

Appeal Ref	APP/B1550/C/06/2006788
Appellant	Mr D Fewings
Location	Pudsey Hall Farm, Pudsey Hall Lane, Canewdon SS4 3RY
Decision	Appeal succeeds in part and the enforcement notice upheld and varied (01.05.08)

The breach of planning control as alleged in the notice is the change of use of the land from agriculture to a mixed use of agriculture and breaking, repair, servicing, parking and storage of vehicles, plant and machinery as well as the storage of scrap materials not associated with the authorised agricultural use. The requirements of the notice are

- i. Remove from the buildings and site all tools, equipment (including but not limited to gas bottles, containers, cement mixers) vehicles, plant and machinery as well as scrap materials (including but not limited to wooden pallets, vehicle engines, wheels, tyres and other components), not associated with the authorised agricultural use.
- ii. Cease the use of this site (including the buildings) for the breaking, repair, servicing, parking and storage of vehicles, plant and machinery as well as the storage of scrap materials not associated with the authorised agricultural use.

The period for compliance with the requirements is three months.

The appeal on ground (d) is that at the date the enforcement notice was issued, it was too late to take enforcement action against the matters stated.

Pudsey Hall Farm is a landholding amounting to about 4.3ha lying towards the northern end of Pudsey Hall Lane, a private cul-de-sac on the northern side of Larkhill Road between the villages of Canewdon and Ashingdon. The area of land delineated by the enforcement notice is an approximate square on the western side of the Lane, amounting to about 2.7ha. It contains a dwelling and a variety of other buildings and structures in its north east corner. The remaining part of the land holding, on the eastern side of Pudsey Hall Lane, also contains a dwelling house in its North West corner which Mr Fewings has occupied since 2007.

Mr Fewings moved onto Pudsey Hall Farm with his wife and young daughter in June 1993 before they formally owned it. Neither the land, nor the bungalow in the north east corner of the appeal site, had not been actively used for some time and were in a poor condition. Mr Fewings bought the land to provide a home for his family with space to breed and raise animals, run a farm and to develop a business buying and selling second hand plant and machinery.

An Essex County Council Trading Standards Officer provided a witness statement confirming that Pudsey Hall Farm had been recorded in their records as a livestock farm from since at least May 1995. Various enforcement officers from his department visited the premises from that date until February 2002 for the purposes of the enforcement of animal health legislation.

Aerial photographs of the farm taken in June 1999 show only a small part of the western end of Field A occupied by plant and vehicles, with a group of about 12 caravans at its eastern end. No vehicles/plant is apparent in the western field, including the northwest corner where there had been a significant collection in September 1996. By September of 1999 an aerial photograph shows that the collection of vehicles and parts of vehicles in the eastern field had spread slightly. The farmyard area has all the characteristics of an active livestock holding and shows no obvious signs of vehicles, plant and other objects, beyond what might be expected on a mixed residential/agricultural unit of this type and size.

The Inspector found substantive corroborative evidence to show that between 1993 and 2000 the agricultural activities taking place at Pudsey Hall Farm grew from zero to a sizable and thriving concern involving a significant number of animals and labour input and the use of almost all of the buildings on the appeal site.

In 1991 Mr Fewings had taken a lease on premises at an industrial estate off Progress Road, Eastwood where he set up a vehicle servicing, repair and MOT business. In July 1995 the garage business went bankrupt and Mr Fewings ceased his day to day involvement. From that month he based all of his business activities at Pudsey Hall Farm.

The numerous statutory declarations and witness statements present a consistent claim that Mr Fewings has used Pudsey Hall Farm in conjunction with his business of buying, repairing and selling plant, including agricultural plant, tractors, general machinery, construction plant machinery and other vehicles. He has also used the property in relation to the scrapping of such plant and machinery and sold on the parts arising, is involved in exporting plant and machinery spare parts and also farms Pudsey Hall Farm. The Inspector found no reason to dispute any part of these statements, or those presented at the inquiry, or that such activities commenced from Mr Fewings first occupation in 1993. The key issue was to determine at what scale these were operating and from what date could the non-agricultural activities undertaken at Pudsey Hall Farm be regarded as more than de minimis or ancillary to the lawful agricultural and/or residential uses such as to constitute a material change of use of the appeal site, as part of the larger planning unit.

