



Appeal Decisions

Date of Hearing 18 April (Virtual) and 20 July 2021

Site visit made on 20 July 2021

by Grahame Kean B.A. (Hons) Solicitor HCA

an Inspector appointed by the Secretary of State

Decision date: 13 January 2022

Appeal A: APP/V1505/C/18/3200138

Land to the West of Church Road, Pitsea, Basildon, Essex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr John Delaney against an enforcement notice issued by Basildon Council.
- The notice (Notice One) was issued on 14 March 2018.
- The breach of planning control as alleged in the notice is: without planning permission the unauthorised change in the use of the land for the stationing of residential used caravans and other portable structures together with the parking of motor vehicles.
- The requirements of the notice are:
 - (i) Stop using the land for residential purposes by removing all caravans and other portable structures from the land.
 - (ii) Cease using the land for the parking of motor vehicles by removing them from the land.
 - (iii) Dismantle and remove all other fencing and means of enclosure within the site.
 - (iv) Return the land to its former condition by levelling and cultivating with grass seed.
- The period for compliance with the requirements is:
 - (i) and (ii) 1 month after this notice takes effect.
 - (iii) 2 months after this notice takes effect.
 - (iv) 3 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Formal Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out on below in the Formal Decision.

Appeal B: APP/V1505/C/18/3200139

Land to the West of Church Road, Pitsea, Basildon, Essex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr John Delaney against an enforcement notice issued by Basildon Council.
 - The notice (Notice Two) was issued on 14 March 2018.
 - The breach of planning control as alleged in the notice is: without planning permission the unauthorised formation of hardstanding on the land.
 - The requirements of the notice are:
 - i) Break up the hardstanding and remove all resultant materials.
 - ii) Return the land to its former condition by levelling and cultivating with grass seed.
 - The period for compliance with the requirements is:
 - i) 2 months after this notice takes effect.
 - ii) 3 months after this notice takes effect.
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- The appeal is proceeding on the ground set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Formal Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out on below in the Formal Decision.

Appeal C: APP/V1505/W/18/3200137
Land Adjacent Church Road, Pitsea SS13 2HG

- 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 John Delaney against the decision of Basildon Council.
- The application Ref 17/01752/FULL, dated 8 December 2017, was refused by notice dated 14 March 2018.
- The development proposed is: change of use of land to residential for one Gypsy Traveller family. The site to contain, one static caravan, three touring caravans and parking for two vehicles with associated hardstanding, development and water treatment plant.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Preliminary matter

1. The hearing was in two parts, a session held virtually to consider mainly policy related matters, and a session held face to face at the Council offices to consider the circumstances of the appellant and his extended family, and related matters.

Appeal A on ground (a) and Appeal C

Main issues

2. The main issues are:
 - Whether, according to national and local policy the development is inappropriate development in the Green Belt (GB), including the effect the development would have on the openness of the Green Belt, and other GB purposes, and any other harm;
 - The effect of the development on the character and appearance of the area;
 - The effect of the development on living conditions of the occupants including future occupants with regard to the location and characteristics of the site;
 - Whether the development is intentional unauthorised development; and
 - Whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.
3. Included among such "other considerations" are: the gypsy status of the appellant and other occupants of the site, and their personal circumstances; whether the Council can demonstrate appropriate provision of gypsy and traveller sites, and the need for and availability of alternative accommodation.

4. During the hearing it became apparent that the Council now accepted that the appellant, taken with the family group to be considered in respect of these appeals, satisfied the definition of "traveller" for the purposes of the Planning Policy for Traveller Sites, August 2015 (PPTS).

