Appeal Decisions

Inquiry held on 25-28 July and 7- 9 and 11 August 2023

Site visits made on 25 July 2023 and 9 August 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 26th September 2023

Appeal A Ref: APP/J1535/C/21/3272873
Land at Rose Farm, Hamlet Hill, Roydon, Essex, CM19 5JU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr T Breaker against an enforcement notice issued by Epping Forest District Council.
- The notice, numbered ENF/0288/18, was issued on 1 March 2021.
- The breach of planning control as alleged in the notice is without planning permission: the making of a material change in the use of the land from agriculture to a use for the purposes of the stationing of caravans for residential purposes and the use of agricultural buildings for purposes ancillary to the residential use.
- The requirements of the notice are to:
  1. Cease using the site for the stationing of caravans or mobile homes for residential purposes.
  2. Remove from the land all caravans/mobile homes.
  3. Remove from the land the shingle, kerb edging, lights and any resultant debris or residential paraphernalia, including any sheds. Demolish the extension on the southern elevation of the barn and remove from the land all resulting material, including the bathroom and kitchen fittings and fixtures.
  4. Reinstate the barn as an open- sided building by removing the weatherboarding and external doors from the east facing elevation and removing from the southern bay of the barn the internal walls, mezzanine floor and staircase.
  5. Remove from the land the septic tank.
  6. Remove from the land all materials, debris or waste arising as a consequence of compliance with the above requirements.
- The period for compliance with the requirements 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.

Appeal B Ref: APP/J1535/C/21/3272875
Land at Rose Farm, Hamlet Hill, Roydon, Essex, CM19 5JU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr T Breaker against an enforcement notice issued by Epping Forest District Council.
- The notice, numbered ENF/0077/21, was issued on 10 March 2021.
- The breach of planning control as alleged in the notice is without planning permission: the construction of dwelling as shown hatched on the attached plan.
- The requirements of the notice are to:
  1. Cease the residential use of the building as shown hatched on the attached plan.
  2. Demolish the extension on the southern elevation of the barn and remove from the land all resulting material, including the bathroom and kitchen fittings and fixtures.

3. Remove the weatherboarding and external doors and windows and the Juliet balcony from the barn and the internal walls, mezzanine floor and staircase.
4. Remove from the land the shingle, kerb edging, lights and any resultant debris or residential paraphernalia, including any sheds.
5. Remove from the land the septic tank.
6. Remove from the land all materials, debris or waste arising as a consequence of compliance with the above requirements.

- The period for compliance with the requirements is 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.

Appeal C Ref: APP/J1535/W/20/3260892
Rose Farm Hamlet Hill, Roydon, HARLOW, CM19 5JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs Breaker against the decision of Epping Forest District Council.
- The application Ref PL/EPF/0259/20, dated 3 February 2020, was refused by notice dated 9 April 2020.
- The development is described as change of use of land to a private gypsy and traveller caravan site consisting of one twin unit mobile home, two single unit mobile homes and associated development.

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by:

   - deletion of the reference to Section 171A(1)(a) section 1 of the notice and its substitution with Section 171A(1)(b).
   - deletion of section 3 and its substitution by:

   On 16 September 2015 the Council granted planning permission under reference EPF/1345/15 (the planning permission) for the siting of replacement mobile home to replace existing, provision for standing for 2 touring caravans, retention of dayroom and part barn used as playroom/gym for permanent residential purposes.

   Conditions 2 and 3 of the planning permission provide:

   Condition 2

   The use hereby permitted shall be carried on only by Mr Thomas Breaker and Ms Maria Wilson and their resident dependants and shall be for a limited period being the period of three years from the date of this decision or the period during which the premises are occupied by them whichever is the shorter.

Condition 3

When the premises cease to be occupied by Mr Thomas Breaker and Ms Maria Wilson and their resident dependants or at the end of three years whichever shall first occur, the use hereby permitted shall cease and the mobile home hereby permitted shall be removed from the site along with all caravans, structures, materials, and equipment brought on to the premises in connection with the use and the land shall be restored to its former condition in accordance with a scheme of work submitted to and approved in writing by the Local Planning Authority.

Condition 2 has not been complied with because the use has continued beyond the limited period specified in Condition 2.

Condition 3 has not been complied with because the use has continued beyond the limited period of 3 years specified in Condition 3 and because the mobile home, caravans, structures, materials, and equipment brought onto the site in connection with the use have not been removed and the site has not been restored to its former condition as required by Condition 3.

- deletion of requirement 3 of section 5 of the notice and its substitution by:

  Remove from the land the shingle, kerb edging, lights and any resultant debris or residential paraphernalia, including any sheds (except the sheds numbered 1 and 2 on the attached plan). Demolish the extension on the southern elevation of the barn and remove from the land all resulting material, including the bathroom and kitchen fittings and fixtures.

- the substitution of the plan attached to the enforcement notice with the plan attached to this decision at Annex One.

2. It is further directed that the enforcement notice is varied by the deletion of 4 months and the substitution of 12 months as the time for compliance set out in section 6.

3. Subject to the corrections and variation Appeal A is dismissed and the enforcement notice is upheld.

<u>Appeal B</u>

4. It is directed that the enforcement notice is corrected by:

- deletion of section 3 and its substitution by:

  Without planning permission the change of use of the building shown hatched on the attached plan to use as a single dwelling house.

- deletion of requirement 4 of section 5 of the notice and its substitution by:

  Remove from the land the shingle, kerb edging, lights and any resultant debris or residential paraphernalia, including any sheds (except the sheds numbered 1 and 2 on the attached plan).

- the substitution of the plan attached to the enforcement notice with the plan attached to this decision at Annex Two.

5. It is further directed that the enforcement notice is varied by the deletion of 4 months and the substitution of 12 months as the time for compliance set out in section 6.

6. Subject to the corrections and variation Appeal B is dismissed and the enforcement notice is upheld.

Appeal C

7. Appeal C is dismissed.

Applications for costs

8. An application for costs was made by the Council against Mr T Breaker in respect of all three appeals. This application is the subject of a separate Decision.

Preliminary Matters

9. Mrs Breaker confirmed at the Inquiry that she is known by her maiden name Marie Wilson, and I shall refer to her as Ms Wilson in my decision.

10. As I advised the Inquiry, I shall refer to the notice issued on 1 March 2021 as Notice A and that issued on 10 March 2021 as Notice B.

11. The Epping Forest District Local Plan 2011 – 2033 (the Local Plan 2023) was adopted in March 2023. Following its adoption the saved policies in the Local Plan (1998) and the Local Plan Alterations (2010) (the Local Plan and Alterations) no longer form part of the development plan. Notice A and Notice B and the decision notice for Appeal C make refence to the Local Plan and Alterations and to the Submission Version of the Local Plan. All of these references have been superseded by the Local Plan 2023.

12. The Council provided a Local Plan update listing relevant policies in the Local Plan 2023 in advance of the Inquiry and also provided copies of the policies in advance and sections of the Local Plan 2023 during the event. The appellants have had the opportunity to consider the effects of the implications of the adoption of the Local Plan 2023 on their cases.

13. Within an agreed timeframe after the Inquiry took place the appellants submitted a Unilateral Undertaking which secured an air pollution contribution to mitigate the impact of the development on Epping Forest Special Area of Conservation (Epping Forest SAC). I shall return to this matter later. The Inquiry was closed in writing following the receipt of this document.

Appeal A

14. The Council asked that Notice A is corrected on the basis that when Notice A was served it was found that the dwelling which is the subject of Notice B was in existence. This led to the Notice B being served. In the light of this the Council has requested that references to the use of the agricultural buildings be removed from Notice A. I have addressed this request below.

15. In the light of this suggestion the appellant confirmed he wanted to rely on grounds (a), (b) and (g) only in respect of Appeal A.

Appeal C

16. The appellants confirmed at the Inquiry that they wished to amend the description of development as was set out on their planning application to read as follows:

    Change of use of land to a private gypsy and traveller caravan site for one family consisting of three caravans (one twin unit mobile home and two touring caravans) and associated development.

17. The Council did not raise any objections to the change of description, and it resolves its concern regarding the calculation of the necessary payments under the Epping Forest Air Pollution Mitigation Strategy which has been secured by a planning obligation. As no injustice would arise, I shall determine the appeal on the basis of the amended description.

The Notices

18. The Council accepted that some of the buildings which are on the land are immune from enforcement action. In the light of this an amended enforcement notice plan has been submitted which identifies three buildings 1, 2, and 3. Building 3 is the barn and buildings 1 and 2 are a pair of sheds.

19. Both notices require works to the barn in order to comply with the notice, but they do not refer to its removal. To that extent the barn does not need to be separately identified as a building to be retained. However, I will substitute the enforcement notice plans for both notices to annotate sheds 1 and 2 and correct the requirements of both notices to clarify the status of these sheds as buildings to be retained.

Appeals A and B - Ground (b)

20. An appeal on ground (b) is on the basis that the matters to which the notice relates have not occurred. This is a legal ground of appeal, and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.

Appeal A

21. The appellant considers that there has not been a material change of use (MCU) of the site as described in the notice because its use for the stationing of caravans did not cease following the expiry of a temporary planning permission granted in 2015 for three years (Council Ref. EPF/1345/15) (the 2015 Permission). Thus in his view there has been a breach of the conditions attached to the 2015 Permission.

22. The 2015 Permission was granted subject to a number of conditions including an occupation condition which tied the use of the site to its occupation by Mr Breaker and Ms Wilson and their dependants for a maximum of 3 years (Condition 2) and a condition requiring restoration of the site to its former condition following their cessation of use which also refers to occupation by the appellant and his family and the 3 year time period (Condition 3).

23. In 2017 following events which threatened the personal safety of the appellant and family members, the family moved off the site to Lincolnshire where other family members were located. Two mobile homes remained on the site, and it

was not restored to its former condition. The appellant's position is that the use of the site did not cease as a consequence of the family leaving it. The Council did not provide any evidence to support its contention that after the appellant and his family left the land reverted to its former agricultural use.

24. In the absence in any evidence to demonstrate that the land ceased to be used for the stationing of caravans after the appellant had to leave, it has not been shown that the breach as set out Notice A has occurred and the appeal on ground (b) succeeds to that extent.

