
Appeal Decisions

Inquiry opened on 16 June 2015

Site visit made on 21 November 2016

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 June 2017

Appeal Ref: APP/J1535/C/14/2225843

Land at Greenacres, Silver Lane, Willingale, Essex CM5 0QL

- 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 W Lowe against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 8 August 2014.
- The breach of planning control alleged in the notice is failure to comply with condition No 2 of a planning permission Ref EPF/50/96 granted on 18 November 1996.
- The development to which the permission relates is 'stationing of residential mobile home'. The condition in question is No 2 which states that 'This consent shall inure solely for the benefit of the applicant (William Lowe) and the mobile home hereby approved is to be occupied solely by the applicant and his dependants during the applicant's lifetime only'. The notice alleges that the condition has not been complied with because an additional mobile home has been stationed on the Land and the Land and both mobile homes are in occupation by persons not being William Lowe (the Applicant) or his dependants.
- The requirements of the notice are:
 1. Cease the use of the Land for residential purposes by persons not being the Applicant or his dependants during his lifetime.
 2. Remove one of the mobile homes from the land so that only one mobile home remains on the Land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Appeal Ref: APP/J1535/A/14/2225844

Land at Greenacres, Bassetts Lane, Walls Green, Essex CM5 0QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr William Lowe against the decision of Epping Forest District Council.
 - The application Ref EPF/0657/14, dated 24 March 2014, was refused by notice dated 18 June 2014.
 - The application sought planning permission for stationing of residential mobile home without complying with a condition attached to planning permission Ref EPF/0050/96, dated 18 November 1996.
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- The condition in dispute is No 2 which states that: This consent shall inure solely for the benefit of the applicant (William Lowe) and the mobile home hereby approved is to be occupied solely by the applicant and his dependants during the applicant's lifetime only.
- The reason given for the condition is: Permission is granted in view of the personal circumstances of the applicant.
- The application is to vary condition 2 to read: "The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: William Lowe, William and Susan Cathleen Lowe, Jim and Joanne Scamp".

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out below in the Decision.

The Inquiry

1. The inquiry was opened on 16 June 2015 by the appointed inspector Mr Belcher. A statement was read on behalf of Willingale Parish Council and a start was made on the appellant's case. The inquiry was adjourned that afternoon.
2. The inquiry resumed on 10 August 2016 when I was the appointed inspector. With the agreement of the appellant and the Council a fresh start was made on the presentation of the evidence. The inquiry sat for four days on 10 and 11 August and on the 21 and 23 November 2016. Mr Davies, an interested party supported by local residents, was legally represented and gave evidence at the inquiry, although he did not have rule 6 status.
3. The main parties helpfully compiled an agreed bundle of authorities to support their legal submissions.

The Appeal Site

4. Greenacres is an area of some 2.66 hectares, located in the Metropolitan Green Belt. A U shaped stable block, an open fronted barn and two mobile homes with adjacent gardens are grouped near the main site access off Bassetts Lane, to the west. The remainder of the site is grazing land. The site address is described differently in the various documents but there is no doubt that the site and area of land is the same¹. For the sake of consistency I will refer to the highway on the western boundary as Bassetts Lane.
5. The larger mobile home nearest the western boundary is occupied by Mr William Lowe (junior) with his wife Susan Lowe. The second mobile home is occupied by his daughter Joanna Scamp, her husband Jim Scamp and their four children. The families moved onto the land with their mobile homes around February 2014. They provided information on their family background, employment, patterns of travelling and where they have lived or stayed over the years. I am satisfied that for the purposes of applying planning policy Mr and Mrs Lowe and Mr and Mrs Scamp have gypsy status, as defined in Annex 1, Planning policy for traveller sites August 2015 (PPTS). The Council did not seek to challenge their gypsy status.
6. Mr Lowe bought the land from his father Mr Lowe senior, who shortly after moved into a flat about October 2013. There was common ground between the Council and appellant that Mr Lowe senior has not resided at the site since

¹ The statement of common ground gives the site address as Greenacres, Silver Lane, Willingale (as stated on the enforcement notice) and states that access is from Bassetts Lane. The 2014 application site address was given as Greenacres, Bassetts Lane, Walls Green. The address on the original planning application EPF/50/96 is Greenacres, Stays Lane, Walls Green, Willingale.

early 2014. By that time Mr Lowe senior's old mobile home was in a very dilapidated condition and had to be removed.

7. Mr Lowe senior had owned the land for many years, even before living there. He used to live in a mobile home at Rockhills Farm in Willingale Parish and operated a scrap metal yard on a site close by. When he retired from commercial activity he obtained planning permission to site a mobile home at Greenacres in November 1996 (ref. EPF/50/96, the 1996 permission). The permission was granted on completion of a section 106 planning agreement that secured the extinguishment of all residential use rights and rights relating to the mobile home at Rockhills.
8. The planning history thereafter included a proposal for the removal of a mobile home with extension and its replacement with a single storey dwelling, which was dismissed on appeal in 2009. An enforcement notice alleging an unauthorised change of use of the land for the stationing of a mobile home for residential purposes was withdrawn on 27 March 2014.
9. Development plan policies applicable to the site are set out in the Epping Forest District Local Plan Alterations adopted in 2006 (the Local Plan).

The 1996 planning permission

10. All parties made submissions on the interpretation of the 1996 permission as a preliminary matter, with the Council and the appellant in particular making reference to relevant case law².
11. The main considerations are:
 - the nature of the development granted planning permission in 1996,
 - the scope of planning control exercised through the description of the proposed development on the decision notice and through condition 2, and
 - whether or not condition 2 complies with the legal principles in *Newbury*³ and meets the six policy tests.

The development

12. A planning permission is a public document and therefore its meaning should be plain on its face. The 1996 permission is a full planning permission, as opposed to an outline planning permission and reference to the plans is permissible to show the detail of what has been permitted. Moreover, as a matter of fact condition 4 directs the reader to the submitted layout plan for details of the landscaping scheme.
13. A reasonable reader would understand from the description of the development on the decision notice and the plans that the permission was for the stationing of a residential mobile home. The location plan identifies the whole of the area of land ownership as the application site. The site plan more particularly shows where the mobile home was to be sited, namely to the west of a yard and barn,

² Including *R v Ashford Borough Council ex parte Shepway* [1998] JPL 1073, *Barnett v Secretary of State for Communities and Local Government* [2008] EWHC 1601 Admin and [2009] EWCA Civ 476, *Telford and Wrekin Council v Secretary of State for Communities and Local Government v Growing Enterprises Ltd* [2013] EWHC 79 Admin

³ *Newbury v Secretary of State for the Environment & others* [1981] AC 578

close to the site access and the boundary with Bassetts Lane. The mobile home was shown to be a simply designed flat roofed structure. Two parking spaces would be provided to the front. Tree and shrub planting was shown along the boundary with the lane and behind an existing mature hedgerow, with additional planting to the south and north of the existing internal access road. Condition 4 required the planting scheme to be carried out within 12 months of the mobile home being stationed on the land.

