The Planning Inspectorate

Appeal Decisions

Inquiry held on 6 to 9, 13 and 14 September 2022

Site visit made on 6 September 2022

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal A Ref: APP/B5480/C/20/3265817
Land at New Acres, West side of Benskins Lane, Noak Hill, Romford, RM4 1LB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr M McDonagh against an enforcement notice issued by London Borough of Havering.
- The notice, numbered ENF/457/20, was issued on 18 December 2020.
- The breach of planning control as alleged in the notice is:
  1. Without planning permission, the material change of use of the land to residential use as a travellers' site; and
  2. Associated unauthorised operational development on the land, namely laying hard surfaces, erecting timber fencing, siting waste facilities and subdividing the land into 10 distinct plots.
- The requirements of the notice are to:
  In the area hatched in black on the attached plan:
  i. Cease using the land for residential purposes or as a travellers' site; and
  ii. Remove all mobile homes, static caravans, touring caravans, utility buildings and other residential paraphernalia from the land; and
  iii. Remove all fencing from the land; and
  iv. Remove all hard surfacing and aggregates; and
  v. Remove all other debris, rubbish or other materials accumulated as a result of taking steps (i) to (iv) above; and
  vi. Restore the land to its condition which existed before the unauthorised development and change of use were carried out.
- The periods for compliance with the requirements are: one month for steps (i) and (ii) and two months for steps (iii), (iv), (v) and (vi) after the date when the Notice takes effect.
- The appeal was made 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. The appellant subsequently decided not to pursue the ground (f) appeal[1].

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

Appeal B Ref: APP/B5480/W/20/3263355
Land northwest of Benskins Lane, Noak Hill, Romford, RM4 1LB

- 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 M McDonagh & Gypsy-Traveller Group against the decision of London Borough of Havering.

[1] WSP proof of evidence paragraph 8.23

- The application Ref P1045.20, dated 24 July 2020, was refused by notice dated 13 November 2020.
- The development proposed is Change of Use of Land for the creation of a 10 Pitch Gypsy/Traveller site comprising the siting of 1 mobile home, 1 touring caravan, and the erection of 1 utility building per pitch.

Summary of Decision: **The appeal is dismissed**.

PRELIMINARY MATTERS

1. Three main matters were dealt with in the opening session of the Inquiry: the definition of the Land, corrections to the wording of the enforcement notice and the appellants' alternative schemes.

The Land

2. The Land shown on the plan attached to the enforcement notice appeared to me to cover a slightly different area to the application site in Appeal B and to the existing area forming the traveller site, as seen on an aerial photograph dated May 2021[2]. The potential difference was indicated by the position of the boundary in relation to two ponds and a track crossing the golf course. An overlay plan produced by the appellant confirmed that the two areas were not the same[3].

3. The Council submitted that to correct the enforcement notice plan to accord with the entire area of the developed site would not cause injustice or confusion. The proposed extended area did not include any land ownerships additional to those served with a copy of the notice.

4. The appellant made submissions on the inaccuracy of the plan and the Council's failure to enforce against the entirety of the development. In his view, to correct the plan would cause real prejudice.

5. An enforcement notice should specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise[4]. One of the consequences of the plan attached to an enforcement notice is that it defines the area in respect of which planning permission is sought if there is an appeal under ground (a). In this case to rely on the address of the Land would not be sufficiently precise to define the area of the deemed planning application and a plan is necessary.

6. Section 176 of the 1990 Act allows the Secretary of State (or the appointed Inspector) to correct any defect, error or misdescription in the enforcement notice provided that the correction will not cause injustice to the appellant or the local planning authority.

7. The power to correct the plan is not constrained to reducing the area to which the plan relates. The only test is one of injustice. The documentation showed the appellant understood the Council was taking enforcement action against the development that had occurred at the end of July 2020 and thereafter. The inclusion of the rear part of several of the pitches would not introduce any new matter and would assist all parties in respect of the ground (a) deemed planning application. It would not involve new interests in the land because the

[2] Appendix ST3 to Mr Thelwell's proof
[3] Document 1 plans
[4] Regulation 4(c) The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 SI 2002/2682

Council had served a copy of the notice on additional people to those occupying the pitches, who were understood to own the land.

8. I conclude that to substitute a corrected plan would not cause injustice to the appellant or the local planning authority.

Enforcement Notice

9. I raised various matters about the detail of some of the wording in the enforcement notice in Pre-Inquiry Note 1. In response the Council put forward a number of amendments for clarity and to correct a few typographical errors.

10. The appellant as part of the statement of common ground agreed the proposed amendments to the description of the alleged breach of planning control but subsequently made clear the amendments were not agreed. It was submitted that the scope of the notice would be extended and there would be implications for the deemed planning application fee rendering the ground (a) appeal invalid. Evidence was prepared on the basis of the notice as issued and the proposed amendments would cause injustice.

11. The notice alleges two breaches of planning control – the making of a material change in the use of the land and the carrying out of operational development. The notice should be read as a whole. The breaches are reflected in the timescales for issuing the notice, as set out in the reasons, in the requirements and in the compliance periods. The appellant accepts that a residential caravan site was developed and their evidence is directed at securing permission for a caravan site for occupation by travellers. There would be no injustice in adding a reference to the stationing of caravans for residential purposes in the description of the unauthorised material change of use and requirement (i). To do so would not introduce a new matter and would be consistent with requirement (ii) to remove all mobile homes, static caravans and touring caravans from the land. The utility buildings, also included in requirement (ii), may be regarded as facilitating the change of use and need not be stated in the change of use allegation.

12. The Council proposed including 'erecting associated buildings' in the description of the operational development and in requirement (ii). I consider this correction would extend the scope of the notice in respect of the operational development, which would cause injustice to the appellant. The minor additions to clarify the position and purpose of the timber fencing would not raise any new matter and are acceptable.

13. The deemed planning application was fee exempt and therefore the proposed corrections would have no implications in this respect. I am satisfied that the proposed corrections to the notice would not result in injustice to the appellant or the local planning authority, except for the amendment to the description of the unauthorised operational development.

14. For the reasons given above, I conclude that the enforcement notice does not describe with sufficient clarity the alleged breach of planning control, steps required for compliance and the Land where the breach is alleged to have taken place. It is open to me to correct the errors, as outlined above, in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would not be caused were I to do so.

Alternative Scheme(s)

15. By way of background the appellant accepted that the development on the ground does not fully accord with the proposal submitted in July 2020 (now Appeal B). The appellant stated the correct place to consider the development on the ground is within the section 174 appeal. An alternative scheme is progressed through ground (a). The scheme under the section 78 appeal is the proposal for which planning permission is sought[5].

16. Appeal A. The appellant put forward a draft alternative layout for consideration in the ground (a)/deemed planning application, which would be secured through a site development scheme condition[6]. The plan shows ten pitches occupying a smaller, more central area within the Land, together with an ecological mitigation area to the rear and green space to the front of the Land. A restored pond is shown extending into the site as part of green space between re-formed pitches 1 and 2. I will refer to this proposal as alternative scheme 1.

17. Appeal B. The appellants' landscape architect put forward a revised layout and outline landscape strategy (plan ref 847/01) that would be supported by a long term landscape and ecological management plan[7]. I will refer to this proposal as alternative scheme 2. On first view the layout is similar to alternative scheme 1 in so far as the ten pitches would occupy a more compact area within the central part of the site. A west landscape buffer is shown at the rear and a woodland mitigation zone at the front of the site, with a restored landscape margin along the length, but outside of, the south western site boundary. On closer inspection, differences to alternative scheme 1 are apparent in the pitch layout, extent of hard standing, siting of an amenity building and green space at the rear of the pitches.

18. The appellants submitted the alternative scheme 1 plan and plan 847/01 as part of the proof of evidence documentation on 10 August 2022. In terms of Appeal A no reference was made to such plans in the grounds of appeal and no statement of case was put forward. In terms of Appeal B, the Appellant Group's statement of case stated the initial harm to character and appearance over time would be addressed with an appropriate landscaping scheme, which could be the subject of a planning condition. In a Pre-Inquiry Note I asked the appellants to clarify which of the site layouts was being proposed and to explain why full particulars of the matter were not set out at the statement of case stage. I also asked the Council for its comments on whether the plans should be accepted for consideration.

19. In the opening session of the Inquiry the appellant explained that the plans were indicative of what could be achieved through a site development scheme secured by a planning condition. The biodiversity and design concerns raised by the Council were addressed. There was nothing controversial about reducing the extent of development and the indicative schemes would be within the jurisdiction of the ground (a) appeal.

20. The Council objected to the plans being considered as part of the appellants' case, as the schemes were quite different to what had been developed on the

[5] WSP proof paragraph 6.3
[6] WSP proof paragraph 8.2 and Appendix 6 for the plan
[7] Mr Draffin's proof paragraph 5.1 and Appendix E within Appendix A, the landscape and visual impact assessment.

ground by the time the enforcement notice was issued. The Council noted that in terms of procedure the appellants' statements of case made no reference to these alternative schemes. As a matter of procedural fairness the plans should not be accepted.

21. As I observed at the Inquiry, the submission of the plans at proof of evidence stage was not in accordance with the Inquiries Rules[8] or the Planning Inspectorate's Procedural Guidance[9]. Full particulars should have been set out at the statement of case stage. However, the Procedural Guidance also states that the Inspector can, at their discretion, accept a late document.

22. In my ruling I made a distinction between Appeal A and Appeal B. In Appeal B the proposal considered by the Inspector should essentially be the scheme that was considered by the Council in determining the application. The appeal process should not be used to evolve a scheme. Taking account of the very significant differences between the proposed and alternative layouts I did not accept the new plans as amended or additional plans. The only consideration would be to regard them as illustrative (not indicative) plans in the context of a site development scheme planning condition. In this respect it was relevant that the appellants did not seek to put them forward as substitute plans to those originally submitted with the planning application.

23. The position is somewhat different in Appeal A. A consideration is whether the illustrative schemes fall within the scope of the description of the matters that constitute the breach of planning control[10]. The Council subsequently argued that they did not and amounted to a mixed use development. However, my initial view was that proposals for an ecological mitigation area, landscape buffers and green space could be treated as forming part of the traveller site, even allowing for the sizeable areas shown. Whilst very significant works would be involved in reducing the size of the pitches, the *Bhandal* judgement[11] is very relevant. That case confirmed that the essential question is not whether the proposed alternative requires additional work, as a need for any new work is not determinative, but whether it could properly be described as relating to the whole or part of the matters enforced against. A narrow view should not be taken of the section 177(1)(a) power[12]. With these considerations in mind, I decided that the plans should not be turned away.

24. In summary, I accepted the alternative schemes 1 and 2 as illustrative layouts for consideration to inform what may be achievable under a planning condition requiring the submission of a site development scheme. I did not accept the plans as a revised or additional plan to the plans originally submitted with the application in Appeal B. My view is there is incompatibility between the application plans and the illustrative plans. The plans may inform the ground (a) deemed planning application in so far as I am able to grant permission for

[8] The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002 (SI 2002/2685) and The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (SI 2000/1625)
[9] The Procedural Guide: Planning appeals – England, and Procedural Guide: Enforcement notice appeals – England, both published by the Planning Inspectorate
[10] Section 174(2)(a) of the 1990 Act: A ground (a) appeal is 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.
[11] *Bhandal v Secretary of State for Housing, Communities and Local Government & Bromsgrove District Council* [2020] EWHC 2724 (Admin)
[12] Section 177(1)(a) of the 1990 Act: In determining an appeal made under section 174(2)(a) the Secretary of State, or Inspector, may grant planning permission in respect of the matters stated in the enforcement notice as constituting the breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates.

all or part of the land and all or part of the development. However, it is important to remember that planning permission is not able to be granted for a different development to that described as the matters constituting the breach of planning control.

25. Following my ruling the Council decided, on balance, not to ask for an adjournment of the Inquiry to consider the plans in more detail and the Inquiry continued as programmed.

