



Appeal Decisions

Hearing Held on 20 and 21 August 2024

Site visit made on 20 August 2024

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2024

Appeal A: APP/M1520/C/24/3337028

Land at Thistleyfield, rear of Orchard Place, Southend Arterial Road, Rayleigh, Essex SS6 7TU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Patrick Saunders against an enforcement notice issued by Castle Point Borough Council.
- The enforcement notice was issued on 20 December 2023.
- The breach of planning control as alleged in the notice is Without permission, the making of a material change of use of the land to the rear of the site known as 'Orchard Place' and shown edged red on the attached plan to a mixed use for the siting of caravans for residential purposes and for storage purposes ancillary to the residential use.
- The requirements of the notice are (1) Cease the residential occupation of the land and its use for storage purposes ancillary to the residential use; (2) Remove the caravans, buildings, containers, hardstanding, lighting columns and all other items and materials associated with both the residential use of the land and its use for storage purposes from the site shown in red on the attached plan.
- The period for compliance with the requirements is For requirement (1) 2months; For requirement (2) 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Appeal B: APP/M1520/W/24/3337029

Thistleyfield, rear of Orchard Place, Southend Arterial Road, Rayleigh, Essex SS6 7TU

- 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 Patrick Saunders against the decision of Castle Point Borough Council.
- The application Ref 22/0923/FUL, dated 16 December 2022, was refused by notice dated 14 September 2023.
- The development proposed is The use of land for the stationing of caravans for residential purposes.

Summary of Decision: The appeal is dismissed.

Appeal C: APP/M1520/C/24/3337025

Land at Thistleyfield, rear and west of Orchard Place, Southend Arterial Road, Rayleigh, Essex SS6 7TU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Patrick Saunders against an enforcement notice issued by Castle Point Borough Council.
- The enforcement notice was issued on 20 December 2023.
- The breach of planning control as alleged in the notice is Without permission, the importation of fill material, the raising and levelling of the land and creation of an earth bund to facilitate a material change of use of the land for the keeping of horses.
- The requirements of the notice are (1) Cease the use of the land for the keeping of horses; (2) Require the demolition of the stable building and hardstanding in the approximate position indicated with an 'X' on the attached plan; (3) Require removal of all materials arising from compliance with requirement (2) from the site edged red on the plan; (4) Remove the earth bunds, the approximate position of which is shown annotated as 'bund 1' (shown in green), 'bund 2' (shown in pink), 'bund 3' (shown in yellow) and 'bund 4' (shown in blue) on the attached plan; (5) Return the land to its former condition and levels prior to the 'levelling off' of the site and construction of the earth bunds; (6) Remove from the site edged red on the attached plan all resultant materials arising from compliance with requirements (4) and (5).
- The period for compliance with the requirements is For requirement (1) 3 months; For requirement (2) 5 months; For requirement (3) 6 months; For requirement (4) 6 months; For requirement (5) 12 months; For requirement (6) 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Appeal D: APP/M1520/W/24/3337027

Thistleyfield, rear of Orchard Place, Southend Arterial Road, Rayleigh Essex SS6 7TU

- 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 Patrick Saunders against the decision of Castle Point Borough Council.
- The application Ref 22/0922/FUL, dated 10 January 2023, was refused by notice dated 14 September 2023.
- The development proposed is Material change of use of land for the keeping of horses, the erection of stables, the levelling of land to facilitate the keeping of horses and the creation of a bund.

Summary of Decision: The appeal is allowed in part and is dismissed in part as set out below in the Formal Decision.

Preliminary Matters

The Appeal Sites

1. Appeals A and B are linked enforcement and planning appeals that relate to the same site area. The appeal site immediately adjoins, and is accessed via, an

existing Gypsy and Traveller site. That existing site has planning permission for 6 pitches with a maximum of 12 caravans (6 statics).

2. Appeals C and D are also linked enforcement and planning appeals that relate to the same site. The site in question adjoins the north-western and south-western boundaries of the site that is subject to Appeals A and B.

