



Appeal Decisions

Inquiry opened on 28 November 2023

Site visit made on 29 November 2023

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date 8 March 2024

Appeal A Ref: APP/V1505/C/22/3298897

Appeal B Ref: APP/V1505/C/22/3298899

Appeal C Ref: APP/V1505/C/22/3298902

Appeal D Ref: APP/V1505/C/22/3299450

Appeal E Ref: APP/V1505/C/22/3299451

Appeal F Ref: APP/V1505/C/22/3299452

Appeal G Ref: APP/V1505/C/22/3299453

Appeal H Ref: APP/V1505/C/22/3299381

Appeal I Ref: APP/V1505/C/22/3299382

Land South of Newlands Road, Wickford, Essex, SS12 9ER

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Charlotte Stevens (Appeal B), James Sharp (Appeal C), Sandra Connors (Appeal D), Rebecca Newhouse (Appeal E), Peter Eyles (Appeal F) and John Pomfrett (Appeal G) against an enforcement notice (**Notice 1**) issued by Basildon Borough Council.
 - The notice, numbered 20/00025/UBW, was issued on 22 April 2022.
 - The breach of planning control as alleged in the notice is: Breach of Planning Condition - The relevant planning permission concerned is the permission granted upon Appeal by the Planning Inspectorate decision on 9th November 2010 for change of use of the Land to a residential caravan site ref. APP/V1505/C/10/2124875. The Condition concerned which has not been complied with is Condition 2 of the permission which states -
"No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan or mobile home) shall be stationed on the site at any time."
 - The requirements of the notice are: Remove all excess caravans which have been stationed on the Land which are in addition to the 2 caravans allowed by condition (detailed below).
Condition 2 states: – "No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan or mobile home) shall be stationed on the site at any time"
 - The period for compliance with the requirement is 4 months.
 - Appeals B, C, D, F and G are proceeding on the grounds set out in section 174(2)(a), (d), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal E is proceeding on the grounds set out in section 174(2)(d), (f), (g) of the Town and Country Planning Act 1990 as amended.
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Appeal J Ref: APP/V1505/C/20/3261307

Land East of Newlands Road, Wickford, Essex, SS12 9ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Levi Anderson against an enforcement notice (**Notice 2**) issued by Basildon Borough Council.
 - The notice, numbered 18/00222/GYP, was issued on 18 September 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the laying of hard-core and hardstanding and associated material onto the Land forming an area of hardstanding.
 - The requirements of the notice are: i. Break up the hardstanding and remove all resultant debris and materials from the land; and ii. Restore the level of the ground to its former natural topography.
 - The period for compliance with the requirement is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal K Ref: APP/V1505/C/22/3299438

Appeal L Ref: APP/V1505/C/22/3299436

Appeal M Ref: APP/V1505/C/22/3299440

Appeal N Ref: APP/V1505/C/22/3299441

Appeal O Ref: APP/V1505/C/22/3299442

Appeal P Ref: APP/V1505/C/22/3299443

Land South of Newlands Road, Wickford, Essex, SS12 9ER

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Charlotte Stevens (Appeal K), James Sharp (Appeal L), Sandra Connors (Appeal M), Rebecca Newhouse (Appeal N), Peter Eyles (Appeal O) and John Pomfrett (Appeal P) against an enforcement notice (**Notice 3**) issued by Basildon Borough Council.
 - The notice, numbered 20/00025/UBW, was issued on 22 April 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, operational development consisting of: 1. The laying of hard-core, construction waste and associated material onto the Land forming an area of hardstanding and access routes. 2. The erection of buildings (shown in the approximate locations marked with blue hatching on the attached plan Appendix 2). 3. The erection of lampposts (shown in the approximate locations marked with a green cross on the attached plan Appendix 2).
 - The requirements of the notice are: 1. Break up all hardstanding and access routes and remove from the Land all resultant surfacing materials including the associated compacted earth, hardcore, construction debris, gravel, building materials, construction debris, associated spoils and rubble brought onto the Land in connection with the unauthorised development. 2. Restore the level of the Land to its former natural topography. 3. Remove from the Land all buildings (shown in the approximate locations marked with blue hatching on the attached plan Appendix 2), resultant building materials and debris. 4. Remove from the Land all lampposts (identified as approximately marked with green cross on the attached plan Appendix 2) together with the supporting electrical wiring and cables.
 - The period for compliance with the requirement is 4 months.
 - Appeal K is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeals L, M, N, O, and P are proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Q Ref: APP/V1505/W/20/3261289