26. At the end of the Inquiry, the Council submitted the illustrative drawings proposed a mixed use scheme. That being so the illustrative schemes did not fall within the scope of the description of the matters that constitute the breach of planning control and could not be considered through the mechanism of the ground (a) appeal. I will return to this matter in the Appeal A ground (a) appeal.

Appendix 3 plans

27. The appellants put forward annotated plans to indicate the provision of visibility splays at the site entrance, facilities (primarily amenity space) and a drainage layout to inform Appeal B and to address reasons for refusal[13].

28. These annotated plans raised no new matter and will be considered further in the assessment of the developments.

REASONS: APPEAL A AND APPEAL B

29. The Land is in the Metropolitan Green Belt but is not subject to any designations regarding nature conservation, landscape or heritage. In both appeals the development for consideration is the use of the land as a Traveller site.

30. The planning policy context and the main issues and considerations are the same for the ground (a) appeal in Appeal A and the proposal in Appeal B.

Planning Policy

31. The relevant policies have changed since the determination of the planning application and the issue of the enforcement notice, a matter that is addressed in the statement of common ground.

32. The development plan now comprises the Havering Local Plan 2016 – 2031, adopted in November 2021 (the HLP) and the London Plan published in March 2021. The National Planning Policy Framework July 2021 (the Framework) replaced the previous version published in February 2019. Planning Policy for Traveller Sites August 2015 (PPTS) should be read in junction with the Framework.

33. In the London Plan Policy G2 protects London's Green Belt and development proposals that would harm the Green Belt should be refused except where very special circumstances exist. Policy H14 requires Boroughs to actively plan for gypsy and travellers' accommodation needs. In the HLP the most important policies are Policy 11 gypsy and traveller accommodation, Policy 26 urban design, Policy 27 landscaping, Policy 30 biodiversity and geodiversity and Policy 32 flood management. Policy 11 part (1) identifies and addresses

[13] WSP proof paragraphs 7.9-7.11, 7.21, 7.26 and Appendix 3

accommodation needs and part (2) sets out development criteria for traveller sites. The policies are generally consistent with the Framework and are up-to-date.

34. The Court of Appeal judgement *Smith v SSLUHC & Ors*[14] was issued after the close of the Inquiry. The judgement was specific to the Inspector's decision, where race discrimination was an element of the challenge. As part of its deliberations the Court analysed the change in the definition of gypsies and travellers introduced by PPTS. It was held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim. PPTS was not quashed or declared unlawful and remains extant.

35. The main parties were invited to comment on the implications of the judgement, if any, for these appeals and I have taken into account the representations. I will apply PPTS to the appeals, except for the definition of "gypsies and travellers" set out in Annex 1 of the document.

Main issue

36. The main issue is whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

37. The reasons for issuing the enforcement notice and the reasons for refusing the planning application inform the matters for consideration. These are the effects on: the openness of the Green Belt and on the purposes of including land within it, landscape character and appearance of the site and its surroundings, biodiversity, accessibility and on surface water run-off. Policy on intentional unauthorised development is relevant. The use of planning conditions to mitigate any identified harm also will be considered.

38. The considerations that may weigh in favour of the development include the general need for traveller sites, with particular regard to the level of local provision and need for sites, the availability (or lack) of alternative accommodation for the occupants that is affordable, suitable and acceptable; and the personal circumstances of the occupants, which takes account of the best interests of the child as a primary consideration.

39. Integral to my decision-making will be exercising duties under the Human Rights Act 1998. Article 8, a Convention Right[15], affords a person the right to respect for their private and family life, their home and their correspondence. This qualified right requires a balance between the rights of the individual and the needs of the wider community. There is a positive obligation to facilitate the Gypsy way of life to the extent that the vulnerable position of Gypsies and Travellers as a minority group means some special consideration should be given to their needs and different lifestyle in the regulatory planning framework and in reaching decisions on particular cases.

40. Under the Equality Act 2010 public sector equality duty (PSED) I will have due regard to the three aims identified in the Act – to eliminate discrimination, advance equality of opportunity and foster good relations. Irish Travellers are

[14] *Smith v Secretary of State for Levelling Up, Housing and Communities & Others* [2022] EWCA Civ 1391
[15] Article 8 of the European Convention on Human Rights, which was enshrined into UK law by the Human Rights Act 1998.

an ethnic minority and have the protected characteristic of race under section 149(7). I am also aware from the evidence that there are persons on the site with the protected characteristics of age and disability. There is no doubt that the PSED is engaged in these appeals. The decisions must be proportionate to achieving the legitimate planning aims.

APPEAL A

Ground (a), the deemed planning application

41. In the context of the main issue, I will first assess the planning merits of the development that has taken place, even though the appellant did not attempt to justify the caravan site in its current form.

42. With reference to the Framework[16] and Policy E in PPTS, I conclude that the material change of use and the operational development, consisting of the engineering operations works and the erection of the fencing, amount to inappropriate developments in the Green Belt. This was common ground between the appellant and the Council[17].

Effect on the Green Belt

43. In the past the land formed part of the Stapleford Abbots Golf Course[18]. The active golf course use ceased but the characteristic features of the outdoor recreational land use remained, including the undulating topography, fairways, bunkers and ponds, woodland, rough scrub and trees. Aerial photographs[19] of the appeal site showed the land was open grassland, with a wooded area on the frontage, ponds enclosed by trees and vegetation near the southern boundary and a small bunker towards the back. The site prior to development was not previously developed, untidy or derelict land.

44. Towards the end of July 2020 development began and thereafter the entire site area of approximately 1.3 hectares (ha) was laid to hardstanding. Close boarded fencing was erected and the parking of vehicles took place. Caravans were introduced together with some utility blocks. The change to a residential caravan site, the associated residential paraphernalia and residential activity resulted in a very different use when compared to the golf course. Subsequently the use has consolidated on some pitches through additional dayrooms, outbuildings or sheds, play equipment and domestic items. On the day of the site visit pitches 2, 8 and 9 remained less developed.

45. Openness and permanence are essential characteristics of the Green Belt. Openness has a spatial aspect and a visual aspect. Certain elements of the development, because of their physical form, have resulted in a loss of openness notably the static caravans/mobile homes, dayrooms, utility blocks and close boarded fencing. The parking of vehicles and the touring caravans, whilst not fixed, also contribute to this loss to a lesser degree. The effect on the visual aspect is strong because the extensive hard surfacing, fencing and the almost complete loss of greenspace give a very developed appearance. The development has not preserved the openness of the Green Belt and the loss amounts to serious harm.

[16] Paragraphs 149 and 150 of the Framework
[17] Statement of Common Ground paragraph 6.1
[18] The name of the golf course is from the Statement of Common Ground. Maps of the area identify it as The Priors Golf Course.
[19] Appendix ST1, Appendix B to LIVIA

46. Green Belt serves five purposes, as set out in paragraph 138 of the Framework. The London Plan specifically identifies the London Green Belt's role in containing the further expansion of built development and in assisting urban regeneration. The Local Plan Policy Map (North) confirms the appeal site is located within the countryside. The site is to the north east of the built up area of Harold Hill, outside of the nucleus of Noak Hill and within the circle of the M25 motorway. In this metropolitan area the development of the traveller site conflicts with the purpose of checking the unrestricted sprawl of large built-up areas. A very significant encroachment into the countryside has occurred. The caravan site adds to the loss of open land and spread of development around the small settlement of Noak Hill but it does not contribute to the merging of any neighbouring towns. The effect on the setting and special character of historic towns is not a relevant consideration in this location.

47. The traveller sites allocated through the HLP have been removed from Green Belt. The supporting text to Policy 11 acknowledges that post 2021 there is unlikely to be scope for sites within the urban area to address the accommodation needs of travellers. Given these factors there is no conflict with the purpose of assisting urban regeneration.

48. In summary the creation of a traveller site, with the combination of use and works, has not preserved the openness of the Green Belt and conflicts with two of the purposes of including land within it. Inappropriate development has occurred, which by definition is harmful to the Green Belt and has substantial weight. The loss of openness is serious, leading me to conclude that the totality of the harm to the Green Belt has very substantial weight.

Character and appearance

49. The countryside area around Noak Hill has a semi-rural character, where the land uses reflect the urban fringe location. The golf course, with its engineered topography, is a dominant and extensive area of open land that complements the agricultural fields and paddocks. Landscape features include small woodlands, such as the protected Curtis Wood north of the site, field hedgerows, watercourses, ponds and ditches. The M25 is a major transport corridor to the east. The various businesses and residential properties typically front onto the local road network. Land is crossed in places by tracks and public rights of way. The elevated position on the Havering Ridge allows for extensive views across London from certain locations.

50. Benskins Lane is a long straight unadopted road between Church Road and the M25 corridor. A number of properties front onto the Lane, more particularly on its eastern side, and which extend some way back. Vegetation provides some degree of enclosure and screening. The unauthorised nature of certain uses, such as scrapyards, storage of waste and building materials and stationing of mobile homes[20] considerably reduces the relevance of these properties to the established character of the area. An existing and now allocated traveller site Gravel Pit Coppice is at the far northern end of Benskins Lane. Another allocated site is off Church Road.

51. The appeal site, when part of the golf course, fitted well into the countryside character of the area, especially because of its openness, boundary hedgerows and wooded enclosure, lack of built form and urban features. The development

[20] Appendix ST4 provides a summary

now is a stark contrast that fails to respect the wider surroundings to Noak Hill. The appellant's landscape architect aptly described the current site as being stripped of all vegetation and completely hard surfaced, making a negative contribution to the overall character with significant discordant features. The site layout shows little application of good design principles and because of the size of the site the harmful consequences are more serious.

52. Views of the development are primarily from Benskins Lane[21], the wider public rights of way network, the golf course and adjoining and nearby properties. The Council's photographic evidence of the site frontage and Benskins Lane in October 2014 indicates a very leafy, green aspect with mature vegetation providing 'soft' enclosure. The Lane had a truly rural appearance. Views from the public footpaths to the south and north west would have been of the open recreational land and woodland, harmonising with the prevailing open land use.

53. The short distance views from the site entrance area on Benskins Lane are now of close boarded fencing and the access road extending through the site, together with the caravans and residential features. The appearance is one of a very urbanised site, even though the low profiles of the caravans to some extent limit the degree of visual intrusion. From other identified viewpoints the visual effects of the development vary depending on distance, intervening vegetation and backdrop. The removal of trees and hedgerows and the erection of solid boundary fencing increase the level of visual change.

54. When compared to the baseline position and applying criteria (iii) and (vii) of HLP Policy 11 the site is not provided with high quality boundary treatment and landscaping. The harm to the visual amenity of the local area is unacceptable. The development conflicts with Policies 26 and Policy 27 of the HLP that seek to ensure new development respects, integrates with and enhances its surroundings. Policy DC69 from the Borough's Core Strategy 2008, cited by the appellant's landscape consultant, was superseded by the HLP policies.

55. The policy expectation, in the development plan (HLP Policy 27 and London Plan Policy G7) and in the Framework, is that development proposals should ensure that wherever possible existing trees of value for amenity and biodiversity should be retained. This approach should be applied whether or not trees are protected by a tree preservation order. No attempt was made to retain trees in the site development.

Biodiversity

56. The appellant's retrospective ecological appraisal described the site as previously comprised of grassland, scrub and scattered trees with ponds on the site boundary. The site would have had a high ecological value for protected species, although it is uncertain whether the development removed any invasive or protected plant species. The appraisal concludes that the development resulted in the loss of all vegetated habitats and a net loss of biodiversity. The site no longer has biodiversity or ecological value and fails to provide suitable habitat for wildlife[22].

57. The ecological appraisal confirms that the development was carried out with no attempt to manage impacts on biodiversity and with no aim to secure a net

[21] Benskins Lane is a public footpath, as confirmed by the Definitive Map at Appendix ST2
[22] The detail of the ecological evaluation is set out in Table 5 at paragraph 4.2 of the Appraisal

biodiversity gain. The scheme conflicts with London Plan Policies G6 part D and G7 part C and criterion (vi) of Policy 27 of the HLP.

