

01 March 2012

Mr Stuart Hardwick Carruthers
Dale Farm Residents Association
Grove Farm
Middle Road
Denton
Norfolk
IP20 0AH

Our Ref: APP/V1505/A/11/2156547

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR GRATTAN PUXON (DALE FARM RESIDENTS ASSOCIATION)
AT LAND TO WEST OF CHURCH ROAD, LAINDON, BASILDON, ESSEX
APPLICATION: REF 11/00213/FULL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Clive Hughes, BA(Hons) MA DMS MRTPI, who held a public local inquiry between 22 and 25 November 2011 into your client's appeal against a decision of Basildon Borough Council (the Council) to refuse planning permission for the change of use of land from land for grazing of horses to a site for 12 plots for residential use and for the stabling and grazing of horses, at land to the west of Church Road, Laindon, Basildon, Essex SS15 5SE, in accordance with application Ref 11/00213/FULL, dated 17 March 2011.
2. On 2 November 2011, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, on the grounds that the appeal involves proposals giving rise to substantial regional or national controversy.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. The application for costs (IR1) made by your client at the Inquiry is the subject of a separate decision letter, also being issued today by the Secretary of State.

5. Like the Inspector (IR5), the Secretary of State is satisfied that no prejudice has been caused to any party by determining the appeal on the basis of the revised application description: *change of use of land from land for grazing of horses to site for 12 gypsy and traveller pitches for residential use and for the stabling of horses*.

Matters arising after the close of the inquiry

6. Following the close of the inquiry, the Secretary of State received the representations listed at Annex A to this letter. He has taken account of these representations but, as they did not raise any new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. Copies of these representations can be made available upon written request.

Policy considerations

7. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the development plan comprises the 2008 East of England Plan (EEP) and the 2007 Basildon District Local Plan Saved Policies (LP). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR14 -16.
9. Other material considerations which the Secretary of State has taken into account include the national planning policy documents listed at IR17 as well as Circular 05/2005: *Planning Obligations*; and *the Community Infrastructure Levy (CIL) Regulations 2010 and 2011*. In taking account of Circular 1/2006: *Planning for Gypsy and Traveller Caravan Sites*, the Secretary of State has also taken account of his announcement on 29 August 2010 of his intention to revoke the Circular as he considers it to be flawed, and he has accordingly given it less weight. The Secretary of State has also had regard to the draft Planning Policy Statement on Planning for Traveller Sites, along with the draft of the National Planning Policy Framework, but he has given them little weight as they have been published for consultation and are therefore subject to change.
10. In determining the appeal, the Secretary of State has had regard to the impact of the proposed development on the setting of the Grade I listed St Nicholas Church, referred to by the Inspector at IR129. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, he has paid special regard to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they may possess.

Main issues

11. The Secretary of State has noted the various issues reported by the Inspector at IR94-99 and agrees with him that the main issues to be considered in determining this appeal are those set out at IR105.

Character & Appearance

12. The Secretary of State agrees with the Inspector (IR107) that the proposed development would conflict with LP Policy BAS R11 as it does not involve leisure/recreation use and would fail to retain an emphasis on open land uses. He also agrees (IR109-110) that the proposed development of part of the area of open space as a site for gypsies and travellers would be wholly out of keeping with its established character, that it would appear as a densely developed residential enclave and that it would conflict with saved LP Policy BAS BE12(i). The Secretary of State therefore agrees with the Inspector (IR112) that the proposed development would cause considerable harm to the character and appearance of the appeal site and its immediate surroundings, in conflict with the development plan, and that this harm carries considerable weight.

Protected Species and their habitats

13. For the reasons given at IR113–121, the Secretary of State agrees with the Inspector's conclusions at IR122 that the proposed development would harm the Local Wildlife Site (LoWS), of which it forms a part; that this is undoubtedly a habitat for protected species; and that there is no evidence to demonstrate that any off-site mitigation within the remainder of the LoWS would be achievable by the appellants or would satisfactorily mitigate any adverse impact. Like the Inspector, the Secretary of State gives substantial weight to this harm (IR122).

Living conditions for nearby residents

14. The Secretary of State agrees with the Inspector (IR123 –125) that there is potential for the proposed development to result in some harm to the living conditions of nearby residents, but that that would not, on its own, be sufficient to justify dismissing the appeal or to be in conflict with LP Policy BAS BE12 (ii).

Highway safety

15. For the reasons given at IR126–128, the Secretary of State agrees with the Inspector that the traffic generated by the proposed development would be likely to result in additional hazards to road users and to the children attending the primary school and their carers. He also agrees that the imposition of planning conditions would not prevent the potential for harm to highway safety arising from the increased amount of traffic and turning movements within a congested area that the appeal proposal would generate, and that these factors together carry some limited weight against the development.

Setting of St Nicholas Church and archaeological considerations

16. The Secretary of State sees no reason to disagree with the conclusion drawn by the Inspector and the County Council (IR129) that the development would not have any significant impact upon St Nicholas Church. He also agrees with the Inspector at IR130 that the potential presence of archaeological remains should not prevent the proposed development.

The need and availability of sites

17. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR131–138 on the need for sites and alternative sites. He therefore agrees that the failure by the Council to make proper provision in development plans weighs heavily in favour of the development (IR137); and that the lack of alternative sites also weighs in favour of the appellants (IR138).

Personal circumstances of prospective residents

18. For the reasons given at IR139–140, the Secretary of State agrees that, notwithstanding the lack of first hand evidence to the inquiry, the personal circumstances of the prospective residents are such that their needs carry significant weight.

Overall Balancing Exercise

19. The Secretary of State agrees with the Inspector that the relevant factors weighing for and against the proposed development are those listed at IR142 – 143 and that, in favour of the appeal proposal, the needs of the prospective occupiers of the site are significant and immediate with an urgent and pressing need for alternative accommodation for which the Council has failed to make provision (IR144). However, against that, the Secretary of State agrees with the Inspector (IR146) that the principal constraint on developing the appeal site as proposed relates to its location within a LoWS, which includes protected species, and with no certainty that any mitigation measures could be carried out as the appellants have no interest in the remainder of the LoWS.
20. The Secretary of State agrees with the Inspector (IR147) that great weight must be given to the advice in Circular 06/2005 and that there is no evidence to demonstrate that the use of the appeal site would be the only solution to the issue of the need for sites for gypsies and travellers in the area. He further agrees (IR147) that the only imperative reasons of overriding public interest that could pertain in this case relate to human health, while the evidence fails to demonstrate that the health needs of the prospective occupiers are so great as to justify the potential permanent damage to the biodiversity of this site and the other identified harm.
21. Therefore, having carefully balanced these considerations, the Secretary of State agrees with the Inspector (IR149) that the harm arising from the proposed development would clearly outweigh the benefits and that the harm cannot reasonably be mitigated. He has considered the possibility of a grant of temporary permission, but agrees with the Inspector that, although that would reduce the weight to be given to the harm to the character and appearance of the area, it would not be appropriate as the harm to biodiversity would be immediate and potentially irreversible.

Conditions

22. The Secretary of State has considered the proposed conditions at Annex 1 to the IR, the Inspector's assessment of these at IR150–152 and national policy as set out in Circular 11/95. He considers that the proposed conditions are reasonable and necessary and comply with the provisions of Circular 11/95. However he

does not consider that, either individually or cumulatively, they would overcome his reasons for dismissing the appeal.

Obligation

23. The Secretary of State has considered the draft Planning Obligation submitted by the appellants, the Inspector's assessment of it at IR98 and IR153, the provisions of the CIL Regulations 2010 and 2011 and the guidance in Circular 05/2005. He agrees with the Inspector that, as it is unsigned and undated, it carries no weight, and that the form and content of the Obligation are not acceptable.

Overall Conclusions

24. The Secretary of State concludes that the appeal is not in accordance with the development plan, would go against national policy by causing harm to the biodiversity of the LoWS and would have an adverse impact on the character and appearance of the area. He has therefore gone on to consider whether there are material considerations which would outweigh this conflict - including the appellants' need for a site, the lack of alternative sites or of any policy for their provision, and the welfare of the prospective occupiers. However, having particular regard to the irreversibility of any harm to biodiversity, he does not consider that the factors in favour of the proposal outweigh those against it.

Formal Decision

25. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for change of use of land from land for grazing of horses to site for 12 gypsy and traveller pitches for residential use and for the stabling of horses at land to the west of Church Road, Laindon, Basildon, Essex SS15 5SE, in accordance with application Ref 11/00213/FULL, dated 17 March 2011.

Right to challenge the decision

26. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
27. A copy of this letter has been sent to Basildon Borough Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

ANNEX A – LIST OF POST-INQUIRY REPRESENTATIONS

Correspondent	Date
Ms J White	22 Nov 2011
Mr J Elwell	25 Nov 2011
Mr S Hardwicke Carruthers	27 Nov 2011
Mr S Hardwicke Carruthers	27 Nov 2011
Mr S Hardwicke Carruthers	05 Dec 2011
Mr S Hardwicke Carruthers	09 Dec 2011
Mr S Hardwicke Carruthers	31 Dec 2012
Mr S Hardwicke Carruthers	03 Jan 2012
Mr S Hardwicke Carruthers	04 Jan 2012
Cllr F Tomlin, Cllr J Dornon, Cllr J Hyde & Cllr T Sargeant	24 Jan 2012



Report to the Secretary of State for Communities and Local Government

by Clive Hughes BA (Hons) MA DMS MRTPI

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

Date: 12 January 2012

TOWN AND COUNTRY PLANNING ACT 1990

BASILDON BOROUGH COUNCIL

APPEAL BY

GRATTAN PUXON

(DALE FARM RESIDENTS' ASSOCIATION)

Inquiry opened on 22 November 2011

Land to west of Church Road, Laindon, Basildon, Essex SS15 5SE

File Ref: APP/V1505/A/11/2156547

File Ref: APP/V1505/A/11/2156547

Land to west of Church Road, Laindon, Basildon, Essex SS15 5SE

- 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 Grattan Puxon (Dale Farm Residents' Association) against the decision of Basildon Borough Council.
- The application Ref 11/00213/FULL, dated 17 March 2011, was refused by notice dated 12 August 2011.
- The development proposed is change of use of land from land for grazing of horses to site for 12 plots for residential use and for the stabling and grazing of horses.
- The inquiry sat for 4 days on 22 to 25 November 2011.

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

1. At the Inquiry an application for costs was made by Grattan Puxon (Dale Farm Residents' Association) against Basildon Borough Council. This application is the subject of a separate Report.
2. The appeal was recovered for determination by the Secretary of State by letter dated 2 November 2011 as the appeal involves proposals giving rise to substantial regional or national controversy.
3. Annex 2 to this Report contains a list of the abbreviations used in the Report.
4. The application form states that the applicant is Mr Grattan Puxon; the appeal form adds Dale Farm Residents' Association after his name. I have used the latter for this Report because Mr Puxon was representing the Association.
5. The application form describes the development as set out in the bullet points above. The unsigned Statement of Common Ground (SoCG) that was submitted by the Council (but not agreed by the appellants) adds reference to gypsy and traveller plots. At the Inquiry this extended description was agreed by the appellants and for the sake of clarity I have used this fuller description. At the Inquiry it was also agreed that there is no grazing land within the appeal site; I have omitted this from the description of the development. The revised description is "*change of use of land from land for grazing of horses to site for 12 gypsy and traveller pitches for residential use and for the stabling of horses*".
6. Regional Strategies (RSs), including the *East of England Plan*, were revoked by the Secretary of State on 6 July 2010. However, following the decision of the Courts on 10 November 2010 in *Cala Homes (South) Limited v Secretary of State for Communities and Local Government* ([2010] EWHC 2866 (Admin)), the Regional Spatial Strategy (RSS) for the area has been re-instated and is therefore now part of the development plan. The Secretary of State has clearly stated his intention to revoke RSs and the provisions of the Localism Act reflect this intention. It is therefore the Government's clear intention to lay orders in Parliament revoking the existing RSs as soon as possible, but this is subject to the outcome of the environmental assessments that the Department for Communities and Local Government (DCLG) is undertaking. Consultation on this is now taking place, closing on 20 January 2012. Decisions on the revocations will not be made until the Secretary of State and Parliament have had the opportunity to consider the outcome of the environmental assessment process. In view of this, the intention to revoke is given limited weight.

7. The Government has published a consultation draft Planning Policy Statement on *Planning for Traveller Sites* (April 2011) and a consultation draft *National Planning Policy Framework* (July 2011). I have had regard to both documents as material considerations although, as these are for consultation and are subject to change, they carry little weight at this time.
8. I made unaccompanied site visits, looking at the site and its surroundings from public footpaths and roads around the appeal site on 14 and 21 November 2011. I made an accompanied visit, which included access to the appeal site and surrounding land, on 24 November. This latter visit was followed by an accompanied visit to Dale Farm.
9. The attendance lists do not accurately reflect the number of persons attending the Inquiry as some attendees stated that they were unwilling to sign or provide their names and addresses.

