

PROOF OF EVIDENCE

Prepared by Talent Masuku

Appeal against Enforcement Notice (s.174 of the Town Country Planning Act 1990 as (amended))

Appeal against the issuing by Rochford District Council of an Enforcement Notice dated 28th August 2019

Appellant:	Mr Aarun Archer
Site address:	Land at The Yard, Murrels Lane, Hockley, Essex, SS5 6AB
Planning Inspectorate appeal reference:	APP/B1550/C/19/3237992
Rochford District Council case reference:	18/00151/COU_C
Identified breach of planning control as per enforcement notice:	<p>Without planning permission;</p> <ol style="list-style-type: none"> 1. The material change of land and buildings from a general industrial (Class B2) use to a mixed use of general industrial (Class B2) use and the siting of a mobile home (marked MH on the attached plan) and its use for human habitation. 2. The erection of a steel palisade fence and double gates with a barbed and razor wire top trim. (Marked A to B on the attached plan).

Qualifications and experience

1. I am employed within the Planning Development Management Enforcement team of Rochford District Council as the Team Leader for Planning Enforcement and Planning and Building Control Technical Officers. I have held this position since January 2020. My job role involves all matters pertaining to alleged breaches of planning control within the Council's administrative area such as, but not limited to:
 - Assessing reported alleged breaches of planning control and pursuing the matter further if a breach is identified.
 - The preparation and presentation of evidence on behalf of the LPA in response to planning appeals.
 - Preparation of relevant reports associated with issuing Enforcement Notices, Stop Notices and all other notices associated with planning.
 - Monitoring compliance with enforcement notices and preparation of reports to prosecute against non-compliance.
 - Managing and overseeing to the day to day works and functioning of the enforcement team and the technical officers who carry out the planning and building control validations of applications function amongst other tasks.
2. Prior to this post I held a senior planner role from September 2018 to January 2020 and preceding to that I held the junior planner role as an Assistant Planner within the same team since March 2015. My responsibilities were similar to those set out above. I hold an MSc in Town Planning obtained from Anglia Ruskin University in Chelmsford and I am a Licentiate Member of the Royal Town Planning Institute awaiting outcome of a recently submitted application for chartered membership MRTPI.
3. My evidence in connection with this appeal will refer to all the appellants' grounds of appeal in relation to the enforcement notice appeal. That is grounds (a), (d) and (g). other aspects of ground (d) are addressed in the proofs of evidence compiled and submitted by Yvonne Dunn (Planning Manager at Rochford District Council).
4. My direct involvement with the appeal site began on the 16.06.2016 when I visited the site in relation to a planning enforcement investigation for an alleged use of site for residential purposes and siting for mobile chalet and caravans. This is listed in the site history as case reference 16/00052/COU_C. Thereafter, my involvement resumed following the appellants' appeal being lodged against the enforcement notice dated 28th August 2019 which is subject to this appeal. In this statement I rely on the adopted local and national planning policies, site history and case law.

5. I confirm that I understand and have complied with my duty to the Inquiry as set out in the procedural guidance last updated 14th June 2022. I confirm that this evidence identifies facts which I regard as being relevant to the opinion that I have expressed, and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion. I believe that the facts stated within this proof are true and the opinions expressed are correct.
6. My evidence in connection with this appeal will set out the relevant planning policy position and key determining issues.
7. In this proof of evidence, I will refer to a number of Core Documents already submitted with the appeal questionnaire and the Council's statement of case to maintain a single set of documents. I will produce additional documents pertaining to site visits carried out over time and after service of the enforcement notice; these will be presented as an addition to the index already submitted.

The appeal

8. The appeal site is known as Land at The Yard, Murrels Lane, Hockley, Essex SS5 6AB (hereinafter "the site"). The Council issued and served an Enforcement Notice on the 28th August 2019 on the land as they had evidence to believe that the following breaches of planning control had occurred:

Without planning permission,

1. The material change of land and buildings from a general industrial (Class B2) use to a mixed use of general industrial (Class B2) use and the siting of a mobile home (marked MH on the attached plan) and its use for human habitation.
 2. The erection of a steel palisade fence and double gates with a barbed and razor wire top trim. (Marked A to B on the attached plan).
9. The appeal is to be considered by the public inquiry procedure. The appellant has appealed on the following grounds pursuant to section 174(2) of the Act:
ground (a) that planning permission should be granted for what is alleged in the Enforcement Notice

ground (d) that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters

ground (g) that the time given to comply with the notice is too short.

