

**APPEAL BY MR PATRICK CASEY**

**RE: LAND ON THE NORTHWEST SIDE OF MAYS LANE, ARKELY,  
BARNET, EN5 2AH**

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**OPENING SUBMISSIONS ON BEHALF OF THE  
APPELLANT**

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**WITNESSES**

1. Andrew May CIEEM, FRES, FRSB, FLS  
- ACJ Ecology
2. Patrick Casey (Appellant)
3. James Casey
4. Mr Matthew Green BA (Hons)  
- Director of Green Planning Studio Limited

***Michael Rudd***

**Kings Chambers**

**Manchester-Birmingham-Leeds**

**31<sup>st</sup> January 2025**

## **Introduction**

1. The Appellant sought planning permission in respect of the Appeal Site by way of an application made on 5<sup>th</sup> September 2023 in the following terms: “...a material change of use for the stationing of caravans for residential use with hardstanding and dayrooms ancillary to that use...”.<sup>1</sup> The proposed use of the appeal site is for residential accommodation for members of the travelling community and the Appellant would expect any planning permission to be conditioned for that purpose.
  
2. Planning permission was refused on the 21<sup>st</sup> December 2023<sup>2</sup> for the following reasons, in summary:
  - i. Inappropriate development in the Green Belt, the very special circumstances necessary for the grant of planning permission having not been demonstrated;
  - ii. The proposed residents have not been demonstrated to come within the PPTS definition of gypsies and travellers;
  - iii. Adverse impact on character and appearance;
  - iv. Adverse impact on Great Crested Newts;
  - v. Adverse impact on existing protected trees;
  - vi. Flood risk;
  - vii. Adverse impact on highway safety in the context of access and egress to the Appeal Site.
  
3. The Appellant appealed against that refusal of planning permission pursuant to s.78 of the 1990 Act, and subsequent to the commencement of the appeal, the LPA have withdrawn refusal reasons (v) trees, (vi) flood risk and (vii) highways impact, subject to the imposition of appropriate conditions. It is unclear whether refusal reason (ii) is maintained by the LPA. The R6 Party continue to pursue reason (vi) flood risk, and in a rather obtuse manner, reason (vii) highways safety.

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<sup>1</sup> CD1

<sup>2</sup> CD3.1

## **Green Belt**

4. Recent changes to the NPPF have introduced the concept of ‘Grey Belt’, primarily with a view to releasing land from the Green Belt in appropriate locations, to provide for much needed additional housing stock, including gypsy and traveller accommodation.
  
5. The Appellant considers the Appeal Site to fall within the definition of Grey Belt land, as provided for in the Annex of the NPPF:

*“...For the purposes of plan-making and decision-making, ‘grey belt’ is defined as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143. ‘Grey belt’ excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development....”*

6. Consequently, Grey Belt land can be either previously developed land and/or, land that does not *strongly* contribute to three of the five purposes of including land in the Green Belt, specifically (a) *unrestricted sprawl*, (b) *prevention of merging towns* or (d) *the preservation of the setting and special character of historic towns* at NPPF ¶143. The Appellant relies upon both exceptions, in the alternative.
  
7. The Appeal Site falls within the approved development area of the adjacent Place of Worship,<sup>3</sup> planning permission having been granted on appeal in 1994 and subsequently lawfully implemented. Planning permission was granted by the LPA on 13<sup>th</sup> December 2024 to extend the building.<sup>4</sup> Consequently, the Appellant will demonstrate that the Appeal Site is previously developed land and should be considered to be Grey Belt for that reason.

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<sup>3</sup> CD 2.22

<sup>4</sup> CD 2.26

8. Alternatively, and in addition, the Appellant will demonstrate that the appeal development would not be in conflict with any of the three purposes of including land within the Green Belt that are relevant to the consideration of Grey Belt.
9. Whether the Appeal Site is previously developed land, and/or there is no conflict with the relevant three purposes, the Appeal Site should be found to comprise Grey Belt land.
10. The NPPF at ¶155 provides as follows with regards to development in the Green Belt not being inappropriate, in circumstances where:

*The development of homes, commercial and other development in the Green Belt should also not be regarded as inappropriate where:*

- a. The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;*
  - b. There is a demonstrable unmet need for the type of development proposed<sup>56</sup>;*
  - c. The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework<sup>57</sup>; and*
  - d. Where applicable the development proposed meets the 'Golden Rules' requirements set out in paragraphs 156-157 below.*
11. The Appellant will demonstrate that there is a demonstrable need for appropriate gypsy and traveller accommodation in this borough, and that the Appeal Site is clearly in a sustainable location, both in principle and in the context of the specific sustainability criteria applicable to gypsy and traveller sites as set out at ¶13 PPTS, and thus the Appeal Site falls within the Grey Belt and the appeal development should not be considered inappropriate development.

