

**BASILDON DISTRICT COUNCIL**

**Report to:** Development Control and Traffic Management Committee.  
13 December 2007

**BREACHES OF PLANNING CONTROL – LAND AT DALE FARM,  
(HORSESHOE) , OAK LANE, CRAYS HILL, BILLERICAY – OPTIONS REPORT.**

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**Enclosures:** None

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**EXECUTIVE SUMMARY:**

The purpose of this report is to inform and update Members of an ongoing serious breach of planning control in the Green Belt at Dale Farm, Oak Lane, Crays Hill, Billericay, as edged in black and labelled Unauthorised Gypsy Plots (Horseshoe) fronting Beauty Drive, Camilla Drive, Oak Place, Oak Lane and Swallow Court on the location plan produced below. The sites are the subject of a number of extant Enforcement Notices and a recent planning appeal decision. The Council in June 2005 resolved that authority be given to senior officers to take such action as deemed necessary to enable the Council, pursuant to section 178 of the Town and Country Planning Act 1990 to enter on to the land in question and take such steps as required to ensure compliance with the extant Enforcement Notices. This decision is currently the subject of Judicial Review proceedings The June 2005 decision was re-affirmed in January 2006. There is currently an injunction precluding the Council from taking such action until the outcome of the pending Judicial Review is known. The hearing of the Judicial Review is now scheduled for February 2008.

It is necessary, in view of the delay in taking action to update Members on the current planning position and the individual circumstances (as can be obtained) of current occupiers of the site. This report along with any resolution will also be submitted as further evidence in respect of the current Judicial Review proceedings.

**WARD:**

Crouch

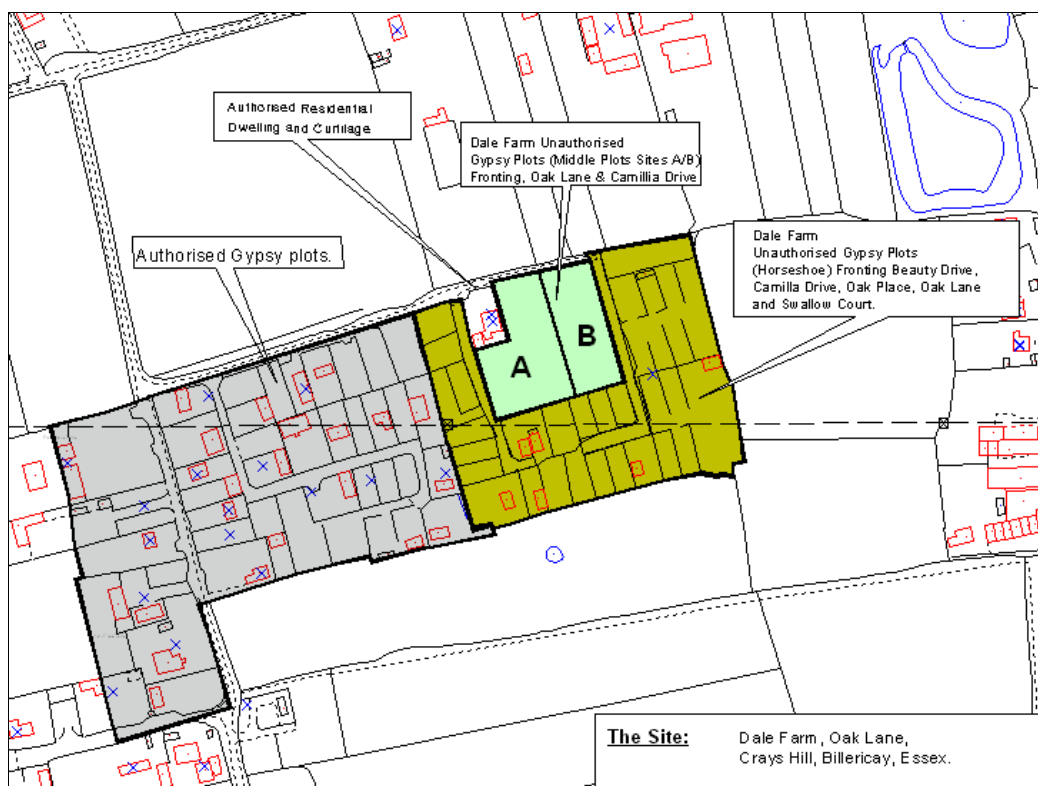
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**BACKGROUND**

In considering whether to take action to secure compliance with the requirements of the extant Enforcement Notices issued in respect of unauthorised development, the Council must balance the public interest in securing the removal of development that has occurred, which is now in breach of criminal law, against any personal circumstances of the occupiers of the site, should that be relevant, and any hardship which could be caused. This decision should also take into account the accommodation needs of the

Gypsy and Traveller community in the context of current National Policy contained in Circular 1/2006. This report sets out the approaches available to the Council in dealing with the unauthorised developments on the land and in doing so considers the following matters:

- (a) The planning history of the site and surrounding area.
- (b) Planning policy and the acceptability of the development subject of the notices.
- (c) The options available to the Council to effect compliance with the notices, and the practical issues involved.



## THE RELEVANT PLANNING HISTORY

The Council first became aware of unauthorised activity at Dale Farm in September 2001. The site has since the autumn of 2001 grown substantially in size, in clear breach of planning control. It has since then been the subject of nine planning applications all of which have been refused permission and ten Enforcement Notices issued following the carrying out of unauthorised development. Eight of the nine planning applications along with all the issued Enforcement Notices have been the subject of appeals. These appeals have generated three Local Public Planning Inquiries resulting in the issue of two Secretary of State decision letters and one Inspectors decision letter.

The first decision letter issued by the First Secretary of State on the 13 May 2003 dismissed appeals against six of the eight issued Enforcement Notices and refused to grant planning permission. Two of the notices were found to be nullities. He also dismissed the appeal against a refused planning application. He did however extend all the compliance periods to two years to enable alternative sites to be found by the

appellants. The compliance periods all expired on the 13 May 2005. The decision letter is produced as a background paper.

The two nullified notices were re-issued in September 2003 and were the subject of further appeals, which were heard in March 2004. The Inspector dismissed the appeals and upheld the notices as issued with the issue of his decision letter dated 8 April 2004. The time for compliance was set at 13 May 2005 to coincide with the earlier Secretary of State decision. A copy of this decision letter is produced as a background paper.

Land at the north-east of the site the subject of this report has been the subject of two significant planning applications relating to a temporary car breaking use, together with applications for a Certificate of Established Use and a Certificate of Lawfulness, which established the use of a rectangular parcel of land with an area of approximately 0.3 of a hectare for the storage and breaking of motor vehicles, the sale of parts and the dealing in scrap metals. The site has since been cleared and the established use has been lost as a result of the establishment of the unlawful development that exists today.

The Council between April and June 2005 received seven planning applications, each of which sought retrospective permission to continue using the land including some adjoining the land as a residential gypsy/traveller caravan site consisting of over 40 individual pitches. All seven applications were refused planning permission. Appeals against the Council's decisions were subsequently the subject of a Local Public Inquiry, which was held in August 2006. The Inspector reported to the Secretary of State on 21 September 2006. The Secretary of State after some delay issued her decision letter on 22 February 2007. In doing so she dismissed the appeals and refused to grant planning permission. Of particular significance in relation to this decision is the fact that it was determined in accordance with National Policy Guidance contained in Circular 01/2006. The decision letter and Inspector's report is produced as a background paper.

It was resolved in June 2005 following an earlier decision to refuse planning permission to take such action as necessary, pursuant to Section 178 of the TCPA 1990 to bring about compliance with the extant Enforcement Notices, which it had been evidenced, had not been complied with. This decision is the subject of Judicial Review proceedings due to be heard in February 2008. An Injunction currently precludes the Council from taking such action until the outcome of the Judicial Review is known

The notices relate to different parts of the land but collective and in general they require the cession of the use of the land as a residential Gypsy/traveller site, the removal of all caravans, portable structures, hardcore and road scalplings and the return of the land to its former condition by leveling and reseeding with grass seed.

