



Appeal Decisions

Site visit made on 18 December 2025

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 January 2026

Appeal Refs: APP/V1505/C/25/3370985 & APP/V1505/C/25/3370986

Land Northeast of Buckwyns Farm, Buckwyns Chase, Billericay, Essex, CM12 0TP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeals are made by Ms Daniella Smilgaitis and Mr Deividas Smilgaitis against an enforcement notice issued by Basildon Borough Council.
 - The notice was issued on 16 July 2025.
 - The breach of planning control as alleged in the notice is: Without planning permission:
 - 1) The laying of hardcore and associated materials onto the Land forming an area of hardstanding as shown approximately edged and hatched black on the attached notice plan; and
 - 2) The material change in use of the Land for the storage of shipping containers.
 - The requirements of the notice are to:
 - i. Break up the hardstanding approximately edged and hatched black on the attached notice plan.
 - ii. Permanently remove from the Land all shipping containers.
 - iii. Break up the concrete base upon which the containers are stored, approximately edged and shaded blue on the attached notice plan.
 - iv. Permanently remove from the Land all resultant waste materials from works completed in compliance with requirements (i) and (iii).
 - v. Return the Land to its condition prior to the unauthorised breach by levelling and reseeding to grass.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (c), (d), (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. It is directed that the enforcement notice is:
 - corrected by deleting the words “ 2) The material change in use of the Land for the storage of shipping containers” within section 3 of the enforcement notice (the matter which appears to constitute the breach of planning control) and its replacement with “2) the placement of two shipping containers on the land”.
 - corrected by deleting the existing requirements under section 5 (what you are required to do) and replacing them with the following:
 - (i) Break up the hardstanding approximately edged and hatched black on the attached notice plan.
 - (ii) Permanently remove from the land all shipping containers.
 - (iii) Permanently remove from the land all resultant waste materials from works completed in compliance with requirements (i) and (ii).

- (iv) Return the Land to its condition prior to the unauthorised breach by levelling and reseedling to grass.
- 2. Subject to these corrections, the appeals are dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

- 3. The allegation in the Notice refers to two separate acts of development:
 - 1) The laying of hardcore and associated materials onto the Land forming an area of hardstanding; and
 - 2) The material change in use (MCU) of the Land for the storage of shipping containers.
- 4. The appellants explain in their Grounds of Appeal Statement and Final Comments that they are not challenging part 1) of the Notice. Indeed, the hardcore and associated materials had been removed before my site inspection, and the land has been restored to its former condition¹. As such, part 1) of the Notice has already been complied prior to writing this decision. Therefore, since the appellants confirm they are not challenging part 1) of the Notice, the only outstanding matter relevant to this appeal is part 2) of the allegation which relates to the alleged MCU of the land for the storage of shipping containers. I have therefore determined the appeal on this basis.
- 5. In addition, the appellants have withdrawn their appeals on ground (g). Therefore, the appeals are proceeding on the grounds (a), (c) and (d) only.

The Appeals on ground (c)

- 6. This ground of appeal is that the development enforced against does not constitute a breach of planning control. The onus of proof lies with the appellants, the relevant test of the evidence being the balance of probability.
- 7. Under this ground of appeal, the appellants argue that the shipping containers are ancillary to the existing use of the land and simply support the upkeep and maintenance of the land². The appellants therefore state that there has been no MCU for the storage of shipping containers and that the works comprise operational development (OD) only. It is therefore necessary to compare any differences in the character of the use of the land at the time the Notice was issued.
- 8. In cases where there is a dispute as to whether an MCU has occurred, it is first necessary to ascertain the correct planning unit, and the present and previous primary (as opposed to incidental) uses of that unit. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in applying the formula of material change of use. The general rule has always been that the materiality of change should be assessed in terms of the whole site concerned. The area to be looked at is the whole of that used for a particular purpose, including any part of that area which is put to incidental use.

¹ As shown in photographs under Appendix 2 of the appellants' statement.

² Appellants Statement, paragraph 8.4.

