



Appeal Decisions

Inquiry Held on 11, 12 and 13 May 2021

Site visit made on 1 June 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 09 July 2021

Appeal A: Ref APP/V1505/C/19/3234438

Appeal B: Ref APP/V1505/C/19/3234439

Land at Skirmish Wood, Outwood Farm Road, Billericay, ESSEX CM11 2TX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr James Sidroy and Appeal B by Mrs Jacqueline Sidroy against an enforcement notice issued by Basildon District Council.
 - The enforcement notice, numbered "Notice 1", was issued on 1 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the formation of bunds and the laying of hard-core and associated material onto the Land creating a hardstanding.
 - The requirements of the notice are to:
 - i. Reinstate the original level of the Land by removing from the Land all material(s) used to create the bunds.
 - ii. Remove all hardsurfacing including the associated compacted earth, hardcore and gravel from the Land.
 - iii. Remove all building materials, construction debris, associated spoils and rubble brought onto the Land in connection with the unauthorised development of the Land.
 - The period for compliance with the requirements is "Three (3) months".
 - Appeal A is proceeding on the grounds set out in section 174(2) (a) (d) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been made on ground (a), the application for planning permission deemed to have been made under section 177(5) falls to be considered.
 - Appeal B is proceeding on the grounds set out in section 174(2) (d) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C: Ref APP/V1505/C/19/3234447

Appeal D: Ref APP/V1505/C/19/3234448

Land at Skirmish Wood, Outwood Farm Road, Billericay, ESSEX CM11 2TX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal C is made by Mr James Sidroy and Appeal D by Mrs Jacqueline Sidroy against an enforcement notice issued by Basildon District Council.
- The enforcement notice, numbered "Notice 2", was issued on 1 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to use for the storage of metal containers.
- The requirement of the notice is to:
 - i. Remove the six metal containers (as shown in the approximate position marked 'A' on the plan) from the Land, including all associated detritus therefrom.
- The period for compliance with the requirements is "Three (3) months".
- Appeal C is proceeding on the grounds set out in section 174(2) (a) (c) (d) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act falls to be considered.

- Appeal D is proceeding on the grounds set out in section 174(2) (c) (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal E: Ref APP/V1505/C/19/3234450

Appeal F: Ref APP/V1505/C/19/3234451

Land at Skirmish Wood, Outwood Farm Road, Billericay, ESSEX CM11 2TX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal E is made by Mr James Sidroy and Appeal F by Mrs Jacqueline Sidroy against an enforcement notice issued by Basildon District Council.
 - The enforcement notice, numbered "Notice 3", was issued on 1 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to use for the stationing of caravans for residential use.
 - The requirements of the notice are to:
 - i. Cease the use of the Land for the stationing of the caravan(s) for the purposes of human habitation.
 - ii. Remove all caravans from the Land.
 - iii. Remove all items from the Land that relate to domestic living.
 - The period for compliance with the requirements is "Four (6) months".
 - Appeal E is proceeding on the grounds set out in section 174(2) (a) (c) (d) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act falls to be considered.
 - Appeal F is proceeding on the grounds set out in section 174(2) (c) (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. In respect of Appeals A and B it is directed that the enforcement notice be varied by:
 - Substituting the plan attached to the notice with the plan attached to these Decisions;
 - Replacing "Reinstate the original level of the Land by removing from the Land all material(s) used to create the bunds" with "Restore the Land to its former level (commensurate with the adjacent ground level) by removing from the Land all material(s) used to create the bunds" in paragraph 5(i);
 - Replacing "Remove all hardsurfacing including the associated compacted earth, hardcore and gravel from the Land" with "Remove all hardsurfacing within the area shown cross-hatched in the attached plan including the associated compacted earth, hardcore and gravel from the Land" in paragraph 5(ii), due to the appeal succeeding to this extent on ground (d); and
 - Replacing "Three (3) months" with "Eight (8) months" in paragraph 6, due to the appeal succeeding under ground (g) to this extent.

