



Appeal Decisions

Hearing Held on 22 June 2021

Site visit made on 24 June 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 19TH July 2021

Appeal A (Notice One) Ref: APP/V1505/C/20/3260146

Appeal B (Notice Two) Ref: APP/V1505/C/20/3260147

Land East of Shrubs, Studland Avenue, Wickford, Essex

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr S O'Driscoll against two enforcement notices issued by Basildon District Council.
 - Both enforcement notices were issued on 18 September 2020.
 - The breach of planning control as alleged in Notice One is without planning permission, the material change in use of the Land for the stationing of caravans for residential occupation.
 - The requirements of Notice One are:
 - i. Cease the use of the Land for the stationing of caravans for residential occupation.
 - ii. Remove the caravans from the Land, including fencing and residential paraphilia.
 - iii. Remove the CCTV camera and associated pole supporting the structure from the land, together with the supporting electricity and wiring and cables.
 - iv. Remove all associated fixtures, fittings including electricity sockets and apparatus and resulting and detritus therefrom.
 - v. Remove all non-organic matter forming the hardstanding within the site from the Land, including all associated detritus therefrom, restoring the level of the ground to its former natural topography.
 - The breach of planning control as alleged in Notice Two is without planning permission, the laying of hard-core and associated material onto the Land forming an area of hardstanding.
 - The requirements of Notice Two are:
 - i. Break up the hardstanding and remove all resultant debris and materials from the land.
 - ii. Restore the level of the ground to its former natural topography.
 - The period for compliance with the requirements of Notice One and Notice Two is four months.
 - The appeals are proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/V1505/W/20/3264465

Land East of Shrubs, Studland Avenue, Wickford, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Simon O'Driscoll against the decision of Basildon District Council.
 - The application Ref: 20/01058/FULL, dated 8 September 2020, was refused by notice dated 30 November 2020.
 - The development proposed is siting of two static mobile homes and erection of day room within existing residential area.
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Decisions

Appeal A

1. It is directed that Notice One is
 - corrected by the deletion of the word 'paraphilia' and the substitution of the word 'paraphernalia' in requirement (ii); and
 - varied by the deletion of 4 months and the substitution of 13 months as the period for compliance in part 6.

Subject to this correction and variation Appeal A is dismissed and the enforcement notice is upheld.

Appeal B

2. It is directed that Notice Two is varied by the deletion of 4 months and the substitution of 13 months as the period for compliance in part 6. Subject to this variation Appeal B is dismissed and the enforcement notice is upheld.

Appeal C

3. Appeal C is dismissed.

Procedural Matters

Appeals A and B

4. The appeal forms for Appeals A and B refer to ground (a). However, the enforcement notices were issued after the making of a related planning application for planning permission but before the time to determine the application had expired. In these circumstances an appeal may not be brought under ground (a). Consequently, I have considered Appeals A and B on the basis of grounds (f) and (g) only as set out in the banner headings.

Preliminary Matters

5. During the course of consideration of the planning application the Council altered the description of development to read:

'Proposed siting of two static mobile homes, erection of day room and stable. Hardstanding and 2 metres close-boarded fence/rail fencing and CCTV-post.'

The appellant has stated that for the purposes of the appeal the altered description is agreed.

6. The appellant agreed during the hearing that the development which has been carried out on the site is not in accordance with the plans which were submitted with the planning application and that some aspects of the plans have yet to be implemented. As there are no appeals under ground (a) my decision on the planning merits of the development will be made in relation to Appeal C only. Consequently, if I allow Appeal C and grant planning permission it will be on the basis of the submitted plans, together with the effects of the compliance with planning conditions. Any other development which has been carried out, but which is not in accordance with those approved plans, would be a matter between the appellant and the Council.

7. It was alleged by interested parties during the hearing that the appellant does not own the site. The planning application form which was completed on behalf of the appellant states that he is the owner of the site and this was confirmed by the appellant and Counsel at the hearing. There is, however, no evidence that any problems could not be properly dealt with under legislation dealing with private legal rights regarding land ownership. For this reason, I have not afforded any weight to the queries over land ownership in my determination of the appeals which are before me.
8. Both parties agree that the site would be occupied by people who meet the definition of gypsies and travellers as set out in the Planning Policy for Traveller Sites (PPTS) and that the PPTS is material to the determination of the appeals. Matters relating to human rights, the public sector equality duty (PSED) and the best interests of children are integral to my decisions.
9. There is an error in the notice, in the form of a misspelling of the word 'paraphernalia' which is written as 'paraphilia'. I can correct this error without causing any injustice to either party.

