The Planning Inspectorate

Appeal Decisions

Inquiry Held on 24 and 25 October 2017
Site visit made on 25 October 2017[1]

by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2018

Appeal A Ref: APP/C/16/3153763
Land north of Freelands, Grays Avenue, Langdon Hills Basildon SS16 5LP[2]

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 [the 'Act'].
- The appeal is made by Mr E Bennett against an enforcement notice issued by Basildon District Council as the local planning authority [the 'LPA'].
- The enforcement notice, numbered Notice One, was issued on 6 June 2016.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised material change in the use of land for deposit of hardcore and other materials and the stationing of caravans/mobile homes.
- The requirements of the notice are to:
  (1) Cease using the land for the deposit of hardcore and other materials
  (2) Remove from the land all deposited hardcore and other materials
  (3) Cease using the land for the stationing of caravans by removing all caravans/mobile homes from the land, and
  (4) Restore the land to its condition by levelling and re-cultivating with grass seed.
- The period for compliance with the requirements is as follows: Step (1), (2) & (3) 28 days, and 56 days step (4).
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and temporary planning permission is granted for three years, subject to conditions, as set out in the formal decision starting at paragraph 84.

Appeal Ref: APP/C/16/3153774
Land north of Freelands, Grays Avenue, Langdon Hills Basildon

- The appeal is made under section 174 of the Act.
- The appeal is made by Mr E Bennett against an enforcement notice issued by the LPA.
- The enforcement notice, numbered Notice Two, was issued on 6 June 2016.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised formation of hardstandings.
- The requirements of the notice are to break up all hardstandings and remove all resultant debris from the land and restore the land to its condition by levelling and re-cultivating with grass seed.
- The period for compliance with the requirements is 56 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and temporary planning permission is granted for three years, subject to conditions, as set out in the formal decision starting at paragraph 86.

[1] I undertook a comprehensive accompanied site visit to gain an impression of the site and locality.
[2] Post code for the site confirmed at the Inquiry.

Preliminary matters

1. All of the evidence was affirmed at the Inquiry, which sat for two days.

2. The appellant, Mr Bennett, and the LPA [for convenient shorthand, the 'Parties'] referred to appeals against enforcement notices at land at Silva Lodge Kennels, Hovefields Avenue, Wickford. On 24 November 2017, The Planning Inspectorate issued its decision and it is a relevant consideration. Additional comments regarding the level of need and provision of traveller sites in the district were invited within certain timescales. I am grateful for all of the comments made by the Parties, which I shall take into consideration.

3. There are a few matters relating to the wording of Notice One that require an assessment with a view to correct the notice, which is possible using the powers available to me subject, of course, to the essential test of injustice[3]. It alleges a material change in the use of land for deposit of hardcore and other materials and the stationing of caravans/mobile homes. The purpose of the caravans and deposit of hardcore is to facilitate a residential use. As such the land is not being used for the deposit of hardcore. The operational development is the subject of Notice Two.

4. The description of the alleged contravention has caused no significant confusion nor has it misled any Party. I agree with the Parties that the allegation should be described in the following terms: *Without planning permission, the making of a material change in the use of the land to a residential caravan site facilitated by the laying of hard standings and the stationing of caravans*. The steps required to comply with the notice need to flow from the corrected allegation. I am satisfied that no injustice is caused by the intended corrections and I will correct the notice.

Appeal A and B - Background information

5. Planning permission is sought for the continued use of the residential caravan site and for operational development comprising the formation of hardstandings. There are two separate applications within the ground (a) appeals[4] and each one will be considered on its individual merits. Information about the site, surrounding area, gypsy and traveller status and planning policy considerations are relevant to both Appeals.

6. The appeal site is situated within the Metropolitan Green Belt which aims to maintain a separation between urban conurbations such as Basildon, Billericay as well as Wickford and urban towns and cities in adjoining local authority areas by checking unrestricted urban sprawl. The site is part of a larger field that has been physically subdivided. Although there is a small structure that has existed on the land for some time, the site is generally open and landscaped.

