



The Planning Inspectorate

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Mrs Laura Moorse
Maldon District Council
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CM9 5DL

Your Ref:

Our Ref: APP/X1545/A/09/2112221/NWF

Date: 31 March 2010

Dear Mrs Moorse

Town and Country Planning Act 1990
Appeal by Mr Wayne Stanley
Site at The Orchards, Lea Lane, Great Braxted, CM8 3EP

I enclose a copy of our Inspector's decision on the above appeal together with a copy of the decision on an application for an award of costs.

If you have queries or complaints about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm. This page also contains information on our complaints procedures and the right of challenge to the High Court, the only method by which the decision can be reconsidered.

If you do not have internet access, or would prefer hard copies of our information on the right to challenge and our complaints procedure, please contact our Quality Assurance Unit on 0117 372 8252 or in writing to the address above.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 0207 947 6655.

You should also note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly. Please contact the Administrative Court for further information.

Yours sincerely



Amanda Baker

COVERDL2

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<http://www.pcs.planningportal.gov.uk/pcsportal/casearch.asp>

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The Planning Inspectorate

Award of appeal costs:

Local Government Act 1972 – section 250(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment¹. This is handled by:

The Supreme Court Costs Office
Clifford's Inn
Fetter Lane
London EC4A 1DQ
(Tel: 0207 9477124).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court². This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

¹ The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. You can buy these Rules from Stationery Office bookshops (formerly HMSO) or look at copies in your local library or council offices.

² Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.



Appeal Decision

Inquiry held on 10 & 11 February 2010

Site visit made on 11 February 2010

by **Jean Russell MA MRTPI**

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

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**Decision date:
31 March 2010**

Appeal Ref: APP/X1545/A/09/2112221

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Wayne Stanley against Maldon District Council.
- The application (ref: FUL/MAL/09/00013) is dated 8 January 2009.
- The development proposed is described as 'change of use of land for the stationing of caravans to extend the existing single residential gypsy [pitch] to provide 3 no. family transit pitches and 3 no. new permanent residential gypsy pitches with utility/day rooms, hard standing and access track ancillary to that use'.

Application for Costs

1. At the inquiry an application for costs was made by Mr Wayne Stanley against Maldon District Council. This application is the subject of a separate Decision.

Decision

2. I allow the appeal, and grant planning permission for the use of land as a gypsy caravan site, with four residential and three transit pitches, and ancillary utility/dayrooms, hardstanding and access track at 5 The Orchards, Lea Lane, Great Braxted, Essex, CM8 3EP in accordance with the terms of the application (ref: FUL/MAL/09/00013) dated 8 January 2009, and subject to the conditions set out in Annex 1.

Clarifications

The Appeal Site and Adjoining Land

3. Planning permission was granted on appeal in 1991 (ref: T/APP/C/90/X1545/00009/P6) for the use of land at OS 6236 off Lea Lane, Great Braxted for the stationing of caravans for human habitation.¹ The land subject to that decision covers some 3.5ha, and I shall describe it as 'the 1991 site'.² The current appeal site lies within the 1991 site and is approximately 0.42ha in size.
4. The 1991 permission was granted subject to conditions that, amongst other matters, made the permission personal to four occupants; restricted the number of caravans to four; and prevented the erection of buildings, walls, fences and other structures. However, there is no condition requiring the removal of caravans or structures when the named persons cease to require the use of the land. The 1991 site was subdivided into two: 'The Oaks', a single pitch occupied

¹ Inquiry document 1.

² Inquiry plan A.

by Mr Clark; and 'The Orchards', which originally held three pitches occupied by three Stanley families including the appellant's.

5. In 2006, permission was granted on appeal (ref: APP/X1545/A/05/1188277) for the subdivision of part of The Orchards, creating two additional pitches. Again, the permission was made personal to named occupants, but with a requirement here that caravans be removed when the beneficiaries cease to require the use of the land. The number of caravans was limited to two on each new pitch.
6. The 2006 decision suggests that one of the original named families had changed at The Orchards. I heard that permission has been granted separately to vary the relevant 1991 condition with respect to another occupier, so only two of the original beneficiaries remain on the 1991 site: the appellant and Mr Clark.
7. A plan was submitted to the inquiry showing the existing subdivision of the 1991 site into six pitches.³ I saw that the addresses of the pitches on the ground at The Orchards do not always correspond with the numbers given on the plan. The appeal site, however, is the pitch that is annotated and known as no. 5. The location plan 08_212_001 shows that the site also includes the shared access to The Orchards. Nonetheless, in the interest of precision, I adopt *5 The Orchards* as the site address in my formal decision.
8. *5 The Orchards* is centrally located within the 1991 site: it adjoins The Oaks to the north west and '4' The Orchards to the south east on its long side boundaries. It also adjoins Lea Lane to the south west and farmland to the north east.
9. I understand that a separate planning application was made last year and refused in January 2010 for two residential pitches and one transit pitch at The Oaks. This is now the subject of a separate appeal.

The Proposed Development

10. The site plan 08_212_003 indicates that *5 The Orchards* would be subdivided into four separate pitches.⁴ The largest pitch, however, would contain three transit pitches for visiting friends and family, as well as a mobile home and touring caravan for the appellant and his family and a shared utility/dayroom. I describe the substantive pitch as 'the appellant's property' again for ease of reference. The other three pitches would be self-contained permanent residential pitches, each containing a mobile home, touring caravan and smaller utility/dayroom.
11. In my view, it is plain from the application form that permission is sought for the permanent use of the three transit and three new residential pitches. These would not be for named occupiers. The form is unclear, though, as to whether approval is sought for the appellant's pitch to remain permanently in residential use, when this is currently subject to a personal condition, but the transit pitches would be sited within its curtilage.
12. The Design and Access Statement states that permission is sought to '*to provide 4 no. permanent residential gypsy pitches, extending an existing single pitch to include 3 no. transit gypsy pitches ... [and] to provide 3 no. permanent residential gypsy pitches*'. The plans indicate that the appellant's pitch would be moved from its existing position within the site, so its new siting, layout and design form part

³ Inquiry plan B. I heard that the 2006 decision relates to 2 and 3 The Orchards as shown on the plan.

⁴ These are identified as Plots 1-4 on the plan, but paragraph 17 of *Circular 04/2007: Planning for Travelling Showpeople* differentiates between residential 'pitches' for gypsies and travellers, and 'plots' for travelling showpeople which may need to incorporate storage space for equipment.

of the proposal. On this basis, and as agreed by the main parties at the inquiry, I consider that permission is being sought for the appellant's residential pitch to remain in such use in perpetuity.

