice was issued on 26 November 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the material change in use of the Land for the stationing of caravans for residential occupation.
- The requirements of the notice are i) Cease the use of the Land for the stationing caravans for residential occupation; ii) Remove the caravans from the land; iii) Remove from the land all fencing enclosures and residential paraphernalia and chattels; iv) Remove all associated utility/day rooms, outbuildings, trailers, fixtures, fittings including electricity sockets and apparatus and resulting and detritus therefrom; iv) Remove all non-organic matter forming the hardstanding within the site from the Land, including all associated detritus therefrom, restoring the level of the ground to its former natural topography.
- The period for compliance with the requirements is Four (4) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (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.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. The Council conceded that when it served the notice the subject of Appeal A above, it was uncertain whether the site was being used for the storage of caravans. It now accepts that caravan storage is not the use taking place on the site. Accordingly the Council, within its representations, agrees that the appeal on ground (b), namely that the alleged breach of planning control has not occurred as a matter of fact, should succeed. I therefore propose to allow this appeal and quash the notice that is the subject of Appeal A. I take no further action in respect of the other grounds of appeal therein.
2. Though it was originally proposed to deal with the appeals via the Inquiry procedure, it was confirmed by way of letter dated 19 January 2022 that, following a review by the Secretary of State of the mode of determination, the appeals would be dealt with on the basis of written representations submitted.
3. The draft Basildon Local Plan was withdrawn by the Council on 3 March 2022. References within the notice subject to Appeal B to policies therein are therefore disregarded. I gave the parties the opportunity to make representations regarding the significance of the withdrawn plan to the future supply of Gypsy and Traveller sites in the Borough in terms of number, location and timescale. I return to this matter later in my decision.
4. The Council has referred to the significance of the Essex Coast Recreational Disturbance and Mitigation Strategy Supplementary Planning Document (SPD). The initiative set out within the SPD aims to facilitate strategic mitigation measures to protect birds of the Essex Coast and their habitats from increased visitor pressure associated with new residential development. The strategy is based on a proportionate financial contribution in accordance with the proposed number of residential units. This matter is considered later in my decision.
5. The appeal site adjoins a separate site of Traveller pitches, somewhat smaller in area, along its western boundary. That site was the subject of separate enforcement appeals, which have since been allowed. Therefore when considering the impact of the development, as part of the ground (a) appeal, I have considered the impact of the present appeal site in combination with the adjoining site.

Appeal B on ground (b)

6. The appeal on ground (b) is that not all of the land comprises the stationing of caravans for residential use, given that part of the site includes a dwelling and its curtilage. The appellant suggests this is remedied by the exclusion of this development from the site, or by the amendment of the notice to refer to two separate planning units.
7. The Council's representations refer to the presence of a severely dilapidated building that has been the subject of a number of unsuccessful applications to replace it and that was deleted from the Council tax records in July 2000. It

was apparent from my visit that this building may now have been demolished and that another building is currently under construction on that site.

8. In any event the alleged breach of planning control is the stationing of caravans for residential occupation [my emphasis]. The alleged breach does not therefore include any dwelling that may be in existence or that may have previously existed on the site. Any such structure, in whatever form, is simply not targeted within the alleged breach of planning control.
9. The ground (b) appeal therefore fails.

Appeal B on ground (d)

10. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The appeal is specifically that the laying of significant amounts of hardstanding took place in excess of 4 years prior to the issue of the Enforcement Notice, and as such is lawful under Section 171B(1) of the Act.
11. However, the ground (d) appeal can only be made in relation to the allegation which in this case is a material change of use. The notice may require that works associated with the use are removed unless the use is immune under the ten-year rule as set out under Section 171B(3) of the Act. I am in no doubt that the hardstanding works serve to facilitate and are integral to the residential caravan use of the site. Furthermore I have had regard to the Google Earth imagery provided by the Council which indicates the site to be densely vegetated in July 2013 and May 2017. I have also had regard to the Council's reference within their proof of evidence to the observation being made by an officer during a visit to the site in December 2019 that fresh hardcore was being laid at that time. This has not been disputed by the appellant.
12. I conclude, on the balance of probability, that neither the alleged development nor the hardstanding facilitating the alleged development has been present on the site for a minimum period of ten years prior to the issue of the notice, in accordance with the requisite immunity period. The ground (d) appeal therefore fails.