14. Use and occupation is described and explained by reference to condition 2. The benefit of the permission is restricted solely to the applicant Mr William Lowe. The mobile home is to be occupied solely by the applicant and his dependants for a period limited to the applicant's lifetime. The reason for the condition is the personal circumstances of the applicant.
15. There is no doubt from the planning permission document about the physical form of the approved development, the restriction on the occupation of the mobile home during the lifetime of Mr William Lowe senior and the basic reason why the mobile home was allowed.
16. In order to gain a better understanding of why the permission was granted related material may be referred to⁴. The brief particulars of the proposed development on the application form clearly stated "placing of mobile home on land for occupation by applicant and his family". The officer's committee report is more helpful on the matter. It detailed the reasons why the applicant was seeking to relocate his mobile home from Rockhills to his land at Greenacres and the very special circumstances that justified allowing the development in the Green Belt.
17. Against the background of the principles established in case law the more contentious issue is the effect of the planning permission. The questions raised include the scope of the development permitted, how long a period is the permission for, does the description of the development have a functional significance and what are the implications of the personal permission.
18. The permission was implemented in accordance with the description of the permission. The mobile home was accepted by the Council and appellant to be within the statutory definition of a caravan. Therefore the authorised development involved a material change in the use of the land, not operational development to erect a dwelling. Land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed is a 'caravan site'.⁵ This description is supported by the fact the Council reissued a caravan site licence on 10 December 2014 following a comprehensive review of site licence conditions across the district. The document stated that Mr Lowe had the benefit of the 1996 permission for the use of the land as a caravan site⁶.
19. Referring back to the approved site plan, the caravan site may be taken to be confined to the area of land to the west of the yard where the mobile home was sited, together with the adjacent land in incidental use. However, the mobile home site was positioned within a larger identified application site. In effect the planning permission was granted for a material change of use of land

⁴ *R (Campbell Court Property) v Secretary of State for the Environment Transport and the Regions* [2001] EWHC 102 Admin, *Wood v Secretary of State for Communities and Local Government* [2015] EWHC 2368 Admin

⁵ Caravan Sites and Control of Development Act 1960 s1(4)

⁶ Inquiry Document 9

to a caravan site, which could be part of a mixed agricultural, caravan site use if the wider application site is considered.

20. Only an express condition can be enforced. There is no concept that allows for conditions to be implied from the description of what is permitted. An established principle is that if a limitation is to be imposed on a permission granted pursuant to an application it has to be done by condition⁷. This applies to a limitation that is substantive in nature as well as temporal.⁸
21. The *Winchester* case⁹ confirms the importance of the description of development in defining the character of the use allowed. In that case the use as a travelling showpeoples' site was a distinct use, a more narrowly defined use when compared to a general caravan or mobile home site. By reason of the general description of the use permitted at Greenacres, future control over the use, and / or occupation, would be dependent on a planning condition. The relevant condition is condition 2.

Effect of condition 2: This consent shall inure solely for the benefit of the applicant (William Lowe) and the mobile home hereby approved is to be occupied solely by the applicant and his dependants during the applicant's lifetime only.

22. The power to impose conditions is widely drawn in sections 70 and 72(1) of the 1990 Act. However, a condition must fulfil some planning purpose, fairly and reasonably relate to the development being allowed and not be Wednesbury unreasonable (the *Newbury* principles). A condition which fails to comply with these principles is invalid. In addition, a condition should satisfy the six policy tests in the Framework and be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. A failure to meet some of the tests does not necessarily make a condition invalid.
23. Section 75(1) of the 1990 Act provides that a grant of planning permission runs with the land rather than being for the benefit of an applicant personally. However, the general rule may be expressly excluded under subsection (1) by creating a personal permission.¹⁰ A personal planning condition, while not encouraged by national Planning Practice Guidance, is acceptable if justified by an exceptional occasion¹¹. The wording of condition 2 departs from the exact wording of model condition 35 in Appendix A of Circular 11/95, which is retained as guidance¹². Also, unlike in the model conditions, there is no condition requiring the use to cease and the removal of the mobile home, materials and equipment.
24. The purpose of Condition 2 was, in the language of section 75(1), to 'otherwise provide'. The condition made the permission personal to Mr Lowe senior and no other person. The expectation was that the permission and the use of the land it authorised would continue only during Mr Lowe's lifetime. The first limb

⁷ *I'm Your Man Ltd v Secretary of State for the Environment* [1999] 77 P&CR 411 and *R (on the application of Resul Altunkaynak) v Northampton Magistrates' Court and Kettering Borough Council* [2012] EWHC 174 Admin

⁸ *Roger Wood v Secretary of State for Communities and Local Government* [2015] EWHC 2368 Admin

⁹ *Winchester City Council v Secretary of State for Communities and Local Government* [2013] EWHC 101

¹⁰ Section 75(1): '..... any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it.'

¹¹ The Planning Practice Guidance provides that there may be exceptional occasions where granting planning permission for development that would not normally be permitted on the site could be justified on planning grounds because of who would benefit from the permission. (ID 21a-015-20140306)

¹² Department of the Environment Circular 11/95: The Use of Conditions in Planning Permissions at paragraph 93.

- of condition 2 is distinct from a generally worded condition controlling occupation of a dwelling or mobile home.
25. The operation of section 75 was considered in the *Knott* judgement.¹³ In that case the condition in question was similarly worded to condition 2, in so far as it stated 'permission shall enure solely for the benefit of Mr and Mrs Knott'. Operational development was involved in that outline planning permission was granted for the erection of a detached dwelling. The situation was highly unusual in that a personal condition will scarcely ever be justified in the case of a permission for the erection of a permanent building.
26. Applying the logic of the *Knott* judgement, once the 1996 planning permission was implemented and Mr William Lowe senior had occupied the mobile home, condition 2 was fulfilled for all time and would not necessarily prevent persons other than Mr Lowe senior occupying the mobile home. It would be a question of fact as to whether or not the condition would be breached if persons other than Mr Lowe senior became future occupiers of the mobile home. The answer would depend on whether the second occupation was materially different from the first permitted occupation.
27. The *Knott* interpretation, in the circumstances of the Greenacres case where a change of use is involved, appears to be contrary to section 75(1) of the 1990 Act and also to prevailing national guidance, both at the time when the permission was granted and now. The case law after the *Knott* judgement confirms that planning conditions should be given a common sense meaning. Conditions should not be construed in the abstract but in the context in which they are imposed. I also have in mind that conditions should not be construed narrowly or strictly¹⁴.
28. The clear message from the statute and the guidance is that a planning condition is an appropriate means of making an exception to the normal consequence that permission runs with the land. A permission is able to be made personal to an individual provided that there is a very good justification and the condition meets all the tests. More particularly the reason for condition 2 was because of the personal circumstances of the applicant (Mr Lowe senior). To potentially confine the requirement to the initial residential use of the land and occupation of a mobile home stationed on the land would defeat the whole purpose of the condition. Following the *Knott* line of argument, Mr Lowe senior could have lived in the mobile home for a few months before vacating the home for occupation by another retired person and his dependants. That would not be a common sense interpretation. A preferable explanation is that the first part of the condition means what it says – the benefit of the permission is for the named person only.
29. Personal permissions are time-limited permissions, either because of the eventual death of the named person(s) or because a specific time period is stated in a condition. It is good practice to impose a condition requiring the use permitted to cease and for the land to be restored to its former condition by the removal of all materials and equipment and where relevant, the mobile

¹³ *Knott v Secretary of State for the Environment and Caradon DC* [1997] JPL 713

¹⁴ The Council referred to *Menston Action Group v City of Bradford MBC* [2016] EWCA Civ 796. The Appellant referred to *Carter Commercial Development Ltd v Secretary of State for the Environment and Northampton BC v First Secretary of State* [2005] EWHC 168 Admin

