



# Appeal Decision

Inquiry held on 17 & 18 March 2009  
and 10 & 11 June 2009

Site visit made on 11 June 2009

by **Susan Heywood** BSc(Hons) MCD  
MRTPI

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

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**Decision date:**  
**17 June 2009**

**Appeal Ref: APP/P1560/A/08/2090227**

**Land at Gutteridge Hall Lane, Weeley, Clacton-on-Sea, CO16 9DL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Tom Doran against the decision of Tendring District Council.
- The application Ref 08/00960/FUL, dated 30 June 2008, was refused by notice dated 31 October 2008.
- The development proposed is described as: "*the change of use to include the stationing of caravans with utility / day-room buildings ancillary to that use and retaining the existing use of the land for stabling horses*".

**Summary of Decision: The appeal is allowed subject to the conditions set out in the formal decision below.**

## Application for costs

1. At the Inquiry an application for costs was made by Mr Doran against Tendring District Council. This application is the subject of a separate Decision.

## Preliminary Matters

2. The use has already commenced on site and caravans, hardsurfacing and fencing have been erected and stationed on the land. The description of development as set out on the planning application form does not include the residential use of the caravans. For clarification purposes I have inserted this wording into the description in the formal decision below. I do not consider that this would be prejudicial to any party.
3. A planning permission already exists for the stable block which lies within the application site. I have therefore removed reference to the retention of the existing use of the land for stabling horses as I consider this to be unnecessary.
4. The appeal relates to an application for the use of land including operational development for the utility buildings / day rooms. I do not consider that there is a need to alter the description of development along the lines suggested in the Council's Proof of Evidence. Ancillary operational development required to facilitate the use is identified on the submitted plans and it would be a matter for the Council to decide whether any departure from these plans would warrant taking enforcement action in the future.

## **Agreed Matters and Main Issues**

5. A Single Issue Review of the Regional Spatial Strategy '*Planning for Gypsy and Traveller Accommodation in the East of England*' is being undertaken. The Secretary of State's Proposed Changes to the Draft Revision to the Regional Spatial Strategy and Statement of Reasons was published in March 2009. It sets out, at draft policy H3 the requirement for local authorities to make provision for 1,237 net additional pitches in the Region by 2011. It identifies a need for 15 pitches to be provided in Tendring District. The parties agree that this figure represents the unmet need within the District.
6. There is no dispute that the appellant and his extended family are gypsies as defined in ODPM Circular 01/2006 '*Planning for Gypsy and Traveller Caravan Sites*' (Circular 1/06).
7. Accordingly, the main issues in this case are:
  - i. the impact of the development on the character and appearance of the surrounding area;
  - ii. the impact of the development on the living conditions of nearby occupiers with particular reference to the potential for noise and disturbance from the use of the access;
  - iii. the impact of the development on highway safety, flooding and ecology.

## **Policy Context**

8. East of England Plan policy H3 requires local authorities to make provision for sites / pitches to meet the identified needs of gypsies and travellers in their area. Tendring District Local Plan policy HG22 sets out criteria for the consideration of gypsy caravan sites. Amongst other things, it requires that there is an identified need for accommodation and that the site should be in a reasonably accessible location, with convenient access and links to services. The Council considers that the development would be contrary to criterion (v) of HG22 relating to the character and appearance of the area and to criterion (vi) relating to residential amenity. Policy QL9 relates to the design and landscape impact of development; QL10 relates to the functional aspects of development proposals; QL11 requires development to minimise adverse environmental impacts and be compatible with surrounding land uses; EN1 seeks the protection of landscape character; EN6 seeks to protect and enhance biodiversity; TR1a aims to ensure that the highway impact of development proposals is acceptable.