Appeal C

Main Issue

10. The site is in the Green Belt and, in accordance with Policy E of the PPTS, the development is of a form which constitutes inappropriate development in the Green Belt. Therefore, the main issue is:

The effect of the development on the openness and the purposes of including land within the Green Belt and whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development, on either a permanent or temporary basis.

11. The Council also put forward an argument on the basis that the development was intentional unauthorised development which by virtue of the Written Ministerial Statement of 31 August 2015 is to be regarded as a material consideration.

Reasons

12. Policy BAS GB1 of the Basildon District Local Plan Saved Policies (September 2007) document (the Saved Policies) establishes the boundaries of the Green Belt and the Council confirmed that there were no plans to take land out of the Green Belt in the area surrounding the site. The Council considers Policy BAS GB1 to be consistent with the National Planning Policy Framework (the Framework) and I agree.
13. The Council explained at the hearing that its emerging local plan has yet to be fully examined and that with regard to policies relating to the provision of gypsy and traveller sites there were unresolved objections. Thus, I have given very limited weight to the Basildon Borough Council Draft Local Plan in my determination of this appeal.
14. The planning policy context for the assessment of the appeal scheme is Policy BAS GB1 of the saved policies, the Framework and the PPTS.

The Green Belt

15. The Framework identifies that the fundamental aim of the Green Belt is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. The openness of the Green Belt can have a visual aspect as well as a spatial aspect.
16. Prior to the development which has been carried out on the site, including that which was carried out by the previous owner, the land did not accommodate any buildings or structures. There is no dispute between the parties that there were more trees on the site than currently exist and all features on the site were natural. The site would have been typical of the undeveloped plots which form part of the wider area of 'plotlands'.
17. The appellant accepts that the site and the land surrounding it is all part of the Green Belt despite many of the plots in the area accommodating dwellings of a wide variety of age and design, other buildings, and static and touring caravans. The Council is not arguing that the development would have an adverse impact on the character and appearance of the site and the surrounding area, and, in this respect, it complies with Policy BAS BE12. The Council's case is purely on the basis that the development would have a harmful impact on the Green Belt and the related issue of intentional unauthorised development in the Green Belt.
18. There was some discussion at the hearing with the main parties and the interested parties about whether development which is present on other plots is lawful or unlawful. There is no evidence before me of the extent of unlawful development or any enforcement action which is pending. However, both of the main parties and the interested parties present at the site visit were content that I take into consideration that there may be some unlawful development in the area, when assessing the impact of the development on the Green Belt.
19. The proposal is for two static caravans to be located on the site, there would be no touring caravans. A day room, which would be a building, framed by existing trees, and a stable would be positioned in the corners of the site furthest from Studland Avenue. A pony paddock would be laid out between the stable and day room. The central part of the site would provide car parking and turning space and two metre high fencing would be erected to either side of the plot with post and rail fencing to the rear and the same combined with a hedge to the front.
20. Whilst I accept that what has been carried out on the site is not the form and layout of development for which planning permission is sought, a material change of use of the land has occurred and I observed during my site visit that the development has a significant impact on the appearance of the site. The proposed development would involve one further mobile home and the erection of a day room. The reduction of the amount of hardstanding and the additional landscaping of the site which would be necessary to comply with the submitted plans and this would improve its appearance. However, it would not overcome the fact that the caravans and buildings would introduce a footprint and volume of development on the site where previously there was none. In doing so the development, which would occupy a substantial area of the site, would have a significant harmful effect on the spatial aspect of the Green Belt.