7. The site forms a self-contained parcel of land north of Freelands, which is a lawful caravan site occupied by Mr Bennett's grandparents[5], and it is accessed from Grays Avenue. The latter is accessed via Thames View. The site adjoins woodland to the west and is defined by hedgerow to the south and east. On its eastern side there is a public footpath and agricultural land. Although there is residential development in the immediate vicinity, the surrounding area is mainly a rural area with plotland characteristics.

8. Mr Bennett is a Romany Gypsy. The statement of common ground ['SoCG'] records agreement that all of the occupants, including the appellant, meet the planning policy definition of a gypsy and traveller set out in Annex 1, Glossary, to the *Planning policy for*

[3] Section 176(1)(a)(b) of the Act – On an appeal under section 174 the Secretary of State may correct any defect, error or misdescription in the notice, or vary its terms, if he is satisfied that the correction or variation will not cause injustice to the appellant or the LPA.
[4] Section 174(2)(a) and s 177(5) of the Act.
[5] Freelands has the benefit of a lawful development certificate granted in 1996.

traveller sites [the 'PPTS'] published in August 2015. Mr Bennett's precise evidence is that he has a nomadic habit of life and a clear cultural and family history of travelling for economic purposes. There is no suggestion that any of the occupants intend to give up travelling. He and his family attend traditional gypsy fairs. Mr Bennett requires a settled base from which to travel because of personal circumstances. He moved onto the site in 2016.

9. The Basildon District Local Plan was adopted in 1998 and its Alterations were adopted in 1999. In 2007, certain polices were saved and are set out in the Basildon District Local Plan Saved Policies 2007 [the 'LP']. Policy BAS GB1 relates to Green Belt boundaries, which were drawn with reference to the foreseen long-term expansion of the built-up areas. The other saved Green Belt policies are specific to the replacement of, and extensions to, dwellings and agricultural workers dwellings. Policy BAS BE12 is a general development control policy. While the phraseology does not reflect national policy found in the National Planning Policy Framework [the 'NPPF'], I find no significant conflict[6]. However, the Parties concur that in this particular case reliance has to be placed on the NPPF for policy on material changes of use and operational development in the Green Belt. The PPTS is also relevant.

10. Basildon Draft Local Plan is under preparation. It includes policies in relation to gypsy, traveller and travelling showpeople accommodation. The strategy is to allocate land for new pitches outside and within the Green Belt via proposed policy H6. The draft plan was issued for public consultation in January 2016 and the authority envisaged that the plan would be subject to further public consultation and submitted for examination over the period July - September 2017 with a view to adoption in 2018/19. The emerging Local Plan is yet to be scrutinised and might change in the future. It carries limited weight in the context of these Appeals[7].

Appeal A

11. NPPF, paragraphs 89 – 90, set out policy for assessing proposals inside the Green Belt. PPTS policy E describes material changes of use of land to traveller sites in the Green Belt as inappropriate development. The Parties agree that a change of use to a residential caravan site amounts to inappropriate development inside the Green Belt which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. NPPF paragraph 88 indicates any Green Belt harm attracts substantial weight. There is, however, disagreement about the effect of the residential caravan site upon openness, and whether intentional unauthorised development ['IUD'] has occurred.

12. Against all of that background, the **main issue** is whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and, if so, whether very special circumstances exist to justify the development. An assessment of the following matters is necessary in order to address the main issue:

    1) The effect of the development upon: (a) the openness and purposes of the Green Belt and (b) the character of the area;

    2) Whether or not the change of use amounted to IUD and, if so, what are the relevant factors to inform the weight to be attached to this consideration;

    3) the existing level of provision and need for traveller sites;

[6] NPPF paragraph 215 applied.
[7] NPPF paragraph 216 applied.

4) the availability, or lack of, alternative accommodation taking account of whether there is a supply of specific deliverable sites and the policy response to address any under-provision of traveller sites in the district; and

5) To what extent the personal circumstances and human rights of the residents contribute to the need for the development.

Reasons - *Openness and purposes*

13. The aerial imagery, taken before 2016, shows the site as being part of a green field with very little, if any, structures. The 2010 photograph shows the site as being part of a larger field with open and spacious features. The mobile home is roughly positioned to the centre of the site. At the time of my site visit, there were two touring caravans also stationed on the land, although Mr Bennett confirms retrospective planning permission is sought for one pitch. I find that the residential use extends over a significant part of the land and the introduction of static a mobile home and touring caravan to facilitate that activity has diminished openness. In my assessment, the introduction of caravans with all attendant domestic features, such as a washing line or outdoor furniture, result in the loss of openness.

