



Appeal Decisions

Hearing Held on 13 September 2022

Site visit made on 14 September 2022

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2022

**Notice 1: Appeal Refs: APP/V1505/C/20/3265750, 3265751, 3265752
3265753, 3268185, 3268187, 3268188.**

Land west of Hillview, Southend Arterial Road, Wickford, Essex

- 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 the persons named in Appendix 1 against an enforcement notice issued by Basildon Borough Council.
- The enforcement notice was issued on 26 November 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the material change in use of the Land for the stationing of caravans for residential occupation.
- The requirements of the notice are i. Cease the use of the Land for the stationing of caravans for residential occupation; ii. Remove the caravans from the Land; iii. Remove from the land all fencing enclosures and residential paraphernalia and chattels; iv. Remove all associated utility/day rooms, outbuildings, trailers, fixtures, fittings including electricity sockets and apparatus and resulting and detritus therefrom; v. Remove all non-organic matter forming the hardstanding within the site from the Land, including all associated detritus therefrom, restoring the level of the ground to its former natural topography.
- The period for compliance with the requirements is four months.
- The appeals are proceeding on the grounds set out in section 174(2)(a) (Appeal A) 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.

Summary of Decisions: Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

No further action is taken in respect of Appeals B to G.

**Notice 2: Appeal Refs: APP/V1505/C/20/3265754, 3265755, 3265756,
3265757, 3268203.**

Land west of Hillview, Southend Arterial Road, Wickford, Essex

- 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 the persons named in Appendix 2 against an enforcement notice issued by Basildon Borough Council.
- The enforcement notice was issued on 26 November 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the laying of hard-core and associated material onto the Land forming an area of hardstanding.
- The requirements of the notice are i) Break up the hardstanding and remove all resultant debris and materials from the land; ii) Restore the level of the ground to its former natural topography.

- The period for compliance with the requirements is four months.
- The appeals are made on the grounds set out in section 174(2) (a) (Appeal H) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The enforcement notice is quashed.

Notice 3: Appeal Refs: APP/V1505/C/20/3265759, 3265760, 3265761, 3265762, 3267235.

Land west of Hillview, Southend Arterial Road, Wickford, Essex

- 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 the persons named in Appendix 3 against an enforcement notice issued by Basildon Borough Council.
- The enforcement notice was issued on 26 November 2020.
- 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 storage purposes.
- The requirements of the notice are i. Cease the use of the Land for the stationing of caravans for storage purposes. ii. Remove the caravans from the Land. iii. Remove from the land all fencing enclosures iv. Remove all associated utility/day rooms, outbuildings, trailers, fixtures, fittings including electricity sockets and apparatus and resulting and detritus therefrom. v. Remove all non-organic matter forming the hardstanding within the site from the Land, including all associated detritus therefrom, restoring the level of the ground to its former natural topography.
- The period for compliance with the requirements is four months.
- The appeals are made on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The enforcement notice is quashed.

Preliminary Matters

1. At the Hearing I was invited by the Council to quash both Notices 2 and 3. The Council explained it considers the removal of the hardstanding, targeted by Notice 2, to be achievable as a requirement of Notice 1, given that it serves to facilitate the residential use the subject of that notice. This was not disputed by the appellants, and I see no reason to take a contrary view.
2. The Council confirmed that Notices 1 and 3 were served in the alternative but, from information that has since come to light, it now accepts that caravans are stationed on the site in connection with the residential use of the land, rather than for storage purposes. The Council therefore seeks to rely on Notice 1 only and regards Notice 3 as superfluous. Again I have no reason to take a contrary view.
3. I therefore propose to quash both Notices 2 and 3, and take no further action in respect of the grounds of appeal therein.
4. The draft Basildon Local Plan was withdrawn by the Council on 3 March 2022. References within Notice 1 to policies therein are therefore disregarded. The Council accepted that it had no Saved policies in relation to gypsy and traveller sites, and as such relies in this case on the application of relevant national policies, as set out within the National Planning Policy Framework (the Framework) and the Government's Planning Policy for Traveller Sites 2015 (PPTS).