Subject to these variations Appeals A and B are otherwise dismissed and the enforcement notice is upheld, and in respect of Appeal A planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

2. In respect of Appeals C and D it is directed that the enforcement notice be corrected by:

- Replacing “the material change in use of the Land to use for the storage of metal containers” with “the material change in the use of the Land to a mixed use of use for paintballing and wargames and use for the storage of metal containers” in paragraph 3.

Subject to this correction Appeals C and D are allowed and the enforcement notice is quashed.

3. In respect of Appeals E and F it is directed that the enforcement notice be:

- Corrected by replacing “the material change in use of the Land to use for the stationing of caravans for residential use” with “the material change in the use of the Land to a mixed use of use for paintballing and wargames and use for the stationing of caravans for residential use” in paragraph 3; and
- Varied by replacing “Four (6) months” with “Twelve (12) months” in paragraph 6, due to the appeal succeeding to this extent on ground (g).

Subject to this correction and variation Appeals E and F are otherwise dismissed and the enforcement notice is upheld, and in respect of Appeal E planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for costs

4. At the inquiry, applications for costs were made by Mr James Sidroy and Mrs Jacqueline Sidroy against Basildon District Council in respect of Appeals C, D, E and F. These applications are the subjects of separate Decisions.

Procedural Matters

5. At the inquiry, the appellants confirmed that appeals on ground (c) had been withdrawn in respect of Appeals A and B.

6. I am in agreement with the appellants that the first requirement of the notice as regards bunds in Appeals A and B would be clearer if amended (as suggested by the Council) to refer to restoring the land to its former level (commensurate with the adjacent ground level) rather than to its ‘original’ level. I am therefore amending Notice 1 to that effect without any injustice to any party.

7. It is explicit in the Council’s submissions that the material changes of use alleged as regards Appeals C, D, E and F are to composite, or mixed, uses due to the introduction of new primary uses to the Land; namely, the storage of metal containers (Notice 2) and the stationing of caravans for residential use (Notice 3). However, Notices 2 and 3 as currently drafted suggest that the alleged material changes of use are to those primary uses alone outside of a mixed use. As the appellants have understood the notices as explained by the Council in its submissions, and have made their appeal arguments accordingly, I am correcting the allegations in Notices 2 and 3 to refer to a mixed use without any injustice to any party.

8. At the inquiry, and through a pre-inquiry note, I invited the main parties to make submissions as to whether Notice 3 might be considered a nullity due to its period of compliance being set out as "Four (6) months". The Council argued that this flaw in the notice did not render it a nullity and that I could use my powers to amend it without injustice, and the appellants did not object to that view or suggested approach.
9. While the defect renders the notice less than clear, much must be wrong with a notice for it to be considered a nullity through being hopelessly ambiguous and uncertain. It does not meet that criterion. Further, the defect is not a failure to specify an essential matter required under section 173 of the 1990 Act. The appellants could appreciate the very minimum period in which the notice apparently required compliance, and against which they could make a ground (g) appeal should they have regarded that period as unreasonably short. Indeed, they have done so and with considered argument which I have taken into account in my decisions. For these reasons, I find that the defect does not render the notice a nullity and, without any injustice to the appellants or any other party, I am able to use my powers to provide a clear compliance period in accordance with my finding on the ground (g) appeal.

Ground (c) – Appeals C, D, E and F (Notices 2 and 3)

