



Appeal Decisions

Inquiry Held on 16-19 January 2024

Site visit made on 19 January 2024

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 May 2024

Appeal A, Ref: APP/J1535/C/21/3279021

Land at Homefield Nursery, Meadgate Road, Nazeing, Essex EN9 2PB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Messrs Brien, O'Brien and Connors against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 25 June 2021.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised use of the land as a Gypsy, Romany and Traveller site divided into 6 pitches (No 9-14 on planning application EPF/0957/20) for the stationing of mobile homes, caravans, tourers and paraphernalia associated and connected with the unauthorised use.
- The requirements of the notice are:
 1. Cease the residential use of the land, as shown outlined in black on the plan attached to the notice.
 2. Remove from the land all mobile homes, caravans and tourers used or connected with the unauthorised use.
 3. Remove from the land, all boundary treatments including all fencing, posts and gates that have been erected in the demarcation of the land into six pitches (9-14).
 4. Remove from the land all hard core that has been laid to facilitate the unauthorised change of use of the land and including hard core laid within the subdivided pitches (9-14).
 5. Remove from the land all resultant debris as a result of compliance with steps 2-4 above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Appeal B, Ref: APP/J1535/W/21/3279019

Land at Homefield Nursery, Meadgate Road, Nazeing, Essex EN9 2PB

- 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 Messrs Brien, O'Brien and Connors against the decision of Epping Forest District Council.
- The application Ref EPF/0957/20, dated 11 May 2020, was refused by notice dated 14 June 2021.
- The development is described as the proposed provision of 6 Gypsy/Traveller pitches each comprising 1 mobile home and 1 touring caravan, together with the provision of hard standing and boundary fencing.

Summary of Decision: The appeal is dismissed.

Application for Costs

1. An application for costs has been made by the appellants against the Council. This application is the subject of a separate Decision.

Procedural Matters

2. The site address is now known as Homefield Nursery and is clearly signed as such on site. The previous nursery on the site was named Holmsfield Nursery and this name was used in the earlier planning history of the site.
3. The Council confirmed that they were no longer continuing with two reasons for issuing the enforcement notice and the refusal of the planning application as they could be addressed by the imposition of appropriately worded conditions. These were in relation to flooding and contaminated land and I will discuss this later in my decision.
4. With regard to harm to the Epping Forest Special Area of Conservation (EFSAC), the appellants submitted Section 106 Unilateral Undertakings (S106UUs) to make an Air Pollution Contribution payment and Monitoring Contribution to the Council. The appellants' case was that this would overcome a third reason for issuing the notice and refusing the application. After the inquiry was closed, I sought the views of Natural England (NE) as part of the Habitat Regulation Assessment process (HRA). The appellants' documents Highway Technical Notes (HTNs) dated 9 and 12 January 2024 submitted to me during the inquiry were forwarded to NE as part of my consultation. The parties were given an opportunity to respond to NE's objections and I have taken these into account in making my decision.
5. Since the application was refused and the notice was issued, the Council's development plan position has changed. The Epping Forest District Local Plan adopted in 1998 combined with Alterations made in 2006, published in February 2008¹ has now been replaced by the Epping Forest District Local Plan 2011 to 2033 (LP). This was adopted 6 March 2023.
6. The Council provided copies of all relevant policies in the LP in advance of the inquiry and also provided copies of the Lee Valley Regional Park Authority's policies. The appellants have had the opportunity to consider the effects of the implications of the adoption of the LP on their cases.
7. Following the exchange of proofs, a new Planning policy for traveller sites (PPTS) was published on 19 December 2023 which includes a revised definition of gypsies and travellers following the *Lisa Smith*² judgement. In addition, the National Planning Policy Framework (the Framework) published September 2023 was replaced by the Framework published on 20 December 2023. The parties were advised in my Pre-Inquiry Note that if there were any matters arising from these publications that were pertinent to the appeals that they could be addressed orally at the inquiry.
8. Document 6³ was submitted by the appellants but the origin of the document is disputed by both parties. The Council claim it is not part of their evidence as they already list the information contained in Document 6 in various tables in

¹ Combined Policies of Epping Forest District Local Plan (1998) and Alterations (2006)

² *Smith v SSLUHC & Ors* [2022] EWCA Civ 1391

³ Caravan numbers and occupiers on adjacent site on 27 October 2023

Ms Dhadwar's Proof of Evidence. The appellants claim it is not their document and insist it is missing information from Ms Dhadwar's Proof. I was unable to resolve the matter at the inquiry and simply accepted the document for what it was. That is, it contains caravan numbers for pitches 1 to 8 on the adjacent authorised site as seen by Ms Dhadwar on 27 October 2023 and information about caravan numbers and occupiers on pitches 9 to 14, on the appeal site.