5. Though not cited as a reason for serving the notices, the Council referred at the Hearing to the significance of the Essex Coast Recreational Disturbance and Mitigation Strategy Supplementary Planning Document (SPD). The initiative set out within the SPD aims to facilitate strategic mitigation measures to protect birds of the Essex Coast and their habitats from increased visitor pressure associated with new residential development. The strategy is based on a proportionate financial contribution in accordance with the proposed number of residential units. This matter is considered later in my decision.
6. The appeal site adjoins a separate site of traveller pitches, somewhat larger in area, along its eastern boundary. That site is also unauthorised and is subject to separate enforcement appeals. Therefore when considering the impact of the development, as part of the ground (a) appeal, I have considered the impact of the present appeal site both alone and in combination with the adjoining site.

Appeal A on ground (a)

Main Issues

7. The main issues are:

- Whether the development would be inappropriate development in the Green Belt for the purposes of the Framework and development plan policy;
- 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;
- The effect of the development on sensitive coastal habitats;
- the question of the need for gypsy / traveller sites;
- the question of intentional unauthorised development;
- the personal circumstances of the site occupiers;
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

8. Paragraph 137 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 138 notes that the Green Belt has five purposes which include safeguarding the countryside from encroachment. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

9. There is no dispute between the parties that the proposal would amount to inappropriate development, indeed the PPTS expressly states that such sites in the Green Belt are inappropriate development.

Openness

10. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. This specific assessment is not about the quality of the development, including the suitability of materials used, in itself, or its effect on the character and appearance of the area.
11. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect¹.
12. The appeal site is broadly rectangular in shape, and orientated north to south. It is subdivided, by close board timber fencing, into six pitches, which are roughly equal in area and accessed via a tarmac road running adjacent to the eastern boundary. The pitches themselves are surfaced either in tarmac or road planings. Close boarded fencing bounds the perimeter of the site.
13. I have been provided with very limited evidence to suggest that the site might reasonably be regarded as having been previously developed. That the site was formerly greenfield land and that the pitches are being used to accommodate various caravans, outbuildings and paraphernalia associated with the residential use, which inevitably take up space is not controversial between the parties. I see no reason to take a contrary view.
14. In terms of visual impact, the site is immediately adjacent to and accessed from the A127 Southend Arterial dual carriageway road. However there is substantial and dense boundary hedging running adjacent to the carriageway, which for the most part serves to effectively screen the site. The continuity of the hedge is only occasionally interrupted and whilst this means the site entrance can be seen and would allow for oblique views of the site perimeter if the adjoining unauthorised site were no longer present, any sightings are only very brief and even more fleeting still for passing motorists. Whilst visibility of the site from the road may increase as a result of seasonal leaf fall, it seems to me that the density of the hedge would ensure that views of the site would continue to remain screened or well filtered.
15. From my visit it appeared that there are few other public vantage points from which clear views of the appeal site may be gained. These points are intermittent gaps in otherwise well-established boundary hedging along Cranfield Park Road to the north-east of the site. Whilst the perimeter fencing along the rear of the site, along with limited views of the upper parts of caravans, are visible in the landscape, and side perimeter fencing and the presence of further caravans would be revealed in the absence of the adjacent unauthorised site, the appeal site is at distance and set against a gently rising land form which serves to assimilate the development to a degree.
16. It is likely that views of the site would be possible at short range from the rear of certain private properties on Honiley Avenue to the west and a nearby

¹ *Turner v SSCLG & East Dorset Council* [2016]

dwelling to the east (were the adjoining unauthorised site not to be present). However it seems to me that the number of properties in question would be few in number. It may also be possible to view the site from the rear of properties on Cranfield Park Road, located near to its junction with the A127 road (were the adjoining unauthorised site not to be present) and also from properties situated on Fairway and Meadow Way to the north of the site. These views however would be at distance, and I consider the sense of impact on the openness of the Green Belt would be limited. I am not persuaded that the hardstanding areas in themselves, owing to their lack of three-dimensional form, impact on Green Belt openness.

17. Drawing the above considerations together, whilst I concur with the view that the development results in a degree of encroachment into the countryside and urban sprawl, and as such is at odds with respective Green Belt purposes as set out in the Framework, I conclude that the development results in only limited visual harm to openness. Furthermore I draw the same conclusion when considering the cumulative visual impact on openness, both of the appeal site and the adjoining traveller site immediately to the east, and which is subject to contemporaneous appeals².

