



Appeal Decisions

Hearing held on 28 January 2025

Site visit made on 28 January 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2025

Appeal A: APP/W3520/C/24/3353244, APP/W3520/C/24/3353245, APP/W3520/C/24/3353246, APP/W3520/C/24/3353247

The Siding, Oak Farm Lane, Mendlesham IP14 5TE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr J Collins, Ms J Collins, Ms D Price and Mr D Price against an enforcement notice issued by Mid Suffolk District Council.
 - The enforcement notice was issued on 16 September 2024.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the unauthorised operational development involving the creation of a hardstanding, and the unauthorised material change of use of the land for the stationing of caravans for residential use.'
 - The requirements of the notice are:
 1. Cease the use of the land for the stationing of caravans for residential purposes, remove the caravans in their entirety from the land, and remove the hardstanding and any and all associated materials or debris from the land, and return the land to its condition prior to the unauthorised development taking place.
 - The period for compliance with the requirements is within three months from the date this notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/W3520/W/24/3353417

Land to the east of Oak Farm Lane, Mendlesham IP14 5TE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990.
 - The appeal is made by Mr & Mrs J Collins against the decision of Mid Suffolk District Council.
 - The application Ref DC/24/02467, dated 31 May 2024, was refused by notice dated 13 September 2024.
 - The development proposed is described as '*Change of use of land to enable standing of residential caravans on previously developed land, refurbishment and relocation of existing building to act and ancillary works.*'
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Formal Decisions

Appeal A

1. It is directed that the enforcement notice be varied by extending the period of compliance from three months to eight months. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is dismissed.

Background and Preliminary Matters

3. Although the addresses are worded differently on the two appeals, the actual sites are the same. Appeal A relates to the address as seen on the enforcement notice, and the address for Appeal B is taken from the appellant's original application form.
4. The application for planning permission was refused on 13 September 2024, and the enforcement notice was issued three days later. By way of the provisions of the Levelling Up and Regeneration Act 2023, the right of making a deemed planning application on the s174 appeal (Appeal A) was lost. Given that the appellant was debarred, the appeal made against the refusal of planning permission in such circumstances is the appropriate vehicle for the merits and impacts of the development.
5. In 1991 and 1993, respectively, temporary planning permissions were granted for the stationing of a residential caravan, along with a septic tank, although a third attempt at regularising the retention of such was unsuccessful with planning permission refused in 1996.
6. The current appellant moved onto the land in July 2024, and the Council saw fit to subsequently issue an enforcement notice in an attempt to remedy the breach of planning control.

Appeal A

The appeal on ground (b)

7. An appeal by way of ground (b) is the claim that the alleged breach of control has not occurred as a matter of fact.
8. The onus is on the appellant to prove his case on the balance of probabilities in this regard.
9. The enforcement notice requires for the removal of hardstanding at the site some of which, the appellant claims, was laid in the early 1900s to facilitate the Mendlesham Railway, which was eventually decommissioned upon closure in the 1950s. However, from my site visit it seemed clear that a significant amount of additional hardstanding is also now present at the site, apparently laid by the current occupier.
10. The appellant accepts that additional hardstanding has been laid, but the two main parties cannot agree the extent of such. The various aerial photographs taken over time, and provided by the appellant in an attempt to demonstrate that an area of hardstanding previously existed, and would thereby be immune from planning control, do not allow for a sufficient degree of discernibility when attempting to differentiate between the areas and amount of all hardstanding laid.
11. Indeed, although the appellant has attempted to draw a distinction between that which previously existed and that which is evident now, from my site visit findings it seems that the lines are blurred as to the extent and significance of

the hardstanding that was originally laid in accordance with the railway. Indeed, it would seem that hardcore placed on the land recently has, in parts, covered that which preceded it.

12. If development is considered immune from planning control, meaning it is no longer subject to enforcement action due to a specific legal provision, then adding further development to that immune area would likely also become immune, unless the new addition significantly alters the nature of the original development.
13. I consider that the character of the land, due to its current use, has materially changed from that which existed prior to the appellant taking occupation, although I have taken into consideration that temporary permissions were granted, albeit over thirty years ago, for the siting of a single caravan's siting on the land.
14. On the above basis I would consider that the appellant has not satisfactorily demonstrated that the reference to hardstanding, which the enforcement notice requires the removal of, can be practicably and realistically differentiated into that which the appellant is claiming immunity for and that which has been very recently laid.
15. Accordingly, the appeal on ground (b) does not succeed.

