



Appeal Decisions

Inquiry Held on 25,27,28 & 29 July 2022

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 23 August 2022

Land South of Redlands, Hovefields Drive, Wickford, Essex SS12 9JD

Notice 1: Appeal Refs: APP/V1505/C/20/3264991, 3264992, 3265011, 3265012, 3265027, 3265049, 3265056, 3265064, 3265065, 3265076 & 3265077

- 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 the persons named in Appendix 1 against an enforcement notice issued by Basildon Borough Council.
 - The enforcement notice was issued on 4 December 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land for the storage of caravans.
 - The requirements of the notice are:
 - i. Cease the use of the land for the stationing of caravans for storage purposes.
 - ii. Remove the caravans from the land.
 - iii. Remove all fencing from the land, including all associated fixtures fittings and detritus therefrom.
 - iv. Remove all non-organic matter forming the hardstanding within the land from the land, including all associated detritus therefrom, restoring the level of the ground to its former natural topography.
 - The period for compliance with the requirements is 1 month.
 - The appeals are proceeding on the grounds set out in section 174(2)(a),(b),(c),(d),(e)&(g) of the Town and Country Planning Act 1990 as amended. The applications for planning permission deemed to have been made under section 177(5) of the Act as amended also fall to be considered.
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Notice 2: Appeal Refs: APP/V1505/C/20/3264996, 3264997, 3265013, 3265014, 3265028, 3265050, 3265057, 3265066, 3265067, 3265078 & 3265079

- 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 the persons named in Appendix 2 against an enforcement notice issued by Basildon Borough Council.
- The enforcement notice was issued on 4 December 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the material change in use of the land to the stationing of caravans for residential occupation.
- The requirements of the notice are:
 - i. Cease the use of the land for the stationing of caravans for residential occupation purposes.
 - ii. Remove the caravans from the land.
 - iii. Remove all fencing from the land, including all associated fixtures fittings and detritus therefrom.
 - iv. Remove all non-organic matter forming the hardstanding within the land from the land, including all associated detritus therefrom, restoring the level of the ground

to its former natural topography.

- The period for compliance with the requirements is 1 month.
 - The appeals are proceeding on the grounds set out in section 174(2)(a),(b),(c),(d),(e) &(g) of the Town and Country Planning Act 1990 as amended. The applications for planning permission deemed to have been made under section 177(5) of the Act as amended also fall to be considered.
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Notice 3: Appeal Refs: APP/V1505/C/20/3264998, 3264999, 3265015, 3265016, 3265029, 3265051, 3265058, 3265068, 3265069, 3265081 & 3265082

- 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 the persons named in Appendix 3 against an enforcement notice issued by Basildon Borough Council.
 - The enforcement notice was issued on 29 November 2020.
 - The breach of planning control as alleged in the notice is:
 - i. Without planning permission, operational development consisting of the importation of hard-core, scalplings and associated material, the levelling of imported material.
 - ii. Without planning permission, operational development consisting of the laying of additional area of hardstanding, creation of roadways, access routes.
 - iii. Without planning permission, operational development consisting of the creation of subdivided plots by way of the erection of fence posts, fence boards and fencing.
 - The requirements of the notice are:
 - i. Break up all hardstanding, and remove from the land all resultant debris.
 - ii. Restore the level of the land to its former natural topography.
 - iii. Remove from the land all fence posts, panels and fencing.
 - The period for compliance with the requirements is 1 month.
 - The appeals are proceeding on the grounds set out in section 174(2)(b),(c),(d),(e)&(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

Notice 1

1. The enforcement notice is quashed.

Notice 2

2. The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Notice 3

3. The enforcement notice is quashed.

Application for Costs

4. At the Inquiry Basildon Borough Council made an application for costs against the appellants. This application is the subject of a separate Decision. Prior to the Inquiry a written application for costs was made by the appellants against Basildon Borough Council. This was withdrawn during the Inquiry.

Preliminary and Procedural Matters

5. A Pre-Inquiry Meeting ('PIM') was held virtually on 25 January 2022 attended by representatives of the Council and the appellants' agent. A series of procedural matters were discussed including clarification of the grounds of appeal against each enforcement notice and the submission of documents. I made it clear that I shall not be considering within these decisions the merits of a stop notice issued by the Council on 4 December 2020 under section 183 of the 1990 Act prohibiting the use of the land for the stationing of caravans for residential occupation, or any related legal proceedings. All such matters fall outside the scope of these decisions and have no bearing on my findings. The same applies to complaints to the Local Government Ombudsman and allegations of misfeasance. I reiterate that position here.
6. Both parties have made me aware of the history of the site and legal action taken by the Council which has escalated to the point of custodial sentences being imposed against some individuals. Indeed, copies of judgments, orders and transcripts form part of the bundle of documents presented to the Inquiry. Aside from providing some information on personal circumstances and potential relevance to the issue of intentional unauthorised development, none of this background influences my findings on planning matters under section 174.
7. Prior to the Inquiry, the appellants' agent sought to submit 'rebuttal' evidence in nine emails. When the nature of this evidence was queried on my behalf, the agent referred to a long standing complaint going through the Council's complaints process. He suggested that: *"All that the rebuttals do is provide evidence that Basildon needs the equivalent of a Criminal Case Review Commission to correct acts of its private police force."* This is clearly outside the scope of an enforcement notice appeal and forms no part of my consideration.
8. I describe the enforcement notices as Notices 1, 2 and 3. Notices 1 and 2 concern the use of the land and Notice 3 is directed towards operations. Notice 3 was in fact issued first but as Notices 1 and 2 are endorsed 'Notice One' and 'Notice Two', respectively, I have used the same numbering to avoid confusion.
9. The appellants describe the appeal site as made up of various plots numbered Plots 1 to 11. I will use the same terminology and numbering. It was established at the PIM that there is no separate Plot 2 which is in the same ownership as Plot 1. Appeals were brought by those interested in nine of the plots being, Plots 1,3,4,5,7,8,9,10 and 11.
10. When the Inquiry opened there were a total of 39 appeals requiring determination made up of 13 appeals against each of the three enforcement notices. During opening announcements, the appellants' agent confirmed withdrawal of the appeals against all three enforcement notices made by Mr Charlie Anderson of Plot 1 (Appeal refs: APP/V1505/C/20/3265043, 3265044 and 3265045) and by Mr Freddie Anderson of Plot 4 (Appeal refs: APP/V1505/C/20/3265034, 3265036 and 3265037). This was subsequently confirmed in writing. There remain 33 appeals.
11. Arguments raised under ground (b) against Notice 2 that planning permission exists for the stationing of residential caravans more properly fall to be considered under ground (c). Other arguments concerning the validity and

effect of the notices are raised under ground (b) which is often used for such arguments as there is no ground of appeal applicable for such arguments. These matters are addressed at the outset bearing in mind that I also have a duty to ensure the notices are in order.

12. Whilst the box was ticked in all the Appeal Forms against Notices 1 and 2 to indicate a case was being brought on ground (f), it was confirmed at the PIM that the ground (f) appeals concern only the hardstanding in Notice 3 and the appeal brought by Ms Foley (Plot 11). There are no ground (f) appeals against Notices 1 and 2. On day 2 of the Inquiry, the appellants' agent announced the withdrawal of the ground (f) appeal on behalf of Ms Foley. In consequence there are no appeals on ground (f) outstanding.
13. I highlighted at the PIM that no details had been outlined by the appellants of their case under ground (d). Despite being given opportunity to provide details, no particulars emerged nor was any evidence included within the ten proofs of evidence submitted by the appellants' agent of any development having gained immunity from enforcement action. At the Inquiry the appellants agent stated that grounds (c) and (d) had effectively merged. Clearly, they are different grounds of appeal but for completeness I consider the case on both grounds.
14. In the days leading up to the Inquiry, the appellants' agent made comments in email exchanges with the Council which indicated a serious risk to personal safety if its Officers were to enter the appeal site. Having reviewed the position, the Planning Inspectorate decided to convert the Inquiry to a virtual event, noting that a virtual PIM had already taken place successfully. No objection to this change of procedure was made by either party.
15. For the same reasons I have not conducted a physical site inspection. The documents before the Inquiry included numerous photographs, aerial images, and maps. The appellants were also invited to submit further photographs if they considered it necessary to aid my understanding of the appeal site and its surroundings but no such further material was supplied. I am content that I can make my findings on the information before me. Neither party requested that a site inspection be conducted before or during the Inquiry or raised any concerns about me proceeding to decision without having inspected the site.
16. The Inquiry was live streamed by the Council on its YouTube channel except for the evidence given by Mr T Cleary where sensitive personal information was divulged. Mr Cleary was the only appellant who attended the Inquiry. However, all the appellants were professionally represented throughout by their agent who informed the Inquiry that they were all watching and would let him know if they wished to speak. Throughout the Inquiry I checked if anyone else wished to contribute.
17. Witness evidence to the Inquiry was given under sworn affirmation. The local ward member, Councillor Jeffrey, did not wish to give oral evidence but requested that his written comments be read out by a Council Officer. I accommodated this request with the agreement of the appellants' agent who was acting as their advocate. As the councillor was not cross-examined, his representations carry less weight than if tested under affirmation.
18. Due to the unavailability of the Council's advocate, the Inquiry did not sit on Tuesday 26 July 2022. To ensure there was sufficient time for all evidence to

be heard during the space of the week, the Inquiry opened a day earlier than originally scheduled on Monday 25 July 2022 with the agreement of all parties. The public notices provided the correct dates.