Land East Side of Newlands Road, Newlands Road, Wickford, Essex, SS12 9ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal of an application for planning permission.
 - The appeal is made by Levi Anderson against Basildon Borough Council.
 - The application Ref 19/00341/FULL was refused on 17 August 2020.
 - The development proposed is Use of land for the stationing of caravans for residential purposes with ancillary dayroom and hardstanding.
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Appeal R Ref: APP/V1505/W/22/3298896

Land East of Newlands Road (Plot 3), Newlands Road, Wickford, Essex, SS12 9ER

Appeal S Ref: APP/V1505/W/22/3298898

Three Sisters (Plot 4), Land South of Newlands Road, Newlands Road, Wickford, SS12 9ER

Appeal T Ref: APP/V1505/W/22/3298901

Plot 5, Land South of Newlands Road, Newlands Road, Wickford, SS12 9ER

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on applications for planning permission.
 - The appeals are made by Levi Anderson (Appeal R), Ms Charlotte Stevens (Appeal S) and James Sharp (Appeal T) against Basildon Borough Council.
 - The applications Ref 21/01427/VAR are dated 20 September 2021.
 - The development proposed is S.73A application to vary conditions 2 and 3 and remove conditions 5 and 6 of planning permission granted by appeal decision APP/V1505/C/10/2124875 for the use of land as a residential caravan site.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 8 March 2024

Decisions

Appeals B, C, D, E, G, H and I

1. It is directed that the enforcement notice be corrected and varied as follows:

By the substitution of the plan attached as "Appendix 1: Notice Plan" to the notice by the plan annexed to this decision.

By the deletion, in Section 1, of the words "paragraph (a)" and its replacement with "paragraph (b)".

By the deletion of Section 5 in its entirety and its replacement with:

"With the exception of one static caravan and one touring caravan on Plot 1 and with the exception of two static caravans and one touring caravan on Plot 3 (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968), remove all caravans from the Land."

By the substitution of 4 months by 12 months as the period for compliance.

Subject to these corrections and variations, the enforcement notice is upheld and, in respect of appeals B, C, D, F and G, planning permission is refused.

Appeal J

2. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the laying of hard-core and hardstanding and associated material onto the Land forming an area of hardstanding at Land East of Newlands Road, Wickford, Essex, SS12 9ER as shown on the plan attached to the notice.

Appeals K, L, M, N, O and P

3. It is directed that the enforcement notice be corrected and varied as follows:

By the substitution of the plan attached to the notice by the plan annexed to this decision.

By the insertion, before the text in Section 5, of the words "With the exception of the hardstanding forming an access way to Plot 3, coloured green on the plan attached to the notice:"

By the substitution of 4 months by 16 months as the period for compliance.

Subject to these corrections and variations, the enforcement notice is upheld and, in respect of appeal K, planning permission is refused.

Appeals S and T

4. The appeals are not valid, so I can take no further action.

Appeals A, H, I, Q and R

5. These appeals were withdrawn.

Preliminary Matters

6. All of the appeals concern a parcel of land that was granted planning permission on appeal¹ in 2010 as a residential caravan site, restricted by condition to a single pitch comprising no more than 2 caravans for occupation by gypsies or travellers. The land, about 0.78 ha and roughly rectangular in shape, is at the southern end of Newlands Road, with the single pitch, referred to in these appeals as Plot 1, established pursuant to the planning permission, occupying the north-west corner close to Newlands Road. In 2010 the remainder of the site extending south to The Chase was paddock grassland. The land has since been sub-divided and now comprises 14-16 residential pitches. Most of the pitches have been laid to hardstanding and access roading has been constructed. The Land the subject of Notice 1, which is concerned with the stationing of caravans, is the entire site granted permission in 2010, the Notice 2 Land is Plot 3 only while the Notice 3 Land is all of the 2010 permission Land apart from Plots 1 and 3. Notices 2 and 3 concern operational development only.
7. The appellants in respect of 2 of the plots, Plot 1 and Plot 3, were the only appellants represented at the Inquiry. Plot 1 is the pitch granted permission in 2010, sited in accordance with the layout plan submitted for approval in accordance with condition 5 of the 2010 permission, while Plot 3 was

¹ Appeal Ref. APP/V1505/C/10/2124875

established in about 2018. Both plots are in the northern part of the site near Newlands Road. At the Inquiry the Council agreed a Statement of Common Ground (SOCG) with those appellants. Through the SOCG the parties invited me to vary the notice by adding, at the beginning of Section 5 setting out the requirements of the notice, the following: "With the exception of one static caravan and one touring caravan on Plot 1 and with the exception of two static caravans and one touring caravan on Plot 3 (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968)...".