10. For the appeals to succeed under this ground, the appellants must satisfy me on the balance of probabilities that the storage and residential uses associated respectively with the metal containers and caravans on the site do not constitute breaches of planning control. To this end the appellants argue that such uses are ancillary to the lawful primary use of the planning unit, namely use for paintballing and wargames, and therefore that no material change of use has occurred which would constitute development requiring planning permission.
11. The Council argues that the 6 metal containers to the east of the site (marked by an 'A' in the enforcement plan) are too excessive in number to be ancillary to the primary use of the land, taking into account 5 in use in the western section of the site. Further, its doubts as to a functional connection were raised when its officers were only able to secure access into 1 of the 6 containers of concern on an enforcement site visit in September 2018.
12. The appellants have submitted photographs showing internal images of eastern container contents and apparent uses. This evidence, together with the inquiry evidence from Mr James Sidroy, is consistent with what I observed on my site visit having gained access to all 6 containers (as well as to the 5 not targeted by the notice). Based on the evidence I find that the containers are as a matter of fact and degree used for storage, retail and administrative uses which are functionally connected and ordinarily incidental to the use of the planning unit for paintballing and wargames. This is notwithstanding use of the containers on the western section of the site (which are largely in use for different ancillary purposes to the eastern containers including catering, offices, a laundry and paintball gun gas plant). An eastern container appears to be in use for the storage of a limited amount of forestry equipment. I note the dispute between the main parties as to whether there is a lawful forestry use, but in the context of maintaining the woodland in which the games take place, I am satisfied that the storage of limited equipment of such nature does not constitute a separate primary use.

13. For these reasons, Appeals C and D succeed on ground (c) since I find that the storage of metal containers is ancillary to the lawful use of the planning unit and no material change of use has occurred. Notice 2 is accordingly quashed and there is no need for me to consider the ground (d), (a) and (g) appeals in respect of it.
14. The 3 caravans stationed to provide residential accommodation for 5 individuals from 3 households are said by the appellants to provide a necessary security function due to the historic unconsented dumping of waste on the land, and therefore it is argued their use is ancillary to the lawful paintballing and wargaming use.
15. I accept that the residential occupation provides increased security to the site and therefore there is a functional link. However, and mindful of the *Harrods* case¹, the functional link in itself is not the only factor in determining ancillary status. I do not consider that the provision of this degree of round-the-clock primary accommodation, to create what could be reasonably described as a small residential settlement, is ordinary to the operation of a woodland for the playing of games largely at weekends. As a matter of fact and degree the significant residential use within this context goes beyond what could be considered ancillary use by substantially changing the character of the use of the site to a mixed use.
16. Accordingly, I find that there has been a breach of planning control resulting from a material change in use of the land without planning permission. Appeals E and F therefore do not succeed on ground (c).

Ground (d) – Appeals A, B, E and F (Notices 1 and 3)

17. For an appeal to be successful under this ground, the appellants must satisfy me on the balance of probabilities that at the date the notices were issued (1 July 2019) no enforcement action could be taken in respect of alleged breaches.
18. Section 171B of the Act provides that no enforcement action may be taken in respect of the alleged operational development subject to Notice 1 after the end of the period of 4 years beginning with the date on which the operations were substantially completed. Therefore, the relevant date for immunity as regards the bunds and hardstanding is 1 July 2015. The appellants make no argument that the bunds were substantially completed before this date, and therefore the only ground (d) consideration in respect of Notice 1 is when areas of hardstanding were substantially completed.
19. The appeal site has been used for paintballing for more than 20 years and it is clear to me from the aerial photographs submitted that there has been an increase in the provision of hardstanding over the years in facilitation of that use, including the provision of a car parking area on the site when an agreement with the owner of neighbouring land came to an end.
20. The Council has not specified in the enforcement notice where immune hardstanding (if any) is located, correctly stating that the burden of proof to demonstrate any such is on the appellants. However, I note a 'Contravention Case Sheet' from its files dated 21 May 2007 which refers to "The Unauthorised

¹ Harrods Ltd v SSETR [2002] JPL 1321.

formation of hardstandings” as well as a letter it sent dated 4 July 2007 which alleged that “a clearing has been formed within the woodland where a hardsurfaced area has been built up above natural land levels”. Further, I place significant weight on the aerial photograph dated 9 July 2013 (the last such photograph submitted before the relevant date of 1 July 2015) which appears to show hardsurfaced areas in both western and eastern sections of the site with sight of what may be a hard-surfaced interconnecting track running between the sections. This appears consistent with Mr James Sidroy’s proof of evidence (and plan of hardstanding laid in 2008 in Appendix 8). Accordingly, based on these pieces of evidence and informed by my site visit, I dismiss the Council’s suggestion that all hardstanding on the site has been laid as one piece of operational development within the last 4 years and attached to these Decisions is a plan showing to my judgement the area of hardstanding which has not acquired immunity (cross-hatched in black). Therefore ground (d) as regards Appeals A and B succeeds to this extent and I am amending Notice 1 to reflect my finding.