Reasons for Refusal

10. The Council refused the planning application for the following reasons:

1. PPS9 (Biodiversity and Geological Conservation), requires that Local Planning Authorities should protect species and habitats that are of principal importance for the conservation of Biodiversity in England. Priority Habitats, Sites of Special Scientific Interest and Local Wildlife Sites should be protected through policies in the Development Plan and ensure the appropriate weight is attached to designated sites and consider the harm to the species or habitats that would result. This has to be considered along with the need and benefits of the development and whether this would clearly outweigh the harm. Priority Habitats are listed in the UK Biodiversity Action Plan as being conservation priorities under threat due to their rarity and rate of decline. The development of this proposal would result in 27% of the Priority Habitat being lost, which, together with the loss of a part of the LoWS is unacceptable. The application has not been accompanied by sufficient information to demonstrate that there would be a need and other benefits that would outweigh the harm caused and would clearly be contrary to national policy contained in PPS9.

2. The proposal would be contrary to the Basildon Borough PPG17 Open Space Quality Standard adopted in the Basildon Borough PPG17 Open Space Assessment - March 2010 which seeks to preserve its Intrinsic Benefits and enhance its quality. The development would result in loss of part of a natural and semi-natural green space audited for its contribution to open space in the Borough in 2007. The PPG17 Open Space Assessment seeks to preserve its Intrinsic Benefit as a UK BAP Priority Habitat of principal importance for the conservation of Biodiversity in England and a Local Wildlife Site. As the alternative use would not be able to preserve the Intrinsic Benefit in situ, it fails the PPG17 Assessment tests and would be harmful to the overall appearance and character of the locality.

3. The development would be contrary to Saved Policy BAS C1 of the Basildon District Local Plan Saved Policies 2007 as it would result in the loss of 1ha of a Local Wildlife Sites (LoWS). Policy BAS C1 states that the Council will have regard to the nature conservation value of the site if it affects LoWS (referred to as Sites Important to Nature Conservation "SINCS" in the policy) and other important wildlife habitats. The site is primarily designated as a LoWS for its reptile

populations, although the extent of relatively unimproved unintensively managed grassland is also important. The site is known to support Great Crested and Smooth Newts, Slow Worm, Common Lizards and Adders, making it one of the more important herptile sites in the south of the county, according to Essex Wildlife Trust's ecologists. Development of this site would therefore result in the loss of part of a UK BAP Priority Habitat of principal importance for the conservation of Biodiversity in England, as well as part of a LoWS specifically designated for its unimproved grassland and reptile populations, which is contrary to this policy and would materially compromise the nature conservation value of the site. Insufficient information has been submitted to fully assess the impact of the development or mitigation that could otherwise take place.

4. ODPM Circular 01/2006 'Planning for Gypsy and Traveller Caravan Sites', states that in areas with nationally recognised designations, planning permission by gypsy and traveller sites should not be granted unless it can be demonstrated that the objectives of the designation will not be compromised by the proposed development. The application has not been supported by the necessary studies to show how the loss of wildlife habitat would be mitigated.

The need for further traveller site development in Basildon has not been demonstrated by the applicant. Basildon has no particular attributes that that [sic] make it especially suited to meeting the demands of the traveller community. Demand cannot be equated to a need where it has not been demonstrated that there is any functional requirement for the demand to be met in Basildon.

The Site and Surroundings

11. The appeal site comprises part of a larger area of open land situated between dwellings in Pound Lane to the west and Church Road to the east. The northern boundary is formed by the Southend Arterial Road (A127) dual carriageway while to the south lies Basildon Road/ Church Hill with Larkins Tyres, a tyre fitting/ car maintenance business that includes vehicle servicing and MoTs; the Laindon Park Primary School and Nursery; and St Nicholas Church. The land is private and used for horse grazing. The appeal site is at a slightly lower level than the road to the south but due to roadside vegetation there are no clear views into it from the road. However, there is a public footpath that runs east/west to the south of the site, between the site and the road, from which clear views can be gained.
12. Access to the site is currently from Church Road but the proposals include a new access from Church Hill, crossing the public footpath to the south. The site itself is close to the Church Road properties, the site being about 22m from the end of their gardens. These dwellings comprise a mix of bungalows and chalet bungalows. The site is mostly rough grassland although there are also some small trees and a thicker hedge to the west.
13. The proposed new access would join Church Hill on the outside of a sharp, 90° bend in the road and opposite the Primary School. On-street parking is prohibited on this corner, but on-street parking is permitted between the school and Larkins Tyres and to the south of the school.

Planning Policy

14. The development plan includes the *RSS for the East of England* (adopted May 2008) and *the Basildon District Local Plan Saved Policies September 2007* (the LP). Policy H3 of the RSS says local authorities should make provision for sites/pitches to meet the identified needs of gypsies and travellers living within or resorting to their area.
15. Policy BAS C1 of the LP says that when considering planning applications affecting Sites of Importance for Nature Conservation (SINCs) [now renamed Local Wildlife Sites (LoWS)] or other important wildlife sites, the Council will have full regard to the nature conservation value of the site. It adds that the criteria that the Council will take into account when considering planning applications for development affecting such sites will be the effect on nature conservation; the importance of the site and of any nature conservation features affected; and the benefits of the proposed development.
16. LP Policies BAS R1 and BAS BE12 are not referred to in the reasons for refusal but are relevant to this appeal. Policy BAS R1 says that in urban areas planning permission will not be granted for development of open space which would cause harm to the recreational or amenity value of the open space or to the contribution it makes to the character of the area. Policy BE12 says that planning permission for new residential development will be refused if, amongst other things, it causes harm to the character of the surrounding area; noise or disturbance to occupants of neighbouring dwellings; and traffic danger or congestion.
17. I have also had particular regard to Planning Policy Statement (PPS)1: *Delivering Sustainable Development*; PPS3: *Housing*; PPS9: *Biodiversity and Geological Conservation*; Planning Policy Guidance Note (PPG)13: *Transport*; and PPG17: *Planning for Open Space, Sport and Recreation*; Office of the Deputy Prime Minister (ODPM) Circular 01/2006 *Planning for Gypsy and Traveller Sites*; DCLG Circular 01/2006 *Guidance on Changes to the Development Control System*; Circular 06/2005 *Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system*; and Circular 11/95 *The Use of Conditions in Planning Permissions*.

Planning History

18. There is only one relevant planning application that relates to the appeal site. In June 1997 the Council resolved to grant planning permission in respect of a site of 7.4ha, including the current appeal site, for sports pitches, clubhouse for rugby football club, car parking, service road, access and floodlighting. Planning permission for this was never issued as the required Agreement under s106 of the Act was never completed. The plans for this development are provided in Document 4, appendix (app) BC4.

The Proposals

19. The proposals involve the change of use of about 1ha of land from its current use for the grazing of horses to a site for 12 pitches to be occupied by former residents of Dale Farm and the erection of two stable blocks and a tack room. The proposals include the formation of a new vehicular access to Church Hill to the south. The site would have an access road along the southern boundary, a central spine road, and an access road along part of the northern boundary. The DAS says that each pitch would provide hardstandings for a mobile home and

touring caravan; a utility building; and two car parking spaces. Three of the pitches would be designed to accommodate disabled residents. Eight additional parking spaces would be accessed from the new road. Close boarded fences, 1.5m high, would be provided along the site boundaries and between the pitches. Existing trees within/ around the site would be retained with additional landscaping. The stable blocks would each be designed for 4 horses.

20. As set out in paragraph 5 (above) the description of the development was changed at the Inquiry to include reference to the site being occupied by gypsies and travellers and to omit reference to grazing land. Two plans were submitted with the planning application and at the Inquiry it was agreed that the Site Layout Plan (Plan B) is incorrect in two respects. First, the vehicle turning areas to the north and south of the site extend outside the appeal site as outlined in red on the site location plan (Plan A). Second, the 6 pitches to the east of the central access road should include hardstandings for touring caravans. These were inadvertently omitted from the plans.
21. Paragraph 17 of the proof of evidence of Candy Sheridan (Document 5) makes reference to temporary permission being sought for an additional 50 pitches; this part of her evidence was withdrawn at the Inquiry. Paragraph 6 of her proof of evidence refers to a community centre/ ecology/ training centre being established. However, at the Inquiry she confirmed that this would be on land outside the appeal site and that this proposal does not form any part of this, or any other, planning application.
22. The precise area of the site is disputed by the principal parties. For the appellants, the application form states that the site area is 0.98ha; the Design and Access Statement (DAS) says 0.93ha; the Great Crested Newt Mitigation Strategy both 0.8ha and 0.85ha; and the site layout plan (Plan B), which has some dimensions marked on it, indicates a site area in excess of 1.1ha. The Council says the site area is at least 1.1ha, although an alternative figure of 1.3ha is also advanced. At the inquiry it was clear that a number of different people and organisations had a hand in drawing up the planning application. While the intention was to keep the site area to less than 1ha, both the submitted plans show the site to be larger than this. The appellants were not able to explain how the 0.98ha had been calculated, other than to say that the intention had been to keep the site area to below 1ha. However, the most reliable source seems to be the site layout plan (Plan B) which has most of the relevant dimensions on it. This shows the site, albeit excluding the access road, the road along the southern boundary, and the two turning areas, to have an area of 1.076ha. I am satisfied, therefore, that the site area exceeds 1ha.
23. The appeal was initially made on 11 July 2011 against the non-determination of the planning application on the basis that it was a minor application. However, for the reasons set out above, the site area exceeds 1ha. In accordance with advice in Section 5 of DCLG Circular 01/2006 and as defined in the *Town and Country Planning (Development Management Procedure) (England) Order 2010* the proposals comprise major development for which the period for determination is 13 weeks. The Council issued its decision within 13 weeks of registration and so my recommendation is based upon the appeal having been made against the Council's decision to refuse planning permission.

Other Agreed Facts

24. There are protected species present on the appeal site. These include Great Crested Newts, bats and breeding birds.
25. There is no policy in the Local Plan that relates directly to sites for gypsies and travellers.

The Case for Grattan Puxon (Dale Farm Residents' Association)

The material points are:

Failure of Basildon Council to make available land for gypsy and traveller sites

26. The Council has failed since at least 2002 to make sites available for gypsies and travellers or to identify land through the planning process. The application was made prior to the Council receiving £1.2m from the Secretary of State to provide gypsy and traveller sites. Through the Homes and Communities Agency (HCA) the Secretary of State has sought to make additional resources available to the Council in the form of grants and land. The Council has chosen to spend this money on a partial site clearance.
27. The Secretary of State last considered Dale Farm in 2008 when she agreed with her Inspector that the need of the then appellants was acute. At the time the Inspector had identified the Council's position as being an acceptance of a lack of available pitches on any County Council sites and that any additional sites in the [then] District would be likely to be in the Green Belt. The Council had argued that there was no reason for the then appellants to confine their search for sites to Basildon District.
28. The Council now argues that need and demand are not related and has lost several appeals on this issue. The Council has also withdrawn its challenge to the figures identified in the RSS as being required to be provided in Basildon borough for gypsy and traveller pitches.
29. Concerning Dale Farm there have been two separate, but linked, work streams; an enforcement stream and an engagement stream. The enforcement stream resulted in a costs decision against the Council, the identification of flaws in the Council's notices and the saving of residential use of 4 plots of land at Dale Farm. The engagement stream is seeking to identify land to which the residents of Dale Farm could relocate. The Council has ceased work on this.
30. The Council refused the application the subject of this appeal following the making of an appeal on grounds of non-determination. The reasons for refusal were not based on the development being contrary to Policy BAS R11 and the Council has sought to identify that the land is no longer needed for the purpose identified in the LP.

The application

31. This was made by the residents of Dale Farm. Dale Farm is a large traveller site unauthorised through the planning system and sited in the Green Belt. The land has been subject to significant and disproportionate breaches of planning control since 19 October 2011 through discretionary decisions of the Council; this has resulted in a large number of persons being made homeless. The appeal site was identified by the appellants in partnership with the Council, Central Government and others as being the only site in Basildon that could be lawfully developed as

a site for gypsies and travellers. No sites have been brought forward by the Council on public open spaces that it is now developing for dwellings in a public/private partnership. This application site has been put forward to secure identification that land in Basildon can be developed as a site for gypsies and travellers.

Resources

32. The identification of sites in Basildon has been challenging. When the application was submitted there was no immediate need for sites/ pitches and there was an intention to work with parties including the wider community to develop the land. The appellants do not have the resources needed to do this and are excluded from affordable housing by the Council. If permission is granted there will need to be a HCA Development Partner to enable access to the necessary resources. If best practice is not observed it is unlikely that the HCA would make resources available. The Council's Local Investment Plan identifies that the Council will not make resources available until at least 2015. It, like the planning system, was developed to meet needs, not to exclude people from society.