8. The intended effect of that variation is to allow section 173(11) of the Act to grant planning permission for the stationing of the caravans on Plots 1 and 3 for the purposes of human habitation. In effect there would be under-enforcement of condition 2 of the 2010 permission by requiring less than would be required to comply with the condition. In those circumstances, upon compliance with the notice planning permission would be deemed to be granted for the development originally permitted without complying with the relevant condition, but limited to the stationing of caravans on Plots 1 and 3 so far as they exceed the number of caravans permitted.
9. Section 176(1)(b) of the Act provides that I may vary the terms of the enforcement notice provided that I am satisfied that the variation will not cause injustice to the appellants or the local planning authority. It is the Council's choice to under-enforce to this extent, it has given reasons which I find reasonable in the circumstances², and clearly there is no injustice to the Plot 1 and Plot 3 appellants. In the interests of natural justice I have considered whether there would be any injustice to the other appellants, but I consider that there would not be. Hence the statutory test is met. I shall therefore amend Notice 1 to that effect, albeit with different wording for clarity. I shall also substitute the enforcement notice plan to show the location of the Plots 1 and 3 within the site. In view of the continuing effect of condition 3, limiting the keeping of commercial vehicles on the overall site, the Council has undertaken, through the SOCG, to provide the Plot 3 appellant with a letter of comfort stating that it will not take enforcement action against the keeping of a commercial vehicle on that plot if that is in addition to one on Plot 1 and therefore in breach of condition 3. As indicated in the SOCG, the Plot 1 and 3 appellants have now withdrawn appeals A, H, I, Q and R. Their representatives did not cross-examine the Council witnesses, but they were made available for my questions.
10. I shall also correct Notice 1 so that the notice refers to the correct sub-section of section 171A(1) of the 1990 Act, that is paragraph (b), since the notice alleges a failure to comply with a condition, and not (a) which is concerned with carrying out development without the required planning permission.

Enforcement Notice 1 Appeals B, C, D, E, F and G

Ground (d)

11. These appeals against Notice 1 are made on the basis that it is too late to take enforcement action. Two arguments are advanced on this ground. First, it is claimed that Condition 5, which required the submission of details of a site development scheme and its implementation was not discharged, and that in

² Plot 3 has made the appropriate payment to the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS) to mitigate the effect of an additional residential unit on the protected habitats.

consequence the use of the land as a caravan site should have ceased, and all caravans, structures, equipment and materials brought on for that use removed, by 9 April 2012, by reference to the time limits set out in Condition 5. Since the use did not cease, it is claimed that the continuous breach of that condition for in excess of 10 years without enforcement action having been purported to be taken means that the appeal site has planning permission for use as a caravan site without being subject to conditions.

12. Condition 5 has a complex multi-part structure that is intended to ensure effective control of matters which would, had the development not already commenced, normally have been the subject of pre-commencement type conditions. The relevant matters relate to site layout, drainage, external lighting and landscaping. The initial action required of Condition 5(i), the submission of a site development scheme within 3 months for written approval by the Council, was done in good time. Approval of the scheme is recorded on the Council's web site as having been granted on 11 April 2011, again in good time, and there is nothing to indicate that the scheme was not carried out and completed as required. However, the evidence suggests that the Council did not provide a decision notice or approval in writing, and it is submitted that this is sufficient to invoke the provisions of parts ii and iii of the condition, which require an appeal to, and determination by, the Secretary of State. Condition 5(ii) does not specify how approval by the Council should be communicated, but it is reasonable to expect that approval in writing was required, by reference to 5(i). However, the scheme was in fact approved, completed and carried out. The failure of the Council to provide written approval is, in my judgement, a minor administrative failure that should be disregarded. It does not go to the heart of the condition, which was, in substance, fully complied with. It would never have been reasonable, or in all likelihood possible, for the Council to take enforcement action against a failure to comply with condition 5 on the basis that its approval had not been in writing given that it was recorded as granted on its web site.
13. The second argument is that Condition 2 has been continuously in breach since the permission was granted, which is more than 10 years before the notice was issued. It appears that a second mobile home was stationed on the site, on land to the east of Plot 1 now referred to as Plot 2, at the time of the appeal hearing and site visit, and it is submitted that there has been a mobile home stationed there continually since then, albeit not always in the same location. However, while the submitted aerial imagery does appear to show the presence of a structure on the land up to 2017, it is absent in 2018 when Plot 2 and other parts of the site are starting to be developed. A different mobile home can be seen on Plot 2 in 2018, but there is no evidence about the timing of the removal of the structure in place up to 2017 or the timing of the stationing of the mobile homes present in 2018. It is entirely possible that there was a significant gap between those events. In the absence of any evidence about this period I am unable to conclude on the balance of probabilities that the condition restricting the number of mobile homes on the land at any one time had been in breach for a full 10 year period.
14. The Notice 1 appeals on this ground do not succeed.

