



Appeal Decisions

Hearing and site visit held on 16 January 2025

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2025

Appeal A Ref: APP/V1505/C/23/3326276

Land East of The Firs, Osborne Road, Bowers Gifford, Basildon, Essex SS13 2LG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Luke Brett against an enforcement notice issued by Basildon Borough Council.
 - The notice was issued on 26 June 2023.
 - The breach of planning control as alleged in the notice is *"Without planning permission, the material change in use of the Land for 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.
 - ii. Remove the caravans and all residential paraphernalia from the Land.
 - iii. Break up and remove all non-organic matter forming the hardstanding within the site from the Land, including all associated detritus therefrom, restoring the level of the ground to its former natural topography.
 - The period for compliance with the requirements is four (4) months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 (as amended).
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Appeal B Ref: APP/V1505/W/23/3328977

Land East of The Firs, Osborne Road, Bowers Gifford, Basildon, Essex SS13 2LG

- 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 L Brett against the decision of Basildon Borough Council.
 - The application Ref is 23/00737/FULL.
 - The development proposed is "Proposed change of use of land for the creation of 2no. Gypsy/Traveller pitches comprising the siting of 1 static caravan and 1 touring caravan per pitch."
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Decisions

Appeal A

1. It is directed that the enforcement notice is varied by:

In section 5. WHAT YOU ARE REQUIRED TO DO:, delete all the words in i. and substitute the words "Cease the residential use.", and delete all the words in iii. and substitute the words "Break up and remove all non-organic matter forming the hardstanding from the Land and return it to its former condition."

And:

In section 6. TIME FOR COMPLIANCE:, delete the words 'four (4) months' and substitute the words 'twelve (12) months'

Subject to the variations, appeal A is dismissed, and the enforcement notice is upheld.

Appeal B

2. The appeal is allowed, and planning permission is granted for the proposed change of use of land for the creation of 2no. Gypsy/Traveller pitches comprising the siting of 1 static caravan and 1 touring caravan per pitch on land east of The Firs, Osbourne Road, Basildon, Essex SS13 2LG in accordance with the terms of the application, Ref 23/00737/FULL, and subject to the conditions in the attached schedule.

Preliminary Matters

3. The s78 and s174 appeals relate to the same Land. The application form declares the address of the Land to be '*Land adj. The Firs*'. However, I find the address set out in the enforcement notice and the refusal notice to be more precise and I have used it in the banner heading above for clarity and consistency.
4. The letter fixing the date of the Hearing notified the Council that "*No later than 2 weeks before the opening of the hearing you must serve a notice of the hearing arrangements on those persons other than the appellant(s) with an interest in the land, those who made representations at the application and/or appeal stages, those entitled to appear at the hearing and anyone else you consider to be affected by or interested in the proposed development.*" The Council had delivered Hearing notification letters on 14 January 2025, which was less than 2 weeks before the opening of the Hearing.
5. Following my opening of the Hearing the Council advised that a representative of Bowers Gifford and North Benfleet Parish Council (the Parish Council) verbally opined that insufficient notification time had been given of the Hearing date, depriving them of the opportunity to decide whether a representative would attend. The Council went on to advise that there have been several appeal hearings within this Parish recently and that representatives of the Parish Council had not attended any of those events.
6. The Parish Council has provided written responses to the planning application consultation and to the appeal notification letter. The content of these two representations is similar and clearly identifies the Parish Council's concerns in respect of the proposal. I had no questions for, nor required any clarification from the Parish Council in respect of their written submissions. Given these facts, I found the late notification of the Hearing details had not prejudiced the Parish Council.
7. Copies of letters from interested parties to the application consultation exercise were provided by the Council. No further representations were received from interested parties in response to the Appeal Notification letter. The Council did not receive any representations to the late notification of the Hearing details. There were no interested parties present at the Hearing. I will have regard to the interested parties' written submissions. As such, in my judgement, interested parties were not prejudiced by the late notification of the Hearing details. The Hearing concluded within the day scheduled.
8. On 12 December 2024, the Government published a revised National Planning Policy Framework (the Framework) and Planning Policy for Traveller Sites (the PPTS). These include revisions to policies that are pertinent to the appeal; those relating to development in the Green Belt and Gypsies and Travellers. The parties

commented on the relevance of the revised Framework and PPTS to the appeal proposal. In my decision, I have had regard to the parties' written and verbal comments.