Whether inappropriate development, and loss of openness

5. The site is in the GB as designated in the saved policies of the Basildon District Local Plan, 2007 (BDLP) and outside any area allocated for development. Saved Policy BAS GB1 confirms the boundaries of the GB and no other saved policy relates to the control of development in the GB.
6. The emerging local plan, the Revised Publication Local Plan 2014-2031 (RPLP) confirms that the appeal site should remain in the GB and outside any area allocated for development. Draft Policies GB1, GB2, and GB4 seek to protect the permanence and openness of the GB and would support development therein only in the exceptional circumstances set out in national policy. Where development is permitted it must maintain the GB's openness and must not conflict with the purposes for including land within it or harm its visual amenities.
7. The fundamental aim of Green Belt policy as set out in the National Planning Policy Framework (NPPF) is to prevent urban sprawl by keeping land permanently open. Its essential characteristics are its openness and permanence. In this context the PPTS states at paragraph 16 that traveller sites (temporary or permanent) in the GB are inappropriate development.
8. Inappropriate development is, by definition, harmful to the GB and should not be approved except in very special circumstances (paragraph 147, NPPF) and substantial weight should be given to that harm (paragraph 148). NPPF at paragraph 150 lists forms of development that are not inappropriate in the Green Belt, such as material changes in the use of land, provided they preserve its openness and do not conflict with the purposes of including land within it.
9. As to openness, the site was previously vacant and clearly, in considering openness as absence of development, structures or activity, the stationing of up to four caravans and would represent a loss of openness conflicting with the purposes of including the land within the GB. The amount of hardstanding (with reference to Appeal C) is considerable although it does not cause loss of openness in itself rather than facilitates the siting of the caravans, associated vehicles and domestic paraphernalia. Having regard to its previous state the development also encroaches upon the countryside in conflict with the purposes of including land in the GB.
10. In considering loss of openness due to the visual impact of the development, the site is virtually surrounded by and closely associated with an area of established development including the A13 to the south. A substantial row of trees mediates the impact of the development from the road. I am also mindful of the Council's recent approval of the hotel development close to the site, and which would cause significant loss of openness to this part of the GB. These factors mitigate the harm a good deal, considering also that the site is relatively small, in an edge of settlement location and intended for one extended family only.

11. I find that the development causes a loss of openness and conflicts with the purposes of including land in the GB and is inappropriate. Although limited, the overall harm to the GB should be accorded substantial weight against the appeals.

Character and appearance

12. The appeal site is close to the edge of the urban area that forms Pitsea, on the western side of Church Road and north of the A13, on a triangular shaped parcel of land. Church Road leads south to a crematorium and cemetery. The site was vacant and overgrown forming a verge between Church Road, densely vegetated on its western boundary that separates it from an open field with livestock. The western part of the site is owned by the Council, and hardcore has been deposited to access an existing dropped kerb, giving vehicular access.
13. The PPTS does not state as is suggested, that new traveller sites should not be located in the open countryside; paragraph 25 states that they should be very strictly limited away from existing settlements or outside areas allocated in the development plan. Sites in rural areas should respect the scale of, and not dominate, the nearest settled community, and avoid placing any undue pressure on the local infrastructure. PPTS (paragraph 25) states that sites in rural/semi-rural settings should not dominate the nearest settled community.
14. Nowhere do these policies intend that gypsy and traveller sites should be hidden from view. Surrounding properties are not uniform in style or form and are set back within landscaping. Such measures would not be inconsistent in this particular setting. The site is on the periphery of the Basildon and Pitsea urban centre, connected by development westward along London Road, is modest in scale, and would not dominate any part of the settled community.
15. Although the appellant's vans have white, shiny and reflective surfaces, I note there is a mobile home by the junction of Church Road and the access to the appeal site, whose white rendered side elevation is largely visible behind a brick and metal boundary. Adjacent to this home is a large plot on the corner of Church Road and London Road (B1464) containing a substantial brick built detached house with large front and rear gardens. The Council concedes that the impact of the development on the character of the area is muted by the A13 to the south and established residential development to the north.
16. To this I would add the recently approved hotel development on land in fairly close proximity to the appeal site for which permission was granted in 2015, also in the GB, and despite an officer report strongly objecting to it. An expert report on hotel accommodation concluded there would appear to be no overall need for the development at the present time, advising there were no very special circumstances to override the presumption against development in the GB.
17. The land is elevated but the Council also accepts that the site is well screened. In my view the combined visual impact of the vans and supporting paraphernalia is not a significant intrusion where it can be seen from outside the site and public vantage points, limited to views from the A13 prior to the erection of wooden fencing on the southern boundary. Although glimpsed for a short time while driving along this road, the site is essentially a strip of verge land of some 0.90 ha, in a vicinity where the open characteristics of the area

have already been compromised by surrounding development. Therefore I disagree that it is essential to preserve the site in an entirely open state.