Surface water drainage

58. HLP Policy 11 criterion ii requires a proposed site to have essential services, including water, sewerage, drainage and waste disposal or be capable of being provided with these. Policy 32 seeks to reduce the risk from surface water flooding by requiring development proposals to reduce surface water run-off by providing sustainable drainage systems (SuDS) unless there are practicable reasons for not doing so. Proposals for SuDS should apply the London Plan drainage hierarchy and include clear arrangements for ongoing maintenance over the lifetime of the development.

59. The appellant explained that presently the surface water drains through the surface materials and that there was no evidence of surface water flooding on the site. However, there are no details to explain how the hard surfaces were constructed and no reason why the policy requirements for a SuDS should not be met.

Accessibility and access

60. An aim of the PPTS is to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure, promoting the social dimension of sustainability. The Framework includes policies on the prioritisation of pedestrian and public transport access, promotes the use of sustainable transport modes and requires safe and suitable access be achieved for all users. In the development plan, criterion iv of Policy 11 says sites should have safe access to the highway and public transport services. The London Plan seeks to ensure new sites are well connected to social infrastructure and public transport facilities.

61. At the Inquiry the Council's planning witness accepted the unsustainable location of the site (cited in the reasons for issuing the notice) was not determinative to the Council's case.

62. The statement of common ground sets out that the PTAL[23] of the site is zero, the worst level on the scale. Bus stops are within 1.9 kilometres but the route has no footways and requires walking on the verge or carriageway. On this information, the site is very poorly served by public transport and does not meet the Policy 11 test. Residents would be reliant on the private car for practically all travel needs. Nevertheless, schools, a medical practice and convenience stores are within an 8 minute drive at most. There is a good range of services not too far away by car. The site is policy compliant in PPTS terms. The nearby allocated traveller site at Gravel Pit Coppice is a useful comparator. This allocation in the HLP indicates that the recognised shortcomings in public transport accessibility and the potential adverse consequences for site occupiers may be outweighed by factors in favour of such a use.

63. The site access initially did not provide pedestrian visibility splays and as a result the safety of site residents and others was at risk. This matter and the related policy conflict have been resolved satisfactorily by repositioning the boundary fence.

[23] Public Transport Accessibility Level

Policy 11 development criteria

64. The land is of sufficient size to accommodate ten pitches but the current layout is unacceptable. The site is capable of being provided with essential services. However, an acceptable drainage layout has not been demonstrated, a matter of relevance to protecting the local environment and public health. Boundary treatment is not high quality and the site is devoid of soft landscaping. The adverse impacts on the visual amenity of the local area are unacceptable.

65. The access onto Benskins Lane is now safely laid out with adequate visibility splays. There is no safe route to public transport services for pedestrians because of the absence of any footways and the distance involved. There is no evidence to suggest that traffic generated by the use would have an unacceptable impact on the capacity and environment of the highway network or that the traveller site would place undue pressure on local community services. The location of the site and pattern of surrounding land uses are such that the residential use would not result in unacceptable impacts on the amenity of occupiers of neighbouring sites. There is no necessity to apply the sequential and exception tests in respect of flood risk management.

66. Therefore certain site development criteria are met but there are also serious conflicts with criteria regarding layout, landscaping, site services and site infrastructure. I conclude that as developed the traveller site is not supported by Policy 11.

67. With reference to the criteria in paragraph 26 of PPTS, the site was not previously developed land. The development is not well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness or to promote opportunities for healthy lifestyles. The enclosure with close boarded fencing gives the impression that the site and its occupants are deliberately isolated from the rest of the community.

Intentional unauthorised development

68. The Government policy on intentional unauthorised development was confirmed by a Written Ministerial Statement in December 2015 and has remained in place after the publication of the Framework. The appellant disputed this but did not identify a specific statement confirming its withdrawal. I will apply the policy, which is consistent with a number of Inspectors' decisions included in the appellant's bundle[24].

69. The policy was in response to concern about the harm caused, particularly in the Green Belt, where development is undertaken in advance of obtaining planning permission. In such cases there is no opportunity to appropriately limit or mitigate harm that may be caused and a planning authority may have to undertake expensive and time-consuming enforcement action.

70. In terms of the chronology, the Council conducted a site visit on 24 July 2020 and established that the land was being cleared with heavy duty machinery and equipment. A temporary stop notice was served that day upon the persons on site and by the display of notices in and near the site. A high court injunction

[24] For example Appendix 14 APP/A1910/C19/3237920 dated 7 June 2021 paragraph 128; Appendix 16 APP/P0119/C/20/3263107 dated 4 October 2021 paragraphs 54 to 56; Appendix 17 APP/J1535/C/21/3270539 dated 22 June 2022 paragraph 87; Appendix 20 APP/J19115/W/19/3234671 dated 4 February 2020 paragraphs 48, 49; Appendix 22 APP/U2235/C/19/3243809 dated 16 December 2021 paragraph 35.

order was served on 31 July but as work continued a further application was made that resulted in the grant of an interim high court injunction order on 7 August 2020. Nonetheless work did not cease, the site was occupied and the Council pursued further legal action. High Court proceedings remained outstanding at the time of the Inquiry.

71. The planning application was dated 24 July 2020 (Appeal B). The appellant's planning consultant confirmed at the Inquiry that he advised his clients on Tuesday 21 July no works should take place before planning permission was granted. He also advised them not to proceed with works when the temporary stop notice was served. He accepted that intentional unauthorised development took place.

72. When giving their evidence residents maintained they did not know what the court proceedings were about. I find this difficult to believe bearing in mind members of the Appellant Group attended the court and were legally represented. Furthermore, their planning consultant gave clear and unequivocal advice to them. This is a case where intentional unauthorised development occurred. Section 73A allows for planning permission to be sought and granted retrospectively but the policy introduces an aspect of intent.

73. Substantial environmental harm has resulted in the development being carried out without the benefit of any consideration of planning issues, as described above. To the extent that harm may have been susceptible to mitigation, there is none and the damage has been done. The layout does not even follow the proposed scheme submitted as the planning application. To date the Council has incurred time and expense in taking enforcement action, including action at the outset to try and prevent the development continuing.

74. The appellant, members of the Appellant Group and their planning consultant seek to justify the action because they were desperate to secure a site and to avoid reliance on roadside camping. However, the extent of the works and the area involved goes some way beyond that necessary to overcome any immediate hardship for themselves and their families.

75. The various considerations lead me to conclude the intentional unauthorised development has very significant weight.

Conclusions on harm

76. National policy attaches great importance to Green Belts and the development plan strongly supports the continued protection of London's Green Belt. The totality of harm to the Green Belt resulting from the major development has very substantial weight.

77. The site planning and poorly designed layout do not respect the character and appearance of the surrounding area, which weighs strongly against the development. The total loss of all habitats, with no provision for future biodiversity gain, has considerable weight. The adequacy and suitability of the site drainage infrastructure remains to be resolved. There is little choice in the means of travel, although this negative factor has limited weight when accessibility to social, education and health facilities is considered in the round.

78. Even when account is taken of the acceptable aspects, the totality of harm is very high when tested against the development plan policies.

79. In this case the circumstances are such that the carrying out of intentional unauthorised development has very significant weight.

Need

80. The context is a generally recognised need for traveller sites nationally and in Greater London.

81. Policy 11 of the recently adopted HLP seeks to ensure the accommodation needs of Gypsies and Travellers and Travelling Showpeople who meet the definition of travellers and those who do not meet the planning definition (as set out in Annex 1 of PPTS) are met for the Local Plan period 2016-2031. For the purposes of this appeal I will focus on Gypsies and Travellers.

82. Policy 11 relies on the Gypsy and Traveller Accommodation Assessment (GTAA) update report of July 2019, which identifies a need for 220 pitches for the Plan period 2016 to 2031. This total need is said to comprise of 174 pitches for Gypsy and Traveller households that meet the PPTS definition, 43 pitches for Gypsy and Traveller households that do not meet the PPTS definition and 3 pitches for undetermined households. The GTAA recognises and explains how the accommodation needs of Gypsies and Travellers who do not have PPTS status were captured. A very significant proportion of the overall need was identified for the period 2016-2021, a total of 171 pitches. The requirement for the period 2021 to 2026 is 23 pitches in total. Any shortfall from the previous period would also be relevant.

83. By way of background, Policy 11 underwent substantial modification prior to adoption. The Local Plan Inspector in her report dated 14 October 2021 identified shortcomings of the earlier 2018 GTAA that led to an underestimation of need: it did not reflect an up-to-date assessment of existing gypsy sites, the response rate to the survey undertaken was low and need arising from proxy interviews was not included. One of the consequences was that Policy 11 of the submission Plan did not seek to meet the need for those outside the planning definition of a Traveller[25], including the "unknown" households. The 2019 GTAA was considered by the Local Plan Inspector to have adequately addressed those issues, resulting in a robust assessment of need for the purposes of the Local Plan. Specific to the appellant's submissions on the *Smith* judgement, I consider in Havering there is not the detailed evidence to conclude that the 2019 GTAA undercounted actual need, possibly by some 75%, given that the 2019 GTAA did not confine its assessment of need to travellers with PPTS status.

84. The main area of dispute between the Council and the appellant on the level of need related to in-migration and households in bricks and mortar accommodation.

85. In-migration. The GTAA, drawing from evidence from stakeholder and household interviews and other local studies, assumed zero net migration. Proposals for a new site by any households from outside of Havering would be considered against the criteria in Policy 11. One pitch related to in-migration was included in the assessment of future need. At the Inquiry the Council's witness from ORS[26] confirmed that there was no evidence of an influx due to

[25] The meaning of Gypsy and Traveller as set out in Annex 1 of PPTS for the purposes of that document
[26] Opinion Research Services

migration and no evidence from their fieldwork that the appellant group were residing in Havering in 2019.

86. The appellant highlighted the difference in the number of unauthorised sites and pitches reported in the 2018 GTAA compared to the 2019 GTAA[27]. The increase was attributed partly to in-migration. The Council's witness disagreed. He explained that surveyors initially were refused access to sites and when access became possible a higher number of unauthorised pitches were found than thought. The increase in the number of sites was due to sub-division, to meet the needs of existing residents.

87. The Council's witness, who was responsible for the GTAA work, may reasonably be expected to have a greater knowledge of the survey information and detail of the response than the appellant's planning witness. The appellant did not substantiate the difference in number with site-specific analysis or demonstrate a pattern or trend of in-migration into the Borough. The appellant also relied on the current site residents residing in and resorting to Havering for a number of years. However, if that was the case, their need for a site would not readily fall within the category of need arising from in-migration. Therefore, whilst the size of the increase is somewhat surprising, my initial view is that the difference in the number of unauthorised sites and pitches between the 2018 and 2019 GTAAs is not necessarily attributable in a significant way to in-migration.

88. Attention was drawn to an injunction, which the appellant submitted showed the presence of persistent unauthorised encampments in the Borough during the period 2016 to 2019. The appellant emphasised the matter was not taken into account in the GTAA and was not placed before the Local Plan Inspector. The evidence was regarded as a significant indicator of in-migration and showed that accommodation needs were not being addressed either through additional allocations or public pitches. The injunction supported the appellants' evidence of their experience of unauthorised camping during the same period.

89. As the Council demonstrated the issue of short-term roadside encampments was recognised within the 2019 GTAA. The Council explained the application for an injunction was due to the number of recorded incidents of encampments on public parks and open spaces, on Council owned car parks, at Borough schools and on industrial land in a Business Improvement District. A significant majority involved dumping of waste and other criminal activity.

90. The evidence suggests to me that the type of encampments in question provide little support for and do not substantiate an argument of a trend of in-migration into the Borough by travellers seeking permanent pitches.

91. Bricks and mortar. The 2019 GTAA explained that the 2011 census identified 46 households in Havering living in bricks and mortar who identified as a Gypsy or Irish Traveller. The document refers to rigorous efforts to make travellers living in bricks and mortar aware of the study and the onus was placed on them to make contact with ORS. The assumption is that all those wishing to move to a site would do so. One interview resulted, the household indicating they had no wish or plans to move to a site. On that evidence no current need was made to cater for movement from bricks and mortar.