9. The larger the unit of occupation, the less likely it is that a change of use of the part will be an MCU of the whole. For instance, in the case of a large factory complex, the planning unit will likely be the whole premises. The various subsidiary activities, such as canteens, offices and car parks will be incidental uses, which may fluctuate without there necessarily being an MCU of the planning unit.
10. The Council consider that the planning unit is the whole of the land within the red line as set out in the notice plan, given that this reflects the current ownership of the land, which has a functional relationship across the entire site. This has not been disputed by the appellants, and I find no reason to disagree with this. Both parties also agree, that prior to the placement of the two shipping containers, the site had no specific planning use³ with the land being merely a grass field of circa 2.1 acres. The concept of a MCU is not defined in statute or statutory instrument. The basic approach is that, for an MCU to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.
11. The Council argue that since the land currently has no authorised use, the introduction of the two containers with their industrial appearance, introduces a new character and appearance to the site, which constitutes a new use which detrimentally affects the character of the site. However, the appellants maintain that the containers house equipment necessary for the maintenance of the site, which includes mowers and trimmers, and various personal items related to outdoor work. Indeed, I observed during my site visit that new landscaping works had recently been installed around the perimeter of the site, comprising the planting of conifer trees.
12. I appreciate that there was previously a single horse trailer/storage facility located in a similar position to the current containers, and that the two shipping containers have not moved since the Notice was served. In addition, the two shipping containers are located on a relatively small area of the overall site, and therefore shipping containers are not spread across the entire site. Based on all of the evidence before me, I accept that the two shipping containers are used in connection with the maintenance of the land.
13. Therefore, as a matter of fact and degree, the character of the use has not changed significantly away from a grass field with no specific use. As a matter of fact and degree, and on the balance of probability, it appears that the placement of two shipping containers has not resulted in a MCU of the land.
14. In support of their argument, the Council have referred to an appeal decision from 2002, where the Inspector found that the stationing of the shipping container resulted in a material change in use of the land⁴. However, that decision related to the front garden of a dwellinghouse, rather than an open grass field, and the size of the site was considerably smaller than this appeal site before me. As such the circumstances of that other appeal decision are different to the current appeal and does not alter my findings above.
15. As outlined above, the appellants argue that the siting of two shipping containers are akin to a traditional storage building and comprise OD works only. The plans

³ Appellants Statement, Paragraph 8.3.

⁴ Appeal ref. APP/X2220/C/01/1067945.

submitted with the appeal show that each shipping containers measures 6058mm deep, 2591mm high and 2438mm wide.

16. Section 336 (1) of the Act includes in the definition of the word '*building*' any structure or erection, and any part of a building, as so defined. This description has been interpreted by the Courts to include structures which would not ordinarily be described as buildings. Three primary factors were identified as decisive of what was a building: (a) that it was of a size to be constructed on site, as opposed to being brought on to the site, (b) permanence, (c) physical attachment. No one factor is decisive, and greater weight may be given to one in reaching a conclusion.
17. I accept that they are not physically attached to the ground and that these were brought onto the land in one piece. Nevertheless, given their substantial size and weight (weighing several tonnes) they are fixed in position by their own weight, and skilled efforts would now be required to move them. Indeed, the evidence indicates that these containers have not moved since the Notice was served in July 2025. Whilst the containers are not connected to any utilities, their overall size and scale would be consistent with a building. Based on the particular circumstances of this case, as a matter of fact and degree, the shipping containers are structures that falls within the definition of the word '*building*' in s336 (1) of the Act.
18. In view of my findings above, the shipping containers are OD that requires planning permission, which has not been granted.

Conclusion on ground (c)

19. Thus, for the reasons given above, my conclusion is that the Notice should be corrected by deleting the following words from Section 3 of the Notice (the matter which appears to constitute the breach of planning control): "The material change in use of the Land for the storage of shipping containers" and replacing this with "the placement of two shipping containers on the land".
20. Furthermore, requirement iii) is also excessive since the removal of the concrete base does not tally with the breach of planning control which now relates solely to OD works only, and I shall delete this excessive requirement. Since an appeal has been made on ground (a) for the retention of the two shipping containers I am satisfied that this would not cause any injustice to either party. I can therefore use my powers under the provisions of s176(1)(a) of the Act to make this correction.
21. The ground (c) appeals succeed to that extent.

The Appeals on ground (d)

22. The onus is on the appellants under ground (d) to make the case that, at the time the enforcement notice was issued, it was too late to take action against the matters stated in the notice.
23. However, the appellants state that their ground (d) appeal is only applicable if their ground (c) fails. I have found above that the appeals succeed under ground (c) and that there has been no MCU of the land. Furthermore, there is no dispute between the parties that the placement of two shipping containers on the site occurred less than 4 years ago. Consequently, the ground (d) appeals fall away.

Appeal on ground (a), the deemed planning application (DPA)

24. Under s174(2)(a) of the Act the allegation forms the description of development for which planning permission is sought. The DPA relates to the allegation as corrected. Following my conclusions on the ground (c) appeal, the DPA relates solely to the placement of two shipping containers on the land.

Main Issues

25. Therefore, the main issues are:

- whether the development amounts to inappropriate development in the Green Belt;
- the effect of the development on the openness of the Green Belt;
- the effect of the development on the character and appearance of the area; and
- if the development is inappropriate, whether harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances needed to justify the development.