The appeal on ground (c)

16. An appeal under ground (c), although accepting that the matters referred to in the alleged breach have occurred, claims that no planning permission is required for the development identified. For the reasons identified in my comments relating to ground (b) the appeal on ground (c) similarly fails.

The appeal on ground (f)

17. An appeal on ground (f) is the claim that the enforcement notice's stipulated steps for compliance goes beyond that which would reasonably remedy the harm caused by the breach. Again, the reasoning put forward by the appellant in support of this ground, does not depart from my comments relating to the ground (b) submission. Accordingly, the appeal on ground (f) also fails.

The appeal on ground (g)

18. A ground (g) appeal is that the said time period for compliance is unreasonably short.
19. Having taken into account the various factors below, and to allow for a reasonable period of time during which the appellant might attempt to address the matters of flood risk and ecology in order to overcome the objections in this regard, I am extending the period for compliance with the enforcement notice's requirements from three months to eight months. This will take effect from the date of this decision letter.
20. Appeal A, therefore, succeeds to this extent.

Appeal B

21. The main issues in this appeal area as follows:

- 1) planning policies, need and local provision of sites for gypsy and traveller purposes;
- 2) whether the development would be subject to a significant risk of flooding, and would comply with planning policy which seeks to steer new development away from the highest risk of flooding; and
- 3) the effect of the proposed development on local ecology and biodiversity.

Policy, need, and provision of sites

22. The existing level of local provision and need for sites along with the availability, or lack of, alternative accommodation are relevant matters under criteria within the government's Planning Policy for Traveller Sites, December 2024 (PPTS).
23. Paragraph 10 of the PPTS expects Councils, in their local plan, to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of sites against their locally set targets.
24. The Gypsy, Traveller, Travelling Showpeople and Boat Dwellers Accommodation Needs Assessment for Babergh, Ipswich, Mid Suffolk, Suffolk Coastal and Waveney (ANA) was commissioned by the Council and published in 2017 to provide evidence to support the need for permanent and transit sites and moorings for the period 2016-2036. This study showed that there is a need for at least 30 additional pitches over the plan period.
25. Part 1 of the Babergh and Mid Suffolk Joint Local Plan (LP) was adopted in November 2023. Policy SP04 thereto indicates that planning permission will be granted for the use of land for gypsy and traveller purposes provided that the requirements of LP policy SP09 are met. Policy SP09 is specifically concerned with the enhancement, management and conservation of the environment. When I questioned the Council witness it was apparent that there is little in the way of local alternative accommodation which the appellant might consider moving to. Further, it was also confirmed that each planning application proposing accommodation for gypsy and traveller purposes such is dealt with on its own individual planning merits.
26. I understand that the Council is currently reviewing its ANA to establish the gap between provision and need and, in this regard, the appellant is of the understanding that the findings will identify a substantial level of need.
27. The Council accepts it is unable to demonstrate that it is currently meeting the identified need within its area and thereby it cannot meet the 5 year land supply requirement, and given the policy situation.
28. The PPTS, in its paragraph 28, indicates that, should a Council be unable to demonstrate an up-to-date 5 year supply of deliverable sites, the provisions in paragraph 11(d) of the national Planning Policy Framework (the Framework) apply. This says that where the policies in this regard which are most important for determining the application are out-of-date – as is the case here – permission should be granted unless any adverse effects of doing so would

significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.

29. At the Hearing it was explained that the Local Plan, Part 2 is currently at Regulation 18 stage. The next milestone will be a further round of consultation, known as 'Regulation 19', where the pre-submission version of the emerging plan is produced and is then submitted to PINS for its Examination in Public. No firm indication as to when the plan's eventual adoption is expected was expressed by the Council at the Hearing, although a new local development scheme (LDS) would be published imminently.
30. On this main issue it therefore appears that there is a clear unmet need for gypsy and traveller pitches. I afford this substantial weight.