Appeal B on ground (a)

Main Issues

13. The main issues are:
 - Whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - the effect of the development on the openness of the Green Belt;
 - the effect of the development on the character and appearance of the area.
 - the question of intentional unauthorised development;
 - The effect of the development on sensitive coastal habitats.
 - the question of the need for Gypsy / Traveller sites;

- the personal circumstances of the site occupiers;
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

14. Paragraph 137 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 138 notes that the Green Belt has five purposes which include safeguarding the countryside from encroachment. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
15. There is no dispute between the parties that the proposal would amount to inappropriate development, indeed the Government's Planning Policy for Traveller Sites (PPTS) expressly states that such sites in the Green Belt are inappropriate development.

Openness

16. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. This specific assessment is not about the quality of the development, including the suitability of materials used, in itself, or its effect on the character and appearance of the area.
17. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect¹.
18. The appeal site is broadly rectangular in shape, and orientated north to south. It is subdivided, by close board timber fencing, into six pitches, and accessed via a linear road, finished with stone, running adjacent to the western boundary. The pitches themselves are surfaced either in tarmac or stone. Close boarded fencing bounds the perimeter of the site.
19. That the site is being used to accommodate various caravans, outbuildings and paraphernalia associated with the residential use, which inevitably take up space is not controversial between the parties.
20. In terms of visual impact, the site is immediately adjacent to and accessed from the A127 Southend Arterial dual carriageway road. However there is substantial and dense boundary hedging running adjacent to the carriageway, which for the most part serves to effectively screen the site. The continuity of the hedge is only occasionally interrupted and whilst this does allow for oblique views of the site perimeter and around the entrance area, any sightings are only very brief and even more fleeting still for passing motorists. Whilst visibility of the site from the road may increase as a result of seasonal leaf fall,

¹ *Turner v SSCLG & East Dorset Council* [2016]

it seems to me that the density of the hedge would ensure that views of the site would continue to remain screened or well filtered.

21. From my visit it appeared that there are few other public vantage points from which clear views of the appeal site may be gained. These points are intermittent gaps in otherwise well-established boundary hedging along Cranfield Park Road to the north-east of the site. Whilst the perimeter fencing along the side and rear of the site is visible in the landscape, along with limited views of the upper parts of caravans, the site is at distance and set against a gently rising land form which serves to assimilate the development to a degree.
22. It is likely that views of the site would be possible at short range from the rear of certain private properties on Honiley Avenue to the west, also from a dwelling situated to the immediate east of the site. However it seems to me that the number of properties in question would be few in number. It may also be possible to view the site from the rear of properties on Cranfield Park Road, located near to its junction with the A127 road and also from properties situated on Fairway and Meadow Way to the north of the site. These views however would be at distance, and I consider the sense of impact on the openness of the Green Belt would be limited. I am not persuaded that the hardstanding areas in themselves, owing to their lack of three-dimensional form, impact on Green Belt openness.
23. Drawing the above considerations together, whilst I concur with the view that the development results in a degree of encroachment into the countryside and urban sprawl, and as such is at odds with respective Green Belt purposes as set out in the Framework, I conclude that the development results in only limited visual harm to openness. Furthermore I draw the same conclusion when considering the cumulative visual impact on openness, both of the appeal site and an adjoining Traveller site immediately to the west, and which was subject to contemporaneous appeals².