25. Although the appeal on ground (b) succeeds, Notice A does not need to be quashed as it can be corrected to relate to the breach of conditions 2 and 3 of the 2015 Permission.

26. The notice as issued refers to Section 171A(1)(a) of the Town and Country Planning Act 1990. As the failure to comply with a condition subject to which planning permission has been granted falls under Section 171A(1)(b) this reference also needs to be amended.

27. Returning to the Council's request regarding the correction of Notice A to remove reference to the use of the agricultural buildings for purposes ancillary to the residential use, this is overtaken by the correction which I am going to make in the light of the outcome of the appeal on ground (b). This is because under the terms of the 2015 Permission the use of the agricultural buildings formed part of that consent and they now fall to be considered under the ground (a) appeal.

Appeal B

28. The appellant considers that the breach set out in Notice B which is the construction of a dwelling has not occurred on the basis that the building was pre-existing. His view is that there has been a change of use of the building.

29. Notice B identifies the alleged dwelling by reference to an area shown hatched on the notice plan. The hatched area denotes approximately one third of a barn type structure which is currently on the site (the building). There is no dispute between the parties that the barn was the subject of a fire in October 2016 nor that prior to the fire that part of the barn closest to the site of the mobile homes was in use as a day room associated with the use of the site for the stationing of residential caravans.

30. The appellant submitted photographs following the fire in their appeal submissions and additional photographs were provided to the Inquiry by Ms Wilson. The photographs show damage to the roof and side walls of the building. A report by Essex County Fire and Rescue Service refers to the potential for structural instability and the need for services to be checked.

31. A comparison of the photos following the fire with the photos and description of the building in early 2017 demonstrates that rebuilding was carried out and that structural alterations were also undertaken. The invoices provided by the appellant demonstrates that at least some of the works were operations normally undertaken by a person carrying on a business as a builder. To that extent the works amounted to building operations.

32. The Council argue that the description of the breach as the construction of a dwelling house covers both the building operations and the use. However, the works which have been carried out, whilst extensive, do not amount to the construction of a building. The majority of the building remained intact and whilst building works were carried out, on the basis of the evidence they were as a matter of fact and degree works of repair and reconstruction.

33. On completion of the building operations that part of the barn was capable of being used as a dwellinghouse, primarily as a result of the formation of two bedrooms on the first floor. This is a material change of use as opposed to the construction of a dwelling as alleged by the Council.

34. On that basis the appellant has made his case that, on the balance of probabilities, the development which is the subject of Notice B has not occurred. To that extent their appeal on ground (b) succeeds.

35. The appellant accepts that there has been a change of use of the building to a dwelling house and has presented his case on that basis. A correction of Notice B to refer to a change of use does not alter the immunity period for the breach which is four years The Council has had the opportunity to respond to the appellant's arguments in its submissions and during the Inquiry. Consequently, no injustice would arise if I were to correct the notice to refer to the change of use of the building to use as a single dwelling house.

36. Although the appeal on ground (b) succeeds, the notice does not need to be quashed because it can be corrected, without injustice, to relate to the change of use of the building to use as a single dwelling house.

Appeal B – Ground (d)

37. An appeal on ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be construed by those matters. In common with ground (b) this is a legal ground of appeal, and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.

38. This ground of appeal accepts that at some stage there has been a breach of planning control, but that when the notice was served the breach was immune from enforcement action. Under s171B(2), where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The use must be continued without significant interruption.

39. The appellant, through his agent, says that the use of the building identified in Notice B as a single dwelling house began when he and his family returned from holiday in January 2017.

40. The history of the use of the building prior to the fire in October 2016 is straightforward. In January 2010 the site, including agricultural buildings, was the subject of an enforcement notice which, amongst other things, alleged the use of those buildings for purposes ancillary to a residential use. A subsequent appeal against that notice was allowed (Appeal Ref. APP/J1535/C/10/2123144) (the 2011 Appeal Decision).

41. The Inspector in the 2011 Appeal Decision granted planning permission which included the use of the barn for purposes ancillary to the residential use, on a temporary basis for 5 years. That planning permission expired on 12 April 2016.

42. The 2015 Permission granted by the Council included the retention of dayroom and part barn used as playroom/gym for permanent residential purposes for a further three years and that consent expired on 16 September 2018

43. Ms Wilson described the layout of the barn at the Inquiry. She said that before the fire there was a kitchen and bathroom in one end the building and adjacent to this was a playroom which was accessed externally. A staircase in the playroom area provided access to a single room at first floor. Ms Wilson said that the family did not use the toilets in the caravans, so they used the facilities in the dayroom, and that the health condition of one of her children necessitated him having a bed in the bathroom. This description is consistent with the use of these parts of the barn as a dayroom in conjunction with the use of the caravans.

44. Following the fire, the appellant made significant changes to the building. These included forming an opening between the kitchen and the playroom, relocating the stairs, creating two bedrooms on the first floor, and installing an upstairs shower room. As a consequence of these changes the building had all of the facilities required for day-to-day private domestic existence.

45. In her evidence Ms Wilson said that the family have always called the building a day room since first using it and that they continue to call it a day room to this day. She said that it was only when the enforcement notice was issued in March 2021 alleging the construction of a dwelling that she became aware that there was an issue. At that time she took advice from the agent, and he advised that the building was now a dwelling house. In the Closing Submissions the appellant says that the evidence shows that there was a flagrant breach of planning control right from the start. However, Ms Wilson's evidence casts doubt on this.

46. Ms Wilson said that the works to the building were an opportunity to provide a bedroom for one of her children who has health needs. As they could not sleep alone in the dayroom the appellant added a second bedroom. Subsequently, two children shared one bedroom and the other was occupied by the appellant and Ms Wilson. Two other children used one of the mobile homes and the other was occupied by a person who worked for the appellant and travelled with the family. Ms Wilson said this was the arrangement between when they moved into the building in January 2017 and March 2017 when they all left the site.

47. The appellant has provided invoices relating to the work carried out to the building. Under cross examination Ms Wilson accepted that some of the invoices pre-dated the fire and had been included in error. I shall disregard those invoices. Other invoices are made out to TML Construction Limited at Rose Farm. It is not clear whether some of these relate to the works on the site or to the appellant's business activities.

48. A customer returns note is dated June 2017. Ms Wilson explained that this related to furniture which was delivered after she had moved out but there is no information to show that this was the case.

49. In respect of receipts for bathroom tiles, some of these are dated March 2017 well after the time when the appellant says that they moved into the building. Ms Wilson said that these related to ongoing issues with the upstairs bathroom. In respect of other receipts dated post January 2017 she said that these related to her responsibility for the maintenance of the building.

50. A letter from a carpentry firm refers to the building being handed over just before Christmas 2016 and an electrical firm invoice refers to first and second fixes which is dated 2 January 2017. This information only demonstrates that the works had reached a particular stage, but it does not demonstrate that the building was ready for occupation by the family.

51. Taken together the invoices and associated information provides some evidence of works to the building during the period October 2016 to January 2017. However, they do not confirm that the works to the barn were completed such that the appellant and his family were able to move in in early January 2017. The appellant argues that the complaint to the Council that the rebuilding works were too high and that non-travellers were living on the site corroborates the date when the work was substantially completed. However, the details of that complaint are not before me, and I cannot be sure what was alleged at that time. Furthermore, even if the complaint did establish the date when the works were substantially complete, the date of the complaint was March 2017 not the January 2017 date which is argued by the appellant.

52. The only evidence which I have before me in respect of the occupation of the building by the appellant and his family is Ms Wilson's Proof of Evidence and the statements which she made under oath to the Inquiry. The appellant's Statutory Declaration addresses only the point of concealment, it does not state that it supports all of the evidence provided by Ms Wilson in its entirety.

53. Ms Wilson refers to the agent visiting the site after the notices were issued in 2021. At this point there is no dispute that the breach had occurred. The agent did not visit the site when the appellant and his family first occupied the building in 2017, thus he cannot provide any first hand evidence about how they were using the building in the first week of January 2017.

54. Ms Wilson said that she only became aware of the issue regarding the use as a dwelling in 2021 when the notice was served, and she regarded the building as a day room. To that extent, given the history of the site, the appellant and his family's status as gypsies and Ms Wilson's own evidence, when the appellant and his family occupied the building, they used it not as a separate dwelling but as accommodation associated with the residential use of the site, albeit that the accommodation provided all the facilities normally provided in a dwelling house. Thus, it could be argued that the material change of use to a dwelling did not occur during the appellant's initial occupation of the building.

55. In March 2017 the appellant and his family had to leave the site and he says that he rented the building to a tenant, Mr Samules. A copy of an Assured Shorthold Tenancy Agreement (ASTA) which refers to Mr Samules by name was provided as part of Ms Wilson's Proof of Evidence.

56. The ASTA states that the property to which it relates is 147 Longbanks a property in Harlow. The agent acting for the appellant admitted that he had not realised the address was incorrect. During the Inquiry a letter was provided

which is signed by Mr Samules which confirms that he rented and moved into what is described as 'the dwelling house at Rose Farm' from 3 March 2017 to 18 February 2021. The letter contains the address 147 Longbanks in the letter heading.

57. In response to the letter from Mr Samules the Council provided a supplementary proof to the Enforcement Officer's proof and information regarding the ownership of 147 Longbanks. In this document the Council sets out that officers visited 147 Longbanks during an adjournment and the person who was residing at that address had no knowledge of Mr Samules. The Council considers this finding is inconsistent with the letter provided by Mr Samules to the Inquiry which the Council argues indicated Mr Samules residential or correspondence address.

58. The appellant's response to the Council's arguments in its supplementary proof was effectively that 147 Longbanks had been included in the letter heading erroneously by the agent acting for the appellant.

59. The letter from Mr Samules does not have the status of a Statutory Declaration with associated sanctions for not telling the truth. At the Inquiry it was established that the letter was drawn up by the appellant's agent following a conversation between Ms Wilson and Mr Samules, which could explain the letter heading. However, in any event the letter cannot be given the same weight as sworn evidence. There is also nothing in the letter from Mr Samules to explain why the ASTA refers to 147 Longbanks and not the building at Rose Farm.