19. Grounds (b),(c),(d) and (e) are known as 'legal' grounds of appeal where the onus of proof rests upon the appellants. The test of the evidence is the balance of probabilities.
20. After the issue of the enforcement notices, the National Planning Policy Framework ('the Framework') was revised on 20 July 2021. This officially replaced the previous version published in February 2019. The parties had opportunity to address the revised Framework in their ground (a) submissions pertinent to Notices 1 and 2. It is the revised Framework which now applies.
21. The draft Basildon Local Plan was withdrawn by the Council on 3 March 2022. Therefore, all references within the Notices to emerging local plan policies are obsolete and shall be disregarded.
22. A core bundle of 35 documents was compiled by the Council for the Inquiry. The appellants' agent did not object to the inclusion of any of the documents but had not approved the bundle on the basis that other documents should also be included, as appended to his proofs of evidence.

Planning obligation

23. A discussion took place on the planning conditions which might be appropriate to impose should the appeals succeed on ground (a) and planning permission is granted. During this session it emerged that the Council would require a financial contribution towards strategic mitigation measures to address adverse impacts on birds of the Essex coast and their habitats associated with new residential development. In this case, 11 new residential pitches.
24. The requirement for a financial contribution would arise because the appeal site falls within the Zone of Influence for the Essex Coastal Recreational Avoidance and Mitigation Strategy but not within, or directly adjacent to, any Special Protection Areas or Ramsar¹ sites. The Council has adopted the Essex Coast Recreational Disturbance and Mitigation Strategy Supplementary Planning Document, May 2020 which provides for payment to be secured by way of a planning obligation deed made under section 106 of the 1990 Act.
25. None of this was identified in the reasons for issuing the enforcement notices or mentioned by the Council at any previous time in the course of the appeal. Nevertheless, the appellants accepted that payment would be triggered and agreed to complete and submit a unilateral undertaking. The Council provided its standard template for that purpose. Clearly, it was impractical to expect completion of the deed to be achieved within the short timescale remaining. I therefore closed the Inquiry having set a timetable for submission of the legal deed and comments by the Council thereon. The parties were made aware both orally at the Inquiry (and subsequently confirmed in writing) that I would proceed to decision if the timetable was not adhered to.
26. No completed undertaking was received as the parties disagreed upon who could be signatories. The Council relies upon photocopies of signed and dated

¹ Wetland of international importance designated under the Ramsar Convention 1979.

TP1 transfer forms from Mr William Anderson of individual plots within the site to some of the appellants. It considers that all persons who acquired plots on the appeal site should be signatories. The agent advised that this could not be achieved and queried why Mr Anderson could not sign. To find a way forward, the Council offered to accept signature by one transferee provided the monies payable under the deed are paid up front.

27. Mr Anderson remains the current registered proprietor at H.M. Land Registry as the transfers of land by him have not been registered. The transferees may have an equitable interest in the land, as acknowledged by Counsel for the Council, but they do not have a legal interest if the registration is incomplete.
28. Under section 106 of the 1990 Act any person interested in land can enter into a planning obligation. The agent indicated at the Inquiry that Mr W Anderson would be willing to sign the deed. It is unclear why the Council would not accept a completed deed from Mr W Anderson in the same terms offered to the transferees when he appears able to bind the legal estate.
29. As the appropriate authority, I have a duty to ensure that the compensatory measures are secured where required. Given my decision not to grant permission on ground (a) for other reasons, the financial contribution has not become due. That being so, I make no finding on the omission of the planning obligation deed.

New evidence

30. During closing submissions, the appellants agent referred to matters not previously before the Inquiry in terms of legal advice from Cornerstone Chambers and regarding 'previously developed land'. Having alerted the appellants' agent to this, he acknowledged that they were new points and requested that paragraphs 14 and 39 of his written closing statement be struck out rather than adjourn and re-open evidence to hear those matters.

The Enforcement Notices

Whether the notices have effect

31. Whilst suggesting it is not a nullity argument, the appellants claim that the notices are of no effect due to a lack of authority or they otherwise cease to exist by reason of flawed procedures.
32. Where a notice is a nullity, it cannot be corrected because it is of no effect. It is as though the notice does not exist. That differs from a notice which is not null but contains defects. Provided a notice is not null, section 176(1) of the 1990 Act provides Inspectors with wide powers of correction subject to there being no injustice to either party. If injustice would arise by correcting defects, then in that scenario, a notice would be invalid.
33. Under section 172(1) of the 1990 Act, the local planning authority may issue a notice where it appears to them— (a) that there has been a breach of planning control; and (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
34. The appellants assert that the Council had not secured the necessary committee approval prior to issue of the enforcement notices. They claim that

- authority was only secured to issue one change of use notice, not both.
35. A notice is only a nullity if a defect is evident on the face of the document. Whether the Council had secured the required delegations when the notices were issued does not fall within the scope of a nullity argument, as per *Beg and Others v Luton BC* [2017] EWHC 3435 (Admin). The appellants' agent was unable to direct me to any other legal authority that would indicate otherwise.
36. There is no jurisdiction for an Inspector to deal with submissions as to whether the Council exceeded its powers in issuing the notices. That would be a matter for the courts. It follows that any procedural flaw would be outside the scope of this appeal. As it happens, the notices were signed by the Head of Planning and the Council was able to produce a copy of each delegated report seeking authorisation for enforcement action in respect of all three notices. Councillor Brown as Chair of the Planning Committee was consulted and agreed enforcement action in emails on 29 November 2020 and 3 December 2020.
37. Any challenge as to whether it was 'expedient' for the Council to issue an enforcement notice in the first place similarly must be pursued by way of judicial review. Inspectors have no jurisdiction to determine whether a Council complied with section 172, as per *Britannia Assets v SSCLG & Medway Council* [2011] EWHC 1908 (Admin).
38. The appellants submit that the copies of the enforcement notices served upon them are not the same as those registered on the Council's register of enforcement and stop notices which it is required to keep under section 188 of the 1990 Act and to be available for public inspection. According to the appellants, the notices served "cease to exist".
39. The Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out the information that the 'enforcement register' kept under section 188 must contain. For enforcement notices this includes the address of the land to which the notice relates or a plan by reference to which its situation can be obtained. The Council's approach has been to identify the land by giving northing and easting co-ordinates for the land affected along with a description of the land taken from the notice. It accepts that the northing and easting co-ordinates written in its public register for these notices were originally wrong. The appellants also claim that all the notices give the wrong address.
40. The provisions of section 173 of the Act along with The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 set out the matters to be specified in an enforcement notice. Regulation 4(c) requires the notice to specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise.
41. There is no requirement for an enforcement notice to be accompanied by a plan so long as the precise boundaries of the land enforced against are specified. The area of land enforced against and shown on the enforcement notice plans is the same in Notices 1 and 2. The eastern and northern boundaries differ in Notice 3 (which was issued first) and is subject to a request by the Council for correction. Nevertheless, it is undisputed that the land in all the notices encompasses the area which was sub-divided and used as a residential caravan site by the appellants with facilitating operations.

42. In essence, the point being made is that the easting and northing co-ordinate numbers listed in the public register held under section 188 would be for another piece of land albeit the address also appears. What matters for the purposes of these appeals is the content of the notices issued and served.
43. Despite differences in the boundaries marked on the plan for Notice 3, all show the surrounding plots with buildings and other features identified, including the A127 Southend Arterial Road running parallel with one boundary. There is no question that the appellants were misled by the wrong co-ordinates being on the public register. When I enquired of the appellants' agent whether the appellants could identify the land enforced against from the copies served, the reply given was "*Of course they could.*"
44. The appellants knew exactly what land the notices were directed at. In all the served notices, the land is described as 'Land south of Redlands, Hovefields Drive, Wickford.' The property known as 'Redlands' lies opposite on the other side of Hovefields Drive and to the north of the appeal site (as shown on all the enforcement notice plans). 'Redlands' is marked up on the maps. I see nothing wrong or misleading in the address used. It accurately identifies the location of the appeal site which can also be seen on the accompanying plan.
45. The appellants contend that the Council only had power to vary the requirements of the notice and they should have withdrawn and re-issued the notices. The failure to do so, they say, means that the notices were issued twice and the registered ones take precedence.
46. The key point here is the sworn evidence of Council Officers that only one of each notice was issued and copies of those notices were the ones served.
47. At the Inquiry the agent cited the presumption of regularity and the judgment in *Trevelyan v SSETR [2002] EWCA Civ 266*. The presumption of regularity is a common law maxim that all things are presumed to be done correctly until the contrary is proved. '*Trevelyan*' is an example of the operation of the presumption. It was a public rights of way case where it was held that in the absence of evidence to the contrary, the Secretary of State or an Inspector acting on his behalf, should assume that a right of way marked on a definitive map did in fact exist.
48. It is unclear quite how the maxim assists the appellants. The appellants' agent asserts that I must take the register as correct and definitive unless the Council can prove that it is wrong. Yet, the appellants were served with a copy of the notices on which the Council rely. The copies served have the correct 'north' co-ordinate on the plan. The appeals are lodged against the notices, as served. The notices do not depend upon registration under section 188 in order to take effect. It is incorrect that the register supersedes the notices served.
49. Ultimately, if the public register is wrong or not up-to-date, that is an entirely separate matter which falls outside the scope of these appeals under section 174 of the Act. It is not for me to decide whether there has been any failure to comply with the statutory requirements within section 188, as so invited by the appellants. They are different issues.
50. Arguments that the boundaries are shown incorrectly in Notice 3 may make the notice defective (and I come onto this) but it does not make the notice null.