The Appeal C Notice

3. The alleged breach of planning control refers to the importation of fill material. I concur with the appellant that importation of material does not, in itself, constitute an act of development. I am satisfied that the wording may be omitted from the notice without causing injustice.

Appeal A on ground (b)

4. The appeal on ground (b) is that the alleged breach of planning control has not occurred. The appellant accepts the alleged residential use is taking place. However, because the alleged storage use is ancillary to that residential use, they say there is no second primary use taking place on the site. The appellant's point therefore is that there is no mixed use taking place on the site as alleged.
5. During the Hearing, the Council accepted that the alleged storage was ancillary to the residential use alleged to be taking place. It raised no objection to the wording of the allegation being amended to delete reference to the mixed use. I have no reason to take a contrary view. The ground (b) appeal therefore succeeds to this extent.

Appeal A on ground (e)

6. This ground of appeal is that copies of the enforcement notice were not served as required by s172 of the Act. S172(2) requires that the notice be served on owners, occupiers and anyone with an interest in the land subject to the notice. S329 of the Act sets out various alternative means of effectively serving a notice.
7. The Council set out in evidence that prior to serving the notice it carried out a land registry search and served a Planning Contravention Notice with a view to identifying those with an interest in the land. When serving the notice, the Council posted copies at the site and affixed copies to the entrance gates there.
8. Even if the notice had not been correctly served, section 176(5) of the Act provides that failure to serve may be disregarded if the appellant, or other person required to be served, have not been substantially prejudiced by the failure to serve. The appellant has been able to submit an appeal against the enforcement notice and argue it fully in the course of these appeal proceedings. There is no suggestion that any other person may have been prejudiced. At the Hearing the appellant conceded that even if there had not been proper service of the notice, then prejudice would not have been caused.
9. Overall I consider, as a matter of fact and degree, that sufficient steps were taken to ensure that copies of the enforcement notice were served as required by s172 of the Act and that service was properly effected. I conclude that

prejudice has not been caused to the appellant and site occupiers on this basis. The appeal on ground (e) therefore fails.

Appeal A on ground (a) and Appeal B

Main Issues

10. The main issues are:

- Whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework);
- the effect of the development on the openness of the Green Belt and the purposes of including land within the Green Belt;
- the effect of the development on the character and appearance of the landscape;
- the question of the need for Gypsy and Traveller sites;
- the personal circumstances of the site occupiers;
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate Development

11. Paragraph 142 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 143 notes that the Green Belt has five purposes which include safeguarding the countryside from encroachment. Paragraph 152 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
12. There is no dispute between the parties that the proposed siting of caravans for residential use would amount to inappropriate development. Indeed, with regard to the use, the Government's Planning Policy for Traveller Sites 2015 (PPTS) expressly states that such sites in the Green Belt are inappropriate development.

Openness and Green Belt Purposes

13. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect¹.

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

14. That there are caravans and paraphernalia associated with the residential use, which inevitably take up space, is not controversial between the parties. I see no reason to take a contrary view.
15. As set out above, the appeal site is accessed directly from the adjacent permitted Traveller site. The presence of this intervening site means the appeal site is significantly set back from the A127 arterial road. There is also intervening dense vegetation along the highway boundary. From the road the appeal site is therefore very significantly screened, with not even fleeting glimpses likely to be an issue, at times when the adjacent site entrance gates are open.
16. The other potential visual receptors for the site are from a public right of way, some way to the north-west, and from a garden centre development to the south-east. However, visibility of the site is obscured from the right of way due to intervening dense vegetation and changes in ground level. The Council say that the site might be visible from the grounds of the nearby garden centre during times of seasonal leaf fall, but accepted any views would be limited.
17. Drawing the above considerations together, whilst I concur with the view that the development results in a degree of encroachment into the countryside, and as such is at odds with one of the Green Belt purposes as set out in the Framework, I conclude that the development results in negligible to very limited harm to openness, viewed from the public domain.