- home or caravan (see model condition 36). There is no such condition attached to the 1996 permission.
30. It could be argued that even without such a condition the benefit of the use of the land would cease eventually as a result of the permission being personal to Mr Lowe senior in the context of section 75(1). However, continuation of the use beyond the terms of the personal consent would not involve development of the land. Furthermore, a reasonable conclusion is that model condition 36 must be necessary on the basis of the policy tests and therefore its use in conjunction with model condition 35 must have a purpose. In my view the absence of a condition requiring the use to cease is significant but not necessarily fatal.
31. Condition 2 has more than one element. As explained above, the first limb seeks to confine the benefit of the residential use of the land to Mr William Lowe senior. The second limb seeks to control the occupation of the mobile home by restricting occupation to Mr William Lowe senior and his dependants. The third element defines a time element by allowing for the occupation of the mobile home by Mr William Lowe senior and his dependants during his lifetime only. 'During his lifetime only' could be read one of two ways - the use comes to an end at the end of his lifetime or as allowing for any occupation after his lifetime.
32. A consequence of the wording of condition 2 is that there is a potential conflict between the length of the use and the length of permissible occupation of the mobile home. It has come about that Mr William Lowe Senior put the land up for sale and the appellant agreed to buy the land. His father moved to a flat in Ongar where he still lives. However, Mrs Scamp stated that Mr Lowe Senior says that he wants to return to Greenacres and suggested that he could move back. The appellant indicated more particularly that his father could return to live with them in the mobile home. Such an arrangement cannot reasonably be ruled out, taking into account old age, health and family responsibilities.
33. The Council submitted that persons deriving title of the estate in land from the person named in the personal condition do not acquire the land with the benefit of planning permission. Following that interpretation the benefit of the use of the land ceased when Mr Lowe senior sold the land to his son. Mr Lowe senior would be precluded from occupying the mobile home during the remainder of his lifetime, despite the provisions in the second and third limbs. A similar situation would arise in the event the land was sold but only Mr Lowe senior and his dependants continued to occupy the mobile home.
34. The alternative approach is not to over-analyse the condition. Adopting a straight forward and common sense reading, the use is authorised only during the lifetime of Mr Lowe senior and during this time-limited period the mobile home is to be occupied solely by Mr Lowe and his dependants. This reasonable interpretation accords well with the context, both in terms of protecting the Green Belt and allowing for the very particular events behind the grant of planning permission. It is consistent with a view expressed by a planning officer at the time enforcement action was sought¹⁵. Mr Dagg, on behalf of Mr Davies, also considered that the authorisation to station the mobile home on the land ceases with the death of the named applicant.

¹⁵ The report seeking authorisation for enforcement action stated that the consent is solely for the benefit of Mr Lowe senior and his dependants during his lifetime only.

35. The other matter for consideration is whether only a single mobile home is permissible on the land under the 1996 permission. The description of the permission and the approved plan provides for one mobile home. In addition condition 2 states 'the mobile home hereby approved', which again is consistent with a single mobile home. However, the permission does not include a separate planning condition expressly controlling the number of caravans or mobile homes that may lawfully be stationed on the land or more particularly requiring no more than one mobile home to be stationed on the land. The Council does not dispute this fact.
36. Having considered the relevant case law referred to by the main parties, my conclusion is that in this case the description of the development is not sufficient and that a planning condition should have been imposed if the local planning authority wished to limit the development to a single mobile home¹⁶. The *Cotswold Grange Country Park*¹⁷ judgement is very pertinent to the current appeal. The development described by the 1996 permission is a form of residential use through the stationing and occupation of a mobile home. The description does not have a functional significance and therefore is distinguished from the *Winchester* case¹⁸ and similar judgements. A numerical limitation on the number of mobile homes permitted has to be achieved by a planning condition.
37. In conclusion, on close examination the 1996 permission is poorly drafted. The development is not adequately described in that no reference is made to the making of a material change in the use of the land. The policy advice and the appropriate wording of model conditions were not applied, even though Circular 11/95 was in place at the time of the decision. Consequently condition 2 is not well worded because it does not sufficiently recognise the interplay between use and occupation. The absence of a follow up condition is a serious failing if, as was probably the case, the local planning authority wanted to ensure the residential use ceased at some future point in time. The description of the development permitted and condition 2 do not provide the full amount of control on the use of the land intended or now advanced by the Council. The deficiencies cannot be overcome by implying something that is not there in the first place.

Validity of condition 2

38. Taking account of the background to the planning application and the location of the site within the Green Belt, the condition fulfils a planning purpose in protecting the openness of the Green Belt, whilst responding to the circumstances of Mr Lowe senior. The permanent extinguishment of all residential use and rights to a caravan/mobile home at Rockhills was linked to the placing of a mobile home at Greenacres for occupation by Mr Lowe and his dependants. These provisions were secured by means of a section 106 agreement, which was entered into by Mr Lowe senior. The committee report indicated that Mr Lowe did not enjoy security of tenure at Rockhills. All matters considered in respect of the planning history, condition 2 was fairly and reasonably related to the development permitted. It was not 'Wednesbury'

¹⁶ Including *I'm Your Man v Secretary of State for the Environment* (1970) 21 P&CR 411

¹⁷ *Cotswold Grange Country Park LLP v Secretary of State for Communities and Local Government & Tewkesbury BC* [2014] EWHC 1138

¹⁸ *Winchester City Council v Secretary of State for Communities and Local Government* [2013] EWHC 101 (Admin)

- unreasonable in the sense that no reasonable planning authority properly directing itself could have imposed it.
39. Turning to the six policy tests, relevant to planning, relevant to the development to be permitted and reasonable in all other respects broadly relate to the criteria for validity considered above. In 1996 the condition was necessary in order to uphold the very special circumstances that justified allowing inappropriate development in the Green Belt. The precision of the wording has been shown to be wanting and some aspects of enforceability may be questioned. However, the condition is not impossible to enforce and the wording is not so deficient that the condition can be given no sensible meaning.
 40. The appellant, whilst questioning the validity of condition 2 and concluding that the 1996 permission was very poorly drafted, stopped short of a firm submission that condition 2 was invalid.
 41. My conclusion is that even though condition 2 is poorly drafted it is not so hopeless or fundamentally flawed as to be invalid.
 42. This assessment and conclusions on the 1996 permission will inform determination of the two appeals. Similar to the Council's approach I intend to consider the appeal against the enforcement notice first. This will establish whether there has been a breach of planning control or not. In turn this conclusion will inform the approach to the determination of the section 78 appeal. The appellant took the opposite view, relying on the provisions of section 180. However, this approach fails to recognise that even if the section 78 appeal is successful the appeal against the enforcement notice remains to be determined.

Appeal against the enforcement notice

43. I am satisfied that the enforcement notice tells the recipient what he has allegedly done wrong and what he must do to remedy the alleged breach of planning control. All relevant issues on the wording of the notice may be adequately dealt with through the grounds of appeal.
44. It is important to have in mind the two matters which are alleged to constitute the breach of planning control related to non compliance with condition 2 – an additional mobile home was stationed on the Land; both mobile homes were occupied by persons not being William Lowe senior or his dependants.
45. The Land is shown on the plan attached to the enforcement notice to extend over the whole of the 2.66 hectares, which is equivalent to the application site shown on the location plan for the 1996 permission. This demonstrates that the Council considered the 1996 permission applied to not just the small area where the mobile home was to be positioned but to the whole site. Only on this basis could condition 2 and the 1996 permission be the subject of the notice. The appellant did not raise any issue on this point and in fact relies on the larger area being the relevant site to support aspects of his case and his s78 appeal.

