



Appeal Decision

Hearing held on 6 November 2024

Site visit made on 6 November 2024

by Chris Preston BA (Hons) Town and Country Planning, Bachelor of Planning (BPI), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2025

Appeal Ref: APP/V1505/C/23/3330687

Sadlers Park, London Road, Bowers Gifford, BASILDON SS13 2HD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Martin Doran against an enforcement notice issued by Basildon Borough Council.
 - The notice was issued on 4 September 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a building ("the Building") in the approximate location as shown outlined and hatched in black on the attached notice plan.
 - The requirements of the notice are to:
 - (i) Demolish the Building (as approximately shown outlined and hatched black in the attached notice plan) and permanently remove all resultant building materials, construction debris from the Land.
 - (ii) Break up the foundations and permanently remove all resultant building materials, construction debris from the Land.
 - The period for compliance with the requirement is six months after the notice takes effect.
 - The appeal is proceeding on the ground[s] set out in section 174(2) (a), (b), (c) 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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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the erection of a building at Sadlers Park, London Road, Bowers Gifford, Basildon SS13 2HD, as shown on the plan attached to the notice, subject to the following condition:
 - 1) The building hereby permitted shall be used as a dayroom ancillary to the day to day residential use of the land and for the residents of pitch No.1, Sadlers Park, London Road, Bowers Gifford SS13 2HD and for no other persons or purpose.

Preliminary Matters

2. The appellant initially appealed on grounds (a), (b), (c), (f) and (g) of section 174(2) of the Town and Country Planning Act (the Act). However, prior to the Hearing the appeal on ground (f) was withdrawn. Consequently, I shall address the remaining grounds of appeal below.
3. The enforcement notice refers to the erection of a "building" without specifying an end use. That is due to the fact that the structure is not yet occupied and on account of the fact that the Council had been unable to gain access to view the building internally. Externally, the building is essentially complete but work has

been put on hold internally, pending the outcome of the appeal. Nonetheless, the internal walls have been erected such that the layout can be readily appreciated. That layout is consistent with the layout plan for a single-storey dayroom that was prepared in 2023¹. The plan depicts a communal area, bathrooms adapted for use by the disabled, along with sensory rooms for three of the present occupants of the site.

4. I have no reason to doubt that the building is intended for that purpose and following the site Inspection the Council are satisfied that is the intended use. Therefore, on the basis of the written and oral evidence presented and I have considered the appeal on that basis.
5. Following the Hearing the Government published changes to the National Planning Policy Framework (the Framework) and the Planning Policy for Traveller Sites (PPTS) in December 2024. Given the potential implications of those changes, particularly in respect of Green Belt policy, I gave the main parties the opportunity to submit comments on the relevance to the appeal and have taken the responses into account in reaching my decision.

The Appeal on Ground (b)

6. An appeal on ground (b) is made on the basis that the breach of planning control alleged in the notice has not occurred as a matter of fact. I can deal with this ground briefly because it is clear that a building has been erected in the approximate position shown on the plan attached to the enforcement notice. In effect, the appellant's argument is that he had planning permission to erect the building. However, whether the building actually amounts to a breach of planning control is a matter for consideration under ground (c). In respect of ground (b) it is clear that the building has been erected and the appeal must fail.

The Appeal on Ground (c)

7. Planning permission was granted by the Council for two amenity buildings/dayrooms at the site in 2019². The approved plans show that one of those amenity buildings was proposed to be located in the north-west corner of the site. However, the position is markedly different to that of the building as constructed. Whereas the approved building was set parallel to London Road, the constructed building is set at right-angles to it and is also located further away from the northern boundary of the site.
8. Moreover, the building is wider and longer such that the footprint of the building is notably greater than that approved. The external appearance is also different, particularly the roof, which has hipped ends as opposed to the approved gable ends and a projecting front gable in contrast to the unbroken pitch of the approved roof.
9. Overall, it is undoubtedly a different building in terms of its position, size and external appearance. The changes are not minor in nature and the building that has been constructed is not that for which permission was granted in 2019.
10. I am aware my responsibilities in respect of the Public Sector Equality Duty (PSED), arising from s149(1 & 2) of the Equality Act 2010. At the Hearing it was

¹ Drawing No. DRM-01-2023, dated October 2023

² LPA ref 15/01356/FULL

suggested, on behalf of the appellant, that a reasonable adjustment could be applied in respect of the ground (c) appeal on account of the medical needs of the appellant. I won't repeat the specific details to avoid the unnecessary publication of sensitive personal information but the argument advanced was that those needs make it difficult for the appellant to interpret plans, drawings and regulations and that should be taken into account when determining whether the breach of planning control is one of unauthorised development or a breach of condition from the previously approved scheme.