## **Reasons**

### *Character and appearance*

9. The appeal site is located outside the settlement boundary for Weeley. To the south the site is bounded by Gutteridge Hall Lane and open countryside beyond. To the west of the site lies open countryside and the residential property at Reedlands. The site is separated from residential properties to the south east and the buildings at St Andrew's Primary School by open fields. To the north lies Starena Lodge and a railway line and caravan park beyond. The

surrounding area therefore has a semi-rural appearance, rather than having the appearance of open, undeveloped countryside.

10. The site is only visible from a few vantage points along Gutteridge Hall Lane and beyond due to the substantial hedgerow alongside that lane. From these points the existing fencing along the eastern boundary of the site is visible as are the tops of caravans on the site and the upper portion of the existing stables. The upper parts of mobile homes and utility buildings would also be visible from these vantage points. At the access to the site, close boarded fencing and gates have been installed and block paving materials have been laid.
11. The site is well screened along its northern boundary and is further screened from land to the north of the railway line by additional substantial trees along the railway boundary. There is a hedge and trees along part of the western boundary but this is sparse in places and the site is visible from the nearby fields. The site is also visible from the adjoining playing fields to the east. The site would undoubtedly benefit from some additional screening along the western and eastern boundaries. This can be secured by condition. Otherwise, the development on the site is well screened in its surroundings.
12. Circular 1/06 advises that gypsy sites are acceptable in principle in the countryside and refers (at paragraph 54) to the suitability in principle of sites on the outskirts of built-up areas and rural or semi-rural settings. Furthermore, there is no requirement for gypsy sites to be hidden from view. Whilst the site would be visible from the locations identified above, the substantial existing screening and potential for further screening to soften and filter views of the development, leads me to the view that the development would have a very limited impact on the character and appearance of the surrounding area.
13. I do consider that the block paving at the entrance, the close boarded fencing and the gates have an urbanising appearance which are out of character with the semi-rural nature of the surroundings. However, these are unauthorised and, with the exception of some of the close boarded fencing along the eastern boundary, do not reflect the details on the submitted planning application. Conditions can be imposed which require the submission and implementation of details of fencing, landscaping and hardsurfacing at the entrance to the site, in order to ensure that these are appropriate to the semi-rural character of the area.
14. I acknowledge that part of the hedgerow has been removed to create the access into the site and that this will have reduced the sylvan nature of the lane at this point. However, I consider that it would be possible to replant some hedging alongside the access road at the site entrance and that this can be secured by the imposition of a landscaping condition. On balance, I do not consider that the impact of the loss of a relatively short section of hedgerow has caused unacceptable harm to the character and appearance of the surrounding area. The development does not therefore conflict with criterion (f) of policy EN1 and criterion (iv) of policy QL9.
15. I note the points made by interested persons that other residential development is not acceptable in the countryside. However, each development

must be treated on the merits of the case in question and in accordance with the policies, both national and local, which apply to it. There are circumstances where residential development is acceptable in the countryside and in relation to development proposals by the gypsy and traveller community, Circular 1/06 is a material consideration of significant weight.

16. For the above reasons, I conclude that, the development would have a minimal impact on the character and appearance of the surrounding area. This minimal impact would be capable of being mitigated by the imposition of suitable conditions. The development therefore complies with part (v) of policy HG22. Having regard to the advice in Circular 1/06 I therefore consider that the development would not cause unacceptable harm to the character or appearance of the surrounding area.