The Inspector stated that on the balance of probabilities, Mr Fewings' activities was no more than ancillary to the lawful agricultural and residential uses of the land until at least 2001. It may have provided a significant part of Mr Fewings' income, and part-time employment for others, but it did not materially change the character of the use of the land.

By 2005 substantial quantities of materials were also arriving at the farm to be processed for scrap by a large scale crusher, which arrived on site in August of that year. This change in the nature and scale of the non-agricultural business activities, which included the buying in of a wide variety of unwanted vehicles and other products, household goods and clothing for processing and resale for scrap and other purposes, represent a significant further material change in the character of the use of the land at Pudsey Hall Farm.

The Inspector came to the conclusion that in December 1995, 10 years prior to the issuing of the enforcement notice, the use of the land at Pudsey Hall Farm, and the appeal site as part of the larger planning unit, had a mixed use for agricultural and residential purposes. The considerable body of evidence assembled for the inquiry clearly indicates that on the balance of probabilities the material change of use of the land as described in the notice did not occur until at least 2001, with the addition of a distinct 'scrap yard' type use from mid-2005. Therefore, at the time the enforcement notice was issued it was not too late to take enforcement action against the matters stated in the notice and the appeal on ground (d) fails.

The appeal on ground (g) states that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed.

Pudsey Hall Farm is an inappropriate location for the recycling and waste disposal activities carried out by Mr Fewings in terms of planning policy: the site lies within the Green Belt, the Coastal Protection Belt and a Special Landscape Area. In addition it has harmed both the openness and the character and appearance of the area and the vehicle movements and some of the other activities detract from the rural character and quiet enjoyment of their properties that the occupiers of the houses on Pudsey Hall Lane might reasonably expect.

The Council indicated at the inquiry that they would be willing to extend the period for compliance with the requirements of the enforcement notice from 3 months to 6 months. Mr Fewings seeks at least 18 months to relocate his business.

The Inspector felt that given the scale and nature of the unauthorised activities, and the significant impact they have on their surroundings and the living conditions of local residents there was no reason to allow them to operate for a further 18 months. However considered that the 3 months specified is unreasonably short for both this and for Mr Fewings to reduce the scale of his non-agricultural businesses and/or secure an alternative site(s), move his business(es) to it and comply with the requirements of the notice in their entirety. In the Inspectors view 6 months is the minimum period which strikes a reasonable balance between providing time for Mr Fewings to comply with the requirements of the notice while safeguarding the local environment and the living conditions of local residents.

The Inspector directed that the enforcement notice be corrected by:

- a) The deletion of the breach of planning control as alleged in the notice as written and its substitution:

The change of use of the land from a mixed use for agriculture and residential purposes to a mixed use for:

- i. Agriculture;
- ii. Residential purposes;
- iii. The breaking, repair, servicing, parking and storage of vehicles, plant and machinery and parts thereof for re-sale purposes as well as the storage of scrap arising from those activities; and
- iv. The storage, dismantling, processing and re-sale of scrap products and materials not arising from (iii) above.

b) The deletion of the Requirements of the notice as written and their substitution by:

- 1) Remove from the buildings and site all tools, equipment (including but not limited to) gas bottles, containers, cement mixers) vehicles, plant and machinery as well as scrap materials (including but not limited to wooden pallets, vehicle engines, wheels, tyres and other components), not associated with the lawful agricultural and/or residential uses.
- 2) Cease the use of the land (including the buildings) for the breaking, repair, servicing, parking and storage of vehicles, plant and machinery and parts thereof for re-sale purposes as well as the storage of scrap arising from those activities; and the storage, dismantling, processing and re-sale of scrap products and materials not arising from (iii) above.

The deletion of '3 months' and the substitution of '6 months' as the period for compliance.

Subject to these corrections and variations the Inspector dismissed the appeal and upheld the enforcement notice.