51. As stated by the appellants' agent, it would have been helpful had the notices been more explicit than referring to 'policies contained within Chapter 12 and 13 of the National Planning Policy Framework', but no issue on this is taken. Reference is made in each notice to Basildon Local Plan Policy BAS GBA1 as the relevant adopted policy, fulfilling the requirement within paragraph 4(b) ENAR to cite the policies and proposals in the development plan which are relevant to the decision to issue the notice.
52. Under my remit, I find no cause to conclude that the notices are a nullity or otherwise fail to take effect.

Notice 1

53. The Council confirmed at the Inquiry that Notices 1 and 2 were issued in the alternative. It was seeking to cover all bases by enforcing against the storage of caravans in Notice 1 in case the residential use of the caravans could not be shown as per Notice 2. The Council accepts that the notices are mutually exclusive. On the first afternoon of the Inquiry the Council advised that it was satisfied that the real mischief is the residential use of the land as a caravan site. It was announced to the Inquiry that the Council no longer wished to pursue Notice 1 although it declined to formally withdraw the notice because authority to do so had not been secured under its constitution. I am invited instead to quash Notice 1.
54. In light of this announcement, no further evidence was heard on Notice 1. Plainly, both notices cannot be right when each alleges a different single primary use across the whole of the same site. Notice 2 is the notice upon which the Council wishes to rely and I shall exercise my powers to quash Notice 1. It follows that none of the grounds of appeal in relation to Notice 1, or the application for planning permission deemed to have been made under section 177(5) of the 1990 Act, fall to be considered.

Notice 3

55. Pursuant to section 55(1) of the 1990 Act, "development" means "... the carrying out of building, engineering, mining or other operations, in, on, over or under land, or the making of any material change in the use of any buildings or other land."
56. The first allegation in Notice 3 is directed at unauthorised '*operational development consisting of the importation of hard-core, scalpings and associated material, the levelling of imported material*'. I queried with the Council whether 'importation' amounts to an act of operational development. In addition, there is no mention of the hardcore, scalpings and associated material in the requirements. The allegation and requirements should match.
57. Following a discussion led by myself at the start of the Inquiry on the drafting of the notices, the Council requested that the word 'importation' be substituted with the word 'laying' to more accurately reflect the mischief with which the Council is concerned. The Council also requested the addition of the words 'hardcore' etc within the requirements. The appellants agent opposed the amendments.
58. Having re-considered the position, the Council subsequently requested deletion of the first allegation altogether meaning that no amendment would be needed

to the requirements. The Council is satisfied that the second allegation, which is directed at the laying of hardstanding and the creation of roadways and access routes, adequately addresses the unauthorised operations.

59. There would be no injustice to either party in removing the first allegation.

However, other corrections would be needed.

60. The third allegation in Notice 3 refers to 'operational development consisting of the creation of sub-divided plots...'. The sub-division of the land may be the outcome but it does not, in itself, comprise operational development. It is the erection of the fencing which amounts to operations. In response, the Council invited me to re-order the wording to place emphasis on the erection of fencing as the unauthorised act of development. Such amendment is unlikely to cause injustice to either party.

61. Similarly, minor typographical errors can be corrected without injustice and the erroneous reference to a 'use' of the land in the reason for issuing the notice rather than 'operations'. Other corrections sought are more significant.

62. The second allegation refers to the laying of an '**additional** area of *hardstanding*' whereas the corresponding requirement is to break and remove '**all** *hardstanding*'. At the Inquiry, the Council maintained that the word 'additional' is superfluous and should be deleted as there was no existing hardstanding. Again, the appellants agent objected to the requested correction.

63. As drafted, the allegation suggests the presence of some hardstanding which has been added to, albeit unclear where the 'additional' area might be. The requirement appears to be wider than the allegation by requiring removal of all hardstanding. There is inconsistency between the allegation and requirement which would need resolution for clarity. In correcting the allegation, it potentially widens the scope of the notice. Yet, if it is left uncorrected then the notice is uncertain. Either way injustice could arise.

64. Another issue concerns the enforcement notice plan for Notice 3 which differs from those attached to Notices 1 and 2. Having obtained further information, the Council accepts that Notice 3 does not accurately reflect the site boundaries which require correction in line with the other notices. This entails removal of a roughly square shaped parcel of land in the top north-eastern corner of the appeal site. This belongs to two separate landowners who were not served with Notice 3 and have not appealed. Removing this area from the appeal site would not result in injustice to either party. Indeed, prejudice would arise to third parties if it remained.

65. However, to correctly identify the site boundaries would involve adding a long triangular shaped strip along the eastern boundary adjacent to Plots 7 to 11. Whilst this additional strip was occupied by the appellants of those plots, it is not a minor or inconsequential tweak to the boundary. A correction would widen the scope of the notice.

66. According to the appellants agent, this was one a number of errors identified with Notice 3 which prompted them to argue that the notice is defective and which is why they did not pay the fee to pursue a ground (a) appeal. The Council argued that no injustice would be caused to the appellants who were

- unlikely to have been influenced in their decision not to plead ground (a) based upon errors in the notice. It would have been a 'high risk strategy' if so.
67. To my mind, there are other arguments that the appellants may have wished to run if the accompanying plan had been correctly drawn with the inclusion of the additional land along the eastern boundary. It would make the notice more onerous as there is hard surfacing and fencing within that area which is not caught by the issued notice.
68. I have considered whether to simply exclude the northern corner which is in third party ownership and where unauthorised activity is not alleged. However, this would still leave the unsatisfactory situation of part of the plots being omitted from the notice.
69. For the reasons given above, I conclude that Notice 3 does not specify with sufficient clarity the alleged breach of planning control or the land enforced against. It is not open to me to correct the error under section 176(1)(a) of the 1990 Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
70. As it is, Notice 3 achieves no purpose beyond that covered by Notice 2 which contains requirements to remove all fencing, hardstanding and restoration of the land to its former natural topography. In evidence, the Council's Head of Planning confirmed that there is no development attacked by Notice 3 which is not required to be removed by Notice 2. There is no reason why a local planning authority should not issue separate notices for unauthorised uses and operations. In this instance the requirements are duplicated.
71. Notice 2 can properly require the removal of buildings or works for the purposes of remedying the breach, as per Section 173(5) of the Act. It is settled law that a notice directed at a material change of use can require the removal of facilitating operational development even if not mentioned in the allegation. The facilitating works included in the change of use notice (Notice 2) are the same as those in Notice 3 which is solely directed at operations.

The grounds of appeal

72. Given my findings above, there remains only one enforcement notice to consider, Notice 2, which attacks the material change in use of the land to the stationing of caravans for residential occupation. The appeals are made on grounds (a),(b),(c),(d),(e) and (g).