Background, site and surroundings

9. The appeal site is approximately 0.5 hectares in area and comprises a roughly rectangular piece of land. It is bounded by Meadgate Road to the north, an access road to the east, Bracken Pool (a fishing lake) to the west and an authorised gypsy and traveller site to the south. The pitches on the southern site occupied by the appellants are numbered 1 to 8 and therefore they numbered the new pitches on the northern portion 9 to 14. Both sites are within the Lee Valley Regional Park and the Metropolitan Green Belt.
10. Previously pitches 1 to 14 were one horticultural site known as Holmsfield Nursery which was acquired by the appellants around 2005. Pitches 1 to 8 were laid out at this point and the northern portion of the site containing a disused building and water tanks was left as an open grassed area. Planning permission was granted on appeal⁴ in June 2008 for the unauthorised use that had taken place. This was subject to a condition limiting occupation to 5 years and that no caravans should be stationed on the northern portion of the site, amongst other conditions.
11. A permanent planning permission was given by the Council on 29 November 2010⁵ which largely replicated the previous conditions including the limitation on the northern portion of the site. There have been two further appeals. One in October 2012⁶ sought to remove the condition limiting the stationing of caravans on the appeal site, which was dismissed. The second in December 2017⁷ dismissed an application to use the appeal site as 8 gypsy and traveller pitches, each with a mobile home, caravan and amenity block.
12. On 12 January 2024, the appellants advised by email that they would be making an appeal under ground (b) on the basis that the enforcement notice should have alleged a breach of condition 3, attached to the 2010 permission, rather than a material change of use. Condition 3 prevented the stationing of caravans on the appeal site, the erection of means of enclosure, the laying of hard surfacing and the laying out and formation of further vehicular accesses to Meadgate Lane.
13. The new ground (b) was discussed during my opening remarks when I heard the appellants' points and the Council's response to my suggestion that the allegation and the description of development should refer to the making of a material change of use for residential purposes. The appellants did not accept my corrections but the Council did. I declined to adjourn proceedings pending the receipt of a new notice, as requested by the appellants. Instead, I advised that the inquiry would continue as neither party would be prejudiced and the appellants' points in relation to ground (b) would be addressed in my decision.

⁴ Ref: APP/J1535/C/06/2014682

⁵ Ref: PL/EPF/0849/10

⁶ Ref: APP/J1535/A/12/2173467

⁷ Ref: APP/J1535/W/17/3169495

Appeal A: the ground (b) appeal

14. The purpose of the ground (b) appeal in this case is to address the appellants' concerns that the notice does not properly describe the breach of planning control. In appealing on ground (b) the burden of proof is firmly on the appellants to demonstrate that the matters stated in the notice have not occurred as a matter of fact.
15. The appellants do not dispute that a hard surface has been laid, a new access has been created onto the internal site road that leads to Meadgate Road, fences, gates and walls have been erected and various caravans have been stationed on the land for residential purposes. The nub of the issue is whether there has been a material change of use to residential or whether the development amounts to a breach of condition.
16. The appellants' main points are as follows. When planning permission was first granted on appeal in 2008, this was after the issue of a notice alleging a material change of use to a gypsy/traveller site and the stationing of caravans for residential purposes. The site identified on the plan accompanying the notice was Homefield Nursery, that is the current appeal site and the southern portion of the land, which was all outlined by a single thick black line. So, a material change of use has already been granted for a residential use of the appeal site but the operation of the use was controlled by condition and with reference to a plan (Plan A). That showed the appeal site as the hatched area. This plan was added to the decision by Inspector Rusdale and shows the whole site outlined in black and the appeal site hatched. The boundary of the site did not change when the Council granted a permanent permission in 2010 and imposed the same condition (now condition 3) as follows:

"No caravans shall be stationed, no means of enclosure shall be erected, no hard surface shall be laid and no further vehicular access to Meadgate Road shall be formed on the land between Meadgate Road and the 8 plots as shown hatched on plan A submitted with this application."
17. For these reasons the appellants state that the notice should have referred to section 171A(1)(b) not (a) of the Town and Country Planning Act 1990 as amended (the 1990 Act). This is because paragraph (b) states a breach of planning control failing to comply with any condition or limitation subject to which planning permission has been granted.
18. The Council state the appellants' position goes against their previous actions in making an application for a material change of use to station caravans for residential purposes to create 8 pitches (the 2017 appeal decision) and in making the Appeal B application. Notwithstanding whether it appears the breach of control falls under paragraph (a) or (b), the development of the appeal site as a gypsy site has occurred as a matter of fact. In light of this the appellants would still be required to make the ground (a) appeal. If the notice was framed as a breach of condition the ground (a) appeal would be that the condition ought to be discharged. In determining that question the Inspector would have to consider the impact of the development on the Green Belt and whether there are very special circumstances.

19. I note the description of the deemed planning application in 2008⁸ and the description of development in 2010⁹ both referred to a residential use in caravans stationed on the land. It is clear from the 2008 appeal decision that the site attacked by the notice was the whole of Homefield Nursery. The plan accompanying the 2010 decision is less clear cut as there was no distinct black or red line outlining the whole of the nursery.
20. However, it appears that the appellant submitted Inspector Rusdale's Plan A with their application as it is referred to in condition 3 and this does clearly show the application related to the whole of Homefield Nursery. On the balance of probabilities, I therefore accept that the 2010 planning permission related to the whole of the Homefield Nursery site. Condition 3 neither extinguishes the use permitted in 2010 nor can it.
21. As such, the lawful use of the whole site is residential and condition 3 merely controls activities within the ambit of that permitted. The notice before me does not need to be quashed as it can be corrected. It should therefore allege a failure to comply with condition 3 and I will direct that the notice is corrected accordingly.
22. I am satisfied there would be no injustice caused to either party by correcting the allegation as the submissions made by both parties under ground (a) remain largely the same. The appeal under ground (b) succeeds as the matter alleged has not occurred as a matter of fact in that technically there has been no material change of use to residential. Notwithstanding this, caravans have been stationed on the land and operational development has taken place to enable the residential use. This results in a development that, to all intents and purposes, resembles a material change of use.
23. It is directed that the notice is corrected and varied and the appeal continues on the basis of the corrected and varied notice. It follows that the appeal under ground (a) and the deemed application is therefore to retain the development that has taken place, without complying with the condition. This is similar to an application made under section 73A(2)(c) of the 1990 Act.