Character and Appearance

18. From my visit it was apparent that the appeal site is part of a semi-rural landscape of fields with densely vegetated boundaries, on the outskirts of Thundersley. The site would effectively result in an extension to an existing larger, lawful Traveller site. There are commercial developments in the vicinity, and it is not far from substantial infrastructure developments, with the aforementioned A127 road and electricity cable routes passing nearby. This is not therefore an isolated development within otherwise open countryside. Furthermore for the reasons set out above, the site has a very low degree of visibility. I therefore conclude that it does not result in harm to the character and appearance of the surrounding landscape.

Need for Gypsy and Traveller sites

19. Paragraph 7(b) of the PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their areas over the lifespan of the development plan. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) was produced in September 2017. This identified a requirement over the period 2016-33 of some 6 pitches, which included Gypsies and Travellers who had ceased to travel either temporarily or permanently, in keeping with the recent definitional change in the PPTS². The Council accepts that it would be reasonable to consider the GTAA to be out-of-date, and expects to publish a revised assessment within the next few months.

² From 19 December 2023 the definition has reverted to that adopted in the 2012 version of the document.

20. The PPTS states that local planning authorities should identify, and update annually, a 5-year supply of specific deliverable sites against their locally set targets. It is undisputed that since the most recent GTAA was published, planning permission has been granted for 11 additional pitches within the Borough. Therefore based on need identified in the most recently published GTAA, it would be arguable that a five-year supply of sites has been maintained.
21. Notwithstanding this, the appellant's statement of case sets out that the most recent GTAA underestimated the level of need for pitches in the Borough. It says that the assessment did not take sufficient account of the number of concealed, 'doubled-up' and hidden households, and the level of household growth. Consequently, it states there is an immediate need for an additional five pitches, and for an additional eight pitches over the GTAA plan period.
22. However, with regard to these matters, at the Hearing the appellant accepted the shortfall resulting from concealed households, where different households share accommodation, would have been addressed by a net increase of 5 pitches at a site elsewhere in the Borough³. It seems to me that this would also address the alleged shortfall of a single site to accommodate a doubled-up household.
23. Hidden households are those households seeking a site that are currently residing in bricks and mortar accommodation. The appellant has criticised the adequacy of the GTAA methodology for identifying the number of hidden households, and calculates an underestimation of 2 such households. However, given the very limited scale of the suggested discrepancy and also that the Council reported that it has not received any enquiries from such persons seeking a pitch, the appellant's argument in this respect is not compelling.
24. It was also acknowledged at the Hearing, the main parties used different models to calculate future household growth. However, despite this difference in approach, it could not be said by the opposing parties that the other's methodology was fundamentally inappropriate or wrong.
25. Therefore, having regard to the aforementioned points and when taking into account planning permissions granted for pitches since the base date of the GTAA, I do not give weight to the alleged shortcomings in the GTAA methodology.
26. At the Hearing the appellant provided details of the number and identities of persons occupying the proposed site and existing lawful site. It was undisputed that the two pitches on the proposed site, and the six lawful pitches on the adjacent site were being occupied by members of the same extended family. I find no reason to doubt the appellant's point that the occupation of the appeal site is indicative of unmet need.
27. The Council's case is that the existing adjacent site is big enough to accommodate those households occupying the unauthorised appeal site. As such, in the Council's view, there is an alternative site available to those families. The appellant, however, is firmly of the view there is inadequate

³ Janda Field - planning permission granted on appeal in October 2019.