21. Section 171B of the Act provides that no enforcement action may be taken in respect of the alleged material change of use subject to Notice 3 after the end of the period of 10 years beginning with the date of the breach. Therefore, the relevant date for immunity as regards the stationing of caravans for residential use is 1 July 2009 and there must have been continuous such use throughout that period.
22. The evidence from the appellants is that the 3 caravans have been continuously occupied as residences since 2003 (caravan 1, by the appellants themselves) and since 2008 (caravans 2 and 3, by the appellants’ 2 adult children to 2012 and 2015 respectively and then by others including those currently providing security services). However, apart from the witness evidence given to the inquiry, there is limited supporting evidence to support this. For a family living together on the site for several years, one might for instance have expected family photographs or other evidence in support. Television licences from 2006 onwards have been submitted that Mr James Sidroy says relate to caravan 1 but television licences can also be issued in respect of non-residential sites such as offices and guard stations. The Council’s letter of 4 July 2007 referred to a mobile home but did not say that it was in use as residential accommodation.
23. Despite an email from Abaco mobile homes written in 2019 supporting what the appellants say about caravans 2 and 3 being delivered to the site in September 2008, neither of the caravans are visible on the site in the aerial photography until July 2013, and caravan 2 is first visible in June 2018. This was explained by Mr James Sidroy during cross-examination as being due to the fact that both caravans were located under the marquee which can be seen in the aerial photography, which he said was arranged to keep the heat off the caravans. This I find an unusual arrangement and the fact that the marquee can be seen in the March 2008 aerial photograph, 6 months or so before the caravans were allegedly delivered, casts doubt on the explanation given. I find the account even less likely given that the notable and unusual arrangement involving the marquee and the caravans was not mentioned in the proofs of evidence submitted by the members of the Sidroy family and it was not mentioned in the live evidence of those who had allegedly resided within that arrangement until put to them. Indeed, Ms Sidroy originally confirmed that the

caravans had not been contained within any kind of tent, before changing her account when shown the photos.

24. For these reasons, I find it more likely than not that there has not been continuous residential occupation on the site since at least before 1 July 2009. The fact that Ms Johnson-Marshall told the inquiry that the witnesses were “probably not lying” does not alter my view. Accordingly, the appeal on ground (d) fails in respect to Notice 3 and Appeals E and F.

Ground (a) and the deemed planning applications – Appeals A and E (Notices 1 and 3)

Main issues

25. The main issues in Appeals A and E are:

- Whether the appeal developments are inappropriate development in the Green Belt.
- The effect of the appeal developments on the openness of the Green Belt and the purposes of including land within it.
- The effect of the appeal developments on the character and appearance of the area.
- The effect of the appeal developments on biodiversity.
- Would harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations? If so, would this amount to the very special circumstances required to justify the appeal developments?

Inappropriate development, openness, character and appearance

26. Chapter 13 of the National Planning Policy Framework (the Framework) stresses that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
27. Paragraph 146 of the Framework says that engineering operations (Appeal A, Notice 1, the bunds and hardstanding) and material changes in the use of land (Appeal E, Notice 3, the stationing of caravans for residential use) are not inappropriate provided they preserve its openness and do not conflict with the purposes of including land within it.
28. The appellant’s appeal under this ground was supported by live expert evidence and a written proof from Mr Matthew Miller of ET Planning. Mr Miller states that neither the hardstanding nor the bund are visible from public vantage points. I agree, with it being apparent on my site visit that any significant visibility of the appeal developments is from private land rather than public vantage points such as the nearby public right of way. Although visibility is an aspect of openness to which I give some weight, and also bearing in mind that the appeal developments can be seen to the fore of the woodland upon entering

the site and also partially from the private land which facilitates access, it is the effect on the spatial openness of the Green Belt in this case which draws focus.