18. On site I saw two static vans, one somewhat larger than the other and two tourer vans. There were also two portaloos and two vehicles. I was told the smaller static van would be replaced with a tourer and the tourer then occupied by the appellant's son would be replaced with another, more modern tourer.
19. I agree with the appellant that landscaping/screening within and around the edge of the site could be improved by additional planting to soften its general appearance and assimilate what can be seen of caravans on the site into their surroundings. On site I observed an extensive amount of hardcore deposited to form hardstanding areas. The appellant would agree to a site development condition that among other matters would seek to achieve an acceptable balance between hard and soft landscaping to satisfactorily assimilate the development into the surrounding landscape without unduly adverse impact. Such a condition would set out the general disposition of the vans and other structures to eliminate undesirable massing effects.
20. In this respect I find that the development would accord with BDLP Policy BE12 in that it would not materially harm the semi-rural character and appearance of the surrounding area, street scene or appear over-dominant. It would also comply with NPPF, paragraph 127 in that it would not unacceptably harm the character of the area.

Provision of sites, and circumstances of the appellant and family

21. The 2018 GTAA concluded the overall level of additional need for gypsy and traveller households meeting the planning definition is 54 pitches. Of these, 15 pitches were needed to meet current needs, 33 pitches were required for future needs, and an allowance of 6 pitches was been made for the borough's unknown households. There was a supply of 1 pitch arising from households moving away from the borough which resulted in a net need of 53 pitches.
22. The GTAA 2020 update included new sites and pitches granted planning permission or allowed on appeal since the baseline date for the GTAA 2018 Report. The assessment took the total need for households that met the planning definition to 85 pitches for Gypsies and Travellers, assuming a more up-to-date national average (approximately 30%) of the borough's unknown household needs that meet the planning definition.
23. The GTAA 2020 update report goes on to state that 15 pitches are allocated within the RPLP across 4 new sites. Draft Policy H3 anticipates that "appropriate" unauthorised sites in the GB occupied for at least 3 months (as of October 2018) might be regularised and permitted for use by 'travelling' Gypsies and Travellers subject to meeting design/location criteria in draft Policy H24. This would deliver 29 new pitches. In total the RPLP allocates a minimum of 44 pitches, leaving a potential shortfall of 41 pitches (previously 9 pitches) to be identified from alternative sources of supply.
24. The Inspector for the emerging Local Plan highlighted that the Council's provision for gypsy and traveller sites falls significantly short of the latest identified need. The Council's response to that Inspector's questions in January 2021 showed that the scale of need (85 pitches) could be alleviated by the supply of 15 pitches allocated in the local plan, a further 15 from capacity from

- households meeting the planning definition on unauthorised/temporary sites; and 10 pitches from “further intensification/expansion of existing sites”. The potential shortfall of 45 pitches would then be met by a combination of windfall growth, additional site allocations made through neighbourhood plans, and “broad locations for potential housing growth” (but these locations have constraints and are not specific development locations in the emerging plan).
25. The Secretary of State wrote to the Council on 23rd March 2018, concerned that it remained without an up-to-date local plan which for whatever reason remains the case. Although it may well be that the adoption process will be completed this year (2022) it remains to be seen whether the emerging plan will effectively address the significant shortfall between need and provision.
26. The initiatives set out are not fully developed. The PPTS sets out that to be “deliverable” as required by that national policy, sites must be available now, offer a suitable location for development, and be achievable with a realistic prospect that development will be delivered on the site in five years. It is uncertain whether the Council’s strategy as described will achieve the desired result. I also read that breaking down the scale of need into 5-year epochs until 2038, the Council’s 5-year need for 2019-23 is 43 pitches and the supply across new and existing sites is 40 pitches. This would still not demonstrate a supply of deliverable sites to provide 5 years’ worth of sites against its assessed need, as required by the PPTS. In addition the 4 new sites allocated are all private sites and 3 are in the GB. They would need to be subject to a proper planning process, assuming their inclusion in the adopted plan. I attach significant weight in favour of the appeals to the failure to identify deliverable pitches in accordance with the PPTS.
27. Moreover, of the potential sites identified and discussed at the hearing, none were available to the appellant and his family. It is accepted that they have nowhere else to live that would meet their accommodation needs. The lack of a suitable alternative accommodation site for the appellant’s family should be given significant weight in favour of the appeals.

