



Appeal Decisions

Inquiry held on 21 and 22 January 2025

Site visit made on 21 January 2025

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21 FEBRUARY 2025

Appeals A, O, P, Q, R, S, T, U, V, W, X & Y

References: APP/V1505/C/24/3339881 etc as set out in Appendix 1

Land East of 9 North Benfleet Cottages, Harrow Road, Basildon, SS12 9JJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms R Cooper and others as set out in Appendix 1 against an enforcement notice ("Notice Two") issued by Basildon Borough Council.
- The notice was issued on 30 January 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change in use of the Land for the storage of caravans.
- The requirements of the notice are to: i. Cease the use of the Land for the storage of caravans ii. Remove all caravans 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 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (e), (f), (g) of the Town and Country Planning Act 1990 (as amended).

Appeals B, C, D, E, F, G, H, I, J, K, L, M, N

References: APP/V1505/C/24/3339853 etc as set out in Appendix 1

Land East of 9 North Benfleet Cottages, Harrow Road, Basildon, SS12 9JJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms R Cooper and others as set out in Appendix 1 against an enforcement notice ("Notice One") issued by Basildon Borough Council.
- The notice was issued on 30 January 2024.
- 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 occupations 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 6 months.
- The appeals are proceeding on the grounds set out in section 174(2) (b), (c), (g), (d) of the Town and Country Planning Act 1990 (as amended). Appeal B is also proceeding on ground (a) and as such an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decisions

Appeals A, O, P, Q, R, S, T, U, V, W, X & Y

1. It is directed that the enforcement notice is corrected by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
2. The appeals are allowed and the enforcement notice is quashed.

Appeals B, C, D, E, F, G, H, I, J, K, L, M, N

3. It is directed that the enforcement notice is corrected by: the insertion of the words “(other than the concrete platform in the north west of the site)” after the word “Land” in requirement 5(iii); and the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
4. Subject to the corrections, Appeal B is allowed, the enforcement notice is quashed and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the stationing of caravans for residential occupation at Land East of 9 Benfleet Cottages as shown on the plan attached to the notice and subject to the conditions in the attached schedule.

The Notices

5. Notices One and Two define the appeal land as the land shown edged red on the attached plan, but both plans show multiple areas edged red. The plans should therefore be substituted with the corrected plan that only shows the appeal land edged in red.

Appeal A and other appeals relating to Notice Two, Ground (b)

6. This ground of appeal is that the matters stated in the notice have not occurred. The Council issued Notices One and Two because they were unable to ascertain the purpose of the caravans and so issued the notices in the alternative: Notice One alleges the material change of use of the land for the stationing of caravans for residential occupation, and Notice Two alleges the material change of use of the land for the storage of caravans,
7. Following consideration of the information received during the course of these appeals, it is now evident that the caravans on the appeal site are being used for residential purposes, and that the allegation of use of the land for the storage of caravans in Notice Two is incorrect.
8. The appeal under ground (b) in relation to Appeals A and the other linked appeals therefore succeeds, and Notice Two is quashed.

Appeal B and other appeals relating to Notice One, Grounds (b), (c) and (d)

9. In relation to Notice One, the appellants argue that the hardstanding is lawful as it has been there since the early 1980s. It was also claimed that the caravans were dwellinghouses, or within the curtilage of the adjacent gypsy and traveller sites. These arguments are on the basis that the matters stated in the notice do not constitute a breach of planning control, or are immune from enforcement action.
10. There were 12 caravans on the site when the notices were issued which has since been reduced to 6 caravans. I am satisfied, having seen the caravans on site, that they fall within the statutory definitions of caravan, and have not been adapted so as to become buildings. In addition, taking into account the layout of the other gypsy and traveller sites on the wider site within the same ownership (including the individual boundaries and entrances from the shared access lane), the appeal site forms a different planning unit and is not part of the curtilage of any other building.

11. A metal building stands in the north-west corner of the site, which on balance is probably the same building as that referred to as Building 1 in the Planning Inspector's Appeal Report dated 28 March 1982 ("the 1982 Appeal Report"). It stands on a concrete slab which covers the north-western corner of the site, and two caravans were also stationed on it during the site visit. The rest of the site is covered by hardstanding and loose chippings.
12. The concrete slab is visible in the same location on the site on the photograph dated 11 March 2006 (Image 3 in the Council's Statement of Case). It is not possible to see any hardstanding (including the concrete slab) on the aerial photographs between 2008 and 2020. The earliest photograph where the site does not appear to be overgrown is dated 4 October 2020. Mrs Cooper gave evidence that there had been hardstanding on that part of the overall site during all of the time that she had lived there, i.e. for more than 39 years, but she was not clear and precise about what such development consisted of or the actual area that it covered.
13. When relying on a legal ground of appeal, it is for the appellant to prove their case on the balance of probability. Taking into account the information before me, including my observations during the site visit, it has not been shown on balance that the whole of the site has been covered by hardstanding for more than 4 years prior to the issue of the notice. However, it is evident that the concrete slab predates the material change of use of the stationing of caravans for residential purposes, and that on balance it has been there for more than 4 years prior to the issue of the notice. It is therefore immune from enforcement action.
14. The appeals are therefore unsuccessful under grounds (b) and (c) but successful under ground (d) in relation to the concrete slab in the north west of the site only. The requirements should therefore be corrected in this respect.