13. Thus, I have revised the description of development: *the use of land as a gypsy caravan site, with four residential and three transit pitches, and ancillary utility /dayrooms, hardstanding and access track*. Although the appellant is seeking full planning permission, his secondary position is that permission should be granted on a temporary basis.

Procedural Matters

14. The Council has stated that had the appeal not been lodged, it would have refused permission for the proposed development for reasons related to sustainable development in rural areas and the character of the area.
15. Great Braxted Parish Council (GBPC) objected that the appellant did not consult the community before submitting the application. *Planning Policy Statement 1: Delivering Sustainable Development* (PPS1) supports community involvement in planning, but there was no onus on the appellant to carry out pre-application consultation. GBPC and local residents were consulted on the application itself and able to make representations at all stages of the planning process.
16. GBPC objected that there were anomalies in the application. Aerial photographs confirm that a track shown on the north eastern site boundary on plan 08_212_002 is not present on the ground. However, GBPC agreed at the inquiry that their other concerns had been resolved.

Gypsy Status

17. The appellant had gypsy status at the time of the 1991 decision. However, this appeal must be considered against Government guidance in *Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites* (C01/06), which defines gypsies and travellers as 'persons of nomadic habit of life whatever their race or origin', including those who have ceased to travel temporarily or permanently on grounds of their dependants' educational needs.
18. I heard that the appellant continues to travel for employment purposes. He works in construction and groundwork, obtaining jobs with and through other gypsies. In my view, he has a nomadic way of life that is employment-related. I also note that he has three sons who I heard attend school. The Council accepts that the appellant still has gypsy status and, taking his family circumstances in the round, I agree.

Main Issues

19. From the evidence before me, I consider that there are three main issues:
 - 1) whether the appeal site would represent a sustainable location for a gypsy site of the size proposed;
 - 2) the effect of the proposed development on the character, appearance and natural environment of the Chelmer-Blackwater Ridges Special Landscape Area (SLA); and
 - 3) the need for and the provision of sites for gypsies and travellers.

Reasons

Sustainability

The Principle of Development

20. The appeal site is in use as a gypsy pitch, albeit subject to conditions. The proposed development would represent a material intensification in the use: the number of residential pitches would be quadrupled on the appeal site or increased by 50% on the 1991 site as it is now. Visitors occupying the transit pitches would add to activity. Before addressing whether the scale of the proposed development would be sustainable, however, I find that the principle of the use of land as a gypsy caravan site is established.
21. The appeal site lies outside of any settlement and within the countryside. The Council's first suggested reason for refusal indicates, amongst other matters, a presumption to resist development in rural areas. Reference is made to Policy S2 of the *Maldon District Replacement Local Plan* (LP), which states that outside of development boundaries, the countryside will be protected for its own sake.
22. At the inquiry, the Council pointed out that LP Strategic Objective vii) requires the creation of sustainable and accessible environments. I accept that this objective is relevant to the main issue; that the Strategic Objectives in general inform the strategic policies; and development boundaries can be a measure of accessibility. However, I also consider that the focus of Policy S2 is clearly to protect the countryside and not on access or sustainability more widely.
23. I assess the impact of the proposed development on the character of the area later in this decision. In principle, however, paragraph 54 of C01/06 – which post-dates the LP – indicates that rural settings, where not subject to special planning constraints, are acceptable for gypsy and traveller sites. This does not mean that *any* rural location should be approved for new or intensified gypsy developments. But the critical point is that *presumptions* cannot be made against pitches in the countryside. Most gypsy sites are, and will likely continue to be in rural areas for practical reasons. When assessing sustainability, therefore, I find Policy S2 of little relevance to the appeal.
24. The third suggested refusal reason states that additional piecemeal development of the type proposed would be contrary to LP Policy H1, which seeks to locate new housing within development boundaries. As *PPS3: Housing* implies, gypsy sites provide residential accommodation. However, it seems to me that Policy H1 is intended to relate only to bricks-and-mortar housing. In any event, I consider that applying the policy so as to impede gypsy developments in rural areas as a matter of principle would again conflict with paragraph 54 of C01/06.

Accessibility

25. The Council's main concerns in relation to sustainability are the disconnection of the site from villages and services, and that future residents would be reliant upon the private car. The first suggested reason for refusal indicates that the proposed development would cause harm to the 'local road network'; the Council confirmed at the inquiry that this objection is related to sustainability, not highway safety.
26. The nearest settlement to the site is Wickham Bishops, a village some 2km away. There are shops here – including a good-sized convenience store – but few other amenities. The nearest schools and supermarket are in Witham, a town some 2km from the site by public footpath and lanes, or 5.6km away by road. There

are bus services linking Wickham Bishops and Witham, but the site itself is not served by public transport.

27. *Planning Policy Guidance Note 13: Transport* (PPG13) indicates that walking can replace short car trips, particularly for distances of under 2km and including for journeys that also involve public transport. Cycling can replace the car especially for trips under 5km. I accept that future occupiers of the site might cycle to the shops or walk on local footpaths on occasion. However, there are no pavements or street lights along Lea Lane by the site. In my view, for most functional day-to-day journeys, the residents would have little choice but to use a car.
28. Reducing the need to travel, especially by private car, is widely recognised as important to delivering sustainable development. C01/06 and *Designing Gypsy and Traveller Sites: Good Practice Guide* (the GPG) encourage locating gypsy sites with easy access to local services and social contact. I accept that if access was the only criterion for judging sustainability, and considered inflexibly, the site would not be the optimal place for more people to use as a settled or transit base.
29. However, since C01/06 allows for gypsy sites in rural locations, it can be inferred that such developments will sometimes be at a distance from shops and services. C01/06 expects authorities, when assessing the suitability of rural sites for gypsies, to be realistic about the availability of alternatives to the car. It also states that such proposals should not be rejected if they would only give rise to modest additional daily vehicular movements and/or the impact on minor roads would not be significant. PPG13 accepts that the potential for using public transport and non-recreational walking and cycling is more limited in rural areas.
30. The Council suggested at the inquiry that the proposed development could double traffic from the 1991 site. I disagree: only three more families would live here. I prefer the appellant's estimate that the residential pitches would each be likely to generate some six to ten vehicular trips per day. The transit pitches should generate less, since it is doubtful that they would all be occupied at all times and children on visits to the area would not attend school.
31. I am also satisfied that the distances to local amenities are such that the site cannot be described as unacceptably remote. Occupiers might travel to work across a wide area, but this could be the case wherever they live. Journeys from the site to shops, schools and services, however, would likely be relatively short – and potentially linked and/or shared.
32. Locational guidance for transit pitches in Essex is set out in Policy H3 of the *Regional Spatial Strategy for the East of England (RSS)*, as amended by *Accommodation for Gypsies and Travellers and Travelling Showpeople in the East of England (RSS Revision)*. This advises that transit pitches should be on a distributed network aligned with transport routes and urban centres. In my view, while the appeal site is not located on a major road or by a town, it is part of the 1991 site 'network'. There would be travel advantages in siting the proposed transit and residential pitches together, since the former are required in this case – and often in general by – people wishing to work with or visit friends and family.
33. I saw that Lea Lane is a quiet road that is rarely used to capacity even at peak times. I consider it typical of rural roads in its design and usage and, therefore, of accesses to many gypsy sites. Even if future occupiers of all the proposed pitches used motor vehicles for all their trips, I consider that the length and number of journeys would not be excessive, the development would not be unacceptably unsustainable in access terms, and the impact on Lea Lane would be insignificant.