Appeal on ground (b): the matters stated in the alleged breach of planning control have not occurred

46. An additional mobile home was stationed on the Land. The occupation of both mobile homes is by people other than Mr Lowe senior (the person stated in

condition 2). The occupants are members of Mr Lowe senior's family but as adults they are not his dependants. The appellant accepted these matters of fact, the position being confirmed by the oral evidence at the inquiry from Mr William Lowe (the appellant) and Mrs Scamp. The accompanied site visit provided further verification.

47. Therefore the matters stated in the allegation have occurred as a matter of fact and the appeal on ground (b) does not succeed.

Appeal on ground (c): the matters do not constitute a breach of planning control

48. The notice is against non compliance with a planning condition, a condition that imposes a continuing requirement. My consideration is restricted to the matters alleged at the time the notice was issued.

Additional mobile home

49. Condition 2 does not expressly control the number of mobile homes that may be placed on the land but refers instead to 'the mobile home hereby approved'. Having regard to relevant case law, this description is not specific or sufficient to exercise control on the number of mobile homes on the land¹⁹. Therefore the additional mobile home does not amount to non-compliance with condition 2 and is not a breach of planning control of the type alleged. On that particular narrow point I agree with the appellant.
50. The issue becomes whether there has been a material change in the definable character of the land. The appellant submitted that placing an extra caravan on the land did not result in such a material change. The planning history records that the Council withdrew an enforcement notice alleging a material change of use and then issued the current notice where the alleged breach is expressed as non-compliance with a condition. The Council's planning witness Mr Courtney accepted in cross examination that a second mobile home did not amount to a material change of use. Mr Davies (the interested party) in his evidence argued that as a matter of fact and degree a material change of use had occurred as a result of the additional mobile home with its attendant ancillary uses and activity.
51. Clearly a material change of use was a topic that was addressed by all parties. However, the notice is not attacking this form of development in view of the Council's stated position on the matter of the additional mobile home and the reliance on s171A(1)(b) and condition 2 in taking enforcement action against it. I have no doubt that it would cause injustice to use my powers to correct the notice so that it becomes a hybrid non-compliance with condition/change of use enforcement notice. That being the case I will not consider the material change of use issue further in this appeal.

Occupation

52. The appellant accepted that the occupation of 1 mobile home by people other than by Mr William Lowe senior is a breach of planning control, but only whilst Mr William Lowe senior remains capable of living on the land, that is, as stated in the opening submissions, whilst he is alive.

¹⁹ See paragraphs 35 and 36 above

53. Relying on the *Knott* judgement, the appellant maintained that once Mr Lowe senior had occupied the land the first element of condition 1 was discharged and fell away and so the second element applied only during his lifetime.
54. Even if the principle arising in the *Knott* judgement is followed regarding the benefit of the permission continuing for all, the fact is that Mr Lowe senior is still capable of living on the land. Therefore, even on the appellant's case, condition 2 was not complied with as a result of occupation of the mobile home by the appellant. A breach of planning control occurred.
55. In conclusion, the appeal on ground (c) partially succeeds in relation to the stationing of the additional mobile home but fails in terms of occupation of the mobile home. The wording of the allegation shall be corrected accordingly.

Appeal on ground (a)

The development

56. Regarding an appeal on ground (a), section 174 (1) provides "that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged".
57. It follows that the deemed planning application in this case is narrowly defined because it relates solely to the matter stated in the notice, which has been found to be a breach of planning control – the occupation of the mobile home by Mr and Mrs Lowe. The additional mobile home, in terms of its presence and occupation, forms no part of the breach in this notice. Furthermore the benefit of the permission given to Mr William Lowe senior (*This consent shall inure solely for*) is not for consideration.
58. A key consideration is a change in the occupation of the mobile home, which is not within the meaning of development as set out in s55(1) of the 1990 Act. Nevertheless the deemed planning application is similar to a retrospective one, to carry out the original development without complying with the particular element of condition 2 being enforced. It is not open to me to review any of the other conditions imposed on the original grant of permission because to do so would widen the scope of the notice. Success on the ground (a) appeal would result in (i) the ability under s177(1)(b) to discharge condition 2 and the substitution of a new condition (in this case retaining the matters not at issue), and (ii) the grant of a new planning permission subject to conditions (sections 177(5), 177(1)(a) and 70(1)(a)). A new permission would be for the same development as granted permission in 1996, the stationing of a residential mobile home, which I have concluded involved a material change of use to a caravan site.

Main issues

59. In view of the provisions set out in section 177 regard must be had to the provisions of the development plan, so far as material to the subject matter of the enforcement notice and to any other material considerations. A material change in the use of the land is inappropriate development in the Green Belt. The main issues centre on the effects on the openness of the Green Belt and the amenity of nearby residents and whether any harm would be clearly outweighed by other considerations to amount to the very special circumstances to justify the development.

Planning merits

60. The site is in the Metropolitan Green Belt where there is strict control on development through national and local planning policies. The essential characteristics of Green Belts are their openness and permanence. Inappropriate development is by definition harmful.
61. The mobile home has been stationed on the site for some 30 years and would continue to be present whatever the outcome of this appeal. The inclusion of Mr and Mrs Lowe as named occupants would not extend the life of the permission as it would still enure solely for the benefit of Mr Lowe senior. Therefore the change in occupation would not lead to any material loss of openness in relation to the physical presence of the structure. Aerial photographs indicate some increase in the degree of domestication and improved tidiness adjacent to the home. As a result the appearance of the mobile home site has changed to a limited extent. Nevertheless the layout has remained very similar to that indicated and allowed for by the approved site layout plan. Mature planting and the roadside hedgerow provide good enclosure and the mobile home is not prominent in views at short or longer distances. In that respect there is no conflict with Policy GB7A of the Local Plan.
62. Mr and Mrs Lowe's occupation may have resulted in some increase in comings and goings and general activity because Mr Lowe is not retired and he makes a living as a landscape gardener. However, an appeal decision issued in 2009 described one of the barns providing garaging for several trailers that belonged to the grandson of Mr Lowe senior, who lived on site and carried out a gardening business²⁰. The second barn was said to be used in part for Mr Lowe senior's logging business, described by others as small scale sale of firewood.
63. I conclude that no harm to openness and no significant encroachment into the countryside have occurred. The evidence suggests no harmful change in character has occurred, resulting in compliance with Policy CP2 of the Local Plan.
64. Nearby residents described events since 2008 and 2010 which included increased traffic movements, use of the yard for business activities, burning of waste, occupation of land by touring caravans and intimidating behaviour. They maintained that the use of land by the younger Lowe family had caused them undue disturbance and loss of amenity. The character of the site had changed in comparison to the time when occupied by Mr Lowe senior, who was a very private and retiring individual and respected the tranquil nature of the immediate environment.
65. Mr Lowe (the appellant) confirmed that he was not responsible for burning waste on the land, although he accepted that a member of his family was responsible. He explained that he travelled to find work, now mainly locally and into Cambridgeshire. A limited amount of equipment was kept on site but his touring caravan was kept in storage near Chelmsford.
66. The view I have formed from the oral evidence is that there has been no burning of waste for over five years and that much of the disturbance was linked to the use of land to the south known as Fox Meadow. In this period the

²⁰ The Inspector also reported that Mr Lowe senior had brought up his grandson since the age of seven. By 2009 the grandson was 21 years old and had his own gardening business.

mobile home was still occupied by Mr Lowe senior, because he moved to Ongar in late 2013. As a matter of fact visits to Greenacres by his family were not precluded by condition 2. Fox Meadow is now owned by Mr Davies, who accepted that activity associated with the appeal site has decreased in recent times. Overall, there is no reason to resist the appellant's occupation of the mobile home on grounds of loss of amenity. It was not a matter pursued by the Council, who would have been familiar with events over the period of disturbance referred to by residents.