9. The appeal site has been cleared, hardstanding has been laid and a mobile home used for residential purposes has been stationed. The mobile home is occupied by the appellant, his partner and their two children. I was told that a touring caravan has on occasion also been stationed on the land and used for residential purposes. The touring caravan belongs to and is occupied by Mr Ryan Campion and his son. Given these circumstances, I shall consider the proposal on the basis that the development has begun.
10. Mr Brownjohn told us the appellant and Mr Campion are English travellers and that they, and their families, exercise a traditional nomadic lifestyle. Both families have been living on the roadside and/or doubling up on the pitches of other family members in recent times. Both the appellant and Mr Campion are employed as landscapers, and they travel for work. We were also told that their work arises from word of mouth and leaflet drops within the areas they are travelling. Given the additional information provided at the Hearing, the Council concede that both the appellant and Mr Campion meet the revised definition of Gypsies and Travellers found in Annex 1 of the PPTS. I see no reason to disagree and shall proceed on this basis.

Appeal A

Matters Concerning the Enforcement Notice

11. It is incumbent upon me to put the enforcement notice (the notice) in order. There is no dispute that the matter alleged has occurred. The requirements however lack precision. Step i. shall be varied to '*Cease the residential use of the Land.*' and Step iii. shall be varied to '*Break up and remove all non-organic matter forming the hardstanding and return the Land to its former condition.*' by the deletion of superfluous words.

The ground (g) appeal

12. An appeal on this ground is that the period for compliance falls short of what should reasonably be allowed. The appellant is seeking an extension of the period from 4 months stated in the notice to 12 months, based on the appellant's personal circumstances. Those personal circumstances include, but are not limited to, the needs of the children and the need to be able to find a suitable alternative site in order to prevent a return to a roadside existence.
13. There is no doubt that the appellant's development of the land occurred over a relatively short time frame. This was however, more likely than not, in response to a lack of any other suitable alternative option. I therefore need to balance the public interest in the notice being complied with expeditiously against the private interests bound up in the development.
14. In this regard I am keen to ensure that the appellant should be given the most reasonable opportunity to find an alternative solution, in the context of the harm identified in the notice. I consider that extending the compliance period to 12 months would amount to the optimal position.

Conclusion on Appeal A

15. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Appeal B

16. The main issues are:

- Whether the proposal would constitute inappropriate development in the Green Belt having regard to the Framework, the PPTS and any relevant development plan policies;
- If the proposal would be inappropriate development in the Green Belt, the effect of the proposal on openness of the Green Belt;
- The effect of the proposal on the Essex Coastal Special Protection Area; and
- Whether any harm by reason of inappropriateness, and any other harms, would be outweighed by other considerations, so as to amount to very special circumstances required to justify the proposal.

Reasons

Development in Green Belt

17. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping it permanently open. The essential characteristics of Green Belts are their openness and their permanence.
18. The development plan does not contain a specific Green Belt policy, the Council therefore rely on the Framework. Paragraph 153 of the Framework advises that substantial weight should be given to any harm to the Green Belt, including harm to its openness. Also, that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
19. Paragraph 154 confirms that development in the Green Belt is inappropriate, unless it falls within any of the eight exceptions it identifies. Exception (e) provides that '*limited infilling in villages*' is not inappropriate development.
20. The Council confirmed that the appeal site lies within the village of Bowers Gifford. There are existing built developments to the east and west of the appeal site, therefore it constitutes an infill plot. The appeal site has a similar width and depth to other plots on Osbourne Road and the proposed layout plan shows that 2no. gypsy/traveller pitches can be comfortably accommodated. In my judgement, the development proposed is of limited scale. The Council conceded at the Hearing that the proposal amounts to limited infill in a village. For the reasons set out, I concur.
21. The proposal is not therefore inappropriate development in the Green Belt as it constitutes an exception falling within paragraph 154(e) of the Framework. The proposal therefore also complies with Policy E of the PPTS. Furthermore, as the proposal is not inappropriate development, it would have no adverse effects on the

openness of the Green Belt or upon the purposes of Green Belt. Demonstrating very special circumstances to justify the proposal is not required.