Personal need and circumstances

28. The site was set up in 2017 after the appellant bought the land. The family had been living locally on the site of a friend but were asked to vacate that site and had nowhere else to go. The Council refused permission for reasons that included insufficient details as to whether the family met the definition of Traveller/Gypsies in the PPTS. However at the hearing the Council accepted that the relevant information had indeed been provided earlier and should have been addressed earlier. The upshot is that it is undisputed that the appellant and the family group are Irish Gypsies and satisfy the definition of “traveller” for purposes of PPTS.
29. Currently M and her children occupy the larger of two static caravans on the site and the appellant and his wife occupy the smaller van. The appellant’s son and daughter respectively occupy two tourer vans. The extended family thus consists of the appellant, his wife E, their son and daughter, aged 18 and 21, and E’s sister M and her four children, J aged 17, A aged 15, AN aged 14, and JA aged 9. The three youngest of M’s children attend school locally, save for A who has behavioural issues and whose needs are currently met by attending a school in Grays, travelling by train and accompanied by an adult or the eldest child. The youngest attends primary school close by the site.

30. The occupants of the site are registered with a GP locally at Dipple Medical Centre in Pitsea. E suffers from several health issues which are documented in the appellant's statement and not disputed. The lack of certainty over accommodation exacerbates these issues that include serious underlying health conditions. Treatment is ongoing every 3-4 weeks and provided by Dipple Medical Centre and Basildon Hospital. I agree that a permanent place to live would make consistent health care feasible. E and her children moved to be with the appellant's nuclear family about two years ago, from an untenable domestic situation which is documented in court papers relative to her ex-partner. The circumstances that gave rise to the need for her and her children to move from a settled base to a place of safety, through temporary habitations which culminated in their residence on the appeal site, are also undisputed. E is integrated into the wider family unit on the appeal site. It is desired that they be treated as a single household in these appeals.
31. I find it is in the best interests of the children of the family to maintain a stable ongoing education from a settled base. Further, the development permits the family to live together and enables them to provide support for each other, an acknowledged and important cultural aspect of the Gypsy and Traveller lifestyle. The site provides a stable base from which the occupants may access essential services such as education and healthcare. The overall benefits of the site's ability to afford a permanent and settled base to meet the needs of the extended family is a consideration to which I accord significant weight.

Intentional unauthorised development

32. On 31 August 2015 the government introduced a planning policy making intentional unauthorised development (IUD) a material consideration in the determination of planning applications and appeals. It was laid in the House of Commons on 1 December 2015 as a written ministerial statement (WMS). A concern of the Government was that there is no opportunity appropriately to limit or mitigate harm that has already taken place. The WMS refers to such development involving local planning authorities having to take expensive and time consuming enforcement action. The policy applies to all new planning applications and appeals received from 31 August 2015 and to the settled and the traveller community equally. Particular emphasis is placed on protecting GB land.
33. The IUD policy is a consideration in this appeal and the appellant accepts through his agent that the development is unauthorised and was intentional. The application the subject of appeal was made on 9 December 2017 apparently following the weekend that the encampment was established. I have found elsewhere in this decision that the appellant came onto the site having nowhere else to go to live that would be suitable in terms of the accommodation needs of himself and his young family.
34. Although the appellant's actions cannot gainsay the breach of policy they do affect the weight I attach to the harm caused. In terms of actual damage that could not otherwise have been mitigated there is no equivalent harm due to the loss of protected trees (as was the case with the Studland Avenue decisions¹ submitted in the hearing) and the ongoing harm by reason of loss of openness is limited. The IUD is a material consideration that weighs against the development but carries minor weight.