21. It is reasonable to assume, given the number of children on the site, that the grassed area towards the front of the site which forms part of the proposed landscaping would be used for play and as outdoor amenity space for drying clothes and sitting out. This use would generate domestic paraphernalia.
22. The sliding gate and high fences which currently define the front boundary restrict views into the site. Save for reference to a post and rail fence, hedging and what appears to be shown as a swinging gate on the submitted plan, there is limited detail of what form the front boundary would take. In these circumstances it is difficult to be sure what level of visibility into the site there would be in the future and the degree to which the caravans, domestic paraphernalia and cars would be seen from the road. However, I anticipate that there would be a need to preclude views from the road in the interests of privacy.
23. Notwithstanding that there is likely to be a degree of screening the development will have a visual impact on the Green Belt.
24. The openness of the Green Belt in visual terms varies significantly within the plotlands with some plots accommodating a number of buildings and structures and others being devoid of built form. However, in terms of the appeal site the development shown on the submitted plans would have an adverse impact on the site visually. This is because, even taking account of the works carried out on the site before its acquisition by the appellant, it would introduce caravans and buildings, car parking and hardstanding and domestic features onto a site which was previously of a natural and uncluttered appearance.
25. The visual impact could be mitigated to a degree by hedging and fencing along the front boundary of a design compatible with the surrounding plots and by the use of natural materials for cladding the static caravans. However, this would not reduce the visual impact below a significantly harmful level.
26. I conclude that the development would have a significantly harmful effect on the openness of the Green Belt.

Other considerations

The need for and supply of gypsy and traveller sites

27. The PPTS states that, in producing their Local Plans, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.
28. The Council confirmed at the hearing that it had carried out a needs assessment and site provision study in 2018 and that the needs assessment was updated in 2020 (GTAA Update Report June 2020). The Executive Summary of the GTAA Update Report June 2020 identifies a need for 68 pitches for households which meet the PPTS definition to 2038, 43 of which it identifies for the 5-year period between 2019 and 2023. This level of need attracts significant weight in favour of the appellant.
29. The emerging local plan includes draft policies which seek to make lawful some unlawful gypsy and traveller sites, allocate land for new sites and set out criteria against which proposals for future windfall sites can be assessed. All of these actions show that a positive approach is being taken by the Council. However, there are objections to the Council's policies which means that there

is no certainty that, through the implementation of these policies, the Council will be able to fulfil the future needs of gypsies and travellers.

30. Within the Statement of Common Ground, the Council agreed that it cannot demonstrate a 5-year supply of deliverable sites but wanted to discuss the progress it is making towards this target through the emerging plan at the hearing. Having heard the Council's arguments on this point I conclude that despite some positive action, the Council cannot demonstrate that the supply of gypsy sites is meeting the current need. This factor also weighs significantly in favour of the appellant.

Availability (or lack) of alternative accommodation

31. The appellant explained that he had to move from a previous site because it had a temporary planning permission and was for four pitches, with his caravan effectively forming a fifth, unauthorised, pitch. He also said that there is a substantial waiting list for public sites. Whilst there was no substantive evidence to support this the Council confirmed that there are no alternative sites for the appellant to relocate to.
32. The local councillor raised the question of whether the appellant could look further afield for suitable accommodation, but no other particular sites were referenced. Notwithstanding that the PPTS requires Councils to consider sites for any travellers, not just those who have local connections, there is no evidence before me to show that suitable sites are available even in a wider area.
33. The appellant confirmed to me that the only alternative for him if he could not remain on the site was to go back onto the road. He did not feel that he could go back to the previous site as this would jeopardise the owner's chances of obtaining a personal consent for it.
34. The lack of available alternative accommodation attracts significant weight in favour of allowing the appeal.

Personal circumstances of the appellant

35. The development allows for a family to live together and in close proximity to other family members enabling them to provide support for each other, which is acknowledged as of importance to the Gypsy and Traveller community. The site also provides a stable base from which the residents can access essential services such as schools and healthcare.
36. Two of the appellant's children are young adults and they are not at school. They work with the appellant who has a roofing and general maintenance business. Two children attend the local primary school, one of whom is due to move to secondary school in September 2022. A younger child will start at a nearby nursery in September 2021. None of the school age children or younger have any identified long term health problems.
37. Whilst there is no specific evidence about the progress which the children are making at school, it is clearly in their best interests that they continue to be able to access full time education. Furthermore, as the younger children reach school age, they would be able to access the local school also.