[27] 2018 GTAA reported the position in July 2016 to be 23 unauthorised sites (56 pitches); the 2019 GTAA reported the position in December 2018 to be 31 unauthorised sites (102 pitches)

92. The site residents' evidence identified 5 partners who were or are living in bricks and mortar. Of those, two partners who used to be in a house in Havering are now resident on the appeal site. In the remaining 3 cases the dwelling is not in Havering and there is no indication the resident is seeking to move to a pitch. This evidence suggests the 2019 GTAA may have underestimated a need from residents in bricks and mortar but even so the 2019 GTAA is the best objective evidence available.

93. Personal need. The appellant's case is that the families have been residing in and resorting to Havering for a number of years, yet their need was not recorded in the 2019 GTAA.

94. It seems to me the picture is not straight forward when account is taken of the written personal statements and oral evidence. The residents' occupation of the Land post-dates the survey work. There is little indication that residents were living on an authorised or unauthorised pitch within the Borough, whereby their need would be identified. The written statements were not always consistent with the oral evidence. Statements tended to be less specific as to locations in London where appellants travelled, stopped or had a home base, whereas oral evidence more particularly identified Havering. Even so, in only four instances did residents specifically state that they travelled within or stopped in Havering. Based on the available evidence the 2019 GTAA should not be criticised for failing to identify the individual needs.

95. Certain themes are evident. The male residents have travelled widely around the country, and in one instance abroad. Travelling has not been confined to the Essex/London area. Travelling has become more challenging because of the lack of stopping places and the continual requirement to move on quickly from unauthorised encampments. A safe, stable base is preferred to raise a family and for health reasons and has in a few cases enabled families to come together after being separated. They became aware of the site by word of mouth from extended family or family friends and most residents have family connections with and family members living in Havering. Nevertheless, there was no suggestion of a specific intention or aim to settle in Havering and in all probability if a similar opportunity of land had arisen in a neighbouring or nearby authority area, it would have been thought suitable.

96. Notwithstanding a need for caution, the evidence demonstrates all site residents are in need of a pitch to act as a settled base.

Meeting Need

97. In summary, the HLP strategy set out in Policy 11 is to allocate sites to meet the identified need for the period 2016 to 2021 and to identify locations to accommodate needs in the period 2021 to 2026. Throughout the plan period pitches/sites coming forward and proposed by way of a planning application are to be assessed against the stated criteria in part 2 of the Policy, and account taken of the matters identified in criteria (a) to (e) of paragraph 24 of PPTS.

98. The Local Plan Inspector concluded in her report that there were some limitations in the Plan's approach but recognised the significant constraints on providing pitches in the Borough. With the prospect of an immediate update of the Plan on adoption the Inspector concluded that the approach (subject to the main modification) was sound. The intention to commence an immediate

update is stated in the adopted HLP. There is no reason to question the strategy.

99. Policy 11 allocates sites for gypsies and travellers and identifies the number of pitches to be accommodated on each site to meet need over the period 2016 to 2021. In total 162 pitches are identified, leaving the requirements for the additional 7 pitches to be addressed within the areas allocated to accommodate growth in the period 2021 to 2026. The shortfall in allocation (7 pitches) and the inability of certain sites, such as at Vinegar Hill, to achieve the stated number of pitches were highlighted by the appellant as an illustration of the failure to meet current need. However, these limitations were recognised by the Local Plan Inspector and are addressed and explained in the supporting text to the policy. They do not amount to a 'failure of policy' or undermine the HLP approach to provision. Importantly, and especially in view of the *Smith* judgement, Policy 11 seeks to provide for the accommodation needs of Gypsies and Travellers who were found to have and who do not have PPTS status or where status is uncertain.

100. Progress on delivering authorised pitches on the allocated sites to date has been mixed. However, at the Inquiry the Council explained the proactive approach taken to engage with the owners and residents to encourage and help them apply for planning permission, work which was slowed by the intervention of the Covid pandemic. At the current time no application has been made for some 65 pitches[28]. I do not see this as a failure of policy or as an additional contributor to a need for accommodation within the period 2021 to 2026 because the allocations apply to existing sites where gypsies and travellers reside. It is the formal process of regularisation and approval of details that is taking the time. In this respect the removal of the allocations from the Green Belt through the plan-making process should ease the process as very special circumstances do not have to exist. The sites do not have to have planning permission to be deliverable within the meaning of PPTS[29]. Therefore even carrying the 'need' forward into the current five year period, this element is met by a supply of specific deliverable sites.

101. The expectation, as set out in Policy 11, is that the majority of the accommodation needs arising in the period 2021 to 2026 could be met within existing sites or within land adjoining them where this is in the control of the household(s) on the existing sites. The named locations reflect this approach. For the needs unable to be met in this way reliance is placed on planning applications coming forward that would be judged against the part (2) policy criteria. The site delivery assessment provides information on the potential for existing sites to accommodate further growth and there is a degree of uncertainty over capacity and the actual need from the existing households. The HLP update was intended as an opportunity to comprehensively review how accommodation needs may be addressed.

102. I consider the HLP identifies developable[30] sites and the broad locations for growth for meeting this need. However, no evidence was produced for the Inquiry to detail or expand on the named locations or to show progress on an

[28] Inquiry Document 2
[29] To be considered deliverable, sites should be available now, offer a suitable location for development and be achievable with a realistic prospect that development will be delivered on site within five years.
[30] To be considered developable, sites should be in a suitable location for traveller site development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged.

annual update of the five year supply. By definition a windfall site is a site that is not specifically identified in the plan. Bearing in mind the five year period has now moved on a year, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against locally set targets has not been demonstrated.

103. Through the update of the HLP the 2019 GTAA will be reviewed as a key part of the evidence base, to ensure the need for accommodation is understood and recognised through appropriate provision. The update will also enable assessment of how the need for further sites can be met, recognising that scope for the provision of sites within Havering's urban area is unlikely because of the pressure for other land uses. At the Inquiry the Council stated that work on an HLP update started in November 2021. The GTAA will be updated, not redone, and the timing of this work will be later in the schedule. The Local Development Scheme gives late 2023 as the date to submit a new Local Plan for examination.

104. The "inevitability" of need being met by sites within the Green Belt was regarded by the appellant as an important factor in the balance supporting the development. The implication is that Green Belt harm is inevitable if need within the Borough is to be met. However, this does not weaken or modify Green Belt policy, nor does it reduce the actual harm caused by this development. The update of the HLP in providing for need will be subject to consultation and scrutiny. The consideration adds little weight to the case on need and lack of any alternative site and does not significantly affect the striking of a balance between benefit and disbenefit in this case.

Conclusions on need

105. Policy 11 of the HLP is the recently adopted policy in the development plan to guide the provision of traveller sites to meet identified need within the Borough. The evidence has demonstrated there is no reason to depart from its approach to site provision. The appeal development should be considered against the matters set out in part (2) of Policy 11. The failure of policy argument has not been substantiated.

106. The level of need within the Borough was established through the 2019 GTAA and in turn is now part of the adopted HLP. Having considered the specific matters raised by the appellant the local planning authority's assessment of need was robust. Inevitably, because of the accepted methodology used in GTAAs, the figures on need are not 100% accurate and will be subject to change over time. The update of the HLP is the appropriate process for reviewing the GTAA and how the need for further traveller sites will be met.

107. Locations are identified for meeting traveller needs in the plan period 2021 to 2026. However, the locations now do not equate to a supply of specific deliverable sites sufficient to provide 5 years' worth of deliverable sites against the locally set target.

108. The appellant and his family and the residents of the other nine pitches have a personal need for a permanent pitch, whether in response to personal and family circumstances, to ensure the best interests of the children are safeguarded and in response to wider constraints on finding sites and stopping places when travelling. Some site residents have family ties with Havering or nearby London Boroughs. Nevertheless, the personal needs do not require a

site or pitches to be in Havering or for all the families to be accommodated on a single site. That being said, there is no policy requirement for new sites to be confined to travellers with local connections.

Alternative sites

109. There are no public sites in the Borough and no evidence of available pitches on public sites in neighbouring boroughs or districts. The appellant and members of the Appellant Group who gave evidence at the Inquiry did not indicate they were registered on a waiting list with any authority.

110. The sites allocated in the HLP or that are expected to come forward on land adjoining are likely to be required to meet the accommodation needs of those families already in occupation and their relatives. On the basis of existing ownership they do not offer the potential for meeting the needs of the appellant and the families on the appeal site. Their evidence also suggests that affordability is likely to be an issue for most in any future land search. In the event the current appeals are unsuccessful the Council accepted that alternative places to stay could include the side of the road.

111. Therefore no alternative site or pitch has been identified within the short term to meet the accommodation needs of the appellant and the current residents of the site. The most probable prospect of a pitch is through the review and update of the HLP, through 'turnover' on an existing allocated pitch or through an acceptable windfall site either in the Borough or elsewhere. The levels of need within and around Greater London, the pressures on land resources within urban areas and constraints such as Green Belt indicate that alternative pitches that are suitable, affordable and acceptable would be difficult to find and secure. Within this context the ability of the appeal site to provide a safe home for Travellers is a positive factor.

Personal circumstances

112. Written statements were submitted from occupiers of all the pitches when the Appeal B planning application was made in July 2020. These statements, apart from one[31], were updated by residents through oral evidence at the Inquiry. Health, education, family issues and travelling patterns were covered. The Council submitted that much of the evidence was not credible and should be given little weight. My view is this observation applies more to evidence relating to knowledge about the injunction on the site, the associated court proceedings and need for planning permission. In certain statements explanations of travelling patterns lacked detail or were inconsistent with the earlier written statements. In respect of pitches 5, 8 and 9 personal evidence did not tally well with the lack of occupation and site conditions observed by the Council on a site visit carried out on 21 July 2022[32]. However, evidence regarding family matters was not contradicted by other evidence or shown to be inaccurate through cross examination and cannot be discounted[33].

113. Taking an overall view, the evidence demonstrated that a stable base has been of benefit to residents' home and family life, for example by allowing close family to visit at weekends and during school holidays, reducing anxiety experienced by non-resident family members over their health and welfare.

[31] The resident was unable to attend the Inquiry for personal reasons.
[32] Proof of Enforcement Officer paragraph 3.5
[33] The individual detail will be considered further in the proportionality assessments.

Residents have registered at local medical practises and attend clinics or specialist hospitals in the area. There were several instances where health was said to have improved since having a settled base. Aspirations were expressed about ensuring children received an education. Specific evidence related to educational matters was limited, although the residents of two of the pitches confirmed their children attended local schools. Residents have support from members of extended family or friends living on the appeal site. There are two pitches where occupiers are particularly vulnerable and where safety and stability are currently paramount to their welfare. The appellant's boxing career distinguished his evidence from that of other residents. His pitch currently is a home to his sister and her five children.

114. If the appeal is not successful compliance with the notice would result in the residents on each pitch losing their existing home and base and potentially having to return to reliance on unauthorised encampments. Family life and existing health and educational arrangements probably would be severely disrupted. The effects on residents' well-being would be serious and in particular the best interests of the children would suffer. The interference with the appellant's way of life and the family life of all other residents would have consequences of such gravity as to engage the operation of Article 8. The loss of the home would not assist in minimising disadvantages and advancing equality of opportunity for members of a minority group.

Other matters

115. In 2015 temporary planning permission was granted on appeal for a traveller site, known as Westwood Park, on land fronting Benskins Lane and which lies immediately to the north of New Acres. The site was formerly the maintenance yard for the golf course and was much smaller than the New Acres site[34]. The permission was limited to 3 years and pre-dated Policy 11 and allocations in the adopted development plan. Westwood Park is not included as an allocated traveller site in the HLP. All these factors and the reasoning in the appeal decision lead me to conclude the 2015 permission provides very little support for the New Acres development. The Council is currently investigating an unauthorised caravan site there on a slightly larger area than previously permitted.

116. Information was provided on the Prospect Road sites, which suggests that the matters in dispute are related to development management and are not for me to comment on. Accordingly little of direct relevance is gained from this evidence to assist in the current appeals.