*Living conditions of nearby occupiers*

17. The site is separated from the adjoining property at Reedlands by a substantial copse of mature trees and open land to the side of Reedlands. The pitches are located some distance behind the rear boundary of Reedlands and are well screened by the copse of trees.
18. The Council confirmed that their concerns related to the movement of traffic on the driveway and the impact of this on the living conditions of the occupiers of Reedlands. Interested parties have also raised concerns in relation to the living conditions of other residents along the lane.
19. The appellant estimates that the development would result in a maximum of 18 – 30 vehicle movements per day. This figure was not challenged by the Council and it seems to me to be a reasonable estimate of vehicle numbers for three pitches. The access drive to the appeal site is located some distance to the east of the property at Reedlands. I acknowledge that this amount of traffic may be noticeable to the occupiers of that property. But, I consider that the distance between the driveway and that property is sufficient to ensure that the noise from vehicle movements would not be so significant as to harm the living conditions of the adjoining occupiers. Neither do I consider that these vehicle movements would harm the living conditions of those properties close to the junction of Gutteridge Hall Lane and Clacton Road, given the relatively modest increase in traffic and the distance of those properties from the road.
20. I note the concerns raised by interested parties in relation to potential for commercial activities on the site. The appellant stated that there would be no commercial activities carried out from the site and this is a matter that can be controlled by the imposition of a suitable condition.
21. I conclude on this issue that the development would not harm the living conditions of the surrounding occupiers and it would not therefore conflict with part (vi) of policy HG22.

*Highway Safety*

22. Interested persons have raised concerns that the development would harm highway safety on Gutteridge Hall Lane, particularly having regard to the proximity of the site to St Andrew's Primary School. I accept that the lane is

narrow and that there are no formal passing places along much of its length. However, from my observations, other than in the vicinity of the school, the amount of traffic currently using the lane is small. There are some points along the lane at field entrances where two vehicles would be able to pass each other. But, in any case, given the moderate traffic movements to and from the site, and the low traffic movements currently along the lane, I do not consider that the width of the lane and lack of formal passing places would be likely to cause a significant problem in terms of highway safety.

23. I acknowledge that the development would increase the number of vehicles passing the school. However, there are already a significant number of vehicles manoeuvring in the vicinity of the school at drop off and pick up times. I consider that the increase in vehicle movements passing the school at those times, as a result of the appeal development, would be negligible. I do not consider that this increase in vehicular movements would cause harm to highway safety in the vicinity of the school.
24. In addition to the above, I note that the Highway Authority has raised no objections to the development on highway safety grounds. Paragraph 66 of Circular 1/06 advises that proposals for gypsy sites 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.
25. For the above reasons, I conclude that the development would not harm highway safety in the vicinity of the site. It would not therefore conflict with local plan policy TR1a and would comply with the advice in Circular 1/06.

#### *Flooding*

26. The appeal site lies within Flood Zone 1 and the Environment Agency were consulted on the application but made no comments. Interested parties suggested that there may be drainage issues in the nearby area, but the photographic evidence submitted related to a property and to the lane, further to the east and some distance from the site. I do not consider that there is any evidence to suggest that the appeal site is at risk of flooding or that the development would increase flood risk elsewhere. A condition can be imposed to ensure that drainage details are submitted to the Council to ensure that these are satisfactory. On this basis, I consider that the development would not conflict with local plan policy QL10.

#### *Ecology*

27. I note the concerns initially expressed by Natural England and those raised by interested parties in relation to the potential for newts in the pond at Reedlands. The appellant has carried out an ecological survey which concluded that the site is of low value for newts and that, provided hedgerows are retained, any impacts to amphibians would be negligible. Natural England has indicated that they are satisfied that the development is not likely to have a significant adverse impact on protected species. They indicate that conditions could be imposed to improve the value of the boundary hedgerows as a habitat. I accept that the removal of part of the hedge along the frontage of the site may have reduced the amount of foraging habitat for newts along the southern boundary. However, I consider that the imposition of conditions as

referred to above will adequately compensate for this loss. I therefore consider that the development would not conflict with local plan policy EN6.

### **Other matters**

#### *Location of the development*

28. Interested parties raised concerns in relation to the proximity of the appeal site to local services. Circular 1/06 advises that issues of sustainability should take in wider considerations other than transport mode and distances from services. These include the wider benefits of easier access to GP and other health services; children attending school on a regular basis and the provision of a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment.
29. In terms of its location in relation to services and facilities the appeal site is similar in nature to sites in many rural areas. It should therefore be seen in the light of the advice in Circular 1/06 regarding the acceptability in principle of gypsy sites in rural areas. I consider that the development would not conflict with the aims of Circular 1/06 or policy HG22 in this respect.