The Essex Coastal Special Protection Area

22. The Essex coastline is home to internationally important numbers of breeding and non-breeding birds and their coastal habitats, these are its qualifying features. The conservation objectives are to ensure that levels of bird disturbance are not increased.
23. The appeal site falls within the Zone of Influence for the Essex Coastal Special Protection Area (the SPA). Any occupants of the pitches would be likely to use the Essex Coast, thereby increasing visitor pressures on the protected habitats, leading to potential harm. I therefore consider that the effects of the development, both on its own and in combination with other development projects, is such that they are likely to have significant effects on the integrity of the SPA. In such circumstances, Regulation 63(1) of the Conservation of Habitats and Species Regulations (The Habitats Regulations) indicate the requirement for an Appropriate Assessment (AA). As the competent authority, I have therefore undertaken an AA.
24. Various mitigation measures in response to pressures on the habitat that I have identified are set out in the Essex Coast RAMS Strategy SPD (May 2020) (the SPD). The measures include provision of information and education, habitat base measures, including fencing, waymarking, zoning, habitat creation, monitoring and continual improvement. It is a comprehensive suite of mitigation measures. Funding for the measures is calculated, and a per dwelling average cost provided. I am satisfied that the mitigation payment is required to avoid adverse effects arising from the development proposal on the integrity of the SPA. The Council confirmed at the Hearing that there was no requirement to consult with Natural England (NE) as the specific mitigations have been agreed with NE and are in place for the SPA as set out in the SPD.
25. The SPD requires the appellant to enter into a formal deed with the local planning authority to secure the payment of the required financial contribution. In this case I have been provided with evidence in the form of a receipt of payment, confirming that the required financial payment has been made to the local planning authority. The Council confirmed at the Hearing that the payment had been received and that they were satisfied that this was an appropriate method of securing the financial contribution towards the adopted mitigation measures. The payment will ensure that there are no likely significant effects on the SPA. On this basis I am satisfied that the integrity of the SPA would not be adversely affected, and the proposal would comply with the SPD in this respect and the Habitats Regulations.

Other Matters

Intentional Unauthorised Development

26. A Written Ministerial Statement (WMS) dating from August 2015 establishes that Intentional Unauthorised Development (IUD) is a material consideration to be weighed in the determination of planning applications and appeals. The WMS relates to all forms of development not just that relating to Gypsy and Traveller Sites. It places particular emphasis on IUD in the Green Belt.

27. Part of the underlying reason for seeking to deter IUD is to avoid prejudicing the opportunity to mitigate the impact of development by using planning conditions. In this case an application for planning permission has been made, providing an opportunity to impose conditions to mitigate any effects of the development. I am also mindful that the 1990 Act as amended makes provision for retrospective planning permission, and that planning enforcement is remedial rather than punitive. In the light of these provisions, in my judgement, the intentional unauthorised nature of the development carries limited weight.

Loss of Habitat

28. The site clearance undertaken to facilitate the unauthorised development may have resulted in the loss of habitat for wildlife. However, I have no evidence to show the vegetation benefitted from any formal designation or protection, or that protected species have been affected.
29. The land is predominantly laid to grass. The proposed site Plan (J004519-DD-05) shows that, even with the development, there would be adequate land for an appropriate landscaping scheme to be implemented. In my judgement, this would mitigate the limited habitat harm arising from the clearance of the land.

Surface Water Flooding

30. The Council advised at the Hearing that surface water flooding is not a recognised issue in the locality. I have been provided with no empirical evidence showing that the land or its immediate locality suffer from surface water flooding. A satisfactory surface water disposal scheme could be secured by condition. Such a scheme would ensure that the proposal does not increase the risk of surface water flooding within the locality.

Effect on the settled community

31. The proposal would provide no.2 Gypsy/Traveller pitches in a predominantly residential area. I saw that there are several other Gypsy/Traveller pitches along Osbourne Road and others in the wider locality. The Council opined at the Hearing that the Plotlands are characterised as accommodating the traveller community.
32. The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates their traditional and nomadic way of life while respecting the interests of the settled community. In my judgement, the scale of the village is such that the provision of these two additional pitches, alone or taken with others, would not result in a disproportionate number of pitches that would dominate the settled community.