Appeal site and its location

10. The appeal site is shown on the submitted site location plan attached on the enforcement notice appended at TM01.
11. The appeal site is approximately 0.24 hectares in size. Vehicular and pedestrian access to the site is via a single entry point off Murrells Lane which branches off Church Road. Church Road links Hockley and Hullbridge which are both residential settlements.
12. The appeal site is located within the district's Metropolitan Green Belt (MGB) as identified in the Council's Allocations plan 2014. The Metropolitan Green Belt (MGB) designation extends throughout Rochford District and joins Green Belt designated land contained within the neighbouring Basildon, Castle Point, Chelmsford and Southend on Sea administrative districts, serving to contain the towns and villages as well as the growth of urban London. The vast majority of the designated green belt in Rochford remains undeveloped.
13. The character of the Murrells Lane area is that of sporadic plot land residential development with some vacant plots, stables for livery use and horse grazing land and other equestrian uses. The extent of the appeal site is shown on the enforcement notice plan. Furthermore, an annotated aerial image showing the site in context and extract from the Council's Allocations Plan 2014 showing the green belt designation is appended at **RDC1 plans 1 and 2**.
14. Within the appeal site are commercial uses (mostly B2 industrial use class) occurring in:
 - Units 1 - Lewis Downes
 - Unit 2 - Elenora Rzeczycka
 - Unit 3 - Aarun Archer
 - Unit 4 - BSH Resin Ltd
 - Yard 5 - Aarun Archer
 - Yard 7 - Scott Windsor
 - Yard 8 - Aarun Archer

15. Sharing a boundary with the appeal site to the East is a residential dwelling known as High Trees. The south and western boundaries abut to undeveloped open fields. North of the site are former agriculture barns converted to use for storage and distribution purposes.
16. The appeal site is owned by Aarun Archer, the appellant, as per title absolute shown on the land registry title EX622506, see RDC2. The appellant resides on the site with Deanna Macmanus. Together they are registered with Rochford District Council as persons responsible for paying council tax, see appended report at RDC3.
17. The appeal relates to the siting of a mobile home of which the unit of accommodation is considered to be a caravan as legally defined by Section 29 (1) of the Caravan Sites and Control of Development Act 1960.

Planning application history

18. Application 00/00750/LDC - Sub Units 1 - 4, & 6 Establish Lawfulness of Use of Land and Buildings as Auto Recovery, Salvage, Repairs and Servicing and Painting. **Granted**
19. Application 00/00751/LDC - Sub Unit 5 Establish Lawfulness of Use of Building as a Fencing Business – **Granted**
20. Application 06/00260/OUT - Demolish Vehicle Salvage Facility and Construct Two Detached Houses. – **Refused**
21. Application 10/00203/OUT - Demolish and Remove Existing Commercial Premises and Construct Four Detached Properties. **Application invalid and returned requiring additional information.**

Planning enforcement investigation / case outline and key dates

22. Enforcement case 00/00028/COU_A - Unauthorised Business Use and Associated Development – **Closed**
23. Enforcement case 16/00052/COU_C - Use of site for residential purposes and siting for mobile chalet and caravans – **Closed**

24. In March 2016, it was brought to the planning authority's attention that the site was being used as a builder's yard and had been used for residential purposes involving the siting of a mobile chalet and caravans. I visited the site on the 16th of June 2016 and there was no evidence of residential occupation, and this was confirmed by a tenant in one of the units as well as the owner Mr Nigel Wood who at the time was out of the country. On this basis, the enforcement case was closed on the 13th of July 2016. The site visit notes are appended at TM02.
25. Enforcement case 18/000151/COU_C - Residential Use on the Site – **Pending and associated with this appeal.**

The Development Plan and National Policy

26. The Council's Development Plan currently comprises the Rochford District Core Strategy adopted December 2011; The Development Management Plan (December 2014) and the Allocations Plan (February 2014). Relevant planning policies to this appeal are:

Rochford District Council Development Management Plan 2014

- Policy DM1 Design of new development

Rochford District Council Core Strategy 2011

- Policy GB1 Green Belt Protection
- Policy GB2 Rural Diversification and Recreational Uses
- Policy CP1 Design

27. Furthermore, the Council refers to the
- National Planning Policy Framework paragraph 127 and paragraphs 133 to 147.
 - The ministerial statement of 31 August 2015 on Green Belt Protection and Intentional Unauthorised Development HLWS404
28. The Development Plan expressly recognises the need to protect the character and openness of the Metropolitan Green Belt. The Council submits that there are no very special circumstances that would outweigh the degree of harm arising from the development in all respects.