#### *Need*

30. I consider that it is clear that the appellant and his extended family have a need for a site, having regard to the evidence given relating to their cultural background.
31. The timescale for adoption of the Site Allocations Development Plan Document was given as mid 2012. No gypsy sites have yet been identified by the Council and it therefore appears likely that the Council will not meet the identified need of 15 pitches by 2011.
32. The appellant's, and his extended family's, need for a site and the general need for gypsy sites in the District are factors which weigh in favour of the development.

#### *Health and Education*

33. The appellant's mother and sister have health difficulties which require medical supervision. I consider that it is of benefit that the family has a settled site in order to more easily gain access to the required medical attention. There are also children on the site who attend the local school and younger ones who will require schooling in future years. I note the concerns regarding the capacity at the school, but the appellant's children have secured places at the school. Even if it were not possible for the other children on the site to secure places there in the future, a settled base is desirable in allowing the children to regularly attend school, even if they have to travel to a school further away from the site. These matters provide some weight in favour of the appeal.

#### *Starena Lodge*

34. During the Inquiry, it came to light that Starena Lodge to the north of the appeal site and in the ownership of the appellant has a Certificate of Lawful Use or Development (CLEUD) for four caravans for "human habitation". It was therefore advanced by the Council and interested parties that this site would

meet the appellant's needs and that there is therefore no need for the appellant to reside on the appeal site.

35. I accept the appellant's arguments that the Starena Lodge site would not meet entirely his requirements at the present time. But I also note the Council's views that the appellant could alter his requirements. I agree with their view that it is possible that that site could accommodate the appellant's needs in the future subject to the relevant planning permission being granted.
36. Nevertheless, the availability of Starena Lodge as a potential alternative site which the appellant could move to does not make the appeal site unsuitable for the use. I have concluded that the development causes no unacceptable harm. The existence of the CLEUD on Starena Lodge does not alter that view.

#### *Human Rights Implications*

37. Representations were made to the effect that the appellant's, and his extended family's, rights under Art 8 of the European Convention on Human Rights (ECHR) would be infringed if the appeal were to be dismissed. As I have decided to allow the appeal, I do not need to deal further with this matter.
38. I note that an interested party has also raised concerns in relation to the human rights implications for local residents if the appeal is allowed. Although it was not made clear which Article of the ECHR would be infringed in these circumstances, the rights and freedoms of local residents must be balanced against the effect of the development on the public interest. In the light of my conclusions on the matters addressed above I am satisfied that if the appeal is allowed, its effect on local residents would be proportionate in the circumstances and would not result in an infringement of their rights.

#### **Conclusions**

39. I conclude that the development would cause no unacceptable harm to the character and appearance of the surrounding area, no harm to the living conditions of nearby occupiers and no harm to highway safety or the other matters identified. Accordingly, the development would comply with the criteria set out in policy HG22 of the Tendring District Local Plan and with the advice in Circular 1/06. In addition, the general need for gypsy sites in the District and the appellant's, and his extended family's, need for a site and their educational and health needs provide some weight in favour of the appeal.
40. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

#### **Conditions**

41. A condition is required restricting the use to gypsies and travellers only, due to the special considerations applying to development by the gypsy and traveller community. But, I do not consider that a personal permission is needed as my decision has not turned on the personal circumstances of the appellant or his extended family. In order to protect the appearance of the area conditions are required restricting the number of pitches and number and type of caravans; requiring the submission of details of materials for the amenity blocks, boundary treatments and gates, hard surfacing at the entrance to the site, landscaping and its maintenance; and restricting commercial vehicles and

activities. Drainage details should be submitted to ensure that the site is properly drained. Details of visibility splays at the entrance of the site are required in the interests of highway safety. A condition is also required to secure the ecological mitigation measures along the lines suggested by Natural England.