Appeal A: The ground (a) appeal and Appeal B: The section 78 appeal

Main Issues

24. These are the same in respect of both appeals and are:
- (i) Whether the development is inappropriate development for the purposes of the Framework and development plan policy;
 - (ii) The effect of the development on the openness of the Green Belt;
 - (iii) The effect of the development on the character and appearance of the area, having regard to its location within the Lee Valley Regional Park (LVRP);
 - (iv) The suitability of the site for a gypsy and traveller site and its effect on the EFSAC; and
 - (v) If the development is inappropriate, whether the harm to the Green Belt and any other harm is clearly outweighed by other considerations

⁸ Without planning permission, the material change of use of the land to a private travellers/gypsy site by means of (i) the stationing of caravans and/or mobile homes and other portable structures on the land for residential purposes and (ii) associated operational development comprising a laying of a track and hardstanding, the erection of means of enclosure around and to subdivide the land.

⁹ Retention of use of site for eight private gypsy plots to replace previous temporary consent.

so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether the development is inappropriate development in the Green Belt

25. The operational development that has taken place, namely the walls and fences are classed as buildings, which the Framework defines as being inappropriate development (paragraph 154). The laying of hardcore and the formation of the access are classed as engineering works and are not inappropriate development in accordance with the Framework provided openness is preserved and there is no conflict with the purposes of including land within the Green Belt (paragraph 155).
26. All of the development, including the stationing of caravans, is in breach of condition 3, and has changed the former open and rural appearance of the site. Where once it appeared in its natural state as part of the countryside seen in the same view of hedges and undergrowth either side of Meadgate Road, now in its current form it appears as an extension of the existing gypsy and traveller site. This constitutes encroachment into the countryside directly in conflict with one of the purposes of the Green Belt (paragraph 143 of the Framework). It therefore amounts to inappropriate development.
27. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the Framework and Policy E within the PPTS, which are material considerations, as well as the development plan, I find the development that has occurred, and the proposed development in Appeal B, are inappropriate development in the Green Belt.
28. This is contrary to LP Policy DM4 which states within the Green Belt planning permission will not be granted for inappropriate development, except in very special circumstances, in accordance with national planning policy. Both developments are by definition harmful to the Green Belt and should not be approved except in very special circumstances.

Openness

29. The parties differ as to the appearance of the site before the development took place. Initially, the appellants stated that the disused building and water tanks were demolished sometime around 2010, as set out in Mr Woods' Proof of Evidence. At the inquiry though the appellants' witnesses stated they were still present on the site just before the development took place. The Council submitted an aerial photograph dated 2018 which appeared to show that these buildings were no longer present. From the previous appeal decisions on the site I note only Inspector Rusdale in 2008 mentions the disused building and water tanks when describing the site. Inspector Anstey in 2012 and Inspector Felgate in 2017 refer only to undeveloped scrubland.
30. I note that condition 6 attached to the 2010 planning permission required the removal of the disused building and water tanks within three months of the date of the decision. I also note that although one of the appellant's witnesses pointed to a round white 'spot' on the Council's 2018 aerial photograph to identify the building, this did not correlate with the location of the building on

Inspector Rusdale's Plan A. It also did not correlate with the description¹⁰ of the building given by the witnesses, which suggested a rectangular building. On balance, and as a matter of fact and degree, I find it is more likely than not that the disused building and water tanks were removed well before the current development, after which the site was then left open and undeveloped.

31. The loss of openness is visible when passing in both directions along Meadgate Road but mainly when approaching from the east. This is because the site is visible across the junction of the site access with Meadgate Road and across the large and open front garden of Holmesfield, a detached dwelling situated to the east of the appeal site. When approaching from the west, the loss of openness is only glimpsed, due to gaps in the hedge bordering Meadgate Road. When viewed across Bracken Pool, from the Lee Valley Pathway¹¹, the site is largely screened by hedging and the consequent effect on openness is also therefore limited.
32. As the site was open prior to the development I find there is harm to Green Belt openness both spatially and visually from the stationing of caravans and the associated operational development. I reach the same conclusion in respect of the proposed development. The appellants accept that there is a loss of openness and submit there is scope through planning conditions to achieve additional planting to overcome the harm. This, however, would not overcome the harm to the spatial loss of openness and there is therefore significant harm to Green Belt openness which conflicts with LP Policy SP5. This states the openness of the Green Belt will be protected from inappropriate development in accordance with national planning policy and Policy DM4.

Character and appearance

33. The appeal site and the surrounding countryside has no national landscape designation. It does, however, as previously stated, lie within the LVRP. The LVRP was designated by an Act of Parliament in 1966. It is a linear park centred on the River Lea running from Ware in the north to the River Thames in the south. The Act places a duty on the Park Authority to develop, improve, preserve and manage the park as a place for leisure, recreation, sport and nature reserves.
34. Having regard to the wider area around the appeal site, this mainly comprises a broad flat valley floor with large areas of flooded reclaimed gravel pits, rolling farmland to the east and urban development in the west. In the vicinity of the appeal site not all of this is seen in a panoramic view as most views are short in distance and enclosed by, for example, woodland glades. The appeal site lies near the eastern edge of the LVRP separated from the boundary by the curtilage of Holmesfield and industrial works and a depot either side of the junction of Meadgate Road with Sedge Green, which are all within the park.
35. It is not immediately obvious that Meadgate Road/Sedge Green junction marks one of the entrances to LVRP as there are no signs to that effect, only for Broxbourne Sailing Club (BSC), who use a lake (Nazeing Meads North Lagoon) to the north west of the appeal site. The entrance is dominated by the movement of heavy goods vehicles (HGV) associated with the industrial site. This has a separate entrance (from Meadgate Road) and exit (onto the junction

¹⁰ "Was as big as 50ft x 20ft" and "There was a big building about 60ft x 20ft".