34. LP Policy T2 sets out requirements for transport infrastructure in the layout of new development. In my view, the policy is generally relevant to the appeal, because the proposed change of use represents development, and the submitted plans show a site layout. I also consider that the proposed development would comply with one criterion of the policy by providing adequate links to the road system.
35. The proposed development would not include foot/cycleway or public transport facilities along Lea Lane. Nor would there be links to two nearby public footpaths. However, Policy T2 only requires such provision 'where appropriate'. It also sets out a more general requirement for development to promote social inclusion and accessibility. In the sense of having reach to jobs and services, I find that the lack of footpath or public transport links would not make the proposed pitches unacceptably inaccessible, or lead to the social exclusion of future residents.
36. LP Policy T2 also expects proposals for larger scale developments to include a Green Travel Plan, but this scheme in my view would not be of such a size for the requirement to apply.

Other Aspects of Sustainable Development

37. Paragraph 64 of C01/06 indicates that issues of sustainability should not only be considered in terms of transport and distance. Other factors should include the promotion of a peaceful and integrated co-existence between the site and local community. C01/06 further states that gypsy sites should respect the scale of and not dominate the nearest settled community. GBPC and local residents are concerned that the proposed development would cause tensions by creating a 'critical mass' of activity and imbalanced local population.
38. However, the site is some 150m from the nearest dwelling. In my view, it is close enough to other properties to form part of the community but sufficiently far away to ensure seclusion at householder level. The appellant is a long-term local resident and, from the number and content of representations, it seems that the existing pitches have caused few problems for nearby occupiers. I consider that the proposed development would not be so large scale as to cause the 1991 site (as it would become) to dominate the parish. I see no reason to assume that it would fail to peacefully co-exist with or integrate into the community.
39. C01/06 suggests that the wider benefits of easier access to GP and other health services, and children attending school on a regular basis should be considered when assessing sustainability. There are GP and hospital services at reasonable travel distances from the site in Witham. It has been confirmed that the local primary schools could offer places to children living on the site, and I heard that the Council would need to provide them with transportation.
40. GBPC suggests that any gypsy site could enable access to health and education services, and this is true. Nevertheless, that the proposed development would provide three additional families with reach to such services is still a material consideration in favour of the appeal. The Council suggests that the wider benefits of the proposal – in terms of integrated co-existence as well as use of services – would be less effective in the absence of accessibility, but I repeat my view that the site is not unacceptably isolated.
41. Another issue relating to sustainability, according to C01/06, is that the provision of a settled base can reduce the need for long-distance travelling and possible environmental damage caused by unauthorised encampments. Later in this decision, I find a need for gypsy sites in Maldon. It seems to me, therefore, that

by providing a settled base for three more families, the development should reduce the numbers of people travelling to find places to stay – and reduce stays on unauthorised sites in the region if not the district.

42. Since the proposed additional pitches are not intended for named people, it is impossible to know the existing movements of future occupiers. In that respect, any travel benefits of the development cannot be quantified. Having found, however, that journeys from the site to shops and services would be relatively short, I consider on balance that the travel impacts of the scheme would be likely to compare favourably with those created by an under-supply of pitches.
43. The appellant has also promoted the proposed development on the basis that it would make better use of the appeal site. This matter is raised as a general consideration, but in my view it is pertinent to the question of sustainability. PPS1 promotes the efficient use of land and resources, and the beneficial use of previously developed land as means to achieve sustainable development.
44. I saw that the site is divided into two unequal halves. The smaller area, by Lea Lane, is used for living purposes. It includes two mobile homes, a portaloo, a shed and a parking and turning area. Although mainly hard-surfaced, there is a small lawn by one of the mobile homes. The rear portion of the site is laid out as pasture and grazed by a horse. Since it forms part of the pitch, however, I consider that it is likely to represent previously developed land in planning terms.
45. The existing pitches were allowed in 1991 and 2006 in part because the low key nature of the use, the spaciousness of the sites and limits on caravan numbers would protect the character and appearance of the area. I assess the landscape and visual impacts of the proposal later in this decision, but observe here that the previous Inspectors did not rule out a greater density of development in principle. In general, I find that there is scope to make more efficient use of the appeal site and doing so could alleviate pressure for the use of greenfield land for gypsy sites in what is a largely rural district. The economic use of land offered by the proposed development is a positive consideration in relation to sustainability.

Conclusion

46. The appellant has referred to other appeals where gypsy sites were held to be sustainable in rural areas.⁵ I consider that, while those proposals differ to this in various respects, reading the decisions together serves to underline that a different approach must be taken to sustainability in the light of C01/06. In the 2006 appeal pertaining to part of The Orchards, the Inspector found that the proposal before him 'would conform acceptably as a reasonably sustainable development'. In my view, despite its larger scale and the lack of footpath or public transport links, this development would also be acceptable in access terms, and sustainable overall when taking a rounded view of the issue.
47. I conclude that the appeal site would represent a sustainable location for a gypsy site of the size proposed. The proposed development would not comply with LP Policies S2 and H1, but these are of little direct relevance to the appeal. It would comply with LP Policy T2 and Strategic Objective vii), as well as revised RSS Policy H3, C01/06, PPG13 and PPS1, which in my view should prevail in this instance.

⁵ The appeals included those with reference numbers ending 2003892, 2034300, 2050900/2046884 and 2029107.