67. In conclusion, the harm is confined to the inappropriateness of the original development. In order to satisfy Policy GB2A of the Local Plan, when read with the supporting text, and national policy in the Framework very special circumstances have to be demonstrated. Compliance with Policy CP2, which protects the quality of the rural environment and its countryside character, is achieved. The development is not conspicuous in the Green Belt and hence does not offend Policy GB7A.
68. In terms of the considerations in support of the application the appellant is a Romany Gypsy and travels to seek a livelihood. Mr and Mrs Lowe moved to Greenacres having lived many years in a house in High Ongar whilst their children grew up and went to school. A gypsy family who wishes to move from bricks and mortar to a caravan site counts towards need. There is a significant need for additional gypsy pitches in Epping Forest District and the Council is unable to demonstrate a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against a locally set target. As a result finding suitable pitch accommodation is very difficult.
69. Romany Gypsies are a distinct racial group and because race is a protected characteristic under the Public Sector Equality Duty I must have due regard to advancing equality of opportunity, fostering good relations and eliminating conduct prohibited under the Equality Act 2010. Also, the vulnerable position of gypsies as a minority group means that some special consideration should be given to their needs and different lifestyle in decision making. To this extent there is a positive obligation to facilitate the gypsy way of life under the Article 8 Convention right. As to personal circumstances Mrs Lowe is in poor health and needs regular medical checks. Allowing Mr and Mrs Lowe as named occupiers would increase rather than reduce the probability of Mr Lowe senior returning to live on the site. To require Mr and Mrs Lowe to find alternative accommodation would be disproportionate.
70. The planning history is highly relevant. The development at Greenacres enabled environmental benefit elsewhere in the Green Belt. The personal circumstances of Mr Lowe senior and his associations with both Rockhills and Greenacres very strongly influenced the original wording of condition 2. The occupation by Mr and Mrs Lowe would not affect the length of the permission and by association nor would it affect the period of definitional harm to the Green Belt.
71. The harm by reason of inappropriateness has substantial weight. On the other side of the balance, the planning history has substantial weight in this instance. In the context of this deemed planning application, considerations regarding need for traveller sites and a lack of deliverable sites have significant weight and the personal circumstances of Mr Lowe senior and Mr and Mrs Lowe have moderate weight. The definitional harm is clearly outweighed by other

considerations when taken together. In the context of the very unusual planning history and background, the positive obligation to facilitate the gypsy way of life and the duties under the PSED, very special circumstances exist.

Conclusions

72. In view of the compliance with the development plan as a whole and the support from other considerations, including national planning policy, condition 2 should be reworded to enable Mr and Mrs Lowe to live in the mobile home in addition to Mr Lowe senior. This outcome would protect the rights of Mr Lowe senior and reflect the change in occupation as a result of his and his family's circumstances.
73. For the reasons given above the appeal should succeed on ground (a) and the enforcement notice should be quashed. I propose to discharge the condition which is the subject of the notice, and to grant planning permission, on the application deemed to have been made, for the development previously permitted without complying with the condition enforced against, but to substitute a less onerous condition. In view of the restricted scope of the deemed planning application and to avoid injustice, the wording of the new condition follows the format of the original wording. Grounds (f) and (g) do not fall to be considered.

Section 78 appeal

74. The appellant sought the variation of condition 2 to allow additional named persons and their resident dependants to occupy the site. The proposed wording of the condition was: "The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: William Lowe, William and Susan Cathleen Lowe, Jim and Joanne Scamp". Through the course of the appeal reference was made to the discharge of condition 2 as an alternative but I will determine the appeal on the basis of the proposed variation as set out on the planning application and appeal forms.
75. The appellant made the application under section 73, not section 73A. The reasoning was that the development was implemented and occupied in accordance with the 1996 permission and the imposed conditions. There then was a breach of condition. A remedy was sought under section 73 because the authorised development remained the same and lawful. A fresh planning permission was not required, only a variation of condition 2.
76. The Council, having reviewed the provisions of sections 73 and 73A and the *Lawson Builders* judgement²¹, concluded that whether considered by reference to section 73 or section 73A the current use of the land involves a material change in the lawful use of the Land for agriculture for which a grant of planning permission is required. Nevertheless, as wider planning considerations were taken into account when determining the application the Council did not assert that any prejudice would be caused by determination of the appeal on either basis²².
77. Therefore as a preliminary matter I will consider whether the application was correctly made under section 73 or whether it should have been made under

²¹ *Lawson Builders Ltd and others v Secretary of State for Communities and Local Government and another* [2015] EWCA Civ 122

²² Document 20 Council's closing submissions paragraph 75.

- section 73A. The answer affects the scope of the matters under consideration and the powers available to the decision maker. Whether or not there has been a material change of use will inform my conclusion.
78. Variation of a condition per se does not amount to development. Section 73 applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. It applies to development to be carried out and is not itself retrospective to allow validation of completed development. Subsection 2 states that on such an application a local planning authority shall consider only the question of the conditions subject to which planning permission should be granted. However, the provisions of the development plan and other material considerations should be taken into account. A decision under section 73(2) leaves the original planning permission unaltered. If the application is successful and a fresh planning permission is granted under section 73(2)(a) it is an entirely new planning permission for development and may be subject to conditions differing from those originally imposed. The new conditions must be ones which could have been imposed on the original permission, in other words the permission must not be rewritten.
79. Section 73A(1) provides for planning permission to be granted for development carried out before the date of the application. Subsection (1) applies to development carried out (a) without planning permission, (b) in accordance with a planning permission granted for a limited period, or (c) without complying with some condition subject to which planning permission was granted. In making a decision it is necessary to consider the planning merits of allowing the development to continue.
80. An application under s73A is in all respects a conventional planning application, save that the development will have commenced. Where an application has been triggered by the fact that there has been a breach of condition the local planning authority in considering the merits of the application is not required to confine its attention to the appropriateness of the condition.
81. The sequence of events in this case is that the development granted permission in 1996, the stationing of a mobile home for residential use, was carried out in accordance with the permission and condition 2 was complied with over a number of years. On the Council's evidence two mobile homes were moved onto the site in early January 2014. At the inquiry Mrs Scamp confirmed that both mobile homes arrived at the same time and that she was living on the site in February 2014. The planning application to vary condition 2 was dated 24 March 2014. Whilst exact dates are not entirely consistent there is no doubt that the application was made after a breach of condition 2 had occurred.
82. The provisions of section 73A enable planning permission to be granted retrospectively on a planning application made after the act of development or the non compliance with a condition has occurred. That is what has happened in this case, notwithstanding that the stationing of the mobile home was carried out in accordance with the 1996 permission many years ago. The application was for retrospective planning permission to enable the residential use of the land for the stationing of two mobile homes to continue without complying with condition 2.
83. The point taken by the Council on the material change of use does not appear to be consistent with the withdrawal of the first enforcement notice and Mr

Courtney's acceptance in his evidence that a material change of use had not taken place. Furthermore, the benefit of the 1996 permission continues throughout Mr Lowe senior's lifetime, whether or not he resides on site in the mobile home. Therefore the lawful use of the site land has not reverted back to a single primary use for agriculture. However, the matter of a material change of use is appropriately addressed in this appeal and rests primarily on whether the introduction of second caravan has led to a material change of use by intensification.