- space to accommodate the two additional households there, which would necessitate a static and touring caravan on each pitch.
28. However, I have had regard to an indicative layout plan, relating to the lawful use of the existing site⁴. From that evidence, and when also taking into account that some of the households occupying the existing site are relatively small and utilise only a single caravan, I am not persuaded that there would be insufficient space, whilst also allowing for the turning requirements of vehicles.
29. I do recognise that the existing planning permission for the site limits the number of caravans present there to twelve, which may not allow sufficient capacity to accommodate the two 'outlying' households, including touring caravans. Planning permission would therefore be required to 'vary' the condition in question. However, at this stage from the information before me, I cannot conclude that such a permission is unlikely to be forthcoming, or that insufficient space exists. Accordingly, an alternative site for the households in question may be available. This therefore moderates the weight in favour of development that I give to the unmet need indicated by the appeal site.
30. Whilst a revised GTAA is likely to be published shortly, this case aside, there is a lack of compelling evidence of substantial unmet need, or the absence of a five-year supply of sites in the Borough.
31. The appellant sets out that a need for sites at the regional and national level should also be taken into account. I am mindful that the focus of the PPTS is on Council's understanding the likely accommodation needs of their areas and setting local targets accordingly, albeit that cross authority working is encouraged in the interests of flexibility. I acknowledge the PPTS states one of the Government's aims is to increase the number of traveller sites in appropriate locations with planning permission in order to address under supply. However, as set out above, the proposal in this case is inappropriate development by definition, which therefore moderates the weight I attach to this factor.
32. The appellant also seeks to make a policy failure case, in other words that the Council has, over time, failed to provide Traveller sites through their planning policies. I acknowledge that the Council's existing Local Plan is now somewhat dated. However, subject to the present case, as I have set out above I am not persuaded that there is a long-standing unmet need for sites in the Borough, and accordingly this consideration does not attract weight.
33. It is undisputed that a large proportion of land in the Borough, around 60 per cent, lies within the Green Belt. It therefore seems to me likely that there will need to be reliance to a degree on the Green Belt, in any event, for the provision of pitches going forward. However, in the absence of evidence of need within the Borough, aside from this specific case, and the possibility of an alternative available site, this consideration does not attract weight.

Personal Circumstances

34. During the Hearing the appellant set out that the appeal site would effectively form an extension to the existing lawful site, providing a consolidated settled

⁴ Drawing ref: 14_620B_003 – Proposed Block Plan

base for the extended family group living there. The appellant confirmed at the Hearing that there are young children present on the appeal site.

35. If the appeal is not successful, in the absence of an alternative site, the families are at risk of being made homeless. It would remove a settled base that would potentially mean having to resort to living on the roadside. This in turn would very likely mean disruption to the children's educational provision as a result. I am mindful that access to education may be jeopardised if the families have no fixed address.
36. The appellant's personal circumstances therefore weigh in favour of the development.

The Green Belt Balance

37. National planning policy attaches great importance to Green Belts. Therefore, when considering any planning application substantial weight should be given to any harm to the Green Belt. The appeal proposal is inappropriate development in the Green Belt. In addition, the residential use and associated paraphernalia cause a loss of openness and harm to one of the purposes of including land in the Green Belt, namely to assist in safeguarding the countryside from encroachment, albeit I consider harm to openness, at worst, to be very limited in visual terms.
38. I have found that the development would not result in harm to the character and appearance of the landscape. This 'absence of harm' is neutral in the planning balance and does not weigh in favour of the appeal.
39. There are other considerations which support the appeal. I have had regard to advice in the PPTS when considering sites in Green Belt locations. This states that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.
40. I have found that the residential occupation of the appeal site is evidence of unmet need, but that there is an absence of evidence of need for sites in the Borough beyond this. I also give weight to the site occupiers' personal circumstances, when considering, in particular, the benefits of a settled base for the children present. I would have awarded significant weight in relation to both of these factors, however in view of the potential availability of an alternative site (within the existing adjacent site) the positive weight is tempered to a moderate level. I give limited weight to the site's contribution to tackling the under provision of sites across a broader geographical area.
41. I have balanced the harm to the Green Belt and any other harm, against the other considerations referred to above. However for the reasons given, having regard to the PPTS, I find that they do not clearly outweigh the harm identified. The very special circumstances necessary to justify the development have not therefore been demonstrated. Consequently, the proposal conflicts with the Green Belt protection aims of the Framework. The grant of a permanent planning permission would not therefore be appropriate.
42. I also need to consider, by way of alternative, the possibility of a temporary planning permission instead. I was invited, by the appellant, to consider a

