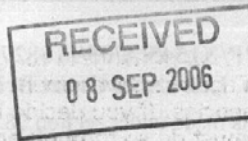




Appeal Decisions

Hearing held on 25 July 2006

Site visit made on 25 July 2006



by **Stuart M Reid** D Arch (Hons) RIBA

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

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Date
7 September 2006

Appeal A: APP/X1545/C/05/2003353

The Orchards, Lea Lane, Great Braxted, Witham, Essex CM8 3EP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Billy Brede against an enforcement notice issued by Maldon District Council.
- The Council's reference is FUL/MAL/05/00241.
- The notice was issued on 26 July 2005.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use of this land for the stationing of caravans.
- The requirements of the notice are to cease using the land for residential purposes and remove all caravans from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

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

Appeal B: APP/X1545/C/05/2003312

The Orchards, Lea Lane, Great Braxted, Witham, Essex CM8 3EP

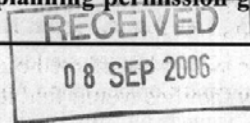
- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by James Brede against an enforcement notice issued by Maldon District Council.
- The Council's reference is FUL/MAL/05/00241.
- The notice was issued on 26 July 2005.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised construction of a hardstanding and the installation of a septic tank.
- The requirements of the notice are to:
 1. Break up the hardstanding and remove from the land all resultant materials.
 2. Remove the septic tank from the ground and from the land.
- The periods for compliance with the requirements are:
 1. Three months.
 2. Three months.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

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

Appeal C: APP/X1545/A/05/1188277**The Orchards, Lea Lane, Great Braxted, Witham, Essex CM8 3EP**

- 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 James and William Brede against the decision of Maldon District Council.
- The application Ref FUL/MAL/05/00241, dated 25 February 2005, was refused by notice dated 18 May 2005.
- The development is a long-stay caravan site for two gypsy families (4 caravans) with ancillary hardstanding etc.

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

**Appeal C: The Section 78 Appeal****The Appeal Site, its Planning History, and its Surroundings**

1. The appeal site is a part of a rather larger piece of land for which planning permission was granted on appeal in 1991, Ref: T/APP/C/90/X1545/000009/P6, for its use for the stationing of caravans for human habitation, subject to a number of conditions. These included that the caravans shall only be occupied by 4 named families, all of whom fell within the definition of gypsies at that time, and that no more than 4 caravans or mobile homes shall be stationed on the site at any one time. One of the named families has moved away and the Appellants have jointly acquired their land, as they had been asked to leave the site they were on by the end of July 2006. The gypsy status of the Appellants is not disputed by the Council. The original plots were rather generous, giving the site overall a spacious feel. It is generally well screened, with a strongly rural character around and within it, and it lies within the Chelmer and Blackwater Ridges Special Landscape Area.

Main Issues

2. From what I have said above, from my inspection of the site and its surroundings, and from the representations made at the hearing and in writing, I consider that the main issues in this appeal are:
 - Firstly, the effect the development has on the character and appearance of the surrounding rural area; and
 - Secondly, whether the development is a sustainable development; and
 - Thirdly, the effect the development has on highway safety and the free flow of traffic.

Reasons

3. The Council's main concern was that the development involved an intensification of the existing use, which had been limited to 4 named families, even though one of those families had changed since the original grant of permission. The appeal site itself is very spacious, and certainly does not give the impression of being cramped, nor of being a visually unacceptable intensification of use. I was told the Appellants are well-known Essex gypsies who have a need for a site in this area, close to the A12 corridor, although I accept that it does not have to be on this particular piece of land. Even if they were not local, I note that

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the advice in ODPM Circular 01/2006 *Planning for Gypsy and Traveller Caravan Sites*, at paragraph 62, is that private applications should not be refused solely because the applicant has no local connections. Moreover, the site is well screened, and it would be very difficult to tell from outside it that there had been an intensification of use.

4. Furthermore, it is a modest increase over and above the original site permission as a whole, and the 2 Appellants are members of the same family, and to that extent would fit within the original permission. The difference is that there would be an increase in accommodation and activity, primarily in terms of a further caravan or mobile home and vehicles over and above the permitted single family use. However, the appeal site is so spacious that the increase in accommodation and activity would have very little additional impact in the area as a whole. There are no nearby neighbours, apart from the other gypsy families on this land, who would be affected by this modest intensification of use, and I do not consider that the gypsy families would find it harmful.
5. In addition, it offers the benefit of housing 2 gypsy families instead of one in a way which is not harmful to the area. It is also not uncommon that the number of pitches on a site increases, as children become young adults and seek provision for their own, independent, accommodation. Whilst there are vacancies on other gypsy sites in the area, that does not preclude the acceptable use of this gypsy caravan site, even though it is for 2 families and not one as originally permitted.
6. The Maldon District Replacement Local Plan was adopted on 3 November 2005, before the issue of Circular 01/2006. Local Plan Policy H16 relates to proposals for the provision of new public or private residential gypsy caravan sites, and it is a criteria based policy, where compliance with all 8 criteria is required. The development which I am considering relates to an existing permitted gypsy caravan site, where planning permission for a change of gypsy family name for a pitch could be acceptable in principle, and has been granted in the past. The sole difference is that this development relates to 2 families on 1 pitch instead of one, not an application for a new site. I do not therefore consider that this particular policy is relevant.
7. Similarly to the previous Inspector, I do not consider that the limited impact of the development on this pitch, which already has permission as a gypsy pitch on a gypsy site, would harm the character and appearance of the Special Landscape Area or damage the natural environment. It would continue to be protected for its own sake, and the development would therefore accord with the Essex & Southend-on-Sea Replacement Structure Plan Policies CS2, C5 and NR1, and Local Plan Policies CC7 and S2.
8. Whilst the Council have expressed their concerns about the sustainability of the site, that matter was broadly dealt with by the previous Inspector. He noted the significant distance of the site from the nearest shops and primary school, but that amongst other matters were not sufficient to outweigh his decision to grant permission for the gypsy site. I am aware that there may be a greater importance attached, in national as well as local policy terms, to the issue of sustainable development today than at the time of the previous decision. However, the advice in paragraphs 64 to 66 of Circular 01/2006 is pertinent, not least that proposals should not be rejected if they would only give rise to modest additional daily vehicle movements and/or the impact on minor roads would not be significant. That is clearly the case here, and I consider that the development would conform acceptably as a reasonably sustainable development, within those parameters.