¹ Studland Avenue, APP/V1505/C/20/3260146/3260147; APP/V1505/W/20/3264465 dated 19 July 2021.

Other matters

35. It is widely accepted that there is a national shortage of authorised sites for Gypsies and Travellers. This has led to increasing numbers of unauthorised encampments and developments with the potential that has to create tensions between this demographic group and the settled community.
36. The PPTS at paragraph 13 states that traveller sites should be economically, socially, and environmentally sustainable; planning policies should promote peaceful and integrated co-existence; and promote access to appropriate health and educational services.
37. It is agreed the development is sustainable. It is small scale and within walking distance of the village with shops, a train station is close by and other necessary services and facilities. The settled community is relatively extensive in numerical terms and in area, and the pitch to be provided on the appeal site would be of minor significance in that this addition to the locality would not dominate the settled community.
38. The development has the potential to offer a settled base from which its occupants might access health and education facilities, and there is no reason to suppose that the viability of local services or infrastructure would be affected due to the development. The site is close to a primary school attended by one of the children, and the medical centre where the occupants are registered with a GP.
39. The site is capable of being integrated into the locality and I have been given no good reason why the family should not co-exist peacefully with the settled community. The objection letters have been considered, including from the chairman of the parish council that highlights several unlawful encampments and the concern that these may destabilise the balance of an existing mixed community. Good relationships between settled and travelling residents are likely to be fostered more whenever sites can be properly justified. The site is of a small scale and there are dwellings nearby which offers the opportunity for engagement on matters of common interest. I find that the development is capable of assisting in the promotion of peaceful and integrated co-existence.
40. The Council withdrew its objections on the grounds of unsatisfactory parking arrangements and access to the highway. Interested parties raised concerns in relation to this matter, however I note that the local highway authority for the area who were consulted on the proposal, had no concerns. The proposed access is shown on the block plan submitted with the application and I find that it provides for a suitable means of vehicular access and egress into and out of the site. I am satisfied that the development would comply with BDLP Policy BE12 in that it would not cause harm in terms of traffic danger or congestion.
41. I have considered two previous appeal decisions submitted by the parties.² The decision issued on 19 July 2021 upheld a refusal of permission for the stationing of caravans for residential occupation of land on Studland Avenue in the Council's area. It is of limited assistance in these appeals. There the Inspector concluded that the weight given to other considerations was not outweighed by the definitional harm to the Green Belt and a significantly harmful effect on the openness of the Green Belt, in combination with the IUD

² APP/V2635W/17/3180116 (The "Fakenham" decision) and APP/V1505/C/20/3260146/7 (The "Studland Avenue" decision)

which was accorded moderate weight, and loss of mature trees which was also accorded moderate weight due to the importance and contribution to the amenity of the area. In respect of the current proposals I have not found that the IUD should carry more than limited or minor weight, there is no equivalent harm due to the loss of protected trees and I have found that the visual harm by reason of loss of openness is minor. I have come to different conclusions based on materially different circumstances.

42. As far as concerns the Fakenham decision the highlighted passages I was asked to consider related to the wish of the wider family group in that case to be considered as a single group or household, and where the Inspector found that there was clear interdependency and close links between the various members such that they were part of a household that fell within the PTTS definition of gypsies and travellers. Whilst there are similarities I have come to my conclusion in relation to the particular factual matrix and circumstances of the appellant and the wider family members on the current appeal site.