APPEAL BULLETIN FOR MAY 2008



Appeal Ref	APP/B1550/C/07/2047872
Appellant	Mr D Fewings
Location	Pudsey Hall Farm, Pudsey Hall Farm, Pudsey Hall Lane, Canewdon, Rochford, Essex SS4 3RY
Decision	Succeeds in part

The appeal relates to the breach of planning control as alleged in the notice is the change of use of land from agriculture to a mixed use including agriculture and the use of land for the siting of caravans/mobile homes for the purpose of human habitation and the storage of caravan/mobile homes. The requirements of the notice are to:

- i. Cease using the land for the siting of caravans/mobile homes for the purpose of human habitation and the storage of caravans/mobile homes.
- ii. Permanently remove all caravans/mobile homes from the land.
- iii. Remove all other ancillary items from the site connected with the use of the land for the siting of caravans/mobile homes for the purpose of human habitation and the storage of caravans/mobile homes, including but not limited to paving, gravel, swings, washing lines, sheds, fences and garden ornaments.
- iv. Break up all caravan/mobile home hardstandings on the site and permanently remove all materials resulting from the site.
- v. Restore the land to its condition before the breach took place by levelling the ground and reseeding with grass.

The period for compliance with the requirements is 3 months.

The appeal on ground (d) that, at the date the enforcement notice was issued, it was too late to take enforcement action against the matters stated.

For the appeal to succeed on ground (d) it is necessary to prove, on the balance of probabilities, that the material change of use as specified in the enforcement notice had subsisted for a continuous period of 10 years prior to the issue of the notice.

Mr Fewings moved onto Pudsey Hall Farm with his wife and young daughter in June 1993. The family initially occupied a mobile home which they brought onto the site and stationed it to the south of the bungalow. Mr Fewings repaired and restored the bungalow and the family moved into it in November 1993.

Mr Fewings claimed that the mobile home was subsequently let to a Mr and Mrs Garrett who began living in it just before Christmas 1993 and they stayed there for about 18 months.

Mr Disney moved into the mobile home in February 1996. Throughout his claimed period of occupation Mr Disney was working at a concrete crushing business at Purdeys Industrial Estate, in Rochford. He said that he lived in the mobile home at Pudsey Hall Farm continuously from early 1996 until January 2001 when, during the Foot and Mouth outbreak, his daily movements on and off the farm were considered a risk to the spread of the disease.

Mr Fewings said that after Mr Disney vacated the mobile home it was 'lived in for a time by my brother Craig and Andrew Wilson. In about September 2002 it was broken up and Goldie Spearman brought on a replacement'. Mr Spearman said that he, his wife and son had lived in this mobile home since September 2002, with occasional periods of travel in a touring caravan, maybe 2 or 3 times from 2004-2006 for a couple of months at most to Wales and the Midlands.

There is substantial evidence that Mr Fewings and his family occupied a separate mobile home at Pudsey Hall Farm, from August or September 1999, following the fire which destroyed their bungalow. In the summer of 2001 substantial works were undertaken to this structure, and an extension added, such that in the Inspector's view it changed in character from a caravan to a building. For the purposes of the ground (d) appeal however the significant point is that while it continued to be occupied for residential purposes, the structure ceased to be a caravan after the summer of 2001 and can only count toward the 'ten year period' for the two years it was on the site up to that date.

The Inspector found convincing evidence that there was residential occupation of a caravan at Pudsey Hall Farm for the period from early 1996 to the summer of 2001, and from July 2002 to the present day. For the intervening year there is some evidence in the form of statutory declarations and Mr Fewings' oral statements that Andrew Wilson and Craig Fewings occupied either the mobile home vacated by Mr Disney or another caravan for at least some of this time but there is no evidence as to precise dates and/or length of occupation of any caravan during this period.

The lack of any firm evidence of occupation by any person of a caravan at Pudsey Hall Farm between the summers of 2001 and 2002 is a fundamental weakness of the ground (d) appeal. Accordingly, the Inspector found that at the time the enforcement notice was issued it was not too late to take enforcement action against the matters stated in the notice and the appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application that planning permission ought to be granted for what is alleged in the notice.