60. The ASTA contains a fundamental error and is unsigned. As such it carries limited weight. Mr Samules says that he became a tenant of the appellant because he had rented out his property 147 Longbanks and could not return to it when his plans changed. However, there is no information to support this and apart from the ASTA which is unreliable there is no evidence to demonstrate that he was a tenant of the appellant. For example, although Ms Wilson said that she was paid rent by Mr Samules and could provide evidence in the form of bank statements, none of these were provided to the Inquiry.

61. Ms Wilson said that she also had CCTV footage of Mr Samules mowing the grass and copies of text messages she had with him regarding meter readings. Again these were not submitted. The ASTA sets out that the rent is inclusive of services such as electricity, but that Council Tax is payable by the tenant. There is no evidence of Council Tax being paid by Mr Samules or of any exemption which applied to him.

62. I do not find the evidence provided about Mr Samules occupation of the building to be precise or unambiguous. Also, even if I could conclude that the evidence demonstrates on the balance of probability that the breach of planning control began on 3 March 2017 and continued until 18 February 2021 this does not cover the full four year immunity period required in order to achieve success on ground (d).

63. The appellant submitted another ASTA with a Mr Smith as part of his appeal submissions and a signed version of the ASTA was provided during the Inquiry. The ASTA is dated 18 February 2021. The ASTA refers to property at Rose Farm but in common with the evidence regarding Mr Samules tenancy there is

no supporting information such as bank statements showing rent payments. The ASTA with Mr Smith states that he has responsibility for paying charges for services such as gas and electricity, however there is no evidence of this in the form of copies of bills and payments for example.

64. On the basis of the tenancy date Mr Smith was a tenant for the period 18 February 2021 to 10 March 2021 when the notice was issued. Unlike the ASTA with Mr Samules, the ASTA with Mr Smith makes it clear which property the ASTA relates to. In that sense the evidence provided in relation to Mr Smith's tenancy agreement is more precise and unambiguous than that relating to any agreement with Mr Samules. However, the lack of any evidence that rent was paid, and the building occupied by Mr Smith reduces the weight of this evidence.

65. Mr Smith's occupation of the building between 18 February 2021 and 10 March 2021 is important because it completes the evidence available for the four year period running up to the date when Notice B was issued.

66. If it had been shown that Mr Samules and Mr Smith had rented and occupied the barn in accordance with the dates set out in the ASTAs that would demonstrate that the use of the barn as separate dwelling was immune from enforcement action. The breach would have commenced with Mr Samules's occupation in accordance with the ASTA in his name on 3 March 2017 and been continuous until Notice B was issued, a period of 4 years and 7 days. In that scenario it would not matter if the appellant and his family had regarded the barn as a dayroom.

67. Notwithstanding the lack of precision and ambiguity in the evidence of Mr Samules and Mr Smith's occupancy of the barn there is also the matter of concealment which has been raised by the Council.

68. The appellant says that he did not prevent the Council from accessing the site, including entering the barn or the caravans. The Council did not dispute this point and both the enforcement officer, and the planning officer said that they have not been inside the building which is the subject of Appeal B.

69. The enforcement officer says that when she visited the site to serve Notice A on 1 March 2021 this was the first time that she was aware that the day room had been converted into a separate dwelling. When asked how she knew that the conversion had taken place, she said that this was because of what Mr Smith, the person occupying the barn, had said to her.

70. This version of events is consistent with the allegations as set out in Notice A and B. Notice A refers to the use of agricultural buildings for purposes ancillary to the residential use. However, the Council has requested that the notice be varied to remove this reference having discovered that the dwelling had been formed when Notice A was served and this was subsequently the subject of Notice B.

71. The enforcement officer said that she had visited the site before the notices were issued in April 2018 and November 2020. The planning officer visited the site in March 2019. The appellant says that when these visits took place the alterations to the barn had already taken place. These included the changes to the access doors, the installation of French doors and the Juliet balcony and

new windows, including high level windows. The changes to the barn are shown on the photographs from the site visits in April 2018 and November 2020 provided by the enforcement officer and the Council is not disputing that they had occurred by April 2018.

72. There had also been alterations to the outside space by April 2018. These included the enclosure of a grassed area adjacent to the barn with access provided via the French door and the erection of play equipment. In an email from the appellant to the Council in April 2018, he refers to the garden being a play area for one of his children.

73. At the site visit in April 2018 the enforcement officer met an agent representing the appellant, Ms Ball. There are no notes from that meeting and the appellant has not provided any evidence from Ms Ball. The enforcement officer says that Ms Ball told her that there had been no change to the barn or the dayroom. It is evident that changes had been made to the barn and the surrounding area and in that respect Ms Ball was incorrect and the enforcement officer conceded that those changes had been made.

74. The appellant argues that the enforcement officer should have been aware of the dwelling when she visited the site in April 2018 because of the changes which had been made. For example he considers that the formation of windows in a barn is a good sign that a barn has been converted to a dwelling. However, whilst it would have been reasonable to have reached such a conclusion in respect of an agricultural building, when the site visit took place in April 2018, the barn had planning permission to be used as a dayroom and part barn as playroom/gym under the terms of the 2015 Permission.

75. The alterations to the barn and the site more widely, as viewed on both site visits, were entirely consistent with the residential use of the barn for purposes associated with the stationing of the mobile homes and touring caravan. For that reason, whilst the Council could have gone inside the barn to confirm its use this was not necessary, particularly as Ms Ball had told the Council that there had been no changes to the barn.

76. Following the site visit in April 2018 the enforcement officer wrote to the appellant, asking for details about who was living in the caravans, and she refers to a planning application being required to allow continued use of the site. In her letter she says, incorrectly, that the 2015 Permission was due to expire on 30 July 2018. This was corrected to 16 September 2018 in the Inquiry. She also recommends that the garden area, the base for the mobile home and 'any use you currently have of the barn' should be included in a new planning application.

77. The appellant makes the distinction between the request from the Council relating to people living in the caravans and people living on the site. However, at that stage, given the advice provided by Ms Ball and the extant planning permission and that the appellant and his family had had to leave the site with a view to be returning to it, it was reasonable for the Council to assume that the caravans were the only place that any residents could live.

78. When the appellant responded to the Council's letter, he said that the occupants of Rose Farm between the two caravans and the barn was himself and Ms Wilson and their family and a named individual, who Ms Wilson said at

the Inquiry worked for the appellant and travelled with the family. At the Inquiry it was suggested that the response from the appellant referred to who would be living on the site as opposed to who was living there at the time.

79. However, that is not the way the question was posed nor how it was responded to, both of which are in the present tense. It is also notable that in his response the appellant refers to the barn as well as the caravans. It was therefore reasonable for the Council to assume that the persons named were either living on the site or were away from the site with the intention of returning.

80. The evidence of Mr Samules occupation of the barn is said to cover the period from 3 March 2017 to 18 February 2021. In April 2018 when the appellant wrote his email, he refers to the barn but does not refer to Mr Samules. One explanation of the lack of refence to Mr Samules is that he was not living in the barn at that time. This would at least call into question the continuity of use of the barn. The alternative is that Mr Samules was living in the barn and Mr Breaker chose not to reveal this to the Council.

81. Drawing all of these points together on the matter of concealment, in this case the actions of the appellant do not amount to positive deception. Nevertheless, the information provided by appellant in April 2018 adds to the lack of clarity about Mr Samules occupation of the barn.

Conclusion on ground (d)

82. The fire which consumed part of the barn in October 2016 is a matter of fact. However, the invoices and other information relating to the works carried out following the fire do not confirm that the building was capable of occupation in early January 2017 by the appellant and his family. Furthermore it is arguable that when the applicants occupied the building themselves, they continued its use as a dayroom and its use as a separate dwelling did not commence until it was occupied by others. The ASTA provided to confirm Mr Samules occupation of the building refers to a different address. The subsequent letter from Mr Samules provides some support for his occupation of the building, but it is undermined by the weight which I can attach to it, and it provides no explanation for the error in the ASTA. There is also no supporting information to show that either Mr Samules or Mr Smith occupied the building or if they did their occupation was uninterrupted. The appellant's email in April 2018 also casts doubt on who was occupying the site at that time.

83. Ms Wilson provided evidence under oath, and this is first hand evidence of how the building has been used. However, Ms Wilson relies on the supporting documentation in the form of the invoices etc relating to the works to the barn and the ASTAs which I have found to be incomplete and unreliable. Furthermore, Ms Wilson herself said that she was not very good with dates and names which makes her evidence less reliable.

84. For the reasons set out above I conclude that it has not been shown on the balance of probability that the change of use to a dwelling occurred and has continued for a period of four years without significant interruption prior to Notice B being issued. Thus the breach of planning control as set out in Notice B is not immune from enforcement action and the appeal on ground (d) does not succeed.

Appeal C

Main issues

85. The main issues are:

- Whether the use of the land for a gypsy and traveller site is inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies.
- The effect of the development on the openness of the Green Belt.
- The effect of the use of the existing access on the safety of users of Hamlet Hill.
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

86. The site is in use as a gypsy and traveller site. In making my decision I must have regard to the rights of the appellants and their family under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life and home, including the ability of Romany Gypsies to enjoy the particular lifestyle which is shared by their ethnic group. However, this is a qualified right which involves balancing the fundamental rights of individuals against the legitimate interests of others and the wider public interest. The concept of proportionality is crucial because a disproportionate or unjustified interference would result in the violation or breach of the appellants and their family's rights.

87. There is one child under the age of 18 on the site, consequently I must also consider the best interests of the child in this case. It has been established that the best interest of the child is a primary consideration, and no other consideration is inherently more important, however, it is not a determinative factor.

88. As required by the public sector equality duty (PSED) under the Equality Act 2010, I will also have due regard to the three aims identified in the Act – to eliminate discrimination, advance equality of opportunity and foster good relations. The appellants and their family are Romany Gypsies which is an ethnic minority, and they have the protected characteristic of race under section 149(7) of the 2010 Act. I am also aware from the evidence that there are persons on the site with the protected characteristic of disability. Therefore, the PSED is engaged in the appeal and the decision must be proportionate to achieving legitimate planning aims.

Reasons

Inappropriate development in the Green Belt?