29. The Council's development plan consists of seven policy documents adopted between 2011 and 2015.
30. The NPPF provides that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence. Although there is no definition of openness in the NPPF; in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. Section 13 of the NPPF makes clear that a decision maker dealing with an application for planning permission for inappropriate development in the Green Belt must give "substantial weight" to "any harm to the Green Belt". The development to which the appeal relates; being the material change of use of land and operational development within the Metropolitan Green Belt is harmful by definition and such harm requires the demonstration of very special circumstances that outweigh the harm the development causes to the Green Belt and any other harm.
31. All the above policies remain extant.
32. Regarding a new local plan. The Council is currently working towards preparing the preferred options stage of the New Local Plan for public consultation in summer of 2023. It is then anticipated that the Submission version of the New Local Plan will be published in early 2024 with a view to its examination in Summer 2024 and its eventual adoption in Autumn /Winter 2024.

Ground (a) that planning permission should be granted for what is alleged in the Enforcement Notice

33. The development being considered under this ground of appeal is the development in its entirety as is outlined on the enforcement notice. The appellant submits their appeal on ground (a); that, in respect of the breach described on the enforcement notice; planning permission should be granted for the sitting of a mobile home and its use for human habitation and the erection of a steel palisade fence and double gates and a barbed razor wire top trim. This is as set out in the statement of case submitted 17th August 2020. A further statement submitted 23rd November 2020 withdraws the appellants reliance of the Turner case as well as the green belt argument. The appellant's position was then revised as follows:
 - a) additional units of housing supply
 - b) the lack of a five-year housing land supply
 - c) failure of policy, and
 - d) the security of the premises.

34. The Council's case remains as submitted within its statement of case.
35. The statements provided to date raise two points of consideration, whether the stationing and use of the mobile home is ancillary to the B2 lawful use of the site and whether it will give rise to any significant harm, affecting local amenity or environmental interests. As has already been demonstrated; the site lies within the metropolitan green belt (MGB). A starting point for the Council is to consider protection of land within the MGB and consider whether such development would as a matter of principle constitute inappropriate development.
36. The development in its entirety constitutes inappropriate development in the MGB. The NPPF at paragraph 147 indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 advises that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
37. Majority of land within the Rochford administrative area is designated green belt as per the allocations plan adopted in 2014. The appeal site wholly lies within the green belt as demonstrated on the extract plan at RDC1 of the statement of case appendices. Therefore, the relevant green belt policies within the Council's adopted plan and the national planning policy framework apply.
38. The mixed use of the site as described in the enforcement notice must be assessed against relevant planning policy and regarding any other material planning considerations. In accordance with section 70 of the Town and Country Planning Act 1990 (as amended) and section 38(6) of the Planning and Compulsory Purchase Act 2004, planning applications and appeals should be determined in accordance with the development plan and its policies unless material considerations indicate otherwise.
39. The National Planning Policy Framework (NPPF) (2021) states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances and substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