¹¹ The Lee Valley Pathway is shared with National Cycle Network Route 1

- of Meadgate Road and Sedge Green). HGVs park in Meadgate Road and their movements are managed by banksmen.
36. Once past these activities, an extensive boundary wall and metal entrance gate mark the access to Holmesfield, with the house set well back from the road. There are a number of mature trees in the front garden which mitigate the urban appearance of the boundary treatment. The entrance into Homefield Nursery is immediately adjacent to these walls, marked by two brick piers. It is at this point that a rural character and appearance is obvious. This is because Meadgate Road narrows in width and hedging and scrubland come into view on both sides of the road.
37. Once past Bracken Pool, views from Meadgate Road become more open across Nazeing Meads North and Central Lagoons before shortening again on reaching the River Lea Navigation. There is an informal parking area adjacent to the buildings of BSC overlooking the north lagoon and various boats are stored in an open enclosure on the land adjacent to the road. There is a degree of tranquillity walking in the vicinity of the lagoons or fishing around Bracken Pool, though this may change at the weekend when there are likely to be more activities on the lagoons.
38. I find there are very limited views of the appeal site when approaching from the west or the south, (along the Lee Valley Pathway) within the park due to the level of natural screening. It is only when passing the site along Meadgate Road that the new boundary fencing behind the existing hedge is apparent and some caravans are visible through gaps in the hedge.
39. There is more of a change when approaching from the east. Previously the open natural appearance of the site helped screen pitches 1-8 and the undergrowth on the appeal site added to the rural character and appearance of the area. The development of new pitches 9-14 results in new fencing and several caravans being visible from a short section of Meadgate Road. As a result, there is some erosion of the LVRP's rural character and appearance and a degree of unacceptable harm arising from the changes to which I give moderate weight. I reach the same conclusion in respect of Appeal B.
40. I have reached a different judgement from my fellow Inspectors in 2012 and 2017. This is due to the hedge to the north and west of the appeal site being retained, which helps to conserve the rural character and appearance of the immediate area. I also find the development of the site does not detract from any improvements to the park such as the development of the Lee Valley Pathway, as it is not visible from the pathway, or landscaping carried out by the LVRP authority. In addition, since the previous appeal decisions the LVRP Area Proposals were published in 2019. These contain no specific proposals for the appeal site.
41. Although no trees or hedgerows were removed prior to the development, the wider character and appearance of the countryside has not been conserved, as required by Policy SP6¹². However, I have not found significant harm to landscape character such that the development is contrary to Policy DM3. This states that development will be permitted where it can be demonstrated that there is no significant harm to landscape character. Policies DM1 and DM5

¹² This policy was not cited in the enforcement notice with other emerging policies but it replaced the previous adopted Policy RST24 following the adoption of the latest LP and was referred to in Ms Dhadwar's proof.

require the protection and improvement of biodiversity, trees and hedgerows amongst other habitats, which has not been addressed in the development so there is conflict with these policies but this could be overcome with the imposition of a landscaping condition.

42. The LVRP has a Park Development Framework (PDF) which sets out the Park Authority's aspirations for the development and management of the area. Local planning authorities whose areas are included within the LVRP are subject to a statutory duty to include those parts of the PDF affecting their area within their development plan. In addition, the LP includes the Lee Valley Regional Park Vision.
43. There are a number of documents that make up the PDF of which Area Proposals were adopted in April 2019. The appeal site falls within Area 7 The Wetland Park where there are policies to manage Nazeing Meads and to improve the visual and environmental quality of Meadgate Road. There is also an aim to work with Essex County Council to introduce a lorry ban along Meadgate Road to improve pedestrian and cycle safety. I find the development of the appeal site does not conflict with these policies.

The suitability of the site for a gypsy and traveller site and its effect on the EFSAC

44. Policy H4 of the LP sets out the Council's approach to gypsy and traveller site development including allocated sites and sites which come forward through planning applications (windfall sites). In respect of windfall sites, the policy contains a list of considerations which need to be taken into account when planning applications are determined.
45. The Council have raised no concerns in respect of the effect of the development on: local amenity, the historic environment, local infrastructure, access to the highway and public transport, the provision of on-site facilities such as parking and play space, the compatibility of the site with surrounding land uses and integration. The parties agree that risk from flooding could be dealt with by the imposition of a condition and I see no reason to take a different view. I will discuss the effect of the development on the natural environment (EFSAC) next.
46. The appeal site lies approximately 11km from the EFSAC. The EFSAC has been identified primarily for its beech trees, wet and dry heaths and for its population of stag beetles. It is a recreational resource drawing visitors from a wide area given its location on the edge of London. Large areas of the EFSAC have an unfavourable conservation status due to the effect of visitors and atmospheric pollution from vehicles. These effects also arise from new residential development. The appeal development, however, would not have likely significant effects on the EFSAC through in-combination impacts upon recreational pressure as it is beyond the 6.25km Zone of Influence for this pathway of impact.
47. Nevertheless, both the refusal of planning permission and the reasons for issuing the enforcement notice state that there was insufficient information to satisfy the Council, as the competent authority at that point, that the development would not adversely affect the integrity of the EFSAC. As a result, the appellants submitted the HTNs. In that light, the Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) require me,