Appeal B, Ground (a) and the deemed planning application

15. The main issues are:
 - The identity and status of the occupiers of the site;
 - Whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (2024) ("the Framework") and any relevant development plan policies;
 - The effect of the development on the SPAs and protected and priority species;
 - Whether the development was intentionally unauthorised; and
 - Planning balance (including consideration of paragraph 11 of the Framework).
16. The appellant has requested that the deemed planning application be considered on the basis of the siting of 5 caravans on the site (the maximum that could be granted a caravan site licence), rather than 12 as were present at the date of the issue of the notice. With the reduction of the number of caravans to 5, the proposed development will still constitute part of the development alleged in the notice. The ground (a) appeal and deemed planning application has therefore

been determined on the basis of the siting of 5 caravans for residential use which can be done without causing injustice.

Occupiers of the Site

17. During the course of the appeals, contradictory information was submitted by the appellants regarding the nature of the occupation of the site and status of the people living there. The sworn evidence provided by Mrs Cooper did not tally with the information previously submitted on her behalf, or indeed the information given to the Council during the site visit in January 2024.
18. Notwithstanding these discrepancies, the number of caravans sought is now less than half of that originally stationed on the appeal site. It seems likely on balance from Mrs Cooper's evidence that some of the occupiers are part of her extended family, and do fall within the definition of gypsy and traveller in Planning Policy for Traveller Sites (December 2024). In addition, the appellants have confirmed that they are only seeking permission for the site to be occupied by gypsy and travellers and that appropriate conditions could be imposed to secure both the gypsy status of the occupiers and number of caravans.
19. I have therefore determined the appeal on this basis, taking into account relevant national policy and other material considerations.

Whether inappropriate development

20. The site is located in the Green Belt and gypsy and traveller sites are inappropriate development within it unless they fall within one of the exceptions provided in the NPPF.
21. Paragraph 154(g) provides that one such exception is the limited infilling or the partial or complete redevelopment of previously developed land, which would not cause substantial harm to the openness of the Green Belt. Previously developed land is defined as land which has been lawfully developed and is or was occupied by a permanent structure. It can also include land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been lawfully developed.
22. It is evident from the 1982 Appeal Report that the inspector at that time considered that the site had four buildings on it. Whilst two of the buildings are described as "Portakabins", the inspector concluded at paragraph 48 that *"I incline to the view that the placing on the land of 2 Portakabins in this case constitutes operations rather than a material change of use. They have remained in the same place all the time and there is no evidence of any intent to move them. They are connected to the mains electricity and telephone and are clearly of a permanent nature."* Paragraph 11 of the Inspector's Report also states that part of the appeal site *"is screened with a wooden fence and within that screening the surface has been concreted."*
23. And whilst the decision does not specifically refer to any hardstanding or the concrete slab, it appears likely on balance, the building in the north-west corner of the site is the same building that is referred to by the inspector as "Building 1 – a profiled steel clad workshop 11.25m x 6.3m". The aerial photographs provided going back to 1999 appear to show a metal roof in the same location as the current shed building. It is also possible to see surfacing in the same position of

the current concrete slab in the photograph dated 2006 (Image 3 in the Council's Statement of Case), although other photographs are less clear and the site appears overgrown in later images. Image 10 dated October 2020 shows the cleared site and it is then possible to see the roof of the building and concrete slab in the same position as in the earlier Image 3. As set out in relation to Appeal A above, as the concrete slab sits underneath this building it must also have been present in 1982 and both are therefore immune from enforcement action and therefore have become lawful due to the passage of time.