29. Mr Miller says that the hardstanding and bunds do not fail to preserve the openness of the Green Belt in a site which already has a notable degree of development in connection with the existing business. Further that the bunds “integrate seamlessly into the surroundings” due to their “natural visual appearance” which is especially due to being planted with wildflowers. However, the weight I give these expert opinions is tempered by the fact that Mr Miller told the inquiry he has never visited the appeal site and further that he could not identify the photographs he had based those opinions upon (they are not referenced within his proof). I therefore give his evidence limited weight.
30. The bunds are of significant size (rising to above head-height in several places) and have an alien appearance in the context of the local landscape and topography. Although planted with wildflowers, the bunds are of a man-made character rather than a natural one being constructed from a mixture of earth and construction waste and their appearance is incongruous with the wooded appearance of the area notwithstanding structures within those woods used for gaming. Further, they have a direct enclosing effect on the land (which appears to have been the intention of the appellants in separating the playing areas from the car park and circulation spaces). Notwithstanding the presence of immune hardstanding, the hardstanding requiring planning permission provides a further large hard surface area facilitating car parking which further restricts permanent openness within the Green Belt and encroaches upon the countryside along with the bunds. For these reasons, even in the context of all lawful development within the site, the bunds and hardstanding significantly reduce the openness of the site and create an urbanising effect upon the countryside against the purposes of including land within the Green Belt. They are therefore inappropriate development in the Green Belt and for the same reasons significantly harm the countryside character and appearance of the area. There are no conditions I could reasonably impose which would make the development acceptable.
31. Mr Miller says that the caravans are transient features and therefore have a limited effect on openness. I give limited weight to that argument as the cluster of caravans has been present on site for several years, reducing both spatial and visual openness through being framed in views against the woodland beyond when seen from the land before the entrance to the site. Further, the 3 caravans and their use as dwellings provide the character of a small residential settlement which encroaches upon the countryside (contrary to the purpose of including land within the Green Belt). These harms could not be made acceptable by a screening condition, which would in any event serve to reduce spatial openness further. The material change of use is therefore inappropriate development in the Green Belt and for the same reasons it significantly harms the countryside character and appearance of the area.
32. Mr Miller’s arguments are not supported by the *Carcroft* appeal decision², in which the Inspector found that the mobile home accommodation said to provide a security function was clearly inappropriate development.

² APP/F4410/A/11/2157563

Biodiversity

33. The Council's reasons for enforcement as regards both Notices 1 and 3 refer to the loss and deterioration of an irreplaceable habitat. The Council has since confirmed that the real focus of this issue is on the loss of ancient woodland – which the Council accepts arises primarily in relation to the bunds and hardstanding. I agree, in that I cannot see how the use of the caravans are causing loss or deterioration of the woodland.
34. The formation of the bunds and laying of hardstanding, however, appears to have resulted in the deposition of many tonnes of earth and construction waste including upon land above the root zones of trees of the woodland. In some cases, the material is very notably piled up around trunks of trees now rising up through bunding. I am not a tree expert, but as a layman my understanding is that such deposition within the root zones is harmful to the health of trees and on my site visit several of the trees within the bunding appeared either dead or not very healthy as compared to trees away from the deposition areas. Further, when comparing the 2017 and 2018 aerial photographs with that of 2013 it appears that the appeal developments have been associated with the cutting down of trees.
35. The status of the wider woodland (Moses' Spring, Barrenlays and Claypitshill Woods) in which the appeal site is located is identified in the development plan as ancient woodland and a Site of Importance to Nature Conservation as well as a Local Wildlife Site.
36. Paragraph 175 of the Framework says that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. I have seen nothing to persuade me that there are "wholly exceptional reasons" in this case. The stated benefits in providing facilities for the business and its customers are not public benefits which would clearly outweigh the loss or deterioration of habitat, and given the apparent harm caused by the bunds to trees that I have outlined above I am not convinced that they serve on balance to protect the ancient woodland by preventing parking and other activities which may impact upon it. Nor do I accept that the bunds (and wildflowers) in themselves create an irreplaceable habit that should not be lost.
37. The appellants have suggested that permission be granted subject to a condition for the approval and implementation of a Biodiversity and Ecological Enhancement/Mitigation Plan. However, given the degree of existing loss and deterioration to the ancient woodland caused by the bunds and hardstanding, this would not make the development acceptable.