- as the competent authority in the context of this appeal, to consider the effect of the development on the integrity of the EFSAC.
48. To that end, new development in the Council area has the potential to increase the Annual Average Daily Traffic (AADT) using roads in close proximity to the EFSAC and traffic is a key contributor to atmospheric pollution.
49. As such, the Council adopted an Interim Air Pollution Monitoring Strategy (IAPMS) in February 2021. This is based on development identified in the LP and a small proportion of windfall developments based on an annual average. The annual average of windfall gypsy and traveller developments is not stated in the Council's submissions but it would appear to be sites up to 5 pitches in size. This is because the Council's guidance note on site-specific assessment processes¹³ states the trigger for assessing transport impacts for residential developments will apply to proposals for 6 or more dwellings.
50. Where applications are made that differ from that originally assessed as part of the Council's air pollution evidence base, there is a need to undertake an assessment of the development against the evidence base to confirm if there are additional adverse effects which may arise if the AADT from the site is greater than that modelled. This explains the submission of the HTNS.
51. These, however, fail to have full regard to the Council's guidance note, which identifies the information required to be provided by applicants to enable an appropriate assessment to be undertaken. It specifically requires the calculation of the number of vehicle trips in AADT but this has not been done. Residential development of any type would be expected to generate traffic during the 12 hour period between 1900 and 0700 and also during the weekend but this information has also not been provided. The second HTN though does conclude that 6.19% of the potential working population at the site would likely travel through the EFSAC.
52. In addition, NE advise that the development would have likely significant effects on the EFSAC through in-combination impacts upon air quality. This is because the HRA for the LP concluded that development proposals¹⁴ that would result in an increase of just one additional vehicle would have the potential to contribute to increases in atmospheric pollution within the EFSAC. I see no reason to disagree and as such, appropriate mitigation is required.
53. The appellants seek to rely on the IAPMS for mitigation, namely a contribution of £335 per pitch but this only applies to windfall sites up to 5 pitches in size. However, for the reasons set out above the appeal site development does not fall within this category. Bringing these matters together, it has not been demonstrated that there has not been significant adverse effect on the integrity of the EFSAC following the development.
54. In the light of a negative assessment on the implications on designated sites, the Habitats Regulations require consideration as to whether there are any alternative solutions and if not, whether there are any imperative reasons of overriding public interest. However, irrespective of whether there may be any alternative solutions to the development, the stationing of caravans, the

¹³ Epping Forest District Council Habitats Regulations: Site-specific assessment processes in relation to the effects of development on atmospheric pollution, December 2020.

¹⁴ Regardless of their type, size and location

erection of means of enclosure and the laying of hard surfacing is not sufficient to amount to imperative reasons of overriding public interest.

55. The Habitats Regulations indicate that permission must therefore not be granted. Based on my findings above, there is conflict with LP Policy DM2, the provisions of the Habitats Regulations and the Framework.

56. I have already considered the effect of the development on the character and appearance of the area and have had regard to Green Belt considerations. In respect of both matters I have found harm and conflict with LP policies. There is no requirement set out in Policy H4 that no harm should be found in respect of all the considerations for a development to be found acceptable. Nevertheless, given my findings on Green Belt harm, the character and appearance of the area and the effect of the development on the natural environment, I conclude the development conflicts with Policy H4.

Whether the development accords with the development plan as a whole

57. Notwithstanding my finding on Policy DM3, I have found conflict with the other relevant planning policies. As such, it is my view that when read as a whole, the development and the proposed development in Appeal B does not accord with the development plan. This attracts substantial weight.

Other considerations:

(i) Need and provision of sites for gypsies and travellers

58. The PPTS sets out how travellers' housing needs should be provided for in plan making for those covered by the definition in Annex 1. Local planning authorities should make their own assessments of needs, working collaboratively with neighbouring local planning authorities. In addition, they should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set targets.

59. The most up-to-date Gypsy and Traveller Accommodation Assessment (GTAA) was published in September 2017 based on surveys undertaken in September 2016. In an ideal world those surveys may have been refreshed before the adoption of the LP in March 2023 but the arrival of COVID-19 interfered with proceedings. Whilst the Essex Planning Officers Association have commissioned a new GTAA on an Essex wide basis, prior to the adoption of the LP, findings, conclusions and actions are some way off. As such, it is the 2017 GTAA that has been acted upon in the LP. I note that the GTAA also includes an assessment of need for households that do not meet the planning definition. This need was identified as for 4 pitches.

60. The appellants have raised, in effect, the same arguments about discrimination to those made before Inspector Dyer in her September 2023 decision at Rose Farm, Hamlet Hill, Roydon.¹⁵ These arguments were made before the publication of the latest PPTS but nevertheless her response, which dismissed the arguments, holds good and, as such, I agree with it.