Enforcement Notice 1 Appeals B, C, D, F and G

Ground (a) and the deemed planning application (DPA)

15. This ground is that planning permission should be granted for the breach of planning control. In this case the deemed planning application is for the development originally carried out, the change of use to a residential caravan site, without complying with Condition 2 limiting the number of caravans. The other conditions would remain, so far as they were still relevant, hence occupancy would be restricted to Gypsies and Travellers as defined in Planning Policy for Traveller Sites (PPTS).
16. The site is in the Metropolitan Green Belt, where PPTS provides that Traveller sites are inappropriate development, which should only be permitted where very special circumstances exist. It has been argued that because the breach enforced against is one of failure to comply with a condition, which is not development as defined in the 1990 Act, the proposal cannot be considered to be inappropriate development. However, as I have set out above, it is the change of use of the land to a residential caravan site without complying with Condition 2 that falls to be considered, and that is inappropriate development in the Green Belt.
17. In that context, I must consider whether Condition 2 is necessary in the interests of the Green Belt and local character. In effect, and having regard to the acknowledgement by the Council that the current occupation of plots 1 and 3 is acceptable, and to the Site Management Scheme the subject of condition 5 which established the extent of development in 2010, it is the effect of the additional plots on the Green Belt and local character that is important.

Green Belt

18. The fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and their permanence. The stated purposes of the Green Belt includes checking the unrestricted sprawl of large built-up areas, preventing neighbouring towns merging into one another, and assisting in safeguarding the countryside from encroachment.
19. Consistent with this, Saved Policy BAS GB1 of the Basildon District Local Plan 2007 (BLP) provides that boundaries of the Green Belt in the District are drawn with reference to the foreseen long term expansion of the built up areas acceptable in the context of the stated Green Belt Purposes. The accompanying text makes it clear that the narrow gap between Wickford and Basildon has a significant Green Belt role. The Inspector in the 2010 appeal referred to previous Inspectors who had described the narrow strip of Green Belt including the appeal site as being particularly fragile and vulnerable. He was considering development of only a small part of the site, but the current position, and the effect of the proposal before me, is that the entire site has been developed, with significant adverse effects on openness, encroachment on the countryside and the loss of one of the remaining pieces of open land in this part of the Green belt functioning to maintain separation between built-up areas.
20. The harm due to inappropriateness, loss of Green Belt openness, encroachment on the countryside and adding to urban sprawl must all be given substantial weight.

Local character

21. The appeal site and surroundings lie within an area designated as Plotland, located within an area of wider countryside between Wickford and Basildon. The locality includes several land uses and types of built form. There are numerous residential properties on the former plots within the plotlands, along with Gypsy and Traveller sites, light industrial/workshop uses, and edge-of settlement uses, interspersed with grassland fields and paddocks. Without the unauthorised pitches I consider that the site would have contributed positively to the relatively open and semi-rural character of the land between The Chase, Newlands Road and Cranfield Park Road further north. The site itself would have been aptly described as part of the 'green fingers' of open land extending south from Cranfield Park Road forming an integral part of the network of connected open land providing a clear rural separation between the settlements of Wickford and Basildon. With the limited development at the northern part of the site it would have reflected the historic character of the Plotland landscape.
22. The extent of development of the site, particularly at the southern end by The Chase, including extensive hardstanding, an internal roadway and close-boarded fencing between plots, has altered the character of the site to the extent that it no longer contributes positively to local character, rather it has significantly diminished the separation of the settlements of Wickford and Basildon and the open semi-rural character of the locality. The extent of development of the site also adversely affects the historic plotland character. As such, the development conflicts with BLP Policy BAS BE12, which aims to avoid material harm to the character of the surrounding area, amongst other things.

Other considerations

23. The Council has no saved policies in relation to gypsy and traveller sites, and as such relies on the application of relevant national policies, as set out within the National Planning Policy Framework (the NPPF) and the PPTS. The PPTS requires local planning authorities to, among other things, assess the need for sites, develop fair and effective strategies to meet need through the identification of land for sites, and increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply. In producing their Local Plan local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of sites against their local targets.
24. The most recent assessment of need is the Basildon Council Gypsy and Traveller Accommodation Assessment Update Report June 2020 (GTAA), which estimated a need for 68 pitches over the period to 2038, with 43 required in the 5-year period 2019 to 2023, and a further 13 to 2028. The situation at present is that 29 pitches were granted permission by March 2023, leaving a shortfall of 25 pitches. The Council intends to address the shortfall by making site allocations through the Local Plan process, but the next Local Plan is unlikely to be adopted until 2027 at the earliest, so in the meantime provision is likely to rely on applications coming forward, either for new sites or for the expansion of existing sites. Unsurprisingly, the Council is unable to identify a 5-year supply of deliverable sites, and it appears that the Council's policies have failed to address the delivery of gypsy and traveller sites over a significant

period of time. It is also relevant that the Council is unable to identify suitable alternative accommodation for the current occupants. The substantial unmet need for sites, the continuing failure to satisfactorily address that through the local plan process and the absence of identifiable alternative sites are all matters that attract significant weight in favour of the development.