Information

33. The appeal site is of ecological interest and it does have some intrinsic value, although there is no public access. This is demonstrated by the fieldwork of the Essex Field Club, the Essex Wildlife Trust and others. It benefits from being occupied by protected species, some of which appear to have been moved to the site to enable other land to be developed for housing, and these are probably limited to Great Crested Newts, bats and breeding birds. The value is associated with the site being part of a larger site, the remainder of which has not been subject to development. There has been a previous resolution to grant planning permission for a rugby club on the land.
34. Without access to the necessary resources, additional survey work cannot be undertaken, meaningful engagement with development partners cannot be considered and meaningful plans cannot be developed. There is a lack of resources to engage in consultation with the wider community to develop consensus to ensure that there are benefits for the settled and traveller communities. Until land in Basildon is identified for gypsy and traveller use, resources cannot be accessed.
35. The appeal site is not large enough to maintain significant populations of protected species. There are three ponds in the vicinity; the Council's expert identified that a large population for a pond would be 100 Great Crested Newts. Dispersal following breeding would be expected and it is likely that garden ponds would also be used. The information required by the Council is considered to be excessive and not in accordance with its usual practice.

Need

36. There is a need for pitches. There is a known shortage of sites in the Borough; no alternative sites are available. The RSS identified a need for 61 pitches in Basildon but this was challenged by the Council. The Essex Gypsy and Traveller Accommodation Assessment (GTAA) identified a need for 148 pitches. The Council has not accepted this either. Instead the Council is clearing sites at Dale Farm while refusing to make alternative pitches available. The provision of 60

pitches at Laindon as a temporary measure would enable the Council to focus on seeking to deal with the problem.

37. About 50 traveller families living in Basildon have been made technically and functionally homeless by the Council's decisions. All the potential occupants of the site claim gypsy status for planning purposes. The families have lived and travelled together for many years and they wish to be regarded as a single group. Many affected are ill, frail and elderly while parents are fighting to keep children in school. It is recognised that they need access to education, health and social services.
38. There have been extensive attempts to locate to alternative sites but no other district is willing to accommodate need arising in Basildon. The Council has refused to make grant aid available to enable relocation. The Laindon site, including the adjoining land, could accommodate all the Dale Farm residents. The HCA has said that it is willing to make land and funds available within Basildon to meet needs.
39. Funds made available by Central Government to provide sites have been used to clear the site at Dale Farm. Without access to land the need cannot be met and resources engaged. The Council caused the application as it is the only land in Basildon that the Council has identified that can be developed as a site for gypsies and travellers.
40. Details of the prospective occupiers of 21 pitches were submitted in writing with the appeal (Document 5 App PL1). A reduced list of the prospective occupiers of the 12 pitches now sought was submitted on the third day of the Inquiry (Document 42). The personal circumstances of the 12 occupiers are set out below, together with details of their carers where appropriate.
 - 1: Nora Sheridan, age 77, has alzheimers and depression and cannot look after herself. She has had 3 lots of skin cancer, high blood pressure and high cholesterol. She is looked after by her daughter-in-law who has 4 children of which 2 attend Crays Hill School.
 - 2: Margaret Quilligan's son, Dan (6) has Down's Syndrome, restriction in airways, inoperable hole in the heart and recurring ear infections. He needs constant access to a breathing machine and has an upcoming ear operation. Dan attends Pioneer School, a special needs school in Basildon
 - 3: Bridget Sheridan (72) has high blood pressure, heart conditions, under active thyroid, depression and problems with her spine. She is looked after by her niece, either Mary or Michelle Sheridan, and her brother Richard Sheridan who has bleeding behind the ears. Michelle Sheridan has 4 children, 3 of whom are of school age and attend Ghyll Grove Junior School in Basildon. Two children have special needs statements.
 - 4: Cornelius Sheridan (57) has septicaemia in both lungs, bowel cancer, severe asthma and is constantly on either a breathing machine or a pump. He is looked after by Bridget Sheridan, his niece, who has 3 children at Crays Hill Primary School.
 - 5: Jean O'Brien, aged 67, has just been told that her throat cancer may be back; if so it is life threatening. Her abdominal aortic aneurysm is approaching a dangerous size. She has recently had a hip operation and will

have further operations on hip and spine. She has 5 grown daughters at Dale Farm who look after her. It is not decided who would live with her on her plot. Each of the daughters have at least 2 young or school age children.

- 6: John (63) and Ellen Sheridan. John has suffered post traumatic stress disorder following the death of his 8 year old son. He recently had a stroke and is waiting for an operation on his arteries. Ellen also suffers from post traumatic stress disorder, has blockages in some veins and high blood pressure. They are looked after by their daughter, Laura.
- 7: Tom (64) and Nora O'Brien (61). Nora has an under active thyroid and gout in legs and feet, a long standing heart condition and depression. She looks after her son, Jeremiah, who has mental health issues having been born with brain damage. Tom has a heart condition. They are looked after by their daughter, Nora Hegarty who has 3 children, 2 of school age.
- 8: Bridget Sheridan, aged 64, has a chronic chest condition, high blood pressure, ulcers, severe depression/ dementia after a nervous break down. She is looked after by her 2 grown daughters, Ellen and Margaret Sheridan. Margaret has a pre-school child.
- 9: Nora Berry (57) has a fractured pelvis, chronic back pain, under active thyroid, asthma, high blood pressure and depression. She is looked after by her daughter Nora Berry, who is expecting a baby.
- 10: Patrick Quilligan, aged 79, has long standing conditions of diabetes, arthritis, angina, and low iron in his blood. He has limited mobility and memory loss. He is looked after by his daughter, Kathleen O'Brien who has 3 children of whom 2 are of school age. One child has a cochlear implant and another is hearing impaired.
- 11: Mary Ann Sheridan (30) has depression, a one-year-old daughter and is expecting a second baby in 2012. She is helped by her sister, Margaret, who has three children of whom 2 attend Crays Hill.
- 12: James Sheridan (48) has suffered from epilepsy since childhood. He also suffers from visual impairment, hypertension and high cholesterol. He is looked after by Mary McCarthy.

Oral representations made at the Inquiry in support of the appellants

The material additional points are:

[All the parties were prepared to answer questions from the Council's advocate.]

41. **Ann Kobayashi**, a resident of Wickford. She has come to know many Dale Farm residents through being a member of Our Lady of Good Counsel Catholic parish in Wickford. At least one hundred residents have become part of the parish community. Integration is an ongoing process and Dale Farm residents have contributed to the parish's overseas and humanitarian projects and have participated in church social events. The eco-centre suggested by Candy Sheridan might provide a possible meeting ground. The local authority should take some responsibility for facilitating good community relations between the travellers and local residents. She has assisted Dale Farm residents in their housing applications; they have no wish to take bricks and mortar

accommodation from those who want it. The Council has spent money on enforcement proceedings; it would have been better for such resources to have been put into finding alternative sites. There are no vacancies on any authorised sites.

42. **Zelda Jeffers**, a resident of Basildon, argued that cultural differences do not mean that there cannot be good community relations. Land at Gloucester Park, Basildon, has been turned from a recreation and leisure use with trees and grass into a private housing development. Concerning wildlife, there were bats in the chalets at Dale Farm which have now been destroyed. Both wildlife and the settled population can live with travellers. The provision of public open space is beneficial; people move to be near the open space at Gloucester Park.
43. **Rosa Glover Allen**, who chose not to say where she lives, comes from a travelling family. She has spent some time at Dale Farm and appreciated the community spirit and family values. The former residents need sites; they also need access to medical facilities and community care and access to education. Evictions will make such access almost impossible. Many of the residents were born in Basildon and it is important for travellers to have the opportunity to integrate into the community. It takes time to build trust and she speculated that the most vocal residents are not fully representative of the views of the settled community. The development of the site may promote biodiversity and community development. The current overgrazing may endanger the biodiversity and reduce the available habitat for the Great Crested Newts. The development would enhance the LoWS and offer potential gains.

Written statement to the Inquiry in support of the appellants

44. A joint statement was submitted by **Mary Turner**, a photojournalist, and **Johnny Howorth**, a documentary filmmaker, who have both been working with the Dale Farm community. They state that the blame for the current situation rests with the Council with costly evictions at Dale Farm and Hovelands. Having spent an enormous amount of money, we are now left with homeless families and an area of Green Belt that blights the landscape. The solution is adequate site provision. Without this there will be a continued cycle of costly evictions and unauthorised developments. It is important for the travellers to maintain traditions and their way of life; bricks and mortar is not a solution. The travellers are currently living on the roadside outside the entrance to Dale Farm with no electricity or running water. It is apparent that the majority do not have houses or pitches elsewhere in the country or else they would not live in such conditions.

The Case for Basildon District Council

The material points are:

Background

45. In 2001/2 gypsies and travellers purchased and developed former plotlands at land at Dale Farm, Crays Hill without planning permission. Hardcore was imported; hardstandings and access roads constructed; and caravans for residential use were stationed there and occupied. Dale Farm is in the Green Belt and for many years the Council pursued the clearance of the land the subject of the unauthorised development. In order to avoid eviction if possible, the Council adopted a twin track approach with an enforcement stream, comprising pitch

clearance, and an engagement stream, seeking to identify alternative land to which the gypsies and travellers could relocate. As part of the engagement stream various sites were mooted. The HCA land at Church Road, Laindon was identified and discussed as part of that process. The site was not, however, suggested or promoted by the Council. It was the only site owned by the HCA in Basildon that was not immediately ruled out. However, no formal discussions with the Council, as planning authority, took place.

46. Before the application was made, the appellants were advised by the Council that the site had various ecological constraints and that survey work would need to be carried out. Despite this advice, the application was made without any such information. The Phase 1 Habitat Survey was not submitted until May and the Council did not consider it to be fit for purpose.

Planning application

47. The application as submitted is deficient in a number of respects. In particular the site area had not been properly calculated and the appellants were unable to explain the source of their figures. The site layout cannot be relied upon as the access roads extend beyond the red line boundary of the appeal site and the individual plots do not show the amount of development that is proposed for each of them. No alternative layout was submitted showing how the development could be accommodated in a functionally satisfactory way within the appeal site. The description of the development includes grazing land, whereas none is proposed within the site.
48. In her evidence, Mrs Sheridan referred to the community centre/ ecology/ training centre as being important for her vision of the development of the site. She said that it would be available to the wider community, but this cannot be delivered as part of this development. Both witnesses for the appellants emphasised the potential need for this centre to contribute to community cohesion. No such centre is included with the appeal application; it is not shown on the plans or mentioned in the DAS. Mr Hardwick Carruthers agreed that it should have been included and its absence gave rise to concerns about the assessment of the overall environmental effect of the development.
49. Mrs Sheridan's evidence also indicated that the appellants were seeking permission for 50 temporary pitches. In cross examination she acknowledged that she knew that this could not be considered by the Secretary of State; it had been put in to demonstrate the scale of the need. In view of the road extending out of the site to the north, it is not surprising that the residents fear another Dale Farm situation. The appellants were initially seeking to ask the Secretary of State to choose the site occupiers on the basis of personal circumstances. At the Inquiry a list of putative occupiers was provided. In the same vein, the appellants also asked the Secretary of State to provide guidance on the planning obligation. The obligation as submitted is not fit for purpose.
50. These matters undermine the contention that this could be a model development. Given the local circumstances it might have been thought that an exemplar site would be put forward as a result of community engagement. That has not happened; a shambolic application has been pursued to appeal, provoking further controversy and exacerbating existing tensions.

Environmental Impact Assessment

51. It became clear, during the evidence, that the appellants envisage a three-part development; the 12 pitches for gypsies and travellers, plus an ecology centre on adjoining land, plus horse grazing that is also on the wider land. Taken together, the development would have a more significant environmental effect than had at first appeared. The decision maker has a responsibility to consider the environmental impact of the development as a whole (Document 50).

The development plan

52. The development plan comprises the *East of England Plan* and the saved policies of the *Basildon District Local Plan* 1998. The RSS remains in place although it is the Government's intention to revoke all the RSSs. The Government is now a step closer to that objective with Royal Assent being given to the Localism Act so the intention should carry more weight.
53. The LP policies were saved in 2007; the appeal site is part of a wider site that is allocated for leisure and recreation under Policy BAS R11. Policy C1 seeks to ensure that full regard is had to the nature conservation value of a site in planning decisions. The site was part of a SINC; that is now described as a LoWS. The decision maker should have regard to the up to date work regarding LoWS. Policy BAS BE12 concerns residential development and seeks to prevent harm to the character of the surrounding area.