Character and Appearance

18. From my visit it was apparent that the appeal site is situated within a relatively flat landscape of agricultural fields, typically bounded by low fences, hedges and trees. In distant views of the site towards the south-west, a modest rise in ground level is evident. The site immediately adjoins a separate traveller site, that is the subject of contemporaneous appeals, but is otherwise separated by open fields from, though still relatively near to, residential properties on established plotlands. The site is not far from substantial infrastructure developments, with the aforementioned A127 road and electricity pylon routes passing nearby. These features have a very strong and imposing physical presence in the landscape. In particular the massive upright framework of the pylons tends to jar with the more horizontal emphasis of hedges and tree belts across the flatness of the landscape. The site is a semi-rural location.
19. I have set out above where I consider the key visual receptors for the development to be located. The appellants raise the point that national policy, in the form of the PPTS, contemplates the development of sites in rural and semi-rural settings, and that the inevitable consequence of this is that some degree of visual impact must be acceptable. I do not dispute this point and I accept that caravans are seen in the countryside, but equally this is not to say that all such development must be acceptable.
20. For the reasons set out above the visibility of the site is generally well concealed from the public domain. For most drivers passing through the area, it seems to me that the development is unlikely to attract attention away from the route of the A127 road. From greater distance, although the upper parts of caravans would be visible above site perimeter fencing, they would be significantly screened by that fencing, which itself tends to be assimilated by the horizontal orientation and background of landscape features.

² Appeal refs: APP/V1505/C/19/3243848 & APP/V1505/C/20/3265821

21. It seems to me that there would be scope for some limited tree and /or hedge planting within the pitches adjacent to the site boundaries, that would further assist in mitigating the development, but without resulting in a strong sense of enclosure of the site. I do not agree with the Council that the development results in a sense of visual harm due to urbanisation. Furthermore the scale of the aforementioned pylons tends to draw the eye, more so than the site, as being at odds with the natural characteristics of the landscape. I am not persuaded that the proximity and scale of the appeal site is such that it would result in material visual harm for occupiers of nearby existing plotland properties.
22. I draw the same conclusions when considering the cumulative visual impact, both of the appeal site and an adjoining traveller site immediately to the east and subject to contemporaneous appeals³. Drawing these considerations together I am not persuaded that the development results in harm to the character and appearance of the area. Accordingly the development would comply with Saved Policy BAS BE12 of the Basildon District Local Plan 2007 (LP) insofar as this seeks to avoid harm to the character of the surrounding area.

Coastal Habitats

23. The Essex Coast includes several Special Protection Areas which are internationally important for breeding and non-breeding birds and their coastal habitats. There is no dispute between the parties that the appeal site would fall within the so-called zone of influence underpinned by the SPD strategy. It cannot be ruled out that the development, alone or in combination with other plans and projects, would result in a likely significant effect on these sites.
24. Therefore as the appropriate authority, I have a duty to undertake an appropriate assessment to consider whether it would be possible to secure satisfactory mitigation measures. I have had regard to the SPD and have also consulted Natural England, as the statutory nature conservation body. I consider that the provision of the financial contribution towards strategic mitigation measures enables it to be ascertained that the proposal would not adversely affect the integrity of sites protected under the habitat regulations.
25. Accordingly the appellants have submitted a planning obligation, in the form of a unilateral undertaking (UU), which commits to making the aforementioned financial contribution (£137.71 per traveller pitch).
26. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 states that, subject to monitoring costs, a planning obligation may only constitute a reason for granting planning permission for the development where it meets three tests. The tests, which are restated in paragraph 57 of the Framework are as follows:
- a) necessary to make the development acceptable in planning terms;
 - b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development.

³ Appeal refs: APP/V1505/C/19/3243848 & APP/V1505/C/20/3265821

27. I am satisfied that the provisions of the UU would be necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related in scale and kind to the development. The statutory tests in Regulation 122 of the CIL Regulations are, therefore, met and the planning obligation is a material consideration which satisfactorily mitigates harm in this case.