117. The refusal of planning permission in May 2022 for a one pitch traveller site in the urban area on Spencer Road was in part because the Council accepted it did not have a 5 year supply of housing sites for the settled population whereas the HLP made provision for meeting the need for traveller sites. In addition, there was concern the proposal would prejudice the future development of a larger adjacent area. This decision illustrates the pressure on land resources within the Borough to provide all types of housing accommodation and the importance of effective use of land in meeting the need for homes.

118. The appellant made reference to a number of appeal decisions to support the arguments in favour of the development at New Acres. None of the cases were

[34] The Location Plan J003627-DD01 (Appeal B) illustrates the size of sites.

in the London Borough of Havering or any other London Borough. In all those examples where sites were in the Green Belt the permission was granted because very special circumstances existed. The weight attached to the various considerations was dependent on the specific facts of the case and the judgement of the decision maker. Certain decisions were used to bring out how the Inspector assessed the accessibility of a site location to services and facilities. The approach I have followed in my assessment is generally consistent with that of my colleagues.

119. Subsequently an appeal decision was submitted which was said to have some relevance for the manner in which the Inspector considered the *Smith* judgement, particularly in respect of need and the occupancy condition attached to the permission. This decision for a traveller site in the Borough of Basingstoke and Deane raises nothing that leads me to change my conclusions on need in Havering.

120. I consider the appeal decision related to mitigation and provision of enhancements to biodiversity in the Mitigation section below.

Initial planning balance

121. The order of need identified in the HLP is based on a robust assessment in the 2019 GTAA. The personal needs of the site residents for pitches could not reasonably have been foreseen and are additional to the identified need. Policy criteria are in place to assess windfall sites that may provide the pitches residents require. Having moved through the plan period in providing for the locally set target there is not currently five years' worth of deliverable sites. The appeal site is available whereas there are no alternative pitches in an acceptable location elsewhere for the site residents to move to now. In Havering acceptable sites within the urban area and outside Green Belt are unlikely. These aspects of need and supply together have considerable weight. They are brought into sharp focus by the position of the individual families who have developed their pitches in the hope the site will provide the answer to their accommodation, family and welfare needs. These personal needs add significant weight.

122. A Traveller site should be sustainable economically, socially and environmentally. Despite the considerations that support the development, the public interest arguments in protecting the Green Belt and local environment are very strong and are clearly of greater weight. The HLP site development criteria applied to a windfall site are not met sufficiently to give policy support for the development.

123. Within this context an important consideration is whether an otherwise unacceptable development could be made acceptable through the use of planning conditions. Alternative schemes 1 and 2 illustrate the amount of change the appellant considered necessary to address design and biodiversity concerns and make the development acceptable.

Mitigation

124. Planning Practice Guidance states when used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects.

125. All mitigation by way of landscaping and ecological enhancement would have to be within the area defined as the Land. The restored landscape margins and restored pond(s) indicated on alternative scheme 2 should be excluded from consideration because they fall outside the Land. The same comment applies to the restored pond indicated in alternative scheme 1.

126. Based on case law, planning permission may only be granted for the development described in the alleged breach of planning control, as corrected. To recap, the development here is the material change of use of the land to use as a travellers' site including the stationing of caravans for residential purposes with associated operational development including the laying of hard surfaces, erecting timber fencing, siting waste facilities and subdividing the land into 10 distinct plots by means of timber fencing.

127. Considerations related to mitigation proposals, as informed by the evidence on alternative schemes 1 and 2, centre on whether they fall within the scope of the deemed planning application and whether such proposals could be secured through a site development scheme (SDS) condition.

Deemed planning application

128. The illustrative schemes show a central pitch area, including amenity areas and buffer planting to the boundaries, on about 50% of the overall area. The appellant considered alternative scheme 1 would satisfy the criteria of HLP Policy 30 in full. The evidence refers to forming three zones comprising an entrance woodland/ecological mitigation area, a revised layout of pitches on the central area and a west landscape buffer or ecological mitigation area. The mitigation areas are envisaged as being distinct from the amenity area(s) for the pitches, through the creation of varied habitats and wildlife areas (to include native tree, scrub and hedgerow planting, wildflower grassland and reptile refugia and hibernacula), promotion of wildlife corridors and the formation of a landscaped envelope. These general objectives are not translated into an outline scheme and little information is provided on proposed aftercare and future management.

129. The alternative schemes provide for use as a ten pitch caravan site incorporating hard surfacing of varying extent and served by a central access road from Benskins Lane. Nevertheless, despite these similar elements, the proposals illustrated would be substantially different in character to the development on the ground when the notice was issued. The scale of the works required to bring about the changes on the 1.3 ha site would be substantial too, involving reconfiguration of the pitches and layout, excavation of and relaying of hard surfaces, ground works, ground preparation and planting of the soft landscaped areas.

130. Moreover, the landscape evidence and the ecological appraisal report indicate the primary function of the two mitigation zones is quite distinct from the residential use with very little, if any, functional relationship to the caravan site. The proportion of the Land given over to mitigation also supports a conclusion that these zones would not be functionally related to the primary use. This evidence suggests a mixed use comprising use as a travellers'

caravan site and an open space/woodland use[35]. A mixed use would not be within the scope of the deemed planning application.

131. The appellant emphasised that he is not seeking a mixed use planning permission and that "the landscaping proposals merely give the opportunity to comply" with policies in the Framework and PPTS to protect and enhance the landscape and environment[36]. In my view a primary use of the whole site as a residential caravan site has important implications for the future use and management of the potential entrance mitigation area and the western landscape buffer for ecological purposes and biodiversity gain. The likelihood is that benefits would not be as significant as claimed or as illustrated, and policy compliance would not be achieved. The same observation applies to any similar scheme to be submitted under a SDS condition. The positive weight to be attached to the potential site improvements through a site development scheme would be much reduced.

Planning conditions

132. The 1990 Act section 72(1) provides for conditions to be imposed on the grant of planning permission (a) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made), or (b) requiring the carrying out of works on any such land, so far as appears to the local planning authority to be expedient for the purposes of or in connection with the development authorised by the permission.

133. In addition to the three legal tests, conditions should be kept to a minimum and only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (the six tests). Planning Practice Guidance confirms that any proposed condition that fails to meet one of the six tests should not be used. This applies even if the applicant suggests or agrees to it.

134. The tests of reasonableness and enforceability are particularly pertinent to securing the mitigation on the scale illustrated on the submitted plans. Planning Practice Guidance states that conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness. Conditions cannot require that land is formally given up (or ceded) to other parties. Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. It may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition).

135. Conditions meeting the 6 tests would be able to control the number of pitches, the number and type of caravan on each pitch; to exclude business activity and larger commercial vehicles on the site; and secure a more suitable form of fencing and boundary treatment. Compliance with these conditions would not require significant changes to the pitch layout. The proposed condition requires no more than two caravans to be stationed on any pitch at any time, of which no more than 1 should be a static caravan. This constraint

[35] Planning Practice Guidance states that open space, which includes all open space of public value, can take many forms, have an ecological value and contribute to green infrastructure (Paragraph: 001 Reference ID: 37-001-20140306)
[36] Document 15 paragraph 1.1.19

would not provide adequate accommodation into the future for those pitches where there is now more than one household. The implication is not all current occupiers would be able to stay and that this is acknowledged by the appellant.

136. The appellant's case relies on the use of a planning condition to secure and achieve an alternative scheme, informed by the illustrative plans. In Appeal A the proposed SDS condition includes a requirement for an ecological enhancement and management plan for all landscape and ecological areas for the lifetime of the development. In addition, hard surfaces should cover no more than 50% of the total site area and landscape/ecological enhancement to all boundaries should have a minimum width of 15 metres (m) (except for the access to Benskins Lane).

137. Alternative scheme 2 gives the better indication of a 15m landscape/ ecological buffer in the central pitch area, which would reduce the depth of the hard surfaced area on each re-sited pitch to about half the existing. As indicated by the boundary treatment to the pitches the 15m zone probably would function as amenity space within the individual pitches. On alternative scheme 1 a 15m buffer is indicated along the northern boundary but it is less clear whether the space would be within individual pitches. No similar notation is shown to the southern boundary where the proposed four pitches would extend much closer towards the boundary. The appellant's planning evidence refers to landscaped boundaries of between 1.5m to 8m on either side of the site and along its perimeter[37]. All in all the inconsistencies do not assist in understanding the scope and extent of the intended mitigation.

138. It is common practice to attach a SDS condition to permissions for traveller caravan sites, less typical to seek to reduce the operational area by up to 50%. Application and compliance with the proposed condition potentially would substantially change the development which is the subject of the deemed planning application at issue. Such an outcome would not be reasonable. Closer inspection suggests that the two alternative schemes would not be entirely compatible with the requirements of the condition. Overall a lot of uncertainty is introduced over a potential outcome when the illustrative schemes are considered alongside the proposed condition and description of development. This uncertainty has particular significance in deciding on the weight to be given to harms and benefits in the Green Belt balance.

139. Those site residents giving oral evidence, and who were asked, confirmed they understood the alternative scheme proposals and that they would be happy to comply if it meant they could stay on the site. On behalf of the appellant it was also stated that requirements for a SDS and ecological mitigation would be acceptable should a temporary permission be granted. However, I have to be satisfied that any condition imposed meets the tests and is enforceable.

140. The illustrative schemes would involve substantial changes to the current site layout. To achieve the scale of ecological mitigation indicated pitches would have to be re-sited, reconfigured and reduced in size. The landscape buffers and ecological mitigation areas would involve substantial new planting and long term management commitments, over and above the landscaping to pitches and amenity spaces. The appellant's landscape witness had not done any

[37] WSP proof paragraph 8.10

detailed costings but indicated a sum of £50,000 for establishment of the soft elements.

141. Even if residents carried out the ground works, ground preparation and planting themselves, certain specialist knowledge and skills would be required in preparing a detailed scheme, a management plan(s) and in subsequent supervision, monitoring and management. The evidence refers to the preparation of an engineering report (relevant to drainage requirements and soil levels), the appointment of a project ecologist, a management contractor and a retained landscape contractor. Materials and the range of plants required would be additional costs. The evidence suggests that the proposed scale of mitigation and the financial burden would be an unreasonable requirement in relation to use of the remainder of the land as a caravan site, more especially in respect of a temporary permission.

142. The Council was concerned that in the absence of a section 106 planning obligation it would be impossible to secure the mitigation proposed. The appellant refuted this point. Nevertheless, the appellant's landscape witness talked of a residents' management company, with a communal management fund, to look after any landscape buffer and amenity spaces in the central pitch area and the use of a planning obligation together with a planning condition.

143. The HLP seeks a comprehensive management plan for all major applications that sets out the on-going maintenance tasks, the long term goals for the landscape scheme and how these will be achieved typically over a period from establishment through to long term mature (year 16 onwards). Long term management and maintenance may be secured by means of planning conditions or obligation. Planning Practice Guidance encourages the use of a planning condition rather than seeking to deal with a matter by means of a planning obligation where either mechanism would serve equally well.

144. The fact is no planning obligation has been submitted in conjunction with the deemed planning application. As drafted the planning condition would enable the local planning authority in the first instance to approve or reject an ecological enhancement and management plan and ultimately if the matter was not resolved the use would have to cease. As it stands I have no information about potential future management regimes and arrangements in the short and over the longer term and the probable scale of commitment of resources (time, money) for existing and future residents. In the absence of this type of information I am unable to conclude on the most appropriate mechanism to secure the long term health and success of such areas or whether a disproportionate management burden would be placed on the appellant and future occupiers. The lack of any formal assurances on the matter considerably reduces confidence in the ability to deliver and secure the environmental enhancement indicated into the long term.

145. The appellant now appears not to own or control all of the Land forming the deemed planning application site. 'Control' does not necessarily involve estate or interest in land. However, I must be satisfied as a matter of fact and degree that the control is of a degree and kind to sufficient to implement the condition or that the necessary control could be imposed by a negative condition. The appellant's planning consultant indicated that the land as a whole was bought for a sum of £80,000. Residents said that they own their individual pitches, having paid the sum of £8,000. This ownership is not reflected in the Land

Registry details[38]. Information subsequently obtained from the residents' solicitor is to the effect that the applications made to the Land Registry were cancelled due to the conveyancing plans being slightly incorrect. Notwithstanding, the solicitor maintained that residents all own the land concerned and have done since the date of the transfers (10 July 2020).