Notice 2 - ground (e)

73. Ground (e) concerns whether a copy of the enforcement notice was properly served as required by section 172 of the 1990 Act.
74. Section 172(2) requires that a copy of an enforcement notice shall be served—
(a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
75. Thus, a notice must be served on all owners, occupiers, and others with an interest in land likely to be materially affected by it. The term 'owner' is defined

- within section 336 but 'occupier' is not. Caravan dwellers are usually regarded as 'occupiers' where they have been on site for some time.
76. The service of the notice must take place— (a) not more than 28 days after its date of issue; and (b) not less than 28 days before the date specified in it as the date on which it is to take effect (section 172(3)).
77. Council Officers attended the site on 29 November 2020 to serve Notice 3 and returned on 4 December 2020 to serve Notices 1 and 2.
78. The appellants claim that an occupier of Plot 6, Mr Hughes, was not served with copies of the notices as required by section 172. For that reason, there is no appeal from anyone interested in Plot 6.
79. In the agent's table of appellants, he originally listed Ms Foley as the appellant for Plots 6 and 11. The current registered proprietor at H.M. Land Registry for the entire site is Mr William Anderson, who owned the land from September 2014. The Council has produced copies of 'TP1' transfer forms supplied by Mr William Anderson indicating that he disposed of the appeal site as 11 separate plots on 27 November 2020. The completed and signed 'TP1' form for Plot 6 indicates that Mr Anderson sold the land to Ms Foley in November 2020 albeit the land registration remains incomplete.
80. In evidence, the appellants' agent cast doubt upon the registrations ever being completed because the transfers included part of the access road belonging to a Mr Casey who he claimed should also have been served. Mr Casey had been served with Notice 3 when his adjoining land was erroneously included on the plan. During the Inquiry, an undated aerial image was produced on which the appellants' agent had outlined in thick red line the land belonging to Mr Casey in an attempt to demonstrate that he owns a section of the access. This has not been plotted with any technical precision as the agent acknowledged under cross examination. It carries little weight as evidence. I further note that at no point has Mr Casey come forward to claim that his land is affected by Notice 2.
81. The certificate of service signed by two Council Officers certifies that Ms Foley for Plot 6 was served with the two enforcement notices (Notices 1 and 2) by depositing the notices on the land at the entrance to the site along with site notices. In addition, the notices were served in the same way on the owner(s)/occupier(s) of each plot, including Plot 6. The notices were attached to wooden stakes and hammered into the ground at the edge of the site. Copies were also sent by first class recorded delivery post to Ms Foley.
82. When I asked the appellants' agent about Mr Hughes' interest in Plot 6, he was unable to tell me anything about when Mr Hughes had been in occupation. He had "*Not the faintest idea when Mr Hughes purchased Plot 6*" but "*I presume it was November or December 2020*". The agent went on to say that Mr Hughes did not live on the site but at another location. He claimed that Ms Foley did not live at the site either when the notices were issued and lived elsewhere on Hovefields although she put her horses on Plot 11.
83. There is no evidence beyond mere supposition to support the agent's contention that Mr Hughes was either an owner or occupier of part of the appeal site at the time of issue of the enforcement notices. By his own admission he has no idea when Mr Hughes occupied or acquired the site. The

ground of appeal is lacking in any form of support.

84. Even if Mr Hughes was an owner or occupier, section 329(2) of the Act allows a person to be duly served by addressing the notice to the occupier either by name or by the description "the owner" or the case may be "the occupier". It can be sent by registered letter/recorded delivery, delivered to some persons on the premises or affixed conspicuously to some object on those premises.
85. Given that the change of use notices were served upon the owner(s)/ occupier(s) of Plot 6 by affixation of the notices at the entrance to the appeal site, effective service would have been achieved in any event. Affixation of the notices in this way would similarly deem service upon Mr Casey, if it so happens that a thin strip of the access falls within his ownership.
86. The appeals on ground (e) fail.

Notice 2 - ground (b)

87. This ground is that those matters alleged in the notice have not occurred. It was pleaded in the context of operations on Plot 11 and Notice 3 which shall be quashed.
88. It is undisputed that the appeal site was in use for the stationing of caravans for residential purposes at the time of issue of Notice 2. Thus, I find as a matter of fact that those matters, as alleged, have occurred.
89. It follows that the appeals on ground (b) are bound to fail.

Notice 2 - ground (c)

90. This ground of appeal is that the matters alleged do not constitute a breach of planning control. In essence the appellants must demonstrate that development has not occurred for the purposes of section 55, or that planning permission is granted for the development enforced against.
91. The thrust of the appellants' argument is that unconditional planning permission exists by operation of section 173(11) of the 1990 Act. The argument advanced is that enforcement notices were issued in 2004 which remain in the enforcement and stop register. The appellants argue that a 2004 notice was stated to take effect within a period of less than the requisite 28 days and so the requirements failed to take effect. The appellants say that planning permission is granted due to the fact the notice is in the public register held under section 188 of the Act.
92. That is plainly a misinterpretation and mis-application of section 173(11).
93. Section 173(11) of the 1990 Act provides that where an enforcement notice could have required any buildings or works to be removed or any activity to cease, but does not do so, then provided that all other requirements of the notice have been complied with, planning permission shall be treated as having been granted in respect of development consisting of the construction of the buildings, works or activities by virtue of section 73A.
94. In other words, section 173(11) applies when an enforcement notice alleges that buildings, works or activities have taken place in breach of planning control but fails to require all the buildings, works or activities, as the case may

- be, to be removed or cease. Once the notice takes effect and there is compliance with all other requirements then, at that point, section 173(11) bites and unconditional planning permission is treated as having been granted for the building, works or activities which were not required to be removed or cease even though contained in the allegation.
95. Where unlawful activities or works are not alleged, the enforcement notice cannot require them to cease or be removed.
96. The public register has no bearing on the operation of section 173(11). What is important is the actual wording of the relevant enforcement notice.
97. Copies of two enforcement notices from 2004 are produced by the Council. One was directed at the deposit of hardcore and road chippings to form an area of hardstanding. The other notice concerned the 'unauthorised development of a hardstanding'. Both notices are dated 26 August 2004 and expressed to take effect on 1 October 2004 i.e., more than 28 days. They both required the area of hardstanding to be broken up and removed. In each case the area of hardstanding is shown within the area outlined on Notice 3. It appears to be excluded from Notice 2 (and Notice 1) although it would need to be properly scaled off to be sure.
98. Neither of the 2004 notices attacked a material change in use of the land for residential purposes. There is no possibility of such use having been granted planning permission in consequence of either of those 2004 notices.
99. Even if any of the hardstanding as shown in the 2004 notices falls within the parameters of the land enforced against in Notice 2, section 173(11) does not bite because the hardstanding was required to be removed. The notices did not under enforce.
100. The appellants' agent quotes from the publication of Bennion, Bailey and Norbury on Statutory Interpretation, 2020 that a public official must assume that a presumption of regularity applies to legislation and to official acts done under it. The agent says: *"This means that the LPA must prove that its s188 register is false if it has not chosen to grant unconditional planning permission to the appeal site in 2004 due to its registration."*
101. In reply, the Council refers to *R v Soneji & another* [2005] UKHL 49 where the House of Lords considered the consequences of a failure to comply with statutory provisions, in that case in criminal proceedings. The judgment sets out some general principles which may be of wider application. It was held that the correct approach to an alleged failure to comply with a provision prescribing the doing of some act before a power was exercised was to ask whether it was a purpose of the legislature that an act done in breach of that provision should be invalid.
102. The appellants further contend that the Council *"has registered in its public register that it has granted planning permission for residential caravan use over about 100 hectares of the Metropolitan Green Belt."* I am referred to numerous pages of entries of the register held under section 188 for the year 2020. The basis of this claim again relies upon the argument that the Council has registered eastings and nothings where the land affected is different to that against which enforcement notices have been issued.

103. No legal authority has been brought to my attention for the assertion that unconditional planning permission can somehow be granted by reason of incorrect co-ordinates given in the public register. There may be relevance in terms of the statutory defence if criminal proceedings were invoked following non-compliance with the terms of a notice but that is an express statutory provision. As before, section 173(11) does not apply by virtue of the public register. The wording of section 173(1) applies specifically to an enforcement notice only. The section makes no mention of the register.
104. The Council acknowledges that it corrected the co-ordinates in the register for the notices now under appeal and has since stopped using them altogether. Correction of the register is not the same as attempting to vary the notices under section 173A. An enforcement notice is distinct from the register which alerts the public to issued notices if they choose to inspect it. Nowhere in the enforcement notices are the co-ordinates given and that is what matters for the purposes of these appeals.
105. The appellants refer to the requirement on the local planning authority within section 173A(3) to immediately give notice of the exercise of its powers (to withdraw an enforcement notice or to waive or relax the requirements) to every person served with a copy of the notice or would be so served if the notice were re-issued. This section refers specifically to withdrawal, waiver, or relaxation of the notice itself. Upon the Council's sworn evidence, there were no changes made to the notices once issued. Section 173A(3) does not apply.
106. Further arguments concern different versions of the 2004 enforcement notices. I gather these matters have been put to the Council as complaints. They have no bearing on these grounds of appeal.
107. Attention is drawn by the appellants to a report to the Development Control and Traffic Management Committee on 29 August 2006 which refers to the issue of two enforcement notices on 24 August 2004². It records that direct action by the Council to ensure compliance with all enforcement notices for land adjacent to Dunroamin (which covers the appeal site) was prevented by Injunction in judicial review proceedings. Judgment was entered by the Court on 12 April 2006 'when it was found that the Council's decision was unlawful'. It is unclear which decision was unlawful but this does not assist the appellants in their ground (c) argument. Planning permission does not flow from an unlawful decision howsoever arising.
108. In conclusion, the material change of use alleged in Notice 2 constitutes an act of development requiring planning permission. Permission has not been granted by a development order, through an application to the local planning authority or by operation of section 173(11). The development is unauthorised.
109. I conclude that the matters alleged in the notice constitute a breach of planning control. The appeals on ground (c) do not succeed.