89. There is no dispute between the parties that the site is within the Green Belt and that the occupiers of the site are Romany Gypsies. Under Policy E of the PPTS a Traveller's site, either temporary or permanent, is inappropriate development in the Green Belt. Policy DM4 of the Local Plan 2023 sets out that within the Green Belt planning permission will not be granted for inappropriate

development except in very special circumstances, in accordance with national planning policy. Policy DM4 also specifies types of development which are not inappropriate in the Green Belt. These do not include the use of land for gypsy and traveller sites.

90. On the basis of the PPTS and in the light of the Framework and the relevant development plan policy I conclude that the use of the site constitutes inappropriate development in the Green Belt. As such it is development which is by definition harmful to the Green Belt and should not be approved except in very special circumstances.

Effect on openness

91. The Framework identifies that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. The Framework also sets out that the Green Belt serves five purposes. The relevant purpose in this case is to assist in safeguarding the countryside from encroachment.

92. The appellants accept that there is a modest loss of openness and localised encroachment into the countryside as a result of the development.

93. The Council has provided an aerial photograph which depicts the site in 2007. This provides a sound basis for a comparison between the site as it was before the introduction of caravans and other works which were the subject of the 2011 Appeal Decision and the 2015 Permission and the scheme which is the subject of Appeal C.

94. In 2007 the site was laid to grass with some buildings, which appear to be the barn and the sheds which are still on the site. It is not clear from the photograph whether the site access had any form of hardstanding.

95. The photograph also lacks clarity as to whether the southern extension of the barn was in situ before the site began to be used for the use identified in the notice which was the subject of the 2011 Appeal Decision. However, the 2011 Appeal Decision refers to a requirement of the notice being the removal of the southern extension suggesting that it was not considered to be lawful at that time and there is no evidence before me to suggest that it was lawful when Notice B was served. On that basis I do not regard the southern extension of the barn as forming part of the baseline condition of the land for the purposes of the assessment of the effect of the development on openness.

96. The introduction of three caravans onto the site along with the domestic paraphernalia associated with a residential use would, by comparison with the 2007 baseline, affect openness. Examples of this are on the site in the form of children's play equipment and a small shed.

97. Hardstanding is necessary to facilitate the stationing of caravans and to provide access and parking and the hardstanding has led to a loss of openness in spatial terms. The southern extension of the barn similarly has led to a loss of openness.

98. In terms of a loss of openness in visual terms the appellants are correct that the site is well screened from Hamlet Hill. However, within the site the visual

effect on openness, such as the extension to the barn, the hardstanding and the caravans is apparent.

99. A comparison between the baseline condition and the development, which is the subject of the planning application, as amended, leads me to conclude that there would be a harmful effect on openness. It follows that the development fails to safeguard the countryside from encroachment which I have found to be the relevant purpose of the Green Belt in this case.

Effect on the users of Hamlet Hill

100. Access to the site is off Hamlet Hill which is subject to a 40mph speed limit. In terms of its geometry and the physical characteristics of the road there has been no change since the 2011 Appeal Decision.

101. The issue between the parties is whether or not vehicles leaving the site can do so without compromising the safety of users of Hamlet Hill. There is agreement that adequate visibility splays are provided towards the right for emerging vehicles. Where the parties are in dispute is in respect of vehicles exiting the site turning right which involves a manoeuvre across the road to the opposite side of the road.

102. In common with the positions adopted by the parties when the 2011 Appeal was under consideration there is no agreement about which standards should be applied. However, there is no dispute between the parties that the visibility splay to the left does not meet the standards on application of either the Design Manual for Roads and Bridges (DMRB) or Manual for Streets 2 (MfS2). On the basis of the measurements referred to in the Proofs of Evidence produced by the parties in respect of highway matters, there is broad agreement that the visibility to the left is in the order of 10 metres to the nearside edge and 23 metres to the centreline.

103. In the 2011 Appeal Decision the Inspector considered that DMRB was the appropriate guidance, but he also said that if MfS2 was applied the situation would still be unacceptable in terms of available visibility. I do not know what information the previous Inspector had before him which led him to conclude as he did but the fact remains that he refers to both DMRB and MfS2 in his decision. There is no evidence before me to suggest that the visibility splay to the left either does or can be altered to meet the standards of either guidance document. On that basis I share the previous Inspectors conclusions about the unacceptable nature of the visibility splay.

104. The appellants argue that since the 2011 Appeal Decision the Framework has been published and that this has changed the policy context within which the assessment of the suitability of the access needs to be made. In particular they reference paragraphs 108 and 109 and argue that this provides a decision maker with a more flexible approach than was the case in 2011 when the reliance was on the achievement of standards.

105. Since the appellants prepared their case, the Framework has been updated from the version which their quote comes from. However, the wording of the relevant paragraphs has not been changed and they have only been re-numbered to become paragraphs 110 and 111 (National Planning Policy Framework July 2021).

106. I do not have the guidance before me that was before the Inspector in 2011 but there is no evidence to suggest that the change described by the appellants has not occurred and that a more flexible approach can be adopted beyond the simple application of standards. The Council also accepted that I could take a more flexible approach.

107. The appellants refer to the manoeuvre which a driver would need to undertake when leaving the site and turning right. This would involve the vehicle being edged out into the road until a sufficient line of sight is achieved from the left. The appellants argue that as a result of the alignment of Hamlet Hill which curves beyond the site to the left it is unlikely that two vehicles approaching from that direction would be overtaking each other. Consequently vehicles in the flow of traffic from the left would be able to see the vehicle edging out in the opposing carriageway.

108. The appellants argue that edging out into traffic is a commonplace activity and that in the case of the appeal scheme such an arrangement is safe. They also refer to the lack of any accident data relating to this part of Hamlet Hill over the 12-13 years since there has been a caravan site. For these reasons the appellants argue that it would be difficult to conclude that the development would result in an unacceptable impact on highway safety or a severe residual cumulative impact on the road network as required by the Framework.

109. Turning to the accident data first, this would only apply to personal injury accidents which were reported and would not include near misses. Simply because an accident has not occurred to date does not make the access serving the site safe.

110. In respect to the safety of the manoeuvre, edging out into traffic may be a commonplace activity as argued by the appellants, but it does not follow that it is safe in all cases. In this case where visibility is poor a vehicle has to pull out some way to achieve an adequate line of sight. However that would not necessarily involve entering the opposite side of the road.

111. Nevertheless, if a vehicle was overtaking it would be likely to be fully or partly on the same side of the road as the vehicle edging out. Whilst it is reasonable to assume that a car would be unlikely to overtake another car or larger vehicle given the road alignment, the same could not be said for a motorcyclist. Also a car overtaking a cyclist and providing the clearance now required by the Highway Code would be across the centreline of the road. Both of these scenarios could give rise to interactions and potential collisions between the vehicle leaving the site and vehicles already on the road.

112. I carried out a site visit with the appellants' highways expert and the County Council's Strategic Development Engineer who both gave evidence to the Inquiry. During that site visit I observed traffic movements past the site and also drove along Hamlet Hill in both directions. Whilst I accept that this was a snapshot in time, what did strike me was the diversity of types of vehicle using the road including cyclists and the very limited appreciation any driver would have of the access to the site ahead of them when heading towards it from the left. There is also no physical barrier to prevent vehicles crossing the centre line of the road when approaching that part of Hamlet Hill where the access to the site is positioned.

113. For above reasons there is a potential for conflict between vehicles leaving the site and those already on Hamlet Hill which results in a significant impact on highway safety.

114. Drawing all of these points together I find that the use of the access serving the development has a harmful effect on the safety of users of Hamlet Hill. The development is contrary to Policies H4 and T1 of the Local Plan 2023 which require that access to the highway is considered as part of traveller site development and sets out that development will be permitted only where it can be demonstrated that it does not compromise highway safety and also contrary to the Framework because a safe and suitable access to the site cannot be achieved for all users and there would be an unacceptable impact on highway safety.

Other Considerations

Policies H1 and H4 of the Local Plan 2023

115. Policy H1 of the Local Plan 2023 relates to housing mix and types including sites upon which caravans are to be stationed and Policy H4 of the Local Plan 2023 sets out the Council's approach to Traveller Site Development including allocated sites and sites which come forward through planning applications (windfall sites). In respect of windfall sites Policy H4 contains a list of considerations which need to be taken into account when planning applications are determined.

116. In the Report on the Examination of the Epping Forest District Local Plan 2011-2033 (the Local Plan Inspectors Report) the Local Plan Inspector refers to Policy H4 setting criteria against which applications for additional gypsy and traveller accommodation on unallocated sites can be assessed. He goes on to say that Policy H1 includes criteria for considering applications for caravan accommodation made by persons who might culturally identify as gypsies and travellers who do not meet the definition.

117. The appellants consider that no weight should be given to Policy H4 of the Local Plan 2023 because when the Local Plan Inspector examined the plan, he did not take the Lisa Smith judgment (Lisa Smith v SSLUHC [2022] EWCA Civ 1391) into account. Furthermore, the appellants argue that that part of the local plan which deals with gypsy site provision is out of date and that the Council has failed in its duty under the PSED and the Equality Act.

118. The thrust of the Lisa Smith judgement is that the change made to the PPTS definition of gypsies and travellers was unlawfully discriminatory. Notwithstanding the Local Plan Inspectors Report and whilst the preamble to Policy H4 includes reference to the PPTS definition which has been found to be unlawful, the policy itself does not draw any distinction between gypsies who meet the definition and those who do not. The considerations contained within Policy H4 reflect the Framework and the PPTS which allows for a fair and consistent approach to be taken to all gypsies and travellers.

119. The appellants also consider that the Local Plan 2023 adopts a different approach to providing sites for gypsies who meet the definition in the PPTS and those who do not. This is on the basis that Policy H1, does not allocate land for gypsy and traveller sites but Policy H4 does. They say that such an approach is

discriminatory. However, the wording of Policy H4 does not differentiate between gypsies who meet the definition and those who do not, consequently all gypsies would have access to allocated sites, regardless of any interpretation which the appellants have put on the Local Plan Inspector's report.

120. For the reasons set out above I consider that Policies H1 and H4 of the Local Plan 2023 should be afforded full weight.

Need and supply of gypsy sites

121. Policy SP1 of the Local Plan 2023 states that provision will be made for a minimum of 64 pitches over the period 2011-2033 to meet the needs of gypsies and travellers.