40. Paragraph 150 of the NPPF discusses that certain forms of development are also not inappropriate development in the green belt provided they preserve the openness. One exception is (e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds). The appellant submits that, *"It will be set down that the development preserves the openness of the Green Belt, if the mobile home was not in situ, the space would be occupied by something else relating to the B2 use of the site. There can therefore be no impact on openness or a conflict with any of the purposes of including land within it. This falls within the exception set out at paragraph 150(e) NPPF"*. I neither share nor agree with this viewpoint or interpretation of paragraph 150. The true meaning of paragraph 150 in particular part (e) is to enable material changes of use that are acceptable forms of development and uses. The residential occupation in a mobile home is effectively a new dwelling in the greenbelt and would not fall within the acceptable and listed forms of development set out in this paragraph. The siting of a mobile home for permanent residential accommodation in this location is an inappropriate form of development in the Green Belt and is not supported by the NPPF or any Development Plan policies. In the event that the mobile home was not in situ, planning permission would be required for a building in this location, and it would be scrutinised against local and national policy accordingly.
41. Metropolitan Greenbelt designation is nationally recognised and protected through national policy. Government is committed to ensuring that the planning system does everything it can to protect the MGB. Significant weight should be placed on any MGB land regardless of its size or location or how a respective landowner would perceive it.
42. The appeal site hosts lawfully existing buildings and extensive areas of hardstanding. The mobile home referred to on the enforcement notice is sited within its own enclosed courtyard. It is occupied by the appellant and his partner as their permanent home and would not meet the true meaning of a use by a night watchman. It was confirmed to the Council in 2016 that there was no and had never been any residential occupation on the site and instead the mobile home seen at that time was being stored at the site. It must be noted that the position of that mobile home is not that which the mobile home enforced against is cited. At the 2016 site visit, the mobile home was stationed in a central position nearer the site gates whereas the current mobile home is tucked in the Southwest corner. Policy GB1 of the Rochford District Council Core Strategy requires that development is directed away from the Green Belt so far as is practicable and will prioritise the protection of Green Belt land. Rural diversification whilst encouraged, should not undermine the objectives or character of the Green Belt. This is substantiated further in Policy DM11 of the Development Management Plan which states that new development should be

designed to minimise the impact on the character, appearance and openness of the Green Belt.

43. The case of *R (Lee Valley Regional Park Authority) v Epping Forest DC* [2016] EWCA Civ 404, Treacy, Underhill, Lindblom LJJ at TM08 held that it is not necessary for development to be visible to harm openness.
44. Whereas policy GB2 of the Core Strategy promotes rural diversification and recreational uses within the green belt. To satisfy this policy, acceptable forms of development in appropriate circumstances are inclusive of conversion of existing buildings for small-scale employment use; small scale green tourism which is sensitive to the local environment; conversion of buildings to bed and breakfasts or small-scale hotels and outdoor recreation and leisure activities.
45. Policy DM1 '*Design of new developments*' sets out the expectation on design for all new developments regardless of its size. The requirement of this policy is that the design of new developments should promote the character of the locality to ensure that the development positively contributes to the surrounding natural and built environment and residential amenity, without discouraging originality, innovation or initiative. Emphasises being that new development should be well designed and appropriate for the site. From a design perspective, the palisade fence, gates, and barbed wire is considered to be a highly incongruous, unsympathetic and is detrimentally impinging upon the local character. Furthermore, chapter 12 of the NPPF '*Achieving well-designed places*' indicates that planning decisions should ensure that developments:
 - a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
 - b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
 - c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).
46. This chapter states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. In any event notwithstanding the principle reason for finding the development objectionable the proposed development would not comply with policies relating to good design.

47. The appellant says...'*Upon further consideration, it has become apparent that the breach alleged in the Enforcement Notice does not constitute inappropriate development in the Green Belt because the mobile home can be sited in connection with the existing lawful use, General Industrial Class B2*'. The appeal site benefits from a two lawful development certificates granted under applications 00/00750/LDC (An auto recovery service, including repairs and salvage of motor parts, buying and selling of salvaged motors, repairs, painting and servicing of motor vehicles) and 00/00751/LDC (Use of land for the manufacture, sale and delivery of items connected with a fencing business). a B2 use is use for industrial process other than one falling within class E(g) (previously class B1) (excluding incineration purposes, chemical treatment or landfill or hazardous waste). The stationing of the mobile home for permanent accommodation is not considered ancillary to the B2.

48. I now turn to the appellants revised position on the four points which their case is based upon, which are:

- (i) additional units of housing supply
- (ii) the lack of a five-year housing land supply
- (iii) failure of policy, and
- (iv) the security of the premises.

(i)additional units of housing supply and (ii) the lack of a five-year housing land supply

49. At the time of preparing the statement of case, the Council acknowledged that its latest published housing supply position statement (Chapter 4 of its Authority Monitoring Report 2018/19) calculated a figure of around 4.9 years' supply. Since then, this position has changed. The Council can demonstrate an up to date 5-year housing supply which currently stands at 5.7 year as per the draft Housing Land Supply Position Statement for this year (2022) appended at TM03 and TM04. This read along the housing trajectory which sets out the expected housing supply by site and by year over the next 10 years cements the Council's position in that this 1 unit of residential occupation would have a nil impact on this position. It must be noted that at the time of composing these proofs of evidence both the HSL and trajectory were draft as had not yet been through a formal sign-off process at the Council. Nevertheless, the Council is certain that these are accurate enough to be used in this appeal context, particularly over any equivalent documents produced in previous years. Should these be formally signed off, the appeal will be updated accordingly in due course. Given the above, paragraph 11d of the Framework is not engaged.