12. If not inappropriate development, the Appellant will demonstrate that the presumption in favour of sustainable development at ¶11 NPPF is engaged, primarily as the LPA cannot demonstrate a 5 year housing land supply for gypsy and traveller housing, and any adverse impacts arising from the appeal development do not significantly and demonstrably outweigh the benefits. Those benefits being the same matters as would be relied upon as other considerations outweighing the harm to the Green Belt, should the appeal development be found to comprise inappropriate development.
13. Should the Inspector find to the contrary, that the Appeal Site does not fall within the definition of Green Belt land, then the appeal development would be considered to be inappropriate development and very special circumstances will need to be demonstrated to justify the grant of planning permission.
14. In circumstances where the appeal development is inappropriate development, the harm by reason of inappropriateness is to be given substantial weight, in totality together with the other Green Belt harms identified by the LPA, those being impact on openness and impact by way of both encroachment and alleged contribution to urban sprawl.
15. The appeal development comprises a two pitch site, which can only credibly be described as small scale. Consequently, the impact on openness can only be limited, and if there is impact in terms of urban sprawl and encroachment, the extent of that impact must be informed by the very small scale of the proposed development.
16. The **only** other harm identified by the LPA, following withdrawal of the refusal reasons relating to adverse impact on trees, flood risk and highways safety, is that of impact on character and appearance and impact on Great Crested Newts.
17. Considering any impact on character and appearance, all land uses and development in the immediate locale must be taken into consideration,

regardless of the nature of their contribution. The immediate locale is characterised by a mix of residential, commercial, ecclesiastical and agricultural uses, and the appeal development responds well to the nature of the local landscape character. The Appellant will demonstrate that there would be no adverse impact on the character of the area. Further, any impact on appearance, to the extent that there would be any, can be mitigated by a landscaping condition, bearing in mind that housing for gypsies and travellers should not be required to be hidden from view.

18. In the specific circumstances of this case, it is considered that the concerns with regards to Great Crested Newts can and should be addressed by a pre-commencement condition. This would be in accordance with the principles adopted by Natural England. The manipulative behaviour of both the LPA and the local residents in generating what they believe to be a 'trump card' for refusal/dismissal should not be condoned.
19. In addition, the R6 Party persist in pursuing baseless objections relating to flood risk, impact on bats and highways impact, though they have attempted to deflect the latter by presenting evidence on the impacts but claiming it is not their evidence, merely a collation of others, thus preventing the Appellant from properly challenging that evidence by way of cross-examination, and rather opportunistically attempting to prevent a costs application against them in respect of their continued opposition on highways grounds. As the LPA have quite properly and reasonably accepted, there are no adverse issues arising from the appeal development in the context of flood risk, bats and highways safety, subject to the imposition of appropriate conditions.
20. Against the substantial weight to be given to the totality of Green Belt harms and the limited weight to harm arising from visual impact, and with any potential adverse impact on GCN being addressed by condition, the Appellant relies upon a number of other considerations to clearly outweigh the totality of that harm (these are the same considerations which when considered cumulatively, would have to be significantly and demonstrably outweighed by

any harm identified in the event that the Appeal Site is found to comprise Grey Belt land):

- i. General need for additional gypsy and traveller accommodation;
- ii. Lack of alternative pitch provision;
- iii. Failure of policy;
- iv. Lack of a specific 5 year housing land supply;
- v. Likely location of future gypsy and traveller sites;
- vi. Personal circumstances of the Appeal Site future residents;
- vii. Extended family unit;
- viii. The best interests of the children that would live on the Appeal Site;
- ix. Animal welfare;
- x. The Article 8 rights of all of those who will reside on the Appeal Site.

### **Summary**

21. The Appellant will present his case on five limbs, in the alternative:

- i. The Appeal Site is Grey Belt Land as it comprises previously developed land, and thus the appeal development is not inappropriate development, the tilted balance is engaged and permanent planning permission should be granted, the limited harm not significantly and demonstrably outweighing the benefits; or
- ii. The Appeal Site is Grey Belt land as it does not make a *strong* contribution to any of purposes (a), (b) or (d) of including land in the Green Belt, and thus the appeal development is not inappropriate development, the tilted balance is engaged, and permanent planning permission should be granted, the limited harm not significantly and demonstrably outweighing the benefits; or.
- iii. The Appeal Site is conventional Green Belt, but the other considerations relied upon, excluding personal circumstances, clearly

outweigh the harm to the Green Belt and any other harm such that very special circumstances exist, and permanent, non-personal planning permission should be granted;

iv. The Appeal Site is conventional Green Belt, but the other considerations relied upon, including personal circumstances, clearly outweigh the harm to the Green Belt and any other harm such that very special circumstances exist, and permanent, personal planning permission should be granted;

v. The Appeal Site is conventional Green Belt, but the other considerations relied upon, including personal circumstances, clearly outweigh the harm caused to the Green Belt and any other harm, where that harm is reduced by way of a time limiting condition, such that very special circumstances exist, and temporary planning permission should be granted for a period of 5 years.

22. However, the Appellant's primary position will be that permanent planning permission should be granted to provide for a 2 pitch gypsy and traveller site.

***Michael Rudd***

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