14. Mr Bennett argues that the static and touring caravans could be moved on or off the site at any time. In practice, the mobile home is likely to remain on the land for a considerable period of time. The site is not directly visible along a public footpath to the east due to intervening foliage, but the land gently rises in a south-to-north direction. The site is noticeable in views from Thames View where it meets Grays Avenue because of the topography. The static caravan has a similar appearance to a small bungalow and the site is, and is intended to be, used as a settled base. The introduction of comings and goings to and from the caravan site as well as the parking of vehicles in the open adds to the visual impact of the development. To my mind, the caravan site is perceived as intrusive development and causes an actual and appreciable loss in openness.

15. Mr Bennett argues that the site is sufficiently separate from the edge of built-up areas to have limited effect on urban sprawl. However, the residential use of the site has resulted in the introduction of all of the trappings associated with living, and extended domestication into land that was formerly a field. Additional structures for residential purposes such as a dayroom may be expected adding to reduction in openness. I consider that the caravan site represents encroachment into the countryside and conflicts with the fundamental aim of Green Belt policy, which is to prevent urban sprawl by keeping land permanently open. There is conflict with Green Belt purposes. I conclude that the development has a materially harmful effect on openness.

Character and appearance

16. There is residential development in the immediate locality but the area surrounding the site is semi-rural in character interspersed by woodlands and agricultural land. From higher ground, and in long-distant views, the Thames Estuary is visible. The tranquil and generally undeveloped appearance of this landscape is locally distinctive. The caravans are noticeable from Thames View given the geography. In combination with all of the attendant features such as domestic paraphernalia, the location and exposed positioning of the caravans has changed the physical appearance of the site and this part of the countryside.

17. The locality has a distinctive plotland settlement pattern, but in medium-to-long distant views of the site the caravans are visually intrusive features and have a jarring effect, due to their location and position. Given the design and layout of the caravans combined with spread of domesticity, I consider that the development has an urbanising impact upon this part of the countryside and detracts from the rural setting of the wider landscape. I do not

consider existing and proposed landscaping softens the visual effect, due to the nature of the development.

18. Pulling all of the above threads together, I consider that the development has, and would have, a significant adverse visual effect upon the character of the surrounding area. I find conflict with LP policy BE12.

IUD

19. The material facts are that Mr Bennett's father owns the land and has been engaged with the LPA over various planning issues in relation to the development of the site. For example, applications for planning permission to develop a residential caravan site had been previously made. Action by the enforcement authority has, in the past, resulted in issuing of an enforcement notice alleging the change in the use of the land for the deposit of hardcore and other materials, and the parking of motor vehicles, plant and machinery. The subsequent appeals against that notice were withdrawn[8]. Given the extensive and detailed planning history available on public record, I attach limited weight to his claim that he was not aware of these planning difficulties in relation to the development of this particular site.

20. Even if I am to give Mr Bennett the benefit of doubt, and accept Mr Green's submission that his client was ignorant of the planning process, the LPA served a temporary stop notice and stop notice on 13 May and 13 June 2016 respectively. Mr Bennett conceded receipt of these documents; they should have set off alarm bells. His own evidence is that he ignored them because he had previously been served with similar eviction notices. I give little credence to this defence, because all of the documents clearly refer to the alleged contravention of planning controls. Stop notices are very serious legal documents and flagrant failure to comply with them can have grave consequences. Each document clearly explains the potential penalty for a failure to comply.

21. To his credit, however, Mr Bennett made prompt contact with Green Planning Studios as soon as the enforcement notices were served. I also note Mr Green's submission that this episode does not represent an example of the worst kind of IUD; he had in mind development carried out over a Bank Holiday weekend. Nevertheless, all of the evidence presented points in the likelihood that the material change of use amounted to IUD within the meaning of the 31 August 2015 planning policy statement.