Flood risk

31. The site is a relatively long, narrow piece of land close to the junction of Oak Farm Lane and Brockford Road. The River Dove runs east to west along the run of Brockford Road, and a drainage ditch runs north to south along the site frontage. A resident at the Hearing mentioned that this river, at Mendlesham, has a history of flood alerts and warnings and, at my site visit, I noted that there was significant localised surface water flooding, likely resultant from fluvial flooding from the river.
32. The Environment Agency indicates that the appeal site falls within fluvial Zone 3a whilst the Statement of Common Ground site shows an agreement between the main parties that the site is within Flood zones 2 and 3. However, that aside, the appellant, at the Hearing, instead made the claim that part of the site – that area where the static caravan is currently located – falls within Flood Zone 1.
33. The appellant comments that the Environment Agency is an agency of DEFRA and, in its Flood Risk data, fails to identify the risk of failures in waste water infrastructure. In this connection reference is made to the fact that a rising sewer passes through the site to a nearby sewage treatment plant. The appellant is of the view that failures of the authorities to administer local foul water infrastructure is the main reason for the immediate area being subject to flooding.
34. Apparently, the existing building on the site, referred to as 'the barn' has been erected over the line of the sewer and the appellant indicates that the intended relocation of this building to a different part of the site would be beneficial in this regard.
35. Paragraph 170 of the National Planning Policy Framework (the Framework) indicates that development in areas at risk of flooding should be avoided by directing the development away from such areas. Both the Framework and also the government's planning practice guidance (PPG) says that a site specific Flood Risk Assessment (FRA) should be provided for all development in Flood Zones 2 and 3; the latter being the most vulnerable. Such development would normally require the implementation of the Sequential test and also the Exception test. The Sequential Test is intended to establish whether the principle of development is acceptable in terms of flood risk. Accordingly, it is

therefore unlikely that there will be circumstances where it would be appropriate to attach a condition requiring this test to be carried out.

36. Having applied the Sequential test, if it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the Exception test may have to be applied. The need for this will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification. In this instance, the vulnerability will likely be high.
37. The application of the exception test should be informed by a strategic or site-specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. The exception test should also show that the benefits of the proposal outweigh the risks associated with development in an area at risk of flooding
38. A site specific FRA should address all possible flood risks, not just from rivers, but also groundwater, surface water and sewer flooding. In this particular instance, although titled a 'Flood Risk Assessment', the appellant has provided only a very brief submission, with seven short points, and a conclusion arrived at, from very little detail, that the probability of the land 'used residentially' being flooded is very low. The appellant is here merely attempting to draw a distinction between the area where the static caravans would be sited and the majority of the site.
39. Assertions are also made that 'Old Farm Lane', presumably Oak Farm Lane, could be flooded to a maximum depth of 0.38m which, it is said, can be passable by a vehicle. The assertion continues with the indication that the junction with Brockford Road could be flooded to a depth of at least 0.9m. Despite the appellant's comments regarding the risk of flooding to the appeal site itself he accepts that the access thereto would not be dry, so to speak, and this situation hardly inspires confidence or a satisfactory degree of certainty.
40. LP policy LP27 says that development proposals can be approved where, amongst other things, in areas of medium or high risk from flooding, if it has been soundly demonstrated that the development can be made safe for its lifetime without increasing flooding elsewhere. There has been no demonstration of either here, nor of the possibility of a satisfactory degree of mitigation or amelioration.
41. I am not satisfied that the development is appropriately flood resistant, and the circumstances at the time of my site visit, where significant flooding was occurring in the immediate vicinity of the site illustrated, empirically, that there is a problem here. With further illustration local residents who spoke at the Hearing recalled previous such events.
42. Although, for the benefit of the Statement of Common Ground, the main parties have agreed a condition could be imposed requiring that a flood evacuation plan could be drawn up I would only consider this to be a temporary measure, given the circumstances I have described, and not one that should reasonably be incorporated into any such planning permission here. Besides, due to the expense of implementing flood defences, I consider it unlikely that these would satisfactorily be carried out.