Character and Appearance

48. I have noted that the appeal site currently includes hardstanding and structures towards the front, with green space behind (on slightly lower land). The edge of the hardsurfaced area, where vehicles can be parked, is some 10m from Lea Lane. The highway boundary is marked by a hedge and fence, while trees are planted on a roadside verge. There is another deciduous hedge and fence at the rear of the site, but the sides are bound by tall leylandii hedges.
49. The appellant's property would be approximately 25m wide and 37m deep. It would be further back within the site than at present – some 22m from Lea Lane, behind a mini sewage-treatment plant with a soakaway. The appellant's caravans and the shared dayroom would be directly behind the boundary to the soakaway. The transit pitches, which would each provide room for a touring caravan and car parking, would lie opposite, at the northern end of the property, across an access and yard area. The dayroom would be a single storey, pitched roof building, approximately 10m wide, 6m deep and 4.4m high to the ridge.
50. The other three residential pitches would extend back from the appellant's property in a linear fashion to the rear of the site; they would be approximately 25m wide and 25m deep, with caravans and dayrooms lined up along the north western boundary. The dayrooms would be approximately 6.5m wide, 3.4m deep and 3.8m high to the ridge.
51. The proposed pitches would have individual accesses off a new track from the existing shared drive through The Orchards, and they would be separated by fences. They would include open areas but be entirely hardsurfaced. However, new hedges would be planted on the pitch boundaries and the Lea Lane frontage. Trees would be planted by the proposed soakaway; on the boundary between the appellant's property and adjoining residential pitch; and by the entrances to new residential pitches.

The SLA and Policy Context

52. Being within the SLA, the site lies within a locally valued area of countryside. The area surrounding the 1991 site is dominated by arable and grazing land which has an undulating landform but is sufficiently low-lying as to afford views across fields. These are often enclosed by deciduous trees and hedgerows on boundaries and in copses. Indeed, as its names imply, the 1991 site itself was originally an orchard. There are also a few dispersed dwellings in the vicinity of the site.
53. Across the SLA (or Totham Wooded Farmland area) more widely, according to the *Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessments* (the LCA), there are rolling hills with steeper ridges than I saw close to the site. However, 'contrasts of deciduous woods and hedges [and] undulating fields' seem to characterise the SLA as a whole as well as the setting of the site. The LCA describes the area as having a high sensitivity to change. LP Policy CC7 resists development within SLAs unless its location, siting, design, materials and landscaping would conserve or restore the character of the area.
54. Paragraph 53 of C01/06 states that local landscape designations should not be used in themselves to refuse planning permission for gypsy and traveller sites. The appellant suggests that, because this is an existing gypsy site, a refusal of permission would essentially contravene that direction of C01/06. It would be hard to find another site within an SLA where a gypsy development would be more in character with the area. I have some sympathy with this argument.

55. Moreover, I note that some 65% of Maldon is covered by SLAs, and parts of the district have higher or other forms of policy protection from development. The Council suggested that areas outside of SLAs might be more suitable for gypsy sites, but did not identify any specific places. In my view, since gypsy sites are often in rural or semi-rural areas, it would be impractical as well as inappropriate to prohibit their development within the SLAs of this district.
56. However, the Council's second suggested reason for refusal alleges harm from the proposed development because of its size, scale, density and design. This is a detailed and not 'in principle' objection that needs to be carefully considered. In addition, and although not cited by the Council in opposition to the proposal, I note that LP Policy BE1 requires development, amongst other matters, to make a positive contribution to the landscape and open countryside.

The Existing Use

57. I agree with the Council and GBPC that the green and spacious layout of the appeal site helps to mitigate the impact of the existing use on the landscape. There is relatively little built development in depth. However, I saw that the existing use appears to have altered the character of the site over time. In the 1991 decision, the Inspector commented on the extent to which the original landscape of orchard set in grassland, surrounded by trees and hedges had been kept intact. I saw little of the orchard remaining on the appeal site.
58. In the 2006 decision, the Inspector noted the size and rural character of The Orchards and that it is 'well-screened'. But he said little to suggest that landscape features on the pitches are critical to the character of the SLA. In my view, the pasture on the appeal site is qualitatively and visually different to nearby fields, since it is smaller, encroached upon by small domestic structures and enclosed by leylandii hedges on its long sides. Thus, the landscape and natural environment of the site deviate somewhat from those that typify the SLA. I find that the site as a whole has a residential character and appearance – as, to varying extents, do the similarly spacious adjoining gypsy pitches.
59. Moreover, the existing boundary planting is sufficiently sparse that, particularly in winter, the tops of structures on the site can be seen from Lea Lane over the fence. Meanwhile, views of the pasture are limited from the road. There are no other public vantage points: the site is not visible from nearby footpaths or even from Lea Lane after walking a few metres away, not least because of the leylandii hedges and caravans on adjoining pitches. Thus, the existing use is apparent from the street, but green areas on the site are not prominent.

Scale and Density

60. It is plain that the proposed development would result in the net loss of open green space. There would be a significant increase in the number of structures on the site, and I agree with GBPC that the outdoor parking of vehicles and keeping of other domestic paraphernalia would be likely to occur on each pitch. Thus, I accept that the development would have an urbanising effect upon the site. The subdivision of the land and extension of development would result in an increased visual and landscape contrast between the site and SLA.
61. However, I am not persuaded that the scale or density of development would be excessive. Local residents are concerned that the proposal would represent over-development of the site. Yet it seems to me that the proposed pitches would in fact be reasonably large for gypsy sites, and their size is disguised to a certain

extent both by comparison to the existing situation and the extent of hardstanding shown on the plans.

62. Paragraph 7.12 of the GPG indicates that an average family pitch must be able to accommodate, amongst other matters, drying space for clothes, a lockable shed, parking space and small garden area. The submitted plans do not show sheds or gardens, but there would be room in my view for future occupiers to provide such facilities. Subject to conditions controlling the numbers of caravans stationed and commercial vehicles parked, I consider that the pitches would include adequate open space and not be unacceptably cramped.
63. The GPG indicates that transit sites should be large enough to accommodate two touring caravans, two parking spaces and private amenities. The proposed transit pitches would be smaller than this, but sited on a large and integrated family property where there would be shared facilities including open space. Overall, I find the density of the proposed development commensurate with good practice. The scheme would also result in fewer than 15 pitches on the 1991 site, the maximum scale or capacity recommended by the GPG.
64. Compliance with the GPG does not prove that the proposed development would conserve the character of the SLA. However, it is an important consideration in my view. Since gypsy pitches are acceptable in principle in rural areas, the GPG would normally be used to assess any new proposed site in the SLA as well as redevelopment schemes such as this.