25. The Borough is about 68% Green Belt, with the remainder being urban land, so any further site provision in advance of site allocation through an adopted Local Plan will almost certainly be in the Green Belt. However, the site is a vulnerable part of the Green Belt in terms of development pressure and its loss would cause considerable harm to the purposes and functioning of the Green Belt in this area. Much of the Green Belt is unlikely to be quite so critical in terms of function. For this reason I give only limited weight to this consideration.
26. The intentional unauthorised nature of the development is also a matter capable of weighing against the development, particularly so in the Green Belt. Had the site been developed by people in urgent need of a site this might carry less weight, but what appears to have happened here is that much of the site development, infrastructure-wise particularly, was initiated and implemented by the land owners at the time who lived nearby and were not themselves in need of a pitch, and the unauthorised development of the site continued over a number of years, intensifying between 2020 and 2022, despite the owners being aware of the Council's efforts to control further encroachment. In the circumstances I consider that the intentional unauthorised nature of the development should be accorded significant weight.
27. The personal circumstances of the site occupants are also material considerations. Many of the initial site occupants have now left the site, and aside from the occupants of Plots 1 and 3 none of the appellants appeared or were represented at the Inquiry. Further, there appears to have been considerable turnover in plot ownership and occupancy. The Council sought details of current occupants in August 2023, visiting the site, interviewing occupants and leaving questionnaires aimed at establishing personal circumstances. Four of the plots were vacant and had not been fully developed, but the Council considers that occupation of the overall site in August 2023 is much as it is now. Briefly, again leaving aside Plots 1 and 3, some details were provided as follows:
 28. Plot 2: static caravan occupied by two people and a timber building occupied by another. No details of traveller status.
 - Plot 4: occupants not present, but previous contact (November 2020) indicated occupied by a family with 3 young children. No details of traveller status.
 - Plot 5: two small touring caravans present, one occupied by a woman who moved onto the pitch about 2 months beforehand with her infant child, the other occupied by a young couple with no children. The occupants were related. No details of traveller status. A statement submitted at the Inquiry (Document 1) states that it has been occupied since October 2022 by a young Traveller family who are expecting their first child.
 - Plot 6: Only children present on the site during the Council's visit, but a statement submitted at the Inquiry (Document 4) states that it has been occupied since October 2022 by a Traveller family with 4 young children, 3 of whom attend a local primary school.

Plot 9: Now subdivided into 2 pitches. No information from the Council site visit, but a statement submitted at the Inquiry (Document 3) states that it has been occupied since October 2022 by a Traveller family with 2 young children, for whom they are seeking school places. The unused pitch is intended for the mother of one of the family.

Plot 10: Occupants not identified at Council site visit, but previous contact (March 2022) indicates that it was being occupied by a relative of the plot owner, a traveller who intended to occupy it with her 4 children, whom she wished to register at local schools. Four children were subsequently registered at a local school, but the pitch did not appear to be occupied on a pre-Inquiry site visit (24 November 2023).

Plot 11: Occupants not identified at Council site visit, or previously.

Plot 12: Occupied by a Traveller family since January 2023, no children. Owned by a non-Traveller who told the Council he intends to live there himself.

Plot 13: Occupied by a Traveller family, no children.

Some of the adults on the site have reported health problems, and that the site is in a suitable location from which to access treatment.

29. Despite the limited information on personal circumstances, I have proceeded on the basis that most, at least, of the current occupiers meet the definition of Travellers in the PPTS, and in any case the nature of the appeal means that any permission would be restricted by condition to those meeting the definition. The personal circumstances of the occupants are not exceptional and in themselves attract only moderate weight, but, while the tenure of the plots is unclear, dismissal of these appeals would lead to the loss of a home for those currently occupying the site, thus interfering with their rights under Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, in relation to respect for private and family life, and also to their rights under Article 1 of the First Protocol in relation to peaceful enjoyment and protection of property. This is a matter to which I accord significant weight.
30. For the children living on the site, having a settled base from which to access education and health services would clearly be in their best interests. The best interests of the children are necessarily a consideration at the forefront of this decision, and no other matter is intrinsically more important. It is not the children's fault that I do not have full details of their circumstances, but it is likely that having to leave the site will have adverse consequences for them, being at the very least unsettling. Their best interests warrant substantial weight.