## **LEGISLATION/POLICY**

### National Planning Policy Guidance

#### ***Circular 1/2006***

Current planning advice on the provision of sites for gypsies and travellers is contained in Circular 1/2006 "Planning for Gypsy and Traveller Caravan Sites". Paragraph 12 of the Circular states that its main intentions are, amongst other things, to ensure that gypsies and travellers have fair access to suitable accommodation and community services. It seeks to reduce the number of unauthorised encampments and make enforcement more effective where local authorities have complied with the guidance set out in the Circular.

The Circular also updates the definition of gypsy status to reflect the continuing evolution of gypsy culture and economic activity. The revised definition is set out in paragraph 15 of the Circular.

The Circular envisages that further site provision of sites will come about through the Development Plan process whereby the overall accommodation requirement will be set out in the Regional Spatial Strategy (RSS). Local Planning Authorities will then determine specific site allocations in their Gypsy and Traveller Development Plan Document (DPD). The criteria based policies for the location of sites must be fair, realistic and effective in delivering sites. The Government can intervene in the plan-making process where it considers the local planning authority has not adequately addressed site provision.

Where there is clear evidence of immediate need, such as the presence of significant numbers of unauthorised encampments, the Circular encourages local planning authorities to bring forward the preparation of their Gypsy and Traveller DPDs containing site allocations in advance of regional consideration of pitch numbers and the completion of any accommodation needs assessment. Transitional arrangements for meeting immediate need where it is evidenced is set out in paragraphs 41 to 46 of the Circular.

In establishing the existence of need it is necessary to consider the ongoing incidents of unauthorised encampments, the number and outcomes of planning applications and appeals, the level of occupancy, plot turnover and waiting lists for public authorised sites, the status of existing authorised private sites and the bi-annual gypsy caravan counts. Much of the unauthorised camping that takes place in Basildon is on private sites in the green belt following the occupier's purchase of land.

Enforcement notices have in all cases been issued against the unauthorised occupation and development of such sites. Appeals against issued notices have been dismissed following Inspectors and/or the Secretary of State concluding that the harm to the green belt is not outweighed by the issue of need or the personal circumstances of individual occupiers. It is known that the County Council site in Courtauld Road, Burnt Mills, Basildon is permanently full and the waiting list remains closed. The number of unauthorised pitches within the district remained below 20 until the end of 2000. Since then the number of unauthorised pitches has risen beyond all expectation thereby generating unprecedented demand for pitches in Basildon beyond what can realistically be provided. The bi-annual caravan count figures with the exception of those pitches in Crays Hill remain permanently occupied throughout the year with little known change in ownership taking place. The evidence clearly indicated that there is demand for pitches in Basildon. This demand is not however associated with any need to be in Basildon. Basildon does not provide any unique or specialist healthcare or educational services that cannot be provided elsewhere or are not readily available elsewhere.

Basildon's only attraction is the availability and purchasability of cheap green belt land. The availability of cheap land is not a justification for considering the grant of temporary permissions in accordance with the transitional arrangements as set out in the circular.

Paragraph 45 states that where there is unmet need, but no available alternative, consideration should be given to the grant of temporary permission where there is reasonable expectation that new sites are likely to become available by the end of the temporary period.

The Circular clearly recognises at paragraphs 49 to 51 the primacy of Green Belt policy and the presumption against inappropriate development as set out in PPG2 (Green Belts). Alternatives should be explored before such locations are considered as possible rural exception sites. It is recognised that Green Belts will limit opportunities for identifying gypsy sites. However, alterations to Green Belt boundaries should be addressed through the RSS, rather than through ad-hoc planning permissions. PPG2 makes it clear that, once approved, detailed Green Belt boundaries should only be altered exceptionally. It also recognises at Paragraph 62 that LPAs are entitled to refuse private applications in locations that do not comply with planning policies. Effective enforcement action should be pursued in accordance with the Government's aims set out in paragraph 67.

Advice in respect of Human Rights, Race Relations and monitoring of decisions is set out in paragraphs 70 to 73 of the Circular.

The Circular is provided as a background paper.

### ***Planning Policy Guidance Note 18 (Enforcing Planning Control)***

This guidance sets out the enforcing powers available to the Local Planning Authorities. It reminds them of the discretionary nature of those powers to take enforcement action, and that such action should only be taken as a last resort, where there is a clear breach of planning control and where it is expedient to do so. The decisive issue in considering any enforcement action is whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. PPG18 also states that Local Planning Authorities will need to assess in each case on its own merits and determine which power is best suited to deal with the breach of planning control, to achieve a satisfactory, lasting and cost-effective remedy.

The Circular is provided as a background paper.

### ***Development Plan Framework and Notation***

The Development Plan framework and Notation for the land the subject of this report was until 28 September 2007 provided by the Essex and Southend on Sea Replacement Structure Plan at the strategic level, and the Basildon District Local Plan at the more local level. As a consequence of the commencement of Section 38 of the TCPA 2004 and Schedule 8 (1) (2) that sets out the transitional provisions under the Act which states unless expressly replaced by a 'new' policy 'old' policies (the adopted Structure Plan and the Local Plan) could only be saved for three years from the 28 September 2004. It has not been possible in the course of preparing the Local Development Framework (LDF) to adopt any Development Plan Documents (DPDs) containing new policies. It has therefore been necessary for both Essex County Council and Basildon District Council to apply to the Secretary of State to have policies saved from the adopted development plans beyond the prescribed period as set out in Schedule 8. The Secretary of State has in accordance with Schedule 8 (1) (3) issued Directions to both Essex County Council and Basildon District Council setting out which policies are to have saved status and remain part of the development plan for the purpose of controlling local development. The saved policies are listed in the separate schedules attached to each of the issued Directions, which are supplied as background papers.

It should be noted that all previous decisions in respect of the development the subject of this report has been considered against the Development Plan framework and notation that existed prior to the 28 September 2007. It is however only those policies that have been saved that are now of relevance.

Both the Structure and the Local plans included the land within the Green Belt that surrounds the district's urban settlements. In addition, the changes brought about by the introduction of Section 38 Sub-Section (3) of the Planning and Compulsory Purchase Act 2004 has had the effect of establishing RPG9 (Regional Planning Guidance for the South East) as the applicable regional planning guidance for the district of Basildon. The guidance was published in March 2001 and covers a plan period up to 2016. Boundary changes following the publication of RPG9 resulted in the County of Essex being included within the East of England region. The Regional assembly for the East of England published the "draft revision to the Regional Spatial Strategy (RSS) for the East of England (The East of England Plan) in December 2004. It has been the subject of an Examination in Public in 2005/6 and the Government published for consultation its Proposed Changes to the Plan in December 2006. The Government expects to publish the final East of England Plan late 2007. However this may be delayed pending its assessment for the purposes of the European Habitats Directive. Until such time as the RSS for the East of England is adopted, the Regional Planning Guidance for the South East (RPG9) remains the approved RSS for Essex.

The Essex and Southend-on-Sea Replacement Structure Plan, adopted in April 2001, states that the general area in which the land is situated, should form part of the Green Belt but leaves the detailed determination of its boundaries to the relevant planning authorities. The Basildon District Local Plan was adopted on 25 March 1998, and was up to the 28th September 2007 the statutory Development Plan for the area. Therein, the land the subject of this report and the surrounding area forms part of the Green Belt, as shown on the Proposals Map attached to the Local Plan which is provided as a background paper. Both these plans are provided as background papers.

The following saved policy is relevant to the issues considered in this paper. Basildon District Local Plan Policy BAS GB1 sets out the general extent of the Green Belt within the district.

Policy BAS BE12 provides:

PLANNING PERMISSION FOR NEW RESIDENTIAL DEVELOPMENT, AND FOR THE ALTERATION AND EXTENSION OF EXISTING DWELLINGS, WILL BE REFUSED IF IT CAUSES MATERIAL HARM IN ANY OF THE FOLLOWING WAYS: -

- (I) HARM TO THE CHARACTER OF THE SURROUNDING AREA, INCLUDING THE STREET SCENE;
- (II) OVERLOOKING;
- (III) NOISE OR DISTURBANCE TO THE OCCUPANTS OF NEIGHBOURING DWELLINGS;
- (IV) OVERSHADOWING OR OVER-DOMINANCE; AND
- (V) TRAFFIC DANGER OR CONGESTION.

It is considered that criteria (i), (iv) and (v) are of particular relevance in that the development the subject of this report is harmful to the character of the surrounding area, it is over-dominant with the landscape and creates a traffic danger.