Design and Landscaping

65. The Council objects that caravans and the dayroom on the appellant's property would be visible over the existing fence. However, they would be sited further back than the existing parking area and no more visible than the existing mobile homes in my view. Development on the other three residential pitches would be screened by that to the front. I also consider that all the proposed dayrooms would be of a reasonable size and height both for the site and their intended use. They would have a functional appearance, in keeping with many domestic outbuildings, but no objection has been made to their design. Building as well as hardsurfacing materials can be controlled by condition.
66. In terms of landscaping, I consider that there would be some recompense for the loss of the pasture through the creation of the soakaway, which would act as a green buffer zone at the front of the site. I also agree with the appellant that, subject to conditions controlling the details of the scheme, the proposed hedgerow and tree planting near to Lea Lane would serve to soften and reduce views of development – and to enhance the landscape character of this rural road. Within the site, the proposed vegetation would give the pitches a green appearance.
67. I accept that it takes time for planting to mature, and native deciduous species will allow views of the site in winter. However, it is also proposed to retain the existing trees and shrubs. While GBPC are right that the leylandii has little landscape value, it would likely remain in place regardless of this decision, so its screening effect must be taken into account. Even at its most exposed, I consider that the proposed development would not be unacceptably conspicuous, because of its layout and the proposed and existing landscaping. As the Inspector found in the 2006 appeal decision, 'it would be very difficult to tell from outside [the site] that there had been an intensification of use'.

68. I also consider that, without prejudice to the impending appeal at The Oaks, the adjoining gypsy sites could assuage the impact of the proposed development on the character of the area. They form part of the context of the site, as much as nearby open countryside. In my view, their uses would link them to the development, while the open spaces within them would provide progressive assimilation into the wider landscape; this would be a further mitigating factor.

Activity and Noise

69. Local residents object that the proposed development would lead to increased noise around Lea Lane, mainly from vehicles and dogs. I can understand the concern and note that the LCA seeks to protect the tranquillity of the area. Lea Lane has a quiet feel, but noise from the 1991 site can be heard at times.

70. However, I consider that the number, size and landscaping of the proposed pitches would serve to limit and contain activity on the site. Noise from normal domestic activities, including the keeping of dogs, would be unlikely to increase to such levels or carry such distances as to unacceptably harm the rural character of the area. I also consider that, subject to conditions controlling commercial vehicles, motor activity generated by the development would not be so significant as to cause an unacceptable change to the ambient environment along Lea Lane.

Conclusion

71. Landscaping can rarely justify harmful development on its own; the argument could be repeated too often. In this case, however, I conclude that the proposed scale, density, design and landscaping together would ensure a high quality scheme that is respectful of its setting. There would be no unacceptable loss of landscape features critical to the character of the SLA, and views from and the character of Lea Lane would be enhanced. I disagree with GBPC that pressure would arise to remove planting in the future; occupiers would likely appreciate the privacy and outlook afforded.

72. For the reasons given, and despite the limits on caravan numbers imposed by my predecessors, I conclude overall that the proposed development would conserve the character, appearance and natural environment of the SLA in accordance with LP Policy CC7. It would make a positive contribution to the landscape of the area and protect the countryside in accordance with LP Policies BE1 and S2, and *PPS7: Sustainable Development in Rural Areas*. It would also comply with the GPG.

73. In reaching this conclusion, I have had regard to the possibility of the proposed development becoming more visible in the future, since the adjoining pitches are subject to personal conditions. As indicated above, however, the 1991 permission does not require the removal of caravans from the land. Such a constraint only pertains to '2' and '3' The Orchards. Some beneficiaries of the 1991 permission have also changed. In my view, the 1991 site is likely to largely remain in use as a gypsy site, or physically altered as a result of the use, in the long-term.

The Need for and Provision of Gypsy and Traveller Sites

The General Need for Gypsy and Traveller Residential Sites

74. The revised RSS Policy H3 states that local planning authorities (LPAs) should provide at least 1,237 net additional pitches across the region by 2011. 15 pitches should be provided in Maldon; this is a minimal allocation, not a target. Provision should be made from 2011 to 2021 for an annual 3% compound increase in residential pitch numbers.

75. Permission was granted by the Council in February 2009 for the continued use of land for the permanent stationing of a mobile home at New Redgates Farm in Purleigh. The siting of an additional mobile home at The Stables in Great Totham was approved in August 2009.⁶ These permissions are subject to personal conditions but still create two additional pitches for policy purposes. Thus, 13 further pitches are now required in Maldon by 2011 (15 minus 2). The proposed development could contribute towards, but not meet in full that allocation.
76. The Council does not dispute the RSS requirement. However, it refers to the *Essex Gypsy and Traveller Accommodation Assessment* (GTAA) of November 2009, which suggests in Table 14.26 that there is a need for just 9.8 additional pitches in the district by 2013. Table 14.26 is based on an assessment of supply and need. As a result, and since no unauthorised developments were recorded in recent Caravan Counts, the Council suggests that the need for pitches in Maldon is low and not so urgent as to justify the proposal.
77. In my view, even if the GTAA assessment could take precedence, the proposed development would still provide fewer pitches than the 7.8 needed when the recent permissions are deducted from Table 14.26. But I should also be clear that, according to C01/06, the number of pitches to be delivered by LPAs must be based on the RSS. The RSS should itself be based on evidence, including GTAAs, but once adopted it has statutory force.
78. The Council pointed to a paucity of planning applications as evidence of a lack of need for gypsy sites in the district. But I have already noted the pitches approved at New Redgates Farm and The Stables. In addition, there are the refused applications relating to the appeal site and The Oaks. Taking all the applications together, permission has been sought for seven new residential pitches in the district in the previous two years. This equates to almost half of the RSS allocation and a considerable portion of the GTAA assessment of need.
79. The Council's second committee report suggests, in response to local concerns, that there is no evidence of the [1991] site being occupied beyond its existing limits. However, 11 and 14 caravans were recorded at Lea Lane in the Caravan Counts of January and July 2009 respectively, when the permitted number is eight. It may be that the additional caravans were occupied by people visiting the existing residents – such as those for whom the transit pitches are proposed. Equally, however, over-occupation of the 1991 site could be an indication of a need for more pitches in this district, as could the fact of waiting lists for the two existing Council-run gypsy sites at Wood Corner and Brickhouse Road.
80. At the inquiry, the appellant suggested that GTAA Table 14.26 might underestimate actual need, because the methodology is flawed or unclear in certain respects. C01/06 suggests that the accuracy of data used to assess need is a material consideration in the determination of planning applications and appeals. In this case, however, I have insufficient evidence that the GTAA is erroneous – and the question is of limited importance anyhow. In accordance with both the RSS Revision and the GTAA as it is, I am satisfied that there is a general need for pitches in Maldon which exceeds the number proposed.