84. Based on case law, an increase in the number of caravans on the land on its own does not necessarily result in a material change of use, rather the test is whether the intensification of use has changed materially the definable character of the use of the land²³. The planning unit, against which to measure the materiality of change, is the land which comprises the 2.66 hectares owned and occupied by the appellant (the appeal site). The various descriptions of the land and activities over time indicate a physical and functional relationship between the yard area and the adjacent grazing lands and no-one put forward any analysis to support a conclusion that the yard, including the mobile homes, had become physically or functionally separated from the rest of the land. In fact throughout both the Council and the appellant approached their respective cases on the basis of the area of land equivalent to the appeal site.
85. The changes in activities and patterns of movement and traffic described by Mr Davies and local residents pre-dated and were unrelated to the introduction of a second caravan. The 2009 appeal decision suggests that activity was focussed on the yard area, similar to the situation now. The appellant and Mr Scamp may well park their work vehicles in the yard but they travel to sites elsewhere to conduct their landscape gardening businesses. The burning of waste, possibly associated with business activities, took place on occasion in 2010 and 2011 but there is no claim that a new commercial use has become established at the site. A comparison of aerial photographs dated 2006 and 2015 indicates the garden areas near the caravans have extended a little way into the field to the north and that the land is managed to a greater degree than before. However, this limited change in appearance does not significantly contribute to a change in the overall character of the land.
86. Therefore the second caravan and the increase in the number of residents and associated activity has not given rise to such materially different planning circumstances to bring about, as a matter of fact and degree, a change in the definable character of the use of the land comprising the planning unit. A material change of use has not occurred in that sense. Furthermore, if the activity carried on at the site remains the same, a change merely in the identity of the person carrying it on does not amount to a material change in the use.
87. Relating this finding back to the 1996 permission, the area that was shown as the application site in 1996 is equivalent to the current planning unit. That being so the 1996 permission in effect allowed a change of use of the planning unit to a mixed use for the purposes of agriculture and a caravan site, with the permission for the mixed use time-limited. However, that was not the

²³ Including *Reed v Secretary of State for Communities and Local Government and Another* [2014] EWCA Civ 241; *Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal Waste Recycling Limited* [2012] EWCA Civ 1473

description of the development granted permission. This is a further reason why the application should be considered under section 73A.

88. In conclusion, the proposed 'variation of condition 2' is properly considered as an application under section 73A, best categorised as for development carried out without planning permission for the avoidance of any doubt. The development involves a material change of use of the land to a mixed use for purposes of agriculture and a residential caravan site. The planning issues related to this form of development were dealt with by all parties because the development on site now was assessed in the evidence. Therefore it would not cause injustice to proceed on this basis. Even considering the application under section 73 would require the planning merits of the continuation of the use to be assessed, particularly bearing in mind the location of the site within Green Belt, the planning history and the prevailing planning policies including policies on traveller sites.

Main issues

89. The change of use to a mixed use is inappropriate development in the Green Belt, taking account of Policy E in the PPTS and paragraph 90 of the Framework. This type of development is not identified as 'appropriate' by Policy GB2A of the Local Plan. The main issue is whether the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Given that one of the primary uses is a caravan site to be occupied by an extended gypsy family, it is relevant to refer to the PPTS to indicate the range of matters to be considered. These include the existing level of local provision and need for sites, the availability (or lack) of alternative accommodation for the applicant, other personal circumstances of the applicant and locally specific criteria used to guide allocation of sites or assessing applications.

Potential harm

90. A starting point is to have in mind the existing authorised development. Mr and Mrs Lowe's mobile home may remain in residential use, at least during the lifetime of Mr Lowe senior. Even after his passing there is no requirement for the mobile home to be removed and the land to be restored to its former condition. The lawfulness of the group of buildings in the yard has not been questioned.

Openness, purposes of Green Belt

91. The second mobile home is sited within the building group, between the open sided barn and the stables block. By reason of this position, and its modest size and low height, it is not particularly visible. More noticeable is the garden area that has encroached into the open grazing land to the north. The contrasting appearance with the agricultural land draws attention to the residential use. A second caravan, occupied by a family with four children, probably would give rise to greater activity on the site, more parked vehicles and comings and goings, which would detract from openness. Even so the development is not conspicuous when assessed against the terms of Policy GB7A of the Local Plan. By allowing the additional named persons and their resident dependants to occupy the site would increase the longevity of the residential use, which in turn would increase the harm by reason of a small loss of openness and the degree of encroachment. Significantly the Council's objection was limited to

harm by reason of inappropriateness and the proposed permanent use of the land as a caravan site.

92. Conditions on the number and type of caravans, the layout of the site and the parking of commercial vehicles would ensure that the actual harm would be contained at its current low level.

Amenity

93. There is good separation distance between the caravans and the nearest dwellings, achieved in part by the agricultural element of the mixed use. The disturbance reported by residents that arose in the period after 2008 and more particularly around 2010/2011 probably was atypical and not wholly attributable to the current occupiers. A business use was not established. A reasonable expectation is that the level of activity associated with a small scale family caravan site as part of a mixed use would be low and compatible with its surroundings. This is not an area within the district where there is a large travelling community and a small family site would not dominate the nearest settled community. As pointed out by the Council, no matter how long a planning condition has been in operation, it cannot give rise to a legitimate expectation on the part of local residents that it will not be discharged.
94. The site would provide a good living environment for the occupiers. In accordance with the PPTS positive weight should be given to the opportunity to promote healthy lifestyles by having space on site for children's play. Also the site is not enclosed with so much hardstanding, high walls or fences to give the impression that the site and its occupants are deliberately isolated from the rest of the community. The reliance on soft landscaping and gates and fencing respectful of the rural character of the area help to blend the site into its surroundings.
95. There has been local concern, with reference to another gypsy site nearby, that once established a gypsy site would expand and create a precedent. The events described by local residents between 2010 and 2014 and the unsuccessful planning application in 2012 for a four pitch gypsy site lend some weight to this concern. However, the development plan, national planning policy and the specific controls exerted by any planning permission would provide for the regulation of and benchmark for assessing the acceptability of future change.

Local infrastructure

96. The increase in traffic using the network of country lanes would be unlikely to be significant and would be absorbed within the day to day variability of traffic. There is no evidence to substantiate a conclusion that the development would place an undue pressure on local infrastructure.

Other locational criteria

97. Referring to Policy H10A and the criteria in the Local Plan (paragraph 9.67a), the site is within a reasonable distance of a settlement for access to schools, shops and other facilities and has convenient and safe access to the main road network. The Council withdrew its objection on accessibility grounds at the inquiry.
98. The mobile homes are sited within an existing group of agricultural buildings where there is good boundary planting to the field edges. These site conditions

have helped to minimise the effect on the appearance of the countryside. The Council did not maintain an objection on loss of visual amenity.