24. The substituted plan identifying the appeal site at that time in the Secretary of State's decision letter dated 27 August 1982 is smaller than the area which is the subject of the current enforcement notice. However, the previous inspector does refer to the appeal site in 1982 being between 2 groups of cottages, and that part of it was screened with a wooden fence which matches up with the current appeal site in terms of location and potential size. As I have not seen copies of the notices from 1982, nor the original plans appended to them, I do not know the full extent of the site or whether it was the same in each notice (although it appears likely to have been the same site as the inspector does not differentiate in his reasons). The current appeal site is not very large overall, and I am satisfied on the information before me including the previous inspector's reference to the site as a whole being bounded to the south and east by natural hedgerows (as is the case today) and description of some of it as waste land, that it formed the curtilage to the buildings present in 1982.
25. I am therefore satisfied that the appeal site falls within the definition of previously developed land for the purposes of paragraph 154 of the Framework. This is because; one building (Portakabin) was found to be lawful in the 1982 Appeal Report; the metal building (although not the subject of enforcement action) has probably been on the site since that time and is therefore immune; and I have found that the concrete slab is also immune from enforcement action under Appeal A and should therefore be treated as lawful for the purposes of the Framework definition.
26. The appeal site is within Parcel NB2 identified in the Basildon Green Belt Study 2023 which also includes the adjoining gypsy and traveller sites as well as housing and a large commercial garden centre which the Council say significantly impact on the openness of the Green Belt. I accept that the appeal development causes harm to the openness of the Green Belt, both spatially and visually in terms of the physical structures, and from the residential activities including vehicular comings and goings. However, as the Council accepts, this impact is confined to the immediate vicinity of the site. The appeal site is a small parcel within the larger overall site which is owned by Mrs Collins, which is already in a residential use with associated operational development, and as such the harm to openness is limited in both scale and nature.
27. As a matter of fact and degree, the development does not cause substantial harm to the openness of the Green Belt taking account of its size, location and the character and appearance of the surrounding uses. It therefore falls within the exception to inappropriate development provided within paragraph 154(g) the Framework (as the site is previously developed land), and there is no conflict with the Basildon District Local Plan.

The SPAs and protected and priority species

28. The site falls within the Zone of Influence for the Essex Coastal Recreational Avoidance and Mitigation Strategy SPD 2020 ("the SPD"). The contribution which has been paid by the appellants is required under the SPD to mitigate the impacts of the additional recreational pressure caused by the development on the SPAs.
29. I am therefore satisfied that the integrity of the Essex Coastal Special Protection Areas will not be affected, and that the proposal complies with the SPD and the Conservation of Habitats and Species Regulations 2017.

Whether intentionally unauthorised development

30. The planning chronology of the use of the site since December 2022 includes the failure to respond to the Planning Contravention Notice and to the notice served under Section 330 of the 1990 Act. There is nothing before me to show any attempt by the appellants to regularise the position or co-operate with the Council during site visits, and taken together these factors indicate that the development was intentionally unauthorised. I attribute significant weight to this consideration as there was no co-operation until after the issuing of the enforcement notice leaving the Council little option other than enforcement action in seeking an appropriate resolution.

Planning Balance

31. As the policies which are most important for determining the application are out of date, the Framework advises that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole¹. The Council accepts that the most relevant policies are out of date as there is not a five year supply of pitches in light of the figures in the most recent Gypsy and Traveller Accommodation Assessment 2024.
32. However, having particular regard to the Framework policies of directing development to sustainable locations and securing well-designed places, the Council argues that the development does not achieve these aims, and that permission should not be granted.
33. The appeal site is part of the larger site which is divided into other smaller parts, all with caravans as well as several dwelling-houses in residential use occupied by gypsies and travellers. The evidence provided during the inquiry is that many of the occupiers of the site overall are related to the site owner Mrs Collins who also lives there. Within the cluster of similar development, the site is within easy reach of goods and services, and sustainable economically, socially and environmentally in accordance with the PTTS.
34. There are only limited views into the appeal site from the public domain as the southern boundary is fenced with dense hedgerow and vegetation so that there are only very partial views into it when approaching from the west even in winter. The permission sought is for 5 caravans only, which is the most that would be permitted by a caravan site licence due to its size, and there is not room for additional touring caravans or intensification of use. It is not adjacent to the A127

¹ National Planning Policy Framework 2024, paragraph 11(d)(ii).

so that the noise and emissions levels are limited, and without any technical evidence to show otherwise, acceptable.

35. Due to the character and appearance of the wider site and other development in the area, and very limited views from the public highway or elsewhere outside of the wider site, I am satisfied that the appropriate site layout and design, including any additional landscaping if required, can be secured by the imposition of a condition requiring a detailed site development scheme. I do not therefore find that there will be conflict with the Framework policy of securing well-designed places, as the development can be made acceptable in this regard.
36. As the development is not inappropriate in Green Belt terms, and the adverse impacts of granting permission does not significantly and demonstrably outweigh the benefits when assessed against the Framework policies taken as a whole, the presumption in favour of sustainable development applies. I have given significant weight to the fact that the development was intentionally unauthorised but this is outweighed by the great need for and lack of supply of gypsy and traveller pitches in the Council area.
37. The appeal on ground (a) therefore succeeds and the deemed planning application is granted subject to the conditions as set out in the schedule to this decision.