146. Even if the appellant and residents (who are the Appellant Group in Appeal B) control the Land, only the appellant has appealed the enforcement notice and applied for planning permission through a ground (a) appeal. Consent of all other owners would be required to rearrange the site layout as illustrated, with some owners losing their pitch entirely to open space. There is nothing formal to confirm that would be achievable, resulting in doubt over the reasonableness of the SDS condition.

Appeal decision

147. The Neverend Farm, Maidstone appeal decision[39] illustrates securing mitigation and provision of enhancements to biodiversity through a condition including requirements for a SDS and a landscape and ecology plan. However, there are significant differences when compared to New Acres. For instance, the site was not in Green Belt. In the planning balance the Inspector concluded that the developments, subject to the enforcement notice and as proposed, were in accord with the development plan and in each case a permanent permission was justified. The proposed change to the site layout appears to be limited to the replacement of a turning area with a wild flower meadow, a wetland scrape and a hibernaculum. The Inspector expressed no concern about whether the proposed mitigation fell within the scope of the deemed planning application or complied with the 6 tests. Consequently, it does not follow use of the same type of approach is acceptable in this appeal.

Fallback

148. The enforcement notice requires the land to be restored to its condition which existed before the unauthorised development was carried out. The inappropriate use would have to cease and the land cleared. Over time natural regeneration would occur, albeit no positive enhancement scheme would be in place.

149. A greater biodiversity gain may be achieved through a suitably conditioned planning permission. However, an understanding of the scope and size of any gain is not possible on the basis of the submitted illustrative material, which substantially reduces the positive weight to be attached to this consideration.

Conclusions

150. The appellant has not sought to make a case to retain the current layout, devoid of green space. A high level of landscaping and ecological mitigation is proposed to make the traveller site acceptable. I am not satisfied that as a matter of fact and degree a landscape and mitigation strategy as illustrated in alternative schemes 1 and 2 would fall within the scope of the deemed planning application.

[38] Land Registry details as of 6 September 2022 show that the Land is not owned by either the appellant or the current residents and no application was pending against the Title Number.
[39] WSP Appendix 22

151. Moreover, I am not satisfied that the type and scale of mitigation illustrated through alternative schemes 1 and 2 is able to be secured by planning condition(s) that satisfy all the 6 tests. The SDS condition as drafted fails the reasonable test. The biodiversity gain and environmental enhancement that may be achieved through a SDS probably would be much less ambitious and comprehensive than the appellant's case suggests. Compliance with policy requirements have not been demonstrated.

152. There are no other proposals before me and I am not prepared to accept the existing development or to leave all matters to be resolved by planning condition(s) where fundamental elements of the scheme are so uncertain.

153. In summary, the unacceptable development cannot be made acceptable through the use of planning conditions to enable a permission to be granted.

Planning balance and conclusion

154. The harm by reason of inappropriateness, and any other harm, is not clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development. The development fails to comply with Policy G2 of the London Plan. The material change of use of the land to a traveller site and the associated operational development is not in accordance with the development plan when read as a whole and the development is not supported by the Framework or PPTS. This direction that planning permission should be refused is subject to the outcome of a structured proportionality assessment and final conclusions on ensuring the human rights of the appellant, his family and of all residents of the site are not violated.

Human Rights

155. This matter was introduced through the main issue and when considering the personal circumstances of the appellant and site residents. There is no doubt that if the appeal is unsuccessful the families' Article 8 rights are engaged. The positive obligation to facilitate their way of life as Travellers is very relevant.

156. Article 8 states that everyone has a right to respect for their private and family life, their home and correspondence. The scope of this qualified right is wide and in appropriate circumstances an interference may be justified in the public interest. The aim is to strike a fair balance between the demands of the general interests of the wider community and the protection of the individual's fundamental rights. In this appeal the interference would arise from exercising a statutory function and be in accordance with the law. Also the interference would be in pursuit of a legitimate aim to protect the environment through the regulation of land use.

157. The means used to impair individual's rights must be no more than is necessary to accomplish the public interest aims. There are various possible options and outcomes, including to grant a full, permanent permission, a temporary permission, a personal permission that could be further limited by a specific time period, a permission limited to part of the development site or an extension to the compliance period through the appeal on ground (g). Furthermore, through the operation of section 180(1) of the 1990 Act a grant of permission through Appeal B would have the effect of overriding the notice's requirements so far as inconsistent with the permission.

158. Central to the principle of a fair balance is the doctrine of proportionality. The closing submissions on behalf of the appellant cited the *AZ* judgement[40] which highlights how an Article 8 proportionality assessment is not the same as consideration of the personal circumstances of the applicant/appellant. Its purpose is to determine whether the protected rights of the individual and his/her family would be disproportionately interfered with if the rights of the community are upheld.

159. The proportionality assessment can only be made on the basis of the evidence available, in this case primarily the witness statements and oral evidence of the appellant and site residents. Evidence was mainly concerned with aspects of family life, travelling patterns, health and well-being. Detailed expert evidence or support was absent in respect of health and education.

160. In the event the enforcement notice is upheld at the end of the compliance period at least 10 households would have to vacate the site and no longer be able to rely on their pitch as a stable base and their home. The site residents have a common interest in wishing to stay on the site and they know and travel together to varying degrees. By all accounts they get on well. However, each household has their own separate pitch, there was no evidence of close dependency between separate households and little to indicate that they need to stay together as a group. It is the loss of the home of the individual or family unit and its effect on the individual's or family's rights that is balanced against the harm to the public and community interest, not the cumulative effect on everyone's rights. The seriousness of the interference with an individual's or family's rights will depend on a number of factors. In this appeal these have been shown to be the availability of alternative accommodation, vulnerability (including health and well-being), safety and mutual support. The weight to be attached to each factor will vary according to an individual's circumstances. I also will have in mind the following additional points of general applicability.

161. As explained above, the Council was unable to offer any suggestion as to an alternative pitch or site or other option such as conventional housing. Article 8 does not in terms give a right to be provided with a home. However, a cultural aversion to bricks and mortar and/ or a tradition of living in a caravan is a factor specific to the Gypsy and Traveller way of life that places them at a disadvantage in finding suitable accommodation. Pitches in appropriate locations offer the occupiers the opportunities to pursue regular education for their children, the ability to have ease of access to medical care, other support services and basic amenities, without the disruption and stress inherent in roadside living. In turn disadvantage would be reduced and inclusion improved.

162. As a general rule it is relevant whether or not the home was established unlawfully in considering whether a requirement that an individual leave his or her home is proportionate to the legitimate aim pursued. In view of the injunction proceedings and the visits by the Council to the site the probability is that the appellant and pitch 'owners' knew planning permission should be obtained before occupation, which does not help their case. In some instances the initial occupiers have been joined by other family members well after the enforcement notice was issued. However, when considering the well-being of

[40] *AZ v Secretary of State for Communities and Local Government* [2012] EWHC 3660 Admin

the children, it would be wrong in principle to reduce the weight to their best interests by actions for which they were not responsible for.

163. As to the public and community interest, the regulation of land use is in accordance with a statutory framework. The purpose of the planning system is to contribute to the achievement of sustainable development by fulfilling environmental, social and economic goals. The development plan is the starting point for decision making. In Havering both the HLP and the London Plan were adopted last year in 2021. The protection of the Green Belt is a legitimate and long established planning policy aim and, as confirmed by the Framework, it is a key element of national planning policy. The very substantial harm caused by the development has been explained in the reasoning on the main issues, together with the legal, policy and physical constraints on achieving adequate mitigation and enhancement through the deemed planning application.

164. Against this background it is very relevant that the appellant's case focused on achieving changes and improvements to the development on the ground by means of a site development scheme secured through compliance with a planning condition. The appellant did not actively seek to justify the development that has taken place, even for a temporary period, which is an indicator of the high level of harm. Nor were any alternative proposals put forward for anything less than 10 pitches. No obvious alternative presents itself for granting a permission on part of the land. I am not satisfied from the submitted material that the appellant would be able to take ownership of the mistakes of the past and correct them by the route of the ground (a) appeal and site development scheme of a kind and scale illustrated on the submitted plans.

165. The written and oral evidence identified the following main interests relevant to the enjoyment of family life and the home, which have been summarised recognising the sensitivity of some information.

166. Pitch 1 The witness statement was considerably updated through oral evidence. The appellant is planning to settle down on the pitch with his new partner and to progress his boxing career. He is hopeful that his young daughter will continue to stay. His sister moved to the pitch 6 months ago and is staying there with her five children. His father is doubling up on a car park within Havering.

167. The indication is the pitch would provide a stable base with suitable caravan accommodation and access to services and community facilities as well as being an opportunity to make a home and strengthen family interests. However, it appears to date the appellant has spent a lot of time away from the pitch in connection with his professional boxing career. The information on close family was scant. No health or education issues were identified.

168. Pitch 2 The witness statement was considerably updated by the oral evidence, which outlined the family circumstances that led to the current occupation of the pitch by a parent and two very young children. I came to the view that the residents are very vulnerable, reliant on extended family members to provide support and caravan accommodation. The site is a safe place where help is at hand. There was no involvement by the occupier in the development of the site.

169. Pitch 3 Two families are resident on the pitch. This was the first pitch they could find and afford, having previously travelled around without any stable base. The children are at school and are doing well but are affected by the current uncertainty. They hope they could have a second unit to relieve the current overcrowding. The evidence indicates that the ability to stay on site would be in the best interests of the children and family life.

170. Pitch 4 The witness statement was considerably updated by the oral evidence. About 8 months ago the original occupiers were joined by another family who have four young children and are closely related. In addition, an older relative has stayed occasionally. The proximity to medical facilities is important. The evidence was quite basic and lacking in detail, although it may be concluded that stability would be in the best interests of the children and the health of the occupiers. I note that in the list of planning conditions, the named adults are limited to the original occupiers of the pitch.

171. Pitch 5 The unsigned witness statement refers to two families hoping to live on the site and their expectations. The statement was not supported by oral evidence and no written update was provided. As such the statement has limited weight. When the Council visited in July 2022 the pitch was described as vacant. Hard surfacing was being laid and machinery was present, together with a touring caravan. On the day of the appeal site visit a mobile home was sited on the pitch.

172. Pitch 6 The written statement was supplemented by oral evidence. The occupiers have travelled widely, including abroad but because of the hardships of roadside living they are looking to have their own pitch. Moving to New Acres has led to improved health. The site is near to close family who live in bricks and mortar, although nothing was said about the importance of this for family life. The hope is that in future the pitch would provide a home for the son to raise his family. The evidence of this witness highlighted the difficulties of roadside living now and the benefits of having a stable base and suitable caravan accommodation to maintain their way of life.

173. Pitch 7 The witness statement was considerably updated by the oral evidence. The witness explained how having a pitch has brought the family together again and the benefits to personal health after the difficulties and loss in recent years. The two children go to the same school and their third child was born earlier this year. Extended family members have pitches on the site. The evidence suggests that the loss of the pitch would be very detrimental to family life and welfare.

174. Pitch 8 The witness statement was corrected and updated by a relative, who was "extremely worried" about the health of her father-in-law and very concerned about him being on the road. He has been joined on the pitch by his two grandsons, who for good reasons would not be able to return to their former bricks and mortar home. The oral evidence clearly indicated the importance of having a pitch for the occupiers to have easy access to health services and to enable them to follow their nomadic way of life. The loss of the pitch would also have consequences for close relatives worried about their well-being. A return to constantly being on the road would not be in the interest of the individual or close family.

175. On the Council's visit in July 2022 the pitch was found to be vacant with the remains of a burnt out mobile home visible. In September 2022 I noted a

motorhome on the rough surfacing and compared to most other pitches the level of occupation appeared very limited.

176. Pitch 9 The written statement was expanded on through oral evidence. The opportunity to secure this pitch came after many years of unsuccessfully looking for a suitable, affordable and available site. The occupier has family connections with other site residents and continues to travel for economic purposes, together with his son. The pitch enables regular contact to be maintained with close family members in the area and also is well-placed for required health provision. Loss of the pitch probably would result in serious interference with family life if no alternative was available.