Impact on the LoWS

54. There is overlap between this issue and protected species. Advice in paragraph 53 of ODPM Circular 01/2006 says that local nature conservation designations should not be used in themselves to refuse planning permission; this needs to be read together with paragraph 60 which says that questions of any significant environmental impacts should be resolved at the earliest opportunity. This makes it clear that applicants for gypsy and traveller pitches are not absolved from having to address significant environmental impacts. The Circular also has to be read subject to the duties under European law concerning, in particular, protected species.
55. The appeal site is part of a complex of grassland and scrub habitats notified as LoWS: Ba23, St Nicholas Church Complex. The description identifies that it is primarily designated in recognition of its reptile populations. It is known to support Great Crested Newts, Smooth Newts, Slow-worms, Common Lizards and Adders. These make it one of the most important herptile [*reptiles and amphibians*] sites in the south of Essex. The development would result in the loss of about 20% of the grassland regarded as Lowland Meadow United Kingdom Biodiversity Action Plan (UK BAP) Priority Habitat.

Ecology; impact on protected species and adequacy of information generally

56. The appeal site forms part of a wider area known to support species protected under European Council Directive 92/43/EEC (the Habitats Directive). Regulation 9 of the *Conservation of Habitats and Species Regulations* 2010 requires decision makers to exercise functions in accordance with the Habitats Directive. Article 12(1)(b) of the Habitats Directive requires that

"Member states take all requisite measures to establish a strict protection for the [protected species] in their natural range, prohibiting ... (b) deliberate

disturbance of the species particularly during periods of breeding, rearing, hibernation and migration..."

57. The Council considers that the Secretary of State has insufficient information about the likely impact of the development on the protected species; that conclusion is consistent with NE who object to the grant of planning permission. In a letter dated 1 August 2011 (Document 7 App CL4b) Natural England (NE) refer to their standing advice. Application of the flow chart for Great Crested Newts (Document 7 App CL4bii) shows why, on the basis of the submitted information, permission should be refused.
58. The appellants accepted that they had not referred to the published guidance on the preparation and assessment of development proposals. PPS9 sets out an overall aim of ensuring that the potential impacts of planning decisions on biodiversity are fully considered; the aim of planning decisions should be to prevent harm to biodiversity interests. Where planning permission would result in significant harm to those interests, PPS9 sets out preferences. If significant harm cannot be prevented, adequately mitigated against, or compensated for, then permission should be refused. The Council's expert witness considered that the development would result in significant harm. Without a proper understanding of the impact of the development it is not possible to confidently conclude that any proposed mitigation is adequate. In this case, information on both the impact and on the mitigation is lacking.
59. Great Crested Newts, Adders, Common Lizards and Slow Worms are all species that are included in section 41 of the *Natural Environment and Rural Communities Act 2006* which lists the species of principal importance for the conservation of biodiversity in England. They are also listed in Schedule 5 of the *Wildlife and Countryside Act 1981*. The Act makes it an offence to kill or injure these species. It is also an offence to damage or destroy places used by Great Crested Newts for shelter or protection or to disturb them while in a place of shelter. The site is within an area that corresponds to the definition of the Lowland Meadows UK BAP Priority Habitat. About 1ha of that land would be lost.
60. PPS9 identifies that local sites have a fundamental role to play in meeting overall national biodiversity targets; the Good Practice Guide to PPS9 identifies the need to appraise the environmental impacts of all development proposals. In this case the appellants submitted a Phase 1 Ecological Survey at the request of the Council; it was necessary for validation. This had a number of shortcomings.
61. Circular 06/2005 is clear. In order that all relevant material considerations are taken into account in planning decisions, sufficient information must be provided before planning permission is granted. Only in exceptional circumstances should conditions be used. The purpose of this is to ensure that all material considerations are taken into account. The Good Practice guidance (Document 3 App 12) emphasises that the onus falls on the applicant to provide enough information for the planning authority to assess the impact on biodiversity.
62. The appellants accepted the Council's evidence that there was little chance of protected species being observed during the walkover surveys. These were not sufficient to establish the presence of, the location of or the numbers of Great Crested Newts or other protected species. The appellants accepted that the information provided was insufficient and failed to meet Government guidance. The appellant's argument was that sufficient information would only become

available when funding was released through the grant of planning permission; the Council does not consider that permission should be granted on that basis. Earlier studies by Essex Ecology Services Limited (EECOS) on behalf of the Council related to the condition of the LoWS and were not sufficient to allow a proper understanding of the impact of this development.

Open space

63. The Council's PPG17 Open Space Assessment Implication Report (Document 4 app BC9) indicates that the Council's objection to the loss of open space relates to a quantitative rather than a qualitative loss. The wider site is judged to be "low quality/ high benefit". It is low quality because much of it has no public access. The preferred approach is to seek to preserve or enhance its intrinsic benefit, which this development would fail to do.

Character and appearance

64. The development would harm the outlook for nearby residents by introducing areas of hardstanding, caravans, utility blocks and residential paraphernalia and activity. The land has wildlife and nature conservation value. While there is no public access, the land forms a visual break to the generally urbanised character of Laindon. The proposed development would detract from this green lung.

Need for gypsy and traveller pitches

65. The gypsy status of the intended site occupiers could not be tested as none gave evidence to the Inquiry. The Council differentiates between need and demand; good planning requires something better than a passive acceptance that provision should be made for a land use requirement where demand has led to unauthorised development. This matter would have been addressed in the High Court had not the Council's challenge to the RSS not been withdrawn in reliance of the attempted revocation of RSSs.
66. In Basildon, prior to 2001 there was a low number of unauthorised caravans; that was the context for the 1998 Local Plan. In 2001-02 a very significant increase (about 400%) in unauthorised camping took place. That was evident from the development at Dale Farm. At the last Caravan Count, of the 1,142 caravans within 19 administrative areas of Essex, 32% are in Basildon. Basildon has no special attributes that make it better suited to meeting the lion's share of the county's provision. It is highly constrained by Green Belt that is tightly drawn around the urban areas. The Council considers that it was attractive as it has a large amount of Green Belt land with no development value and a multiplicity of ownerships due to its plotlands past.

Alternative sites

67. The Council does not have an alternative site to which the intended occupants could go. As little information about their personal circumstances has been provided it is not clear how wide the search for alternative sites should go. Mrs Sheridan suggested it should include the East of England.

Personal circumstances

68. There is no doubt that a settled base enables gypsies and travellers to have better access to health and other services and education facilities. For the intended site occupiers, many with acute health concerns, a settled base would be a significant benefit. However, these needs are not ones that can only be met on the appeal site or in Basildon.

Planning obligation

69. The submitted obligation is not fit for purpose. It does not fulfil the necessary statutory formalities. The Council's concerns about the potential use of conditions (Document 4 para 6.19) are shown to be right; the proposals have not reached the appropriate level of analysis, never mind a mitigation strategy, to deal with the impact of the development. Ecology is not the only issue. The appellants do not know who would own the land if it were developed, nor do they know how it would be managed.

Temporary planning permission

70. The ecological harm to the site would arise even if the development were permitted for a temporary period. There is no mitigation strategy in place to deal with that harm. Temporary planning permission would not be appropriate.

Oral representations made at the Inquiry in support of the Council

The material additional points are:

[All the residents and community representatives were prepared to answer questions from the advocate for the appellants except where stated.]

71. **Cllr Terri Sargent**, Basildon Borough Councillor for Crouch Ward and Essex County Councillor for Laindon Park and Fryerns, requested that the appeal be dismissed. She agreed with the Council's decision to refuse permission. She argued that the access would be hazardous as it is close to a bend in the road, opposite a school and beside a commercial building used for tyre fitting and servicing. The site was too close to dwellings in Church Road; the proposals would be visually harmful with about 1ha of hardstanding, buildings, caravans etc. The impact of the development on the community would be harmful. There had been a huge level of local objection to the development and there had not been any pre-application discussions with the community. The community centre/ ecology centre for the wider community had not been the subject of any discussions. Tensions have arisen due to the Dale Farm saga; the revelations of Candy Sheridan in her evidence about her real intentions have not helped. It seems that the intention is to relocate all Dale Farm to this site with no evidence as to how this would work; there is no evidence to show how the Dale Farm residents have integrated into the community. There are more caravans in Basildon than in any other district in Essex.
72. **Cllr John Doran**, Basildon Borough Councillor for Laindon Ward and Essex County Councillor for Laindon Park and Fryerns, said that the site owners, the HCA, are fully aware that the site is allocated for leisure and recreation use in the Local Plan. The HCA has ignored advice in ODPM Circular 01/2006 concerning local decision making. There has been no community involvement. The appellant is ignoring NE's support for the Council on nature conservation issues.

73. The access to the site is in a dangerous location on a bend in the road opposite a busy school and next to a tyre fitters/ MoT station with associated traffic and parking issues. The traffic could involve large vehicles accessing the site as well as horse boxes and deliveries of hay and straw. Stables also attract flies and commonly vermin. The development would be harmful to visual amenity for nearby residents and school children. The land should not be given to those who have broken the law.
74. **Cllr Gilly Hyde**, Borough Councillor for Laindon Park Ward referred to the site being recognised as being home to a large and varied selection of wildlife. She considered that the land should be managed and controlled to allow the various species to thrive and survive in their natural environment as the biodiversity contributes to the character and landscape of the local area. There are protected species on the site. The development would be harmful to visual amenity. It would be accessed via a small winding road that is used as a short cut with the entrance on a sharp bend close to a primary school. The hill becomes impassable in ice and snow. The development would encroach into the peaceful surroundings of St Nicholas Church and local residents would lose this access to the countryside. Property prices would fall if the development was allowed.
75. **Cllr Stephen Hillier**, Borough Councillor for the Langdon Hills Ward, is Chair of the Development Control and Traffic Management Committee. The Committee was fully aware of all relevant planning policy and voted to support the officer recommendation to refuse the application. The Council is well aware that there will have to be an assessment of need for traveller sites. This will be undertaken in due course. There would be no grazing land; the whole site would be used residentially. The fact that the applicants are now suggesting 50 additional pitches is distracting and disingenuous at best, deliberately obfuscatory at worst. If the appellants want more pitches they need to submit an application for that use. The lack of public ownership does not devalue it; its environmental and ecological value is intrinsic to its location and status, not ownership.
76. **Michael Thomas**, a local resident, referred to the Great Crested Newts, bats and breeding birds on the site. NE has objected to the development; it is accepted by the Council that there are protected species on the site. This has been confirmed by the Essex Field Club study of 2008. To develop the site now would breach EEC regulations. Species have been relocated to the wider site from other development sites elsewhere so the situation has changed since the rugby club proposals.
77. **Cliff Hammans**, a local resident, cited Policy BAS R11 of the Local Plan and the site's allocation for leisure/ recreation purposes. He has lived in Church Road for 25 years and seen a huge amount of development in the area. The HCA has not told residents of their intentions. The land should be offered back to the local community; the travellers are not part of that community. The travellers would, if allowed on the site, expand without further planning permission as this seems to be part of their culture. This would not respect the wildlife. As at Dale Farm local residents' properties would be devalued. The claim that the development would benefit the local community has not been justified. In addition there would be highways problems associated with the access as Church Hill is a rat run at peak times.

78. **Ryan Cleland**, a local resident, stated that the local residents are proud of their Grade I listed church and that they maintain the grounds and cemetery. This site is part of the last green lung in Basildon. The development would be harmful to the character of the area. The draft PPS refers to travellers and the settled community working together to meet need but there has been no collaboration here. The s106 agreement shows a lack of sincerity on the part of the appellants. Candy Sheridan has referred to 2 caravans and a mobile home per pitch; that would be 12 more caravans than applied for. The 50 plus additional pitches are not part of this application. Dale Farm residents have had since 2004 to move. The local estate agents have said our properties cannot be marketed at present. If this proposal succeeds we will never be able to move.
79. **Paul Martin**, local resident, was especially concerned about highway safety and wildlife considerations. If permission is granted large vehicles would use a blind entrance opposite the school entrance. There would be light goods vehicles and touring caravans using the access. This would impact on the safety of children. The road closures during winter due to snow and ice also need to be considered as Church Hill becomes impassable. He was concerned about the plans showing internal roads extending out of the site into the wider area and the reference to temporary permission for additional pitches. Property values around Dale Farm had fallen considerably and he did not want that repeated here. He referred to the findings of the Essex Field Group and the presence of a third pond in the wider area. There needs to be a proper ecological survey.
80. **Keeley Bailey**, local resident, has had children at the Nursery and Primary School. The loss of this last area of open space, which acts as a natural wildlife park, would result in the whole area being concrete with cars all around. There are footpaths across the site which locals can enjoy. The community could work together to make the land a dedicated wildlife area. This would need public access. The suggested management plan would result in no work for the first 36 months; this would be harmful as there would be nothing left after 72 pitches had been provided. She disagreed with the highway assessment; the access would not be safe. The road is dangerous especially when icy. This is a good school with a waiting list. In answer to questions she acknowledged that the idea of local residents managing the site had arisen as a result of this planning application.
81. **James Allen**, local resident who has lived over 40 years in Laindon, was concerned about the taxpayer having to foot the bill when clearing up after travellers. There had been threats to local residents and he objected to more travellers coming into the Borough.
82. **Mr Wood**, local resident, has lived in Laindon for all his 74 years. He remembered when the appeal site and surrounding land was all wheat fields; a scheme for a park had fallen through. He did not want plots/ houses on the land. He considered that it would devalue property in the area. In answer to questions he said that the park idea, some 20-40 years ago, planned a Beatrix Potter Theme Park but this had never taken off. It had become grassland many years ago.
83. **John Rogers**, local resident, had lived 45 years in Basildon. He could not understand why the homes of hundreds of people, who had worked hard for their properties, should be devalued by 12 families. He queried the appellants' need

to live in this area and the need for stables. The travellers should not be given grazing land.