38. At present the older children occupy a touring caravan on the site and the two mobile homes proposed would provide the space that the family need. The appellant refers to the marriage of his eldest son and his aspiration that he and his wife would be accommodated on the site. However, this was not confirmed at the hearing and I have made my decision on the basis that it is the appellant, his wife and his children who would occupy the two mobile homes.
39. With regard to the need for access to health services I was told that all family members are registered with the doctor. Also, the appellant said that he has latterly developed a health problem which necessitates regular hospital visits. There is a clear and significant benefit to the family in terms of being able to maintain access to health services from a stable base.
40. The site also enables the appellant to keep his horses on site which supports his activities in the horse trade and attendance at horse fairs. This is another important aspect of the Gypsy and Traveller way of life.
41. The personal circumstances of the appellant weigh significantly in favour of allowing the appeal, particularly in respect of the best interest of the children who are attending school and potential access to education for the younger children.

Whether the site is a suitable one for the proposed development

42. The PPTS says that locally specific criteria should be used to assess applications for development on unallocated sites. The emerging local plan contains a policy which will fulfil this requirement, but it attracts very limited weight given the objections to the Council's approach to the provision of gypsy and traveller sites. However, it was established at the hearing that the site is accessible in terms of local shops and services and that public transport is available. This is a factor which weighs moderately in favour of allowing the appeal.

Previously developed land (PDL)

43. The appellant argues that the land was previously part of the garden area of Charlotta and The Paddocks which are adjacent plots. Charlotta is a derelict bungalow and there is no evidence before me to demonstrate that the appeal site originally formed part of its garden. The Paddocks is currently occupied by sheds and caravans, but there is no indication of it accommodating any form of dwelling. Furthermore, there is no information to show that the appeal site previously formed part of The Paddocks.
44. There is insufficient evidence to show that the site was PDL and in the light of this and the first hand evidence of residents who attest to the site not being part of the adjacent plots, I attach no weight to the argument that the site is PDL.

Intentional unauthorised development (IUD)

45. There is no dispute between the parties that development took place on the site before planning permission was applied for and granted. The Council's enforcement report refers to complaints it received on 26 May 2020 regarding works which were taking place on site and the stationing of a caravan. This predates the appellant's acquisition of the site and he did not move onto it until August 2020.

46. The Council did not verify in May 2020 that the works and the bringing onto the site of a caravan required planning permission. The Council served a temporary stop notice on 28 August 2020 and at that point the appellant would have been aware that the stationing of caravans for residential occupation and the laying of hardstanding amounted to unauthorised development.
47. The Written Ministerial Statement upon which the Council bases its argument of IUD dates from August 2015 and establishes that intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals. The WMS relates to all forms of development not just that relating to gypsy and traveller sites and places particular emphasis on IUD in the Green Belt.
48. At the hearing the appellant argued that the WMS has not been reviewed as intended by the government and that it has not been incorporated into policy documents which have been released subsequently. Nevertheless, it remains relevant and I have attached full weight to it. However, a finding of IUD must be supported by evidence of something more than development being carried out without planning permission. The appellant must be shown to have intended the development to be unauthorised or actively sought to harmfully flout the rules.
49. The Council confirmed at the hearing that the appellant submitted a planning application in August 2020 but that the application was not able to be validated because the drawings were not suitable, and the fee had not been paid. In early September 2020 the appellant appointed a new agent who took over the submission of the planning application and the application form which he submitted is dated 8 September 2020. The application was not validated until 5 October and in the meantime the enforcement notices were served, together with a Stop Notice on 18 September.
50. The appellant was aware that planning permission was required before he moved onto the site, nevertheless he carried on with his occupation of it. Furthermore, there is evidence that he carried out works in contravention of the Stop Notices.
51. He explained that there was an urgent need for him to provide a site for his family and this was the main driver for his actions. He also says in his personal statement that the outbreak of the Covid-19 pandemic influenced his ability to remain on the previous site. It will be seen from my considerations above that I accept that in terms of a site for his caravans the only other option available to the appellant was an unauthorised roadside encampment.
52. There had been some development on the site before the appellant moved onto it principally in the form of fencing and lighting, a cesspit, hardstanding, a touring caravan (which has been replaced), a washroom and a stable. The appellant did not carry out these works, consequently though their seemingly unlawful status needs to be resolved, it is clear that they do not amount to IUD by the appellant.
53. In the light of the facilities already available on the site the appellant has carried out the minimum works necessary to provide a habitable environment for his family. There was discussion at the hearing about an area of decking which has been constructed adjacent to the static caravan. I am persuaded by

the argument put forward by the appellant that this feature is necessary for the safety of his children.