122. The appellants seek to challenge this figure on need for a number of reasons but primarily because it is based on a Gypsy and Traveller Accommodation Assessment (GTAA) derived from information collected in 2016, being 7 years ago. There is no evidence to dispute the Council's contention that all of the criticisms now made by the appellants were raised by other parties as part of the local plan process. Furthermore, it is clear that the Local Plan Inspector was content to rely on the information before him and the plan was found to be sound.

123. The Local Plan 2023 has not been the subject of a challenge in respect of its approach to assessing the need for gypsies and travellers.

124. The Lisa Smith judgement may have ramifications for the level of need going forward if a future GTAA includes both gypsies meeting the PPTS definition and those who do not in the calculation of total need. Similarly, the GTAA which has been commissioned by the Council and which is ongoing may result in a greater level of need being identified. However, my decision must be made on the current position and in this respect, I find that the level of need as identified in the Local Plan 2023 can be relied upon.

125. Turning to the supply of gypsy and traveller sites, the Local Plan adopts a sequential approach, and this is set out in Policy SP1. In their Closing Submissions the appellants contend that given their arguments on the Council's assessment of need it also cannot be shown whether the Council has a five year supply of gypsy and traveller sites.

126. It will be seen from the foregoing that I do not agree with the appellants that the Local Plan 2023 cannot be relied upon in terms of the assessment of need. Accordingly I consider that the Council's position on supply based on that need and set out in the Local Plan 2023 is also sound.

127. For the reasons set out above I find the Council have established the need for sites and can demonstrate a 5 year supply of sites. Consequently, these considerations do not weigh in favour of the development.

128. Nevertheless, the development provides a gypsy and traveller pitch which contributes towards the supply of sites in a general sense, and this is a matter which weighs in favour of the development. The weight to be attached to this consideration is limited as a consequence of the scale of development.

Failure of policy

129. On the basis of their arguments that the GTAA is out of date and the implications of the Lisa Smith judgement for local plan policy, the appellants argue that there has been a failure of planning policy. It will be seen from the foregoing that I do not accept these arguments. The Local Plan 2023 has been adopted very recently and if there have been any failures in policies relating to gypsy and traveller development in the past the Local Plan 2023 has addressed them. For that reason there is no failure of policy to be weighed in favour of the development.

Failure to allocate the appeal site in the Local Plan 2023/Location in the Green Belt

130. Under the sequential test set out in Policy SP1 of the Local Plan 2023 the first option is the regularisation of existing sites with temporary permissions or other unauthorised sites, as appropriate. The appeal site was considered as part of an assessment of such sites (the ARUP Assessment). Although it was initially rejected on the grounds of availability which was not the case, it was then included in further assessments. At the final stage the site was rejected on the basis of significant access constraints and because more suitable and deliverable sites had been identified.

131. The appellants note that the site was not ruled out on the grounds that it was in the Green Belt and that none of the other sites which were assessed and taken forward were ruled out for that reason. The Council conceded this point. On this basis the appellants consider that this factor weighs in their favour particularly if I conclude that the site is suitable in terms of the impact on highway safety. However, I have not reached that conclusion and I concur with the outcome of the ARUP Assessment.

132. There is no dispute between the parties that a very high percentage of the district lies in the Green Belt. Therefore it is reasonable to assume that most, if not all, the sites considered by the ARUP Assessment would be in the Green Belt. Similarly, it is reasonable to assume that the majority of new gypsy and traveller sites will be in the Green Belt or on land released from the Green Belt.

133. However, the Local Plan 2023 is evidence of a plan led strategic approach to the protection of the Green Belt involving planned releases of Green Belt land and policies such as Policy SP1 which allow for new travellers sites in the Green Belt where they are appropriately located. In this context the lack of reference to the site’s Green Belt location in the ARUP assessment and the inevitability of any new gypsy and traveller site being in the Green Belt attracts limited weight in favour of the development.

The suitability of the site for a gypsy and traveller site

134. The considerations set out in Policy H4 of the Local Plan 2023 include those relating to access to the highway and impact on the Green Belt. I have found harm in respect of those considerations. However, in relation to the other considerations there is no conflict and in those respects the site is suitable for use as a gypsy and traveller site. This attracts moderate weight in favour of the development.

The availability (or lack) of an alternative site for the appellants

135. The appellants say that if they cannot remain on the site, they have nowhere else to move to and they would be likely to end up on the roadside. Whilst the appellants occupied sites in Lincolnshire between 2017 and 2023, they say that these sites were unlawful and there is no evidence before me to suggest that the appellants could return to any of them. The Council does not dispute the arguments put forward by the appellants although it considers that in due course the appellants may be able to access one of the pitches coming forward in the supply of sites identified in the Local Plan 2023.

136. In its letter of objection Roydon Parish Council refers to other gypsy and traveller sites in the parish. However, there is no evidence before me to show that there are any pitches available on those sites.

137. Notwithstanding the potential for a site for the family to becoming available for example on an allocated site, at present there is no alternative accommodation available to the appellants. This weighs significantly in favour of the development.

Personal circumstances of the appellants and their family

138. The 2011 appeal decision refers to the appellants and their family moving onto the site in 2008. They obtained planning permission to remain on the site until 2016 and the 2015 Permission effectively extended the temporary permission until September 2018. By 2017 when they were forced to leave the site, they had become established there. Ms Wilson said that they did not want to leave the site and the circumstances of their departure were harrowing. Ms Wilson said that they always intended to return to the site.

139. The appellants have four children, three of whom are over 18 years of age. Three of their children have ongoing health conditions which Ms Wilson described in detail.

140. Child A, who is over 18, requires access to hospital on occasion and the particular hospital is within a one hour drive from the site. When the family were in Lincolnshire it took longer to get to this hospital.

141. In his appeal decision the Inspector for the 2011 Appeal Decision refers to Child A specifically and acknowledges the need for regular access to the same hospital that Ms Wilson refers to. The Inspector also refers to information which he had before him from the consultant who was responsible for Child A's care. The Inspector specifically mentions Child A's health in his conclusions, and he refers to the needs of the other children in terms of well-being and education.

142. Child B, who is also over 18, does not have any particular health needs. Another child (Child C), who is also over 18, has recently undergone investigations for a long running health problem and is under new medication.

143. The youngest child (Child D) has the most severe health issues and requires support from all of the family but particularly from Ms Wilson. I have addressed the best interests of this child separately below.

144. There is at least a possibility that if the appellants and their family were unable to stay on the site, they would have to live in their touring caravan on

the roadside. This would not be good for the health and wellbeing of any family members but particularly for Child D.

145. Taking account of all of these factors, the personal circumstances of the appellants and their family weigh significantly in favour of the development.

Best Interests of the Child

146. Child D has health and educational needs. Ms Wilson is their principal carer, but other family members provide support. The needs of Child D are such that they cannot be left alone, and they need constant supervision. Ms Wilson is coaching Child D in domestic tasks such as preparation of food and she says that they are making progress.

147. Child D does not adapt well to changing circumstances and Ms Wilson would like them to return to a local specialist school from where they have had support in the past. There is evidence in the form of a letter from the head teacher at the school which documents that Child D was a pupil at the school for nearly four academic years, although for the last year Ms Wilson says that they were on the school roll only.

148. The letter which is dated October 2020 says that Child D had been taken off the school roll, but it acknowledges Ms Wilson's desire to return to the site. There is no updated evidence before me to demonstrate that a place will be available for Child D to return to the local school in September 2023 which is Ms Wilson's wish or at any later date.

149. While the appellants and their family were away from the site from 2017 Child D attended a school elsewhere for some of that time. The appellants returned to the site in January 2023 and Child D now has one to one lessons via a laptop. Ms Wilson hopes that Child D will be able to return the local school in September this year, but she said that there is no certainty that Child D will be ready to do so.

150. Ms Wilson described the school as providing education beyond 16, potentially up to 21 years of age. This would be advantageous given that Child D does not cope well with change, and this would provide certainty for them. Child D is 12 years old, therefore if they return to school in the coming school year, it is likely that they would be at school for a further four years. The potential for them to continue their education in that setting until age 21 years could result in up to 9 years of schooling and associated support being available to them. Nevertheless, the absence of any supporting evidence from the local school to establish that a place with suitable support is going to be available to Child D for the next academic year reduces the emphasis which can be placed on this as a likely outcome.

151. The 2011 Appeal decision and the subsequent 2015 Permission included the use of agricultural buildings on the site for purposes ancillary to the residential use. Child D benefited from use of this space away from other family members when they were resident on the site until March 2017.

152. Ms Wilson considers that there may come a time when a live in carer is required to support the child as they grow up and the buildings on the site could provide space to accommodate that.

153. The Inspector in the 2011 Appeal decision does not refer to Child D. However, the Council's committee report for the 2015 Permission acknowledges that since the 2011 Appeal decision Child D has been formally diagnosed with their condition. This correlates with the information supplied by Ms Wilson.

154. The Council's committee report which relates to the 2015 Permission refers to letters provided by Essex County Council and health professionals and the advice contained within those letters which recommended permanent planning permission be granted. Neither these letters nor any updated information from these sources have been provided to me. The only letter before me from Essex County Council dates from December 2015. Although this postdates the 2015 Permission it does not contain any advice regarding Child D's living arrangements.

155. Drawing all of these points together, there is very limited information before me regarding Child Ds' specific health and educational needs save for the first hand evidence from Ms Wilson which was given under oath. The Council did not dispute the evidence provided by Ms Wilson and I can find no reason to do so. Nevertheless, much of what Ms Wilson said about how Child D's educational needs would be met in the future rely on the availability of a place at the local school. However, there is no certainty about whether and when such a place might become available.

156. Child D is described as a person with complex needs and it is reasonable to assume that finding a school place for them will not be as straightforward as placing a child in the mainstream school environment.

157. In terms of their health there are no documents from consultants or other medical practitioners to support Ms Wilson's evidence. In particular there is no expert opinion regarding the need for Child D to remain on the site and the consequences of any decision which may result in them having to move off. Ms Wilson also referred to the use of the building on the site as a dayroom being beneficial to Child D in relation to his health needs but at present those facilities are unavailable to them because they are used by a tenant.