50. Paragraph 11d refers to where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date. This is read in line with footnote 8 which states, “this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years”.
51. The 2016 Strategic Housing Market Assessment did not cover non-traveller mobile homes and caravans. However, the Council consider that for those members of the community who prefer to reside within these types of homes, that need can be met by those existing residential park home sites within the district without the need for further individual sites incrementally eroding the Green Belt.

(iii) failure of policy

52. It is unclear which policies the appellants refer to and how the said policies have failed to meet their objectives. The Council will await the appellants proofs of evidence and provide comments within its opening and closing comments.

(iv) the security of the premises

53. The mixed use of general industrial (Class B2) use and the siting of a mobile home (marked MH on the attached plan) and its use for human habitation would be considered unacceptable by virtue of policy GB1 and GB1. The erection of a steel palisade fence and double gates with a barbed and razor wire top trim (Marked A to B on the attached plan) creates an impression of, a fear of crime, contrary to the aims of the NPPF and the Council’s own design policies CP1 and DM1. It causes harm to the character of this rural lane and the amenity previously enjoyed by the public enjoying outdoor recreational activities and the neighbouring properties. The siting and scale of the fence adjacent a highway which is significantly prominent as the fence is visible from public vantage points plus materials used degrade the appearance of the land and area.
54. The NPPF defines five purposes of the green belt, one of which is to assist in safeguarding the countryside from encroachment. The fence is significantly prominent and has resulted in a material change in character which has a negative effect on the semi-rural character

of the area owing to the addition of the fencing. The fence represents an intrusion into the Green Belt contrary to paragraph 138 and is considered to have a significant tangible impact upon the openness of the Green Belt due to the amount of development, resulting in an urban feature which diminishes the generally semi-rural character of the locality. The appended street view imagery dated May 2019 show the character and means of enclosures along Murrells Lane. The character is that hedgerows (leafy/verdant character), low level ranch style fencing, trees and shrubbery. The introduction of the palisade fencing departs from this setting, see annotated aerial imagery and street view images at TM05. The prominent harsh palisade fence against the openness of the Green Belt takes away from the soft appearance of the area. This would have been the position at the time of issuing the enforcement notice and remains similar to date.

Location 1 – views towards Church Road from the site entrance

Location 2 – views looking towards the site entrance and past the site away from Church Road

Location 3 – views at junction Murrells Lane and Church Road

Location 4 – views towards and past the site away from Church Road

Location 5 – views towards and past the site away from church road

Location 6 – views towards Church Road

55. Given the positioning of the fence adjacent the highway, it would not benefit from permitted development in its current form. The fence is sited up to the highway, for the fence to constitute permitted development the fence would need to be moved back by a minimum of 2metre. Case law and appeal decision have established a 2metre set back as acceptable distance to enable a fence not to be deemed adjacent a highway. If this were to take place the Local Planning Authority would have no control over its appearance or impact upon the Green Belt. However, I consider that these matters do not amount to very special circumstances required to justify the granting of planning permission. The fence represents inappropriate development within the Green Belt having a significant detrimental impact upon the openness of the Green Belt resulting in the objectives of Green Belt being adversely impaired.
56. The appellant submits that there is a security need on the site hence the residential occupation of the stationed mobile home and the type of fence and barbed wire finish. The Council's case is such that there are other appropriate measures of security that can be employed without residing at the site such as CCTV, guard dogs and burglar alarm systems. These appear to already be in use as per the signage at the site entrance. The appellant has not submitted any evidence of police reports pertaining to burglary at the site nor crime occurrences in this locality. It appears to the Council that the residential

occupation at the site commenced immediately upon purchase of the site and therefore there would not have been a clear opportunity enabling use of other non-residential occupation of the site to be used. Furthermore, there is no need for a full-time occupation of the site should this be taken as a security measure because the expectation would be for the night-time watchman to have a permanent home address elsewhere given that site security is not needed in the daytime where the site is active. I am of the view that CCTV, guard dogs and burglar alarm systems are an effective deterrent for purposes of securing the site. Furthermore, there has not been evidence of these security measure recommendations via either the police or insurance company and clear evidence of criminal acts which have occurred at the site. The appellant has not provided details of the nature of the businesses on site and information pertaining to items of a particular high value or sensitivity within the commercial uses which will require a physical presence on the site. Further to this it would be necessary for the appellant to demonstrate the value of residing on site over use of alarms, CCTV etc.