54. Bringing all of these points together I find that IUD has occurred but the weight which I attach to this is reduced by the fact that the appellant had no alternative, that he has limited the amount of development which he has carried out since occupying the site and that he sought to resolve the issues with the validation of his application shortly after being contacted by the Council. Consequently, IUD attracts moderate weight in this case.

Matters raised by interested parties

55. Both the local councillor and the occupiers of Shrubs were active participants in the hearing, and I could see during the site visit that the occupiers of Shrubs were the residents most directly affected by the development.
56. I have already addressed some of the issues raised by the interested parties in terms of the need for gypsy and traveller pitches, the effect on the Green Belt and the fact that development was carried out before planning permission had been obtained.
57. Interested parties refer to the removal of mature trees from the site. Although these actions were not necessarily the responsibility of the appellant, nevertheless the evidence before me suggests they were protected trees and it follows that they made a valued contribution to the amenity of the area. The trees were removed to facilitate the use of the land for the siting of caravans. In view of their assumed importance and contribution to the amenity of the area the removal of trees in this case weighs against allowing Appeal C and I accord moderate weight to this issue.
58. Whilst it is reasonable to accept that there has been some impact on wildlife and consequently biodiversity on the site as a result of the development there is no substantive evidence before me to establish that protected species have been affected or that wildlife generally has not successfully relocated to other plots within the vicinity of the site. A before and after assessment of biodiversity on the site in the light of the development is not justified in this case.
59. Whilst there is reference to flooding problems there is no evidence to substantiate this and subject to the resolution of potential land ownership issues, a connection to local services appears feasible. Similarly, there is no evidence to suggest that, subject to the planning condition recommended by the Highway Authority, the site would result in harmful conditions in terms of highway safety or significantly adverse amenity impacts would arise from additional traffic.
60. The area is one where the natural environment is ever present, however it is not entirely without noise other than birdsong. There are other residents on adjacent plots which generate noise as a result of comings and goings and activities such as mowing grass. There is a dog on the site, and she does bark, but there are dogs in other gardens and whilst barking dogs can be annoying, I do not find that it is an entirely unexpected occurrence in the area. Therefore, I do not consider that a noise survey is necessary in this case.
61. With the exception of the loss of mature trees the other matters raised by interested parties do not attract weight either for or against the proposal.

Further matters raised specific to the occupiers of Shrubs

62. The occupiers of Shrubs refer to specific amenity impacts in the form of overlooking, including by CCTV cameras, and the effect on their privacy, excessive external lighting and overshadowing. The orientation of Shrubs and the location of its private garden are key considerations in this regard.
63. The side elevation of Shrubs which faces the site contains full height windows which the residents describe as serving their lounge and kitchen; and there is also a patio. These windows face the main garden of Shrubs which is mainly mown grass with a band of trees and shrubs along the side boundary with the appeal site. The larger trees are deciduous, but they were fully in leaf at the time of my site visit. The boundary is defined by a post and wire fence which has been augmented by a high level screen formed by poles and sheeting. The sheeting is opaque but at close quarters it is possible to see through it.
64. The fence which has been erected on the appeal site is set in from the boundary and there is a space between it and the neighbours' fence/screen. This fence screens most of the activities on the appeal site from the neighbours. However, as a result of the level at which the current static caravan is placed, the upper parts of openings on its rear face are visible over the fence on the appeal site. Overlooking of the garden and windows in Shrubs is reduced significantly by the presence of the fence and the screen which has been erected by the occupiers of that property. However, without that screen there would be a strong feeling of at least perceived overlooking if not actual.
65. There is a CCTV post and cameras on the site at present with two cameras being static and one moving. I was shown the coverage of the cameras during the site visit, with the Council officer also present, and I was able to verify that the position and angles of the cameras do not afford views into the garden of Shrubs. Nevertheless, when viewed from Shrubs, the rotating action of the moving camera is visible, and it is easy to see why the neighbours feel they are overlooked.
66. Proposed static mobile home 1 would be placed broadly in the same position as the current static caravan although closer to the road. The elevations of the proposed mobile home show three windows and a door on the side facing Shrubs and part of a window in the end elevation. The appellant confirmed during the site visit that the door is required as a means of escape.
67. The proposed day room, which would also be close to the boundary with Shrubs is shown to have a window serving a toilet facing the boundary, and the layout shows car parking against the boundary fence. The CCTV post and cameras are shown on the submitted layout plan as close to the boundary with The Paddocks i.e. not as close to the boundary with Shrubs as the current arrangement.
68. Given the height of the proposed mobile home, its position relative to the boundary and the tree and shrub planting and the extensive grassed area within the garden of Shrubs, any overshadowing would not have a significantly harmful effect on the residential amenity of the occupiers of Shrubs. However, given the outlook from Shrubs and the lesser degree of tree and plant cover in the winter months the proposed layout has the potential to result in at least the perception of overlooking which would be harmful to the amenity currently enjoyed by the occupiers of Shrubs.