The planning balance

43. The development contemplated is inappropriate development in the GB and the definitional harm caused by such development should under the NPPF attract substantial weight against the grant of planning permission. The use of the land as a caravan site and the associated works would not preserve the openness of the GB, however the loss of openness is not serious having regard to other surrounding development in place or permitted by the Council. Minor harm is caused in terms of loss of openness and encroachment but overall the harm to the GB still attracts substantial weight against the development.
44. IUD has occurred. I take into account that the family had no alternative than to occupy the site if they were not to stop by the roadside or set up an unauthorised encampment elsewhere. The weight attached to this is reduced in light of this factor and the fact that the development carried out on the site itself has been limited and an application made for planning permission shortly after setting up on site. IUD therefore attracts minor weight in this case.
45. The site's location is compliant with PPTS policies in that they do not prevent gypsy and traveller pitches in the countryside, especially where they are not too far from the edge of settlements. There is no presumption in these or NPPF policy that sites should not be located in rural areas, rather that in open countryside such development should be strictly limited. For this site, the impact of the development on the character of the area is considerably muted by the existence of the A13 to the south and established residential development in close proximity. It would comply with BDLP Policy BE12 in that it would not materially harm the semi-rural character and appearance of the surrounding area, street scene or appear over-dominant and also comply with similar aims set out in paragraph 127, NPPF.
46. Although not a brownfield site it is set well back from the road and has some screening which has taken hold. Further screening with native vegetation would ameliorate the minor adverse effect on visual amenity caused by glimpses of the caravans above the timber fencing. The single pitch would conveniently accommodate a static caravan and up to three tourers or alternatively two static vans and two tourers, and parking for two vehicles, together with landscaping/open space and appropriate boundary treatment. The scale of development would not interfere with a peaceful and integrated co-existence

- between occupiers of the site and the local community. The development would contribute to the local supply of pitches, for which there is clearly a significant need and would fulfil the Government's aims in paragraph 4 of PPTS to promote more private sites and reduce the number of unauthorised developments/encampments.
47. PPTS at Policy H, states that consideration should be given to existing levels of local need for sites, the availability of alternative accommodation for the applicants and their personal circumstances.
48. The Council's ability to demonstrate an adequate supply of specific deliverable sites sufficient to provide 5 years' worth of sites against its locally set targets is dependent on its strategy set forth in the draft local plan, not yet adopted. Adoption is not estimated to be before mid-2022 at the earliest but in reality it may be delayed for several months more. If the sites identified are included in the adopted version they are dependent on eventual planning applications and being approved on an individual basis by the Council. Only then could one class them as sites that were "deliverable" as required by the PPTS. There is no good reason to suppose that the appeal site would cause more harm to the GB than any which may be allocated that are also in the GB. Draft Policy H24 is a criteria-based policy to determine new applications for pitch provision in accordance with PPTS. This and the other draft policies therefore have limited weight, however overall and subject to appropriate conditions the development would meet the criteria as to design and location of pitches for gypsy and travellers.
49. There is an immediate need for more sites in this part of the Council's district. The planned provision does not assist the appellant and his family in their current circumstances who, it is not disputed, would be homeless were it not for their occupation of the site. The appellant has lived in caravans all his life and is justifiably averse to living in bricks and mortar accommodation. He and his family would expect that they could carry on an outdoor living lifestyle and I am satisfied that in this location no unacceptable impacts from noise and disturbance or conflict with the settled community need arise. I find that that the site is suitable to accommodate gypsies and travellers.
50. The NPPF makes it clear that the potential harm to the GB by reason of inappropriateness and any other harm due to the development must be clearly outweighed by other considerations for planning permission to be granted. Policy E of PPTS adds that traveller sites (temporary or permanent) in the GB are inappropriate development and subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the GB and any other harm so as to establish very special circumstances.
51. The personal circumstances of the appellant and the extended family weigh significantly in favour of allowing the appeal, particularly in respect of the best interests of the children who are attending school and being provided with stable habitation which includes the special educational provision for one of M's children, but also taking into account the long terms health needs of E.
52. In this case the considerations in favour of the development are sufficient in my opinion to clearly outweigh the harm caused to the GB, including but not exclusively so, the weight attached to personal circumstances and unmet need. In addition the site is small in scale and close to existing dwellings and has the

potential to promote peaceful and integrated co-existence with the settled community.