Notice 2 - ground (d)

110. A ground (d) appeal is that at the date the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters. In other words, it is claimed

² This is clearly a typographical error as the notices for the same development described are dated 26 August 2004

that what is alleged is immune from enforcement action, having subsisted for the four or ten year time limit periods laid down by section 171B.

111. In the case of a breach of planning control involving a material change in use of land, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach (section 171B(3)).
112. To succeed on this ground the appellants must demonstrate that the change in use of the land to the stationing of caravans for residential occupation occurred at least 10 years prior to the date of the issue of the enforcement notice on 4 December 2020 and continued without material interruption for a period of 10 years after the date of such change.
113. It is undisputed that the unauthorised residential use of the land did not begin until the site was cleared and the appellants moved onto the land with their caravans in November 2020. That was when the material change of use took place. Plainly, the site has not been occupied for residential purposes in breach of planning control for a period of 10 years or more for immunity from enforcement action to have been gained.
114. The appellants argument that enforcement action cannot now be taken because entries in the public register granted planning permission is incorrect. Immunity cannot somehow be achieved by virtue of those entries.
115. As concluded under ground (c), the appeal site does not as a matter of fact benefit from planning permission for the stationing of caravans for residential use. When Notice 2 was issued it was not too late to take enforcement action against the material change of use.
116. The appeals on ground (d) fail.

Notice 2 - ground (a) and the deemed planning applications

117. The deemed planning application is for the development that existed at the time of issue of Notice 2 i.e., the stationing of caravans for residential occupation. Neither a stop notice, nor Injunction prevents the subsequent grant of planning permission for those activities which have already taken place.

Background and policy context

118. Both sides describe the appeal site as 'plotland'. The Basildon Borough Plotland Study 2017 explains that 'plotlands' refers to small pieces of land laid out in regular plots on which a number of self-built settlements were established in the south-east of England from the late 1800s and up to the Second World War. The introduction of Green Belts in 1947 had the effect of freezing the extent of development with these areas at a point in time. Therefore, developed plots are interspersed with undeveloped plots where new development is now considered to be inappropriate.
119. The appeal site lies within the Metropolitan Green Belt. Therefore, Green Belt planning policies apply. It is outside any designated settlement boundary and is therefore also in the countryside for the purposes of planning policy.
120. A major thread of the appellants' case concerns the argument for more land within the Green Belt to be released to free up development to accommodate the borough's housing need. This is a matter for the Local Plan process, not

these Decisions. That is plain from Paragraph 140 of the Framework which states that once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. It is for strategic policies to establish the need for any changes to Green Belt boundaries.

121. As things stand, the relevant development plan is the Basildon District Local Plan Saved Policies ('LP'), September 2007.
122. As provided by section 38(6) of the Planning and Compulsory Purchase Act 2004, development should be in accordance with the development plan unless material considerations indicate otherwise.
123. The sole development plan policy identified in Notice 2 is saved LP Policy BAS GB1. This provides that the boundaries of the Green Belt are drawn with reference to the foreseen long term expansion of the built up areas acceptable in the context of the stated purposes of the Green Belt and to the provisions. The boundaries are shown on the Proposals Maps.
124. There is no saved development plan policy specific to gypsy and traveller development.
125. National planning policy set out in the Planning Policy for Traveller Sites 2015 ('PPTS') says the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community (Paragraph 3). To help achieve this, Paragraph 4.e PPTS promotes more private traveller sites. When considering planning applications for traveller sites Paragraph 24 PPTS makes clear that, amongst other relevant matters, consideration should be given to matters such as: a) the existing level of local provision and need for sites, b) the availability (or lack of) alternative accommodation for the applicants, and c) other personal circumstances.
126. Paragraph 25 PPTS also states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.
127. The PPTS must be read in conjunction with the Framework both of which are important material considerations.
128. Under Paragraph 150 of the Framework, certain forms of development are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. The list includes material changes in the use of land. Engineering operations, which would include the formation of hardstandings, driveways and accesses, are also listed.
129. Policy E of PPTS confirms that traveller sites (temporary or permanent) in the Green Belt are inappropriate development. The appellants accept that the residential use amounts to inappropriate development in the Green Belt. I concur. It follows implicitly from the development being inappropriate development that the use causes a loss of openness to the Green Belt. It would not be inappropriate development otherwise. Therefore, there is no need for me to make a specific finding on the point.

130. Whilst undisputed that there is harm to openness of the Green Belt, the parties disagree on the extent of harm and so I address this as a main issue.

Main Issues

131. The main issues are:

- whether the intended occupants are gypsies and travellers as defined in Annex 1 of PPTS;
- the effect on Green Belt openness and purposes; and
- whether the harm from inappropriateness and any other harm would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify the developments, on either a permanent or temporary basis.

Reasons

Gypsy/traveller status

132. The Council challenges the gypsy and traveller status of the appellants within the meaning of Annex 1 PPTS on the basis of insufficient information.

133. The Annex 1 definition of gypsies and travellers is as follows:

"Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, [my emphasis] but excluding members of an organised group of travelling showpeople or circus people travelling together as such". Paragraph 2 of Annex 1 adds:

"In determining whether persons are "gypsies and travellers" for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters:

- a) whether they previously led a nomadic habit of life*
- b) the reasons for ceasing their nomadic habit of life*
- c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances."*

134. The definition does not include those who have permanently ceased to travel. The 'cultural definition' of a gypsy and traveller is wider, in that it includes anyone who has stopped travelling on a permanent basis.

135. The appellants are Irish Travellers. The Inquiry heard how they used to travel as a group prior to their arrival at the appeal site in November 2020. Their agent readily accepted in evidence that Ms Foley and Mr J Anderson are non-nomadic. He suggested that the Cleary family are "marginal" on whether they meet the PPTS definition whereas all the others are within the definition.

136. Mr Cleary gave evidence at the Inquiry and explained that he longer travels apart from holidays. There is no suggestion that anyone in the family travels for an economic purpose. In fact, quite the contrary. Mr Cleary said he finds work locally and wants a settled base for his family which he thought he had

found at the appeal site. From Mr Cleary's evidence he has ceased to travel and not just temporarily and he would not now meet the PPTS definition.

137. According to the appellants' agent, some of the other appellants (McGinley, Stokes, Collins and McDonagh) have been travelling together and working in Canada for "about 3 to 4 months" and they expect to return in November 2022. The Council challenged this evidence and suggested that Mr McDonagh may have gone to Ireland and Mr McGinley has gone 'up north' as given in evidence by their Solicitor in High Court proceedings in July 2021.
138. Their precise location is of no real consequence to the issue of status. The fact of the matter is that the agent was unable to say with any level of certainty anything about their lifestyle. Whilst he claimed that all these appellants are nomadic and "working in tarmacking", he acknowledged that it was difficult to obtain any information from them. He simply did not know.
139. The only firm information available is that supplied in support of individual, part retrospective, planning applications seeking permission for gypsy and traveller accommodation on each plot (except Plot 6) which were made in December 2020³. This is supplemented by information gleaned by Council Officers from their visits to the site and talking to occupants. However, circumstances appear to have changed since then.
140. The threshold is low to fulfil the PPTS definition but with such scant information available, I cannot be satisfied that any of the appellants who wish to occupy the appeal site have gypsy and traveller status within PPTS. That does not mean permission cannot be granted but the housing needs of the appellants would be addressed as part of the wider housing needs with reference to the Framework rather than PPTS.

Openness of the Green Belt

141. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Openness is an essential characteristic of the Green Belt. It has a spatial aspect as well as a visual aspect.
142. The appellants accept that the introduction of caravans along with fencing erected to enclose and sub-divide the site to facilitate the use adversely affects openness and has an adverse visual impact. They do not agree that those factors have a significant adverse effect.
143. Before assessing the impacts, it is worth stating that openness cannot be preserved if there would be an adverse impact on it of any kind.
144. Aerial photographs illustrate how in 1999 the appeal site formed part of a larger open grassed field bounded by hedgerow. In 2018 the appeal site remained an open green field with hedgerow to the northern, eastern, and southern boundaries. By that time development had taken place on an adjacent parcel to the immediate west with large areas of hard surfacing and what appear to be mobile homes. A street view photograph captured in May 2021 shows high wrought iron gates set between the hedgerow off Hovefields Drive. The site appears otherwise free from development. It looks overgrown with vegetation and with no sign of hardstanding or vehicular access.