The General Need for Gypsy and Traveller Transit Sites

81. The revised RSS Policy H3 requires the provision of an additional 160 transit pitches by 2011, with 30 to be provided in Essex, Southend-on-Sea and Thurrock.

⁶ Inquiry documents 8 and 10.

Allocations are not provided at district level; the location should be based on local studies. The Essex GTAA finds, in table 14.37, a need for three additional transit pitches in Maldon by 2013. In this case, while three transit pitches are proposed in order to accommodate people visiting the appellant, it is clear that the development would also neatly achieve the allocation.

82. I have already found that the proposed transit pitches would comply with the locational guidance set out in the revised RSS Policy H3. I consider, therefore, that they would be suitable to meet the policy requirement.

Alternative Sites

83. I have noted the permissions for pitches at New Redgates Farm and The Stables. Neither of these can be described as 'available' alternative sites, however, since they are subject to personal conditions. The Council has no existing allocated sites for gypsies and travellers, and was unable to suggest any alternative sites for the proposed development.
84. GBPC put it to the inquiry that the RSS allocation might be met by 2011 by other proposals coming forward. However, I was provided with few details of any such schemes. GBPC also suggested that there are strategically preferable locations for gypsy sites in the district, but again I was given no indications of the availability, affordability or acceptability of any other site addresses.
85. The Council is in the process of preparing its *Core Strategy* (CS): the Examination in Public is due to take place in November 2010 and adoption is expected in January 2011. The draft CS contains a policy, CS10, which sets out criteria for the identification of sites for gypsies and travellers. However, this would not in itself be the mechanism by which sites are formally allocated.
86. It is intended that the *Site Allocations Development Plan Document* (DPD) will be commenced in April 2011 and adopted in September 2012. I heard that, via the Council's *Strategic Housing Land Availability Assessment*, work has already been undertaken to find sites for residential development. It seems, however, that the search is focussed on land for bricks-and-mortar housing rather than gypsy sites. In any event, the DPD will not be adopted in time to provide 13 sites by 2011.
87. The appellant made no search for an alternative site. However, it has been established in case law that there is no requirement for an appellant to prove a need for a particular site.⁷ Evidence of a search can add weight to an appellant's case. However, since I have found a general need for and lack of evidence of any alternative sites, I am satisfied that the appellant's lack of a search does not seriously diminish the case for the appeal.

Transitional Arrangements and Temporary Permission

88. C01/06 aims to increase significantly the number of gypsy and traveller sites in appropriate locations within 3-5 years (by 2009-11). Paragraph 43 of the Circular indicates that where there is a clear and immediate need for sites, LPAs should bring forward site allocation DPDs in advance of regional consideration of pitch numbers. The appellant suggests that the Council has been in this position, but failed to provide sites by not commencing work on the DPD in time.
89. I agree that the lack of site allocations weighs in favour of the proposed development. For the purposes of determining this planning appeal, however,

⁷ South Cambridgeshire District Council v SCLG and Brown, Neutral Citation No: [2008] EWCA Civ 1010.

there is little further to be gained from criticising the Council's past performance. With C01/06, the RSS Revision and the GTAA in place, I have sufficient evidence of need and relevant policy guidance before me.

90. Paragraph 45 of C01/06 indicates that where there is an unmet need and no available gypsy and traveller provision, but a reasonable expectation of new sites becoming available at the end of the period, consideration should be given to the grant of a temporary permission. The main parties agreed at the inquiry that such permission could be granted if necessary, since the CS and DPD are likely to be adopted within a few years. I consider this matter in my discussion on conditions.

Conclusion

91. I conclude that there is a general need and lack of alternative sites for gypsy and traveller residential and transit sites in this district. The proposed development would comply with the revised RSS Policy H3, the Essex GTAA and C01/06.

Overall Conclusion

92. As noted above, the Council's third suggested reason for refusal seeks to resist piecemeal development. GBPC put it to the inquiry that gypsy site provision should be made as part of a strategy and not on an ad-hoc basis. I am sympathetic to the case for a planned approach to site provision – for this and any development type. I can also see the relevance of the argument to this appeal in particular, where the site forms part of a larger development and there is an undecided proposal to intensify the use of the adjoining pitch.
93. However, C01/06 does not discourage windfall applications for gypsy sites. By contrast, it seeks to promote private site provision in appropriate locations. I have also noted that the Council's CS and DPD are some way from adoption, but there is a need for gypsy sites now. In my view, it would be hard to find a more suitable place to provide some of the pitches required than an existing site where development is proposed to an acceptable scale, density and appearance. I do not consider this to be an undesirable or unplanned proposal.
94. Local residents object that the proposed development would set a harmful precedent. Again, I understand that my decision on this appeal could be seen to have implications for the consideration of future gypsy site proposals in this district, including the appeal at The Oaks. However, since I have found that the proposed development would cause no unacceptable harm in relation to the main issues, it is hard to see how any precedent could be negative.
95. Moreover, planning applications must be considered on their own merits. I heard that the Council has a different objection to the proposed development at The Oaks and, in any event, my decision cannot bind the Inspector determining that appeal. That and any other proposal for 'piecemeal' development on the 1991 site would need to be considered in relation to contemporaneous circumstances, which could include its particular visual and landscape impacts, the cumulative effect of development and forthcoming Council policy.
96. I conclude that the appeal site represents a sustainable location for a gypsy site of the size proposed and the proposed development would cause no unacceptable harm to the character, appearance or natural environment of the surrounding area. In this situation, that there is a general need for and lack of alternative gypsy sites becomes a material consideration which reinforces, but is not decisive to the acceptability of the proposal.

Other Matters

97. I have covered most of the issues raised by local residents. I consider that the proposed pitches would be sufficiently large and well-screened as to prevent overlooking, noise or any other unacceptable harm to the living conditions of neighbouring occupiers – of both nearby houses and adjacent gypsy pitches. The Council and Environment Agency consider the proposed sewage and drainage system acceptable and I agree. Property prices are not a planning matter.
98. The Highways Authority suggested that vegetation should be cleared back to improve the existing visibility splay to the south of the shared access to The Orchards. However, this splay crosses land controlled by the Authority, and the Council did not consider it sufficiently defective as to raise a highway safety objection. As suggested by Little Braxted Parish Council, there is a sharp bend on Lea Lane but this is several metres to the north west of the site entrance. In my view, traffic generated by the proposed development would be unlikely to cause an unacceptable risk of traffic accident.
99. I have had regard to all the other matters raised but none alter my decision to allow the appeal.