- temporary permission for a period of 5 years. In principle, a temporary permission would serve to reduce the severity of harm identified. This must be the case, because the generation of harmful impacts would be less than in the case of permanent occupation.
43. However, I am mindful that it remains open to me to extend the notice compliance period, should I consider this to have merit. In the present circumstances, where an alternative site may be available to the appeal site occupiers, I therefore conclude that granting temporary planning permission still fails to clearly outweigh the harm identified and to justify quashing the notice.
44. Article 8 of the Human Rights Act 1998 states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
45. Given the circumstances overall, I find that granting planning permission would not be a proportionate outcome, whilst having regard to the best interests of the child and despite interference with the appellant's rights to a private and family life and home.
46. Furthermore in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race. I have concluded in this case that any impact on the site occupiers by reason of their protected characteristics is justified and proportionate.
47. I have had regard to the various case law and appeal decisions referred to me by the appellant. However, I do not consider these cases demonstrate my reasoning to be incorrect.

Appeal A on ground (f)

48. The appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. With regard to the unauthorised change of use, in broad terms the objectives of the notice are to discontinue the use of the land and to restore the land to its condition before the breach took place, by removing various works and items. It follows that the purpose of the notice is to remedy the breach in accordance with the provisions of section 173(4) of the Act.
49. The appellant's concerns are related to the ground (b) appeal that the alleged mixed use has not occurred. Accordingly, it says that the requirements of the

notice should be amended to delete reference to ceasing the ancillary storage use and removing associated structures and items.

50. I have already concluded that the ground (b) appeal should succeed in relation to the alleged mixed use of the site. It follows that the requirements of the notice specifically addressed towards the storage use are excessive and that the notice should be amended accordingly. The ground (f) appeal therefore succeeds to this extent.

Appeal A on ground (g)

51. The appeal is that the compliance period falls short of what should reasonably be allowed. I need to balance the public interest in the notice being complied with expeditiously against the private interests bound up in the development. In this regard I am keen to ensure that the households effected by the notice are given the most reasonable opportunity to find an alternative solution, in the context of the harm identified.
52. I have concluded that an alternative site may be available to the site occupiers. Extending the compliance period would allow time for the appellant to make a planning application to the Council to vary the existing permission to accommodate the additional households, should this be considered feasible and necessary; in the alternative to provide further evidence as to why occupation of the existing lawful site is not feasible, in support of a retrospective planning application for the existing proposed development; and ultimately to comply with the notice should these alternatives be unsuccessful.
53. I consider that extending the compliance period to **twelve months** would amount to the optimum position. The ground (g) appeal therefore succeeds to this extent.

Conclusion

Appeal A

54. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation 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

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

Appeal C on ground (a) and Appeal D

Main Issues

56. The main issues are:

- Whether the development would be inappropriate development in the Green Belt for the purposes of the Framework and development plan policy;
- the effect of the stables, earth levelling and bunding on the openness of the Green Belt and the purposes of including land within the Green Belt;

- the effect of the stables, earth levelling and bunding on the character and appearance of the landscape;
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Policy Context

57. Paragraph 154 of the Framework establishes that new buildings within the Green Belt are 'inappropriate' unless, amongst other things, it involves the provision of appropriate facilities (in connection with the existing use of land or a change of use) ... for outdoor recreation, ... as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
58. Paragraph 155 states that certain other forms of development are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. The other forms of development referred to include engineering operations and material changes in the use of land (such as changes of use for outdoor sport or recreation ...)

Keeping of Horses

59. There is no dispute between the parties that the keeping of horses has resulted in a material change of use of the land. The Council, however, refutes the appellant's claim that this is a recreational use. At the Hearing it sought to draw a distinction between keeping and riding horses, whereby the latter activity would be regarded as a recreational pursuit.
60. However, the keeping of horses is part and parcel of the Gypsy and Traveller lifestyle, and I can find no good reason why this should not be regarded as akin to keeping and looking after a domestic pet for recreation purposes. Nor am I persuaded that it is necessary for the outdoor recreation use to provide services to the wider public or financial benefit to the appellant, in order to qualify as not being inappropriate development.
61. I find the keeping of horses on the land would not be harmful to the openness of the Green Belt, or to conflict with the purposes of including land within it. I therefore conclude that this change in the use of the land would not amount to inappropriate development and would accord with the Green Belt protection aims of the Framework.