Other Considerations

Need for gypsy and traveller sites

28. Paragraph 7(b) of the PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their areas over the lifespan of the development plan. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) was produced in 2020 and is undisputed to provide the most up to date published indication of the scale of need for gypsy and traveller pitches in the Borough. The GTAA identified the level of need for those that meet the definition of gypsies and travellers in Annex 1 of the PPTS to be 85 pitches.
29. The PPTS states that local planning authorities should identify, and update annually, a 5-year supply of specific deliverable sites. As previously set out, the Council withdrew its emerging Local Plan earlier this year, and with this went any formal allocation of deliverable sites. The Council acknowledged at the Hearing that at present the strategy and timescale for the delivery of gypsy and traveller sites going forward remains uncertain.
30. Not surprisingly it is therefore common ground that immediate unmet need for sites exists within the Borough; also that the Council is unable to identify a five-year supply of deliverable sites. There is no suggestion that available alternative sites exist for the present site occupiers elsewhere within the Borough. I have been provided with no evidence to persuade me away from the conclusion that the Council's policies have failed to address the delivery of gypsy and traveller sites over a significant period of time. That there is also a broader national and regional unmet need for sites is not a matter of contention between the parties.
31. In addition it is undisputed that a large proportion of land in the Borough, some 63 per cent, lies within the Green Belt. It therefore seems to me likely that there will need to be reliance to a degree on the Green Belt in any event for the provision of pitches going forward. Indeed, prior to the emerging Local Plan being withdrawn earlier this year, it appears that a number of the allocated gypsy and traveller sites were in the Green Belt, albeit that the Council said it tried to select sites where the harm was less. There is however no evidence to persuade me that Green Belt harm arising from this site would be greater than from any other site that may be allocated. All of these factors weigh positively in favour of the development.
32. It appears that most of the appellants have now moved away from the site, for reasons which include leaving the area and moving into bricks and mortar accommodation due to personal relationships outside the traveller community. Notwithstanding this, there is no dispute that each of the six pitches are being used by different traveller families, albeit that the occupiers of two of the sites are currently away travelling, with one of those sites being occupied

temporarily by a different family. These considerations do not overcome the above conclusion regarding an acute need for pitches in Basildon.

Intentional unauthorised development (IUD)

33. The Council states that the intentional unauthorised nature of the development is a material consideration in line with Government policy, that should be given significant adverse weight. At the Hearing, the site occupiers in attendance were able to give a brief insight into their living circumstances prior to moving to the appeal site, which essentially involved either doubling up on existing sites, thus resulting in limited space, or living in bricks and mortar accommodation. When considering that government policy, as expressed within the PPTS, is to facilitate the traditional and nomadic way of life of travellers this would not be consistent with living in bricks and mortar accommodation. The Council confirmed at the Hearing that the traveller status of the site occupiers, in line with Annex 1 of the PPTS, is undisputed.
34. The Council said it would have expected the appellants to have made an informal planning enquiry about the likelihood of planning permission being granted. Notwithstanding the value of pre-application advice, the above simply serves to underline the significant and immediate need for sites in the Borough and I struggle to accept, under the circumstances, that the unauthorised development of the site would not have been an inevitable outcome. Part of the underlying rationale for seeking to deter IUD is to avoid prejudicing the opportunity to mitigate the impact of the development through the use of planning conditions. When asked about this at the Hearing, the Council were unable to say clearly how they thought that such prejudice had occurred.
35. I am also mindful that the Act makes provision for a grant of retrospective planning permission, and planning enforcement that is remedial rather than punitive. In light of these considerations I attach only very limited weight to the intentional unauthorised nature of the development.

Personal circumstances

36. Article 8 of the Human Rights Act 1998 states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. I am also mindful that Article 3(1) of the United Nations Convention 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.
37. Furthermore in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.

38. The appeal site is split into six pitches, one of which is vacant at present with the occupiers said to be away travelling. It appears that there are several young children living on the site, a number of whom are of school age and one of whom has a learning disability; also that some of the adults in occupation are suffering from various physical and / or mental health issues.
39. The occupiers have provided certain official medical documents which support some of the above disability claims. At the Hearing, however, it was evident that the Council was not persuaded as to the severity of the personal circumstances claimed by the site occupiers. Notwithstanding this, it seems to me that there can be no doubt that if the appeal was unsuccessful it would take away a settled base for these households, who may potentially need to resort to living on the roadside, in view of the acknowledged lack of alternatives. This would very likely mean disruption to the children's educational provision as a result. I am mindful that it may be difficult to enrol children in school and /or maintain the children's attendance if they have no fixed address. It would also potentially disrupt access to health services for those occupying the site. These considerations weigh positively in favour of the development.