At the inquiry it was clarified that what was being sought under this ground was planning permission for the use of the land for the permanent siting of up to two mobile homes and two touring caravans for the use of the Spearman family and Andrew Wilson in the north east corner of the western park of the farm, and the use of the south west corner of the eastern field as a transit gypsy site for up to six touring caravans for an aggregate period of up to four months in any year.

It was accepted by the parties that this use had to be regarded as inappropriate development in the Green Belt. Paragraph 3.1 of PPG2, the Government's Planning Policy Guidance Note on Green Belts states a general presumption against inappropriate development and that such development should not be approved, except in very special circumstances. Paragraph 3.2 says that very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and that in view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any appeal concerning such development.

Were planning permission to be granted, the Spearman's mobile home is likely to remain in the place it has occupied for some 5 years. It, and the associated touring caravan, causes some loss of openness, but its relatively small size and siting very close to a number of much larger buildings which will remain whatever the outcome of the appeals, makes its effect on the openness of the Green Belt minimal.

The Inspector assumed that Mr Fewings' former mobile home will remain in its current position. Two possible locations for the siting of Mr Wilson's caravans were put forward at the inquiry, with the agreement of both parties. One is at the northwest corner of the manege, to the south of building 4, and the other at the eastern end of the proposed transit site. The former is already developed land and if sited here the caravans would be well screened by the earth embankments around the manege and the nearby farmyard buildings. This would cause only a very limited additional impact upon the openness of the Green Belt, whereas the alternative location would represent an extension of development into an open field, albeit close to a large barn on the land to the south.

With regard to the proposed transit site in the south west corner of the eastern field, this would occupy what is lawfully part of a field. The number of caravans proposed (up to 6) and the area of land involved (about 20m by 30m) and the almost inevitable requirement for the laying out of hardstandings, a permanent amenity block and other minor artefacts necessary to comply with a caravan site licence, would have a far more substantial impact upon openness, even if the caravans are present for only part of the year. Additional weight therefore has to be given to the harm arising from the loss of openness caused by the transit site, which would be exacerbated were Mr Wilson's caravans to be kept here as well.

The development, especially the transit site, would result in some harm to the character and appearance of the area because of the presence of the caravans in an otherwise open field, and the necessary operational development. A small amount of weight has to be assigned to this additional harm. But neither element of the development would compromise the objectives of the SLA or Coastal Protection Belt such as to be contrary to Structure Plan Policy CC1 or Local Plan Policies NR1 or NR10.

The Inspector accepted the need of both the Spearman family and Mr Wilson for caravan site accommodation in accordance with their gypsy status and lifestyle. Were the appeal to be dismissed and the Council to seek to enforce the requirements of the notice, in the absence of any identified alternative sites the Inspector considered it almost inevitable that the Spearman family would be rendered homeless and Mr Wilson would lose the base site he has been using for many years thereby effectively rendering him homeless also. Although he appears to have successfully continued an itinerant existence, the need for a permanent base site has long been recognised as an essential requirement to support a transitory gypsy lifestyle.

The consequences for Mr Wilson may be less severe as he has been following a much more itinerant existence than the Spearman's in recent years, but in the Inspector's view the loss of access to what he apparently has regarded as his home base for a considerable number of years would also represent a significant interference with his human rights, out of proportion to the harm which his caravans and occasional presence on the site may cause.

The transit site was mainly intended to allow Mrs Spearman's relations, the Smith family from Wales, to continue to spend part of the summer at Pudsey Hall Farm as they have done for many years, and to allow other gypsies and travellers known to Mr Fewings to stay at the Farm on an occasional basis. The regular visits by the Smith family, and others do not (apart from a particularly large incursion several years ago) appear to have provoked significant objection from local residents. However, the Smith family have their home site in Wales and no special case has been made out as to their need for this site or the consequences for them were planning permission to be refused. The Inspector therefore cannot give the case for the transit provision more than limited weight.