99. The site is in open countryside and away from existing settlements, a location where PPTS states that new traveller sites should be very strictly controlled. However, this has to be balanced against the locational constraints acknowledged in the Local Plan and the site specific circumstances and planning history applicable in this case.

Other considerations

Need for traveller pitches

100. As of June 2016 there were 123 authorised permanent pitches in the District and 16 authorised temporary pitches. Most if not all pitches are in the Green Belt, which covers 92% of the District. Nazeing and Roydon parishes are recognised as having the most number of pitches.
101. In July 2014 a Gypsy and Traveller Accommodation Assessment (GTAA) was published for the County of Essex and the unitary authorities of Thurrock and Southend-on-Sea. The new pitch provision required for the study area amounted to 387 pitches for the period 2013-2018 and a further 121 pitches for 2018-2023²⁴. The findings specific to Epping Forest District were: current need 28 pitches and a future need of 84 pitches over the period of 2013 to 2033, resulting in a total requirement of 112 extra pitches.
102. Since the study was carried out, the information provided by the Council and Green Planning Studio (GPS) for the appellant identify 5 pitches which have been granted planning permission²⁵.
103. GPS considered that the base date figures in the GTAA underestimated the number of concealed households, those in bricks and mortar and the number of family units. In terms of emerging need, a 3% compound growth rate figure was preferred to the 2% annual growth rate used in the GTAA. Consequently it was submitted that the GTAA underestimated need and that 64 additional pitches were needed in the District by 2018, a further 29 from 2018-2023, with an overall total of 166 additional pitches by 2033. The Council accepted that unmet need is significant. No detailed rebuttal was presented regarding the methodology of the GTAA. Reliance was placed on an appeal decision in Chelmsford where the Inspector did not accept the criticisms of the GTAA regarding doubling up and concealed need and found the 2% growth rate a reasonable assumption.
104. The PPTS requires local planning authorities to make their own assessment of need and Policy A requires the use of a robust evidence base to establish accommodation needs. The GTAA methodology incorporated use of local evidence through desk based research, interviews with the traveller community and a wide range of stakeholders. The household formation rate of 2% was supported by research and technical assessment. There is not the detailed contrary locally based evidence to dismiss the findings and to adopt the figures promoted by GPS instead. Furthermore, national guidance on assessment of housing needs in relation to caravans and houseboats is under review. For the

²⁴ GTAA Table 83

²⁵ Hallmead Nursery 4 pitches and Woodside 1 pitch. The permission granted on appeal at Sons Nursery in February 2016 was for a four year period.

purposes of this appeal it is sufficient to recognise that there is a significant unmet need and that the GTAA is probably a minimum figure. Interestingly, the identified pitch need in Epping Forest District is relatively high when compared to a number of the Essex local authorities, a position which is unlikely to have significantly changed.

105. The PPTS reaffirmed that local planning authorities should in producing their Local Plan identify and update annually a supply of specifically deliverable sites sufficient to provide 5 years worth of sites against their locally set targets. The Council accepted that it does not currently have a 5 year supply of deliverable sites and that it had yet to identify what the five year target should be. The framework for the future development of the District for the period up to 2033 will be set out in the Epping Forest District Local Plan, which is expected to be adopted in October 2018. In the interim the Council's approach is the continued use of Policy H10A of the Local Plan. Reference was made to the 49 permanent authorised pitches granted planning permission since January 2008 by this means, to support the Council's view that there has been no failure of policy in the District. In addition, options identified for making additional pitch provision include more intensive use or extensions to existing permanent authorised sites, regularising suitable unauthorised pitches, incorporating new traveller provision on housing and other development sites and specific land allocations.
106. The Council decided when adopting the Local Plan Alterations to pursue a reactive approach to traveller site provision because of the built up nature of the urban areas in the district and the inability to readily identify locations for additional gypsy sites. Even though the Council has been receptive to approving suitable sites, the reactive approach is not up to date and for a number of years has not represented an adequate policy response in light of national policy requirements and the emphasis on a plan led process. Whilst PPTS promotes more private traveller site provision there is recognition that there will always be those travellers who cannot provide their own sites. Despite the private site provision to date, the current pressing need is probably in the order of at least 28 pitches.
107. The probability is that at least some of the future additional pitch provision will be on Green Belt land, bearing in mind the current distribution of sites, the options under consideration, the reasons behind future need and the constraints on the use of urban land. Urban extensions or site allocations taking land out of Green Belt are acknowledged as possibilities.
108. A consequence of the failure to bring forward adequate site provision through the development plan process is that no suitable alternative sites are able to be identified for those in need.
109. In conclusion, there are several need related factors that weigh in favour of the development and which fall into two main categories. The significant unmet need has considerable weight. The absence of an effective up to date strategy, including land allocations, to meet need has very significant weight.

Personal circumstances and rights

110. The following information is based on the witness statements and oral evidence of Mr Lowe and Mrs Scamp.

111. Before moving to the appeal site Mr and Mrs Lowe lived in a house for some 25 years in order that their children could receive an education and they could have an address to get registered at a doctors and such like. Having been brought up in caravans they did not like a conventional home and travelled or visited the pitch of Mr Lowe senior during that time. They wished to go back to their traditional way of life and looked to buy land in the locality before purchasing Greenacres from Mr Lowe senior when it was up for sale. Mrs Lowe is not in good health and needs assistance to be at hand all the time. She requires regular visits to the doctors and is under the care of the hospital in Epping.
112. Mr and Mrs Scamp spent most of their early married life travelling without a settled base. They then tried living in a house but found the experience very difficult and suffered abuse. They also used their parents' house as a base before moving onto their current pitch. Mr Scamp grew up on the Council run gypsy site at Hop Gardens at Toothill. They know that there is no chance of getting a pitch there because it is full and the occupants do not travel.
113. They have four children aged 13, 9, 5 and 3 years old²⁶. Their eldest son attends Ongar Academy and their younger sons attend High Ongar Primary School. Their daughter was due to start nursery last September. The family enjoy good health. Mrs Scamp explained that having a pitch at Greenacres enables her to look after her mother. Also the children are able to have a stable education, whilst they continue travelling as a family at weekends and school holidays.
114. Mr Lowe and Mr Scamp buy and sell horses when they travel to the horse fairs. Although horse dealing was not claimed to be a main source of income it complements the travelling lifestyle. The ability to graze horses on the land at Greenacres is an asset that also supports the agricultural element of the mixed use and may be expected to assist in the management of the land.
115. In conclusion, the move to Greenacres has facilitated the gypsy way of life, enabling the extended family to strengthen their traditional lifestyle, provide mutual support, have equality in opportunity in accessing health and welfare services and ensure that the children have a safe home with stability in education. This consideration, which takes account of personal circumstances, has significant weight.
116. A cultural preference not to live in bricks and mortar accommodation should be respected and as a consequence both Mr and Mrs Lowe and Mr and Mrs Scamp and their family had a need for suitable accommodation. In the short term at least there is no indication of any lawful or suitable available alternative, a consideration which has significant weight. If they are unable to stay at Greenacres there would be serious interference with home and family life. The ability to stay on the site would be in the best interests of the children, which is a primary consideration that inherently has substantial weight.

Green Belt balance

117. The harm to the Green Belt by reason of inappropriateness has substantial weight. The limited harm to openness and by reason of countryside encroachment adds a small degree of additional weight against the

²⁶ Ages as at 10 August 2016

development. No other material harm has been identified. The planning history is a neutral factor in the context of this development, unlike the position in the narrow scope of the deemed application in the enforcement appeal.