57. I now turn to the human rights of the appellant(s). Article 8 'the right to respect for private and family life, their home and correspondence' which protects the rights to private life, family life and home. Within this article, the right in respect to home does not give a right to housing. It is a right to enjoy an existing home peacefully. This means that public authorities should not stop people entering or living in any home without very good reason, and they should not enter without permission regardless of ownership. There are situations when public authorities can interfere with the right in respect for private and family life, home and correspondence. This is only allowed where the authority can show that its action is lawful, necessary and proportionate. Action is 'proportionate' when it is appropriate and no more than necessary to address the problem concerned. The rights have to be balanced against all other material considerations and this will be a planning judgment. The human rights were carefully considered however these did not outweigh the serious environmental harm resulting from the development in this case. An Equality Impact Assessment (EIA) completed prior to issuing the notice indicated that the decision to issue the Enforcement Notice would not have had an adverse impact on the occupiers of the land. A copy of the EIA can be found at RDC4.
58. The Council is confident that in all its actions relevant to this appeal site and its occupants the Human Rights of the appellant and partner have not been breached. Personal circumstances, hardship and Human Rights are not necessarily enough to outweigh the case against a residential mobile home in the MGB.
59. The Council's application of its approach to development in the Metropolitan Green Belt has historically been tested and supported at appeal in relation to the appeal site as well

as other sites across the Districts' green belt. Therefore, as set out in the above paragraphs relating to the ground (a) of appeal, in my opinion, for the reasons set out above the appellant' appeal on this ground (a) must fail.

Ground (d) that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters

60. Section 171B of the Town and County Planning Act 1990 (as amended) 'the Act' provides statutory time limits for when formal action can be taken by the Local Planning Authority as follows:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

61. Part (3) from the above section of the Act provides that where there has been a breach of planning control of this type, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. This means that if the change of use took place more than ten years before the date of the enforcement notice, and continued without material interruption thereafter, it will be immune from enforcement action and the use will be lawful.

62. On ground (d), it is for the Appellants to demonstrate, on the balance of probabilities, that the material change of use alleged in the enforcement notice has existed for a

continuous period in excess of 10 years prior to the date of issue of the notices and continued actively throughout the following 10 year period. There can be no 'dormant' periods in the 10-year period. The Appellants must show when the change of use first occurred and demonstrate that it had continued actively throughout the relevant period, to the extent that enforcement action could have been taken against it at any time. The relevant date for the purposes of this appeals is the 28th of August 2009.

63. The appellants' ground (d) of appeal claims a 10year continuous mixed use of the site from the date the enforcement notice was issued and served.
64. In 2016 the Council received a call from a lady who refused to leave her details (name & address) but said she lived nearby the appeal site (log at TM06). She said there was a couple who had started living on the site. I was the investigating officer on this case. On the 16th June 2016 I visited the site unannounced and met a gentleman called Wayne Meredith. Mr Meredith allowed me access to the site and said I could look around wherever I could. Having explained the alleged breach to him he told me that there was no one living on the site and instead there were some jealous people around. Mr Meredith said there was a caravan for sale next door referring to the locked compound. This caravan was within a compound to the southeast of the site in a more central position than the caravan location highlighted for this appeal. As the gates to the caravan were locked, I could not look inside the caravan. After this visit I contacted the owner of the site Nigel Wood of N J Wood Ltd to arrange a visit. He told me no one lived on the site and he was out of the country but if I wanted to I could ring him weekly to check if he is back then arrange for access (TM07). My site visit notes are appended at RDC7(5) and TM. This enforcement case was then closed.
65. The burden of proving relevant facts in this appeal rests on the appellant. The test of the evidence is made on the balance of probabilities. The proofs of evidence submitted by Yvonne Dunn address this ground (d) of appeal in whole.

Ground (g) that the time given to comply with the notice is too short.