Character and Appearance

24. From my visit it was apparent that the appeal site is situated within a relatively flat landscape of agricultural fields, typically bounded by low fences, hedges and trees. In distant views towards the south-west, a modest rise in ground level is evident. The site immediately adjoins a separate Traveller site, that was the subject of contemporaneous appeals, and the aforementioned dwelling situated to the immediate east, but is otherwise separated by open fields from, though still relatively near to, residential properties on established plotlands. The site is not far from substantial infrastructure developments, with the aforementioned A127 road and electricity pylon routes passing nearby. These features have a very strong and imposing physical presence in the landscape. In particular the massive upright framework of pylons tends to jar with the more horizontal emphasis of hedges and tree belts across the flatness of the landscape. The site is a semi-rural location.
25. I have set out above where I consider the key visual receptors for the development to be located. For the reasons set out above the visibility of the site is generally well concealed from the public domain. For most drivers passing through the area, it seems to me that the development is unlikely to attract attention away from the route of the A127 road. From greater distance,

² Appeal refs: APP/V1505/C/20/3265750 and others

although the tops of caravans are visible above site perimeter fencing, they are significantly screened by that fencing, which itself tends to be assimilated by the horizontal emphasis of surrounding landscape features.

26. It seems to me that there would be scope for some limited tree and /or hedge planting within the pitches adjacent to the site boundaries, that would further assist in mitigating the development, but without resulting in a strong sense of enclosure of the site. I do not agree with the Council that the development results in a sense of visual harm due to urbanisation. Furthermore the scale of the aforementioned pylons tends to draw the eye, more so than the site, as being at odds with the natural characteristics of the landscape. I am not persuaded that the proximity and scale of the appeal site is such that it would result in material visual harm for occupiers of nearby existing properties.
27. I draw the same conclusions when considering the cumulative visual impact, both of the appeal site and an adjoining Traveller site immediately to the west and which was subject to contemporaneous appeals³. Drawing these considerations together I am not persuaded that the development results in harm to the character and appearance of the area. Accordingly the development would comply with Saved Policy BAS BE12 of the Basildon Local Plan 2007 (LP) insofar as this seeks to avoid harm to the character of the surrounding area.

Intentional unauthorised development (IUD)

28. The Council states that the intentional unauthorised nature of the development is a material consideration in line with Government policy, that should be given adverse weight. The site occupiers have failed to provide any information as to whether they are Gypsies and Travellers, or regarding the circumstances which have led to them taking up residence there. In view of the failure to substantiate background and circumstances, the appellant has failed to provide a compelling justification for the unauthorised development proceeding.
29. Notwithstanding this I am mindful of the acute shortage of sites for Gypsy and Traveller provision (discussed later in my decision); that I have found the visual harm associated with the development to be limited; also that the Act makes provision for a grant of retrospective planning permission, and planning enforcement that is remedial rather than punitive. In view of the above considerations, on balance, this is a matter to which I therefore attach moderate adverse weight.

Coastal Habitats

30. The Essex Coast includes several Special Protection Areas which are internationally important for breeding and non-breeding birds and their coastal habitats. There is no dispute between the parties that the appeal site would fall within the so-called zone of influence underpinned by the SPD strategy. It cannot be ruled out that the development, alone or in combination with other plans and projects, would result in a likely significant effect on these sites.
31. Therefore as the appropriate authority, I have a duty to undertake an appropriate assessment to consider whether it would be possible to secure satisfactory mitigation measures. I have had regard to the SPD and have also consulted Natural England, as the statutory nature conservation body. I

³ Appeal Ref: APP/V1505/C/20/3265750 and others

consider that the provision of the financial contribution towards strategic mitigation measures enables it to be ascertained that the proposal would not adversely affect the integrity of sites protected under the habitat regulations.