Other Matters

40. The PPTS states that local planning authorities should very strictly limit new traveller site development in the open countryside that is 'away from' existing settlements or outside areas allocated in the development plan. Despite the parties seeming to agree that the appeal site is broadly in an edge of settlement location, in relation to Wickford a little way to the north, the Council later said at the Hearing that it did not accept the site as being in a sustainable location, also that it considered the site to be isolated.
41. I note that the sustainability of the location was not given as a reason for the Council issuing the notice. I set out earlier in my decision that I considered the site to be relatively near to residential properties on established plotlands. I concur with the view that the site should be regarded as being located on the edge of, rather than away from, a settlement and not in an isolated location.
42. In terms of access to services and facilities, the appellants referred to the proximity of a shop, regularly used by the site occupiers, associated with a nearby petrol filling station on the A127 road to the west. The Council did not consider that this merited weight in view of the limited range of convenience goods that would be on offer.
43. Having visited the shop, which is likely to be within reasonable walking distance for most people, it seems to me that it would be equipped to cater for a variety of day-to-day food needs. A sustainable travel option would therefore be available to a degree. I am in no doubt, however, that it would be necessary to travel to Wickford in order to access a full range of services and facilities. It would be realistic to conclude that for reasons of convenience, distance and safety during hours of darkness there would be significant reliance on the private car in order to get to and from Wickford.
44. However, the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Despite the likelihood of a very high degree of reliance on the private car, it seems to me that the length and duration of journeys necessary to access

essential services and facilities would be relatively moderate for a rural location. There is also the potential for the various pitch users to make shared trips. The overall distances that would need to be travelled in order to access a range and choice of services are likely to be limited for these reasons. I consider that this weighs in favour of the conclusion that the appeal site should be regarded as in a relatively sustainable location.

45. The PPTS states that local planning authorities should ensure that the scale of sites in rural or semi-rural areas do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure. Whilst at the Hearing the Council stated that concerns had been raised by residents of an over-dominance of traveller sites, I am not provided with any further detail of how any sense of dominance has manifested itself. This consideration does not therefore attract weight.
46. Highway safety was not given as a reason for the enforcement notice being served. Nevertheless concern about dangerous access arrangements, onto and from the A127 road, has been cited by a third party. The speed limit along the dual carriageway as it passes the site is 50mph. Access onto the road, from the site, and to the site from the road is via the aforementioned unauthorised site, with which the access is shared, and is restricted to a left-turn arrangement only.
47. At the time of my visit, during mid-afternoon, the road was evidently very busy, with almost continuous streams of traffic. However there appears to be a good standard of visibility in the direction of oncoming traffic for drivers emerging from the site; also a good standard of forward visibility towards the site access for approaching traffic. I am also mindful that I have not been made aware of any vehicle accidents in the vicinity during the considerable time that the site has been in its current use. On the basis of these findings I conclude that the development would not result in harm to highway safety. I reach the same conclusion when considering the cumulative impact on highway safety, both in terms of the appeal site and the adjoining traveller site immediately to the east.
48. Whilst concern was raised with regard to noise associated with the use of power generators on the site, I was able to observe from my visit that the site is connected into and serviced via the electricity grid. I therefore have no reason to believe that the sustained use of power generators would present ongoing disturbance issues in this case.

Green Belt Balance

49. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application substantial weight should be given to any harm to the Green Belt. The appeal site development is inappropriate in the Green Belt. In addition, the residential use and associated structures, both in present and proposed form, cause a loss of openness and encroachment into the countryside, therefore harm to the purposes of including land in the Green Belt, albeit that I consider the degree of harm in visual terms to be limited. The intentional unauthorised nature of the development attracts very limited weight.

