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## Appeal Decision

Site visit made on 11 December 2024

**by J Hobbs MRTPI MCD BSc (hons)**

an Inspector appointed by the Secretary of State

Decision date: 6 January 2025

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**Appeal Ref: APP/V1505/W/24/3344292**

**The land lying to the east of Lower Avenue, Bowers Gifford, Pitsea SS13 2LZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Niki Wright against the decision of Basildon Borough Council.
  - The application Ref is 23/01460/FULL.
  - The development was originally described as “Proposed retrospective approval of land for recreational use. Class F2 – Outdoor sports and recreation.”
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### Decision

1. The appeal is invalid and therefore I am unable to determine it.

### Preliminary Matters

2. On the application form the appellant has indicated that the development started in February 2022 and was completed in January 2023. During my site visit I observed structures that appeared like those shown on the application plans. The appellant has also indicated elsewhere that the application was retrospective. I have therefore dealt with the appeal on that basis.
3. On 15 April 2024 the Council issued an enforcement notice in relation to development at the site, including development subject to this appeal. The appellant has not appealed the enforcement notice. For clarity, my decision is based upon the planning application dismissed by the Council only.
4. Section 79(6) of The Town and Country Planning Act 1990 (as amended) provides that if, before or during the determination of an appeal the Secretary of State forms the opinion that planning permission for that development could not have been granted by the local planning authority, they may decline to determine the appeal or to proceed with the determination.

### Reasons

5. Article 13(1) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO) sets out that an applicant for planning permission must 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. Article 14 of the DMPO requires where an application for planning permission is made, the applicant must certify that the relevant requirements of Article 13 have been satisfied.

6. Furthermore, the Planning Practice Guidance<sup>1</sup> advises that the planning system entitles anyone to apply for permission to develop any plot of land. However, an applicant is required to notify owners of the land, and they must sign an ownership certificate to which the application relates.
7. On the application form the appellant has completed Ownership Certificate A which indicates that 21 days before the date of the application nobody except the applicant was the owner of any part of the land and that none of the land is, or is part of, an agricultural holding. Similarly, on the appeal form the appellant has completed Ownership Certificate A which indicates the same as above, but 21 days before the date of the appeal instead.
8. The red line on the Location Plan<sup>2</sup> does not follow the established field boundary and it includes part of the garden of a property identified as Clissold. In correspondence with the appellant, they acknowledged that the red line and consequently the ownership certificate was incorrectly completed.
9. It is my understanding that the Council identified this discrepancy following the determination of the planning application. However, as the correct ownership certificate was not completed, and accordingly it appears as though the correct notice(s) were not served, the Council could not have granted planning permission for the development.
10. It has been held in caselaw<sup>3</sup> that an Inspector can only consider the merits of an application and determine the appeal if they are satisfied that a valid planning application has been made. Whether the Council has validated the application and issued a decision letter is not determinative and the Inspector must consider and reach a view on validity themselves. If an application is invalid, the Secretary of State has no jurisdiction to determine any appeal and it must be turned away as invalid.
11. In this instance I have found that the original application did not comply with the requirements of the DMPO and thus it was invalid. I am unable to determine the appeal and it is not necessary for me to consider the merits of the development.

## Conclusion

12. For the reasons given above, I conclude that planning permission could not have been granted by the local planning authority due to the procedural failings that I have identified, and I am unable to consider the planning merits of the appeal. I therefore conclude that the appeal is invalid, I decline to determine it and shall take no further action.

*J Hobbs*

INSPECTOR

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<sup>1</sup> 'Making an application', Paragraph 027, Reference ID: 14-027-20140306

<sup>2</sup> Drawing Ref. 1822-01 Rev. -

<sup>3</sup> Geall (Marc John) v Secretary of State for the Environment, Transport and the Regions and Lewes DC [1999] JPL 909; [1998] EGCS 183; (1999) 78 P & CR 264