Other considerations

38. The appellants say that they are the victims of illegal dumping of materials by others onto their land, and that they have attempted to make the best of a bad situation in removing some of the material and using the rest to create bunds and hardstanding to the benefit of their business and customers. However, I give this consideration limited weight as this explanation for the presence of the material lacks significant credibility. I have heard that the problem occurred over periods of years and was so serious that it was necessary for Mr James

Sidroy to patrol the site with a licenced firearm visible, having received threats to his life. Further, that the scale of the unlawful activity was so enormous that tens of thousands of tonnes of material were deposited. Yet despite this, and the financial implications for the business (plus the environmental harm), I have also heard that the appellants did not at any time contact the police or any other authority dealing with the dumping of waste. This is not consistent with the facts as put forward by the appellants, nor was the live evidence of their children who despite purportedly having lived on the site for several years seemed unconcerned about the threat of intruders undertaking criminal activities upon the land.

39. It is claimed that the stationing of caravans for residential use is necessary and essential for the sustainable operation of the site in order that a 24/7 security presence is sustained to deter illegal dumping on the site. However, given what I have said above about the limited evidence as to unconsented dumping and Mr Simionescu's acceptance that there is scope for security to be provided from offsite in other ways (such as effective gating and CCTV monitoring), I give this consideration modest weight.
40. The appellants say that they run a small struggling business and compliance with Notice 1 would be a significant expenditure which might result in bankruptcy. However, the appellants have not submitted a quotation indicating what it would cost and I note that Mr James's Sidroy's friend had previously removed material at a profit. Further, unlike the case in the *Carcroft* appeal decision, this is a for profit business without a similar degree of social purpose. For all these reasons, I give this consideration modest weight.
41. The hardstanding is said to be essential for the sustainable operation of the site in providing storage and car parking provision (where there is a lack of alternative public transport provision) which the bunds also facilitate. These benefits are tempered by the fact that I have found that there is a large area of hardstanding immune from enforcement on which parking and storage can occur. I therefore give this consideration modest weight.
42. The appellants say that the removal of the material in the bunds and the hardstanding would cause environmental harm, including from the number of lorry journeys that would result. I give this consideration moderate weight.

Green Belt/Planning balance

43. Paragraph 144 of the Framework indicates that in considering any planning application, substantial weight should be given to any harm to the Green Belt. Accordingly, as I have found harm to the Green Belt in Appeals A and E, I apply substantial weight in respect to it. I have also found that significant harm is caused to the character and appearance of the area in Appeals A and E, and that there is the loss and deterioration of an irreplaceable habitat in respect of Appeal A which the Framework says should be refused in these circumstances. In totality, the harm is of a magnitude which weighs very heavily against the appeal developments in both appeals.
44. Having considered all matters raised in support of the appeal developments in each appeal (A and E) I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified in each respective appeal. Accordingly, very special circumstances do not exist in either appeal.

45. Consequently, the development in Appeal A is contrary to the Green Belt and design guidance in the Framework and Policy C5 of the Basildon District Local Plan Saved Policies (September 2007) (LP) which seeks to protect woodlands. I do not find conflict with Policy BAS BE12 of the LP as, notwithstanding the supporting text, the wording of that policy is clear that it is restricted to residential development, which is not what the appeal development involves.
46. I find that the development in Appeal E is contrary to the Green Belt and design guidance in the Framework and Policy BAS BE12 of the LP which seeks to protect residential development causing harm to the character of the surrounding area.
47. I place limited weight on the emerging plan³ submitted for examination due to its stage of preparation. It does not affect my decisions.

Conclusions on ground (a) and the deemed planning applications

48. For the reasons above, Appeals A and E do not succeed on ground (a) and I will not grant planning permission in respect of either development.