9. Finally, with regard to the Council's concern about poor visibility at the site entrance, it seemed at the site inspection that satisfactory visibility could be achieved, and the Council were content with a condition for a scheme to be put in and implemented to achieve satisfactory visibility. I shall therefore impose such a condition, and subject to the provision of acceptable visibility the development would accord with Structure Plan Policy T3.

Conditions

10. The Council have suggested 3 conditions, and a fourth condition on visibility, as I have mentioned, arose at the site inspection. I consider it necessary to make the permission personal to the Appellants to control the use, so that unacceptable over-intensification is prevented, and as it would be consistent with the existing permission. As the condition is personal to the Appellants, who are gypsies, it is unnecessary to restrict the use to gypsies. I also consider it necessary to limit the number of caravans in view of the location of the site in the Special Landscape Area. It is also necessary to control commercial activity on site, to maintain the character of the area. I have already stated that I will impose a visibility condition, on the grounds of safety.

Conclusions

11. I therefore conclude that the development would not harm the character and appearance of the rural area. It would be a sustainable development within the terms of Circular 01/2006. With the provision of acceptable highway visibility it would not have an adverse effect on highway safety or the free flow of traffic.

Appeal B and Appeal C: The Appeals on Ground (g)

12. Ground (g) is that the appellants consider that the time given to comply with the notice is too short.
13. The Appellants have requested 2 years to find another site. The Council's witness stated at the Hearing that if the Appellants discussed the matter with the Council they would help the Appellants to find a site. If no site had been found within the time, but the Appellants had made an effort to purchase a site, the Council would use their powers to extend the period. Although the Council did not object to a period of 6 months, their approach to assisting the Appellants with finding an appropriate site, and extending the period as appropriate, seemed to me to offer a more acceptable way of finding a realistic solution.
14. In these circumstances I therefore consider the period to be reasonable, and the ground (g) appeals do not succeed.

Conclusions

15. For the reasons given above and having regard to all other matters raised, I conclude that the section 78 appeal should be allowed, and that the section 174 appeals should not succeed.

Formal Decisions

Appeal A: APP/X1545/C/05/2003353

16. I dismiss the appeal and uphold the enforcement notice.

Appeal B: APP/X1545/C/05/2003312

17. I dismiss the appeal and uphold the enforcement notice.

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Appeal C: APP/X1545/A/05/1188277

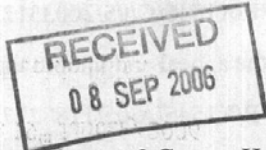
18. I allow the appeal, and grant planning permission for a long-stay caravan site for two gypsy families (4 caravans) with ancillary hardstanding etc at The Orchards, Lea Lane, Great Braxted, Witham, Essex CM8 3EP in accordance with the terms of the application, Ref FUL/MAL/05/00241, dated 25 February 2005, and the plans submitted with it, subject to the following conditions:

- 1) The use of the site hereby permitted shall be carried on only by Mr James Brede and Mr William Brede, their partners and children (the specified occupiers). When the site ceases to be occupied by the specified occupiers the use hereby permitted shall cease and all materials and equipment brought onto the site in connection with the use shall be removed.
- 2) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 2 shall be a static caravan or mobile home) shall be stationed on the site at any time.
- 3) No more than one commercial vehicle per plot shall be kept on the land for use by the occupiers of the caravans hereby permitted, and they shall not exceed 3.5 tonnes in weight.
- 4) The use hereby permitted shall cease, and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) within 3 months of the date of this decision a scheme for an improved visibility splay at the site access to the south (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation;
 - (ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made, by the Secretary of State;
 - (iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State;
 - (iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

Stuart M Reid

INSPECTOR

APPEARANCES



FOR THE APPELLANTS:

Dr Robert Home MA (Cantab) PhD Chartered Town Planner, 9 Curzon House, St Peter's House, Ipswich IP1 1XF.
DipTP MRTPI

James Brede Appellant.

William Brede Appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Peter Le Grys MTP DipEP MRTPI Development Control Team Leader, Maldon District Council.

Ms S Anker MIHIE Development Control Officer, Highways and Transportation, Essex County Council.

DOCUMENTS PUT IN AT THE HEARING

Document 1 Table 1: Count of Gypsy Caravans 19th January 2006.

Document 2 Plan A, showing the 1991 Appeal Decision Site.