84. **Elizabeth Hammans**, local resident, questioned what would happen when the 50 plus caravans moved onto the wider site.
85. **Len Gridley**, who lives adjacent to the Dale Farm site, was not prepared to answer any questions. He had been to the local school. He did not want to see another situation like Crays Hill School where the roll had fallen by about 50% and most children there are from traveller families. He wondered whether Crays Hill School would now close and where the children would be schooled if it does. He was concerned that the need to bus the children to school would increase traffic generation around the appeal site. He said that property prices in Crays Hill had fallen and that the Council Tax revenues had also gone down as a result of revaluation of houses. There is no need for more sites as travellers had moved off legal sites onto Dale Farm to get more land. No travellers from Dale Farm had been on any waiting lists until recently.
86. He considered that this was an unacceptable site for gypsies and travellers due to the access being on a blind bend and opposite a school. Traffic generation is much higher than stated. Church Hill closes in winter due to snow and ice. There was only one alternative road in/out this area, the one leading to the dual carriageway to the east. The road is used as a short cut to avoid congestion.
87. **Mr Gibbons**, a local resident, queried what would happen to the protected species on the site. He disputed the appellants' claims that property prices would rise due to the provision of public open space.

Written Representations

88. Letters from John Baron MP and from 47 nearby residents were received in response to the Council's notification letter, all raising objections to the development. The main reasons for the objections relate to the following matters:
- Highway safety – access onto dangerous bend; road becomes unusable due to snow and ice; increased traffic; conflicts with school access, tyre business and school children;
 - Nature conservation issues including protected species; site is UK BAP site;
 - Conflict with Local Plan Policy BAS R11 which says the land should be used for leisure/ recreation purposes;
 - Concerns about long term intentions – plans show roads going out of the site to enable future expansion of the site;
 - Errors on plans;
 - Basildon has more than its fair share of sites for travellers, there is no local need for more sites; need is not the same as demand;
 - The Dale Farm site started as a small legal site and the residents of Laindon do not want to see that repeated here;

- Travellers at Dale Farm have not obeyed the law; no reason to believe they will do so here;
 - Important to preserve our open spaces;
 - Local facilities, such as schools, doctors and hospitals, are already at bursting point; concern at school being “taken over”;
 - Back gardens get waterlogged now and all this hardstanding will make it worse; flood risk increased;
 - Concerns about storage and disposal of horse waste/ manure;
 - Overlooking of adjoining properties;
 - Loss of outlook; impact of on-site lighting; appearance of 1500mm high close boarded fence;
 - Harmful to the appearance of the area and setting of Grade I listed church; wrong location for any residential development;
 - Local residents should have greater say in planning decisions;
 - Potential anti-social behaviour including noise, crime, fly tipping and rubbish accumulation;
 - Impact on archaeological remains of medieval church hall; and
 - Loss of property values.
89. A bundle of 120 letters from nearby residents, the originals of which had been sent to Mr Terry Fuller, Chief Executive of the HCA, was handed in during the Inquiry. All the letters raise objections to the development. The bundle also includes a letter from the Head Teacher at Laindon Park Primary School to all parents and carers concerning inconsiderate parking and 18 photographs of parking in the vicinity of the school. The main reasons for the objections are the same as set out above. The following additional matters were raised:
- Objection is raised to HCA land being given to the travellers; this is seen as a reward for breaking the law;
 - The land should be made available for use and management by local residents; and
 - There is a restrictive covenant on the land to prevent caravan use.
90. At the application stage the Council received a letter from John Baron MP and 104 letters and a petition signed by 1284 residents in the area raising objections to the development for the same reasons as set out in paragraph 88 above.

Conditions

91. A list of conditions was provided by the principal parties during the course of the Inquiry. These suggested conditions, together with a number of additional conditions, were discussed at the Inquiry. All the conditions set out in Annex 1 to this Report were agreed in principle at the Inquiry.

Obligation

92. A Planning Obligation under s106 of the Act (Document 11) was submitted by the appellants in advance of the Inquiry. As it is unsigned and undated it carries no weight. It is difficult to understand due to the use of convoluted language and it includes requirements concerning land at Dale Farm, land in Basildon generally and land outside the appeal site at Laindon. It is a long way from being a mature strategy for ecological mitigation in the area; it includes unacceptable demands from the Council; it is unworkable in concept. In the "Hearing Statement" produced jointly by Candy Sheridan and Grattan Puxon, there is a request that the Secretary of State provide guidance on the planning obligation to enable the HCA to meet needs. (Document 6 paragraph (para) 11)

Conclusions

93. The following considerations are based upon the evidence given at the Inquiry, the written representations made and my inspections of the site and the surrounding area. In this section the numbers in square brackets [] refer to paragraphs in the preceding sections of the Report.

The planning application and appeal [5, 19-22, 40, 46-50, 68-9, 92]

94. There are a number of errors and discrepancies in the documents submitted with the planning application. The planning obligation was unsigned. The list of potential site occupiers was provided on day 3 of the Inquiry. Taken together, this caused some confusion for interested parties. It is unfortunate that several different site areas, all under 1ha, were stated by the appellants, especially when Plan B, which shows most of the relevant dimensions, clearly shows the site area to exceed 1ha. The appellants were unable to explain how some of the other figures had been arrived at save to say that a number of different persons and organisations had had an input. There is no doubt that the most accurate source, the dimensioned Plan B, shows the site to exceed 1ha in area. I have set out the revised description of the development; reference to grazing land is deleted as the site is too small to accommodate any. Even if planning permission is granted for the appeal proposals, there remains uncertainty concerning the future ownership, management and use of the surrounding land within the LoWS, which would be needed for any mitigation strategy.
95. The appellants accept that there are errors on the submitted plans. They fail to show hardstandings for touring caravans on half of the pitches. The DAS refers to one touring caravan per pitch; Mrs Sheridan's proof of evidence says that normally there would be no more than 2. The plans also show roads or turning areas extending out from the appeal site on land outside the site. This could be taken to indicate the intention to expand the site; more likely they represent turning areas for refuse vehicles. Whichever is correct, by being partly outside the appeal site, they contribute to the inaccuracy of the submissions.
96. The application form says that there were no pre-application discussions with the Council; that is now accepted by the appellants to be incorrect. The Council produced a letter sent to the appellants in response to such consultation (Document 4 App BC14). The appellants were therefore fully aware of the Council's concerns before the application was submitted.
97. During the Inquiry the appellants acknowledged that statements in their proofs of evidence concerning temporary consent being sought for an additional 50 pitches (Document 5 para 17; Document 7 para 11) and that the establishment of a community centre/ ecology/ training centre was anticipated (Document 5 para 6) were not part of the proposals the subject of the appeal. This Report is based on the premise that these further proposals do not form any part of this appeal.
98. The planning obligation submitted by the appellants is undated, unsigned and does not satisfy the statutory formalities. In the "Hearing Statement" (Document 6) submitted by Mrs Sheridan and Grattan Puxon, the appellants seek guidance from the Secretary of State on "the planning obligation required to enable the HCA to meet needs...." The obligation as submitted contains clauses that the Council made clear that it could never put its name to. These include, for

example, a covenant making land available within one year for 65 gypsy and traveller pitches within Basildon with a proviso that failure to meet this target would enable all land in public parks in Basildon to be used by gypsies and travellers in perpetuity. I do not consider that there was ever any expectation on behalf of the appellants that this obligation would be signed.

99. At the Inquiry the appellants amended Appendix PL1 of Document 5 to reduce the pool of potential site occupiers from 21 to the 12 names (together with details of their carers and carers' family members) being put forward as site occupiers (Document 42). None of these potential occupiers, many of whom are seriously ill, gave evidence to the Inquiry, so the details of their personal circumstances were not tested. While it is highly probable that they are all gypsies and travellers who have ceased travelling for health reasons, their gypsy status could not be tested.

Planning History [11-13, 18, 73]

100. The appeal site itself has only a limited planning history but there are a few planning applications concerning nearby land that were raised at the Inquiry. Concerning the appeal site, there has only been one previous planning application. This was for the relocation of Basildon Rugby Club to this site. In June 1997 the Council resolved to approve the development but as the planning obligation was never completed, no decision notice was issued. The submitted plans show that the development would have involved most of the land between Church Hill and the Southend Arterial Road (A127). At the southern end there would have been a substantial club house and parking for almost 160 cars and 4 coaches. Within the site there would have been permanent and demountable floodlights. It is fair to say that while this development would have been wholly in accordance with the designation of the site in the Local Plan, it would have had a very significant impact on both the character and the appearance of the land. It is also relevant that the vehicular access would have been from Church Hill in approximately the same position as that now proposed.
101. The appellants also referred to other developments in the vicinity. The staff car park for the school is shown on Document 18. This lies within the school playing field which was outside the SINC and now lies outside the LoWS, so the circumstances are not comparable to the current proposals.

Planning Policy [7, 14-17, 52-3]

102. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan includes the *East of England Plan* (adopted May 2008) and the *Basildon District Local Plan Saved Policies* (September 2007). The RSS does not carry full weight due to the intention of the Government to revoke RSs. Policy H3 of the RSS says that local authorities should make provision for sites/ pitches the meet the identified needs of gypsies and travellers living in or resorting to their area. The RSS identifies a need for Basildon to provide 61 pitches. The Council initially challenged the RSS in the High Court, but this challenge was withdrawn when RSs were revoked. RSs have now been reinstated, although the intention to revoke remains.
103. Policy BAS C1 of the LP is relevant to the determination of the appeal as the site forms part of a LoWS (formerly defined as a SINC) and it says that the

Council must have regard to the nature conservation value of the site. The development needs to be considered in relation to LP Policy BAS R1 which says that planning permission will not be granted for development that would cause harm to recreational or amenity value of the open space or to the contribution it makes to the character of the area. LP Policy BE12 relates to the impacts of residential development so is relevant to this appeal. There is no LP policy concerning sites for gypsies and travellers.

104. Concerning ODPM Circular 01/2006, it was not disputed that this carries significant weight, notwithstanding the Secretary of State's intention to revoke it. Both principal parties relied upon it at the inquiry. The Circular remains extant and the timescale for its replacement is not yet known. The replacement PPS has been out for public consultation and so is subject to change and carries little weight.

Main Issues

105. The main issues are:

- the effect of the proposed development, involving the loss of part of a wider area of open space, on the character and appearance of the area;
- the effect of the development on protected species and their habitats; and
- whether the other material considerations advanced in support of the development are sufficient to outweigh any identified harm.

Character and appearance [11-13, 54-5, 63-4, 74, 78, 88-90]

106. The appeal site forms part of a larger area of open space within the built up confines of Laindon on the outskirts of Basildon. This wider area is largely surrounded by roads and dwellings with a school, tyre fitters and a church to the south. The context can be clearly seen on the map and aerial photograph at Document 4 App BC1 & BC2. The site lies within an area identified on the LP Proposals Map as being allocated for leisure/ recreation use (Policy BAS R11). The policy, under the general heading of sports facilities, says that development may include buildings but should retain an emphasis on open land uses. The scheme for the rugby club met this policy requirement.
107. The current proposals, however, would conflict with this Policy as it does not involve leisure/ recreation use and, insofar as it relates to the appeal site itself, would fail to retain an emphasis on open land uses. The Council's PPG17 Open Space Assessment Implication Report (Document 4 App BC9) concludes that the proposals fail the Open Space Quality Standard and that the proposals were unacceptable on PPG17 grounds. I have taken account of the appellants' claims concerning the provision of a community centre/ ecology/ training centre elsewhere within the LoWS, but there is no evidence to suggest that the land owners have agreed to this or that any funding is available. The appellants' also initially suggested further temporary pitches for gypsies and travellers on this surrounding land. In any case, such development would require planning permission and no such application has been submitted. This suggestion, therefore, carries very little weight.
108. The site is also within an area identified as a LoWS. The boundary of this LoWS is more extensive than that of the SINC it replaced; the appeal site lies

within the LoWS but outside the SINC. While the LoWS designation is more relevant in relation to the second main issue, the identification of the site took place in 2006 and is partly a recognition of its open grassland and scrub habitats which form an important part of its character.