43. Suffolk County Council is the Lead Local Flood Authority (LLFA) for the area and, upon receipt of the planning application, the subject of Appeal B, considered that a holding objection be made as the applicant had not sufficiently assessed the predicted flood risk in line with national policy and guidance. This represents a temporary position to allow reasonable time for the applicant and the LLFA to discuss what additional information is required in an attempt to overcome the objection. However, nothing further of any real substance in terms of the appeals has been produced in this connection.
44. The lack of an appropriate FRA which, to allow for a relevant and cogent appraisal, should best be prepared by specialist consultants, is sufficient on its own to lead to an application being refused or an appeal dismissed. As it stands, therefore, I conclude that the development, as implemented, fails to demonstrate that there would be adequate arrangements made to counteract the flood risk threat. Accordingly, the proposal is in conflict with LP policy LP27 and also relevant advice within both the Framework and the PPG.

Ecology

45. LP policy LP16 says that all development must follow the biodiversity mitigation strategy. This involves amongst other things, considering, in the first instance, the adverse effects on such so as to avoid negative impacts, and then minimising any unavoidable impacts in an attempt to reduce the harm. The decision maker should, therefore, undertake a thorough analysis of an applicant's or appellant's ecological report as part of its wider determination of the application. In reaching a decision, it should be taken into account, amongst other things, whether it has been adequately demonstrated that the proposal would deliver the stated outcomes if planning permission is granted.
46. The presence or absence of protected species, and the extent to which they could be affected by the proposed development, should therefore be established before planning permission is granted, otherwise all material considerations might not be properly considered in making the decision. Accordingly, the use of planning conditions to secure ecological surveys after planning permission has been granted should only be applied in exceptional circumstances.
47. The Council says that, in relation to ecological impacts and biodiversity gains, the appellant did not provide sufficient information to accompany the planning application which would satisfy the Council that these matters had been, or could be, sufficiently minimised and maximised, respectively, yet no preliminary ecological appraisal was drawn up. Further, and specifically, Mr Bailey, at the Hearing, mentioned that information would be needed regarding the likelihood as to the presence of bats.
48. The proposal is therefore in direct conflict with LP policies SP09 and LP16.

Other Considerations

Personal circumstances

49. The appellant's family includes three children of school age, the youngest of which, I understand, has certain particular educational needs. It is intended that the other two static caravans will be occupied by the extended family.

Equality Duty and Human Rights, including the Best Interests of the Child.

50. There is a positive duty by virtue of Article 8 of the Human Rights Act to facilitate the traditional and nomadic way of life of travellers.
51. The Public Sector Equality Duty (PSED), set out in s149 of the Equality Act 2010, is concerned with how a planning decision might impact upon a person with a protected characteristic of which gypsies and travellers are examples
52. However, in considering the proportionality of a requirement to leave one's home it is relevant whether or not the home was established unlawfully.
53. Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary, amongst other things, for the protection of the rights and freedoms of others.
54. Article 3(1) of the United Nations Conventions on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
55. In 2013, in the High Court judgement of *Stevens v SSCLG* [2013] EWHC 792 (Admin) it was held that where the Article 8 rights are those of children, their best interests are a primary consideration. Once identified, although a primary consideration, the best interests of the children were not determinative of the planning issue, but no other consideration was more important or to be given greater weight and those best interests had to be kept at the forefront of the decision maker's mind.
56. Nonetheless, importantly, it was held that the best interests of the children were not only not determinative, neither were they paramount; the judge noting that Article 3 says "*a primary consideration*" rather than "*the primary consideration*". Nor should they be considered temporally or logically first.
57. Also in 2013, the Court of Appeal heard the case of *Collins v SSCLG* [2013] EWCA Civ 1193 where it was held that whether the best interests of the children had been taken properly into account, the overall exercise was a question of substance to be answered by the detailed reasoning of the decision letter as a whole. It was acknowledged that the Secretary of State had, in substance, taken the view that the best interests of the children coincided with those of their families as a whole and lay in remaining on the site, but that the children's best interests and the other factors in favour of granting planning permission were outweighed by the harm that would be caused.
58. In the current appeal, with children being present at the site, their best interests, that is the need to safeguard and promote their welfare, are a primary consideration, particularly as their education would be likely to be interrupted if the family were forced to move from the site. Further, the accessibility to health care that a settled base secures is a benefit to the family as a whole.
59. Moreover, accommodation by way of a settled base, rather than a roadside existence, can only be beneficial. I consider that the development provides

accommodation consistent with this and, as such, the personal circumstances of the appellants including the best interests of the child must be afforded substantial weight. However, in the context overall, and with the significant flood risk, due to the limitations of the information in this regard, I do not consider this a suitable environment for residential use.