11. Whilst I am mindful of the need to advance equality of opportunity between persons who share protected characteristics and those who don't, I have not been presented with any caselaw to indicate that the Equality Act allows for such factors to be considered when assessing whether a breach of planning control has occurred. As noted, planning permission was granted for a substantially different building, in a different position and orientation on the site. As a matter of fact the building does not conform to that planning permission. It is not a minor discrepancy but a different building altogether. Whilst I am mindful that some people may be able to interpret drawings more easily than others, that could be said for a wide range of the population. If someone does have such difficulty the obvious solution would be to consult someone who can interpret drawings prior to constructing a building project. Whilst I am mindful of the difficulties posed, that does not alter my conclusion that a breach of planning control has occurred.
12. Consequently, the building does not benefit from planning permission and the appeal on ground (c) must fail.

The Appeal on Ground (a)

13. The appeal site is situated within the Green Belt. The Framework identifies that new development is inappropriate within the Green Belt unless it falls within a limited number of exceptions. At the Hearing, the appellant accepted that the building in question did not fall within any of the exceptions set out in the Framework, as it stood at that point in time, such that the development amounted to inappropriate development. However, the changes to the Framework published since the Hearing introduced the concept of grey belt land to which paragraph 155 applies. On the back of those changes, the appellant contends that the development is not inappropriate. The Council disputes that position.
14. With that in mind the main issues in the determination of the appeal on ground (a) are:
 - i) Whether the development amounts to inappropriate development within the Green Belt;
 - ii) If so, the effect of the development on the openness of the Green Belt;
 - iii) The effect on the character and appearance of the area;
 - iv) If the development does amount to inappropriate development within the Green Belt, whether the harm by way of inappropriateness, and any other harm, is clearly outweighed by other material considerations such that very special circumstances exist to justify a grant of planning permission.

Whether the Development is Inappropriate Development Within the Green Belt

15. The Framework identifies “Grey Belt” as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143, excluding land where the application of footnote 7 would provide a strong reason for refusing the development. The latter does not apply in this instance. It is common ground that the land is previously developed, having formed part of the permitted caravan site. There is also no suggestion that the site plays any role in preserving the setting and character or historic towns with respect of subsection (d) of paragraph 143.
16. I have been referred to a Green Belt study carried out by the Council in 2023 which places the site in a wider parcel of land referred to as NB3. That study suggests that the land within NB3 contributes “very highly” to the purposes specified in subsections (a) and (b), in terms of checking unrestricted sprawl of large built-up areas and preventing neighbouring towns from merging into one another. Taking NB3 as a whole I concur with that assessment. It forms a narrow tract of land between the settlements of North Benfleet/ Bowers Gifford, which are adjacent to Basildon, and South Benfleet which lies to the east. Given the limited separation between the settlements the land within NB3 is clearly important in preventing sprawl and particularly in preventing the settlements merging into one another.
17. However, on an individual level, the contribution the appeal site makes to purposes (a) and (b) is limited in my view. It forms part of an established caravan site situated in between a number of busy roads, including London Road, Canvey Way and the A13/A130. Highway engineering and development dominates the immediate vicinity, with the Saddlers Way roundabout to the east and cuttings/ fly overs associated with the junction to and from the A13/A130 to the north-west and south-west of the site. Immediately to the north, on the opposite side of London Road, is what appears to be a small industrial estate and haulage yard utilising the buildings and land associated with Saddlers Farm.
18. Thus, whilst the site is situated amidst a slither of agricultural land which separates Bowers Gifford and South Benfleet the immediate vicinity is not free from development. In fact, the Council's Green Belt study notes that the A130 provides a “strong degree of separation from Thundersley and South Benfleet to the east”. The distinction between Bowers Gifford, North Benfleet and Basildon, in the western part of DB3, is noted as being much weaker. That is clear to see on the ground. On that basis the Green Belt study concludes that release of land in NB3 would compromise the gap between settlements and weaken the consistent boundary feature of the A130.
19. However, the appeal site sits to the east of the A130 and is well screened in views from the west, being situated in a dip behind the fly over. Thus, in a visual sense, it has a much closer association with Thundersley/ South Benfleet, as opposed to Bowers Gifford. In effect, the site is already at the edge of the settlement in the east, being separated from nearby housing only by the large roundabout which is an urban feature of itself. The caravan site has a developed character and does not contribute to the sense of separation to any notable degree. Nor does it contribute strongly to the purpose of preventing settlements from merging because it already marks the edge of the settlement in a visual sense. The physical barrier

of the A130 and the significant cuttings and fly overs continue to provide a strong barrier to the west.