RPG9 is the approved RSS for Essex and policy E3 states that there is no regional case for reviewing Green Belt boundaries and in preparing development plans local authorities should frame policies in accordance with advice in PPG2 (Green Belts).

Notwithstanding the changes to the development plan framework and notation. The site continues to be subject to Green Belt policy and the guidance in PPG2 remains fully applicable. That advice, together with the advice in Circular.01/2006 and saved policies BAS GB1 and BE12, remain clearly relevant to the matters being considered in this report.

## **THE PLANNING CONSIDERATIONS**

The planning merits of the unauthorised development that has taken place on the land referred to as the Horseshoe, was considered by the First Secretary of State in 2003 when he issued his decision letter dated 13 May 2003 in respect of Enforcement Notice appeals lodged in 2002. He stated at paragraph 23 that the development was inappropriate in the Green Belt and that, in addition to the harm caused by reason of inappropriateness, the development has significant adverse effect on the openness of the Green Belt, and harms the character of the countryside in the area. He accepted that the shortage of authorised sites and the personal circumstances of the appellants are material considerations which weigh in favour of the proposals, but these need to be balanced against the harm to the Green Belt and other objections to the proposal in terms of highway safety and regarding the impact on residential amenity. The First Secretary of State concluded that the considerations in favour of the proposals do not amount to very special circumstances that would justify allowing inappropriate development in the Green Belt, or would indicate that the appeals should be determined other than in accordance with the development plan. The Secretary of State dismissed the appeals, but in doing so granted an extension to the compliance period from three months to two years.

The Council received seven planning applications in the spring of 2005 all of which sought the retention of the development the subject of extant Enforcement Notices. The Council refused all these applications permission in the summer of 2005. Appeals were lodged and determined by the Secretary of State with the issue of her decision letter dated 22 February 2007. She concluded at paragraph 37 that the development of the land the subject of these applications was contrary to Structure Plan Policy C2 and Local Plan Policy BAS GB2 and parts of Policy BAS S7 and therefore constituted inappropriate development in the Green Belt. In addition to the harm from inappropriateness the sites cause harm to openness and functions of a Green Belt. The Secretary of State attached substantial weight to each of the harms including considerable weight to the significant harm the sites cause to highway safety. The Secretary of State at paragraph 38 agreed with her Inspector that the material considerations put forward by each of the appellants did not, either individually or cumulatively amount to very special circumstances, which would clearly outweigh the harm caused to the Green Belt by reason of inappropriateness and any other harm. She concluded that she was satisfied that the material considerations relied upon by the appellants did not justify a determination other than in accordance with the development plan. The appeals were dismissed.

The issues that arise for consideration are: -

- The Green Belt Function of the Land

- Harm to the Green Belt
- Other Harm: -
  - Effect on highway safety
  - Effect on the living conditions of nearby residents
- Conclusions on Harm
- Very Special Circumstances: -
  - Personal Circumstances and Gypsy Status
  - The need for additional Gypsy Sites
- Emerging Plans and Policies
  - Regional Spatial Strategy
  - Local Development Framework
- Transitional Arrangements and Temporary Permission
- Human Rights
- Prospects of Success
- Racial Discrimination
- Enforcement Options

### **The Green Belt Function of the Land**

The land the subject of this report is located within a predominantly open rural area of countryside to the north of Basildon, which properly located within the Green Belt that surrounds the districts urban settlements. It clearly fulfils the first three functions of the Green Belt as set out in paragraph 1.5 of PPG2, which is produced as a background paper.

The Green Belt within which the land is situated checks the unrestricted sprawl of large built-up areas by limiting the extension of Billericay, Crays Hill, Wickford and Basildon thereby maintaining the full extent of the predominantly open countryside that surrounds these settlements. It safeguards the surrounding countryside from further encroachment by placing strict control over new development thereby safeguarding the countryside to the north of Basildon from further encroachment. In contributing to the first two purposes of a Green Belt, it also contributes to the third purpose by preventing neighbouring towns from merging into one another. If development were permitted on these appeal sites it would weaken the gap between the settlements and therefore lessen the ability of the Green Belt to prevent neighbouring towns from merging into one another.

The publication of Circular 11/2005, The Town and Country Planning (Green Belt) Direction 2005 dated 5 December 2005 reaffirms the Governments commitment to the principles of the Green Belt and the fundamental aim of Green Belt policy as set out in paragraphs 1 and 2: -

*'1. The Government is committed to the principles of the Green Belt and to maintaining tight planning controls over development on Green Belt land. The First Secretary of State expects all planning applications for development in the Green Belt to be subject to the most rigorous scrutiny, having regard to the fundamental aim of Green Belt policy as set out in Planning Policy Guidance note 2 (ppg2), Green Belt.*

*2. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The most important attribute of Green Belts is their openness. The importance of Green Belts in maintaining open countryside around most of our largest and most heavily populated cities and urban conurbations remains undiminished."*

The Circular is provided as a background paper.

The Government has recently restated its commitment to the Green Belt in the context of a wider recognition that more provision needs to be made to meet housing needs. In introducing the Housing Green Paper to Parliament on 23 July 2007, The Minister for Housing, Yvette Cooper MP was explicit that despite announcing proposals to deliver two million additional homes by 2016 and three million by 2020 that the Government will not change the rules on strong Green Belt protection.

A copy of her statement is provided as a background paper

The importance, in Green Belt terms, of the area in which the land is located, was reflected in the Secretary of State's decision letter on 29 November 1991 in relation to a request from the Council for a direction under Article 4(1) of the Town and Country Planning General Development Order 1988. This related to the fields between the unlawful sites and the lawful Gypsy sites to the west and the A127 to the south. The decision letter states in paragraph 4 that:

*"He is satisfied that there is a real and specific threat of the uncontrolled erection of agricultural buildings and workings on the land which would be detrimental to an interest of acknowledged importance, namely the Green Belt status of the area. The Secretary of State considers the site to be an integral part of an area of predominantly open land which by checking the unrestricted sprawl of the nearby built-up areas, safeguarding the countryside to the north of Basildon from further encroachment, and preventing neighbouring towns from merging into one another, helps to fulfil three of the main purposes of the Green Belt."*

The Inspector who held the January 2003 Local Public Inquiry, which dealt with appeals against the Enforcement Notices and a planning application, stated in his report to the First Secretary of State at paragraph 232 that *"the development on each of the appeal sites has a significant adverse effect on the openness of the Green Belt, contrary to Local Plan Policy BAS S7(ii)(b). This adverse effect also harms the character of the countryside in this area, bringing the development further into conflict with Structure Plan C2 and Local Plan Policies BAS GB2 and BAS S7(ii)(b)".* The Inspector opens the paragraph by stating *"The adverse impact upon the Green Belt can be seen at its greatest when all the appeals are considered together."* The harm this development has upon openness of the Green Belt, and the ability of the land to perform its Green Belt function must be considered with regard to these very clear conclusions about the development of the land. The Inspector's

concluding sentence to be found at the end of paragraph 231 remains highly material and should be taken into account when considering this report.

*“I agree with their (The Council) assessment that the very large Gypsy site that has been created has a disproportionate effect on the Green Belt and the visual appearance of the area.”*

The extracts referred to above are from paragraphs 231 and 232 of the Inspector’s Report and should be read in their entirety and in conjunction with the preceding paragraphs 228 to 230.

The First Secretary of State clearly agreed with his Inspector and stated in paragraph 15 of his decision letter: -

*‘The Secretary of State agrees with the Inspector for the reasons he gives in paragraphs 229-232 of his report that the development on each of the appeal sites has a significant adverse effect on the openness of the Green Belt and on the character of the countryside, contrary to development plan policies’*

The function of the Green Belt in the location of Dale Farm was once again considered by the Secretary of State in her decision letter dated 22 February 2007 at paragraph 15 that the Green Belt within which the site is located fulfils 3 of the 5 purposes of including the land in the Green Belt: -

*“Harm to the purposes of the Green Belt: -*

*Paragraph 1.6 of PPG2 sets out the five purposes of including land in the Green Belt. For the reasons set out in IR179, The Secretary of State agrees with the Inspector that the part of the Green Belt in which the appeal sites lie fulfils 3 important purposes. It checks the unrestricted sprawl of the built-up area of Basildon, prevents the towns of Wickford, Billericay and Basildon from merging and it helps to safeguard the countryside from encroachment. She agrees with the Inspector, for the reasons given at IR179, that the Green Belt’s openness in this location is particularly vulnerable. The proposals do not therefore comply with LP policy BAS S7(i). The Secretary of State also agrees with the Inspector that there is no good reason in this case to make an exception to policy LP BAS S7(i) which establishes that gypsy sites should not be in the Green Belt or RPG policy E3 which establishes that there is no regional case for reviewing Green Belt boundaries (IR179).”*

It is clear that the land the subject of this report has a very important and fundamental function to play within the Green Belt and in doing so substantially contributes to maintaining the open, semi-rural character of the area, a fundamental characteristic of the District’s hinterlands. The site clearly fulfils the functions of including the land within a Green Belt and needs to be retained in an open condition if those functions are to be maintained.