Balance

31. In balancing these considerations, substantial weight must be given to any harm to the Green Belt, the definitional harm, loss of openness and conflict with a number of the purposes of including land in the Green Belt in this case, and there is also harm to the character and appearance of the area, adding further weight against the proposal. The intentional unauthorised nature of the site's establishment also weighs against the development. Thus there is very substantial weight in total against the appeals. To justify a grant of planning permission for inappropriate development in the Green Belt, on either a

permanent or temporary basis, there must be considerations which clearly outweigh the definitional and other harm. However, the weight I accord to the personal circumstances of the occupants, interference with their Human Rights, the extent of unmet need for Traveller pitches, the failure of policy, the lack of identifiable available and suitable alternative sites and the best interests of the children are not sufficient in this case to outweigh the totality of the harm identified. While a temporary permission would mean that the harm would be time limited, and therefore of lesser weight, there would still be very substantial harm. The prospect of sites coming forward within a reasonable timeframe through the local plan process can be afforded some weight in favour of a temporary permission, but it would still fall well short of clearly outweighing the totality of the harm I have identified.

32. As noted above, dismissal of the appeals interferes with the appellants Human Rights. However the harm caused by the development in terms of its effect upon the interest of the economic well-being of the country, which includes the well-established and legitimate aims of Green Belt policy and the protection of the character and appearance of the countryside, cannot be ignored. I consider that the protection of the public interest cannot be achieved by means which are less interfering of the occupants' rights. They are proportionate and necessary and hence would not result in a violation of rights under Articles 1 and 8 of the First Protocol of the European Convention on Human Rights.
33. In coming to this view I have had regard to my duty under the Equality Act to avoid discrimination and promote equality, but the very substantial harm and conflict with the development plan read as a whole, and with national planning policy, outweigh its benefits in terms of eliminating discrimination against persons with protected characteristics, advancing equality of opportunity for those persons and fostering good relations between them and others. I conclude accordingly that it is proportionate and necessary to dismiss the appeals and refuse planning permission.

Other Matters - Protected habitats

34. Most of the Essex coast is designated under the Habitats Regulations as part of the European Natura 2000 network, now referred to as the National Site Network. The nearest protected habitats sites at Benfleet and Southend Marshes (Special Protection Areas (SPA) and Ramsar) and the Crouch and Roach Estuary (SPA and Ramsar) are designations aimed at protecting breeding and non-breeding birds and coastal habitats. The appeal site falls within the Zone of Influence (ZoI) for the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS) for the Essex coastal designated sites. Natural England has advised that new residential development within the ZoI is likely to have a significant effect on the features of interest of the SPA and Ramsar sites through increased recreational pressure. The aim of the RAMS is to secure financial contributions or other means to mitigate the likely impact of development, without which it is likely that there would be adverse effects on the protected habitats. No such contributions have been made in respect of the occupiers of the additional plots, Plot 3 aside, and nor has any mechanism been proposed that might guarantee compliance with RAMS. On its own the likelihood of adverse effects on such protected sites is sufficient reason to refuse planning permission, but had the development been otherwise acceptable I would have taken steps to ensure that the relevant contributions could be made before finalising my decision. In the event that does not arise.

Enforcement Notice 1 Appeals B, C, D, E, F and G

Ground (f)

35. This ground is that, in these circumstances, the requirements of the notice exceed what is necessary to remedy the breach. No lesser steps are suggested, but the appeal on this ground was made on the basis of uncertainty regarding which caravans need be removed from the site. That is resolved by the amendment of the requirements outlined above.

Ground (g)

36. This ground is that the period for compliance, 4 months, is too short. In view of the apparent lack of a suitable available alternative sites and the best interests of the children living on the site I consider that 12 months is a more reasonable and proportionate period to allow the occupants to look for alternative accommodation. The appeals on this ground succeed to that extent.

Enforcement Notice 2 Appeal J

Ground (a) and the DPA

37. This appeal concerns the hardstanding on Plot 3 and on the access way leading to it from Newlands Road. The effect of the amendment to Notice 1 means that Plot 3 will benefit from a deemed planning permission enabling the stationing of caravans on it for the purposes of human habitation upon compliance with the notice. As a result the Council no longer object to the retention of the plot hardstanding and access way, clearly on the basis that it is necessary, and have invited me to allow the appeal on ground (a) and grant planning permission for the operational development necessary to enable the occupants of Plot 3 to benefit from the deemed planning permission to occupy the plot and to ensure satisfactory living conditions.
38. The hardstanding is inappropriate development in the Green Belt, but the further Green Belt harm from loss of openness and conflict with the purposes of including land in the Green Belt is very limited in the circumstances, and there is no harm to the character or appearance of the area. There is, however, a clear need for the access and hardstanding on the plot to provide satisfactory living conditions for the occupants of plot 3, and this is sufficient in the circumstances to outweigh the Green Belt harm and avoid any conflict with the development plan. The very special circumstances necessary to justify a grant of planning permission for inappropriate development therefore exist. The appeal on this ground succeeds accordingly, and I shall grant planning permission for the hardstanding and access. No conditions are necessary. Since planning permission is granted, the notice will be quashed and the appeals on grounds (f) and (g) do not fall to be considered.
39. Although not strictly necessary, for clarity I shall amend the requirements of Notice 3 to exclude the access to Plot 3, and I shall amend the Notice 3 plan to identify that access.