61. The appellants criticised the GTAA but it was found to be sound and robust by the examining Inspectors. Furthermore, I note the LP has not been the subject of a challenge in respect of its approach to assessing the need for gypsies and

¹⁵ APP/J1535/W/20/3260892

- travellers. Two of the occupiers of pitches 1-8 were interviewed in 2016 and the needs of the remaining were taken into account as part of the unknowns.
62. Policy SP1 states that the LP will provide for a minimum of 64 pitches to accommodate the needs of travellers. The provision will be delivered through a sequential approach with the regularisation of existing sites with temporary permission or other unauthorised sites being the first consideration. This is followed by making best use of existing sites through intensification and/or extension. Thereafter, new sites outside the Green Belt ought to be considered followed by those within the Green Belt, then as part of the new Garden Communities (Policy SP4) and finally in accordance with the criteria based Policy H4 Traveller Site Development. This policy contains a requirement to consider any impact on the Green Belt.
63. The Council have outlined in detail their 5 year housing land supply and 48 pitches have already been provided from the start of the LP period leaving 16 to be provided over the plan period. However, the LP allocates 38 more pitches on identified sites over the plan period, which equates to an oversupply of pitches. Therefore, the Council has a supply of specific sites and pitches to meet the 5 year identified need for gypsies and travellers and can also identify a supply of specific, developable sites for years 6 to 10.
64. However, despite the oversupply, I remain to be convinced that the 15 pitches allocated in the Garden Communities will be provided as soon as the Council envisage. No planning permissions have been granted for any of the sites but I note that the developers have committed to delivering them and have shown them on master plans. Furthermore, learning is taking place between Epping Forest District Council and Chelmsford Council on the practicalities of funding and managing new pitches. However, there is nothing more concrete than that before me.
65. Moreover, the regularisation of existing sites with temporary planning permission or other unauthorised sites only meets the personal need of those people already living on those sites but does not meet general needs. In addition, intensifying or extending existing sites is also likely to meet only the personal need of the families living there, not general needs. I also note that 92% of the district falls within the Green Belt which makes finding a site outside this area difficult. This is recognised by the Council as the gypsy and traveller strategic allocation sites in the LP have been made on land formerly in the Green Belt.
66. On paper the Council's "over supply" situation was found to be sound by the examining Inspectors and rightly so as the sequential approach is one way of meeting need. However, there is no timeline for providing the strategic allocations, which amount to truly new sites, other than the end of the plan period, namely 2033. This merits some weight.

(ii) Availability of alternative sites

67. PPTS paragraph 24 requires consideration of the availability of alternative accommodation. Alternative sites must be available, affordable, acceptable and suitable. To be available a pitch must have planning permission, be vacant and be actually available to the proposed occupier.

68. The Council stated that there is one public site in the district run by Essex County Council with 16 pitches but 12 of them are occupied by people who are not gypsies and travellers. The Council would like to see those 12 occupiers removed but to date there has been no progress on that matter. The Essex Countywide Traveller Unit list 52 people on their waiting list of which 6 express a preference to live in the Council's area. No other sites have been put forward by the Council.
69. The appellants have asked around their community about available sites and have kept an eye open for anything that might become available but have been unsuccessful. However, none have either contacted the Council or put themselves on the waiting list.
70. The Council submit that eviction from this site would not necessarily result in a roadside existence as in the short term the appellants could return to pitches 1-8 from where they came. However, the reason they moved from the authorised site was because it had become seriously overcrowded. I saw, even after the appellants have moved, the remaining caravans on most of the authorised pitches are, out of necessity, very closely spaced, less than 6m apart (the minimum distance in terms of fire safety) and they continue to be occupied.
71. The caravan numbers permitted by the 2010 permission are now significantly exceeded as families have increased in size since 2010 and adult children have formed new households. For example, one occupier who moved onto the site in 2005 arrived with one child and one on the way and proceeded to have 7 more children. One family ended up with 7 children and another with 5 children. My findings are set out in the table below:

	Number of authorised caravans	Number seen at my site visit
Pitch 1	4	7
Pitch 2	3	6
Pitch 3	4	8
Pitch 4	3	9
Pitch 5	3	3
Pitch 6	3	6
Pitch 7	4	5
Pitch 8	4	5

72. It is not clear how long people wait on the County list and there are no details about when 12 pitches might become available on the County site. I consider that a return to pitches 1-8 is neither feasible nor safe. Furthermore, it would appear that the occupation condition would be breached in that the returning former dependents are now adults. As such, I conclude that there does not appear to be alternative accommodation for the appellants. This is strongly indicative of unmet need. I have given this consideration substantial weight.

(iii) Personal circumstances

73. The appellant group comprise Irish Travellers who practice a nomadic habit of life for economic purposes. Based on human rights law there is a positive obligation to facilitate the gypsy way of life. The appellant group share a protected characteristic and under the Public Sector Equality Duty due regard must be had to the need to remove or minimise disadvantages and advance equality of opportunity between persons.
74. I have noted the following matters, which are of concern. Pitch 9 is occupied by a single parent and their child and the single parent's adult sibling. The single parent has some health needs and their child has an Educational, Health and Care Plan (EHCP). They are currently being home schooled pending a suitable placement in a secondary school. The adult sibling is disabled and is unable to live independently.
75. Pitch 10 is occupied by a couple and their 3 children. The eldest child attends a special school for which transport is provided as they are profoundly disabled. This is evidenced by paperwork from their hospital, which they regularly attend. In the not too distant future the child will require fully adapted accommodation with hoists to enable bathing to take place and proper wheelchair access to their home. The middle child has no health needs and currently attends a local primary school. The youngest child is too young for school or nursery at present.
76. Pitch 11 is occupied by a married couple. Pitch 12 is occupied by three households. The first comprises a married couple with three children, of which the eldest attends primary school and the middle child attends nursery. The second comprises another married couple with a child on the way. The third comprises a non-adult teenager who is engaged to be married. There are no health needs arising from any of the occupiers other than the need for ante natal care.
77. Pitch 13 is occupied by a married couple and their three young children of which the eldest 2 attend primary school. Pitch 14 is occupied by two households. The first comprises a married couple with two young children and the second comprises a married couple with three young children. The eldest child in each household attends primary school.
78. It is clear that the appellant group support one another. For example, some adult children on pitches 9-14 support some elderly parents on pitches 1-8 who are in poor health. Younger parents on pitches 1-8 who are in good health help to support their grandchildren such as those on pitch 10. There is also mutual support provided to one another by the parents on the appeal site who regard themselves as one large family group as they all grew up together. In addition, the Courts have held that the occupiers of pitches 9-14 do not need to show that their educational and health needs are exceptional.
79. The best interests of children are a primary consideration in my decision and there are currently 15 children living on this site. The children's best interest is to have a secure and settled site. This would give them the best opportunity for a stable family life, safe play and access to education, health and other services.