50. I have found that the development would not result in harm to the character and appearance of the area or, subject to the planning obligation, to sensitive coastal habitats. It would not be in a location 'away from' a settlement nor too remote from services and facilities. The development would not result in harm to highway safety. These 'absences of harm' are neutral in the planning balance and do not weigh in favour of the appeals.
51. There are other considerations which support the appeals. I have had regard to advice in the PPTS when considering sites in Green Belt locations. This indicates that in such locations the absence of an up to date 5-year supply of deliverable sites should not amount to the significant material consideration it may otherwise do in a less strictly controlled area, when considering applications for the grant of temporary planning permission. It also states that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.
52. However an unlikely scenario is distinguishable from one that may never occur. Indeed it seems to me that the Council's undisputed significant and immediate unmet need for pitches (without taking into account need that is likely to exist over a broader geographical area), as manifested in the lack of available alternative sites and the lack of five-year land supply should be a matter that collectively attracts substantial weight. Furthermore the Council's policy failure in this regard over many years, including a lack of assurance as to when the position might be addressed, attracts significant weight.
53. In addition I give moderate weight to the likelihood that when gypsy and traveller sites are allocated, a significant proportion of pitches will be located within the Green Belt in any event. All of this leads me to conclude that such an exception to the probable position, as set out in the PPTS, would be justified in this case.
54. I also attach significant weight to the site occupiers' personal circumstances, when considering, in particular, the benefits of a settled base for the relatively large number of young children present on the site.
55. I have balanced the harm to the Green Belt and any other harm, against the other considerations referred to above. Having regard to the PPTS, I find that they clearly outweigh the harm identified. Furthermore I find this to be the case without the need to rely on the weight that I have afforded the site occupiers' personal circumstances.
56. The very special circumstances necessary to justify the development have therefore been demonstrated. Consequently the proposal accords with the strategy for the protection of Green Belt land as set out in the Framework. In this context I do not find conflict with Policy BAS GB1 of the LP which seeks to establish the boundaries of the Green Belt to achieve its stated purposes.
57. I consider that because of the amount of weight attached to need, policy failure and the likely location of future sites, the balance is in favour of granting a permanent planning permission irrespective of the additional weight of personal circumstances.

58. The Council has drawn my attention to a recent appeal decision in relation to a nearby site, where, following an Inquiry, the Inspector upheld an enforcement notice in respect of the material change in the use of the land to the stationing of caravans for residential occupation⁴. Notably the Inspector in that case was not satisfied that any of the appellants wishing to occupy the appeal site had gypsy and traveller status within the PPTS. Furthermore only limited weight was attached to the lack of alternative sites given evidence of alternative accommodation being found and other families appearing to have moved away. The Inspector also observed that none of the appellants were now living on the site.
59. In addition, significant adverse weight was given to intentional unauthorised development in that case, the Inspector commenting *"It is rare in my experience to come across a whole series of proceedings before the Courts which point so firmly to flagrant intentional breaches of planning control which continued in spite of Injunction Orders."*
60. Each development must be considered on its own individual merits, and it therefore seems to me that there are factors distinguishing that case from the appeals currently before me, and which led to weight being applied differently in terms of the Green Belt balance.

Conditions

61. I have considered the conditions suggested by the Council and discussed with the parties at the Hearing. A condition confirming that planning permission is restricted for residential use by gypsies and travellers is required in order to safeguard the supply of the site for this purpose. However in light of the recent Court of Appeal judgment cited below⁵, in order to avoid discrimination, the condition should include those gypsies and travellers who have ceased to travel permanently.
62. A condition limiting the number of pitches and caravans stationed is needed in order to protect the character and appearance of the area. Conditions limiting the size of vehicles parked and preventing commercial activity on the site are required in the interests of helping to safeguard the character and appearance of the area and the living conditions of residents.
63. A condition confirming the loss of the permission unless details are submitted for approval (including a timetable for implementation) concerning the site layout, boundary treatments, drainage details, external lighting arrangements and soft landscaping works, including their replacement if necessary, is required in order to help safeguard the character and appearance of the area and the living conditions of the site occupiers.
64. The form of this condition is imposed to ensure that the required details 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. The condition will

⁴ Appeal Decisions APP/V1505/C/20/3264996 & others

⁵ *Lisa Smith v SSLUHC & Ors [2022] EWCA Civ 1391*

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.

65. Finally a condition withdrawing permitted development rights for domestic structures and enclosures is required in view of the fact that limits to the quantum of development form part of the justification for planning permission in this case.

Conclusions

Notice 1

66. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the use as described in the notice subject to conditions. The enforcement notice will be quashed, and it follows that the various appeals on ground (g) do not fall to be considered.

Notice 2

67. For the reasons given above I conclude that the enforcement notice should be quashed.

Notice 3

68. For the reasons given above I conclude that the enforcement notice should be quashed.

Formal Decisions

Notice 1

69. Appeal A 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 1990 Act as amended for the development already carried out, namely the material change in use of the Land for the stationing of caravans for residential occupation at Land west of Hillview, Southend Arterial Road, Wickford, Essex as shown on the plan attached to the notice and subject to the conditions below.