158. To conclude, there is a lack of evidence to support the arguments made by Ms Wilson therefore the weight to be attached to the best interest of Child D in the Green Belt balance in this instance is moderate.

The Green Belt Balance

159. Both the previous Inspector who made the 2011 Appeal Decision and the Council when it granted the 2015 Permission carried out a Green Belt balance exercise.

160. The previous Inspector attached substantial weight to harm through inappropriateness incorporating the effect of the development on openness and character and appearance. He also attached substantial weight to the effect on highway safety. The Council essentially reached the same conclusions on harm when it granted the 2015 Permission.

161. The Inspector and the Council also acknowledged similar other considerations which weighed in favour of the appellants. In the case of the Inspector these were the shortage of sites, the absence of up-to-date policies

which identify alternative sites, the serious implications for the children's education and the health and wellbeing of Child A. He attached substantial weight to these considerations. In its Committee report for the 2015 Permission the Council refers to the absence of available alternative sites for the appellants and it refers to Child D's diagnosis.

162. Having carried out the Green Belt balance in 2011 and 2015, the Inspector and the Council reached the view that a permanent planning permission could not be justified but that a temporary/personal planning permission was appropriate.

163. Turning to the matters which are before me I find that the development is inappropriate development in the Green Belt. I also find that the development has a harmful effect on openness and that it fails to safeguard the countryside from encroachment. By virtue of paragraph 148 of the Framework such harm attracts substantial weight.

164. I have concluded that the development gives rise to conditions which are harmful to the safety of users of Hamlet Hill. Highway safety is an important matter, and some consideration must be given to the public interest in providing safe access along the public highway. For that reason this matter also attracts substantial weight.

165. In favour of allowing the appeal I attach significant weight to the personal circumstances of the appellants and their family and to the lack of an alternative site for the appellants and moderate weight to the suitability of the site for a gypsy and traveller site. I also attach limited weight to the contribution which the development makes to the supply of sites and very limited weight to the absence of the Green Belt location being a justification for failure under the ARUP assessment and the inevitability of any new gypsy and traveller site being in the Green Belt.

166. As I have set out above, the best interests of the children are a primary consideration, and no other consideration is inherently more important, however, they are not a determinative factor. In this case the best interests of Child D weighs moderately in favour of allowing the appeal.

167. The Framework makes it clear that the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the development must be clearly outweighed by other considerations for planning permission to be granted. In this case, there are several matters which weigh in favour of the appellants, however the cumulative weight of these other considerations does not clearly outweigh the substantial harm to the Green Belt and to highway safety.

168. Looking at the case as a whole, my initial conclusion is that the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in this case. Accordingly, the development is contrary to Policy DM4 of the Local Plan 2023.

Planning permission on a personal or temporary basis

169. As I have placed reliance in the Green Belt balance on the personal circumstances of the appellants, including the best interests of Child D, were planning permission to be granted it would need to be a personal permission.

170. This would have the effect of limiting the duration of the planning permission and the harm to the Green Belt and the highway safety harm would be moderated in comparison with that which would result from a permanent planning permission.

171. However, given the age of the appellants and their family a personal permission could result in the development remaining in situ for a considerable amount of time being the lifetime of the appellants and their dependants. The Green Belt harm and the highway safety issues which I have identified would endure for the whole period of the appellant's occupation.

172. Even considering the moderating effect of a personal permission on the harm which I have identified I still find that in terms of the Green Belt balance the Green Belt harm and the harm to highway safety would not be outweighed by other considerations.

173. It is also open to me to grant planning permission on a temporary basis which could further limit the impacts of the development in comparison with either a permanent or personal permission. However, Planning Practice Guidance (PPG) sets out circumstances where temporary planning permission may be appropriate. The relevant consideration in this case is whether it is expected that the planning circumstances will change in a particular way at the end of that period.

174. The appellants suggest in their Closing Submissions that a temporary consent of 5 years would be appropriate as this would enable the Council to complete the current GTAA work and formulate a policy to deal with any update on the need for gypsy and traveller sites. The appellants refer to the Council's duties under the PPTS in regard to supply.

175. There is no timescale for the publication of the GTAA and no certainty that there will be a significant uplift in the need for sites. I have concluded on the basis of the Local Plan 2023 that the Council has a 5 year supply of sites in accordance with the PPTS and there is no evidence to demonstrate with any certainty that policies in the Local Plan 2023 will need to be updated in light the GTAA outcome.

176. Even if I were to accept that the work on the GTAA formed a sound basis for a temporary consent, whilst the harm to the Green Belt and the implications for highway safety would be moderated by the fact that the development would be of limited duration, these harms would be apparent for the duration of the temporary permission. Furthermore, the benefits to the appellants and their family in terms of access to support for Child D would also be reduced. The other matters in the balance would remain unchanged and, on that basis, the Green Belt harm would not be clearly outweighed by other considerations in this scenario either.

177. I conclude that granting permission on a personal and/or temporary basis does not change the Green Belt balance such that planning permission should be granted on either or both of these bases.

Human Rights including the Best Interests of the Child

178. There is at least a probability that dismissing the appeal would result in the appellants and their family becoming homeless, given that I have concluded

that there is no suitable alternative site for them to move to. This would amount to a significant interference with their rights under Article 8.

179. I have considered all of the matters raised by the appellants including the lack of availability of alternative accommodation and the personal circumstances of themselves and their family, including the best interests of Child D. The only alternative for the family appears to be a roadside existence, which would have significant implications for their family life. In relation to the best interests of the child I have concluded that it would be in the best interest of Child D to remain on the site.

180. However, the interference with the rights of the appellants and their family would be a proportionate response in pursuance of the well-established and legitimate aim of the protection of the Green Belt in the public interest and in respect of the safety of users of Hamlet Hill.

181. Turning to the PSED, a letter of objection was submitted by Roydon Parish Council but there were no comments from any interested parties, which could indicate that the relationship between the appellants and the settled community are good. Enabling the family to remain on the site, with the benefit of planning permission to establish a lawful use of the land has the potential to foster and continue good relations between the family and other people in the local community and to eliminate discrimination.

182. Allowing Appeal C and granting planning permission would also advance equality of opportunity by taking steps to meet the particular needs of the family both in their ethnicity and the protected characteristic of disability, in the case of Child D.

183. I have had due regard to the PSED and found that the development would provide the opportunity to advance its aims, however set against the well-established and legitimate aim of the protection of the Green Belt and providing safe conditions for the users of Hamlet Hill dismissing Appeal C is a proportionate response in this case.

Other Matters

184. The site is close to Epping Forest which is defined as a Special Area of Conservation (SAC) because it is an important conservation site, and a SAC falls within the definition of a European site. The Conservation of Habitats and Species Regulations 2017 requires that where any proposal is likely to have a significant effect on a European site either alone or in combination with other plans or projects, an appropriate assessment must be made in relation to the site's conservation objectives. However, as I am dismissing for other reasons it is not necessary for me to consider this matter further as it could not change the outcome of this appeal.

Conclusion Appeal C

185. The development does not accord with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that Appeal C should not succeed, and that planning permission should not be granted. This action would not unacceptably violate the human rights of the appellants and

their family, and the protection of the public interest cannot be achieved by means that are less interfering of their rights.

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

Background

186. An appeal on ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.

187. I have corrected Notice A to relate to the breach of conditions 2 and 3 of the 2015 Permission and the DPA is to carry out the development subject to the planning permission without complying with the conditions being enforced against. Conditions 2 and 3 which were attached to a Decision Notice dated 16 September 2015 are temporary conditions which limit the duration of the planning permission to a maximum of 3 years, therefore the planning permission is time expired.

188. It is open to me to dismiss the appeal on ground (a) or to allow the appeal and grant a new planning permission. I am not bound by any conditions imposed on the time expired planning permission and I can impose any new conditions which are necessary and reasonable to the continuation of the use.

189. There are no conditions on the 2015 Permission which require the development to be occupied by gypsies as this was not necessary in the light of a consent limited to the occupation by named individuals who were gypsies. There was no suggestion at the Inquiry that if the appellant was successful at appeal persons other than gypsies would occupy the development. I shall therefore determine Appeal A ground (a) on the basis that the development is for a gypsy and traveller site. It follows that such development is inappropriate development as established by the PPTS.

190. Conditions 2 and 3 limited the duration of the planning permission which is now time expired and the occupation of the site. The reasons for conditions 2 and 3 established that at the time when the 2015 Permission was granted the personal circumstances of the appellant and his family, and the limited duration of the consent were other considerations which clearly outweighed harm to the Green Belt and other harm such that the very special circumstances necessary to justify the development existed.

191. The description of the development which was the subject of the 2015 Permission has the same components as the planning application which is the subject of Appeal C i.e. one mobile home, two touring caravans and associated development which is specified in the 2015 Permission as a playroom/gym in the barn.

Planning permission without a condition restricting occupancy to the appellant and his family

192. Turning firstly to the scenario where the new planning permission is granted without an occupancy condition. This consideration must be made with regard to the current circumstances and not those which led to the imposition of conditions 2 and 3 which are the subject of the notice.

193. Given that the components of the development which was the subject of the 2015 Permission to which conditions 2 and 3 were attached are the same as the planning application scheme, it follows that the impacts are the same. Therefore, I shall adopt my reasoning in respect of the harm arising from the development which I have set out above for Appeal C, being harm to the Green Belt and the harmful effect on the users of Hamlet Hill in relation to highway safety. This is the extent of harm against which the other considerations need to be set in the Green Belt balance.

194. Turning to the other considerations, the weight to be given to the suitability of the site for a gypsy and traveller site and the inevitability of any new gypsy and traveller site being in the Green Belt would remain unchanged in comparison with the situation in 2015. However, in the light of the adoption of the Local Plan 2023, the need and supply of gypsy sites and the failure of policy are no longer matters which attract weight in favour of the development.

195. Granting a new planning permission without an occupancy condition would have the effect of removing the personal circumstances of appellant and his family, the best interests of the child and the lack of alternative accommodation for the appellant and his family as matters in favour of the development.

196. On the basis of the foregoing, in the event that a new planning permission was granted without an occupancy condition the matters which are in favour of the development, derived from my reasoning in Appeal C, are the suitability of the site for a gypsy and traveller site which attracts moderate weight, the contribution which the development makes to the supply of sites which attracts limited weight and the inevitability of a Green Belt location which attracts very limited weight. On the other side of the balance harm to the Green Belt and the harmful effect on the users of Hamlet Hill in relation to highway safety attract substantial weight.