118. On the other side of the balance the significant unmet need for traveller sites has considerable weight and the absence of an effective up to date strategy to meet need has very significant weight. The lack of a suitable alternative site has significant weight, as does also facilitating a gypsy way of life. Having regard to the great importance attached to protecting the Green Belt in the public interest and the weight given to other considerations, the best interests of the children has significant weight.
119. I conclude the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
120. Protection of Green Belt land remains of high importance in planning policy. In this case personal circumstances and unmet need are not the only considerations in favour of the mixed use development. There may have been an expectation, especially among local residents that the 1996 permission would come to an end, residential use would cease and the land would revert to the former condition and use. However, as close examination has shown against the background of principles established through case law, the permission and the controls in condition 2 were not well drafted. Circumstances have changed over the intervening 20 years or more particularly as regards the range of issues to be taken into account. All matters considered very special circumstances exist to justify the development, as required by local and national policy.
121. There is compliance with Policies H10A, GB2A, GB7A and CP2. The mixed use is compliant with the development plan when assessed as a whole. There are no material considerations that warrant a decision other than in accordance with the development plan.

Planning conditions

122. A grant of permission involving a material change of use to a mixed use will be a new stage in the planning history of the site. The site at issue is defined on the location plan submitted with the application. The discussion at the inquiry on planning conditions ranged over various matters, including the scope of the application and the relevance of the 1996 permission. In view of my interpretation and conclusions on the way the development should be assessed the following conditions are reasonable and necessary.
123. The use and occupation will be made personal to the people named in the application because their gypsy status, accommodation needs and the best interests of the children have been factors weighing in favour of a grant of planning permission on this Green Belt site. A condition requiring the use to cease and the restoration of the land at the end of their occupation is necessary to reinforce the nature of the personal permission.
124. A restriction on the number of pitches and on the number and type of caravans on the two pitches is to control the harm to openness, the degree of encroachment and local amenity. The parties suggested a limit of two caravans but it would be reasonable to allow for a touring caravan on Mr and Mrs Scamp's pitch. The additional caravan is able to be accommodated in the yard

with no noticeable loss of openness, as was evident on the site visit. In the interests of amenity and maintaining the peaceful and unspoilt character of the area no commercial activities should be permitted over and above the agricultural use and the keeping of horses incidental to the occupation of the caravan site. For similar reasons vehicle size should be controlled through a weight limit.

125. A site plan is required to show and confirm the existing siting of the caravans, together with the pitch sizes and incidental works. An acceptable site layout is necessary to ensure that the caravan site continues to be concentrated on the yard area in order to control the impact of the mixed use on the Green Belt.

Conclusion

126. For the reasons given above I conclude that the appeal should be allowed.

DECISIONS

Appeal Ref: APP/J1535/C/14/2225843

127. It is directed that the enforcement notice is corrected by the deletion of the final sentence in paragraph 3 and the substitution of: "It appears that the condition has not been complied with because the Land and the mobile home are in occupation by persons not being William Lowe (the applicant) or his dependants".
128. Subject to the correction above, the appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, condition No 2 attached to the planning permission dated 18 November 1996, Ref EPF/50/96, granted by Epping Forest District Council is discharged and the following new condition is substituted: "This consent shall enure solely for the benefit of the applicant (William Lowe senior) and the mobile home hereby approved is to be occupied solely by Mr William Lowe senior and by Mr William Lowe junior and Mrs Susan Lowe during Mr William Lowe senior's lifetime".
129. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the stationing of a residential mobile home without complying with the said condition No 2 but subject to the other conditions attached to that permission and to the following new condition: "This consent shall enure solely for the benefit of the applicant (William Lowe senior) and the mobile home hereby approved is to be occupied solely by Mr William Lowe senior and by Mr William Lowe junior and Mrs Susan Lowe during Mr William Lowe senior's lifetime".

Appeal Ref: APP/J1535/A/14/2225844

130. The appeal is allowed and planning permission is granted for a material change of use to a mixed use for purposes of agriculture and a residential caravan site at Greenacres, Silver Lane, Willingale, Essex CM5 0QL in accordance with the terms of the application, Ref EPF/0657/14, dated 24 March 2014, and the location plan submitted with it, subject to the following conditions:

- 1) The use hereby permitted and the occupation of the land shall be carried on only by the following and their resident dependants: William Lowe senior, William and Susan Cathleen Lowe, Jim and Joanne Scamp.
- 2) When the land ceases to be occupied by those named in condition 1 above the caravan site element of the mixed use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the caravan use, shall be removed and the land shall be restored to its condition before the development took place, in accordance with the scheme approved under condition 6 below.
- 3) There shall be no more than 2 pitches on the site. No more than a total of three caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, of which no more than two caravans shall be a static caravan, shall be stationed on the land at any time.
- 4) No more than one commercial vehicle per pitch, which shall not exceed 3.5 tonnes in weight, shall be kept on the land for use by the occupiers of the caravans hereby permitted.
- 5) Except for agricultural activities, no commercial activities, including the storage of materials or the burning of materials, shall take place on the land.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within three months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within two months of the date of this decision a site development scheme shall have been submitted for the written approval of the local planning authority. The scheme shall provide details of (a) the internal layout of the site, including the siting of caravans, demarcation of pitches, hardstanding, access roads, parking and amenity areas, area of land to be used for agricultural purposes, (b) boundary treatment and planting, and (c) proposals for the restoration of the site to its condition before the development took place (or as otherwise agreed in writing by the local planning authority) at the end of the period the site is occupied by those permitted to do so.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved 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 and the caravans shall only be positioned in the approved locations.

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

Diane Lewis
Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Michael Rudd	Barrister
He called	
Mr William Lowe	The Appellant
Mrs Joanne Scamp	Occupier of site
Mr Matthew Green	Director, Green Planning Studio Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Mark Beard	Barrister, instructed by the Solicitor to the Council
He called	
Mr Graham Courtney	Senior Planning Officer, Epping Forest District Council

FOR INTERESTED PERSONS

Mr John Dagg	Instructed by Mr and Mrs Davies
He called	
Mr Peter Davies	Local resident

INTERESTED PERSONS:

Willingale Parish Council	Statement read at inquiry on 16 June 2015
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DOCUMENTS

- 1 Willingale Parish Council Statement
- 2 Planning permission ref EPF/50/96 dated 18 November 1996, including location, site and elevation plans
- 3 Section 106 agreement dated 18 November 1996
- 4 *Wall v Winchester City Council* [2015] EWCA Civ 563
- 5 List of suggested conditions
- 6 Council response to Inspector's Pre-Inquiry Note 2
- 7 Local Plan update 4 August 2016
- 8 Notifications of the inquiry
- 9 Appeal decisions refs. APP/W1525/A/14/2226970 May Farm, East Hanningfield; APP/W1525/C/14/2227120 East Hanningfield Road
- 10 Signed witness statement of Mrs Scamp
- 11 Signed witness statement of Mr Lowe
- 12 Caravan site licence: Greenacres, Silver Lane, Willingale, dated 10 December 2014
- 13 Committee report ref EPF/50/96 1 April 1996
- 14 Planning application form ref EPF/50/96 + plans
- 15 Signed statement of common ground
- 16 Database on traveller sites 22/06/2016
- 17 Closing submissions for Mr Davies
- 18 Closing submissions on behalf of the Council
- 19 Closing submissions on behalf of the Appellant

20 Bundle of authorities