Stables

62. The proposed stable building would measure some 29 metres in length, with a maximum depth of approximately 7 metres. The building would be split into six 'boxes' for stabling purposes, with a separate area for the storage of food and tack. It was evident from my visit that construction work on the stable building was at an early stage, with the concrete slab to accommodate the building having been laid.
63. The stables would represent a facility in connection with the material change of use of the land for outdoor recreation. The potential visual receptors for the

development are the same as set out above in relation to the residential development, namely the main road, the public right of way and to a degree the garden centre. However, because of the screening provided by intervening dense vegetation, and the existing lawful site, the stable building would result in very limited harm to openness, viewed from the public domain. I also acknowledge the High Court has recognised that the impact of a development on openness is not necessarily related to its size but also its purpose⁵.

64. Notwithstanding this, I am in no doubt that the development is substantial in spatial terms and, when also considering the lack of evidence to justify the scale of the building on animal welfare grounds, I am not persuaded that it is proportionate to what would reasonably be required. I therefore conclude that the scale of the proposed structure would fail to preserve the openness of the Green Belt, and its encroachment there would conflict with the purposes of including land within the Green Belt. The proposed stables therefore amount to inappropriate development in the Green Belt.
65. As set out above in relation to the adjacent area, the appeal site is part of a semi-rural landscape with other developments in the vicinity. For the same reasons as set out above, the stable building, when completed, would have a very low degree of visibility. I therefore conclude that it does not result in harm to the character and appearance of the surrounding landscape.

Raising and Levelling of Land and Formation of Earth Bunds

66. It is undisputed that prior to the levelling and bund formation works, the appeal site sloped in a north-westerly direction and that the works amounted to engineering operations. It appears that the appellant allowed a third party to bring material onto the land. This material was used to raise and level the site, with excess quantities being used to form the earth bunds along various site boundaries.
67. The land raising / levelling works have occurred over a relatively extensive area and appear to have increased ground levels by up to several metres. The volume of material arising from this operation has occupied space that was previously open. However, the site is substantially screened by dense boundary vegetation. Furthermore, the operation does not involve the provision of buildings and, notwithstanding the volume of material, the resulting form does not in my judgment reveal any significant man-made intervention in the landscape. I therefore conclude that as a matter of fact and degree the land raising / levelling works preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. Accordingly, I find that the works amount to an engineering operation that is not inappropriate development.
68. The Council has expressed concern that the land raising / levelling work has resulted in the loss of numerous trees on the site, referring to evidence in the form of historic aerial imagery. However, whilst the imagery shows the site to have previously been densely vegetated, I am not persuaded that any mature or sizable specimens were removed, or having regard to the presence of

⁵ *Europa Oil and Gas Limited v SSCLG* [2013] EWHC 2643 (Admin)

substantial boundary screening, that the works have resulted in a detrimental impact on the landscape.