Reasons

Whether the development is inappropriate

26. The appeal site is a parcel of primarily open grass land of approximately 2.1 acres and lies within the open countryside and the designated Green Belt. The area is characterised by scattered buildings, agricultural fields and areas of woodland and therefore the site has a rural character. The development relates to the placement of two shipping containers, positioned close to the entrance of the site, which are used for storing the appellants personal items and equipment used in connection to the maintenance of the land.
27. National policy on Green Belt development is set out in Part 13 of the National Planning Policy Framework, 2024 (the Framework). Paragraph 153 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Of particular relevance to this appeal is Paragraph 154 which states that development in the Green Belt is inappropriate subject to a number of exceptions.
28. The appellants consider the development would fall within the exception listed under Paragraph 154b) of the Framework, given that the appellants use the site for walking and spending time in recreational capacity. Exception b) of paragraph 154 relates to the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
29. However, this exception only arises in connection with the existing use of land or a change of use. There is no proposal to change the use of the land upon which the containers sits for outdoor recreation, and there is no allegation in the Notice that any such change has been made. Furthermore, both parties agree that the site is a grass field with no specific planning use. Therefore, as the land is not in use for the purpose of outdoor sport and recreation, I find that the paragraph 154 (b)

exception, cannot arise in relation to the shipping containers which are simply used to store equipment and machinery to maintain the land.

30. In conclusion, the development would not satisfy any of the other exceptions in paragraphs 154 and 155 of the Framework, As such the development amounts to inappropriate development in the Green Belt. In reaching this conclusion, it is of note that paragraph 153 of the Framework states that substantial weight should be given to any harm to the Green Belt.
31. The development does not safeguard the countryside from encroachment and does not assist in urban regeneration. As such the development therefore conflicts with the purposes of the Green Belt, contrary to paragraph 143 of the Framework.

Effect on the openness of the Green Belt

32. Paragraph 142 of the Framework states that the government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The Courts have held that openness includes both visual and spatial dimensions.
33. The shipping containers are positioned close to the access to the site, and are of a reasonable height, size and scale. Whilst I accept that there was a previous horse trailer/storage building on this site, the current two shipping containers are larger than the former structure and occupy a greater area of the site. Therefore, spatially, there is a reduction in openness of the site and hence this part of the Green Belt.
34. I acknowledge that the appeal site is largely surrounded by new tree planting and metal fencing around the perimeter of the site. However, given the proximity of the shipping container to the site's access, they are still clearly visible through the trees and fencing from Buckwyns Chase and from the adjacent public right of way (PROW) to the east. As such, the shipping containers also result in some loss of visual openness.
35. Therefore, in in both spatial and visual terms, the development affects the openness of the green belt, which conflicts with the overarching aim of the Green Belt, to keep land permanently open. Overall, I consider that the harm caused to the openness of the Green Belt would be a limited one.

Character and appearance

36. The site is located a within the countryside characterised by open agricultural land with scattered buildings, areas of woodland. The overall size and scale of the two containers introduces additional built development onto a site that is an open field in the countryside. The two shipping containers, made of metal and finished in dark green, have an industrial appearance which is in stark contrast to its countryside location. Despite the presence of new conifer tree planting around the perimeter of the site, nevertheless, the development remains prominent and visible from public vantage points on Buckwyns Chase and the PROW, adjacent to the appeal site. The development introduces industrial style building within the countryside, which has an urbanising effect on the open rural landscape, harming the character and appearance of the area.

37. In this respect the development conflicts with section 12 of the Framework which requires that developments be sympathetic to local character and history, including the surrounding built environment and landscape setting,

Other considerations

38. The Council has raised no objection to the development on the basis of its effect on the living conditions of nearby residents or highway safety. I find no reason to disagree with this professional assessment. However, these aforementioned matters are of neutral consequence in the overall planning balance.
39. The appellants consider that the functional necessity for safe and secure storage of essential maintenance equipment (such as mower, generator and fuel) to maintain the site for its recreational use by the appellants constitutes a Very Special Circumstance (VSC). It is also argued that the replacement of the previous rotting storage unit with a more robust container was a necessity driven by safety and practical reasons and that without the containers, these maintenance items would be exposed to the elements, creating a safety and security risk.
40. However, there is no specific planning use for the site which is simply a grass field. As such the permanent retention of two shipping containers, for the maintenance of a grass field appears excessive. Indeed, the appellants own photographs of the containers illustrates that one of these containers is largely empty. There was also limited items in one of the containers during my own site inspection. Therefore, the appellants have not clearly demonstrated a need for the retention of the two shipping containers, and I consider that alternative lesser measures could still achieve this aim. In the absence of more compelling evidence, I give limited weight to the maintenance arguments advanced.

Green Belt Balance and Conclusion on Ground (a) and the DPA

41. I have found that the development amounts to inappropriate development in the Green Belt, and that limited harm has been caused to the openness of the Green Belt. These are matters to which I afford substantial weight. In addition, I have found that the development also harms the character and appearance of the area. The adverse impacts need to be weighed against the identified other considerations, noting that there are no significant benefits.
42. In conclusion, the substantial weight to be given to Green Belt harm, and the other identified harm arising from the development, is not clearly outweighed by the other identified considerations. Consequently, the very special circumstances necessary to justify the development do not exist.
43. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the DPA should be refused.

Conclusion

44. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan INSPECTOR