### **Harm to the Green Belt:**

National Planning Policy Guidance contained in PPG2 (Green Belts) makes it quite clear at paragraph 3.1 that there is a general presumption against inappropriate development in the Green Belt. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in “very special circumstances” as set out in paragraph 3.2

of PPG2. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations. In view of the presumption against inappropriate development substantial weight is to be attached to harm to the Green Belt when considering the planning merits of development.

The First Secretary of State agreed in his decision letter dated 13 May 2003 at paragraph 15, with his Inspector, for the reasons he gave at paragraphs 229-232 of his report that the development of the land the subject of this report has a significant adverse effect on the openness of the Green Belt and on the character of the countryside, contrary to development plan policies. He went on to say at paragraph 23 *'that the appeal proposals are harmful to the Green Belt by definition, and also in terms of harm to the openness of an important Green Belt site. They would also have a materially harmful visual impact on the Green Belt and the appearance of the countryside in the locality.'*

The harm the development has on the Green Belt in the location of Dale Farm has further been considered by the Secretary of State in her decision letter dated 22 February 2007. She states at paragraph 12: -

*"Harm to the Green Belt*

*Paragraph 3.1 of PPG2 states that there is a general presumption against inappropriate development in the Green Belt and paragraph 3.2 states that inappropriate development is, by definition, harmful to the Green Belt. The Secretary of State agrees with the Inspector in IR173-174 that the appeal proposals are inappropriate development in the Green Belt, as defined in PPG2, and are therefore harmful. She also agrees with the Inspector (IR174) that they are contrary to SP policy C2 and LP policy BAS GB2, which seek to prevent inappropriate development in the Green Belt. In line with the advice in PPG2, the Secretary of State has attached substantial weight to the harm to the Green Belt, which these proposals would cause by reason of inappropriateness. Like the Inspector, the Secretary of State does not consider that the fact that 3 of the plots included in Appeals B and E lie within the former residential curtilage of Dale Farm farmhouse, and other plots adjoin the authorised gypsy site, lessens the proposals' harm by reason of inappropriateness (IR175)."*

The Secretary of State further states that inappropriateness of the development is harmful to the openness of the Green Belt. In paragraph 13 she states: -

*"Harm to Openness*

*PPG2" states that the most important attribute of Green Belts is their openness. The Secretary of State agrees with the Inspector, for the reasons set out in IR177, that the caravans, mobile homes, utility rooms, boundary walls and roads on the appeals sites make a significant and harmful impact on the Green Belt's openness. She agrees that this is also contrary to LP policy BAS S7(ii)(b). Like the Inspector, the Secretary of State considers that the fact that there is another gypsy site on adjoining land only increases the prominence of the appeals sites".*

## **OTHER HARM**

### Highway Safety

It has been stated that the development of these unauthorised Gypsy/Traveller sites has given rise to an increase in traffic movements along Oak Road, which is a narrow country lane within a semi-rural setting. The rise in traffic movements beyond the roads capacity is detrimental to highway safety and impinges upon residential amenities enjoyed by the occupiers of properties fronting Oak Road.

The First Secretary of State noted in his decision letter dated 13<sup>th</sup> May 2003 at paragraph 21 the sub-standard nature of Oak Road in respect of the amount of traffic carried and that conditions for cyclists and pedestrians were particularly unsatisfactory. He concluded for reasons given by his Inspector at paragraphs 245-249 of his report that the highway objections weighed against the grant of permission.

The Secretary of State in her February 2007 decision letter further considered harm to highway safety. She states at paragraph 16 of her decision letter that Oak Road, formerly a quiet rural lane, is too narrow to deal safely with the traffic it has to carry and the infrequency of passing places and the limited visibility at its junctions make highway conditions extremely hazardous for all road users, particularly cyclists, pedestrians and horse riders. The appellants suggested at the Inquiry that there were various improvements that could be put into place to overcome the objections. The Secretary of State agreed with her Inspector that the fruition of proposed improvements was unlikely or that they would fail to overcome the fundamental problem that the road [Oak Road] is too narrow for the amount of traffic that uses it.

The Secretary of State reaffirms at paragraph 17 of her February 2007 that there would be significant harm to highway safety if the appeals sites were to continue to be used as residential gypsy sites. She continued to state that the development conflicts LP policy BAS S7 (ii)(c), which requires gypsy sites to have convenient and safe access to the main highway network.

It is considered that there has been no material change in circumstances that would indicate that the harm to highway safety has in some way been mitigated to enable a conclusion different to that previously reached in both the enforcement appeal and the more recent planning appeal decisions.

### Living conditions of nearby residents

Many local residents have complained about the anti-social behaviour of the Gypsy/Traveller community that occupy at Dale Farm, the loss of the village school, which was once the centre of the community and generally feeling intimidated and threatened by this large influx of Gypsies and Travellers that has occurred over the last five years.

The Inspector who presided over the January 2003 Inquiry set out in paragraphs 251-257 the effects the unauthorised development was having on the living conditions of nearby residents. The First Secretary of State clearly had some sympathy with the plight facing local residents and stated in his May 2003 decision letter that as matters stand they must overall, weigh against the grant of planning permission.

The Secretary of State in her February 2007 decision letter disagreed at paragraph 19 with her Inspectors conclusion at paragraph 184 of her report that there was a breach of

criteria (ii) of LP Policy BAS S7. The Secretary of State gave no weight to the matters reported by her Inspector as they were considered not to be of any real significance in the determination of these appeals.

The matters raised by the residents of Crays Hill could in spite of the Secretary of States findings be given some weight, however it should be noted that other agencies have powers to deal with those issues of concern and that the Secretary of State has not given weight to these matters in previous appeals.

## **CONCLUSIONS ON HARM**

It follows that the following factors continue to weigh against allowing the development or permitting it to remain notwithstanding the extant enforcement notices:

- (1) There is clearly a very significant impact upon the Green Belt by reason of the inappropriateness of the development. This is matter, which is to be afforded substantial weight;
- (2) There are highway objections, which clearly weighs against the development;
- (3) The development clearly has an adverse affect upon the living conditions of neighbouring residents in the settled community and this could be taken into consideration, although the weight that could be given to this factor should be limited.

The Secretary of State concluded in her February 2007 decision letter at paragraph 37 that:-

*“the Gypsy sites that are the subject of these appeals constitute inappropriate development in the Green Belt and are therefore, by definition, harmful to the Green Belt. In addition to the harm from inappropriateness the sites cause harm to openness; harm to the Green Belt functions of checking the unrestricted sprawl of large built-up areas, preventing neighbouring towns from merging into one another, and in assisting in safeguarding the countryside from encroachment. The Secretary of State attaches substantial weight to each of these harms. She also attaches considerable weight to the significant harm the sites cause to highway safety.”*

Thus, if very special circumstances exist then these must be such that they clearly outweigh the considerations summarised above.

## **VERY SPECIAL CIRCUMSTANCES**

### *Personal Circumstances and Gypsy Status*

The identity of the occupier of land and their personal circumstances would not normally be a material planning consideration that would be accorded any significant weight. However Circular 1/2006 “Planning for Gypsy and Traveller Caravan Sites” recognises that the personal circumstances and needs of Gypsies do call for special consideration in planning decisions. The question of whether the occupiers fall within the relevant definition and can be afforded the benefit of Gypsy status for planning purposes is an important consideration in this matter.