³ All refused on 6 April 2021

145. In stark contrast, the aerial image which Mr Finn, for the Council, confirmed was dated March 2022 (i.e., after issue of the enforcement notices) shows the site cleared of all vegetation, an access formed off Hovefields Drive leading into the site and plots formed with large areas of hard surfacing.
146. Even if caravan numbers were limited to two per pitch (with only one being a static caravan, as agreed by the parties during the 'conditions' session of the Inquiry), this would still represent up to 22 caravans with associated vehicles and paraphernalia. A significant reduction in spatial openness would arise as well as significant visual harm given its previously undeveloped state.
147. The material change of use was facilitated by the laying of hardstanding which Notice 2 requires to be removed. The appellants contest that the introduction of hardcore to lay the hardstanding affects openness. To support this, they produce a recent Appeal Decision for Pitsea⁴ in which the Inspector, having noted that the site was previously vacant, went on to observe that the amount of hardstanding is considerable although it does not cause loss of openness in itself rather than facilitates the siting of caravans etc.
148. It is important to note that the development in that case was described as 'relatively small', in an edge of settlement location and intended for one extended family. The effect of hardstanding on openness will depend on the particular circumstances and so the Inspector's finding in the Pitsea appeal will not apply to all cases.
149. Case law establishes that openness is the counterpart of urban sprawl and that it does not imply freedom from *any* form of development. Thus, there will be some circumstances where development does not affect openness.
150. In this case, the appeal site is around 1.3 hectares of green field land. It was agreed by the appellants agent under cross-examination that approximately 10,000 tonne of hard material was brought onto the site. In consequence ground levels have been raised from anywhere between 0.2m to 1m depending on different accounts. Such a magnitude of imported material will invariably have had a significant adverse effect on openness both spatially and visually.

Green Belt purposes

151. The material change of use to a residential caravan site and facilitating development, including hardstanding across most of the site, introduced urbanising development to a previously open green field in the countryside. By encroaching on the countryside, it is contrary to one of the Green Belt purposes in Paragraph 138c) of the Framework.
152. Another one of the purposes in Paragraph 138b) is to prevent neighbouring towns merging into one another.
153. The Basildon Green Belt Review 2017 is an assessment of the Basildon Borough Green Belt to inform the preparation of the Local Plan alongside other published evidence. It assesses the five Green Belt purposes within the Framework and identifies the strategic gap between Wickford and Basildon as an area of particular importance within the Borough preventing these two significant urban areas from merging. The appellants argue that this purpose is

⁴ Appeal ref: APP/V1505/C/18/3200139 dated 13 January 2022

achieved by the presence of the A127 Arterial Southend Road which lies close to the southern boundary of the appeal site. Obviously, the road is a physical divide between the site and land to the south, but that does not diminish the contribution the site plays as part of a wider parcel in preventing coalescence.

154. The site forms part of Parcel 45 within the Review document, being land adjacent to the town of Wickford in the north and Basildon town in the south. The narrative describes the parcel as a large piece of land and whilst there is sporadic development across the parcel, the density of development is not that which would be associated with Wickford and Basildon. The assessment finds that Parcel 45 is preventing neighbouring towns from merging.
155. Allowing this further development within Parcel 45 would contribute towards the erosion of this significant gap between towns and it would not serve the Green Belt purpose of preventing the towns merging into one another. The fact that some development has taken place emphasises all the more the importance of retaining the site to prevent coalescence of the towns.
156. The appellants' agent described the appeal site as 'effectively infill' development. This was firmly opposed by the Council Officers giving evidence who do not regard it as a village where 'infill' might arise, rather it is plotland within the Green Belt. To my mind, this cannot be regarded as 'infill' development in circumstances where various other development in the vicinity is said to be unauthorised and subject to enforcement investigation.
157. Moreover, for the purposes of Paragraph 149(g) of the Framework, it is only the 'construction of new buildings' which would not amount to inappropriate development where it is 'limited infilling or the partial or complete redevelopment of previously developed land'. In addition, this is only in circumstances where it would not have a greater impact on the openness of the Green Belt than the existing development or not cause substantial harm to the openness of the Green Belt. There is no evidence that this is previously developed land and aerial images provide evidence to the contrary.
158. There is significant harm arising from the encroachment into the countryside and from more development causing a diminution in the important gap which serves to prevent coalescence between towns, contrary to Green Belt purposes.

Other considerations

The local provision and need for sites

159. Whether or not they satisfy the planning definition of gypsies and travellers, I accept that the appellants are ethnic gypsies who have a tradition of living in caravans. The housing needs of those meeting the PPTS definition are assessed separately from those who do not.
160. For those meeting the definition, PPTS requires local planning authorities in producing their Local Plan to identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.
161. Paragraph 74 of the Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their local housing need where

the strategic policies are more than five years old, as in this case. The needs of non-nomadic gypsies for caravan homes are part of the local housing need as set out in Paragraph 62. It is these provisions which apply given my findings that there is insufficient information to conclude that any of the appellants meet the PPTS definition.

162. No data is provided by the Council as part of this appeal regarding its housing land supply under the requirements of the Framework. However, within the Inquiry bundle is the report to Full Council in March 2022 when the decision was taken to withdraw its draft Local Plan. At that time, its 'recently published' calculation was stated to be a housing land supply of 3.2 years.
163. The Council accepts that it cannot demonstrate a 5-year supply of specific and deliverable gypsy and traveller sites as required by PPTS and there is an existing need for non-nomadic gypsies.
164. A statement from Opinion Research Services ('ORS'), commissioned by the Council, concludes that the Basildon Council Gypsy and Traveller Accommodation Assessment Update Report 2020 ('the GTAA') conducted by ORS itself is accurate, robust and in line with national policy and guidance. This is the Council's most up-to-date assessment.
165. ORS append various appeal decisions for gypsy and traveller development in which their GTAA approach has been accepted by Inspectors. Of course, it does not necessarily mean that the findings in Basildon's GTAA must be accurate some 2 years on. The GTAA published in June 2020 identified a need for 68 pitches to 2038 (equating to 43 pitches to 2023 with a further 13 up to 2028) for those meeting the PPTS definition and a need for 52 pitches to 2038 for households that did not meet the definition. These figures do not include an estimated further 0-58 pitches for undetermined households.
166. Furthermore, I was informed that the Council has no information available on gypsy count, unauthorised gypsy and traveller developments or appeals. The Council Officer estimated that there were maybe 10-15 temporary permissions granted for gypsy and traveller development but I have no statistics on these and when they are due to expire. The position might well be worse than revealed by the latest data.
167. The Council refers to a section 106 agreement for the Gardiners Lane South development which was granted permission in 2021 as making off-site provision for 10 gypsy and traveller pitches. Whilst a positive step, no specific land has yet been identified for delivery which is not expected until 2026.
168. Notwithstanding that there are those in need who do not meet the definition, section 8 of the Housing Act 1985 requires the local authority to consider the needs of people residing in or resorting to their area in caravans as part of its wider duties to consider the needs of the district with respect to the provision of further housing accommodation.
169. Paragraph 62 of the Framework also specifies that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. This includes the needs of travellers but as explained in the footnote, PPTS sets out how travellers needs should be assessed for those covered by the definition. Thus, the needs of those not

meeting the definition must still be assessed and met in accordance with the Framework and those that do meet the definition are addressed under the requirements of PPTS.

170. So far, the Council has delivered just one pitch (at Pitsea) against its current targets and that was because of a lost appeal in January 2022. Based upon performance to date and its own estimations, there can be little confidence that the Council's delivery of gypsy and traveller accommodation against identified need will improve any time soon.
171. In evidence, the Council Officer accepted that there was a need for about 50 plus pitches for non-nomadic gypsies based on the 2020 figures. That need is not being met and that attracts very significant weight in favour of the appeal which would deliver 11 much needed pitches.
172. The appellants draw attention to a 2021 Appeal Decision for Market Square, Basildon⁵ where the Council acknowledged the lack of a 5 year housing supply triggered the tilted balance in paragraph 11(d). The application in that case was for a mixed used development including housing, not a gypsy and traveller site. In a case such as this where the application is for a residential caravan site for persons who do not have PPTS status, paragraph 11d) could be triggered by the absence of a 5 year supply of gypsy and traveller sites but not in the Green Belt, as per footnote 7.
173. In this instance, the absence of a 5 year supply of homes warrants very significant weight in light of the appreciable deficit with no sign of the shortfall being remedied within the foreseeable future.

Availability of alternative sites and personal need

174. The Essex County Council operated gypsy and traveller site at 'Hovefields' is at full capacity and unavailable.
175. Neither planning policy nor case law requires the appellants to prove that no other sites are available or that particular needs could not be met from another site. However, the existence or otherwise of alternative sites is relevant to understanding the general position in relation to the available supply. Also, an unsuccessful search for an alternative site, or other evidence that such accommodation options are limited, can add weight to an appellant's case.
176. As such a high percentage of the borough falls within the Green Belt it might be anticipated that this would pose greater difficulties in finding suitable sites outside the Green Belt. However, very little information has been forthcoming from the appellants. No evidence has been given of efforts made to find alternative sites. More specifically, I was told by the agent that Ms Foley lives elsewhere nearby and used Plot 11 for horses whereas the Andersons own other land in Hovefields. Mr Cleary has found land to rent.
177. Whilst the agent maintains that the appellants have nowhere else to go, clearly three of the families have found alternative accommodation and the others appear to have moved away, at least temporarily. There is no evidence that any of the appellants have had no option but to live a roadside existence. It has not been demonstrated that the site needs to be located in the Green

⁵ Appeal Ref: APP/V1505/W/21/3279154 dated 17 December 2021

Belt or that it would not be feasible to find a suitable site elsewhere. In these circumstances, the lack of alternative sites attracts limited weight only.