53. Overall the development would provide significant economic, social and environmental benefits for a gypsy and traveller family in accordance with the PPTS and NPPF. There are no saved policies in the adopted development plan that are relevant to control of development in the GB save BDLP Policy BE12 which the development would comply with in that it would not materially harm the character and appearance of the surrounding area. I find that very special circumstances exist to justify a permanent grant of planning permission. It is therefore unnecessary to consider the alternative submissions of the appellant for a permission for a limited period.
54. In light of my finding that planning permission should be granted, the rights of the appellant under the Human Rights Act 1998 do not require extensive consideration. Article 8 of the European Convention on Human Rights does imply the existence of a positive obligation to facilitate the gypsy way of life, and thus to consider the potential implications of the loss of a home in assessing personal circumstances of those whose Article 8 rights are engaged. The site provides a settled base to enable the family to live together as a group, where they are able to provide support to one another in furtherance of the gypsy way of life. Such general benefits add weight in favour of the development.
55. The Public Sector Equality Duty (PSED) as expressed in the Equality Act 2010 advocates the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
56. The appellant as an Irish Traveller has a protected characteristic for the purposes of the PSED. To refuse permission for the development when it is otherwise acceptable on its planning merits and having regard to the very special circumstances that obtain, would not foster good relations between the appellant and the settled community. This adds weight to my conclusion that the appeals should be allowed.

Conditions

57. A condition is required for certainty to align the development to the approved plans. It is also necessary to attach a condition limiting occupation to gypsies and travellers as defined in PPTS, as the appeal site is intended to be occupied by a traveller family and is justified by matters including the accommodation needs of such persons. It is also necessary to restrict the residential use to one pitch, and the numbers and types of caravans and vehicles, in order to protect the openness of the GB and in the interests of character and appearance.
58. The appealed application in Appeal C as understood to have been amended, was for one static caravan and three tourers. The deemed application under the enforcement appeal is for what was there when the notice was issued which was two static and two tourer vans. Whilst I cannot unilaterally amend the planning application by condition, I regard the preferred ultimate arrangement of one static van and three tourer vans to be within the scope of what may be permitted under s177(1)(a) of the Act and have worded the condition in that appeal to provide limited flexibility.

59. The development should be conditioned in the interests of the appearance and character of the site and its surroundings, and the living conditions of the occupants, to approval and implementation of a site development scheme to include landscaping, boundary treatment and layout and associated matters. If approval of the details is not obtained in a reasonable time as provided in the timetable set out in the condition, the use must cease.
60. Conditions are also needed to prevent the commercial activities and the stationing, parking or storage of vehicles over 3.5 tonnes, to protect local character and appearance, highway safety and living conditions.

Conclusion on Appeal A

61. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore fall to be considered.

Conclusion on Appeal C

62. For the reasons given above I conclude that the appeal should be allowed.

Appeal B on ground (a)

63. The reasons for issuing the notice are twofold: conflict with the NPPF on GB policy, and the intentional nature of the occupier's actions.
64. The hardstanding is operational development and inappropriate development in the GB causing definitional harm and harm to GB openness (principally by way of facilitating development thereon) and by encroachment into the countryside. The overall harm to the GB carries substantial weight.
65. The appellant's intention is to use the hardstanding for purposes associated with the use of land as a Gypsy caravan site and therefore the hardstanding proposal has clearly not been considered in isolation. I have found that planning permission should be granted for use of the land as a Gypsy caravan site, considering that the amount of hardstanding could be controlled by condition to achieve a satisfactory site layout including a suitable amenity area. Subject to such a condition the effect of the hardstanding on the character and appearance of the area would be acceptable as it would also be on the living conditions of the site's occupants. The very special circumstances required to justify the development exist here, and clearly outweigh the harm to the GB by reason of inappropriateness, and any other harm, including that the development is intentional unauthorised development as previously described.
66. Accordingly I will grant permission for the hardstanding subject to a site development condition that is similar to that to be attached to the other permissions. This will ensure that the impacts are consistent with what has been applied for and assessed. The condition is retrospective to ensure that all the hardstanding is removed if no acceptable layout is submitted to the Council and approved in a reasonable time.

Conclusion on Appeal B

67. For these reasons I conclude that the appeal should be allowed. The appeal on ground (g) does not therefore fall to be considered.