22. Harm is not confined to lasting or irreversible harm referred to by Mr Green; harm has been caused to the Green Belt. There was no opportunity to guide the development in a way that could have reduced the degree of harm, for example by exploring whether a site could be well planned or soft landscaped in such a way as to positively enhance the environment and increase openness. The unauthorised development has resulted in the LPA taking enforcement action, which is costly in resources and which the policy seeks to avoid.

23. Mr Bennett refers to his domestic arrangements and circumstances, which I will come to later, as mitigating factors. He says that his state of affairs led him to carry out the unauthorised development. I will return to this matter latter. Nevertheless, in all probability, I conclude that the material change in the use of the site amounts to IUD falling within the meaning of the planning policy statement issued 31 August 2015.

Other considerations advanced in support

24. *The existing level of provision and need for traveller sites*: The level of need for the provision of sites should be considered generally and separately of the personal need of the occupiers of the site. Although the evidence focused on Basildon district, I agree with the Parties that

[8] Appeal ref: APP/V1505/C/00/1041191.

there is a national and regional need for gypsy and traveller pitches. However, the duty[9] upon the local housing authority is, amongst other things, to assess the needs of people residing in or resorting to their district with respect to the provision of sites on which caravans can be stationed and places on inland waterways where houseboats can be moored. The needs of gypsies and travellers will be considered as part of a more general assessment of need for caravan sites. The current available national guidance on needs assessments is the draft guidance on the periodical review of housing needs – caravans and houseboats (DCLG, March 2016).

25. The PPTS has policies on making such assessments and collating an evidence base for plan-making and planning for sites providing for gypsies and travellers who meet the policy definition in Annex 1 to that document. Essentially, the policy requires a robust evidence base to establish accommodation needs to inform the preparation of local plans and make decisions. Set pitch targets for travellers, and identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set targets. In this particular case, there is no up-to-date development plan policy that has a pitch target, that identifies a five years' supply of deliverable sites, or which makes provision for caravan dwellers in general. These issues will be addressed via the new Local Plan.

26. The change in the PPTS definition meant an up-to-date assessment of the level of need was required to inform the authority's local plan making process. The current and future need for traveller sites as well as demand and supply is to be found in the *Gypsy and Traveller Accommodation Assessment* [the 'GTAA'], updated July 2017 [the '2017 GTAA']. It has replaced a local needs assessment dated March 2014 [the '2014 GTAA'].

27. Mr Green believes that the assessment should not seek to split gypsies and travellers up into those that do and those that do not meet the PPTS definition because, he argues, that is the only sensible and practical way to assess the need of caravan dwellers. However, the GTAA has to be prepared, and operate, within a statutory and policy framework. In that context, I consider that the approach of identifying travellers who meet the PPTS definition, those who are 'unknown' households[10] and households who do not meet the definition is reasonable and appropriate.

28. Establishing gypsy status usually has been carried out at the point of decision-making, which normally involves a balance of judgement or requiring a lot of detailed information on travelling patterns, past and future intentions and so on. It should be borne in mind that gypsy status for planning purposes may change over time; indeed, the policy definition may change over time. So, in order to update the previous traveller needs assessment in the light of definition change set out in the revised PPTS, a major element of the research that led to the production of the 2017 GTAA by Opinion Research Services (ORS) was a survey of the local traveller community. This includes those in bricks-and-mortar accommodation. At section 5 of the 2017 GTAA an explanation is given of the sites and yards visited in November 2015, February 2016 and February 2017. A questionnaire[11] was completed by trained interviewers and data analysed by a team of experts. The number of pitches and interviews completed and the reasons why they were not completed is explained.

29. The results of the surveys have been used to determine the status of each household against the new policy definition. Figure 6, 2017 GTAA, indicates that there are about 168 pitches and plots that were visited. Some 76 families were interviewed. Since gypsy and traveller status has been removed from 53 of the households interviewed, the number qualifying for the policy definition has been reduced to just 23. However, the unknown category accounts for about 67 households and 53 do not meet the PPTS definition.

[9] The relevant statutory provision is found in the Housing and Planning Act 2016.
[10] Households who either refused to take part in the survey or were not contactable at the date of the fieldwork.
[11] GTAA Appendix E site record form.