42. The existing derelict mobile home is inconspicuous when viewed from outside of the site. I do not consider that its removal is necessary in order to allow the development to go ahead and a condition is not therefore required to secure its removal. I note that it is not known within whose ownership the hedge along the western boundary lies. Nevertheless, I consider that it would be possible to provide supplementary planting alongside that boundary on land within the appellant's ownership. I consider that this would be more effective in providing a lasting screen along that boundary than would the provision of a post and rail fence to protect the existing sparse hedge.
43. I note that the existing stable block at the northern end of the site is currently being used as a utility / day room but the appellant has indicated that this is only required until the utility buildings included in the application can be provided. A planning permission was granted for the erection of the stable block in 1997. The plans submitted with the current application show this building as being retained for the stabling of horses. It would be possible for the Council to enforce any departure from the approved plans and as such, I do not consider that it is necessary to impose a condition restricting the use of that building to the stabling of horses.
44. I note the Council's objections to a condition worded in such a way as to allow a period of 3 months for the submission of additional details. Nevertheless, a condition worded in a way which sets out clear timescales for compliance provides the Council with a route to effective enforcement action in the face of non-compliance with the specified timescale, or the submission of unacceptable details. In circumstances where the use has commenced, albeit unauthorised and not in accordance with the submitted plans, I consider that this is a reasonable course of action.

### **Formal Decision**

45. I allow the appeal, and grant planning permission for the change of use of the land to a residential caravan site to include the stationing of caravans and for the erection of utility / day-room buildings ancillary to that use on land at Gutteridge Hall Lane, Weeley, Clacton-on-Sea, CO16 9DL in accordance with the terms of the application, Ref 08/00960/FUL, dated 30 June 2008, and the plans submitted with it, subject to the following conditions:
- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
  - 2) There shall be no more than 3 pitches on the site and on each of the 3 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.
  - 3) The erection of the amenity blocks hereby approved shall not take place until samples of the materials to be used in the construction of the



external surfaces of the building have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 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: the means of foul and surface water drainage of the site; visibility splays at the site access; the materials of the surface finish of the proposed private drive within 10m of the highway boundary; details of entrance gates and hard boundary treatments; tree, hedge and shrub planting (including the protection of existing landscape features) and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities; and habitat enhancement measures (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.
- 5) At the same time as the site development scheme required by condition 4 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of five years of the proposed planting commencing at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 7) No commercial activities shall take place on the land, including the storage of materials.

*Susan Heywood*

INSPECTOR

## DOCUMENTS

- 1 Council's letter of notification of Inquiry and circulation list
- 2 Statement of Common Ground, submitted by appellant
- 3 Letter from Essex County Council, Schools, Childrens and Families Directorate, submitted by appellant
- 4 Letter from Dr C Mahmoud, Thorpe-le-Soken Surgery, submitted by appellant
- 5 3 letters in support from nearby residents, submitted by appellant
- 6 Letter from North East Essex NHS Primary Care Trust, submitted by appellant
- 7 Witness Statement of Mr Tom Doran
- 8 Copies of Land Registry Titles, submitted by Council
- 9 Copies of appeal and costs decision (APP/J3720/A/08/2082774), submitted by appellant
- 10 DLCG document: Designing Gypsy and Traveller Sites, submitted by appellant
- 11 Planning permission ref: TEN/97/0011 for stables and hay store, submitted by Council
- 12 Natural England letters, submitted by Council
- 13 Certificate of Lawful Use or Development for Starena Lodge, submitted by Council
- 14 Council's letter of notification of resumed Inquiry and circulation list
- 15 Appendix 21 to Mr Green's Proof of Evidence, submitted by appellant
- 16 Leaflet entitled "To all Weeley Residents", submitted by appellant
- 17 Local Plan policies TR1a, EN1 and EN6, submitted by Ms Bannister
- 18 List of conditions, jointly submitted
- 19 Closing submissions on behalf of Council
- 20 Closing submissions on behalf of appellant
- 21 Costs application on behalf of appellant