197. The Framework makes it clear that the harm to the Green Belt by reason of inappropriateness and any other harm resulting from the development must be clearly outweighed by other considerations for planning permission to be granted. In this case, there are only three matters which weigh in favour of the appellant and the cumulative weight of these other considerations does not clearly outweigh the substantial harm arising to the Green Belt in combination with the significant harm to the safety of users of Hamlet Hill.

198. On the basis of the foregoing I conclude that the very special circumstances necessary to justify inappropriate development in the Green Belt would not exist in the absence of an occupancy condition to restrict occupation to the appellant and his family.

Planning permission without a condition restricting occupancy to the appellant and his family

199. As I have noted above the option of granting a new planning permission with different conditions is available to me. In this respect I could replace condition 2 and 3 with new conditions which limited the occupation of the development to the appellant, Ms Wilson, and their dependents with or without separately limiting the duration of the consent.

200. In respect of the consideration of a new personal planning permission my reasoning in relation to Appeal C, can be fully applied to whether or not Appeal A should succeed, and a new personal planning permission should be granted. As I have also considered whether or not a temporary planning permission would be appropriate under Appeal C, I can also apply the same reasoning in respect of a new planning personal planning permission which is of limited duration.

201. In respect of Appeal C, I have given significant weight to the personal circumstances of the appellant and his family and to the lack of an alternative site for them and moderate weight to the best interests of Child D. However I found that the cumulative weight of these considerations and those relating to the supply of sites and the Green Belt location do not clearly outweigh the substantial harm to the Green Belt and to highway safety. The initial conclusion is the same for Appeal A and it is that the very special circumstances necessary to justify inappropriate development in the Green Belt do not exist and that the development which was the subject of the 2015 Permission is contrary to Policy DM4 of the Local Plan 2023.

202. I have addressed human rights including the best interests of Child D in my consideration of Appeal C. The conclusions which I have reached apply equally to Appeal A and I find that dismissing Appeal A and not granting a new permission is a proportionate response in this case.

203. The conclusion which I have reached on the impact on the SAC in my consideration of Appeal C applies equally to Appeal A.

Conclusion Appeal A ground (a) and the DPA

204. The development which is the subject of the 2015 Permission does not accord with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that Appeal A should not succeed, and that a new planning permission, either with or without a condition to restrict the occupancy of the site to the appellant and his family, should not be granted on the DPA. This action would not unacceptably violate the human rights of the appellant and his family, and the protection of the public interest cannot be achieved by means that are less interfering of their rights.

Appeal B – ground (a) and the DPA

205. The DPA derives from the breach as set out in the notice. In this case I have corrected the notice and the DPA therefore relates to the change of use of part of the barn to a single dwelling house.

206. In his Closing Submissions the appellant states that the dwelling is needed to provide secure accommodation for Child D and a carer and could be restricted by a personal permission for Child D and their carer. I have considered Appeal B on this basis.

207. The use as a single dwelling house has already commenced but it is not currently occupied by Child D and their carer.

Main Issues

208. The main issues are:

- Whether the change of use to a single dwelling house is inappropriate development in the Green Belt having regard to the Framework, including any relevant effects on the openness of the Green Belt, and any relevant development plan policies.
- The effect of the use of the existing access on the safety of users of Hamlet Hill.
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

209. As Child D is under the age of 18, I have also considered the best interests of the child in reaching my decision on Appeal B. The best interests of the children are a primary consideration, and no other consideration is inherently more important, however, they are not a determinative factor.

210. Child D is a Romany Gypsy and suffers from a disability, therefore he has the protected characteristic of race and disability under section 149(7) of the Equality Act. Therefore, the PSED is engaged in the appeal and the decision must be proportionate to achieving legitimate planning aims.

Reasons

Inappropriate development in the Green Belt

211. Policy DM4 sets out that within the Green Belt planning permission will not be granted for inappropriate development except in very special circumstances, in accordance with national planning policy. Policy DM4 also specifies types of development which are not inappropriate in the Green Belt, provided that they preserve the openness of the Green Belt and not conflict with the purposes of the Green Belt. These include the re-use of buildings provided that they are of a permanent and substantial construction.

212. There is no dispute that the part of the barn (the building) which is the subject of Notice B is of permanent and substantial construction.

213. With regard to the effect of the development on openness, the principles which I have established in my consideration of Appeal A and Appeal C are relevant in Appeal B. As such the Framework identifies that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. In common with my findings in Appeal A and Appeal C, the relevant purpose of the Green Belt in Appeal B is to assist in safeguarding the countryside from encroachment.

214. I have already established that in 2007 the barn was present but that save for the sheds building the site was laid to grass. As such the barn but not its extension forms part of the baseline condition of site for the purposes of the assessment of the effect on openness.

215. Part of the hardstanding which has been laid on the site serves as access and parking space adjacent to the dwelling. It is reasonable to assume that this would be for the use of the occupiers of the dwelling, and it results in a loss of openness in spatial terms. Similarly the southern extension to the barn, which forms part of the dwelling results in a loss of openness.

216. The introduction of a residential use onto the land in the form of the new dwelling results in the addition of domestic paraphernalia and parked vehicles. Examples of domestic paraphernalia are on the site at present in the form of children's play equipment and a small shed. Thus, the change of use results in a loss of openness in visual terms. In terms of a loss of openness the appellant is correct that the site is well screened from Hamlet Hill. However, within the site the visual effect on openness would be apparent.

217. A comparison between the baseline condition and the development which is the subject the DPA leads me to conclude that the development has a harmful effect on openness. It follows that the development also fails to safeguard the countryside from encroachment.

218. In the light of my findings the development constitutes inappropriate development in the Green Belt under the terms of Policy DM4 of the Local Plan 2023 because I have found that it does not preserve openness and it conflicts with one of the purposes of including land in the Green Belt. As such it is development which is by definition harmful to the Green Belt and should not be approved except in very special circumstances.

Effect on the users of Hamlet Hill

219. My reasoning and the conclusions which I have reached in respect of Appeals A and C on this issue are equally applicable to the effect arising from the change of use of the building to a single dwelling house. This is because irrespective of the volume of traffic generated from by the uses on the site there is a potential for conflict between any vehicle leaving the site and those already on Hamlet Hill. It follows that the Appeal B scheme would also have the same harmful effect on the safety of users of Hamlet Hill and consequently the development would be contrary to Policies H4 and T1 of the Local Plan.

Other considerations

The Best Interest of Child D

220. The appellant wishes me to consider that the dwelling will be used by Child D and their carer. Currently the appellant, Ms Wilson and their family meet all of Child D's needs and there is no live in carer. Whilst Ms Wilson explained how she supports Child D and the progress that they have made, there is no medical or other expert evidence in terms of Child D's condition or its long term consequences in terms of care. In particular there is no certainty that in the long term Child D will be able to live by themselves with the support of a live-in carer.

221. Furthermore, there is no evidence before me to suggest that the occupation of this dwelling by Child D and a live-in carer is either the only option or the most appropriate option for their long term care.

222. Ms Wilson said that she thought that there would reach a point when Child D would need a live-in carer and she hoped that the dwelling would be available to them. However, in terms of the current circumstances there is no evidence to show that continued care by the family is not an option or that a live-in carer is to be employed imminently.

223. Child D is 12 years old and if the need for a carer coincides with them reaching adulthood as inferred by Ms Wilson there would be a period of time during which the dwelling would not be used by them. Ms Wilson said that during this period she would rent out the building, but this would not be possible if it was subject to a personal condition restricting occupancy to Child D and their carer.

224. In view of my decisions on Appeals A and C the site would not have the benefit of planning permission for a gypsy and traveller site and on compliance with Notice A there would no longer be the family support available alongside the use of the dwelling. There is no evidence before me regarding how this would affect the likelihood of Child D and a live-in carer using the dwelling.

225. Drawing all of these points together, there is much uncertainty about Child D's situation including if and when they will be occupying the dwelling and whether this is the best or only option for their long term care. There is also no supporting evidence from medical and other experts. In the absence of evidence to support the contention that the occupation of the dwelling by Child D and a live-in carer would be in their best interest, this matter attracts moderate weight.

The Green Belt balance

226. The development is inappropriate development in the Green Belt which by virtue of paragraph 148 of the Framework attracts substantial weight. The development also gives rise to conditions which are harmful to the users of Hamlet Hill in respect of highway safety and this harm also attracts substantial weight. On the other side of the balance falls the best interest of Child D which attracts moderate weight.

227. The Framework makes it clear that the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the development must be clearly outweighed by other considerations for planning permission to be granted. In this case, I find that although there are matters which weigh in favour of the appellant, the weight of these other considerations does not clearly outweigh the substantial harm arising to the Green Belt in combination with the harm to the highway safety.

228. Consequently, my initial conclusion is that the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in this case. Accordingly, the development is contrary to Policy DM4 of the Local Plan 2023.

Planning permission on a temporary basis

229. As I have said above PPG sets out circumstances where temporary planning permission may be appropriate. In this case there are two circumstances to consider, firstly whether the planning circumstances will change in a particular way at the end of that period and secondly whether the temporary use of the

building as a dwelling is appropriate pending any longer term proposals coming forward (a meanwhile use).

230. With regard to a likely change in planning circumstances, based on the information before me there is no evidence of the likelihood of this.

231. I have also considered whether the temporary use of the building as a dwelling pending Child D's maturity to adulthood and the development of a care package for them including the need for a live-in carer, could be justified.

232. However, there is a lack of certainty around how Child D's needs will be met in the future and there no medical or other expert opinions about the necessity for them to remain on the site. Given this uncertainty, and the continuation of the harms which I have identified throughout any temporary use, a temporary consent on this basis cannot be justified.

Human Rights and Best Interest of the Child

233. Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998 affords the right to respect for private and family life and home. In the case of Appeal B it is not the appellant's home which is under consideration but the future home of Child D. In this context Child D is currently unable to occupy the building independently and there is no evidence of a care package to enable them to do so or of a carer being organised in the short term. Consequently a decision to refuse Appeal B would not deprive Child D of a home and would not amount to interference with Child D's right to a home.