69. I am also mindful that it would be possible to impose a planning condition to require a suitable replacement landscaping scheme. This could include the application of topsoil and grass seed to cover coarser and more unsightly subsoil mixed with building waste. There is no evidence to persuade me that a suitable scheme could not become established. I conclude, on this basis, the works have not resulted in harm to the character and appearance of the landscape. Accordingly, I do not find conflict with Policy EC20 of the Castle Point Borough Council Local Plan 1998 (LP) or with the Framework insofar as they seek to resist development that would lead to deterioration of the landscape.
70. Turning to the bunds, it was apparent from my visit that these vary in height, with the most substantial being situated along the north-eastern boundary of the site adjacent to the A127 road (Referred to as Bund 1 in the notice). Despite boundary screening, Bund 1 is noticeable from the road and Bund 2, running along the north-western boundary, can also be made out from the public footpath to the north-west of the site.
71. I anticipate the bunds enforced against will become more visible during periods of leaf fall, and also because of their undisputed harmful effect on the long term survival of several boundary trees, due to soil compaction issues. I am in no doubt that in both spatial and visual terms the bunds fail to preserve the openness of the Green Belt and amount to unjustified encroachment. The bunds therefore amount to inappropriate development in the Green Belt.
72. The bunds also appear as an alien feature in the landscape, and it is undisputed that their presence has encroached on and led to the loss of some of the boundary vegetation due to the impact of soil compaction. I conclude that the bunds have resulted in harm to the character and appearance of the landscape, which could not be entirely mitigated by a replacement landscaping scheme. Their presence is therefore in conflict with the LP and with the Framework.

Green Belt Balance

73. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application substantial weight should be given to any harm to the Green Belt.
74. With regard to the stables and earth bunds I have found harm to the Green Belt by way of inappropriateness, because of the harm caused to openness and arising from encroachment. I have also found the bunds result in character and appearance harm, in relation to which I attach significant weight.
75. I have not identified any factors in support of the nature and scale of development proposed. It follows that the harm I have found to the Green Belt is not outweighed. The very special circumstances necessary to justify the development have not therefore been demonstrated. Consequently, the stables and earth bunds conflict with the Green Belt protection aims of the Framework. The ground (a) appeal therefore fails in respect of these elements of the development.

76. With regard to the keeping of horses and the land raising / levelling, I have found that this does not result in harm to the openness of the Green Belt or to the purposes of including land within it, and does not therefore constitute inappropriate development. Neither have I identified any other harm. Consequently it conforms with the Framework and the LP. The ground (a) appeal therefore succeeds in respect of these elements of the development.

Conditions

77. I have considered the various conditions that were discussed during the Hearing. A condition is required to secure landscaping measures, including screen planting, topsoiling and grass seeding and amendments to the slope gradient along the north-western boundary of the site so as to protect existing trees there, in the interests of the visual amenity of the area; also requiring details of means of enclosure in the interests of visual amenity.
78. The form of this condition is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.
79. A condition is required prohibiting external lighting on the site, unless otherwise agreed in writing with the Council, in order to prevent undue light pollution. A condition is required specifically in relation to Appeal D to confirm the approved plans in the interests of certainty.

Appeal C on ground (f)

80. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173 (4) (a)) or to remedy injury to amenity (s173 (4) (b)). The Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
81. With regard to the unauthorised development, the objectives of the notice are to secure the discontinuance of the use and the removal of the raised / levelled ground and earth bunds and therefore to restore the land to its condition before the breach took place. It follows that the purpose of the notice is to remedy the breach of planning control.
82. The appellant's ground (f) appeal is specifically that the notice also requires the demolition of the stable building and hardstanding, which is excessive because the notice does not identify these developments within the alleged breach of planning control. I concur with this point. Whilst the stables and hardstanding

are associated with the horse keeping use, I do not agree with the Council that they are so integral to it such that they facilitate that use and can therefore be said to be part and parcel of the alleged unauthorised development. The notice will therefore be corrected accordingly and the ground (f) appeal succeeds to this extent.

Appeal C on ground (g)

83. When taking into account that I will grant planning permission for the alleged material change of use and for the alleged earth raising / levelling works, also the correction in the preceding section of the decision, the requirements of the notice will essentially be limited to removing the unauthorised earth bunds from the site.
84. The notice allows six months for the removal of the earth bunds. There is no evidence before me to indicate that the necessary arrangements could not be made to secure compliance within this timescale. The ground (g) appeal therefore fails.

Conclusion

Appeal C

85. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for part of the matters the subject of the enforcement notice, but otherwise I will uphold the notice, with corrections, and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act. Consequently, the notice ceases to have effect with regard to the keeping of horses and the raising and levelling of the land, because this will benefit from planning permission and is therefore lawful for planning purposes.