Delivery against local and national policy objectives

178. The Council's 2007 LP pre-dates both the PPTS and Framework and contains no strategic policy for meeting the needs of gypsies and travellers.
179. Over 63% of the land in the borough is classified as Green Belt. The Council acknowledges that to accommodate future gypsy and traveller needs there is a 'high likelihood' that such sites will either have to be found on either previously developed land in the first instance or within the extent of the Green Belt. It states that a comprehensive review of the Green Belt boundary and an assessment of urban capacity is necessary and underway as part of the Local Plan preparation process.
180. However, the new draft Local Plan is at the very beginning of the process and the Council cannot say when new gypsy and traveller sites might come forward. At this time, there is no timetable for the new Local Plan but more will become known once a report is taken to Committee in September 2022. The Council admits that "*As things stand, no provision of pitches is likely to be realised through the development plan process by 2023 in order to deliver against the 5-year requirement by 2023.*"
181. This does not address the existing unmet need for pitches now. At present, the Council clearly has no strategy to tackle the shortfall of caravan homes for either nomadic or non-nomadic gypsy and travellers.
182. The failure of the Council to adopt a new Local Plan to address housing need is a policy failure that weighs in the balance to which I give significant weight.

Personal circumstances and the best interests of the children

183. The best interests of the children are a primary consideration. No other consideration can be inherently more important than the need to safeguard and promote their welfare. It does not mean that the best interest of the children must be the one and only primary consideration. The importance or weight given to the best interests of the children and any other consideration will depend on all of the circumstances of the case. It is possible for their interests to be outweighed by other factors when considered in context.
184. None of the appellants now live on the site. This is because an Injunction Order issued by the High Court in December 2020 prevents their occupation.
185. Mr Cleary gave evidence to the Inquiry on his family's personal circumstances including the medical needs of one of his children. The Council does not seek to question or denigrate the seriousness of the child's medical needs but challenges why the family needs to live at this particular site.
186. Mr Cleary spoke passionately about the needs of his family and desire to live at this site which they consider to be their home and want as their settled base. I understand the need for accessible specialist healthcare and how the proximity of this site to such facilities in Essex and London suited the family.
187. However, Mr Cleary informed the Inquiry how the family now rents land from a friend in a neighbouring county where they live in a caravan. Mr Cleary told

- me it is a lawful site. Whilst further away, the family have still managed to access the same healthcare practitioners. I realise that the Cleary's do not see their current location as a long-term proposition but they are not living a roadside existence and there is no pressing need for them to move on. Mr Cleary indicated that the land was available to rent on an ongoing basis.
188. It is concerning that one of the Cleary children has not attended school since December 2021 because the family had to leave the appeal site. The children are now home schooled. That is not to say they could not attend school in their new locality.
189. Mr Cleary was insistent that details demonstrating medical needs and care for his child were sent to the Council by his wife. I do not question his belief, but if those details were provided it appears most likely that they were sent to the Housing department rather than to Planning Officers. The Council state that the housing application was closed in January 2021. Mr Cleary's agent had not seen the material and it transpired that some documents were sent by WhatsApp to the Solicitor acting for Mr Cleary in other proceedings. Whatever has happened, no medical or other documentation supporting where the family need to live is before this Inquiry.
190. There are no up-to-date details presented to the Inquiry from those appellants currently living abroad as to their personal circumstances or those of their families. Indeed, the agent stated that there was only the one family, the Cleary's, "with very special circumstances".
191. The appellants are all apparently related with the exception of Ms Foley who has known the Anderson family since childhood. Nonetheless, there is no indication of a desire to stay together as a group and, evidently, they have dispersed over recent months.
192. In his proof of evidence, the appellants agent states that the land at Hovefields "*is not suitable for residential occupation without significant investments in infrastructure*". Under affirmation, the agent confirmed his view that the appeal site is "*not fit for human habitation*" due to "*chronic drainage issues*" and "*the position is only likely to get worse*". He described this part of Hovefields and beyond as "*virtually an open sewer*".
193. The agent suggested it was better all the same for the appellants to have somewhere to live although the drainage "*probably needs to be resolved*". From the agent's own evidence this cannot be resolved easily without tackling drainage for the wider area of Hovefields at high cost. He suggested that the need for services would only be addressed if 1200-1400 new houses were built. It is the agent's view that cesspits could not be put in and septic tanks would be needed although this would not address the need for wider infrastructure.
194. Ultimately, the drainage issue must be resolvable with investment and potentially a planning condition could be imposed to prohibit occupation until such time as satisfactory drainage arrangements are in place. The interests of the children would be best served by having a stable base which this site would provide but it is just one factor that feeds into the balance.
195. The agent also suggested that the appellants only wanted a 3 year temporary permission so that they could re-develop the appeal site as a mixed

use site including a gypsy site. He subsequently confirmed that a permanent permission was being sought.

Intentional Unauthorised Development

196. The written ministerial statement issued on 31 August 2015 announced that it is national planning policy that intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals. Although it has not been incorporated within the Framework, the ministerial statement has not been replaced or revoked and it remains a material consideration.
197. Mr Cleary insisted that he would not have bought his pitch had he realised that he should not live on the land nor would he have suffered the severe consequences which followed if his family had somewhere else to go.
198. The Court of Appeal in its Judgment of 16 March 2021 described how a number of the named appellants (including Mr Cleary) “*..embarked on this brazen project together, having engaged planning advisers, and it seems quite clear that there must have been extensive co-operation between the respective plot holders at the outset....*” In conclusion the Court refers to “*a background of serious, wholesale defiance of the planning laws.*”
199. Then on 8 February 2022, the High Court referred to “*the ‘brazen’ and coordinated occupation of the plots, accepted by successive judges.*”
200. It is rare in my experience to come across a whole series of proceedings before the Courts which point so firmly to flagrant intentional breaches of planning control which continued in spite of Injunction Orders.
201. The conduct of the parties, in what I can only conclude was a deliberate occupation of the appeal site in breach of planning control, weighs firmly against the grant of planning permission when other options were seemingly available to the appellants. The intentional unauthorised development carries significant adverse weight.

Green Belt Balance

202. The development comprises inappropriate development in the Green Belt. Under Paragraph 137 of the Framework, it is made clear that the Government attaches great importance to Green Belts. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (Paragraph 147).
203. In accordance with Paragraph 148 of the Framework substantial weight should be given to any harm to the Green Belt. Here, harm arises from inappropriateness, a significant loss of openness along with encroachment and preventing neighbouring towns from merging contrary to two of the Green Belt purposes to which I also attach significant weight. Added to that, is significant adverse weight from intentional unauthorised development.
204. The extent of unmet need for traveller sites is a consideration which supports the appeals. There is a clear general and significant need for gypsy and traveller accommodation in the borough including non-nomadic gypsies which carries very significant weight. There is also an ongoing failure to meet

- policy objectives and an absence of local policies to facilitate future pitch provision which adds further significant weight. Limited weight only attaches to the lack of alternative sites given the evidence available on personal need.
205. Whilst I recognise the particular needs of the Cleary family, they have found land to rent land and still cater for their child's healthcare needs, as before, albeit less convenient to them. The best interests of the children attract substantial weight in having a stable base but such weight is mitigated somewhat by the existence of another option for the Cleary family.
206. I can only attribute very limited weight to the personal circumstances of others who appear to have either found other sites or whose circumstances are not divulged.
207. Taking account of the weight that I have attributed to the various factors the harm by reason of inappropriateness, and any other harm, would not be clearly outweighed by the considerations in favour of the development. Even if I were to impose a planning condition to restrict the period of occupation, it would lessen the Green Belt harm by not being permanent, but the harm would still not be clearly outweighed by the other considerations in support. I have further considered a grant of planning permission on individual plots bearing in mind the case put forward by the Cleary family. Restricting the extent of development to their one plot would reduce the impact on the Green Belt and it would be lessened further if also time limited. After careful consideration it is my judgement that, even with adjustments, the totality of harm would still not be clearly outweighed.
208. Very special circumstances to justify the development do not therefore exist and the development conflicts with the aims of LP Policy BAS GB1 to protect the Green Belt, and the Framework.