234. In relation to the best interest of Child D, the appellant considers that it would be in the child's best interest to be able to live in the dwelling with a live-in carer in the future. It is understandable that as parents, the appellant and Ms Wilson are considering the future needs of Child D and have a view on how those might be met for the best. However, there is no medical or other expert advice to show that such an arrangement would be appropriate for Child D or that there would be no other options available to them. Consequently it has not been fully demonstrated that it is in the best interests of Child D to be able to live in the dwelling with a live-in carer.

235. Turning to the PSED the development has the potential to enable a disabled person from an ethnic minority to be accommodated within an established community which could facilitate interactions between the individual and other people in the community. As a consequence the development has the potential to foster good relations and to eliminate combined discrimination. Allowing Appeal B and granting planning permission would also advance equality by taking steps to meeting the needs of the future occupier both in terms of their disability and ethnic minority.

236. I have had due regard to the PSED and found that the development would provide the opportunity to advance its aims, however set against the well-established and legitimate aim of the protection of the Green Belt and providing safe conditions for the users of Hamlet Hill dismissing Appeal B is a proportionate response in this case.

Other Matters

237. In respect of the impact of the development on the SAC, I shall adopt the same approach as I have done in respect of Appeal A and Appeal C. As I am dismissing for other reasons it is not necessary for me to consider this matter further as it could not change the outcome of this appeal.

Conclusion

238. The development does not accord with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that Appeal B should not succeed, and that planning permission should not be granted.

Appeal B - Ground (f)

239. An appeal on ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case the requirements relate to a breach of planning control.

240. It will be seen from the foregoing that I have corrected the breach to refer to the change of use of the building to use as a single dwelling house. There have been no consequential changes to the requirements as a result of this correction.

241. The appellant’s case is that requirements (2) to (5) are excessive because they are not part of the alleged breach, which when the notice was served was the construction of a dwelling. The Council considers that the requirements are necessary and that they facilitate the change of use. Furthermore the Council considers that without the removal of the features specified in steps (2) to (5) the site could fall into disrepair and that the removal of the unauthorised dwelling is essential to stop the unauthorised residential use of the site continuing. At the Inquiry neither of the main parties added to their evidence which was taken as read.

242. All of the matters which are the subject of the requirements enable the building to be used as a single dwelling house, including the extension of the barn, the provision of space for car parking, services such as the septic tank and sheds other domestic paraphernalia. As such these elements of the development are fundamental to the change of use which has occurred. Therefore, in order to ensure that the residential use is ceased all of the requirements are justified. For this reason I find that the requirements are not excessive and the appeal on ground (f) does not succeed.

Appeal A and Appeal B – Ground (g)

243. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance periods of four months on both notices is too short because it provides insufficient time for them to find suitable alternative accommodation, particularly in light of the effect of change on Child D. They seek a compliance period of 2 years.

244. In relation to the use of the site as a gypsy and traveller site, which is the subject of Appeal A, it will be seen from my reasoning that I accept that there is currently no available alternative site for the appellant and his family. In this context a compliance period of four months is too short and the appeal on ground (g) succeeds.

245. In reaching a view on an appropriate period of compliance I am mindful of the harms which I have identified, in relation to the effect on the Green Belt and highway safety. These are significant issues, and a lengthy compliance period would result in a continuation of those harms over a prolonged period. Also, the appellant has not provided any information to support their contention that it will take 2 years for them to find an alternative site. In that context an extension of the compliance period to 2 years would be excessive.

246. However, I must also consider the best interests of Child D. In this respect I consider that a compliance period of 12 months would cover the whole of the next academic year which might provide certainty in terms of their place at the local school and enable a better understanding of Child D's health and educational needs going forward. A 12 month compliance period would also provide Child D with a period of adjustment as requested by the appellant.

247. In this case the extension of the compliance period is also a proportionate response in respect of the appellant and his family's human rights and my duty under the PSED.

248. In relation to the use of the building as a single dwelling house which is the subject of Appeal B, this part of the site is currently occupied by a tenant and is not available for use by the appellant and his family, specifically Child D. However its use as a dayroom/playroom/gym which is also a residential use would be permissible during the compliance period of Notice A. For that reason the two compliance periods need to align, and I shall also extend the compliance period for Notice B to 12 months.

249. For the reasons set out above I find that the period specified for compliance with both notices falls short of what should reasonably be allowed, and the appeals succeed on ground (g) to that extent. I shall vary Notice A and Notice B to provide a compliance period of 12 months.

Sarah Dyer

INSPECTOR

APPEARANCES

FOR THE APPELLANTS

Mr Alan Masters	Counsel
Dr Angus Murdoch	Agent
Mr Jeremy Hurlstone	The Hurlstone Partnership (Highways)
Ms Marie Wilson	Appellant's partner (Appeals A and B)/ Joint Appellant (Appeal C)

FOR THE COUNCIL

Mr Matthew Henderson	Counsel
Ms Claire Munday	Epping Forest District Council
Ms Suki Dhadwar	Epping Forest District Council
Mr Matthew Cranitch	Epping Forest District Council
Mr Matthew Lane	Essex County Council (Highways)

DOCUMENTS SUBMITTED TO THE INQUIRY

BY THE APPELLANTS:

Signed Statutory Declaration from Thomas Breaker

Document relating to sight distances

Four additional photographs of the site

Health information relating to Child C

Letter dated 26 July 2023 signed by David Samules

Copy of AST Agreement (Gary Smith)

Closing Submissions for the appellants

BY THE COUNCIL:

Opening submissions for the Council

Tracked changes versions of both enforcement notices

Policy extracts from Epping Local Plan 2011 – 2033

Chapter 5 of Epping Local Plan 2011-2033

Extract from Epping Forest District Local Plan Report on Site Selection (E.1.1) and Extract from ARUP GTAA 2017 Traveller Site Selection Methodology

Supplementary Proof of Evidence for Clare Munday with appendices CM5 and CM6

Copy of decision notice for Council Ref. EPF/1345/15

Signed copy of Statement of Common Ground

Note on new GTAA

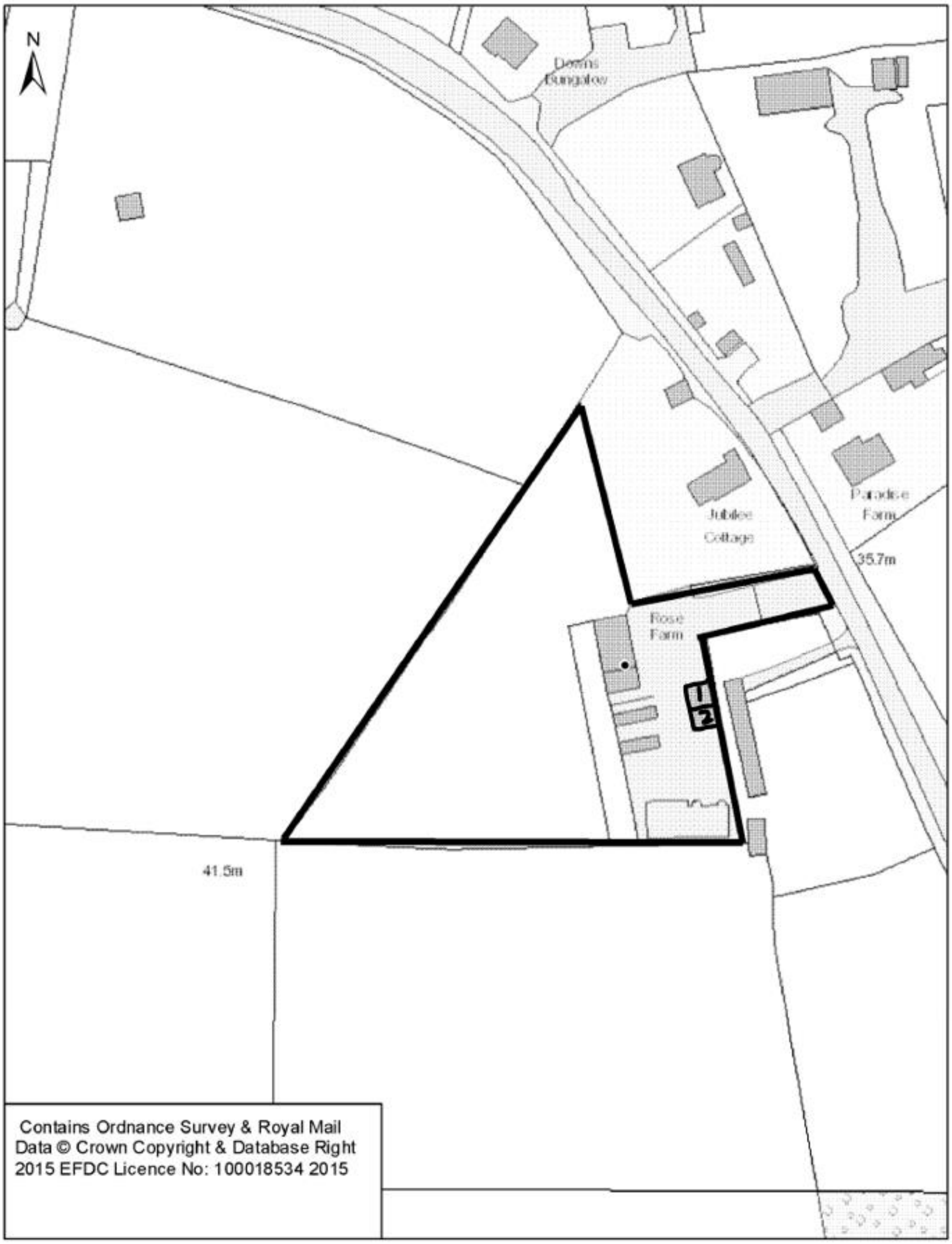
Map of site in relation to the nearest public right of way

Interim Air Pollution Mitigation Strategy

Closing Submissions for the Council

Application for Costs against the appellants

Annex One – Enforcement Notice Plan – Appeal A



Epping Forest District Council	ArcGIS Web Map	Date: 22/02/2021
		Scale: 1:1,250
		Name: arcgis

Annex Two – Enforcement Notice Plan – Appeal B