80. During cross examination, it was revealed that most of the adult occupiers on the appeal site have never had to live on the roadside other than when travelling for work as, in the main, they have always had the benefit of a settled base on pitches 1-8. Overall, I find the appellants' personal circumstances to be compelling and this consideration merits substantial weight in support of the development.

(iv) Intentional unauthorised development

81. Intentional unauthorised development is a material consideration, as a result of a Written Ministerial Statement, that should be weighed in the determination of planning applications and appeals. The development that has been carried out was clearly done in the knowledge that planning permission was required. However, there was no attempt to hide the fact and a planning application was submitted for the development (Appeal B). Nevertheless, it was intentional unauthorised development to which I attach modest weight against the grant of planning permission.

Other matters:

(i) Other appeal decisions

82. I have been referred to several previous appeal decisions of which some concern sites outside Essex. All relate to sites in the Green Belt and all find conflict with the development plan but following the planning balance allow the appeal. However, I find that they can be distinguished from the current appeal in that each case had its own individual set of circumstances and thus each planning balance and each decision reached was different. I therefore give very limited weight to these various decisions.

(ii) Concentration of sites

83. The Parish Council has raised several concerns, some of which have already been addressed in the preceding paragraphs. With regard to the effect of the development on what is submitted to be a disproportionately high concentration of gypsy and traveller sites/pitches in the parish, other than numbers of sites/pitches it has not been shown where they are and in what way that affects the settled community, if at all. I therefore give limited weight to this matter.

(iii) Previously developed land (PDL)

84. The appellants submit that the appeal site was previously developed land (PDL) due to the former nursery building and water tanks. However, during cross examination, Mr Woods expanded that it was also PDL because the site already had planning permission for the use by virtue of falling within the red line of the 2008 permission. Document 7¹⁶ was submitted to support his first position. This is a 2014 appeal decision for a gypsy and traveller site on a former nursery where weight was given to its previously developed, untidy and derelict state, in accordance with paragraph 24(a) of the 2012 PPTS. This was seen by the Inspector at his site visit.
85. PDL is defined in the Framework as land which is or was occupied by a permanent structure. However, it excludes land that is or was last occupied by

¹⁶ Appeal decisions APP/K0425/A/11/2159978 & 12/2183066

agriculture, amongst other uses. Section 336 of the 1990 Act states that agriculture includes: horticulture, fruit growing, seed growing, market gardens and nursery grounds. The current PPTS neither defines PDL nor provides an interpretation for agriculture. It simply states at paragraph 26 "When considering applications, local planning authorities should attach weight to the following matters: (a) effective use of previously developed (brownfield), untidy or derelict land".

86. I find, based on the definition of agriculture, that the appeal site is not PDL as set out in the Framework and therefore paragraph 154(g) of the Framework is not in play. However, the PPTS reference to PDL appears to be wider and includes untidy land. I have not been presented with any photographs of the site before it was developed other than the 2018 aerial image submitted by the Council. Whether this matches Inspector Felgate's 2017 description of the site as being "undeveloped scrub land" and "overgrown and untidy" is not clear. I therefore find the state and appearance of the site immediately prior to the development has not been demonstrated such that I am required to attach weight in accordance with paragraph 26(a) of the current PPTS. I am also not convinced that the site is PDL based on the 2008 and 2010 permissions due to the conditions excluding operational development on the appeal site.

Planning balance

87. Both the Framework and PPTS state that inappropriate development in the Green Belt is harmful and should not be approved except in very special circumstances. There is substantial harm on this basis and also significant harm due to the loss of openness and from the encroachment of the development into the Green Belt. Substantial weight is to be afforded to this combined level of harm.
88. The harm to the character and appearance of the area merits some weight as a condition could be imposed to mitigate the identified harm. Overall though, the development is in conflict with the development plan when read as a whole, which merits substantial weight. In addition, significant weight is added as there is a 5 year supply of deliverable sites and modest weight is added from my finding on intentional unauthorised development. The concentration of gypsy and traveller sites in the area merits limited weight.
89. PPTS paragraph 16 states, "Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances." If the appeals are dismissed, there would be an infringement of the occupiers' human rights under Article 8 of the European Convention on Human Rights as set out in Schedule 1 of the Human Rights Act 1998. This deals with the right to respect for family life and the home and encompasses the best interests of the children. There is a strong possibility that the families would have to take up a roadside existence which would be particularly detrimental to the children and the profoundly disabled child on pitch 10.
90. I have found the personal circumstances of the occupiers to be compelling, which attracts substantial weight. In addition, there is the lack of available alternative accommodation, which also attracts substantial weight. The occupiers' Article 8 rights including best interests of the child, are engaged and I find the best interests of all the children, including those with disabilities, are

to continue living on the site with stable family lives and access to appropriate health and education services.