69. In terms of the impact on residential amenity the appellant argues that a planning condition to require the submission and approval of a site development scheme would enable the impact to be reduced. For instance, an alternative layout of the site could be agreed whereby mobile home 1 was sited parallel to Studland Avenue as opposed to perpendicular to it as currently shown on the proposed layout plan. This would allow for a potential to have the end elevation of the caravan, which could also be designed without windows, facing Shrubs. A site development scheme could also secure a lighting scheme and an amended position for the CCTV post and cameras and the facility to preclude any visibility of the cameras from within the garden of shrubs.
70. I agree that alterations to the site layout could reduce the impacts on the residential amenities currently enjoyed by the occupiers of Shrubs to a reasonable level. Consequently, taking account of the mitigation which could be allowed for through the imposition of a planning condition requiring a site development scheme, the impact of the development on residential amenities attracts weight neither for nor against the proposal.

Green Belt balance

71. Policy BAS GB1 of the Saved Policies establishes the boundary of the Green Belt but there are no relevant saved planning policies which protect the Green Belt from inappropriate development within Basildon District. The policies in the emerging plan do not as yet form part of the Development Plan. However, this does not mean that there is no protection against inappropriate development in the Green Belt because the Framework and the PPTS provide the policy context for the development and specifically the provision of gypsy and traveller sites in the Green Belt.
72. I have found significant harm to the Green Belt in relation to openness and I am mindful that, by virtue of paragraph 144 of the Framework substantial weight should be given to any harm to the Green Belt. Furthermore, in accordance with the WMS, I find that intentional unauthorised development (IUD) has taken place. The WMS does not specify the weight to be attached to IUD and I have concluded that in this case the IUD factor attracts moderate weight. The removal of trees of amenity value from the site also attracts moderate weight against allowing Appeal C.
73. In favour of allowing Appeal C, I attach significant weight individually to the need for and lack of supply of gypsy and traveller sites in Basildon district, the lack of available alternative accommodation for the appellant and his family and the accessibility to health services which a stable base provides.
74. I attach moderate weight to the suitability of the site to accommodate gypsies and travellers. The effect of the development on residential amenity and the potential for use of Previously Developed Land have a neutral effect on the Green Belt balance.
75. The best interests of the children who reside on the site weigh significantly in favour of allowing the appeal and granting planning permission. However, whilst the best interests of the children are a primary consideration and no other consideration is inherently more important, they are not a determinative factor.

76. The Framework establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development, such as the appeal scheme, is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Policy E of the PPTS states that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm.
77. The Framework makes it clear that the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the development must be clearly outweighed by other considerations for planning permission to be granted. In this case I find that although there are a number of matters which weigh significantly in favour of the appellant, the cumulative weight of these other considerations does not clearly outweigh the substantial harm arising to the Green Belt in combination with the IUD and loss of mature trees. Consequently, my initial conclusion is that the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist in this case.

Human Rights and the Best Interests of the Children

78. The occupiers of the caravans would be members of the Gypsy and Traveller community which is recognised as having special needs which are protected through positive obligations in terms of their human rights. Furthermore, if Appeals A and B are dismissed and the enforcement notices upheld as I have set out below, and in the absence of planning permission being granted in respect of Appeal C, the appellant and his family would lose their home.
79. This would be a serious interference with the rights of the appellant and his family under Article 8 of the Human Rights Act 1998 which is the right for respect for private and family life. However, Article 8 is a qualified right and the concept of proportionality is critical. Consequently, I must weigh up the relevant considerations relating to the appellant and his family's rights to enjoyment of family life and a home and the best interests of the children against the public interest, which in this case is the protection of the Green Belt.
80. I have concluded that the development would give rise to harm to the Green Belt which would not be clearly outweighed by the material considerations including the need for gypsy and traveller sites, the lack of alternative accommodation and the personal circumstances of the appellant. In particular given the effect on the openness of the Green Belt which would arise from the introduction of caravans and buildings on what was previously an undeveloped site, there are no planning conditions which would outweigh this harm.