30. The 2017 GTAA has some inaccurate base date that came to light as a result of the debate at the Inquiry. Mr Jarman candidly accepts the report will need further amendments. That said however the key findings in the 2017 GTAA are that between the period 2016 and 2034, there is a need for 35 pitches for those households meeting the PPTS definition, 23 of these pitches falling within the five-year period (2016-2021). Up to 38 or 39 additional pitches are required for unknown households and 51 pitches for households that do not meet the policy definition over the period 2016-2034. This gives a total of 125 additional pitches over the entire period and an immediate need for 81 pitches (2016-2021). In comparison, the 2014 GTAA estimated that over the period 2013 to 2032 an extra 240 net pitches were required to address the needs of all identifiable traveller households. This figure included 83 pitches for 30 concealed households living at Dale Farm, 53 living outside the borough plus a further 53 from household formations over the next 20 years. Broken into five year time periods the need was 122 pitches for 2013-2017.

31. Mr Jarman explains that the significant reduction in the number of additional pitches is due to the findings of the 2017 GTAA. He says that in preparing the update, greater stake-holder involvement was unnecessary. Mr Green contends that is a short-coming; I concur. In my opinion, a greater engagement of the local traveller community might have been secured by the involvement of a community liaison group or representative. It seems to me there is an over-reliance on oral information given by respondents who might not actually have appreciated what was being asked of them and for what purpose. Respondents may not have been aware or appreciative of the potential consequences.

32. Mr Jarman acknowledged there is a mistrust of authority among the settled traveller community, which has been reinforced by recent and high-profile evictions at Dale Farm. I agree with Mr Green that there is a chance some respondents might not have given accurate replies to searching and personal questions as it may not have been readily apparent to them they were being asked about household travelling patterns. Questions that, eventually, would be used to re-assess traveller status may not have been properly understood. In my mind this creates a question mark over why, in reality, there has been such a significant reduction in households who actually meet the PPTS definition.

33. In terms of bricks-and-mortar households, Mr Green estimates immediate hidden need amounts to at least 26 households. The 2014 GTAA, where there was more engagement with stakeholders, indicated that six households were in need of a pitch. In comparison, the 2017 GTAA found no current or future need arising from these households who meet the planning definition. For households who do not meet the definition, interviews identified one household who would like to move to a pitch.

34. Mr Jarman insists that he has relied on Census information specific to Basildon, other local evidence and proven need as opposed to national evidence. While the use of the indices described above is consistent with the PPTS and the draft guidance, only nine out of 78 households were interviewed. A working assumption was that all those wishing to move out of conventional housing would make their views known to ORS as a result of the publicity put in place. That included social media but there is no guarantee households would respond to this type of consultation. Relying upon those households currently living in bricks-and-mortar to make contact is inconsistent with the draft guidance on engagement, which recognises that many members of the traveller community are hard-to-reach. To me, the level of engagement with bricks-and-mortar households represents a deficiency that casts some doubt over the 2017 GTAA's findings in need.

35. The GTAA did not accord gypsy status to the occupants of the appeal site as they were unavailable at the time of the interviews. Consequently, they were placed into the 'unknown' classification but they meet the PPTS definition. Mr Jarman frankly accepts there may be other households who may meet the planning policy definition and their needs should be

met; he suggests a criteria-based local plan policy would address this potential anomaly. There is no policy in place at the moment and the needs of these household should not be overlooked.

36. Mr Green also criticises the way in which unauthorised pitches have been identified and concealed households accounted for[12]. These are included as constituents of need across the three classifications. The questionnaire included questions to establish circumstances where doubling-up and concealed households occur and give rise to need for additional pitches at the current time and in the next five years. It is not necessary to disaggregate the need within the summary tables provided each source of need is given consideration. There is, however, a considerable difference between the minimum of 30 concealed households identified in the 2014 GTAA and the three concealed households at the base date in the 2017 GTAA. The 30 households were located on the Oak Lane site and were identified as being displaced from Dale Farm. This discrepancy links into the wider consideration of the pitch need of the 86 households who were displaced from Dale Farm following eviction.

37. Unlike the 2014 GTAA, the 2017 version does not include an explanation about the accommodation needs of former Dale Farm residents who were parked on Oak Lane and have been displaced. The position adopted in the current GTAA was based on the Basildon survey information, including the vacant pitches at Oak Lane, contact with a representative of the Dale Farm travellers and assessments carried out over a wide area.