For the occupiers to be afforded Gypsy Status for the purposes of planning, they must be able to demonstrate that they accord with the definition as set out in paragraph 15 of Circular 1/2006 which states:-

*“For the purposes of this Circular “gypsies and travellers” means “Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.”*

Annex (b) to Circular 1/2006 confirms that Circular 18/94 remains current and relevant advice paragraph 3 of those Circular states that a test of travelling for an economic purpose is part of the policy definition of a “Gypsy”. Whilst the new Circular has widened the definition to embrace those who have ceased to travel for a qualifying reason, it does not alter the basic definition that the prior travelling must have been for an economic purpose.

It should be noted that in the February 2007 decision, the Secretary of State accepted the Inspector’s view at paragraph 186 that a ‘less literal interpretation’ could be taken. However the Inspector did not address the question of travelling for an economic purpose at all and her reasons seem to relate to the “complications” that would arise if only some of the then appellants were given Gypsy Status. It should not be accepted that this is adequate reason for departing from the clear terms of the definition set out in circular advice.

It is for the occupier of the land the subject of this report to reaffirm that they should be afforded Gypsy Status, by demonstrating that they remain persons of nomadic habit of life. If occupiers have stopped travelling, whether temporarily or permanently, they fall within the definition only if (1) they travelled for an economic purpose immediately prior to the cession (2) and the reason they have stopped travelling is one of the reasons given in the Circular. The Circular is produced as background document.

It should be noted that the Secretary of State in her February 2007 agreed with her Inspector’s conclusion as set out in paragraph 187 of her report that the occupiers should all be classed as having Gypsy Status and that this weighs in the occupiers favour. It should be further noted that she agreed that many of the occupiers have particular health problems that would be exacerbated if they were forced to leave the land and resort to roadside camping. The Secretary of State also agreed with her Inspector that to leave the land would cause disruption to the children’s education and cause hardship. The Secretary of State concluded that the occupier’s healthcare needs and the desirability of continuity of access to education should carry significant weight. Therefore if a particular occupier’s personal circumstances were sufficiently serious to outweigh other considerations then a separate decision would need to be made in respect of that occupiers site.

#### *The Need for additional Gypsy sites*

The Council produces bi-annually a Gypsy and Traveller Monitoring Report, which refers to a number of statistical sources. These include: The DCLG Gypsy Caravan Count Statistics, and the University of Salford GTAA Report: ‘Looking Back, Moving Forward’. All of which are supplied as background papers. The last monitoring report produced by the Council is dated August 2007.

Using the counts, it is possible to see that since 1990 the total number of Gypsy and Traveller caravans has increased nationally by 44%. In Basildon District, however, the increase is over 475%, which is almost eleven times the national increase. The table at the foot of paragraph 49 of the Council's Gypsy and Traveller Sites Monitoring Report August 2007 illustrates this point.

In 1990, only 12% of Essex's Gypsy caravans were in the District. By 2007 40% of the Gypsy caravans in Essex could be found in Basildon. This demonstrates that the Gypsy population in the District has grown at a greater rate than elsewhere in the County. This growth is illustrated in the bar chart produced at the foot of paragraph 47 of the Monitoring Report August 2007.

The numbers of unauthorised caravans in Basildon District remained constant around the figure of 40 for eleven years (1990-2001). Suddenly in 2002 the numbers increased rising to 194 in January 2007. This is equivalent to an increase of 506%. Before 2001 the highest number of caravans had been 71 on the day of the July 1995 count.

In both January 1990 and 2007, unauthorised caravans accounted for around half the Gypsy caravans in Basildon District. In Essex unauthorised caravans make up 33% of the total number of caravans. Regionally and nationally, unauthorised caravans account for around a quarter of the total.

The increase in unauthorised caravans in Basildon District is equivalent to 22 times the increase in Essex and 112 times the increase in the Region. If the number of unauthorised Gypsy caravans in Basildon District had risen at the national, regional and Essex rates, in January 2007 there would have been 29, 33 and 39 caravans respectively, as compared to the actual number of 194. This shows that the number of unauthorised caravans in the District has grown disproportionately. Table 5 at the foot of paragraph 55 of the Monitoring Report August 2007 illustrates this point.

The numbers of caravans in the District do not show a seasonal pattern and there is no clear pattern to the ebb and flow of unauthorised caravans. There are irregular influxes of caravans (1992-3, 1995, 1997, 2002-5). However, as these are unpredictable both in terms of scale and when they are likely to occur, it is not possible to plan ahead for them.

The largest unauthorised group of sites in the District is at Dale Farm, Oak Lane, Crays Hill, where there are 51 pitches. This single group accounts for almost half of the unauthorised pitches in the District. The second largest group is at Hovefields Drive with 12 pitches remaining in occupation. The third largest group with eight pitches is at Cranfield Park Avenue.

There is according to the caravan count figures a greater number of Gypsies/Travellers in Basildon than there is provision. There is therefore a significant demand for accommodation. Whether this demand is to be equated with "need" depends upon whether (a) there is any functional requirement for the demand to be met in Basildon, and (b) any functional need for the land to be within the Green Belt.

The Secretary of State confirmed in her February 2007 decision letter at paragraph 21 that there is an undisputed need for Gypsy sites nationwide and in the County of Essex. She accepted as of August 2006 that the 112 authorised pitches in Basildon are on sites that are full and the 107 unauthorised pitches, including the appeals sites, graphically illustrate the shortage of authorised sites not just in Basildon, but in Essex and the East of England too. The Secretary of State concluded that this unmet need should weigh in favour of the

occupiers. She went on to conclude at paragraph 22 that the Council's reluctance to search for new sites is a consideration that weights in favour of the occupiers and that substantial weight should be attached to the general need for additional sites.

In have said that, the Secretary of State considered at paragraph 23 of her decision letter that the occupiers desire to retain living on the land as they feel safe there, the pitches are affordable and on some of the plots, there are three generations of the same family who help and support each other. The Secretary of State concluded that although there were some family ties between the occupiers of this land and the occupiers of adjoining authorised pitches, there was no compelling social need for the occupiers to live next to the authorised pitches. She also agreed that there were no economic, educational, or healthcare needs that required the occupiers to live on the land as they are not dependant on job opportunities in Basildon and the education and healthcare provision that the occupiers are receiving could be provided elsewhere other than Basildon.

The Secretary of State did however given some weight to the fact that many of the occupiers had put down some roots in the district and therefore may have a case for staying in the locality. She agreed with her Inspector that the occupiers need a site or sites, to which they can move, as for the majority, traditional housing would not be an acceptable alternative leaving the occupiers if forced to resort to illegal camping. She accepted at paragraph 27 that the need for sites and the lack of alternative accommodation options weighed in favour of the occupiers.

Members will be aware that Basildon provides well over 100 authorised pitches to the Gypsy/Traveller community. Basildon according to the DCLG Gypsy Caravan Count figures for January 2007 has the fourth largest concentration of traveller caravans in the Country. Only three other authorities in England and Wales are recorded as having more than Basildon. Whilst in strict numerical terms there are clearly more gypsies and travellers in the district than there are authorised pitches, the council has consistently argued that demand generated by the availability of cheap Green Belt land and need are not one and the same and that other districts must play their part in allocating land for traveller pitches.

To accept that demand must be satisfied at the point at which it arises is overly simplistic, it will inevitably give rise to disproportionate site distribution and lead to overly large settlements that are unlikely to be sustainable. Accordingly the Council has not allowed any land to further gypsy/traveller site development ahead of eth issue of the draft gypsy/traveller Single issue Review RSS.

## **EMERGING PLANS POLICIES**

### *Regional Spatial Strategy*

The East of England Plan was as a result of the requirements of Planning and Compulsory Purchase Act 2004 published in December 2004 and is the draft spatial strategy to guide development in the East of England for at least the next 20 years. On the subject of Gypsy site provision, the Plan was silent. This point was noted and objections were lodged.

The Government Office for the East of England (GO East) made an observation, stressing the need for the "insertion of a new policy to provide a strategic framework for local planning of the provision of more sites for Gypsies and Travellers in the region". This observation was made prior to the issue of Circular 1/2006. The East of England

Regional Assembly (EERA) accepted the Government's observation and on 6 February 2006 the Regional Planning panel endorsed an indicative timetable for a Single Issue Review of the RSS, to address the accommodation requirements of Gypsies and Travellers. The Issues and Options Consultation Document was published in May 2007 and has been the subject of a 12 week public consultation exercise. A copy of this document is produced as a background paper.