Location

60. The site falls outside the local settlement boundary and thereby lies in the open countryside. The Mendlesham Neighbourhood Development Plan (MNDP), which forms part of the local development plan for the area, illustrates this. Further, it is not a site allocated for new residential purposes, and I note the comments of Mendlesham Parish Council which say that the site's detachment means it is isolated from Mendlesham and its local services and amenities, and it is therefore at odds with MNDP policy MP1.
61. However, notwithstanding the above I must acknowledge that the general needs of gypsies and travellers mean that they frequently look to locate themselves in rural locations, and there is immediate conflict with the spatial policies of Councils. Both main parties in the current case, along with interested parties, have drawn my attention to the infrequency of local bus services and the distances involved. By the very nature of gypsies' lifestyles and movements there is heavy reliance on the private motor vehicle and, accordingly, their modus operandi is irreconcilable with the objectives of the Council's spatial policies.
62. I accept that the development is in an unsustainable location, but strict adherence to the Council's spatial policy in this regard would effectively debar the presence of new gypsy settlements in rural locations, and this is less than feasible. In this connection I am again mindful of an unmet need for such developments.

Temporary planning permission

63. As I have decided that a full planning permission would not be appropriate here given the lack of substance to support the appeals lodged I have, though, considered granting a temporary permission and, in this regard, I have referred to the government's PPG which says that a temporary permission may be appropriate where a trial run is needed in order to assess the effects of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. The eventual adoption of Part 2 of the development plan would represent such a change and it will likely show sites allocated for gypsy and traveller provision.
64. This remains to be seen but, if so, alternative sites might be made available to satisfy the needs of the occupiers at the appeal site. However, there is uncertainty as to a timeline for such. Moreover, it is uncertain as to what the forthcoming LDS might entail.
65. In this respect, and given the problems arising, I feel it is more appropriate to extend the period for compliance rather than grant a temporary planning permission, and I have explained this in my comments on the ground (g) appeal relating to Appeal A.

Planning Balance

66. As I have mentioned, the absence of a five year land supply of sites for gypsy and traveller purposes, and also pitches allocated for such within the Mid Suffolk District Council area are matters that I must afford significant and considerable weight, but this does not mean that planning permission should be granted at the expense of other factors involved, which may elicit harm.
67. I have given due regard to the appellant's personal circumstances and, along with the wellbeing of his dependents, the matter of Human Rights which I have referred to. If Article 8 is engaged, as it is here, then interference with those rights can be justified by the Council if it is a legitimate aim, in accordance with the law and necessary in the public interest. In this particular instance I am firmly of the view – and I have illustrated why – that the Council's remedial actions served a clear and justifiable planning purpose. I am also of the view that the material submitted alongside the planning application, and the s78 appeal arising therefrom, is insufficient to adequately provide support to either of the appeals.
68. Accordingly, given the shortcomings which I have described, I have concluded that, in the absence of details and compelling evidence to show otherwise, the development has realistic potential to cause adverse impacts such that the costs of the development significantly outweigh its benefits. I have found that the development is contrary to the development plan as a whole, and also relevant guidance within the Framework. Further, the government's PPTS document does not provide guidance to the contrary.

Overall Conclusions

69. For the reasons given above I conclude that Appeal A should not succeed. I shall therefore uphold the enforcement notice, but with a variation which extends the time period for compliance with the enforcement notice's requirements.
70. As regards Appeal B, this turns on the degree of harm I have identified and, as such, this appeal does not succeed.

Timothy C King

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stuart Caruthers - Agent

Mr J Collins – Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Simon Bailey – Planning Team Leader, Mid Suffolk District Council

Daniel Cameron – Enforcement Team Leader, Mid Suffolk District Council

INTERESTED PARTIES:

Norman Foster – Mendlesham Parish Council

Robert Foster – local resident

Steve Hyde – local resident