66. It remains that at the appellant's statement of case fails to provide justification for a longer compliance period pertaining to this ground of appeal. The Notice allows a compliance period of 9 months for step 1, 10 months for steps 2 and 3, and 11 months for steps 4 and 5. The Appellant seeks a compliance period of 2 years. In the absence of justification for seeking an additional 13 months of compliance time, I am of the view

that the additional time sought is unreasonable and would unnecessarily elongate the existence of an identified breach of planning control.

67. The steps of the notice are clear in that each step to be complied with has been awarded a timescale deemed adequate period to fully comply with that step. Step 1 requires the use of the land for the siting of mobile home for human habitation to cease. The 9 months allowed is considered long enough to seek either an appropriate site to station the mobile home and relocate it or seeks other suitable accommodation elsewhere. An internet search of available properties both to buy and rent within a 3-mile radius of the appeal site via the property market website RightMove provides several properties which can meet the appellant's housing need. The properties available for sale/rent includes the caravan park sites and bricks & mortar houses. Examples of the said properties are appended to the statement of case and a recent search shows no change in the availability of both sale and rental properties in the local area.
68. The breach of planning controls should not be allowed to continue more than necessary. The residential use of the site can cease relatively quickly therefore the mobile home, domestic paraphernalia, pipework and palisade fence can also be removed in a similar fashion without causing unacceptable levels of disruption.
69. This breach of planning control is causing continuous harm to the Metropolitan Green Belt and any extended compliance period will only prolong this harm. Therefore, the compliance period is considered to be reasonable and proportionate. In the timescale stated on the notice; the appellant should be able to procure a new suitable site; obtain planning consent if needed.
70. Therefore, the compliance period set out on the notice is reasonable and the appellant appeal on this ground (g) must fail.

Summary & Conclusion

71. Metropolitan Green Belt is afforded the highest level of protection through national and local planning policies. Unless it can be demonstrated that very special circumstances exist then planning permission should be refused. In this case, as has been shown throughout this proof of evidence, the appellant has failed to demonstrate their very special circumstances for planning permission to be granted on this site. There are no identified very special circumstances that would clearly outweigh the degree of harm

arising from the unauthorised development and material change of use of the land in totality.

72. The continued residential occupation of the site would inevitably set an undesirable presence in the district leading to new similar developments occurring of which would further contribute to the harm already identified.
73. Overall, the adverse impacts of granting planning permission would significantly and demonstrably undermine the Metropolitan Green Belt and the Development Plan. Therefore, the inspector is respectfully requested to dismiss the ground (a) appeal.
74. A harm requiring enforcement action would normally occur when the breach in question results in an unacceptable departure from relevant planning policies that would have justified refusing planning permission if the development had been the subject of a planning application. Therefore, having regard to the submissions made in this statement, the Inspector is respectfully requested to dismiss all grounds of appeals and uphold the enforcement notice.
75. I confirm that I understand and have complied with my duty to the Inquiry as set out in the procedural guidance. I confirm that this evidence identifies facts which I regard as being relevant to the opinion that I have expressed, and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion. I believe that the facts stated within this proof are true and the opinions expressed are correct.

The evidence which I have prepared and provide for these appeals is true and I confirm that the opinions expressed are my true and professional opinion.



Signed.....

Dated: 14th October 2022

List of appendices

As a minimum, the following documents will be submitted and referred to at the inquiry:

RDC1	1. Aerial image
	2. Extract o the Allocations Plan 2014 confirming designation of the land
RDC2	Land registry search, title EX622506
RDC3	Council Tax report confirming occupants of the site and dates registered with Rochford District Council.
RDC4	Equality Impact Assessment
RDC5	Telephone logs dated 30 th November 2018 and 9 th July 2019
RDC6	Note of site inspection dated 17 th January 2019
RDC7	Letter to Mr Matthew Green, appellant's agent and bundle provided
RDC8	Rightmove record of property for rent within a 3 mile radius from appeal site
RDC9	Rightmove record of property for sale within a 3 mile radius from appeal site
RDC10	Housing Land Supply extract from the Authority Monitoring Report 2018/19
RDC11	Housing Delivery Test Action Plan 2019
TM01	Copy of enforcement notice
TM02	Site visit notes 16 th June 2016
TM03	Housing land supply 2022
TM04	Trajectory 2022 to 2032
TM05	Streetview imagery 2019
TM06	Telephone log February 2016
TM07	Officer notes
TM08	R (Lee Valley Regional Park Authority) v Epping Forest DC [2016] EWCA Civ 404, Treacy, Underhill, Lindblom LJJ