The Council's response to the Issues and Options Consultation Document is also produced as a background paper as is the Essex Planning Officers' Association response. It is clear from these documents that there are substantial issues still to be resolved both in identifying scale of need and in achieving an appropriate distribution of provision. The next stage in the process is the issue of the draft review which, subject to approval by the Regional Planning Panel, is due to be published in January 2008. A timetable for the remaining stages in the process of adopting the Single Issue Review is set out on page one of the Media and Public Information Pack issued in August 2007 and is produced as a background paper. Adoption of the Single Issue Review is timetabled for the autumn of 2009, but this is very likely to be subjected to slippage owing to the complex and emotive nature of the issue being considered.

The emergence of regional policy guidance is an ongoing process and the issue of Gypsy site provision will clearly not be resolved in the short term. It is therefore considered that little weight can be attributed to the emerging policy guidance in the consideration of this report.

#### Local Development Framework

The Planning and Compulsory Purchase Act 2004 introduced new procedures in respect of the preparation and approval of local planning documents. Under the new arrangements, a Local Development Framework (LDF) is established for each local authority area. The LDF is made up of the Regional Spatial Strategy, and a 'portfolio' of Local Development Documents (LDDs) as set out in the approved Local Development Scheme 2006 -2011. This document is produced as a background paper.

Following publication of ODPM Circular 1/2006 "Planning for Gypsy and Traveller Caravan Sites" and the single issue review of the Regional Spatial Strategy on the same topic, a DPD dealing with Gypsy and Traveller Sites has been added to the LDS. The key principle underlying the Gypsy & Traveller DPD timetable is that the DPD will be submitted after the Secretary of State's proposed changes to the single issue review are published. This is to ensure that the submitted DPD conforms with the RSS. If the RSS timetable were to slip, the Council will seek to agree with GO-East a revised DPD timetable as appropriate.

As indicated above the Gypsy / Traveller Single Issue Review of the RSS is expected to be published in January 2008 and this will signal the start of preparatory work on the Council's Gypsy/Traveller DPD, which will lead to the identification of suitable sites to accommodate the pitches numbers set out in the RSS. The adoption of the DPD is unlikely to occur until the autumn of 2009. This is based on there being no slippage in the RSS timetable. It should be noted that the number of new sites the Council will be required to find should be known by the spring of 2008 and as the SIR RSS progresses to adoption so the required number will become a material consideration of increasing weight which will need to be taken into consideration.

## **TRANSITIONAL ARRANGEMENTS AND TEMPORARY PERMISSION**

Where it is evidenced that there is clear and immediate need, Circular 1/2006 recommends transitional arrangements should be put into place to deal with that need. As evidenced by the presence of significant numbers of unauthorised encampments, Development Plan documents (DPDs) containing site allocations should be brought forward and temporary planning permissions could be considered until they are in place. Paragraph 45 of the circular states that advise on the use of temporary permissions is contained in paragraphs 108 to 113 of Circular 11/95 produced as a background paper. The current position is that the provision of sites within the District is disproportionate, and that once accurately identified, need should be addressed on a properly planned, countywide basis. One should be mindful of paragraph 45 of the Practice Guidance that expects adjoining authorities to assist in accommodating needs for gypsies. Accordingly, provision for travellers currently resorting to the District without planning permission may need to be met elsewhere within the sub-region. The Practice Guidance 'Gypsy and Traveller Accommodation Needs Assessments' published October 2007 is provided as a background paper.

It should be noted that Circular 11/95 recommends at paragraph 109 that where it is not possible to devise conditions to safeguard amenity, and if the damage to amenity cannot be accepted, then the only course is to refuse permission. The Secretary of State in her February 2007 decision addressed the appropriateness of granting temporary permission. She concluded at paragraph 34 "that the harm which each of the appeal proposals causes to the Green Belt and to highway safety is unacceptable, even on a temporary basis. This harm cannot be adequately mitigated by conditions". The Secretary of State therefore decided not to allow any temporary permissions.

Attention should be drawn to the Inspectors comments at paragraph 15: -

*"Whilst on my site inspection, I gained the strong impression that some residents of the unauthorised sites as a whole are consolidating their position, undertaking further development in spite of the decisions reached in relation to the previous appeals. This is unfortunate. The lengthy period for compliance that I recommended was intended to provide a real opportunity to identify, and to more to, other suitable alternative sites. As stated in my earlier report, it should not have been seen as a green light for further development on the site".*

The harm identified in the February 2007 decision letter as set in paragraphs 32 to 34 are clear and unequivocal and cannot be mitigated by the imposition of conditions. No temporary permissions have previously been granted. To do so now would undermine the First Secretary of State's previous decision and the Council's ability obtain compliance with extant Enforcement Notices as previously resolved by the DCTM Committee.

## **HUMAN RIGHTS**

The Human Rights Act 1998 requires public authorities to have regard for the rights of individuals before taking any action that may impinge upon they rights as set out in the Act. It is necessary for the Council to consider the implications of taking enforcement action upon the rights of those concerned and whether it is proportionate in the circumstances. This is reflected in paragraph 70 of Circular 01/2006 but is required in any event as a matter of common humanity and because it affects the human rights of the occupiers, particularly those under Article 8 (right to respect for the home, private life and

family) and Article 1 of the First Protocol of the European Convention (right to the undisturbed enjoyment of possessions).

Neither Article 8 nor Article 1 of the First Protocol prevents the Council from taking action but it must be satisfied that to do so would be "in accordance with the law", pursue a legitimate aim and be proportionate. The European Court of Human Rights has accepted that the interests of upholding planning law and policy are a legitimate aim and that planning enforcement would be in accordance with the law. The question of proportionality involves weighing the interest of the community at large in upholding planning law and policy against the hardship this would cause to the occupiers of the site. This question is broadly the same as whether in planning terms the application of Green Belt or other considerations outweighs the personal circumstances of the occupiers.

The human rights of the occupiers would not be breached if the Council concluded that the action it proposed to taken to secure compliance with its Enforcement Notices was justified in the public interest notwithstanding the assessment of the hardship caused by securing compliance with planning control.

The Secretary of State in her February 2007 decision letter considered the personal circumstances of the occupiers of this site. She accepted that many of the occupiers have particular health problems that would be exacerbated if they were required to leave their pitches and resort to roadside camping, thereby making their lives much harder. However she noted that none of the specialist hospitals attended were in Basildon and agreed with her Inspector that healthcare could be provided elsewhere other than Basildon.

In respect of education the Secretary of State noted that the disruption to the children's education would also cause hardship. The Inspector noted in her report to the Secretary of State that the local Primary School had an exceptionally high rate of absence and questioned the occupier's commitment to education. The Secretary of State drew no conclusions on the attitudes towards education, as it was not known what proportion of the children enrolled at Crays Hill School lived on the appeal sites.

The personal circumstances of the occupiers of this site were examined at the Local Public Inquiry that was held in August 2006 and reported to the Secretary of State on the 21st September 2006 and considered in her decision letter dated 22 February 2007.

The Secretary of State concluded at paragraph 35 *"that it is reasonable to assume that if the appeals are dismissed then eviction will follow and this would result in interference with the appellant's home and family life. However, the Secretary of State also agrees with the Inspector that the interference has to be balanced against the harm to the Green Belt and to highway safety caused by the developments (IR205) and she further considers that the public interest in pursuing the legitimate aims of Article 8 must include the protection of the environment."* The Secretary of State continued to conclude at paragraph 36 *"that the dismissal of the appeals is a necessary and proportionate response and would not result in a violation of the appellant's rights under Article 8 of the European Convention on Human Rights"*. Furthermore, she considers that the refusal of temporary planning permission is also a necessary and proportionate response and would not result in a violation of the appellant's rights under Article 8.

The personal circumstances included in part ii of this report, is compiled from information the Council received from both the Travellers and their legal representatives. The Council has no reason to believe that those circumstances relied upon in August 2006 have changed in any significant way that would indicate that a different conclusion should be

reached at this present time than that reached by the Secretary of State in relation to the planning appeals.

As this is a report to consider and decide upon what if any enforcement action should be taken to achieve compliance with the extant enforcement notices. The decision maker whilst undertaking the balancing exercise should take the following factors into consideration. A resolution to proceed with any action is likely to result in the occupiers being required to leave the site, consequently interfering or preventing access to the healthcare and education that they had hitherto been afforded. It should also be noted that there are no available alternative sites in the vicinity and those that would be affected by an adverse decision may be required to leave the site, with nowhere else to go, other than to resort to illegal camping. Members should therefore assume that if enforcement action is taken those required to leave the land will have to resort to camping on the roadside.