Planning permission on a temporary and/or personal basis

81. The appellant made it clear that if I found a permanent planning permission could not be justified, he wished me to consider if a temporary and/or personal permission would be acceptable. Planning Practice Guidance (PPG) establishes that amongst other circumstances where a temporary permission may be appropriate are where it is expected that the planning circumstances will change in a particular way at the end of that period. In this case this could be a change to planning policy which would result in the appellant and his family having a lawful site to move to.

82. The Council anticipates that it will be in a position to adopt the emerging local plan in 2022. Although it was accepted that this would not necessarily resolve the unmet need for gypsy and traveller sites immediately, the adoption would be a step forward in resolving the issue if sites were allocated and a clear criterion based policy established for windfall sites. The Council considered that a two year temporary consent would be sufficient to allow for the policy circumstances to change and alternative sites to become available. Such a consent would expire around July 2023.
83. The appellant considered that the Council is taking an optimistic view of when the emerging local plan is likely to be adopted and considered that a 3 to 5 year consent would be more realistic.
84. I am not convinced that new lawful sites will start to come on stream in the district by July 2023. Although the Council has identified allocated sites, there is no evidence before me regarding land ownership, availability of services or any certainty that planning permission would be forthcoming for them. The appellant's arguments that the Council's emerging policy, which could facilitate some unlawful sites becoming lawful, would not address the needs of gypsies like the appellant who are new to the area also seem reasonable to me. Similarly, I was advised that a high proportion of the district is designated as Green Belt which would present the same issues for windfall sites as have arisen in this case.
85. A temporary consent would provide an end point at which the site would be returned to its previous condition and the harm which I have identified to the Green Belt would cease. However, throughout the duration of the consent the harmful effect, which I have detailed above would endure. I do not expect that there is a realistic prospect that an alternative lawful site would be available to the appellant before the end of the two years suggested by the Council or the three years which the appellant has suggested as a minimum. To that extent a temporary condition of this duration would not meet the test of being reasonable.
86. A temporary consent for 5 years, which has been suggested by the appellant, would be likely to be sufficient time for the planning policy situation to be resolved. Thus, it is possible that by July 2026 the appellant would be able to relocate to another site. Whilst the harm to the Green Belt would be moderated by the fact that it would be of limited duration, the harm would be apparent for a significant time period. Furthermore, the benefits to the appellant and his family in terms of having a stable base would also be reduced. The other matters in the balance would remain unchanged and, on that basis, the Green Belt harm would not be clearly outweighed by other considerations in this scenario either.
87. The day room building and stable have yet to be constructed. These would be permanent buildings and the PPG is clear that it is rarely reasonable to impose a condition which requires the demolition of a building which is intended to be permanent.
88. As an alternative to a temporary condition, I can extend the compliance period in respect of Appeals A and B which would reduce the disruptive effect which having to move in a short time period would have on the family. I have addressed this point below and concluded that an extension of the compliance period is appropriate in this case.

89. A personal consent limited to the appellant and his dependants would address the particular needs of the family, which I have identified as the specific healthcare needs of the appellant himself and the needs of two children who attend school and the child who will be attending the nursery. I have limited information about the duration of the healthcare needs of the appellant, but it is reasonable for me to assume that the educational needs of the youngest family member will remain for in excess of 10 years. In common with the effect of a temporary consent this would result in the continuation of harm to the Green Belt over an unacceptable period.
90. I conclude that granting permission on a temporary and/or personal basis does not change the Green Belt balance such that planning permission should be granted on either or both of these bases. This conclusion also does not change my view that dismissing the appeal and refusing planning permission is a necessary and proportionate response to the policy objective of the protection of the Green Belt. This consideration also addresses my duty to have regard to the Public Sector Equality Duty.