109. The development of part of the area of open space as a site for gypsies and travellers would be wholly out of keeping with its established character. While, according to one witness at the Inquiry, this land was in arable use after World War II, the present character derives more from its openness than from the actual grazing use. The fact that there is no public access to the appeal site does not diminish the contribution that this wider area of open space makes to the character of the area. The appeal site can be seen from public viewpoints and there are public footpaths within the wider area of open space. While none of these paths cross the appeal site, they offer clear views of the site and this increases its importance to the character of the area.
110. In contrast to the appearance of the established area of open space, the proposed development would appear as a densely developed residential enclave. It would be bounded by close boarded fencing and sited some distance away from any natural boundaries. This would have the effect of exacerbating the visual impact of the development and restricting views of a much greater area of land.
111. The proposed access would be from a sharp bend in Church Hill. Due to the need to provide adequate visibility this would involve the removal of a considerable area of scrub from beside the road. This clearance would be likely to open up long distance views into the site from further south along Church Hill. The road rises towards the south and the appeal site is well below the level of the road, so drivers or pedestrians heading north along Church Hill would be likely to have direct views of the development. Due to the scale, siting and intensity of the proposed development, this would harmfully detract from the current rural appearance of the land. The development would therefore conflict with Policy BAS BE12 (i) of the Local Plan.
112. I conclude on the first issue, therefore, that the development would result in the loss of part of a wider area of open space that is allocated for leisure/recreation use and so would conflict with the development plan. For the reasons set out above, the development as proposed would be harmful to both the character and the appearance of the immediate area. While the harm would be relatively localised, the scale of the harm would be considerable and it would impact on a much wider area of land than just the appeal site itself. Taken together, this harm carries considerable weight.

Protected species and their habitats [24, 33-35, 42-3, 51, 54-62, 88-90]

113. LP Policy BAS C1 says that when considering planning applications affecting important wildlife habitats, the Council will have full regard to the nature conservation value of the site. It says that the Council will consider the impact of the development, the importance of the site and the benefits of the proposed development. In this case the development plan is out of date insofar as the LP Proposals Map (1998) identifies the site for leisure and recreation use with a SINC to the west and south. In terms of site protection, SINCS have since been replaced by LoWS but this change occurred since the Local Plan was adopted. The appeal site now lies within the boundaries of the St Nicholas Church Complex

LoWS. This designation has not been formally adopted by the Council so it does not have the full weight of the adopted LP. Nonetheless it is a material consideration of some weight and Policy BAS C1 is still applicable as the development affects an important wildlife habitat. This importance is clear from the site's inclusion within the UK BAP in 2009 due to its flora and fauna.

114. The appellants state that "there is no doubt that the site is of ecological interest and that protected species are present" (Document 7, paragraph 2). The Council fully concurs with this assertion, stating that Great Crested Newts, Common Lizards, Slow Worms and Adders are known to be present on the wider site (Document 3 paragraph 2.18). The principal parties further agree that additional survey work is necessary; indeed the need for various surveys forms part of the recommendations set out at the end of the appellants' Phase 1 Ecological Survey. The main difference between the parties on this issue concerns the timing of such surveys. The Council considers that the surveys must precede any grant of planning permission because the full extent of the ecological interest of the site is not yet known. The appellants argue that until planning permission is granted, the HCA will not fund any surveys or mitigation measures. Once planning permission is granted, they assert, funding can be made available, the surveys can be carried out and mitigation measures can be put in place before any development proceeds.
115. Paragraph 23 of Circular 06/2005 says that if the decision taker is unable to conclude that a proposed development will not adversely affect the integrity of the site, and that this effect, *or possible effect* will not be removed by conditions or other restrictions, they *must not* grant planning permission except in certain circumstances. In this case there may be alternative solutions that would have no harmful effect on the integrity of the site. Whether or not there are imperative reasons of overriding public interest that would justify the grant of permission is considered in the balancing exercise below.
116. The first point that needs to be determined is whether the development falls within the remit of the *Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999*. The appellants argue that as the proposals involve a caravan site it is within 12(e) of Schedule 2 to the Regulations, for which the threshold is 1ha, and so it falls outside the *Regulations*. This reasoning is faulty on two grounds. First, the development does not involve a "tourism and leisure" use; it is an "infrastructure project". As such it falls within 10(b) of Schedule 2 where the threshold is 0.5ha. Secondly, the site area as shown on the submitted plans exceeds 1ha. The *Regulations* are therefore relevant.
117. It is not disputed that the Council, as local planning authority, has a duty to exercise its functions in accordance with the *Habitats Directive*. It is required to establish a strict protection for protected species in their natural range. The Council's unchallenged evidence is that it has insufficient information about the likely impact of the development on the protected species to enable it to grant planning permission. The Council's witness also considered that the development would result in significant harm to protected species. He added that without knowing the extent of the harm it is not possible to conclude that any proposed mitigation is adequate. Again, this was not challenged.

118. The views of NE are important and clear; NE sought further information. The letter from NE dated 19 April states that they object to the development on the basis that there is a reasonable likelihood of legally protected species being present and adversely affected by the development. NE further comment that the application contained insufficient information. A further letter dated 1 August 2011 reiterates the need for further information that clearly describes the impact of the proposals on protected species and any proposed mitigation. NE also refer to the published standing advice. The flow chart in the standing advice on Great Crested Newts, in box (vi), asks whether a detailed newt survey has been carried out; if this is not provided box (vii) says that the application should be refused. On this basis I do not agree with the appellants' assertion that NE has withdrawn its objection to the development.
119. All the evidence at the Inquiry points to there being protected species both on the appeal site and within the wider area of the LoWS. The Report of the Essex Field Club (July 2008) (Document 3 Appendix 4) reported finding immature Great Crested Newts and Adder. There is no definitive evidence as to the extent of these species or the importance of this site, hence the need for a full survey. The methodology used to inform the Phase 1 Ecological Survey was, according to the Council's expert witness, deeply flawed. This was not seriously disputed by the appellants' witness, who had carried out the walkover survey himself, and who described it as a complete waste of time (Document 8 paragraph 9). I do not consider that there has been an adequate survey of the biodiversity of the appeal site or the remainder of the LoWS.
120. It is also relevant that the appellants do not own the appeal site or any of the surrounding land within the LoWS. There is no evidence to show that the HCA would be willing to sell or lease the adjoining land to the appellants. The suggested conservation centre/ ecology/ training centre put forward by the appellants would be on land that they do not own and no arrangements for funding this are in place. No planning application for this has been made. Suggestions that the adjoining land could be used as a temporary site for gypsies and travellers, as set out in the appellants' proofs of evidence, were withdrawn at the Inquiry but do not indicate a willingness to manage the LoWS as recommended in their Phase 1 Survey. That survey recommends that an agreement under s106 of the Act be entered into in respect of the "entire St Nicholas Church Complex to ensure that it is managed to conserve, maintain and enhance existing levels of biodiversity". However, there is no evidence to suggest that such an Agreement will be concluded. The unsigned planning agreement submitted to the Inquiry is not acceptable in terms of either its form or content and so it carries no weight in this matter.
121. Concerning advice in ODPM Circular 01/2006, this says that "local nature conservation designations should not be used in themselves to refuse planning permission for gypsy and traveller sites". The key, however, is the presence of the words *in themselves* which implies that there should be no blanket ban on gypsy and traveller sites in such areas. In this case the local nature designation has been used as the starting point for a consideration of the biodiversity importance of the site. The Circular also advises that any significant environmental impacts should be resolved at the earliest opportunity. The appellants received pre-application advice that highlighted the site's allocation as a LoWS and Protected Species Alert Area (Document 4 App BC14). The Council clearly did not use the LoWS designation, *in itself*, to refuse the application.

122. Overall I conclude on this issue that the development would harm the LoWS. This is undoubtedly a habitat for protected species. The scale of any harm is unknown as there has not been an adequate survey of the land. The difficulty in funding such a survey is recognised, but that is not a good enough reason for potentially endangering the biodiversity of the area. There is no evidence to demonstrate that any off-site mitigation within the remainder of the LoWS is achievable by the appellants or that it would satisfactorily mitigate any adverse impact. This harm carries substantial weight against the development.

Other matters raised by third parties:

Living conditions [11, 71, 73, 78, 88-90]

123. Although not raised by the Council as a reason for refusal, many nearby residents are concerned about the impact of the proposed development on their living conditions with particular regard to the effect on flooding, outlook, privacy and noise and disturbance. With regard to flooding, the Environment Agency maps show the site to be outside any area liable to flooding. The mobile homes and touring caravans would have hardstandings to raise them above ground level. Anecdotal evidence suggests that the land may be liable to flood, but there is no evidence to suggest that this would be likely to result in any on-site or off-site flooding.
124. Concerning outlook, the site would be about 22m from the ends of gardens of dwellings in Church Road. Some of the dwellings are bungalows but most are chalet bungalows with rear windows that overlook the site. The development, involving around 1ha of land, would have a significant impact on the outlook from these properties. The boundary would comprise a close boarded fence and Plan B (which omits the hardstandings for half the touring caravans) shows that much of the site would be hard surfaced. It also shows that there would be 4 mobile homes/ static caravans and a utility building sited close to, and parallel with, the eastern boundary of the site. While the plan shows a number of trees between the site and the existing dwellings, these would all be outside the appeal site, do not form part of the proposals, and so cannot be considered to mitigate the visual impact.
125. There would also be likely to be some increased noise and disturbance to the rear of the dwellings arising from the use of the pitches for residential purposes. This noise could include the comings and goings of small commercial vehicles and the touring caravans and possibly of generators if mains electricity was not provided. There would be the possibility of barking dogs adding to noise considerations. There would also be likely to be some external lighting to enable the utility buildings to be accessed in the dark. All these factors have the potential to result in some harm to the living conditions of nearby residents, in conflict with Policy BAS BE12 (iii). However, due to the distance involved and the fact that any dwellings in this location could give rise to similar impacts, the harm would not, on its own, be sufficient to justify a recommendation that the appeal be dismissed. The proposed mobile homes/ static caravans would be single storey and there would be a boundary fence so that the development would not be likely to give rise to harmful overlooking or conflict with Policy BAS BE12 (ii).

Highway safety [13, 73-4, 77-80, 86, 88-90]

126. This matter was also not raised by the Council but was a matter raised by many nearby residents. Having witnessed the traffic congestion around the school at school collection time, including an unannounced visit a week before the Inquiry opened, I can understand the residents' concerns. The County Council, as highway authority, raised no objections to the development subject to the imposition of various conditions (which are set out in the Annex to this Report). The vehicular access would be from Church Hill, on the outside of a sharp bend in the road. It is in roughly the same position as the approved access for the rugby club, although that access would have been at an acute angle from Church Hill whereas the proposed access would be at right angles. There are double yellow line on-street parking restrictions on this corner and zig-zag markings around the school entrance. Many residents commented on Church Hill, which is quite twisty and narrow, being closed in winter due to snow and ice and on its use as a rat-run when there are delays on the main road to the south (St Nicholas Lane, B148).
127. The DAS says that the development would not generate more than 48-60 vehicle movements per day, but the method of calculating this has not been provided. A dwellinghouse usually generates 8-10 movements per day but in this case there would be likely to be shared journeys due to the close ties between the proposed occupiers. Nonetheless, many of the carers' families would be likely to have small vans for work and the touring caravans would need to enter and leave the site. Outside school peak times there is substantial on-street parking to the east of the proposed entrance; much of this appears to be associated with Larkins Tyres. At school delivery and, especially, school collection times, I saw that on-street parking in the vicinity of this proposed access is significant. While stricter enforcement of the parking restrictions may reduce the congestion around the school, it would be likely to increase parking further away. The photographs submitted with the bundle of letters to the HCA (Document 21) seem to be an accurate reflection on the congestion/ parking difficulties at the end of the school day. I accept that future residents of the appeal site would be likely to try to avoid such times, especially when towing caravans, but this would not always be possible, especially when returning to the site when timing would be more difficult.
128. I am concerned that traffic generated by the proposed development would be likely to result in additional hazards to road users and carers/ children attending the primary school. While planning conditions can be used to address technical details such as the adequacy of visibility at the junction, they would not prevent the potential for harm to highway safety arising from the increased amount of traffic and turning movements within a congested area. This carries some limited weight against the development.

Setting of St Nicholas Church [11, 74, 88]

129. St Nicholas Church is a Grade I listed building and so I have had regard to the provisions of section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* that require special attention to be paid to the desirability of preserving the setting of the building. The church is some considerable distance from the appeal site. While the top of its spire is visible from the appeal site,

above the dense trees, I agree with the County Council that the development would not have any significant impact upon this heritage asset.