Human rights and equalities

209. Under Article 8 of the European Convention on Human Rights, everyone has a right to respect for his private and family life. Upholding Notice 2 would engage that right of the appellants and their families who acquired plots and resided at the site as their home. Article 8 is a qualified right to be weighed against the wider public interest of protecting the environment from unacceptable forms of development. In applying Article 8, there is a positive obligation to facilitate the gypsy way of life to the extent that the vulnerable position of gypsies as a minority group means that some special consideration should be given to their needs and different lifestyle in the regulatory planning framework and in reaching decisions on particular cases.
210. The plots facilitate the appellants' traditional way of life as travellers. However, the interference in this case would be in accordance with the law and in pursuance of the legitimate aim of protecting the Green Belt.
211. In determining these appeals, I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of The Equality Act 2010. This sets out 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. The appellants are Irish Travellers who share a protected characteristic for the purposes of the PSED.

212. It does not follow automatically from the PSED that the appeals should succeed. The provisions of the 2010 Act do not outweigh those of the 1990 Act.
213. The need for sites and the lack of any identified sites in the development plan may indicate inequality of housing opportunity for gypsies and travellers. The grant of planning permission would go some way towards advancing equality of opportunity by providing much needed gypsy and traveller accommodation. The equality implications add weight in favour of the development to be considered in my overall conclusion

Overall Planning Balance

214. I have found that very special circumstances do not exist to justify the development. I conclude that the appeal development, which was intentional unauthorised development, would cause unacceptable harm to the Green Belt. That harm is not outweighed by any of the other considerations, including the need for more gypsy or traveller sites in the area, or the appellants' personal circumstances, on either a temporary or permanent basis even if permission was granted for part only. The development could not be made acceptable through the imposition of planning conditions. I have taken account of all the other matters raised including my duties under the PSED, but none alters these conclusions.
215. The appeals on ground (a) therefore fail. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Notice 2 – ground (g)

216. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed. The Notice gives a compliance period of one month. The appellants originally sought a period of 1 month after the Council adopts its new Local Plan. Now that the previous draft Local Plan has been abandoned and the process re-started with the new draft is in its infancy, the appellants' agent asked for "*as long as possible*".
217. The effect of the appeal is to stop the clock. The notices only take effect on the date of this appeal decision which is the date when the compliance period starts. The request for a longer period is unsupported by any specific reasons.
218. I realise that the appellants may be fearful of the repercussions from others should they undertake remediation works. However, that is not reason to prolong the period for compliance. I gather from the appellants' agent's evidence that some of the hardstanding has already been dug up. If so, it should reduce the works required to achieve compliance.
219. The appellants no longer live on the site as an Injunction Order is in place preventing their re-occupation. I heard how other gypsy families have entered at least part of the site but there is no information before me as to who they are or their circumstances. Indeed, the appellants' agent was reluctant to give any information which might influence my decision on this ground except to

confirm their presence. I have no means of knowing whether there might be factors for these third parties which ought to be taken into account.

220. It is desirable that the breach of planning control is remedied without unnecessary delay in order to address the harm arising from it, as identified in the reasons for issuing the notice. In line with the advice at Paragraph 59 of the Framework, effective enforcement is important to maintain public confidence in the planning system.
221. I have balanced the competing private and public interests; the public interest in bringing the identified harm to an end without unnecessary delay and the private interests of the appellants along with the absence of some from this country whilst they live/work abroad. Nevertheless, I consider that the circumstances are such that 1 month strikes an appropriate balance to enable the appellants to take necessary steps to remove the unauthorised facilitating development required by Notice 2.
222. In the absence of reasoned justification, I am not satisfied that the period of compliance should be extended.
223. The ground (g) appeal does not succeed.

KR Seward

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr Stuart Carruthers	Agent
He called:	Mr T Cleary, appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Wayne Beglan	Instructed by Lyndsey Smith, Principal Solicitor and Corporate Manager
He called:	
Joseph Finn	Senior Planner, Planning Enforcement
Ian Cummings	Team Leader, Planning Enforcement
Adeola Pilgrim	Principal Planner
Katie Ellis	Principal Planner

INTERESTED PERSONS:

Councillor George Jeffrey	Ward Member (written submission read out by Ian Cummings)
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DOCUMENTS submitted at the Inquiry

- 1 Opening statement - appellants
- 2 Opening statement - Council
- 3 Appellants' additional costs information containing (a) Table of register entries for enforcement and stop notices held by the Council (b) local land charges searches against the appeal site (c) report to Committee titled 'Breaches of Planning Control in Hovefields Drive, Wickford: Decision Making Options'
- 4 Email confirmation of withdrawal of appeals by Mr C Anderson and Mr F Anderson sent on 26 July 2022
- 5 H.M. Land Registry title entries for the appeal site and land to the west
- 6 Electronic copy of core bundle
- 7 Council's costs rebuttal
- 8 Written representations from Councillor George Jeffrey
- 9 Email of 27 July 2022 confirming the Council does not rely upon Notice 1

- 10 Appellants 'corrections, confirmations & questions' document and 85 pages of attachments
- 11 Copy witness statement of Rebecca Hawksley dated 28 July 2021 from High Court proceedings
- 12 Undated aerial image with land outlined in red by the appellants' agent
- 13 Aerial and street view images from the Council 1999 to 2022
- 14 Essex Coast Recreational Disturbance and Mitigation Strategy Supplementary Planning Document, May 2020 and Notice of Adoption
- 15 Council's Supplementary Note – Habitats Regulation Assessment
- 16 Land title information for Title Number EX582620
- 17 *R v Soneji* [2005] UKHL 49
- 18 Copy of two enforcement notices issued on 26 August 2004
- 19 Closing submissions - Council
- 20 *Lynch v SSETR* [1998] 9 WLR 192
- 21 Closing submissions - appellants

Appendix 1

List of those who appealed against Notice 1

1	Mr C Anderson	Plot 1	APP/V1505/C/20/3265043	Withdrawn
2	Mr B McGinley	Plot 3	APP/V1505/C/20/3265064	
3	Ms B McGinley	Plot 3	APP/V1505/C/20/3265065	
4	Mr F Anderson	Plot 4	APP/V1505/C/20/3265034	Withdrawn
5	Mr J Anderson	Plot 5	APP/V1505/C/20/3265027	
6	Ms B Mcdonagh	Plot 7	APP/V1505/C/20/3264991	
7	Mr C Mcdonagh	Plot 7	APP/V1505/C/20/3264992	
8	Ms D Stokes	Plot 8	APP/V1505/C/20/3265011	
9	Mr J Mcdonagh	Plot 8	APP/V1505/C/20/3265012	
10	Mr P Collins	Plot 9	APP/V1505/C/20/3265049	
11	Mr T Cleary	Plot 10	APP/V1505/C/20/3265076	
12	Ms K Cleary	Plot 10	APP/V1505/C/20/3265077	
13	Ms L Foley	Plot 11	APP/V1505/C/20/3265056	

Appendix 2

List of those who appealed against Notice 2

14	Mr C Anderson	Plot 1	APP/V1505/C/20/3265044	Withdrawn
15	Mr B McGinley	Plot 3	APP/V1505/C/20/3265066	
16	Ms B McGinley	Plot 3	APP/V1505/C/20/3265067	
17	Mr F Anderson	Plot 4	APP/V1505/C/20/3265036	Withdrawn
18	Mr J Anderson	Plot 5	APP/V1505/C/20/3265028	
19	Ms B Mcdonagh	Plot 7	APP/V1505/C/20/3264996	
20	Mr C Mcdonagh	Plot 7	APP/V1505/C/20/3264997	
21	Ms D Stokes	Plot 8	APP/V1505/C/20/3265013	
22	Mr J Mcdonagh	Plot 8	APP/V1505/C/20/3265014	
23	Mr P Collins	Plot 9	APP/V1505/C/20/3265050	
24	Mr T Cleary	Plot 10	APP/V1505/C/20/3265078	

25	Ms K Cleary	Plot 10	APP/V1505/C/20/3265079	
26	Ms L Foley	Plot 11	APP/V1505/C/20/3265057	

Appendix 3

List of those who appealed against Notice 3

27	Mr C Anderson	Plot 1	APP/V1505/C/20/3265045	Withdrawn
28	Mr B McGinley	Plot 3	APP/V1505/C/20/3265068	
29	Ms B McGinley	Plot 3	APP/V1505/C/20/3265069	
30	Mr F Anderson	Plot 4	APP/V1505/C/20/3265037	Withdrawn
31	Mr J Anderson	Plot 5	APP/V1505/C/20/3265029	
32	Ms B Mcdonagh	Plot 7	APP/V1505/C/20/3264998	
33	Mr C Mcdonagh	Plot 7	APP/V1505/C/20/3264999	
34	Ms D Stokes	Plot 8	APP/V1505/C/20/3265015	
35	Mr J Mcdonagh	Plot 8	APP/V1505/C/20/3265016	
36	Mr P Collins	Plot 9	APP/V1505/C/20/3265051	
37	Mr T Cleary	Plot 10	APP/V1505/C/20/3265081	
38	Ms K Cleary	Plot 10	APP/V1505/C/20/3265082	
39	Ms L Foley	Plot 11	APP/V1505/C/20/3265058	

N.B. All names and spellings are taken from the Appeal Forms.