Traffic Generation

33. The proposal is of a domestic scale, not dissimilar to other residential developments along Osbourne Road. The proposal does not provide for commercial activity to take place on the land and its occupation would be for residential purposes. There is no evidence to suggest that the development would generate a disproportionate number of vehicles.
34. As future residents would potentially travel for work, they may have larger than average vehicles. Osbourne Road is mostly a single-track road with intermittent passing places. Restricting the maximum size of vehicles permitted to be parked

or stored on the land would be justified in the interests of road safety and residential amenity.

Conditions

35. The draft Statement of Common Ground included planning conditions which were discussed at the Hearing. I have considered the conditions in light of advice within the Framework and the Planning Practice Guidance. I have also taken the views of the parties into account.
36. A condition is necessary to restrict the occupation of the site to Gypsies and Travellers to secure the site as part of the Council's supply of traveller sites against identified need. It is also necessary to condition the number of pitches and caravans to safeguard amenity.
37. A time limit condition is not necessary as the development has already commenced. A condition requiring the proposal to be carried out in accordance with the submitted plans is necessary in the interests of amenity.
38. In the interests of the appearance of the site, to avoid pollution and to prevent increased risk of flooding, a Site Development Scheme (SDS) is necessary. The SDS should include details of soft landscaping enhancements/maintenance, details of the location of the vehicle parking and refuse storage, boundary treatments, and external lighting. As the development has already commenced, it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters. This condition should therefore be drafted to include a sanction. The condition should provide for the loss of the effective benefit of the planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or the Secretary of State on appeal), or implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the use for which planning permission has been granted must cease.
39. In the interests of road safety and residential amenity it is also necessary to prevent the parking and storage of vehicles over 3.5 tonnes in weight on the land.

Conclusion on Appeal B

40. For the reasons given above, having regard to the development plan taken as a whole, and all other relevant material considerations, I conclude that appeal B should be allowed.

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Peter Brownjohn	WS Planning & Architecture
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FOR THE LOCAL PLANNING AUTHORITY:

Katie Ellis	Principal Planning Officer, Basildon Borough Council
Ryan Funnell	Planning Enforcement Officer, Basildon Borough Council
Ian Cummings	Team Leader for Enforcement, Basildon Borough Council

DOCUMENTS

HD1	Aerial image dated 15 November 2024
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APPEAL B

SCHEDULE OF CONDITIONS

1. The site shall not be occupied by any person other than Gypsies and Travellers, defined as 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 dependant's educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism or of living in a caravan, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
2. There shall be no more than two pitches on the site. Each pitch hereby approved shall have no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended. The site shall have no more than four caravans in total (of which no more than two shall be static caravans) stationed on the land at any time.
3. No commercial, industrial or business activities, including the storage of materials and goods, shall take place on any part of the site.
4. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
5. The development hereby approved shall be carried out in accordance with the following approved plans:
 - Drawing no. J004519-DD01 – Site Location Plan
 - Drawing no. J004519-DD03 – As Proposed Site Block Plan
 - Drawing no. J004519-DD05 – As Proposed Site Plan
6. The use hereby permitted shall cease and all caravans, vehicles structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within 3 months of the date of this decision, notwithstanding the details shown on approved plan J004519-DD-05, a site development scheme ('the SDS') shall be submitted for the written approval of the local planning authority and shall include a timetable for its implementation and
 - a. the internal layout of the site including the extent of the location vehicle parking, and refuse storage;
 - b. all boundary treatments and all other means of enclosure (including internal sub-division);

- c. hard and soft landscaping and screen planting including details of species, plant sizes and proposed numbers and densities and details of a schedule of maintenance for a period of 5 years;
 - d. details of external lighting within the site;
 - e. the means of surface water and foul wastewater drainage of the site,
- (ii) If within 11 months of the date of this decision the local planning authority refuse to approve the SDS or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted SDS shall have been approved by the Secretary of State.
 - (iv) The approved SDS shall have been carried out and completed in accordance with the approved timetable and shall be retained for the duration of the use of the site and the development.

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

END OF SCHEDULE