It is furthermore considered that the First Secretary of State's decision to refuse planning permission and uphold the Council's Enforcement Notices requiring breaches of planning control to be remedied remains relevant today and it has not been overridden by any changes in circumstances, which may have occurred if any since those decisions.

Information relating to the personal circumstances of the occupiers of these sites has been distributed to Members of the Committee separately.

In accordance with Access to Information Procedure Rules, as defined in Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972, members of the public and press will be excluded from the meeting whilst the Committee considers these personal circumstances.

## **PROSPECTS OF SUCCESS**

There is a clear duty placed upon the decision maker to consider the prospects of success on appeal following the refusal of any planning application, should occupiers of any of these sites make any such application in the future. This duty was made clear following the Judgment of Mr Justice Ouseley dated 12 April 2006 in respect of the Judicial Review of the Council's June 2005 decision to take direct action to obtain compliance with extant Enforcement Notices in relation to unauthorised Gypsy caravan sites on land to the south of Hovefields Drive, Wickford.

The issue is whether the argument, particularly that relating to an assessment of need, is likely to succeed on appeal and what are the consequences for the balance that has to be struck if it does not. The appeal decision of 22 February 2007 indicates, that the unauthorised development that has taken place at Dale Farm is considered to give rise to such additional harm as reported above and in the Secretary of State's decision letter that the issue of need unlikely to outweigh that harm. The view is therefore taken that there is no prospect of any full or temporary planning permission being granted on appeal should any further applications be made. It should be noted that any such appeal could be subject to challenge to the High Court on a point of law. It is considered that the prospects of success in a High Court challenge remain minimal. It should furthermore be noted that the Council in accordance with Section 70A of the TCPA 1990 has the power to decline to determine any subsequent application of a similar nature submitted within two years of a similar previous decision. In this case the decision of the Secretary of State in February 2007. Such action by the Local Authority can be the subject of Judicial Review proceedings in the High Court.

## **RACIAL DISCRIMINATION**

The Council is under an obligation in carrying out its functions and policies to comply with the statutory equality duties. The Council is under a duty not to discriminate against any person on racial grounds in the exercise of its functions both as a result of the Race Relations Act 1976 and Article 14 of the ECHR. This includes determining whether or not to take enforcement action.

By reason of the race equality duty the Council must have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups. The Council has under its Revised Race Equality Scheme assessed the race equality duty as having high relevance to its functions of Development Control and Forward Planning. The Council has commenced equalities impact assessments, of Circular 1/2006 ODPM – Planning for Gypsy and Traveller Caravan sites; the saved policies of the 1998 Basildon District Local Plan; PPG2 revised January 1995; and PPG 18 – Enforcing Planning Control.

The assessments initial findings show that in particular in relation to PPG2 and PPG18 there is significant adverse impact on Gypsies and Travellers in the application of Green Belt policy and its enforcement. There is however no direct discrimination. Actions, which result in such adverse impact, are not unlawful if justified. For a decision to be justified it must correspond with a legitimate aim and be proportionate.

There is thus in the present case a conflict between the adverse impact on Gypsies and Travellers, and the requirements of planning control. Due regard must be paid to the need to eliminate unlawful discrimination and to promote equality of opportunity and good race relations when weighing these conflicting interests. The officers consider that there are legitimate aims in seeking to uphold planning policy, and given the legitimacy of such aims, enforcement action is proportionate. However, any enforcement should be carried out in an appropriate way that does not have the effect of damaging good race relations over and above the effect produced by the fact of enforcement.

## **ENFORCEMENT OPTIONS**

Before considering the individual options open to the Council it is important to acknowledge and consider carefully national policy guidelines on the use of enforcement powers and to take into account the April 2006 judgement of the Court concerning other plots in the District. Planning Authorities have a general discretion to take enforcement action, when they regard it as expedient and in the public interest to do so. They should be guided by the following:

- Parliament has given LPAs the primary responsibility for taking whatever enforcement action may be necessary, in the public interest.
- In considering any enforcement action, the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.
- Action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal

enforcement action against a trivial breach of control which causes no harm to amenity in the locality of the site); and

- where the LPA's initial attempt to achieve a voluntarily remedy fails, negotiations should not be allowed to delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop.

The recent planning appeals have been dismissed. The pitches remain in residential occupation and contain static and touring caravans, portable utility rooms, hardstandings and other infrastructure associated with the residential use of the pitches, which has not been removed within the compliance period. There is now a failure to comply with the requirements of the Notices, which is a criminal offence under Section 179 of the Town & Country Planning Act. It should be noted that in the Hovefields Judicial Review Judgement, it was held that the Council was correct to take action to deal with the breach of the criminal law. Furthermore the Judge considered that such interference was justified in law and upheld the principle that it was not unlawful or disproportionate for the Council to take direct action under Section 178 of the TCPA 1990. There was moreover no reason for a Court to sanction such action because there is sufficient procedural protection for direct action to be proportionate.

As with all forms of enforcement the Council is under the obligation to consider the implications of direct action on those that would be affected. The First Secretary of State and more recently Secretary of State have considered the personal circumstances of those who would be affected by any decision. Their circumstances are set out in the Inspector's reports attached to those decision letters. It was concluded that those circumstances relied upon did not override the harm to the Green Belt and other identified harm. Enforcement action must be proportionate and take into account all material circumstances, especially if enforcement action will result in the occupiers having to resort to illegal camping on the roadside because they have nowhere else to go is a significant consideration.

The Council's decision to take direct action at Hovefields Drive, Wickford was challenged and was found to be disproportionate and unlawful. The decision maker must now consider this case in the light of the Court's judgement, notwithstanding the February 2007 appeal decision. It is still necessary to consider the prospect of success on any future appeal, which was a major factor in the Courts' decision in the Hovefields Judicial Review. There are currently no appeals concerning the land the subject of this report pending consideration, and unless there are substantial changes in circumstances of the occupiers, which as far as it is known there are not, it is reasonable to assume that any appeal would stand very little chance of success and therefore very little weight should be attached to this prospect. However, Members should still pay particular attention to the Dale Farm appeal decision, particularly the comments made about the need for gypsy accommodation and the reluctance of the authority to search for new sites to meet identified need locally. The comments made by the Court regarding the Hatchertang, Hovefields Avenue, Wickford decision, as well as the Council's approach to the meeting the accommodation needs of the Gypsy Traveller community, which have been criticised, are also material considerations. A further consideration is the emerging regional guidance and its effect on local policy. The Gypsy/Traveller Draft Single Issue Review of the RSS is due to be published in January 2008 and it will contain details of the number of pitches the Regional Assembly for the East of England will expect Basildon to provide. The issue of this document will signal the commencement of work in accordance with the

Council's LDF on the production of the Council's Gypsy/Traveller Development Plan Document.

In terms of securing compliance with the Enforcement Notices, there are 5 options open to the Council. All of the options have, to a lesser or greater degree, implications for the right of individuals the subject of such action to respect for their private and family life, their home and the undisturbed enjoyment of their possessions (i.e. the plots of land which they own). The action that the Council proposes to take must be proportionate to the breach but sufficient to secure compliance with the enforcement notice. However, if Members consider that they should uphold planning control and seek compliance with the Enforcement Notices, then it is also relevant to consider which methods of seeking compliance is likely to be most effective.

**Take no action or tolerate the site:** The Enforcement Notice would lie on the file. It remains in force indefinitely, and could be "re-activated" at a later date.

**Prosecution:** (Section 179 TCPA 1990) Failure to comply with an enforcement notice is a criminal offence, and ultimately carries a fine of £20,000. The sanctions of a fine are intended to procure effective compliance with the terms of the enforcement notice. The Courts have held that there is every reason to institute criminal proceedings so as to punish infractions and to deter others, even where planning permission may be sought/granted. Though the Council has not been successful in securing large fines, past experience has resulted in partial compliance with the terms of the notice.

**Injunction:** to restrain any further breach of an enforcement notice, or in some circumstances to restrain an apprehended breach (187B TCPA 1990). A mandatory injunction could be sought to require those resident upon the sites to comply with the Enforcement Notices and to leave.