Enforcement Notice 3 Appeals K, L, M, N, O and P

Ground (d)

40. These appeals concern the accessway, hardstanding, buildings and lampposts on the land outside of Plots 1 and 3. This ground is that it is too late to take enforcement action, the relevant period to achieve immunity being 4 years. The appeal on this ground relates solely to Plot 2, in the north-east corner of the Land. The appeal form indicated that the appellant would demonstrate with reference to witness statements, aerial photography etc that some of the surface the access track and hardstanding on Plot 2 and the substantial part of the easterly building on Plot 2 are immune from enforcement as they were substantially complete in excess of 4 years before the notice was issued, that is by 22 April 2018. However, no further evidence on these points was submitted. The publicly available aerial imagery of the site which shows a building on Plot 2 in 2013, along with what may be some imported material on what is now the access track into the Plot, but for the purposes of immunity the clock only starts running upon substantial completion of the operational development. Imagery dated June 2018 shows the existing track and hardstanding being established, and while the building appears much the same, in plan at least, at that point, the imagery from April 2020 shows a somewhat larger building in place. From the limited evidence available, it is not possible to establish with the requisite degree of certainty, that is the balance of probability, that the track, hardstanding and building were substantially completed by April 2018.
41. The burden of proof in an appeal brought on ground (d) is firmly on the appellant. In this case the evidence submitted, or referred to, falls well short of establishing that the elements claimed had in fact been substantially completed more than 4 years before the notice was issued, and accordingly the appeals on this ground cannot succeed.

Enforcement Notice 3 Appeal K

Ground (a) and the deemed planning application

42. There is no dispute that the operational developments the subject of the appeal are all inappropriate development in the Green Belt. They reduce openness and conflict with the purposes of including land in the Green Belt, and do not benefit from any of the exceptions set out in paragraph 154 of the NPPF. The harm to the Green Belt carries substantial weight against the developments. The extent of hardstanding across the site, along with the presence of the buildings. and the lampposts had they been retained, contribute to the adverse effect on local character of the additional plots which they are to serve, being urbanising and discordant, particularly in the context of the former semi-rural plotland character and the extant plotland character of the neighbouring to the east and north-east, placing the developments in conflict with BLP Policy BAS BE12.
43. In the absence of any authorised use of the site that might justify these developments, there are no other considerations to weigh against the Green Belt and other harm, hence the very special circumstances necessary to justify the developments cannot exist. The appeal on this ground must fail accordingly, and planning permission is refused.

Enforcement Notice 3 Appeals K, L, M, N, O and P

Ground (f)

44. Requirement 1 of Notice 3 requires the removal of the hardstanding and access, along with resultant materials and debris from the Land, while Requirement 2 requires the land to be restored to its former natural topography. It is argued that Requirement 2 exceeds what is necessary to remedy the breach of planning control because land level changes are not alleged, and it would be unclear to any person how that could be complied with. I disagree. Among the means of remedying a breach is by restoring the land to its condition before the breach took place, and there can be no real doubt that the reference to natural topography is to the land levels before the breach took place. It is not necessary to allege level changes as a breach of planning control, compliance with requirement 1 will in any case lower levels by the removal of materials, so it is reasonable to require that the former levels, expressed as natural topography in this case, be restored. I do not consider this to be unclear. The appeals on this ground do not therefore succeed.

Ground (g)

45. The time for compliance is 4 months. Logically, in view of the extension of the period for removing caravans from the site on the appeals against Notice 1, this needs to be extended to four months after the 12 months compliance period for Notice 1. The appeals succeed to that extent.