32. Accordingly the appellants have submitted a planning obligation, in the form of a unilateral undertaking (UU), which commits to making the aforementioned financial contribution (£137.71 per Traveller pitch).
33. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 states that, subject to monitoring costs, a planning obligation may only constitute a reason for granting planning permission for the development where it meets three tests. The tests, which are restated in paragraph 57 of the Framework are as follows:
- a) necessary to make the development acceptable in planning terms;
 - b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development.
34. I am satisfied that the provisions of the UU would be necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related in scale and kind to the development. The statutory tests in Regulation 122 of the CIL Regulations are, therefore, met and the planning obligation is a material consideration which satisfactorily mitigates harm in this case.

Other Considerations

Need for Gypsy and Traveller sites

35. Paragraph 7(b) of the PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their areas over the lifespan of the development plan. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) was produced in 2020 and is undisputed to provide the most up to date published indication of the scale of need for Gypsy and Traveller pitches in the Borough. The GTAA identified the level of need for those that meet the definition of Gypsies and Travellers in Annex 1 of the PPTS to be 85 pitches.
36. The PPTS states that local planning authorities should identify, and update annually, a 5-year supply of specific deliverable sites. As previously set out, the Council withdrew its emerging Local Plan earlier this year, and with this went any formal allocation of deliverable sites. The Council has acknowledged that at present the strategy and timescale for the delivery of Gypsy and Traveller sites going forward remains uncertain⁴.
37. Notwithstanding the delivery of a small number of pitches resulting from recent appeal decisions, I conclude that there exists a significant and immediate unmet need for sites within the Borough; also that the Council is unable to identify a five-year supply of deliverable sites. I have been provided with no evidence to persuade me away from the conclusion that the Council's policies have failed to address the delivery of Gypsy and Traveller sites over a significant period of time. That there is also a broader national and regional unmet need for sites is not a matter of contention between the parties.

⁴ Appeal Ref: APP/V1505/C/20/3265750 and others

38. Notwithstanding this, a recent Court of Appeal judgment has complicated the position further⁵. The thrust of this judgment is that the PPTS definition is unlawfully discriminatory against Gypsies and Travellers who have ceased to travel permanently on grounds of age or disability. Though the exact impact of including, in the assessment of need for sites in the Borough, Gypsies and Travellers falling within this category, who would previously have been excluded because of the PPTS definition, is unknown, the Council nevertheless accepts that there is an outstanding need for sites for non-nomadic gypsies. Accordingly, the Court of Appeal judgment strengthens the weight to be attached in favour of the development.
39. It is undisputed that a large proportion of land in the Borough, some 63 per cent, lies within the Green Belt. It therefore seems to me likely that there will need to be reliance to a degree on the Green Belt in any event for the provision of pitches going forward. Indeed, from reference to recent appeal decisions⁶, prior to the emerging Local Plan being withdrawn earlier this year, it appears that a number of the allocated Gypsy and Traveller sites were in the Green Belt. There is no evidence to persuade me that Green Belt harm arising from this site would be greater than from any other site that may be allocated.
40. All of these factors weigh positively in favour of the development. Notwithstanding the above, no detailed information has been provided as to the identities of the site occupiers, or the circumstances that led them to occupy the site, including whether they have access to any alternative accommodation. Accordingly, on the basis of the information before me, the question of the immediate personal need of the site occupiers does not attract weight in support of the development.

Personal circumstances

41. As set out above the identities, background and circumstances of the site occupiers, including any factors which might weigh in favour of their remaining in occupation on the site for personal reasons has not been forthcoming.

Other Matters

42. The appellant has referred to the existence of a fallback position, the visual impact of which would serve to mitigate that of the proposed development, and thus weigh in favour of planning permission being granted in this case. Little information has been provided, however the Council assumes the appellant to be referring to a haulage yard that was previously present on the site. It says that although part of the site was previously used as a haulage yard, with a lawful development certificate having been granted in the mid-1970s, that use has since been abandoned.
43. Google Earth imagery is provided, dating between 1999 and 2008 showing the site to be overgrown, with a dilapidated building to the rear. The appellant has not provided evidence to persuade me, on the balance of probability, that the aforementioned haulage yard use has not been abandoned. Accordingly the alleged fallback position does not weigh in favour of the development in this case.