For the part of the development involving the Spearman family and Mr Wilson, and subject to appropriate conditions as to siting and landscaping, there would be minimal harm caused to the openness of the Green Belt, the character and appearance of the local area, the SLA or the Coastal Protection Belt, in addition to the substantial weight that must always be attached to the harm by reason of inappropriateness. On the other side of the balance there are several other considerations of significant weight. The general and acute need for additional gypsy and traveller sites in Essex and the wider area; the particular needs of these families; and the current lack of any alternative sites to which they could move were they forced to vacate this site, with very serious consequences for their day to day lives. In the Inspector's view of all of these other considerations when combined together represent a very substantial weight in favour of allowing the appellants to remain at Pudsey Hall Farm on a permanent basis and concluded that together they clearly outweigh the identified harm to the Green Belt and all other harms.

In the case of the transit site there would be slightly more harm to the openness of the Green Belt and the character and appearance of the area, the demonstrated need is not as great and personal circumstances can be given little if any weight. These other considerations do not clearly outweigh the presumption against inappropriate development in the Green Belt and the necessary very special circumstances to justify this aspect of the development do not exist.

The appeal on ground (g) that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed

The Inspector upheld the enforcement notice, which would continue to have effect against any other caravans on the land, beyond those which may be incidental to the agricultural or residential uses at Pudsey Hall Farm.

The Inspector granted planning permission in part on the application deemed to have been made under s.177(5) of the 1990 Act, as amended, for the use of land for the siting of caravans/mobile homes for the purpose of human habitation at Pudsey Hall Farm, Pudsey Hall Lane, Canewdon referred to in the notice, subject to the following conditions:

- 1) The occupation of the caravans hereby permitted shall be only by Golden and/or Julie Spearman, Andrew Wilson and their resident dependants.
- 2) When the land ceases to be occupied by those named in condition 1 above the use of the land for the siting of caravans/mobile homes for the purpose of human habitation shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use shall be removed the land shall be restored to its condition before the use commenced.

- 3) No caravan owned or occupied by those named above shall be sited outside those parts of the land identified on Plan No. DF1/R
- 4) No more than 2 caravans (i.e. 4 in total), as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 owned or occupied by either the Spearman family or Mr Wilson (of which no more than 1 for each family shall be a static caravan or mobile home) shall be stationed on the parts of the land identified on Plan No. DF1/R at any time.
- 5) Within two months of the date of this decision details of additional planting in the north east corner of the site shall be submitted to the local planning authority for their approval in writing. The scheme should list the numbers, species and sizes of the trees and shrubs which are to be planted. All planting shall be carried out in accordance with the approved details and within a time period to be specified by the local planning authority.
- 6) Any trees or plants which within a period of 5 years from the date of first planting 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 give written consent to any variation.

And that the enforcement notice is corrected by:

- a) The deletion of 3 months and the substitution of 6 months as the period for compliance.
- b) The deletion of requirements 4 and 5.

Appeal Ref APP/B1550/A/08/2063006
Application No 07/00288/FUL
Appellant Mr G Clark
Location 16 Leasway, Rayleigh, Essex SS6 7DW
Decision Allowed (01.05.08)

The development proposed is the erection of a two bedroom detached bungalow. The Inspector took into consideration the Rochford District Replacement Local Plan (Policy HP6).

The development site is currently the southern part of the curtilage of the bungalow at No. 16, situated in a residential part of Rayleigh, characterised by modern detached, but fairly tightly spaced, bungalows and two storey houses set well back from the roadway which creates a spacious and open appearance to the street scene.

The proposal includes the demolition of the garage and a small extension on the side of No. 16, and the erection of a small bungalow built in line with that property and 2m from it. The scale, siting and design of the proposed bungalow would be in keeping with both those to the north and with the character and appearance of this part of Rayleigh generally.

The development may not comply with the minimum plot width and side separation distances as set out in the non-statutory supplementary planning document, nonetheless the Inspector found the development to be compatible with the form and pattern of development in the area.