Appeals S and T

46. These appeals are against the failure of the Council to determine applications to vary condition 2 of the 2010 permission, limiting the number of caravans, and condition 3, limiting the number and size of commercial vehicles kept for the use of caravan occupiers, and to remove conditions 5 and 6, respectively establishing the layout, drainage, lighting and landscaping of the 1-pitch development permitted in 2010 and requiring maintenance of the landscaping for 5 years.
47. Approval of a section 73A application results in a new planning permission for the original development, a caravan site in this case, but subject to whatever different conditions that may be necessary to effect the change, which in the case of section 73A is one that has already occurred. Appeals S and T seek approval for the establishment of Plots 4 and 5 respectively by imposing a new condition 2 as follows:

"In the area of this permission, no more than 2 caravans, as defined in the Caravan Sites and Control and Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan or mobile home) shall be stationed on the site at any time",

and a new condition 3:

"In the area of this permission, no more than one commercial vehicle shall be kept on the land for use by the occupiers of the caravan hereby permitted, and they shall not exceed 3.5 tonnes in weight."

The 'area of this permission' refers to the application plans showing Plots 4 and 5 and their respective access roads.

48. The Council did not determine the applications because it considered that they were not valid applications. Briefly, it considered that the application sites were the individual plots and not the land to which the 2010 permission applied, and it was concerned that the effect of the applications would be to create overlapping permissions that conflicted, and which could possibly deprive most of the 2010 permission land of the benefit of the permission.
49. There would be no conflict in terms of the area actually developed, save for some overlap of the accesses to Plots 4 and 5, so there would be no physical incompatibility between the s73A applications and the 2010 permission, but I agree to an extent. In principle, I see no good reason why a section 73A application to regularise the development that had taken place could not be made, but the permissions sought, if granted, would be mutually inconsistent, though that does not make the applications invalid. Mere inconsistency between 2 permissions, or 3 in this case if both appeals succeeded, does not prevent the implementation of any one of them, but it would not be possible, as is clearly intended here, to simultaneously implement all 3 in accordance with their own terms. Each permission would only authorise a single pitch on the land the subject of the 2010 permission, and it would be for the developer to decide which permission to proceed under, though the hardstanding and concrete base facilitating the residential use of Plot 1 have the benefit of a separate permission and so would remain whichever permission was to be implemented.
50. This brings me to a significant problem with the applications themselves. The applications, being made under section 73A, must relate to the whole site, that is the land granted permission for use as a residential caravan site. In 2010 the land was in single ownership. Since then it has been subdivided and parts have been sold, such that it is now in 5 separate titles. Plots 4 and 5 are within the land registered to members of the Sharp family, Plots 1, 2, 3 and 10 are each under separate titles and ownership. Article 13 of the DMPO³ requires applicants for planning permission to give requisite notice of the application to any person (other than the applicant) who on the prescribed date is an owner of the land to which the application relates, and article 14 requires the applicant to certify that the relevant requirements of article 13 have been met.
51. The only owners certified as notified in each case were the members of the Sharp family on whose land Plots 4 and 5 fell. Since the land to which the application relates is the entirety of the 2010 land, the owners of Plots 1, 2 and 3⁴, which were registered on the Land Registry when the applications were made, should have been formally notified of the applications. The failure to do so means that the requirements of article 13 were not met and the applications were not valid. The Courts have held⁵ that an invalid planning application cannot be the foundation for any jurisdiction in an appeal, hence I am unable to determine these appeals.

Paul Dignan

INSPECTOR

³ The Town and Country Planning (Development Management Procedure) (England) Order 2015

⁴ Plot 10 was not registered under a separate title when the applications were made.

⁵ *Geall v SSE* [1998] EWCA Civ 1940

APPEARANCES

FOR THE APPELLANTS:

Matthew Green
Kirsty Wilkinson

Planning Consultant⁶
Occupant Plot 1⁷

FOR THE LOCAL PLANNING AUTHORITY:

Alex Goodman KC

He called	
Steve Jarman	ORS
Kate Ellis	Planning
Silke Gruner	Landscape
Ian Cummings	Enforcement
Christine Lyons	Planning

INTERESTED PERSONS

Kathleen Stokes	Occupant, Plot 13 (Blossom Hill)
Ray White	Local Resident
Leanne Tarrant	Local Resident
Kevin Andrews	Local Resident

DOCUMENTS

- 1-4 Statements – John Stokes, Kathleen Stokes, Marie Taylor and Patrick Stokes.
- 5 Opening submissions - Council
- 6 Statement of common ground between Basildon Council and the occupiers of Plots 1 and 3, including amended plans
- 7 Closing submissions - Council

⁶ In respect of Appeal J and withdrawn appeals APP/1505/C/22/3298897, APP/1505/W/20/3261289 and APP/1505/W/22/3298896

⁷ In respect of withdrawn appeals APP/1505/C/22/3299381 and APP/1505/C/22/3299382

Appendix 1: Notice Plan



Appeal Refs: APP/V1505/C/22/3299438, 3299436, 3299440, 3299441, 3299442 and 3299443

Appendix 1: Notice Plan 1 – shows the Land edged by red line