⁵ *Lisa Smith v SSLUHC & Ors* [2022] EWCA Civ 1391

⁶ Appeal Ref: APP/V1505/C/20/3265750 and others

44. Reference has been made to trees being felled on the site, however in the absence of further information I am unable to evaluate the significance of this concern. Similarly concerns have been raised with regard to inconsiderate parking hindering access for local residents and the lighting of fires on the site and leaving of rubbish. Whilst I have no reason to doubt these concerns, they are not harms that arise from any inherent characteristics of the development in itself and do not therefore weigh against the ground (a) appeal. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission in this case.
45. When considering appeals in relation to the adjoining Traveller site, immediately to the west, the issues of whether the site was in a sustainable location, the relative dominance of Traveller sites in the area and highway safety were raised either by the Council or third parties. These issues have not been raised specifically in relation to the current appeal. However given the proximity of the two sites, I have had regard to these matters in any event. For the same reasons as set out in those appeal decisions⁷, I conclude that the appeal site should be regarded as being in a relatively sustainable location and that it would not result in harm to highway safety. Furthermore I am not provided with any further detail of how any sense of dominance has manifested itself. Accordingly these matters do not weigh against the development.

Green Belt Balance

46. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application substantial weight should be given to any harm to the Green Belt. The appeal site development is inappropriate in the Green Belt. In addition, the residential use and associated structures cause a loss of openness, additional sprawl and encroachment into the countryside, therefore harm to the purposes of including land in the Green Belt, albeit that I consider the degree of harm in visual terms to be limited. The intentional unauthorised nature of the development attracts moderate weight.
47. I have found that the development would not result in harm to the character and appearance of the area or, subject to the planning obligation, to sensitive coastal habitats. The site is considered to be acceptable in terms of the sustainability of the location and highway safety. These 'absences of harm' are neutral in the planning balance and do not weigh in favour of the appeals.
48. There are considerations which support the appeal. I have had regard to advice in the PPTS when considering sites in Green Belt locations. This indicates that in such locations the absence of an up to date 5-year supply of deliverable sites would not amount to the significant material consideration it may otherwise do in a less strictly controlled area, when considering applications for the grant of temporary planning permission. It also states that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.

⁷ APP/V1505/C/20/3265750 and others

49. However, it seems to me that the Council's undisputed significant and immediate unmet need for pitches, as manifested in the lack of five-year land supply should be a matter that collectively attracts very significant weight (only tempered from substantial weight by the uncertainty over the occupiers' personal needs in this case). Furthermore the Council's policy failure in this regard over many years, together with a lack of assurance as to when the position might be addressed attracts significant weight. In addition I give moderate weight to the likelihood that when Gypsy and Traveller sites are allocated, a significant percentage will be located within the Green Belt in any event.
50. For the reasons given above I attach no weight to the appellant's personal circumstances, including the question of whether the present occupiers have a personal need to live on the site. Notwithstanding this I am mindful of the significance of the Human Rights Act 1998, Article 8 of which states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
51. Furthermore in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.
52. I have balanced the harm to the Green Belt and other harm identified against the other considerations referred to above. I consider that, because of the amount of weight attached to need, policy failure and the likelihood of future sites for Travellers being in the Green Belt, these factors clearly outweigh the harm identified, irrespective of the position regarding personal circumstances.
53. From my visit, having observed the presence of people and vehicles, it was apparent that there are people living on the site. I am also mindful that although the identity and personal needs of the site occupants are presently uncertain, the occupants may change in any event; also critically that I may impose a condition restricting the occupation of the site to persons who are ethnic Gypsies and Travellers. If it later appears to the Council that the site is occupied by persons who do not have such status, they can take enforcement action against a breach of the condition.
54. The very special circumstances necessary to justify the development have therefore been demonstrated. Consequently the proposal accords with the strategy for the protection of Green Belt land as set out in the Framework. In this context I do not find conflict with Policy BAS GB1 of the LP which seeks to establish the boundaries of the Green Belt to achieve its stated purposes. The balance is therefore in favour of granting a permanent planning permission.
55. A recent appeal in relation to a nearby site has been drawn to my attention, where, following an Inquiry, the Inspector upheld an enforcement notice in respect of the material change in the use of the land to the stationing of caravans for residential occupation⁸. Notably in that case the Inspector