Overall, the Inspector found the development would respect and preserve the character and appearance of this part of Rayleigh and allowed the appeal, and grant planning permission for the erection of a two bedroom detached bungalow at 16 Leasway, Rayleigh, SS6 7DW in accordance with the terms of the application No. 07/00288/FUL and plans submitted with it, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until details of all facing materials (including their colour and texture) to be used in the construction of the external surfaces of the walls and roof of the dwelling have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details, unless the local planning authority agrees in writing to any variation.
- 3) No development shall take place until details of both hard and soft landscape works to both the existing and proposed dwellings at 16 Leasway have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels, hard surfacing materials, areas to be reserved for parking, boundary treatments, planting plans and principal species proposed.
- 4) The approved hard and soft landscaping works shall be carried out prior to the occupation of the new dwelling or in accordance with a programme agreed in writing with the local authority.

- 5) Any trees or plants which within a period of 5 years from the date of the approval of details 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 give written consent to any variation.
- 6) No development shall take place until details of the proposed new vehicular crossover to serve the existing dwelling at 16 Leasway have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved.
- 7) That new access shall be provided with visibility splays on both sides which shall be maintained thereafter free from any obstruction over a height of 600mm within an area of 2.0 metres by 2.0 metres measured from and along the back of the footway.
- 8) The parking areas, and access to them to be provided in accordance with conditions 3, 4 and 6, shall include space for the parking of two vehicles within the front gardens of both the existing and new dwellings. That for the existing dwelling, and its associated visibility splays, shall be provided in its entirety before development commences on the new dwelling and that for the new dwelling shall be provided in its entirety before first occupation of that dwelling. In both cases those parking areas shall thereafter be retained in that form and made available for the use of occupants of and visitors to the dwellings.
- 9) No development shall take place until schemes for the provision of surface water drainage works and foul drainage works have been submitted to and approved in writing by the local planning authority. These schemes shall be constructed and completed in accordance with the approved details before first occupancy of the new dwelling.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Development) Order 1995 (or any order revoking and re-enacting that Order with or without modifications), no dormers, rooflights or other openings shall be inserted in the new dwelling above ground floor level, without the prior written permission of the local planning authority.

Appeal Ref APP/B1550/A/08/2064319
Application No 07/00844/FUL
Appellant Mr Ali Soygazi
Location Golden Cross Car Wash, Golden Cross Parade, Ashingdon,
 Essex SS4 1UB
Decision Dismissed (09.05.08)

The Inspector dismissed the proposed development of a burger bar selling hot food and cold drink. The Inspector took into consideration the Rochford District Replacement Local Plan (Policy CS1 and SAT2) and Planning Policy Statement 1: Delivering Sustainable Development.

The proposed development would be located next to a car wash business and alongside the vehicular access to the Golden Cross Parade local shopping centre. The proposed burger bar would be just to the north of Rectory Road and separated from the other shops in Golden Cross Parade by the access road serving the car park.

The Inspector felt that the prominent and detached position of the burger bar at the entrance to the site and its outdoor trading style would be likely to attract groups of young people at an inappropriate location, significantly increasing the risk of litter and other anti-social behaviour. The noise of the generator would also add to the potential impact on occupants of the flats in Rectory Road.

The Inspector concluded that the proposed development would be likely to be harmful to local residents in terms of noise, litter and anti-social behaviour. It would be inconsistent with PPS1, and contrary to Policy CS1. There is no clear evidence of any need for the proposed development which could not be met within the existing food outlets in the centre and as such, it would be contrary to Policy SAT2 which includes a requirement for proposals to serve an identifiable local need as one of the criteria for new retail development in local shopping centres and dismissed the appeal.

Appeal Ref	APP/B1550/A/08/2062587
Application No	07/00213/FUL
Appellant	Mr A Baldwin
Location	106 Little Wakering Road, Little Wakering, Southend-on-Sea, Essex SS3 0JH
Decision	Dismissed (12.05.08)

The Inspector dismissed the appeal development proposed to refurbish and upgrade existing outbuilding. The Inspector took into consideration Planning Policy Guidance Note 2: Green Belts (PPG2) and the Rochford District Replacement Local Plan (Policy R1 and R9).