Conditions

100. I have already referred to the question as to whether permission should be granted for a temporary period. Since the proposed development is acceptable in all material respects, I see no need to limit the duration of the permission.
101. I shall impose a standard condition limiting occupation of the site to gypsies and travellers. However, the appellant has not cited personal circumstances to justify his or the other residential pitches. In my view, and despite the existing personal condition, it would be unnecessary and unreasonable to restrict occupation of any pitch to named persons.
102. The proposed transit pitches are intended for use by the appellant's friends and family. They would lie within the curtilage of his residential pitch. However, I consider that a condition restricting occupation of the transit pitches to people associated with the appellant would conflict with the tests set out in *Circular 11/95: Use of Conditions in Planning Permissions*. Critically, since the appellant's residential pitch would remain in use in perpetuity, an occupancy condition would put a severe limitation on the freedom of future owners to dispose of the property. Limiting occupation to members of the appellant's family would be a particularly unreasonable restriction, while a condition that allows for visits from friends would be imprecise and unenforceable. In addition, there is a general need for three transit pitches in this district.
103. That said, I shall impose a condition limiting the periods of occupation of the transit pitches, to ensure that they remain available for short-stay use. I shall also limit the number of caravans on each residential and transit pitch; prevent commercial activities; and restrict the number and weight of commercial vehicles on each pitch. In my view, the constraints are necessary to ensure amenity space for future occupiers as well as to prevent visual clutter and unwarranted activity. I realise that transit pitches in particular can be occupied by people in the area for work, but limiting the number of commercial vehicles to one per pitch would not to my mind cause unreasonable harm to the prospects of any future occupier.

104. In order to protect the character and appearance of the area, I shall require that samples of building materials are submitted to the Council for approval. I shall amend the recommended landscaping condition to ensure that details are approved of hard surfacing materials, refuse storage facilities and any external lighting as well as the proposed soft landscaping of the site. I shall also require that the fences between pitches are constructed prior to occupation and retained.

105. It would be unnecessary to restrict permitted development rights in respect of new buildings and extensions, since such rights do not pertain to caravan sites. However, I shall impose a standard condition requiring that the development is built in accordance with the submitted plans, for the avoidance of doubt and in the interests of proper planning.

Jean Russell

INSPECTOR

ANNEX 1: PLANNING CONDITIONS

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
3. No gypsy or traveller shall stay on the transit site hereby approved (within 'Plot 1' as identified on the submitted plan 08-212_003) for a period of longer than 12 weeks and, following his/her departure, shall not use the transit site again until at least 8 weeks have elapsed.
4. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
5. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include means of enclosure; hard surfacing materials; the location and design of refuse disposal and storage units; and any external lighting.
6. Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and implementation and maintenance programmes.
7. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
8. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
9. No development shall take place until a plan indicating the positions, design, materials and type of fences to be erected has been submitted to and approved in writing by the local planning authority. The fences shall be completed before the use hereby permitted begins in accordance with the approved details, and retained as such thereafter.
10. There shall be no more than four permanent residential pitches on the site, and on each of those pitches hereby approved, no more than two caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) shall be stationed at any time, of which only one caravan shall be a residential mobile home.
11. There shall be no more than three transit pitches on the site, and on each of those pitches hereby approved, no more than one caravan (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) shall be stationed at any time. Any caravans positioned on the transit pitches shall be capable of being lawfully moved on the public highway without division into separate parts.

12. No commercial activities shall take place on the land, including the storage of materials.
13. No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and none shall exceed 3.5 tonnes in weight.
14. The development hereby permitted shall be carried out in accordance with the following approved plans: 08_212_001; 08_212_002; 08_212_003; 08_212_004; and 08_212_005.

ANNEX 2: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Katrina Yates of Counsel	Instructed by Legal Services, Maldon District Council
She called	
Mark Woodger	Maldon District Council

FOR THE APPELLANT:

Michael Rudd of Counsel	Instructed by Green Planning Solutions LLP
He called	
Wayne Stanley	the appellant
Matthew Green	Green Planning Solutions LLP

INTERESTED PERSONS:

Russell Forde BEng (Hons) PGDipTP MRTPI	Smart Planning Ltd, on behalf of Great Braxted Parish Council, supported by Little Braxted and Wickham Bishops Parish Councils
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ANNEX 3: DOCUMENTS AND PLANS

DOCUMENTS

- 1 Statement on behalf of Great Braxted Parish Council
- 2 'Briefing pack' appended to the Parish Council's statement
- 3 Signed and dated witness statement of Mr Stanley
- 4 Statement of Common Ground
- 5 Outline costs application on behalf of the appellant
- 6 Appeal decision ref: T/APP/C/90/X1545/000009/P6 (the 1991 decision)
- 7 Maldon District Replacement Local Plan – Introduction and Strategic Objectives
- 8 Planning permission (ref: FUL/MAL/08/01319) for continued use of land for the permanent stationing of a mobile home as a single residential property, retention of hardstanding, decking and 300mm high brick wall at New Redgates Farm, Farmbridge Road, Purleigh, Essex – dated 9 February 2009
- 9 Appeal decision (ref: APP/X1545/A/04/1148826) dated 10 January 2005 concerning a proposal to remove a time-limited condition imposed on a previous planning permission for the stationing of a mobile home at New Redgates Farm
- 10 Planning permission (ref: FUL/MAL/09/00385) for siting of additional mobile home for family use at The Stables, Colchester Road, Great Totham, Essex – dated 7 August 2009
- 11 Extract (including Table 14.26) from the Essex Gypsy and Traveller Accommodation Assessment – Final Report November 2009
- 12 List of suggested planning conditions
- 13 Closing submissions on behalf of the Council
- 14 Closing submissions on behalf of the appellant
- 15 Costs application on behalf of the appellant
- 16 Submissions on behalf of the Council opposing the costs application

PLANS

- A The site plan, 'Plan A', attached to the 1991 appeal decision
- B Annotated OS 1:1250 plan, signed on behalf of the Council and the appellant, indicating the existing subdivision of the 1991 site
- C Flood Zones map for Maldon District Council
- D Maldon District Council Replacement Local Plan – Proposals Map



Costs Decision

Inquiry held on 10 & 11 February 2010

Site visit made on 11 February 2010

by **Jean Russell MA MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
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Bristol BS1 6PN

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**Decision date:
31 March 2010**

Costs application in relation to Appeal ref: APP/X1545/A/09/2112221 The Orchards, Lea Lane, Great Braxted, Essex, CM8 3EP

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Wayne Stanley for a full or partial award of costs against Maldon District Council.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the 'change of use of land for the stationing of caravans to extend the existing single residential gypsy [pitch] to provide 3 no. family transit pitches and 3 no. new permanent residential gypsy pitches with utility/day rooms, hard standing and access track ancillary to that use'.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

Clarifications

1. I considered the planning appeal on the basis of a revised site address and description of development, and these are cited in the Formal Decision below.