Formal Decisions

Appeal A

68. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of Land to the West of Church Road, Pitsea, Basildon, Essex for the stationing of residential used caravans and other portable structures together with the parking of motor vehicles subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

LP-01 (Location Plan) (dated September 2017)

BP-04 (Block Plan) (dated April 2018)

2. The residential use hereby permitted shall be carried out only by persons who meet the definition of Gypsy/Travellers contained in Annex 1 of Department for Communities & Local Government Planning Policy for Traveller Sites 2015 (or its equivalent in replacement national policy).
3. The residential use hereby permitted shall be restricted to the stationing of no more than four caravans of which no more than two shall be static caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended) at any time.
4. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
5. No commercial activities shall take place on the land, including the storage of materials.
6. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i. within 3 months of the date of this decision, details of: a) any external lighting on the boundary of and within the site; b) the internal layout of the site, including the siting of caravans, parking and amenity areas and waste and recyclable areas; c) means of enclosure; and d) tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities, shall have been submitted for the written approval of the local planning authority and the said scheme shall include timetables for implementation.
 - ii. if within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.
 - iii. if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. the approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal B

69. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the formation of hardstanding on Land to the West of Church Road, Pitsea, Basildon, Essex subject to the following condition:

1. The hardstanding hereby permitted shall be broken up and all resultant materials removed from the site and the land returned to its former condition by levelling and cultivating with grass seed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

i. within 3 months of the date of this decision, details of: a) any external lighting on the boundary of and within the site; b) the internal layout of the site, including the siting of caravans, hardstanding, parking and amenity areas and waste and recyclable areas; c) means of enclosure; and d) tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities, shall have been submitted for the written approval of the local planning authority and the said scheme shall include timetables for implementation.

ii. if within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.

iii. if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv. the approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal C

70. The appeal is allowed and planning permission is granted for change of use of land to residential for one Gypsy Traveller family. The site to contain, one static caravan, two touring caravans and parking for two vehicles with associated hardstanding, development and water treatment plant at Land Adjacent Church

Road, Pitsea SS13 2HG in accordance with the terms of the application, Ref 17/01752/FULL, dated 8 December 2017, subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - i. LP-01 (Location Plan) (dated September 2017)
 - ii. BP-04 (Block Plan) (dated April 2018)
2. The residential use hereby permitted shall be carried out only by persons who meet the definition of Gypsy/Travellers contained in Annex 1 of Department for Communities & Local Government Planning Policy for Traveller Sites 2015 (or its equivalent in replacement national policy).
3. The residential use hereby permitted shall be restricted to no more than the stationing of one mobile home and three touring caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended) at any time.
4. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
5. No commercial activities shall take place on the land, including the storage of materials.
6. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i. within 3 months of the date of this decision, details of: a) any external lighting on the boundary of and within the site; b) the internal layout of the site, including the siting of caravans, hardstanding, parking and amenity areas and waste and recyclable areas; c) means of enclosure; and d) tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities, shall have been submitted for the written approval of the local planning authority and the said schemes shall include timetables for implementation.
 - ii. if within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.
 - iii. if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- b. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.
- c. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the

operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

7. There shall be no additional hardstanding on the site other than as approved in condition 6 above.

Grahame Kean

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Joseph Jones	Appellant's Agent
Mr Delaney	Appellant
Mrs Delaney	Appellant's sister

FOR THE LOCAL PLANNING AUTHORITY:

Martin Firmstone	Senior Planning Enforcement Officer
Adeola Awolola	Planning Officer

INTERESTED PERSONS

Cllr Bernard Foster	Bowers Gifford & North Benfleet Parish Council
Christine Barlow	Clerk to Bowers Gifford & North Benfleet PC

Additional documents submitted at the hearing:

AD1	Supplemental conditions
AD2	Appeal decision APP/V2635W/17/3180116 (The "Fakenham" decision)
AD3	Appeal Decisions APP/V1505/C/20/3260146/7 (The "Studland Avenue" decision)