The appeal site is a bungalow which has a rear garden of similar depth to those of adjoining dwellings and to the rear is an area of paddocks extending to about 0.8 hectares which is within the Metropolitan Green Belt. To the north of the bungalow is a bowling green which forms a gap in the row of dwellings. The appeal building lies to the rear (east) of the bowling green within the Green Belt.

The appeal was a partly retrospective application but in the Inspector's view the submitted plans do not accurately reflect what has already been constructed. There is a substantially completed building on the site which is approximately the size and shape indicated on the plans. It is built of telegraph poles and various types of wood and is partly clad in corrugated iron sheeting. Camouflage netting has been fixed to the front.

The original building had a footprint of about 144m² and a mono-pitch roof with a maximum height of about 7m. The modified building has a similar footprint and is about 9.2m to the ridge. There is an open area in the centre of the building, with stables on one side and storage areas at ground and first floor levels on the other side. It has been designed to allow a horse box to be kept under cover or be driven through to a turning area at the rear.

The appellant accepts that the building looks "rather untidy" as work was halted while the retrospective application was being considered by the Council, but the intention is to paint the outside.

The main issue is whether the increased height of the building constitutes inappropriate development within the Green Belt and if it does, whether there are other considerations which clearly outweigh the harm to the Green Belt (and any other harm) thereby justifying the proposal on the basis of very special circumstances.

The Council describes the building as large and bulky in relation to nearby residential properties and argues that its increased height means that it is visually intrusive in the open countryside and harmful to the openness of the Green Belt.

The appellant argues that the building is not intrusive or harmful to the openness of the Green Belt. It has a low profile as it is 60m from Little Wakering Road and is 20m beyond the bowling green boundary. It is partly screened by conifers and the intention is to carry out more screen planting.

The Inspector noted that the building is clearly visible from Little Wakering Road over the hedge surrounding the bowling green. The increased height of some 2.2m means that the upper part of the building protrudes over the hedge more than the original building and this has had a harmful effect on the appearance of the locality and the openness of the Green Belt. The Inspector concluded that the enlarged building amounts to inappropriate development, and that there are no very special circumstances that might outweigh the harm to the openness of the Green Belt and the character and appearance of the countryside that is caused by the significantly increased height of the building and dismissed the appeal.

Appeal Ref APP/B1550/A/08/2065147
Application No 07/00432/FUL
Appellant Mr & Mrs A Temple
Location 50 Great Wheatley Road, Rayleigh, Essex SS6 7AP
Decision Dismissed (20.05.08)

The Inspector dismissed the application which sought planning permission for the retention of a single-storey rear bay extension without complying with conditions attached to planning permission. The conditions in dispute are Nos 1 & 2 which state that: Condition 01: 'The railing guards on the submitted plan to the rear first-floor bedroom "dual opening windows" shall be permanently retained at 75mm from the outside surface of the brickwork with no hinging or opening mechanism.' Condition 02: 'No balustrading shall be erected on the roof of the extension hereby permitted, or the roof used as a balcony, outside sitting area, or for any other similar purposes.'

The Council refused planning permission for a single-storey rear extension with balcony over in 1991. The development had been carried out and the application was submitted retrospectively. An appeal against the refusal of planning permission was dismissed the following year as the Inspector found that the balcony harmed the privacy of the occupiers of No 54 and considered that it would harm that of the future occupiers of No 52.

In 1992 the Council granted planning permission for the extension, as described above, subject to 2 conditions. The balustrade around the flat-roofed extension was removed after the earlier appeal, but was reinstated in 2005. The railing guard brackets were removed from the first-floor dual opening windows at a similar date.

The appellants contend that it is no longer their intention to use the flat roof as a balcony, and would accept a variation to condition 1 to ensure that the existing first-floor windows do not provide egress onto the flat roof other than for emergency escape purposes or for maintenance. In addition the appellants seek a partial removal of condition 2 in order to be able to retain the balustrading as an architectural feature.