177. Pitch 10 The written statement was updated through oral evidence. Acquiring the pitch has enabled the family to live together safely, which in turn has improved their health. The younger children attend a local school. The priority is to stay together as a family. This is a vulnerable family and loss of the pitch would very seriously interfere with their Article 8 rights.

Conclusion

178. Within the context set out earlier in this section I have weighed up and balanced the considerations and best interests relating to the individual household's exercise of their rights of enjoyment of family life and a home on their pitch against the identified public interests. In each case the interference with the rights of residents is necessary and proportionate to safeguard the wider public interest. A permanent planning permission is not acceptable.

179. I now turn to whether a temporary permission offers a way of achieving the public interest aims whilst reducing the impact on the individual's rights and which also ensures a proportionate outcome when having due regard to the PSED.

Planning balance – time limited permission

180. Planning Practice Guidance explains that a temporary permission may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of the temporary period. In this appeal a potential change in circumstances is linked to the progress on the update of the HLP, review and probable update of the GTAA and possible identification and delivery of new sites and pitches that may offer an alternative for the site residents to move to. The appellant considered five years would be a suitable period. The Council considered that a temporary permission is not appropriate in view of the up-to-date policies in place and providing for the children on site would be equally relevant in 3, 5 or 10 years time. The Council's witness accepted that the process of allocations, through to delivery of sites could take 5 years.

181. The Council anticipated a submission date in 2023 for the HLP update. Allowing for examination and adoption a period of three years may be realistic for the process to be completed. The experience with existing site allocations suggests site delivery may not follow on quickly. Five years is probably a reasonable period to allow for an actual change in planning circumstances to take place and for site residents to follow up and take advantage of any suitable opportunity. There is no certainty that the process would provide an answer to the site residents' accommodation needs.

182. A 5 year time-limited permission would affect the planning balance in so far as the identified harm may be expected to continue for a limited period and in that sense the bar is lowered. The appellant expressed acceptance of the SDS condition and willingness to carry out the type of mitigation illustrated through the alternative schemes 1 and 2. However, the conclusions as to why this does not present a way forward for a permanent permission are equally applicable, if not more so. A preferable alternative may be the proposal in Appeal B. On the 'other considerations' side of the balance, the personal need of the existing site residents is the key component of the need case argument. This indicates a permission time-limited to five years also would be personal.

183. Even on this restricted basis my conclusion is that the harm by reason of inappropriateness, and any other harm, is not clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development. The development is not acceptable under Policy G2 of the London Plan. The material change of use of the land to a travellers' site and the associated operational development is not in accordance with the development plan when read as a whole and the development is not supported by the Framework or PPTS.

184. Having had due regard to the PSED and having taken full account of the human rights of the appellant and his family and the rights all the households on the other eight pitches, I conclude a refusal of permission is necessary and proportionate.

Appeal on ground (g)

185. The issue is whether the compliance periods of one and two months are reasonable and proportionate.

186. The appellant requested a period of 12 months to cease the residential use and a further three months to comply with the remaining requirements of the notice. These time periods are described as a suitable length of time for the appellant group to seek out alternative solutions to their accommodation needs. At the end of the Inquiry the Council remained of the view there was no justification to extend the period of one month in view of the ongoing harm to the Green Belt but agreed to an extension to four months in respect of requirements (iii), (iv), (v) and (vi).

187. The policy context is provided by the Framework and Planning Practice Guidance, which state that effective enforcement is important to maintain public confidence in the planning system and to tackle breaches of planning control which would otherwise have an unacceptable impact on the amenity of an area. In relation to New Acres, the harm is primarily harm to the Green Belt and the local environment rather than to living conditions of nearby occupiers or public safety.

188. The compliance period needs to take account of what the recipients of the notice have to do in practice to carry out the steps. No undue physical constraints have been identified in respect of the physical works in steps (iii) to (vi). The main consideration is the social and family consequences for the occupiers.

189. Compliance with requirements (i) and (ii) would result in the cessation of the residential use and the removal of all caravans from the land. The occupiers

would lose their homes. No alternative pitch or site has been identified that is available for them to move to. The probability is that most, if not all, the families would have to find temporary places to stay whether in car parks, on open spaces, unauthorised encampments, doubling up with family or friends and such like. The human cost would be to the families' health, safety and welfare. There would be costs to the community as well. Some families would be more vulnerable than others as indicated by the human rights considerations. A compliance period of one month is neither reasonable nor proportionate. A period of one year would provide time for the appellant and resident families to explore and consider their options and possibly avoid a return to the roadside. During this period the GTAA and HLP should have progressed, which may also indicate a way forward.

190. The Council explained that the compliance period of two months for steps (iii) to (vi) was considered sufficient when the notice was issued because the development was at an early stage. As a result of continued development a period of four months is put forward as being reasonable. Undertaking operational works to a large extent would require the caravans and other structures and paraphernalia to have been moved off site, although a degree of phasing may be involved across the site. The Council's period of four months would begin from the effective date of the notice, indicating a period of three months for the works after removal of the caravans. There is therefore a measure of agreement between the parties of a time period for site clearance and restoration. The evidence on the establishment of the site indicates such a three month period to be reasonable.

191. For the reasons given above, I conclude that the periods for compliance with the notice fall short of what is reasonable and proportionate. Periods of twelve and fifteen months strike a fair balance. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Appeal A Conclusion

192. The material change of use and works that have taken place on the site are unacceptable when assessed on their planning merits. Within the scope of the description of the deemed planning application and on the basis of the submitted material it is not possible to make the development acceptable by the use of planning conditions. Applying planning policy, there is a strong direction that planning permission should be refused in the public interest.

193. To grant planning permission for the development would meet the accommodation needs of the appellant and the current residents and in so doing fulfil social and equality objectives. However, I conclude because of the conflict with development plan and national planning policies to protect the public interest it is necessary and proportionate to dismiss the ground (a) appeal and to rely on an extension to the compliance period as the less harmful alternative. There will be no violation of the appellant's or his family's human rights or the human rights of the site residents by this outcome.

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

APPEAL B

Proposal

195. The application plans, as supplemented through the appeal[41], show a layout comprising of ten pitches extending almost the full length of the site served by a central access road from Benskins Lane. Each pitch accommodates a single mobile home, a touring caravan, a small utility block, two parking spaces and an amenity space. The site would be enclosed on three sides by a 1.8m close boarded fence. Green space is indicated along the northern boundary, between pitches and at the far end adjoining the golf course. The appellants' planning witness considered the proposal is an acceptable scheme.

196. The material change of use of the land to a 10 pitch Gypsy/Traveller site has taken place and in that sense the appeal is seeking retrospective planning permission. When the proposal is compared to the development carried out on the land back in 2020, the main difference in the proposed site planning is the inclusion of green space and the consequent reduction in the extent of the hard standing. At the time of the appeal site visit, the siting of the caravans and dayrooms did not have the regularity indicated on proposed site layout plan. My assessment will be based on the proposed development shown on plan.

Main issue

197. There is no dispute between the main parties that the proposal amounts to inappropriate development in the Green Belt. Applying the relevant policy tests, I agree. The main issue, policies, the site context, former characteristics and need-related considerations are the same as in Appeal A. Where appropriate, I will rely on that reasoning to avoid unnecessary repetition.

Effect on the Green Belt

198. Previously the land was part of a golf course and covered by grassland and an area of woodland. On adjacent land near the southern boundary were ponds enclosed by trees and vegetation. The land would have appeared open, free of built development and as such was integral to the designated Green Belt.

199. The proposal would result in a substantial change both spatially and visually. The site would be in residential use and assume a residential character in terms of activity and appearance. The loss of openness would be increased by the proposed number of pitches, the number of mobile homes, the extent of the hard surfacing, the means of enclosure and the central access road. The amenity spaces would allow for children's play and recreation and probably would have residential paraphernalia. The green space to the boundaries may in time soften the edges but the site would no longer make a positive contribution to the openness of the Green Belt and a considerable amount of harm would result.

200. The Framework sets out the five purposes of Green Belt. The London Plan specifically identifies the London Green Belt's role in containing the further expansion of built development and promoting urban regeneration. The site is in the countryside, outside the built envelope of urban development and prior to the unauthorised development was not previously developed, untidy or derelict land. Having regard to the site's location in relation to Noak Hill and the

[41] See paragraphs 25 and 26 above on Appendix 3 plans

built-up area of Harold Hill, the proposal is contrary to the purpose of checking the unrestricted sprawl of large built-up areas. It also would result in a very significant encroachment into the countryside but it would not contribute to the merging of any neighbouring towns. Very little scope exists for developing traveller sites in the urban area and so I find no conflict with the purpose of assisting urban regeneration.

201. In conclusion the proposed traveller caravan site is inappropriate development, harmful to the Green Belt and to which substantial weight is given. The serious loss of openness and the conflict with two of the purposes of Green Belt adds to this harm and the weight against the proposal on Green Belt grounds.

Character and appearance

202. The baseline comparator is as described in Appeal A, in summary an area with a semi-rural character including the distinctive features of the golf course, extensive areas of open land, pockets of development and traversed by the M25 corridor. Within the wider land use pattern Benskins Lane now has a more concentrated form of development, although it has to be remembered not all uses are authorised.

203. When part of the golf course the appeal site fitted well into the countryside character of the area, largely because of its openness, boundary hedgerows and wooded enclosure and lack of built form. The proposal would bring a marked change and result in an urbanised site, eroding the countryside character. The appellants' landscape evidence did not assess the application proposal or its effect on the locality.

204. Before the unauthorised development occurred the mature trees and vegetation on site contributed to the leafy, rural appearance of Benskins Lane. In views from the wider rights of way network the site would have been seen as part of the open recreational land. The trees have now been removed. Even though they were not protected by a tree preservation order the policy expectation is that development proposals should ensure wherever possible retention of existing trees of value for amenity and biodiversity. Pitches are shown extending very close if not up to the front boundary with a narrow planting strip. The visual change to the site would be harmful.

205. From other identified viewpoints the visual effects of the development will vary depending on distance, intervening vegetation and backdrop. The low profiles of the caravans are a positive factor but the exposed close boarded fencing on site boundaries would not assist in meeting policy objectives.

206. HLP Policy 27, specifically cross referenced in Policy 11, makes clear that all development proposals should incorporate a detailed and high quality landscape scheme to meet the policy criteria and ensure the development integrates with and enhances its surroundings. The supporting text to the policy states that the level of detail provided as part of the planning application should be commensurate with the size, type and location of the new development and its impact on the local area.

207. The proposed site plan as supplemented by the Appendix 3 plan only shades areas of green space, identifies the position of amenity spaces and possibly tree planting. The amenity spaces would function as part of the residential

pitch and would be unlikely to make a significant contribution to a landscaped structure. The level of detail falls far short of policy compliance. Alternative schemes 1 and 2 illustrate that had landscaping been considered from the earliest stage a very different approach would have been followed to the site design. Policy 27 has not been complied with.

208. Applying criteria (iii) and (vii) of Policy 11, high quality boundary treatment and landscaping is not reflected in the current proposals and the effect on the visual amenity of the local area is unacceptable.

Biodiversity

209. The unauthorised development of a traveller site resulted in the loss of all vegetated habitats and a net loss of biodiversity. The site no longer has value for or provides suitable habitat for wildlife. The circumstances justify seeking a biodiversity gain through the current proposal.

210. The Ecological Appraisal report puts forward potential measures to compensate for the habitat losses and to improve the site conditions for wildlife. The submitted site layout plan, in the absence of details, constrains the ability to do so. There is conflict with Policy 30.

Mitigation

211. Conditions meeting the 6 tests would be able to control the number of pitches, the number and type of caravan on each pitch, to exclude business activity and larger commercial vehicles on the site, and secure alternative boundary treatment. Compliance with these conditions would not require significant changes to the site design and layout. To require no more than two caravans to be stationed on any pitch at any time, of which no more than 1 should be a static caravan, would be consistent with the submitted layout plan. However, this probably would not provide adequate accommodation into the future on those pitches where there is now more than one household.