20. Accordingly, although the majority of land within NB3 contributes 'strongly' to the purposes set out in subsections (a) and (b) of paragraph 143, particularly that land west of the A130, the same cannot be said of the appeal site. The contribution it makes is modest in my view. In view of those conclusions, the land can be considered as Grey Belt land falling within the definition set out in Annex 2.
21. Paragraph 155 states that new homes, commercial or other development should not be regarded as inappropriate where four criteria, (a) to (d), are met. The site is well-connected and there is no suggestion that there is any contravention of (c) or (d). Criterion (a) is that the development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan.
22. Given the small scale of the land in question it is difficult to envisage how it could fundamentally undermine the purposes of the remaining Green Belt across a much wider area. However, the same could be said of many sites and, hitherto, the approach to development within the Green Belt has been based on the collective principle of protecting the area as a whole. The wording of paragraph 155 and the associated grey belt definition would appear to mark a notable shift. For the reasons set out above, the contribution the appeal site makes to purposes (a), (b) and (d) of paragraph 143 is limited.
23. Similarly, the dayroom has been constructed on land that was already developed and the development cannot be said to encroach into the countryside in that respect; it does not mark an extension of the established boundary of the site. Thus, it would not fundamentally undermine purpose (c), nor are there any implications for urban regeneration and purpose (e). Taking all of that into account, I see no conflict with paragraph 155(a) of the Framework.
24. In terms of demonstrable need and paragraph 155(b), the appellant and his extended family live on the authorised part of the caravan site which does not presently benefit from any dayroom facilities. It is generally accepted practice on Gypsy and Traveller sites that dayroom accommodation provides necessary communal facilities for essential day to day tasks but also for socialising and space to come together outside of the main living areas within caravans, as well as a space away from the main accommodation for children to undertake schoolwork etc. The Council have previously accepted the need for two dayrooms across the wider site, neither of which have been built.
25. Those buildings would have represented inappropriate development within the Green Belt at the point at which permission was granted so the Council was satisfied at that time that very special circumstances existed to justify a grant of planning permission. The same family reside at the site and that underlying need still exists. In fairness, the Council does not dispute that but does query the need for a building of the scale proposed.
26. The combined scale of the two approved dayrooms would be greater than the single structure that has presently been erected. However, although the second dayroom hasn't been constructed as yet, the permission has been commenced such that it could be erected in future to serve those occupying the respective pitch. It would not be possible to erect the previously approved dayroom on the

appellant's pitch because it would overlap with the building that has been erected. Consequently, if the other dayroom was constructed, in combination with the appeal building, the overall scale would be greater than that previously found acceptable by the Council.

27. However, based on the medical and health related needs presented the current need is more acute and the precise requirements for a dayroom facility have developed since that previous grant of permission. Again, I shall not reproduce the personal details in the interest of data protection but I have been provided with medical records, including reports from qualified professionals, along with statements from the Special Needs Co-ordinator (SENCo) at the primary school at which one of the appellant's children is enrolled.
28. One of the appellant's children has what is described by the Great Ormond Street hospital as a rare condition which has significant implications in terms of growth and development. As a result attending school or public places is extremely challenging and distressing and space is required at home for sensory therapy, medical appointments and as a safe space to move around freely without fear of injury. I have no doubt that it is impossible to achieve that in the static caravan, particularly given the number of other siblings (6 children altogether) and two other family members who reside there. Of itself that requires a building that has adequate spaciousness. This is a clear case where providing the facility on site will enable the child to access care and facilities and opportunities that are available to most of the population but difficult for the individual to access at present. That matter attracts substantial weight given the requirements of the PSED, as set out above.
29. As became apparent in evidence presented at the Hearing caring for a child with such severe needs can make life difficult for other siblings who also have their own needs and require space to relax, undertake schoolwork and the like.
30. The pitch is also occupied by two close relatives of the appellant's wife who have specific medical needs related to disability, as specified in a letter from their doctor. They require 24 hour care which is provided by the family, particularly Mrs Doran. The day room will assist in providing those needs. Planning permission for four pitches containing four static caravans and 4 tourers was granted on appeal in 2005. That was subject to a condition which is a personal permission with a condition attached limiting occupation to Mrs Gail Doran and her resident dependents, her husband, and her sons James and Thomas Doran and their resident dependents. The appellant is not directly named in that condition but the Council are satisfied that he is a resident dependent of Mrs Gail Doran.
31. The Council does not dispute that the appellant, his wife and their children can lawfully reside at the site and I have no reason to question that position. However, the Council does contend that the close relatives of the appellant's wife are not covered by the personal permission. That would appear to be the case. Nonetheless, there is no suggestion that the Council is considering taking any action in that respect and, as acknowledged at the Hearing, it is perhaps unsurprising that family members have grown and evolved given it is almost 20 years since that approval. It appears that the same family group occupy the lawful part of the site, albeit that some former dependents are now of adult age.