The Inspector considered the suggested amendment to condition 1 is not necessary as there is no evidence that the bedroom windows are designated as a means of escape from the building and as regards to maintenance, the appellants conceded that it is possible to gain access to the flat roof by ladder from ground level.

A condition specifying that a flat roof shall not be used as a balcony, outside sitting area or for other similar purposes, but which does not preclude the erection of balustrading, may be appropriate to protect the amenities of the neighbouring occupiers in some cases. However, in this instance, given that the flat roof is not visible from the public domain, it would not be an enforceable condition and, as such would not accord with Circular 11/95.

The Inspector concluded that if condition 1 were to be amended so that the railing guards to the first-floor windows were to provide egress on to the flat roof for emergency escape purposes and maintenance, or if condition 2 were to be amended to permit the erection of balustrading there would be a materially harmful effect on the living conditions of the occupiers of No 52, in relation to privacy, the proposal would conflict with policy HP6 of the Rochford District Replacement Local Plan and dismissed the appeal.

Appeal Ref APP/B1550/A/08/2062720
Application No 07/00930/FUL
Appellant Mr M Short
Location Cecil Cottage, Ethelbert Road, Rochford, Essex SS4 3JA
Decision Split decision (29.05.08)

The Inspector split the decision regarding the repositioning of the existing conservatory from the rear to the side elevation and to raise the roof level at the rear. The Inspector took into consideration the Rochford District Replacement Local Plan (Policy R5) and Planning Policy Guidance 2: Greenbelts (PPG2).

The main issue is whether the proposal amounts to inappropriate development in the Green Belt and, if so, whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, and whether very special circumstances exist which justify the grant of planning permission.

The extension or alternation of dwellings is not inappropriate in Green Belts providing that it does not result in disproportionate additions over and above the size of the original building. Policy R5 which accords with Government advice in PPG2, provides criteria for the extension of dwellings in the Green Belt. The most relevant criterion is that the total size of the extended dwelling will not exceed the original habitable floorspace by more than 35sqm.

The Council granted a Certificate of Lawful Development in respect of the conservatory and the front and rear single-storey extensions. The conversion of the first-floor accommodation may have been permitted development, but nonetheless, the additional habitable floorspace which now exists over and above the size of the original dwelling significantly exceeds the limit set out in Policy R5.

Raising the roof above the single-storey extension at the rear of the dwelling would create additional floorspace at first-floor level. The Inspector found that the cumulative increase of the floorspace which would arise from raising the roof would be disproportionate in relation to the original building. The additional floorspace would, therefore, amount to inappropriate development.

The appellant submits that the raised roof would create a more uniform mass which would improve the appearance of the dwelling and that the raised roof would not provide habitable floorspace. The Inspector accepted that raising the roof would not harm the visual amenity of the Green Belt, as the rear of the house is well screened and is not readily visible from the public domain; however the new floor area would adjoin an existing bedroom and would include a window in the gable wall. The appellant would be willing to accept a condition precluding the use of the area as living accommodation, but as such a condition would not be enforceable and would not accord with Circular 11/95 the Inspector gave it minimal weight.

The Inspector felt that the repositioning of the conservatory would have no net effect on the floorspace of the dwelling. The replacement structure would have a higher roof and a more solid appearance than the existing conservatory but the marginal difference would not be significant and would not amount to inappropriate development in the Green Belt. It would be visible from the un-adopted street and it would add to the width of the developed frontage of the dwelling. However, subject to conditions controlling the external materials of the conservatory and requiring the removal of the existing conservatory, the change to the appearance of the dwelling would not be so great that it would materially harm the character and appearance of the area.

The Inspector dismissed the appeal insofar as it relates to the proposal to raise the roof level at the rear and allowed the appeal insofar as it relates to the proposal to reposition the existing conservatory from the rear to the side elevation and granted planning permission to reposition the existing conservatory from the rear to the side elevation in accordance with the terms of the application Ref 07/00930/FUL and the plans submitted with it so far as relevant to that part of the development hereby permitted and subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building 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.
- 3) The development of the repositioned conservatory hereby permitted shall not commence until the existing conservatory has been demolished and removed from the site in its entirety.