Appeal D

86. For the reasons given above I conclude that the appeal should be allowed in part and dismissed in part.

Formal Decisions

Appeal A

87. It is directed that the enforcement notice is corrected at paragraph 3 by the deletion of the wording describing the breach of planning control in its entirety and substitution of the following wording instead:

"Without permission, the making of a material change of use of the land to the rear of the site known as 'Orchard Place' and shown edged red on the attached plan to a use for the siting of caravans for residential purposes"; and

At paragraph 5 by the deletion of the wording describing the requirements in its entirety and substitution of the following wording instead:

"(1) Cease the residential use of the land.

(2) Remove the caravans, buildings, containers, hardstanding, lighting columns and all other items and materials associated with the residential use of the land from the site shown in red on the attached plan.”

88. It is directed that the enforcement notice is varied at paragraph 6 by the deletion of the words “2 months” and “3 months” respectively and in both cases their substitution with the words “12 months” instead.

89. Subject to the corrections and variation the appeal is dismissed, 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

90. The appeal is dismissed.

Appeal C

91. It is directed that the enforcement notice is corrected at paragraph 3 by the deletion of the words “the importation of fill material,” in the description of the breach of planning control; and

That it is corrected at paragraph 5 by the deletion of the step (2) and step (3) requirements in their entirety; and

That it is corrected at paragraph 6 by the deletion of the compliance periods in relation to step (2) and step (3) in their entirety.

92. Subject to the corrections, the appeal is allowed in part and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the raising and levelling of the land to facilitate a material change of use of the land for the keeping of horses at Land at Thistleyfield, rear and west of Orchard Place, Southend Arterial Road, Rayleigh, Essex SS6 7TU subject to the conditions in the relevant schedule below.

93. The appeal is dismissed, and the enforcement notice is upheld, as corrected, and planning permission is refused in respect of the creation of an earth bund at Land at Thistleyfield, rear and west of Orchard Place, Southend Arterial Road, Rayleigh, Essex SS6 7TU on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D

94. The appeal is dismissed insofar as it relates to the erection of stables and the creation of a bund. The appeal is allowed and planning permission is granted only insofar as it relates to the Material change of use of land for the keeping of horses, and the levelling of land to facilitate the keeping of horses at Thistleyfield, rear of Orchard Place, Southend Arterial Road, Rayleigh, Essex SS6 7TU in accordance with the terms of the application, Ref 22/0922/FUL, dated 10 January 2023, subject to the conditions in the relevant schedule below.

R Merrett INSPECTOR

SCHEDULE OF CONDITIONS IN RELATION TO APPEAL C and APPEAL D

- 1) The horse keeping use hereby permitted shall cease and all material used to raise and level the land shall be removed, and the land restored to its condition before the development took place within **1 month** of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within **3 months** of the date of this decision a scheme with details for:
 - (a) soft landscaping including details of species, plant sizes and proposed numbers and densities and details of a schedule of maintenance for a period of 5 years; the application of topsoil and grass seed to the land; measures to protect existing trees along the north-western boundary of the site;
 - (b) all means of enclosure (excluding electric fencing);(hereafter referred to as the 'site development scheme') shall have been submitted for the written approval of the local planning authority and the site development scheme shall include a timetable for its implementation.
 - ii) If within **6 months** of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

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

- 2) Unless otherwise agreed in writing with the local planning authority, there shall be no external lighting anywhere within the site.

ADDITIONAL CONDITION IN RELATION TO APPEAL D ONLY

- 3) The development hereby permitted shall be carried out in accordance with the following approved plan: Site Location Plan – 14_620C 001 Rev 02

END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE APPELLANT:

Matthew Green (Green Planning Studio Ltd)	Planning Consultant
Patrick Saunders	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Garner	Assistant Director Development Services
Keith Zammit	Planning Officer
Laura Downer	Planning Enforcement Officer
Steve Jarman	Opinion Research Services

Documents submitted at Hearing:

- 1) List of occupiers on existing and proposed caravan sites.