32. It is not for me to judge whether it would be appropriate to vary that condition and that matter is not before me. However, the site is the home of the two relatives and evidence indicates that they moved to the site after their mother, who previously cared for them could no longer do so due to old age, to a point where she requires care herself. The fact that the two relatives do not comply with the occupancy condition does not lessen the impact on their home life, nor does it obviate my duty under the PSED to foster equality of opportunity between those who share protected characteristics and those who do not. The two relatives clearly have protected characteristics on account of their disabilities and the dayroom would enable them to receive appropriate care, including medical care and rooms with sensory elements, which is presently difficult on account of the cramped living conditions in the static caravan. That is a matter that attracts significant weight in my view, notwithstanding any issue relating to the occupancy condition.
33. In any event the building is not solely designed for those with medical needs but would be utilised by the whole family, including 6 children and the appellant and his wife whose home lives would be significantly enhanced through the provision of an adequate space to undertake caring responsibilities and family life. Moreover, whilst it is a larger building than previously found acceptable by the Council it is not excessive given the particular needs of various family members or considering the size of the family and number of children, even if I was to discount the needs of the two close relatives.
34. The Council has referred to the "Designing Gypsy and Traveller Sites (Good Practice Guide) (2008) which provided guidance on what amenity buildings should contain, including a kitchen, dining area, bath/shower room, separate toilet and hand basin. Whilst that guidance is now revoked, the logic underpinning it with reference to dayrooms is still applicable. The present building offers those basic facilities and none of the space could be said to be without a clear purpose and the scale is reasonable in my view.
35. Having regard to the above, there is clearly a demonstrable need not only for a dayroom but for a dayroom of the specification and scale as constructed. Thus, the development satisfies paragraph 155(b).
36. The appellant has also referred to a local need for further pitches in respect of the Gypsy and Traveller population. Whatever, the extent of that need the development here is a dayroom associated with an existing site and not new residential pitches. Accordingly, in considering whether there is a demonstrable need I have focussed on the need for the development in question.
37. Drawing all that together, there is no conflict with any of the four criteria of paragraph 155, such that the development does not amount to inappropriate development within the Green Belt, having regard to the recently revised Framework.

Openness of the Green Belt

38. In circumstances where development within the Green Belt is not inappropriate, caselaw and established practice is clear that it is not necessary to consider whether any harm would arise to the openness of the Green Belt. To do so would effectively negate the objective of the Framework in recognising that certain types of buildings need not be excluded. Therefore, given my conclusions above, the

question of the impact of the building on the openness of the Green Belt no longer falls to be considered.

39. For clarity, I should stress that my conclusion in that regard relates purely to compliance with Green Belt policy. The visual impact of the proposed buildings and the effect on the character and appearance of the area remains to be considered in respect of the third main issue.

Character and Appearance of the Area

40. As noted, the local character is formed of the existing caravan site, surrounded by significant highway engineering works and heavily trafficked roads. The area is not devoid of buildings and a substantial red brick farmhouse with a Georgian façade sits on the opposite side of London Road, to the front of the industrial estate which appears to occupy former farm buildings and associated land. It is not unusual to see brick built day rooms associated Gypsy and Traveller sites and the building is not incongruous in the context of the established residential use. It is significantly larger than any of the adjacent caravans but size, of itself, is not indicative of harm. The materials are sympathetic to the surrounding palette, particularly the imitation red clay tiles on the roof which is the most prominent element in the surrounding environment.
41. The hipped form of the roof replicates the form of adjacent static units, albeit more substantial. Whilst elaborate and ornate, the front gables and associated pillars are also a direct imitation of the design of the adjacent large static unit and blend in well to the context of an established caravan site, without being prominent from views outwith the site. Thus, the design responds to its context and the elements that can be seen from surrounding vantage points do not cause harm to the established character and appearance of the area.
42. For those reasons the development complies with saved policy BAS BE12(i) of the Basildon Local Plan (2007) (the Local Plan) and the design related aims of section 12 of the Framework.