Conditions

38. Condition 1 regarding the number of caravans, and Conditions 4 and 5 prohibiting commercial activities and the parking of large vehicles on the site are required to provide certainty and prevent harm to the character and appearance of the area. Condition 2 is required to ensure that the occupiers of the site are Gypsy and Travellers as permission was granted taking into account the need for such pitches in the Council area.
39. Condition 3 is imposed is to ensure that the required details regarding the site development scheme are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place.
40. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Conclusion

41. For the reasons given above, I conclude that Appeal B succeeds on ground (a). I shall grant planning permission for the use as described in the notice as corrected. The enforcement notice will be corrected and quashed. In these circumstances the appeals on ground (f) do not fall to be considered.

Zoë Franks

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/V1505/C/24/3339881	Ms R Cooper
Appeal B	APP/V1505/C/24/3339853	Ms R Cooper
Appeal C	APP/V1505/C/24/3339854	Ms A Cooper
Appeal D	APP/V1505/C/24/3339855	Mr F Cooper
Appeal E	APP/V1505/C/24/3339856	Mr A Cooper
Appeal F	APP/V1505/C/24/3339857	Ms F Cooper
Appeal G	APP/V1505/C/24/3339858	Ms F A Cooper
Appeal H	APP/V1505/C/24/3339859	Mr P Cooper
Appeal I	APP/V1505/C/24/3339860	Ms H Cooper
Appeal J	APP/V1505/C/24/3339861	Mr H Cooper
Appeal K	APP/V1505/C/24/3339862	Mr F Docherty
Appeal L	APP/V1505/C/24/3339863	Ms G Docherty
Appeal M	APP/V1505/C/24/3339864	Mr J Docherty
Appeal N	APP/V1505/C/24/3339865	Ms T Docherty
Appeal O	APP/V1505/C/24/3339883	Ms A Cooper
Appeal P	APP/V1505/C/24/3339884	Mr F Cooper
Appeal Q	APP/V1505/C/24/3339886	Mr A Cooper
Appeal R	APP/V1505/C/24/3339887	Ms F Cooper
Appeal S	APP/V1505/C/24/3339888	Ms F A Cooper
Appeal T	APP/V1505/C/24/3339889	Mr P Cooper
Appeal U	APP/V1505/C/24/3339890	Ms H Cooper
Appeal V	APP/V1505/C/24/3339891	Mr H Cooper
Appeal W	APP/V1505/C/24/3339892	Mr F Docherty
Appeal X	APP/V1505/C/24/3339893	Ms G Docherty
Appeal Y	APP/V1505/C/24/3339894	Mr J Docherty

APPEARANCES

FOR THE APPELLANT:

Stuart H Carruthers, Agent

Rachel Cooper, Owner

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson, Counsel

Joe Finn, Senior Planning Enforcement Officer

Katie Ellis, Principal Planning Officer

Lisa Richardson, Principal Planning Officer

INTERESTED PARTIES:

Parish Council

DOCUMENTS

Closing submissions from the Council

Closing submissions from the Appellants

SCHEDULE OF CONDITIONS

Appeals B, C, D, E, F, G, H, I, J, K, L, M, N

1. There shall be no more than five (5) caravans stationed on the land at any time.
2. The site shall not be occupied by any persons 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 dependants' 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.
3. The residential use hereby permitted shall cease and all caravans, 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 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, a scheme with details for:
 - a) The means of foul and surface water drainage of the site, an authorised connection or proof of an authorised connection to the public sewer shall be made. The installation of the new/existing drainage system shall comply with both Anglian Water and Building Control requirements in respect of approval and oversight;
 - b) Proposed and existing external lighting on the boundary within the site;
 - c) Hard and soft landscaping and screen planting including details of the site layout and a schedule of maintenance for a period of 5 years; (hereinafter referred to as the 'site development scheme') shall have been submitted for written approval of the local planning authority and the site development scheme shall have a timetable for its implementation
 - ii) If within 11 months of the date of the appeal decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to 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 site development scheme shall have been approved by the Secretary of State.
 - iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall be thereafter retained.

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.

4. No commercial, industrial or business activities, including the storage of materials, motor vehicles for sale or goods shall take place on any part of the site.
5. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.



Planning Inspectorate

This is the plan referred to in my decision dated: 21 FEBRUARY 2025

by Zoë Franks Solicitor

**Appeal Refs: APP/V1505/C/24/3339881,
APP/V1505/C/24/3339853 and linked cases**