212. The submission of a detailed landscape scheme could reasonably be the subject of a planning condition and such a requirement is included in a proposed site development scheme condition. As stated earlier, a landscape/ecological mitigation scheme based on alternative scheme 1 or 2 would not be compatible with the layout plans forming part of the application. Instead, the draft condition refers to the application layout plan (J003627-DD03), which would allow for a fairly generous depth of planting along the northern boundary and a narrow strip of planting along the southern boundary extending along part of the frontage. Choice of plant mixes and species would offer scope for improving biodiversity above that which currently exists, together with other small scale measures. Beyond these general observations, the quality of an approved scheme is very uncertain and would have to work within the basic layout of the ten pitches.

213. The level and type of mitigation indicated on the Appendix 3 plan would not involve the major reconfiguration envisaged in Appeal A and in that respect would be reasonably related to the proposal. The applicant/appellant is the Appellant Group and it appears that the Group has sufficient control of the land for the purpose of implementing such a condition. However, the proposal would remain as a very harmful encroachment in the Green Belt, unsympathetic to

local landscape character and without taking adequate account of landscape and biodiversity considerations in the site planning.

Drainage

214. The proposal is a Major Development by reason of the size of the site and should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. Policy 32 of the HLP and Policy SI 12 of the London Plan are consistent with this requirement of the Framework.

215. The application proposed the use of soakaways for surface water and cess pits for foul drainage. The additional annotated plan is said by the Appellant Group to show how surface water can be discharged at a controlled rate. However, the plan lacks any explanatory details and without a technical report falls well short of providing any meaningful information. A SuDS appears not to be proposed.

216. A proposed planning condition incorporates the requirement for a SuDS to form part of a site development scheme and the Council accepted that the issue could be dealt within this way. However, the absence of any detail leaves uncertainty over the implications for the site layout as a whole.

Accessibility and access

217. The same policy tests and reasoning apply as in Appeal A. In summary, the site is very poorly served by public transport and the test in Policy 11 of the HLP is not met. Residents would be reliant on the private car for practically all journeys. Nevertheless, there is a good range of services not too far away by car. All matters considered the site is policy compliant in PPTS terms. An allocated traveller site is nearby, indicating the identified shortcomings in accessibility weigh against the proposal to only a limited degree.

218. The proposed site plan provides no detail of visibility splays at the site entrance onto Benskins Lane but adequate visibility is able to be achieved by careful positioning of the boundary fence to the site. This matter can be appropriately resolved through compliance with a planning condition.

Policy 11 development criteria

219. The land is of sufficient size to accommodate ten pitches but as explained above the scale of development and the proposed site layout are unacceptable. The site is capable of being provided with essential services but an acceptable drainage layout incorporating a SuDS has not been demonstrated. The boundary treatment is not high quality and the site is devoid of soft landscaping. The adverse impacts on the visual amenity of the local area are unacceptable.

220. The access onto Benskins Lane is able to be safely laid out with adequate visibility splays. The absence of any footways, together with the distance involved, mean there is no safe pedestrian route to public transport services. There is no evidence to suggest that traffic generated by the use would have an unacceptable impact on the capacity and environment of the highway network. Similarly there is no evidence that the traveller site would place an undue pressure on local community services. The location of the site is such that the residential use would not result in unacceptable impacts on the

amenity of occupiers of neighbouring sites. There is no necessity to apply the sequential and exception tests in respect of flood risk management.

221. Some site development criteria are met but there are also serious conflicts with criteria regarding layout, landscaping and site services/ infrastructure. I conclude that as proposed the traveller site is not supported by Policy 11.

222. With reference to the criteria in paragraph 26 of PPTS, the site was not previously developed land, nor is the proposed development well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness.

Intentional unauthorised development

223. The evidence on the timescale of events shows that site clearance works began very shortly after the Appellant Group was advised not to proceed in advance of planning permission and about the time the planning application was made. The use of the land has changed to a 10 pitch traveller site but the proposal shown on the submitted application plans has not been carried out.

224. In all probability the Appellant Group knew about obtaining planning permission. They intentionally disregarded the need to follow due process and also failed to adopt the submitted, less harmful, layout scheme when carrying out the work. Substantial harm to the designated Green Belt and local environment has occurred. Even allowing for pressing individual personal needs to secure a site, the intentional unauthorised development has significant weight.

Conclusions on harm

225. National policy attaches great importance to Green Belts and the development plan strongly supports the continued protection of London's Green Belt. The inappropriate development has substantial weight with additional weight resulting from the serious loss of openness and the conflict with two of the purposes of the Green Belt. The proposed site planning, design and layout does not respect the character and appearance of the surrounding area, which weighs strongly against the development. The harm to biodiversity has considerable weight. The adequacy and suitability of the site drainage infrastructure requires to be resolved. In this case the circumstances are such that the carrying out of intentional unauthorised development has significant weight. There is little choice in the means of travel, although this negative factor has limited weight when accessibility to social, education and health facilities is considered in the round.

226. Even when account is taken of the acceptable elements the level of harm is high when tested against the Policy 11 criteria. The development does not reflect the effective use of land and good design promoted by the Framework. Planning conditions requiring a site development scheme and imposing controls on the number of pitches, the number and type of caravans, business activity and parking, would not be able to overcome satisfactorily the identified harms.

Other Considerations

227. I adopt the Appeal A reasoning and conclusions in respect of need, meeting need, alternative sites and personal circumstances.

Planning balance (*permanent planning permission*)

228. The Council has planned for gypsy and traveller needs primarily through Policy 11 of the HLP, based on a robust assessment in the 2019 GTAA. As the plan period has progressed, a five years' worth of deliverable sites against the locally set target is not currently demonstrated and as it stands no alternative pitches in an acceptable location elsewhere have been identified for the site residents to move to. In Havering acceptable sites within the urban area and outside Green Belt are unlikely. These aspects of need and supply together have considerable weight. The individual families who have developed their pitches at New Acres explained how the site meets their accommodation, family and welfare needs. The proposal would make a positive contribution to meeting social objectives, particularly in respect of those in the Appellant Group and their children. I give additional significant weight to this aspect of need.

229. Notwithstanding the considerations that support the development, the public interest arguments in protecting the Green Belt and local environment are very strong within the policy framework set out in the development plan and national policy. In terms of a grant of permanent planning permission the harm by reason of inappropriateness, and any other harm, is not clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development. As a result the proposal is not acceptable under Policy G2 of the London Plan and national planning policy in the Framework. Overall the proposal is not in accordance with the development plan when read as a whole and the development is not supported by the Framework or PPTS. The direction is that the appeal should be dismissed.

230. A lack of success in this appeal would not directly lead to a loss of the home but in view of the decision in Appeal A the enforcement notice will be upheld, with an extended compliance period. The failure to gain a planning permission through Appeal B potentially would have serious consequences for the Appellant Group and their families in the event an acceptable way forward is not identified. Therefore a decision to dismiss the appeal must be necessary and proportionate, taking full account of the identified personal needs and the positive obligation to facilitate the Gypsy way of life.

231. The proportionality assessments for the occupiers of each pitch are informed by the general considerations and the main interests relevant to the residents' individual Article 8 rights, set out in Appeal A. However, I recognise that the appellants promoted the Appeal B scheme as being acceptable on its planning merits. The aim of protecting the environment also must be proportionate and outweigh benefits in terms of eliminating discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others.

232. Having carefully considered and weighed the many interests I conclude that it is necessary and proportionate not to grant full planning permission.

Planning balance (*temporary planning permission*)

233. The policy guidance and reasoning for focusing on a five year period is set out in Appeal A.

234. The identified harm may be expected to continue for a limited period and in that sense would be less than compared to a permanent permission. However, the site is on land designated as Green Belt and good site planning is not reflected in the proposals. The scope for achieving mitigation through a SDS condition would be constrained by ensuring a reasonable burden of works. The submission of a SDS, obtaining approval and implementation would have to follow due process and inevitably would take time. The ability of any new planting to become established and have a meaningful positive effect would be limited over a five year period.

235. On the 'other considerations' side of the balance, the personal need of the existing site residents, and more especially the best interests of the children, is the key component of the need case argument, indicating a time-limited personal permission is the relevant option.

236. The bar is set high and the harm by reason of inappropriateness, and any other harm, must be clearly outweighed by other considerations. The proposal is a Major Development and the associated harm is very substantial. The balance is against accepting the proposal on a time-limited personal basis, leading to conflict with Policy G2 of the London Plan and national planning policy in the Framework.

237. My overall conclusion is that the proposal is not in accordance with the development plan when read as a whole and the development is not supported by the Framework or PPTS. Having carefully considered the qualified rights under Article 8 and the PSED, I conclude dismissal of the appeal is necessary and proportionate. The protection of the public interest cannot be achieved by means that are less interfering with the rights of the occupiers and their families.

Appeal B Conclusion

238. For the reasons given above the appeal should be dismissed. There will be no violation of the human rights of the members of the Appellant Group.

DECISIONS

APPEAL A Ref: APP/B5480/C/20/3265817

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

- In paragraph 2 the deletion of the words "cross-hatched in black on the attached plan and is registered under Land Registry Title Number BGL 154957" and the substitution of the words "edged and hatched in black on the attached plan".
- In paragraph 3(1) after the word "site" add the words "including the stationing of caravans for residential purposes".
- In paragraph 3(2) the deletion of the words "erecting timber fencing, siting waste facilities and subdividing the land into 10 distinct plots" and the substitution of the words "erecting timber fencing around the land, siting waste facilities and subdividing the land into 10 distinct plots by means of timber fencing".
- The substitution of the plan annexed to this Decision for the plan attached to the enforcement notice.

240. It is directed that the enforcement notice is varied by:

- In paragraph 5(i) the deletion of the words "or as a travellers' site" and the substitution of the words "as a travellers' site, including the stationing of caravans for residential purposes."
- In paragraph 5(vi) after the words "carried out" the addition of the words "except for the pond and bunkers".
- In paragraphs 5 and 6 the deletion of "ONE month" and the substitution of "TWELVE months" and the deletion of "TWO months" and the substitution of "FIFTEEN months" as the times for compliance.

241. Subject to the corrections and variations 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 Ref: APP/B5480/W/20/3263355

242. The appeal is dismissed.

Diane Lewis

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Masters	Barrister, instructed by WSP
He called	
Brian Woods BA MRTPI	Managing Director WS Planning & Architecture
Peter Gilheaney	Appellant Group
Katrina Gilheaney	On behalf of Steven Gilheaney
Thomas O'Sullivan	Appellant Group
Helen Kiely	Appellant Group
James O'Driscolll	Appellant Group
Philip Kahn	Appellant Group
Michael Delaney	Appellant Group
Martin McDonagh	Appellant + Appellant Group
Jimmy O'Brien	Appellant Group
Christine Dooley	Resident

FOR THE LOCAL PLANNING AUTHORITY:

David Matthias KC and Charles Streeten, barrister	Instructed by the Council of the London Borough of Havering
They called	
Stephen Jarman BSc DipTP	Opinion Research Services Ltd
Onkar Bhogal	Principal Planning Enforcement and Appeals Officer, London Borough of Havering
Simon Thelwell BSc(Hons)	Head of Strategic Development, London Borough of Havering

DOCUMENTS submitted at the inquiry

1 Bundle of Plans
2 Traveller sites in LB of Havering
3 Opening submissions of behalf of the Council
4 Revised plan for the Enforcement Notice
5 Bundle of documents on The View
6 Plans for Lower Bedford Road site
7 Extract from GTAA March 2018
8 Boxing Article
9 Note on Prospect Road sites
10 Documents on *LB Havering v Stokes and others*
11 Note on Unlawful Encampment Injunction
12 Land Registry information
13 Revised list of planning conditions
14 Closing submissions of behalf of the Council + bundle of authorities
15 Notes to closing submissions on behalf of the Appellant

The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 19 December 2022

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

Land at: New Acres, west side of Benskins Lane, Noak Hill, Romford RM4 1LB

Reference: APP/B5480/C/20/3265817