38. Mr Green is critical of the way in which future growth has been assessed. The 2017 GTAA uses a 2.1% household formation rate for households who meet the planning definition. This rate was derived by using local demographic evidence to adapt a national growth rate of 1.5%. The five-year household formation rates suggested by Mr Green over a 15-year period were shown by ORS to equate to an annual rate of 1.8%. Mr Jarman explains that the research to justify the 1.5% national rate. In principle, I consider the use of local base data to refine the figures acceptable and, on the available evidence, the pitch need as a result of new household formation is appropriate.

39. In terms of supply, the Parties agree that only a single pitch was identified as becoming available as a result of a household moving from the study area. The function of the GTAA is not to prescribe how the identified need will be met.

40. Drawing all of the above threads together, the debate at the Inquiry, deliberations above and further additional comment on this subject highlight some inaccuracies, inconsistencies and anomalies in the 2017 GTAA. Despite Mr Jarman's insistence that other Inspectors have found the methodology sound, in this case there is a need for further research, analysis and refinement. The Parties agree that any revised GTAA will be the subject of a local plan examination where such matters would be aired and fully explored. Whichever way one scrutinises the available evidence, I find that the ORS data shows there is a substantial immediate need for at least 81 additional pitches until 2021; there is also some force behind Mr Green's claim that the immediate need could be as high as 100 pitches. For households who meet the planning definition, the need is probably in the order of 23 pitches over the same period, which represents a significant unmet need for additional pitches. However, it should be borne in mind that the number of pitches required for 'unknowns' should not be overlooked, because they account for a large component of the local traveller population.

41. *Failure of policy*: According to Mr Green the underestimation of need goes to the heart of this issue. The claim is that there has been a stark failure of local plan policy and there is no guarantee sites will be identified for private and small-scale developments, due to the poor track record in delivering sites. He contends that the draft Local Plan would not meet the requirements of the travelling community and the plan policies would be based on an

[12] Both terms refer to actual or potential households.

inaccurate assessment of need. However, I consider this matter would be more appropriately considered through a local plan examination.

42. The new Local Plan is under preparation and is still at a relatively early stage. It is intended to address requirements of the PPTS and deliver sites in a planned and co-ordinated manner. It includes proposal to allocate 62 pitches within the Green Belt, 10 pitches in the urban area and 15 pitches on a housing site in local authority ownership. Nonetheless, I have not lost sight of the fact that there has been slippage in preparing and revising the draft document for submission to the Secretary of State.

43. There have been times when the local authority has not fully grappled and responded to the requirements of Government policy and guidance in relation to the provision of gypsy and traveller sites; circumstances have changed. The NPPF and PPTS provide a very strong incentive to allocate sites via the plan-making process. Given the slow progress made with a new Local Plan and recent threats of intervention by the Ministry, it seems to me that the LPA is now proactively seeking to address identified shortcomings. Even if it reacted slowly to the accommodation needs of travellers in its area before, a realistic timetable has now been established and sites are likely to come forward in the near future.

44. Emerging policy suggests the area in which the site is located would be designated as 'plotland infill'. Limited residential development will be supported subject to achieving compliance with all other relevant policies. The draft policy indicates proposals will be supported where the intended infill plot is not the result of subdivision of a larger plot and is located between existing dwellings on an existing road frontage, amongst other things.

45. *Alternative sites*: Mr Bennett does not have the means to purchase his own land to develop, and has lived with other members of the family by doubling-up. He has also led a roadside existence. His family's need for a traveller pitch is undisputed and there is an aversion to conventional housing. There is agreement between the Parties that no alternative site is available at the current time. The only public site, Hovefields Caravan Site that has 25 pitches, is full and not available at the current time and there is a waiting list. There are currently no vacant pitches that would meet this family's needs; I have not been made aware of any in adjoining districts. As mentioned above, the 2017 GTAA indicates that, since the previous research there was one pitch vacated by a household moving away from the study area, but this pitch is not available to Mr Bennett.

46. The findings of the site provision study, outlined in the draft Local Plan, identified one site in the urban area and a further 40 sites within the Green Belt. There is no evidence to show that any of these sites are authorised or are available now. The LPA accepted that it does not have a supply of specific deliverable sites sufficient to provide five years' worth of sites against a locally set target. Linked to this policy consideration, currently there are no identifiable alternative sites to meet the accommodation needs of the family who are resident on the site.