Ground (f) – Appeals A and B (Notice 1)

49. For an appeal to succeed under this ground, I must be satisfied that the steps required by the notice exceed what is necessary to achieve the purpose of the notice.
50. It is clear from the way the notice has been drafted that its purpose to remedy the breach of planning constituted by the formation of bunds and creation of hardstanding rather than remedy injury to amenity. It properly does this under Section 173 of the Act by requiring restoration of the land to its condition before the breach took place. The appellants' suggestion of a lesser step allowing materials to remain on site (though they are unspecific in that regard as to how much would remain and where it would be located) would not achieve this purpose, and in any event I am not convinced in the absence of more specific proposals from the appellants that retention of materials would not cause unacceptable planning harms in respect to the Green Belt, the character and appearance of the area or to habitat.
51. Therefore, the appeal on ground (f) does not succeed.

Ground (g) – Appeals A, B, E and F (Notices 1 and 3)

52. For an appeal to succeed under this ground, I must be satisfied that the compliance period specified in the notice falls short of what should reasonably be allowed.
53. Notice 1 allows 3 months for the removal of material, which is a large amount even when taking into account my finding on ground (d) as to the extent of unlawful hardstanding. Accordingly, I am varying the compliance period to 8 months and the ground (g) appeal in Appeals A and B succeeds to this extent. I am resisting the suggestion of a longer period put forward by the appellants, notwithstanding what has been said about their financial circumstances, due to the limited evidence as to how much the works will cost and the ongoing planning harm which is being caused by the appeal development.

³ Basildon Borough Local Plan 2014 - 2034.

54. I will vary Notice 3 to allow 12 months for compliance, as that is reasonably necessary for the residents of the caravans to look for alternative accommodation. The ground (g) appeal in Appeals E and F succeeds to this extent.
55. Article 8 of the First Protocol to the European Convention on Humans Rights, as incorporated into the Humans Rights Act 1998, is engaged due to potential loss of a home for the appeal site's occupiers due to conflict with planning policy. Therefore, I have undertaken a proportionality assessment and considered whether the objectives of the planning policy could be met by a less intrusive action. However, the policy seeks to protect the character of the area surrounding residential development and its objective cannot otherwise be achieved other than ensuring that planning permission is refused in this case. The implementation of the policy in respect to the appeal site would not be excessive or disproportionate taking all into account, including my decision to extend the compliance period to 12 months.

Conclusions

56. For the reasons given above I conclude that Appeals A and B should not succeed, except to limited extents on grounds (d) and (g). I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application in respect of Appeal A.
57. For the reasons given above I conclude that Appeals C and D should succeed on ground (c). Accordingly, the enforcement notice will be quashed with a correction made. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended in respect of Appeal C do not need to be considered.
58. For the reasons given above I conclude that Appeals E and F should not succeed, except to a limited extent on ground (g). I shall uphold the enforcement notice a correction and variation and refuse to grant planning permission on the deemed application in respect of Appeal E.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANTS: Oliver Lawrence (Barrister)

He called

James Sidroy
Katie Sidroy
Jamie Sidroy
Adrian Simionescu
Nicu Catrina
Matthew Miller (ET
Planning Ltd)

FOR THE LOCAL PLANNING AUTHORITY (LPA): Matthew Dale-Harris (Barrister)

He called

Nina Johnson-Marshall

INTERESTED PERSONS: Alasdair Daw (Billericay District Residents Association),
Will Smith

DOCUMENTS

- 1 Appellants' opening statement
- 2 LPA's opening statement
- 3 Oates v Secretary of State for Communities and Local Government
- 4 Samuel Smith Old Brewery (2020) P.T.S.R 221
- 5 LPA's suggested conditions
- 6 Appellants' proposed conditions
- 7 LPA's closing submissions
- 8 Appellants' closing submissions

PHOTOGRAPHS

- 1 Aerial photographs taken in July 2013; April 2017; June 2018



Plan

This is the plan referred to in my decisions dated: 09 July 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

Land at: Skirmish Wood, Outwood Farm Road, Billericay, ESSEX CM11 2TX

References: APP/V1505/C/19/3234438, APP/V1505/C/19/3234439

Scale: Do not scale