Archaeology [88, 153]

130. The Historic Environment Record shows that the site lies to the north of a late medieval/ post medieval church hall complex. According to the County Council's Specialist Archaeological Advisor there is potential that medieval occupation lay within the proposed development area. However, it is not considered that the potential presence of archaeological remains should prevent the proposed development. A suggested condition concerning a programme of archaeological recording work is set out in the Annex to this Report.

Other material considerations raised by appellants:

The need for sites [8, 19, 26-30, 36-40, 41, 44, 65-6, 71, 75, 88-90]

131. The proposed site occupiers lived at Dale Farm until they were evicted from that site in late 2011. They have no alternative sites to which they can go. Currently numerous families are living beside the access road to Dale Farm in very poor conditions with no electricity or running water. It is clear that they have an immediate need for a site. The actual current whereabouts of the 12 potential site occupiers has not been stated; the final list was only provided towards the end of the Inquiry and none of those on the list addressed the Inquiry. However, I understand that they are all living on the access road or doubled up on the authorised part of Dale Farm.
132. ODPM Circular 01/2006 advocates a plan-led approach to site provision with GTAA's feeding into the RSS. The RSS then identifies the number of pitches required in each local authority (but not their location) based upon the GTAA's and a strategic over-view of needs across the region. This is then translated into specific site allocations in a Development Plan Document (DPD) as part of the Local Development Framework (LDF). In addition the Core Strategy should set out criteria for the location of gypsy and traveller sites to guide the allocation of sites in the DPD and to meet unexpected demand.
133. There have been two recent assessments of the need for sites in Basildon; the Council has not accepted the results of either. I have also had regard to the published bi-annual caravan counts. In respect of the RSS, which forms part of the development plan, this sought an additional minimum provision of 62 residential pitches in the period 2006-2011. This requirement was challenged by the Council in the High Court but the challenge was withdrawn when RSSs were revoked. Following their reinstatement, this figure of 62 now forms part of the development plan although it is still not accepted by the Council. Subsequently, the *Essex Gypsy and Traveller Accommodation Assessment* (GTAA) by Fordham Research (November 2009) (Document 6 app TAB 1) identified a requirement in Basildon for an additional 148 pitches in the period 2008-2013. The Council has never accepted or adopted this GTAA on the basis that it considers that its methodology is flawed.
134. As neither the RSS nor the GTAA has been accepted or adopted by the Council, it is also necessary to consider the Caravan Counts, although these are generally not as accurate as GTAA's as, amongst other things, they are only a snapshot of a single day. In this case the Caravan Count figures show that in January 2011

there were 179 “not tolerated” caravans on gypsies’ own land in Basildon (out of 272 such caravans in the whole county). While this figure is significantly higher than the Essex GTAA figure, the Caravan Count relates to caravans; the GTAA to pitches, so they are not directly comparable.

135. At the Inquiry, the Council sought to differentiate between need and demand, accepting that there is a high level of demand in the Borough but not accepting that this necessarily translates into need. The Council is, rather belatedly, planning to carry out its own GTAA which will feed into a Preferred Options DPD in autumn 2012.
136. It is clear that the number of gypsy and traveller caravans in Basildon increased dramatically in 2001/2 when travellers purchased and settled on former plotlands and imported hardcore for hardstandings and accesses. Prior to January 2001 the number of unauthorised caravans in the Borough (winter counts) remained fairly steady at around 40-50 caravans; the 1998 Local Plan had been based on this level. Since January 2003 the figures have risen from about 150 to over 200. Basildon now contains about one in three of all gypsy and traveller caravans in Essex and the Council does not consider that it has any special attributes that make it any more suited to meeting this provision than any other districts.
137. The Council accepts that it is a popular destination for gypsies and travellers; a fairly obvious conclusion in the light of the above statistics. However, the Council has not implemented the RSS requirement even though it forms part of the development plan. While this is, in part, due to its challenge in the High Court, the result is that the Council still has not provided any additional sites. Even if the High Court challenge had been successful it seems highly unlikely that any subsequent GTAA would not identify any need in Basildon. One of the objectives of ODPM Circular 01/2006 is to increase significantly the number of gypsy and traveller sites in appropriate locations with planning permission over the next 3-5 years. That 5 year period ended in February 2011 and today the Council has still failed to even have a GTAA in place whose contents it accepts. In addition, and to compound the problem, there is no LP or Core Strategy policy against which sites can be assessed. This failure to provide sites in accordance with the development plan and failure of policy weighs heavily in favour of the development.

Alternative sites [36, 38, 41, 44, 67]

138. There are no alternative sites in the Borough. According to the appellants, and not challenged by the Council, there are no suitable, affordable, available alternative sites in the region. This lack of alternative sites also weighs in favour of the appellants.

Personal circumstances [31, 37-41, 43-4, 68]

139. The final list of prospective occupiers of the site was only submitted on the third day of the Inquiry; none of them appeared at the Inquiry so their evidence could not be tested. The prospective occupiers are all former residents of the unauthorised part of Dale Farm, having lived in Beauty Drive, Camilla Drive and Swallows Court. This land has now been largely cleared of all caravans and mobile homes, the former residents are mostly living on the access road to Dale Farm or doubling up on authorised pitches. The immediate need for pitches for

many former Dale Farm residents is clear as there are no sites with planning permission to which they could move.

140. In addition to the need for pitches, it is also evident that all those on the list are in poor health; some of their health needs are severe. Most of their carers have young children at local schools. It is reasonable to conclude that all the prospective occupiers would benefit from a settled base from where they could readily access medical facilities and schools. In terms of needing to remain in this area, however, their specific needs are less clear. Several appear to have various close family members living nearby and there are clear benefits in being able to share the caring between family members. The ability to live on a lawful site would also be likely to reduce stress. It is beneficial, but not essential, for the children to remain in their present schools. Only one of the children of the prospective occupiers and their carers goes to a special needs school; the others could attend other schools if necessary. Nonetheless, and notwithstanding the lack of first hand evidence to the Inquiry, the personal circumstances of the prospective residents are such that their needs carry significant weight.

Overall conclusions and balancing exercise

141. The proposals involve the provision of 12 pitches for occupation by gypsies and travellers who are former residents at Dale Farm, together with the siting of 12 mobile homes, 12 touring caravans, 12 utility blocks with associated parking, fencing and access roads, 2 stable blocks and a tack room. There are strong arguments for and against the development; these pull in opposite directions.

142. In favour of the development are:

- Government policy for gypsies and travellers to provide and manage their own sites (moderate weight)
- a clear and immediate need for sites for the prospective occupiers (significant weight)
- the lack of any known alternative sites that are suitable, affordable and available (significant weight)
- a failure of policy; there is no policy in the LP against which sites for gypsies and travellers can be assessed (significant weight)
- the Council's failure to have any up to date quantitative assessment of need (significant weight)
- the Council's failure to provide any new sites following the publication of the RSS and the lack of any certainty as to when any new sites might become available in Basildon (significant weight)
- the health needs of the prospective occupiers (significant weight)
- the education needs of, in particular, the children of the carers of prospective occupiers (moderate weight)

143. Against the development are:

- harm to biodiversity including protected species and their habitats (substantial weight)

- loss of part of an area identified for leisure/ recreation use in the LP (significant weight)
- impact on the character of the area (significant weight)
- impact on the appearance of the area (moderate weight)
- effect on living conditions of nearby residents (moderate weight)
- effect on highway safety (moderate weight)

144. There is no doubt that the needs of the prospective occupiers of the site are both significant and immediate. The current living conditions for the gypsies and travellers around Dale Farm are unacceptable; there is an urgent and pressing need for alternative accommodation. The Council has failed to provide additional sites; there is no land allocated in the LP for such use; and the Council does not even have a criteria-based LP policy against which alternative sites may be assessed. Given the length of time that the unauthorised part of Dale Farm was occupied prior to the evictions and the number of caravans in the Borough on "not tolerated" sites, it is perhaps surprising that there is not even an agreed quantitative assessment of need in the Borough.

145. For the appellants, it is unfortunate that their proposals contain so many flaws and there is a danger that this could detract from the merits of their case. The unsigned planning obligation was described by the advocate for the Council as being frivolous and there appears to be no realistic prospect of it ever being completed. It is also unfortunate that there has been no contact between the appellants and the settled community around the appeal site as this could have enabled accurate details of their proposals to be put forward in advance of the Council's determination of the planning application. While the planning obligation and some of the inaccuracies in the evidence may have been put forward to emphasise the scale of the problem, it served only to cause uncertainty and alienate the settled population around the site.

146. The above considerations do not mean that each and every parcel of land in the Borough will be acceptable as a site for gypsies and travellers. The principal constraint concerning the appeal site relates to its biodiversity; the site is within a LoWS that is part of the UK BAP. There are protected species present and it is one of the more important herptile sites in the south of the county. The extent of the potential harm is not known due to the absence of a full survey and there is no certainty that any mitigation measures could be carried out as the appellants have no interest in the remainder of the LoWS. In these circumstances, there is no certainty that the recommendations of the Phase 1 Ecological Survey can be implemented; any potential harm cannot reasonably be overcome by condition.

147. Great weight must be given to the advice in Circular 06/2005 which advises that where there is harm to the integrity of a site, the decision-taker must not grant planning permission except in certain closely defined circumstances. There is no evidence that demonstrates that the use of the appeal site is the only solution to the issue of need for sites for gypsies and travellers in the area. The only imperative reasons of overriding public interest that could pertain here relate due to human health and I am not convinced that the evidence demonstrates that the health needs of the prospective occupiers are so great as

to justify the potential permanent damage to the biodiversity of this site and the other identified harm.

148. I acknowledge that the appellants are in a difficult position in that they recognise that the site contains protected species but they are unable to fund a full survey until planning permission has been granted. In addition, having no control over the adjoining land, they are unable to put forward a mitigation strategy in respect of any harm that may arise. However, this seems to highlight the unsuitability of this site for this use and does not justify allowing this appeal.
149. Overall, I conclude that the harm arising from the proposed development would clearly outweigh the benefits. The harm cannot reasonably be mitigated and so I shall recommend that the appeal be dismissed. I have taken account of the transitional arrangements as set out in ODPM Circular 01/2006 and the possibility of a grant of temporary planning permission. This would reduce the weight to be given to the harm to the character and appearance of the area, but the harm to biodiversity would be immediate and potentially irreversible so I do not consider that a temporary permission would be appropriate.

Conditions

150. If the Secretary of State is minded to allow the appeal I consider that the conditions set out in Annex 1 to this report should, where appropriate, be imposed on any permission granted. The first 25 conditions are recommended if a permanent permission is granted; I have also recommended additional conditions in the event that the Secretary of State is minded to grant either a personal or a temporary permission. If a temporary permission is granted conditions 6, 7, 16 and 17 would not be necessary as they relate to the use and the submission of details of permanent buildings.
151. Conditions are recommended limiting the occupation of the site to gypsies and travellers and limiting the number and type of pitches and caravans on the site to accord with the terms of the application and in the interests of the visual amenities of the area. The layout of the site, details of proposed permanent buildings, landscaping, and details of fencing, lighting, and surfacing are conditioned as no such details have been submitted and in the interests of the visual amenities of the area. Commercial activities, the parking of large commercial vehicles and the lighting of fires need to be controlled to protect the living conditions of nearby residents. Conditions are necessary in respect of surface and foul water drainage to prevent flooding and because no such details have been submitted. It is necessary for various ecological studies to be carried out and for any mitigation measures to be undertaken in order to minimise the potential impacts of the development on trees and ecology.
152. The use of the stables/ tack room needs to be controlled to prevent commercial uses or livery which could be harmful to the character of the area and the living conditions of nearby residents. A programme of archaeological work is necessary as the Historic Environment Records show that the site lies to the north of a known late medieval/ post medieval church hall complex. Various conditions concerning the proposed new vehicular access, including visibility splays, its alignment, gradient, kerbs, surfacing materials are necessary in the interests of highway safety. A new section of footway is needed as there is no footway on the northern side of this section of Church Hill. A further condition is necessary to ensure that measures are undertaken to prevent materials being

deposited on the highway during the construction phase in the interests of highway safety. If temporary planning permission is granted, I have recommended that it be limited to a period of 4 years, as suggested by the appellants, rather than for 3 years as suggested by the Council, as this longer period is likely to be necessary to enable sufficient alternative sites to be brought forward.

Obligation

153. The draft Planning Obligation under s106 of the Act that was submitted prior to the Inquiry (Document 11) is unsigned and undated and so carries no weight. The form and content of the Obligation are not acceptable for the reasons set out.