70. I take no further action in respect of appeals B to G.

Notice 2

71. The enforcement notice is quashed.

Notice 3

72. The enforcement notice is quashed.

R. Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy), but including those gypsies and travellers who have ceased to travel permanently.
- 2) There shall be no more than six pitches on the site; these pitches are indicated nos. 1 to 6 on the attached plan (Plan 1). On each of the six pitches hereby approved no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan), shall be stationed on the pitch at any time.
- 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 the development took place within **28 days** of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within **3 months** of the date of this decision a scheme with details for:
 - (a) the internal layout of the site including the extent of the residential pitches, the location of the caravans and vehicle parking, any buildings and hardstandings;
 - (b) all boundary treatments and all other means of enclosure (including internal sub-division);
 - (c) the means of foul and surface water drainage of the site;
 - (d) proposed and existing external lighting on the boundary of and within the site;
 - (e) hard and soft landscaping and screen planting including details of species, plant sizes and proposed numbers and densities and details of a schedule of maintenance for a period of 5 years;(hereafter referred to as the 'site development scheme') shall have been submitted for the written approval of the local planning authority and the site development scheme shall include a timetable for its implementation.
 - ii) If within **11 months** of the date of this 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 thereafter be 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 and 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.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification), no buildings, structures or means of enclosure other than those approved in accordance with Condition 3 above shall be erected on the site.

END OF SCHEDULE OF CONDITIONS



Plan 1

This is the plan referred to in my decision dated: 16 November 2022

by **R Merrett Bsc(Hons)DipTP MRTPI**

Land west of Hillview, Southend Arterial Road, Wickford, Essex

References: APP/V1505/C/20/3265750, 3265751, 3265752, 3265753, 3268185, 3268187, 3268188

Scale: Not to scale



APPEARANCES

FOR THE APPELLANTS:

| | |
|------------------|---------------------|
| Dr Angus Murdoch | Planning Consultant |
| Stephen Stokes | Site Occupier |
| Martin Stokes | Site Occupier |
| Patrick McDonagh | Site Occupier |
| John Cawley | Site Occupier |

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|----------------|-----------------------------------|
| Ian Cummings | Team Leader, Planning Enforcement |
| Katie Ellis | Principal Planner |
| Adeola Pilgrim | Policy Planner |

Documents Submitted at the Hearing:

1. Basildon Borough Council - Traveller caravan counts for 2021 and 2022

Documents Submitted following the Hearing:

1. Unilateral Undertaking

Appendix 1

List of those who appealed against Notice 1

| | | | |
|---|--------------------|----------|------------------------|
| 1 | Mr John McEvoy | Appeal A | APP/V1505/C/20/3265750 |
| 2 | Ms S & M Baker | Appeal B | APP/V1505/C/20/3265751 |
| 3 | Mr & Mrs J Harbour | Appeal C | APP/V1505/C/20/3265752 |
| 4 | Mr & Mrs J Sabine | Appeal D | APP/V1505/C/20/3265753 |
| 5 | M Baker | Appeal E | APP/V1505/C/20/3268185 |
| 6 | Mrs Harbour | Appeal F | APP/V1505/C/20/3268187 |
| 7 | Mrs Sabine | Appeal G | APP/V1505/C/20/3268188 |

Appendix 2

List of those who appealed against Notice 2

| | | | |
|---|----------------|----------|------------------------|
| 1 | Mr John McEvoy | Appeal H | APP/V1505/C/20/3265754 |
| 2 | Ms S & M Baker | Appeal I | APP/V1505/C/20/3265755 |
| 3 | Mr J Harbour | Appeal J | APP/V1505/C/20/3265756 |
| 4 | Mr J Sabine | Appeal K | APP/V1505/C/20/3265757 |
| 5 | M Baker | Appeal L | APP/V1505/C/20/3268203 |

Appendix 3

List of those who appealed against Notice 3

| | | | |
|---|----------------|----------|------------------------|
| 1 | Mr John McEvoy | Appeal M | APP/V1505/C/20/3265759 |
| 2 | Ms S & M Baker | Appeal N | APP/V1505/C/20/3265760 |
| 3 | Mr J Harbour | Appeal O | APP/V1505/C/20/3265761 |
| 4 | Mr J Sabine | Appeal P | APP/V1505/C/20/3265762 |
| 5 | M Baker | Appeal Q | APP/V1505/C/20/3267235 |