91. However, human rights are qualified rights and interference may be permissible when the rights of the individual are balanced against those of the community. In this instance such interference would be proportionate given the public aim of safeguarding the Green Belt and that it has not been demonstrated that the integrity of the EFSAC has been maintained following the development.
92. I have considered whether a temporary planning permission would be appropriate but this would only be the case where it is expected that the planning circumstances will change in a particular way at the end of the temporary period. That is not the case here where the Council have recently adopted their LP. As such, a temporary permission would not be proportionate as it would not balance the protection of the public interest against the families' human rights.
93. This is a finely balanced case. However, given the very particular circumstances set out above, my overall conclusion on the planning balance is to refuse planning permission. The harm to the Green Belt and the EFSAC is not clearly outweighed by other considerations. The appeal on ground (a) and the section 78 appeal therefore fail.

Appeal A: the ground (g) appeal

94. This ground of appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the actual time needed to carry out the work or actions specified in the steps.
95. The appellants submit that three months is not a reasonable period to comply with the requirements of the notice and that this should be increased to a year. This would allow them time to find an alternative site and, if necessary, to obtain planning permission. The Council submits that a year is an unreasonable period, having regard to the visual harm caused to the Green Belt and the LVRP, and that it is open to the appellants to return to the adjacent site.
96. I have already found that a return to pitches 1-8 is neither feasible nor safe. I find that a year would be more reasonable. This would enable the families to look for and consider alternative sites. It would be a proportionate response and would ensure that due consideration is made for the best interest of the children. Ground (g) therefore succeeds to this extent.

Other variation of the notice

97. The 2008 appeal decision found that the previous uses of the site provided potential for the land to be contaminated. These uses include not only the horticultural nursery use but also a gravel quarry, landfill, storage of timber, scrap motor vehicles, machinery and imported diesel oil. This led to the imposition of a condition requiring the carrying out of a phased contaminated land investigation to assess the presence of contaminants and if found, their remediation. This condition was repeated when the Council granted a permanent planning permission in 2010.

98. Investigations were carried out which found elevated levels of lead on the current appeal site. However, the scale and the extent of the contamination was not demonstrated and, as such, Inspector Anstey dismissed the 2012 appeal to remediate the land by hard surfacing it.
99. The land has now been hard surfaced as part of the current development and the notice requires its removal. If changes are proposed to the hard surface, then it would be necessary to carry out a prior assessment of the risk posed by any contamination. If contaminants are found, then it follows they should be remediated.
100. If I were to vary the notice to require the submission and approval of such an assessment prior to carrying out the work, the Courts have held that this would make the notice a nullity and not correctable. I shall therefore direct that the notice is varied by the deletion of this requirement.

Conclusions

Appeal A

101. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

102. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decisions

Appeal A

103. It is directed that the enforcement notice is corrected by

- (i) The deletion of "Section 171A(1)(a)" in line 2 of paragraph 1 of the notice and its replacement with "Section 171A(1)(b)"; and
- (ii) The deletion of the words in the allegation and their replacement with:

"A failure to comply with condition 3 attached to planning permission reference PL/EPF/0849/10 dated 29 November 2010. Permission was granted for the retention of the use of the site for eight private gypsy plots to replace a previous temporary consent and condition 3 states:

No caravans shall be stationed, no means of enclosure shall be erected, no hard surface shall be laid and no further vehicular access to Meadgate Road shall be formed on the land between Meadgate Road and the 8 plots as shown hatched on plan A submitted with this application.

The reason for imposing the condition is:

To ensure the northern section of the site remains open and undeveloped.

The condition has been breached in that caravans have been stationed on the land, means of enclosure have been erected, hard surfacing has been laid and

a new vehicular access has been formed and laid out to enable access via the internal site road to Meadgate Road.”

It is also directed that the notice is varied by the deletion of Steps 1 and 4, the consequent re-numbering of the remaining steps and the substitution of 12 months for 3 months as the time for compliance in paragraph 6.

104. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

111. It is directed that the description of development is deleted and replaced with “A material change of use of the land to residential for the proposed provision of six gypsy/traveller pitches each comprising one mobile home and one touring caravan, together with the provision of hard standing and boundary fencing”. The appeal is dismissed.

D Fleming

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Alan Masters	Counsel
He called	
Mr Brian Woods	WS Planning & Architecture
Ms Margaret Brien	Site resident
Ms Margaret O'Brien	On behalf of son, Mr Jim O'Brien, site resident
Mr Joseph Connors	On behalf of son, Mr Martin Connors, site resident
Mr John Brien	On behalf of sons Mr Miley and Mr Michael Brien, site residents on one pitch
Mr Edward Connors	Site resident
Mr Miles Brien	On behalf of his daughter Mrs Ann Rooney, son Mr Patrick Brien, sister Mrs Ann Heaps, all site residents on one pitch

FOR THE LOCAL PLANNING AUTHORITY:

Mr Giles Atkinson	Counsel
He called	
Ms Sukhi Dhadwar	Senior Planning Officer
Mr Martin Cranitch	Senior Planning Policy Officer

Documents

- 1 Council's response to late ground (b) appeal
- 2 Motion: Highways Technical Note dated 9 January 2024
- 3 Council's response to Motion: Highway Technical Note dated 9 January 2024
- 4 Motion: Highways Technical Note dated 12 January 2024
- 5 Undated email from Lee Craddock of ORS re GTAA interviews
- 6 Caravan numbers and occupiers on adjacent site on 27 October 2023
- 7 Appeal decisions APP/K0425/A/11/2159978 & 12/2183066
- 8 Completed S106 unilateral undertakings
- 9 Draft Statement of Common Ground