Other Material Considerations

43. It is common ground that rights under Article 8 of the European Convention on Human Rights (the Convention) as set out in Schedule 1 of the Human Rights Act 1998 (the HRA) are engaged, in addition to the PSED. In line with established caselaw with respect to Article 8 rights, the best interests of the children must be a primary consideration in the determination of the appeal. Whilst such matters may not always be determinative, no other consideration is inherently more important. In this case, it is clearly in the best interests of all of the appellant's children to have access to a dayroom providing essential day to day facilities. That is more acute in terms of the therapy required for the appellant's disabled child but applicable to all the children. Given the present cramped conditions that is a matter that attracts significant weight of itself, having regard to the PSED and the best interests of the children.
44. The site is within the zone of influence for the Essex Coastal Recreation Avoidance and Mitigation Strategy (RAMS) (2020). Within that zone Natural England has identified that new residential development is likely to have a significant effect on features of special ecological interest, including Special Protection Areas (SPAs) and Ramsar sites, as a result of increased recreational pressure.

45. Under the Conservation of Habitats and Species Regulations (2017) (the Habitat Regulations) where the integrity of a protected site (including the SPAs/ Ramsar sites in this instance) could not be ruled out then an Appropriate Assessment must be undertaken by the 'competent authority'. In respect of appeals that falls to the Inspector. However, in screening the development I am satisfied that any adverse impacts can be ruled out. The RAMS only applies to new residential developments where there would be a net increase in dwelling numbers which could lead to increased recreational pressure and trips to protected sites³.
46. That is clearly not the case in this instance because the dayroom would serve the existing caravan pitch and would not lead to any increase in the number of people residing at the site. No other impacts have been identified that would have any negative effects on the integrity of the protected sites in question. Given the nature of the development and distance from the protected areas I am satisfied that negative effects can be ruled out. Consequently, there is no requirement to undertake an AA.

Conditions

47. The Council put forward a number of conditions in the event that the appeal is allowed. In the interests of clarity and to ensure that the building is used for the purpose upon which the grant of planning permission is predicated, a condition is necessary to ensure that the building is used as a dayroom only, by the residents of pitch 1 and ancillary to the day to day residential use of that pitch.
48. Given that I have concluded that there is no harm to the character and appearance of the area further screening, beyond the boundary planting that already exists, is not necessary to make the development acceptable in planning terms. The Council has also suggested a condition to the effect that no further permanent structures may be erected without first having received planning permission. It is a pre-requisite that a planning application would need to be made for any further buildings on the site and the condition does not therefore serve a necessary purpose.
49. The site is already drained and connected to services and there is no evidence of any issues in that respect such that no condition is necessary to make the development acceptable in planning terms.

The Planning Balance

50. Following changes to the Framework, I am satisfied that the development does not amount to inappropriate development within the Green Belt and, as such, it is not necessary for me to consider the effect of the building on the openness of the Green Belt, nor is it necessary for the appellant to demonstrate very special circumstances to justify a grant of permission. In reaching that conclusion I have satisfied myself that its scale is not excessive in relation to the clearly defined needs of the occupants of the site.
51. The effect on the character and appearance of the area is also acceptable and the development complies with the relevant policy of the development plan in that respect. Given the above, in the absence of any conflict with the development plan and having regard to other material considerations the planning balance indicates

³ Paragraph 3.6 of the RAMS

that permission should be granted subject to the necessary condition relating to the use of the building.

52. Whilst not strictly necessary, I think it is worth noting that I would ultimately have reached the same conclusion prior to the recent changes to the Framework. At the time of the Hearing it was common ground that the building was inappropriate development in the Green Belt. There is also a small to modest impact on openness. Those matters would have attracted substantial weight against the development. However, the personal circumstances and needs of the occupants of the site, including the best interests of the children and the specific medical needs of a number of occupants attract very significant weight in favour of the scheme. Having heard the evidence those needs and the associated benefits to the family would have clearly outweighed the harm such as to amount to very special circumstances and provided a compelling reason to grant permission.

Conclusion

53. For the reasons given above, I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the operation, as described in the notice, and the enforcement notice will be quashed.
54. Given my conclusions in respect of the appeal on ground (a) it is not necessary for me to consider the appeal on ground (g).

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Joseph G Jones
Mrs Alkiavada

Agent, BFSGC
Medical professional/ qualified practitioner.

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ryan Funnel
Mr Ian Cummings

Enforcement Officer
Team Leader, Planning Enforcement

INTERESTED PERSONS:

Mrs Christine Barlow
Cllr Colin Morris
Cllr Susan Moore

Clerk, Bowers Gifford Parish Council
Bowers Gifford Parish Council
Bowers Gifford Parish Council

Documents Submitted to the Hearing:

- 1) Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (2020).
- 2) Email from Joseph G Jones to Team E3, Planning Inspectorate, dated 05/11/2024, regarding the Ground (f) appeal.
- 3) Caravan Count Update 2024