⁸ Appeal Decisions APP/V1505/C/20/3264996 & others

appears to have attached greater weight to the visual harm caused by the development and also to its intentional unauthorised nature.

56. Each development must be considered on its own individual merits, and it therefore seems to me that there are factors distinguishing that case from the appeal currently before me, and which led to weight being applied differently in terms of the Green Belt balance.

Conditions

57. I have considered the need for planning conditions. A condition confirming that planning permission is restricted for residential use by Gypsies and Travellers is required in order to safeguard the supply of the site for this purpose. In light of the recent Court of Appeal judgment cited below⁹, in order to avoid discrimination, the condition should include those Gypsies and Travellers who have ceased to travel permanently.
58. A condition limiting the number of pitches and caravans stationed is needed in order to protect the character and appearance of the area. Conditions limiting the size of vehicles parked and preventing commercial activity on the site are required in the interests of helping to safeguard the character and appearance of the area and the living conditions of residents.
59. A condition confirming the loss of the permission unless details are submitted for approval (including a timetable for implementation) concerning the site layout, boundary treatments, drainage details, external lighting arrangements and landscaping works, including their replacement if necessary, is required in order to help safeguard the character and appearance of the area and the living conditions of the site occupiers.
60. The form of this condition is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.
61. Finally a condition withdrawing permitted development rights for domestic structures and enclosures is required in view of the fact that limits to the quantum of development form part of the justification for planning permission in this case.

Conclusions

Appeal A

62. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed. In these circumstances, the appeals on grounds (e) and (f) do not fall to be considered.

⁹ *Lisa Smith v SSLUHC & Ors* [2022] EWCA Civ 1391

Appeal B

63. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice subject to conditions. The enforcement notice will be quashed, and it follows that the appeals on grounds (f) and (g) do not fall to be considered.

Formal Decisions

Appeal A

64. The appeal is allowed and the enforcement notice is quashed.

Appeal B

65. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change in use of the Land for the stationing of caravans for residential occupation at Hillview, Southend Arterial Road, Wickford, Essex as shown on the plan attached to the notice and subject to the conditions below.

R. Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 2) There shall be no more than six pitches on the site. On each of the six pitches 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 (of which no more than one shall be a static caravan), shall be stationed on the pitch at any time.
- 3) The residential use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within **28 days** of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within **3 months** of the date of this decision a scheme with details for:
 - (a) the internal layout of the site including the extent of the residential pitches, the location of the caravans and vehicle parking, any buildings and hardstandings;
 - (b) all boundary treatments and all other means of enclosure (including internal sub-division);
 - (c) the means of foul and surface water drainage of the site;
 - (d) proposed and existing external lighting on the boundary of and within the site;
 - (e) hard and soft landscaping and screen planting including details of species, plant sizes and proposed numbers and densities and details of a schedule of maintenance for a period of 5 years;(hereafter referred to as the 'site development scheme') shall have been submitted for the written approval of the local planning authority and the site development 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 site development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to 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 site development scheme shall have been approved by the Secretary of State.
 - iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

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

- 4) No commercial, industrial or business activities, including the storage of materials and goods, shall take place on any part of the site.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification), no buildings, structures or means of enclosure other than those approved in accordance with Condition 3 above shall be erected on the site.

END OF SCHEDULE CONDITIONS