The Submissions for the Appellant

2. The costs application was submitted in writing. The following additional points were made orally: in the second instance, the application is for a partial award of costs in relation to the Council's third suggested reason for refusal.
3. It was reasonable for the Committee to defer consideration of the application, in order to receive information on school places, but the initial delay in reporting to the Committee was unreasonable. The Committee failed to consider the wider elements of the concept of sustainability set out in *Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites (C01/06)*.

The Response by the Council

4. The response was made in writing.

Conclusions

5. *Circular 03/09: Costs Awards in Appeals and Other Planning Proceedings (C03/09)* advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 6. The planning application was submitted in January 2009. It was not reported to Committee until 3 August, whereupon the decision was deferred until 2 November for consideration of issues such as school places. Paragraph B10 of C03/09 allows
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- that delays in the determination of an application can arise because of unforeseen concerns. Paragraph B11 indicates, however, that where an appeal against non-determination is allowed, an authority may be at risk of an award of costs if there were no substantive reasons to justify delaying the decision.
7. In this case, I consider that the decision to defer was understandable, but no convincing reason has been given as to why the initial report was not presented for seven months. I do not doubt that the Council had no ulterior motive. Equally, however, lack of resources is a problem afflicting many local authorities – it does not normally lead to hold-ups as long as this.
 8. The first suggested reason for refusal states that the appeal site lies in a rural part of the district where the presumption is to resist development. It then goes on to explain that the proposed development would be unsustainable because of its disconnected location. In my view, the Council clearly had a specific concern regarding accessibility. However, the reference to a ‘presumption’ against development adds little to that objection in any meaningful sense. It rather stands to be interpreted as an additional, ‘in principle’, point of opposition to the proposal.
 9. The first suggested reason for refusal also refers to Policy S2 of the *Maldon District Replacement Local Plan* (LP), which seeks to protect the countryside outside development boundaries for its own sake. As I explain in the appeal decision, the policy makes scant mention of sustainability or access. I also note that the policy was not cited in the second suggested reason for refusal which concerns character and appearance. I consider that the Council sought to apply Policy S2 in an unreasonable and presumptive way so as to thwart development, in conflict with the advice in C01/06 that rural settings, where not subject to special planning constraints, are acceptable for gypsy sites in principle.
 10. Returning to access and sustainability, I accept that these are important issues; the Council sought to defend its concerns; and LP Policy T2 was relevant to the appeal. The first suggested reason for refusal also made a general reference to C01/06. However, C01/06 indicates that there is more to sustainability in gypsy and traveller cases than transport and distance. In my view, apart from the availability of school places, the Council failed to consider the specific issues listed in paragraph 64 of C01/06. Even the Council’s evidence to the inquiry, set out in Mr Woodger’s proof, focussed largely on accessibility-related matters.
 11. Turning to the second suggested refusal reason, I accept that LP Policy CC7 was not applied so as to create an ‘in-principle’ objection. The Council had specific concerns about the size, scale, density and design of the proposed development, and it did attempt to substantiate these objections. However, I am concerned that the Council’s evidence failed to properly examine the likely impacts of the scheme.
 12. Paragraph B16 of C03/09, as cited by the appellant, expects LPAs to produce evidence to show clearly why the development cannot be permitted. Paragraph B18 indicates that where planning appeals involve matters of judgement concerning the character and appearance of an area, costs are unlikely to be awarded against a Council if ‘realistic and specific evidence is provided’ about the impacts of the proposal. However, ‘vague [or] generalised assertions... unsupported by any objective analysis’ are more likely to result in a costs award. Paragraph B19 emphasises the need to demonstrate an understanding of context.
 13. In this case, the first Committee report suggested that the proposed development would comply with *Designing Gypsy and Traveller Sites: Good Practice Guide*. This document was named but not discussed in the Council’s evidence to the inquiry.

Mr Woodger's proof indicates that proposed structures on the site would be visible from the highway. However, it fails to acknowledge two key aspects of the scheme which would affect public views: the re-positioning of development further back from Lea Lane, and additional boundary planting.

14. Moreover, the wording of the suggested refusal reason, and citing of LP Policy CC7, indicated a particular concern of the Council to conserve the character of the SLA. I would therefore have expected the Council to have described the qualities of the area that merited conservation and were threatened. Little such information was given. I was provided with a Landscape Character Assessment, but only by the appellant and Great Braxted Parish Council. I consider that the Council's assertions regarding the impact of the proposal were not adequately substantiated – and this raises serious doubts in my mind as to whether the suggested reason for refusal was carefully framed and relevant, as required by paragraph B16 of C03/09.
15. The third suggested reason for refusal alleges that piecemeal development of the type proposed would be contrary to Policy H1 which seeks to locate housing within development boundaries. Gypsy and traveller sites do provide residential accommodation, but there is little in *Planning Policy Statement 3: Housing* or C01/06 to imply that general housing policies should be used to assess such proposals. In my appeal decision, I found Policy H1 of little relevance, and again I consider that it was applied presumptively in conflict with C01/06.
16. To my mind, therefore, the suggested reasons for refusal failed to have adequate regard to national policy, were insufficiently substantiated, and/or were not clearly relevant – and were thereby unreasonable.
17. I also agree with the appellant that the Council's decision-making process was flawed by a failure to expressly consider the matters set out in paragraphs 44, 58 and 69 of C01/06, which generally relate to the need for and provision of gypsy sites – and by a failure to consider the possibility of a grant of temporary permission. That the officer recommended approval and the appellant did not request consideration of specific conditions are not reasons for the Council to ignore the obligations upon it.
18. Noting that the duplicate application was refused permission for the same reasons as discussed here, I conclude that the appellant had little choice but to pursue an avoidable appeal. Unreasonable behaviour resulting in unnecessary expense, as described in C03/09, has taken place. A full award of costs is warranted and allowed in the terms set out in the Formal Decision and Costs Order.

Formal Decision and Costs Order

19. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Maldon District Council shall pay to Mr Wayne Stanley the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the use of land as a gypsy caravan site, with four residential and three transit pitches, and ancillary utility/dayrooms, hardstanding and access track at 5 The Orchards, Lea Lane, Great Braxted, Essex, CM8 3EP.

20. The applicant is now invited to submit to Maldon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Jean Russell

INSPECTOR