Recommendation

File Reference: APP/V1505/A/11/2156547

154. I recommend that the appeal be dismissed.

Clive Hughes

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Melissa Murphy of Counsel	Instructed by Legal Services, Basildon Borough Council
She called	
Neil Harvey BSc (Hons) MIEEM	Essex Ecology Services Ltd
Clive Simpson BA (Hons) MRTPI	Manager of Planning Services, Basildon Borough Council

FOR THE APPELLANT:

Stuart Hardwick Carruthers	Instructed by the Gypsy Council on behalf of the Dale Farm Residents' Association
He called himself and Candy Paula Sheridan	Vice Chair, Gypsy Council

INTERESTED PERSONS (IN ORDER OF APPEARANCE):

Cllr Terri Sargent	Borough Councillor, Crouch Ward & County Councillor Laindon Park and Fryerns Ward
Michael Thomas	Local resident
Cliff Hammans	Local resident
Ryan Cleeland	Local resident
Cllr John Dorman	Borough Councillor, Laindon Ward & County Councillor Laindon Park and Fryerns Ward
Paul Martin	Local resident
Cllr Gilly Hyde	Borough Councillor, Laindon Ward
Cllr Stephen Hillier	Borough Councillor, Langdon Hills Ward
Keeley Bailey	Local resident
James Allen	Local resident
Mr Wood	Local resident
John Rogers	Local resident
Elizabeth Hammans	Local resident
Len Gridley	Local resident
Mr Gibbons	Local resident
Ann Kobayashi	Resident of Wickford
Zelda Jeffers	Resident of Basildon
Rosa Glover Allen	Interested party

DOCUMENTS SUBMITTED PRIOR TO THE INQUIRY

- 1 Council's notification letter and list of persons notified
- 2 Letters received in response to Council's notification letter
- 3 Proof of evidence and appendices of Neil Harvey
- 4 Proof of evidence and appendices of Clive Simpson
- 5 Proof of evidence and appendices of Candy Sheridan
- 6 Hearing statement and appendices of Candy Sheridan and Grattan Puxon
- 7 Proof of evidence and appendices of Stuart Hardwicke Carruthers (1)

- 8 Proof of evidence and appendices of Stuart Hardwicke Carruthers (2)
- 9 Response of Stuart Hardwicke Carruthers to proof of evidence of Clive Simpson
- 10 Statements of Common Ground (not agreed or signed) submitted by Council and appellants
- 11 Planning Obligation (unsigned and undated)

DOCUMENTS SUBMITTED AT THE INQUIRY

- 12 Council's notification letter and list of persons notified – revised venue
- 13 Letter from PINS to Basildon District Council concerning Environmental Impact Assessment
- 14 Email from Jon Austin re Freedom of Information Act dated 21 November 2011
- 15 Opening submissions on behalf of Basildon Borough Council
- 16 Review of proposed Planning Obligation by Neil Harvey
- 17 Review of Great Crested Newt Mitigation Strategy by Neil Harvey
- 18 Composite plan (scale 1:2500) showing Local Plan designations, planning permissions and appeal site
- 19 Two plans showing Local Plan designation with LoWS
- 20 Statement and appendices of Michael Thomas
- 21 Bundle of letters submitted to Homes and Communities Agency from the Residents' Action Group
- 22 Statement by Cllr John Dorman
- 23 Letter to John Baron MP from Meg Munn DCLG dated 20 December 2006
- 24 Dale Farm Web page
- 25 Report of Essex Field Club meeting 5 July 2008
- 26 List of species found at St Nicholas Laindon surveyed April 2007 and July 2008
- 27 Statement of Cllr Gilly Hyde
- 28 Statement of Cllr Stephen Hillier
- 29 Basildon District Council; note of Engagement Talks re Church Road (Pound Lane) site
- 30 Extracts from Basildon Borough Local Investment Plan 2010-15
- 31 Basildon History – Gloucester Park
- 32 Planning permission Ref 11/00111/FULL – Phase 1 Westside North, Broadmayne
- 33 Ba29 Gloucester Park Meadow
- 34 Letters from Barton Willmore to Basildon Council dated 31 August 2010 and 26 January 2011
- 35 Letter from GO-East to Barton Willmore dated 12 August 2010
- 36 Basildon Borough Council – Agenda Item 4 DC&TM Committee 7 June 2011
- 37 Basildon Borough Council – Agenda Item 5 DC&TM Committee 7 June 2011
- 38 Basildon Borough Council – Minutes of DC&TM Committee 7 June 2011
- 39 Planning refusal Ref 11/00864/11; Plot 31 land adjacent Dale Farm, Oak Lane, Crays Hill
- 40 Basildon Council – Draft of report on authority to take enforcement action; Dale Farm
- 41 Statement of support for appellants from Mary Turner & Johnny Howorth
- 42 Amended Appendix PL1 to proof of evidence of Candy Sheridan reducing the list of potential site occupiers to 12 named residents
- 43 Draft list of suggested conditions
- 44 Statement of Ann Kobayashi
- 45 Statement of Rosa Glover Allen and photo
- 46 Essex Field Club; surveys and lists of species

- 47 Closing submissions on behalf of Basildon Borough Council
- 48 *Mary Sheridan, Cornelius Sheridan and others, Margaret McCarthy v Basildon District Council* [2011] EWHC 2938 (Admin) 12 October 2011
- 49 Council Directive 92/43/EEC 21 May 1992 on the conservation of natural habitats and of wild fauna and flora
- 50 *Ecologistas en Accion-CODA v Ayuntamiento de Madrid* (Case C-142/07) [2009] PTSR
- 51 *Morge v Hampshire County Council* [2011] UKSC2 19 January 2011
- 52 Policy BAS BE12 of Basildon Local Plan Saved Policies 2007
- 53 Letter from Candy Sheridan dated 25 November 2011
- 54 Closing submissions on behalf of the appellants
- 55 Secretary of State's Decision and Inspector's Report – Wood View, Royal Oak Place and 27-31 Oak Lane, Crays Hill, Billericay – APP/V1505/A/07/2043406 dated 21 January 2008
- 56 Application for costs by Grattan Puxon (Dale Farm Residents' Association)
- 57 Response to costs application by Basildon Borough Council

PLANS

- A Drawing No 11-5036-5 Rev A – site location plan scale 1:1250
- B Drawing No 11-5036-02 Rev A – site layout plan scale 1:500

ANNEX 1: List of suggested conditions

The following conditions are recommended if permanent planning permission is granted:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawings No 11-5036-5 Rev A and 02 Rev A.
- 4) There shall be no more than 12 pitches within the site and no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended) (of which no more than 1 shall be a static caravan) shall be stationed on any pitch at any time.
- 5) No development shall take place until full details of the site layout have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved plans and retained thereafter. The static caravans shall be sited in accordance with the approved site layout plan and any material change to the position of any static caravan, or its replacement by another in a different location, shall only take place in accordance with details that have been submitted to and approved in writing by the local planning authority.
- 6) No development shall take place until full details of the elevations and floor plans of the utility buildings, tack room and stables have been submitted to and

- approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 8) The site shall not be occupied and no works whatsoever shall be undertaken to prepare the site for occupation until the following studies (Habitats Assessment including Botanical survey; Great Crested Newts survey; Reptile survey; and Invertebrate survey) have been undertaken to identify the extent of protected species present both on the site and the remaining 15.6 ha that comprise the Local Wildlife Site. The studies shall be undertaken by a suitably qualified ecologist and the methodology and extent of the surveys shall be agreed beforehand in writing by the local planning authority.
 - 9) The site shall not be occupied and no works whatsoever shall be undertaken to prepare the site for occupation until a scheme setting out proposed measures for mitigating the ecological impacts of the development have been submitted to and approved in writing by the local planning authority. The scheme shall include measures for the provision and management of any off-site habitats required and the long term management of habitats within both the development site and the surrounding land. The mitigation strategy will be required to alleviate and compensate in an appropriate manner for all potential harms to both protected species and the natural flora on the site caused by the development.
 - 10) No development shall take place until a surface water strategy/ flood risk assessment has been submitted to and approved in writing by the local planning authority. No caravans or mobile homes on the site shall be occupied until the works have been carried out in accordance with the surface water strategy so approved unless otherwise agreed in writing by the local planning authority.
 - 11) No development shall take place until details of foul water drainage have been submitted to and approved in writing by the local planning authority. No caravans or mobile homes on the site shall be occupied until the works have been carried out in accordance with the approved details unless otherwise agreed in writing by the local planning authority.
 - 12) No vehicle over 3.5 tonnes shall be parked or stored on this site and no commercial activities shall take place, including the storage of plant or materials.
 - 13) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection in the course of development; and a timetable for the implementation of the scheme. Development shall be carried out in accordance with the approved scheme and shall be retained thereafter.
 - 14) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the approved timetable; any trees or plants which within a period of 5 years from the completion of the development

- die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 15) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme providing details of any means of enclosure; any hard surfacing within the site including the parking areas, hardstandings for the static and touring caravans, and individual driveways; the design and location of refuse disposal and storage facilities; external lighting; and a timetable for the implementation of the scheme. The development shall be carried out and thereafter retained in accordance with the approved details.
 - 16) The stables hereby permitted shall be used solely for the private stabling of horses. No business or commercial use including for purposes of livery or any riding school activity shall take place on the site.
 - 17) The stables hereby permitted shall not be used until details of the arrangements for the storage, drainage and disposal of manure, bedding and liquid animal wastes have been submitted to and approved in writing by the local planning authority. All such wastes shall be stored and disposed of in accordance with the scheme as approved. There shall be no burning of animal or stable wastes anywhere on the site.
 - 18) No fires shall be lit on the site at any time.
 - 19) No development or preliminary ground works of any kind shall take place until the implementation of a programme of archaeological work recording has been secured in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
 - 20) Prior to the first occupation of the development, the new vehicular access from Church Hill at its centre line shall be provided with a clear ground visibility splay with dimensions of 90m x 2.4m x 90m, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and shall thereafter be retained free of any obstruction at all times.
 - 21) Prior to the first occupation of the development, and in accordance with a scheme that has been previously submitted to and approved in writing by the local planning authority, the new vehicular access to Church Hill as shown on Drawing No 11-5036-5 rev A prepared by E&P Building design, shall be constructed at right angles to the existing carriageway. The width of the new access at its junction with the highway shall not be less than 6m wide and shall be provided with 2 kerbed radii with a minimum dimension of 10.5m and street lighting if required in accordance with details to be agreed in writing by the local planning authority. The submitted details shall include the gradient of the proposed access which shall not be steeper than 4% (1 in 25) for the first 6m from the highway boundary and not steeper than 8% (1 in 12.5) thereafter.
 - 22) Prior to the first occupation of the development, a section of footway shall be provided on the north side of Church Hill to link the site with the existing footway to the east in accordance with a scheme that has previously been submitted to and approved in writing by the local planning authority.
 - 23) Prior to the first occupation of the development, details showing the means to prevent the discharge of surface water from the development site onto the

highway shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out in its entirety prior to the first use of the access and it shall be retained thereafter.

- 24) No unbound material shall be used in the surface treatment of the vehicular access within 6m of the highway boundary.
- 25) Prior to the commencement of development, details of measure to prevent the deposition of mud and/ or debris on the public highway by any vehicle associated with construction works on the site shall be submitted to and approved in writing by the local planning authority.

The following additional conditions are recommended if a personal permission is granted:

- 26) The occupation of the site hereby permitted shall be carried on only by the following and their carers and resident dependants: Nora Sheridan; Margaret Quilligan; Bridget Sheridan; Cornelius Sheridan; Jean O'Brien; John & Ellen Sheridan; Nora & Tom O'Brien; Bridget Sheridan; Nora Berry; Patrick Quilligan; Mary Ann Sheridan; and James Sheridan.
- 27) When the land ceases to be occupied by those named in condition 26 (above) the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.

The following additional condition is recommended if a temporary planning permission is granted:

- 28) The use hereby permitted shall be for a limited period being the period of 4 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place.
- 29) Notwithstanding the description of the development and the details set out on the submitted plans, this Decision does not grant permission for the utility buildings, stables or tack room.

Annex 2: List of abbreviations used in this Report

App	Appendix
DAS	Design and Access Statement
DCLG	Department for Communities and Local Government
DPD	Development Plan Document
EECOS	Essex Ecology Services Limited
GTAA	Gypsy and Traveller Accommodation Assessment
HCA	Homes and Communities Agency
LDF	Local Development Framework
LoWS	Local Wildlife Site
LP	Basildon District Local Plan Saved Policies
MP	Member of Parliament
NE	Natural England
ODPM	Office of the Deputy Prime Minister
Para	Paragraph
PPG	Planning Policy Guidance Note
PPS	Planning Policy Statement
RS	Regional Strategy
RSS	Regional Spatial Strategy for the East of England
SINC	Site of Importance for Nature Conservation
SoCG	Statement of Common Ground
UK BAP	United Kingdom Biodiversity Action Plan

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.