Conclusion on Appeal C

91. For the reasons set out above I conclude that Appeal C should be dismissed and planning permission, whether permanent or temporary ought not to be granted. This action would not unacceptably violate the family's human rights and the protection of the public interest cannot be achieved by means that are less interfering of their rights.

Ground (f) – Appeals A and B

92. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
93. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Notice One requires the use of the land for the stationing of caravans to cease, the removal of the hardstanding and other works to restore the site and Notice Two requires the removal of hardstanding and restoration of the natural topography. I therefore consider that the purpose of both notices is to remedy the breach of planning control.
94. The appellant's argument in relation to his appeals under ground (f) relates only to the reference in the notices to the removal of hardstanding from the site. He argues that as the hardstanding was present on the site when he acquired it he should not be required to remove it, although he accepts that the surface dressing should be removed. The Council considers that the requirements are proportionate and justified.
95. At the hearing the appellant confirmed that he had 'inherited' the hardstanding. He did not argue that the hardstanding was lawful or put forward any evidence to demonstrate why it should be regarded any differently from the other requirements which are necessary to remedy the breaches. Whilst I accept that the appellant did not lay at least some of the hardstanding which is present on

the site, he is now responsible for the site and the resolution of any unlawful development lies with him.

96. On this basis it has not been shown that there is a viable alternative to full compliance with the requirements of the notice or that these requirements exceed what is necessary. For these reasons both appeals fail on ground (f).

Ground (g) – Appeals A and B

97. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of four months in respect of Notice One and Notice Two is too short because there are no other sites for the appellant to move to.
98. The appellant thinks that a more reasonable compliance period would be twelve months. He also remarked at the hearing that a twelve month period would present uncertainty for one of his children who starts secondary school in September 2022.
99. On the other hand, the Council, supported by some interested parties, consider that four months is an appropriate compliance period given how quickly the site was set up for occupation by the appellant. Furthermore, the Council cite the fact that the appellant has carried out works which amount to intentional unauthorised development as counting against an extension of the compliance period and consider that the appellant should have used the time it has taken to determine the appeals to prepare an alternative plan in the event that his appeals fail.
100. The Council's reference to the time period since the enforcement notices have been served is not a reasonable basis for arguing that the compliance period of 4 months is maintained. This is because the appellant is entitled to assume success on any ground and the outcome of Appeal C may have led to the appellant being able to continue to occupy the site as a residential caravan site, albeit with some differences.
101. The evidence before me has established that there are currently no alternative sites available to the appellant. Although what is on the site and the subject of the notices does not accord with the plans submitted with the planning application and considered under Appeal C, it has a similar harmful effect on the Green Belt. This harmful effect will continue so long as the caravans and associated development are on the site and even taking into account other considerations, I have concluded that a temporary planning permission would not be appropriate in this case. It follows that any extension of the compliance period would need to be limited for the same reasons.
102. Taking into account the appellant's concerns regarding one of his children and her move to secondary school, in order to allow for her to start at the new school the compliance period would need to be extended to over 15 months. This would undermine the expediency of the Council issuing the notices. Furthermore, it is reasonable to assume that it would be disruptive for the child in question to start at her new school and then be removed from it if the family moved away from the area. As an alternative extending the compliance period to 13 months would allow time for the appellant to see if he could find an alternative site to move to and for the child to complete her time at the junior school. This would be a proportionate response in the interests of this child.

103. For the reasons given above I conclude that the periods for compliance with Notice One and Notice Two respectively fall short of what is reasonable. I shall vary both enforcement notices prior to upholding them. The appeals on ground (g) succeed to that extent.

Conclusions on Appeals A and B

104. For the reasons given above both appeals succeed in part on ground (g). I shall uphold the enforcement notices with a variation to each notice.

Sarah Dyer

Inspector

APPEARANCES

For the appellant:

Alan Masters Counsel for the appellant

Brian Woods WSPA

Simon O'Driscoll Appellant

For the Local Planning Authority:

Martin Firmstone Planning Enforcement Officer, Basildon District Council

Nina Johnson-Marshall Basildon District Council

Adeola Awoloda Basildon District Council

Interested Parties:

Councillor Terri Sargent

Mr and Mrs Inns Local residents

DOCUMENTS SUBMITTED DURING THE HEARING

Documents relating to confirmation of a Tree Preservation Order

Copy of Temporary Stop Notice dated 28 August 2020.