The Court may grant such an injunction as it thinks appropriate for the purpose of restraining a breach of planning control. The Council therefore has absolute discretion in applying for an injunction. The local authority must consider it to be a necessary or expedient (see comments above) remedy before making an application to the Court. The penalties available to the Court for breach of injunction are considerable, including imprisonment, although it is unlikely that imprisonment would be ordered initially.

Circular 10/97 offers some guidance on the use of injunctive relief. It identifies a number of criteria, which should be satisfied:

- (a) The authority has taken account of all relevant considerations.
- (b) There is clear evidence of a breach of planning control.
- (c) Injunctive relief is a proportionate remedy in the circumstances.

In considering whether to grant an injunction (or to commit for contempt) the court has to weigh the public interest in securing compliance with planning legislation against the private interests of the persons against whom the injunction is sought. See above in relation to the human rights implications.

The Court has to be satisfied first that the authority has properly reached a final conclusion that the continued occupation of the land could no longer be tolerated in the public interest, and second that it would be appropriate to force removal, even if the effect would be to drive the occupiers onto the roads (if no alternative sites were available) and the various hardships this would cause.

**Compulsory Purchase:** (Section 226 TCPA 1990) The Council has power to purchase land under s. 226 of the 1990 Act (as recently amended by the Planning & Compulsory Purchase Act 2004) in the following circumstances:

"(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area –

- (a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land, or
- (b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

(1A) But a local authority must not exercise the power under paragraph (a) of subs. (1) unless they think that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects —

- (a) the promotion or improvement of the economic well-being of their area;
- (b) the promotion or improvement of the social well-being of their area;
- (c) the promotion or improvement of the environmental well-being of their area."

Guidance on this power is found in ODPM Circular 06/2004. In order to justify the compulsory acquisition of land a compelling case in the public interest would have to be demonstrated (para. 17 of the Circular):

*"17. A compulsory purchase order (CPO) should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention."*

Furthermore the Council would have to demonstrate that it had the funds to carry out the acquisition prior to making the relevant compulsory purchase order and that no obstacles existed to the exercise of the CPO.

Only in exceptional circumstances would CPO be likely to be an appropriate course of action in controlling unauthorised sites since the Council has other powers to secure compliance with planning control which have a less drastic effect than taking away property rights. Nonetheless, it is likely that the property rights are only of value to the current occupiers if they are allowed to occupy the plots as a caravan site.

Again, assuming such action could be justified, the procedures involved would be likely to be protracted most probably involving a public inquiry and subsequent report. The Secretary of State would then have to consider whether to confirm the Order or not.

**Direct Action:** (S178 TCPA 1990) Direct action enables the authority to enter into the land to undertake any work or action required to secure compliance with an enforcement notice. The cost of direct action may be recovered from the landowner.

As with all forms of enforcement the authority is under the obligation to consider fully the implications of direct action upon the personal circumstances of those that would be affected (see the consideration of personal circumstances, above.) In the Hovefields Judicial Review, Mr Justice Ouseley in his judgement of 12 April 2006 in respect of the Council's decision to take direct action in relation to land at South of Hovefields Drive states:

*“It is in my view necessary for a local planning authority in deciding whether to use section 178 to consider and weigh various factors: the degree of harm done to the interests protected by planning control; the need for swift or urgent remedy; the need to uphold and enforce planning control embodied in an effective enforcement notice and the criminal law; the personal circumstances and impact on the individuals of removal”*

A decision to take direct action can be challenged only through the courts, via an application for judicial review of the decision, since there is no right of appeal from a decision to take direct action. That is an option, which flows from the upholding of the notices following appeal against the notices to the Secretary of State.

Direct action may in practice have to be accompanied by an injunction to restrain the occupants from willfully obstructing Officers, or from returning to the site upon being removed. This would put the matter back into the discretionary jurisdiction of the Court, and again, the Court may not grant such an injunction if the planning merits or the impact on the individual's rights have not been adequately considered by the Council.

The costs of direct action may be recovered from the landowner, and one mechanism for recovering those costs might be to force a sale of the land, with the proceeds of sale being paid to the Council.

## **CONCLUSION**

Clearly the continued use of the land for residential purposes involving the siting of static and touring caravans, portable utility structures and the formation of hardstandings on the land is in flagrant breach of valid enforcement notices and is a criminal offence. The development is inappropriate within the Green Belt, which is a consideration that should be given substantial weight. The Secretary of State concluded in the recently dismissed appeals that there was significant harm to the Green Belt. It was also concluded that was harm to highway safety because of the limitations of the highway network in the locality. The issue of need and the personal circumstances of the occupiers did not outweigh the identified harm.

The key issue for Members to weigh in the balancing exercise is whether the impact of taking action to secure compliance with the enforcement notices on the occupiers of the sites is such that the public interest in enforcing planning control should be set aside in favour of allowing the unauthorised development to remain.

It is for Members to judge the weight that should be attached to each consideration. If they conclude that the circumstances of the occupiers, and the hardship suffered if enforced against, are insufficient to outweigh the upholding of the Council's and national planning

policies then Members must consider what option to pursue to secure compliance with the enforcement notices.

## **GENERAL INFORMATION**

### Financial Implications

The Financial Implications of any enforcement action can be met within existing budget limits.

### Risk Management Implications

The key risk to the Council is that any final decision on enforcement action is taken without having full and proper regard to ALL directly relevant laws, criteria and facts, or taking irrelevant factors into account. This is mitigated by way of the detailed report set out in the agenda which identifies each key issue for consideration and is further supported by the availability of specialist advice from officers and other planning and legal experts on the evening of the Committee.

The Committee also needs to be mindful that in considering this report there are other potential risks related to either outcome scenario i.e. whether the Committee makes a decision to enforce or not to enforce.

A decision for the Council not to take enforcement action carries the following risks:

- the integrity of the national and locally determined Council approved planning policies could be brought into disrepute if any flagrant breach is seen not to have been acted upon. This may act as a trigger for other breaches;
- third party action against the Council for failing to administer planning law in relation to enforcement action;
- the general reputation of the Council could be damaged from the perception of residents of the District, particularly those directly affected by the current issue.

The risk of taking enforcement action includes:

- risks to personal safety of all parties involved, including the Travellers and their personal property and belongings;
- that action taken does not achieve a satisfactory, lasting and cost effective remedy. This could only be mitigated through careful organisation and administration of the enforcement action supported by any other legal remedies.

### Background Papers

1. Town and Country Planning Act 1990
2. The First Secretary of State's decision letter dated 13th May 2003
3. The Inspector's decision letter dated 8th April 2004
4. The Secretary of State's decision letter dated 22nd February 2007

5. Circular 01/2006 Planning for G&T Caravan Sites
6. PPG 18 Enforcing Planning Control's
7. The Basildon District Local Plan
  
8. The Essex and Southend on Sea Replacement Structure Plan 1996 - 2011
9. DCTM Committee Agenda and Minutes dated 10th January 2007
10. April 2006 Judicial Review Judgement
11. Circular 10/97 Enforcing Planning Control: Legislative Provisions and Procedural Requirements.
12. DCLGs Guide to Effective Use of Enforcement Powers - Part 2 Unauthorised Development of Caravan Sites October 2007.
13. RPG9 Regional Planning Guidance.
14. The Draft East of England Plan December 2004.
15. Proposed Changes to the Plan December 2006
16. Local Plan Proposals Map
17. PPG2 (Green Belt)
18. Circular 11/2005
19. Yvette Cooper MP Statement to Parliament 23 July 2007
20. Secretary of State's decision letter dated 29 November 1991
21. Circular 18/94
22. DCLG Gypsy Caravan Count Statistics
23. The University of Salford GTAA Report
24. The Council's Gypsy and Traveller Site Monitoring Report
25. Issues and Options Consultation Document May 2007
26. Responses to the Issues and Options Consultation Document
27. Media and Public Information Pack issued August 2007
28. Practice Guidance "Gypsy and Traveller Accommodation Needs Assessments October 2007
29. Circular 11/95
30. The Human Rights Act 1998
31. The Hatchertang Appeal decision letter.
32. Circular 06/2004
33. Race Relations Act 1976
34. Race Relations (Amendment) Act 2000
35. Racial Impact Assessment (Initial)

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