47. *Future sites will be in the Green Belt*: The site provision study suggests land designated Green Belt may have to be allocated for future pitch provision for travellers, but the site was not an area of land considered or identified and has not been through an assessment process. The submission is that if Mr Bennett was not seeking use of this Green Belt site, it would be quite likely to be another site inside the Green Belt given that the district is heavily constrained. PPTS, paragraph 17, states that Green Belt boundaries should be altered only in exceptional circumstances via a plan-led approach; not in response to a planning application. Any alteration to Green Belt boundaries to accommodate traveller sites, or any other development, should be carried out as part of the plan-making process with all available sites being considered. That approach would meet the Government's objectives of delivering sustainable development in a planned and co-ordinated manner. I acknowledge

this application does not seek alteration of any Green Belt boundary, but the effect of a permanent permission would be similar.

48. *Personal circumstances, best interests of children and Human Rights*: The Inquiry received a range of detailed written and oral evidence relating to the occupants of the site and their particular medical and educational needs. Their current domestic circumstances and dependence upon various local services and family has been explained in a precise and clear manner. The LPA do not dispute the nature of these particular circumstances. I have heard and read sufficient evidence to satisfy me of the validity of the health claims and other needs of the family.

49. Mr Bennett and occupiers' rights, including each child, under Article 8 of the European Convention on Human Rights (ECHR)[13] must be taken into consideration. This includes not only respect for their home but also their private and family life and their traditional gypsy lifestyle. The dismissal of planning permission could result in occupiers being evicted. Interference with their home, private and family life is therefore serious but must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8. In this location, the inappropriate nature of the development represents a grave land-use objection. There is a need for restrictive policies to be applied to such areas, and this restriction is an appropriate proportional response to that need.

50. A primary consideration for me is the best interests of the very young children involved in this case[14]; the latter being aligned with adults' interests. I concur it is, and would be, in their best interests to continue to have access to health services and education from a settled base. It would be preferable for those facilities to be the same that they access at present and are familiar with. However, it is not necessary to access these facilities from this site. It is also not uncommon for families to move home from time-to-time and their children to have to change schools, for example. It is not that uncommon for people to change health providers as a consequence of moving home. That said there is no suggestion of another site being available right now that would provide a settled base from which health facilities could be accessed.

51. There is no alternative suitable site presently available for occupation in the district, or indeed, the wider area, which makes the interference more serious and, as indicated above, given that background, it would be in the best interests of each child to remain on the site. This is a primary consideration in the proportionality assessment required by Article 8. It is necessary to consider whether it would be proportionate to refuse planning permission in all the circumstances of this case. I shall consider whether refusal would have a disproportionate effect on the occupiers of the site in my conclusions.

Planning balance

52. The development has harmful implications for the Green Belt in terms of inappropriateness. It results in an appreciable loss of openness of the Green Belt and represents encroachment into the countryside, which is a serious planning objection. In accordance with national policy, such harm carries substantial weight. Added to that is the significant adverse visual effect of the development upon character and appearance. Accordingly, there is conflict with the Green Belt protection objectives found in the NPPF and PPTS, and LP policy BE12.

[13] The ECHR protections have been codified into UK law by the Human Rights Act 1998.
[14] The Ministry's Planning Practice Guidance (PPG) [Ref 21b-028-2015091] states that; *Local authorities need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, they will want to ensure their approach is proportionate. They need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community. This will include considering the scope to mitigate any potential harm through non-planning measures, for example through intervention or extra support for the family through social, health and education services.*

53. The change of use amounts to IUD. Mr Bennett should have obtained planning permission prior to developing the site but he did not do so. He simply carried on in attempt to complete the development. When the enforcement notices were issued, he made prompt contact with Mr Green. Planning permission was sought retrospectively. I accept Mr Bennett acted in the best interests of his family as he had nowhere to live and could not afford a private caravan site of his own. These mitigating circumstances temper the weight I attach to this matter. My finding on IUD moderately weigh against the grant of planning permission.

54. On the other side of the scales, there would be some social and economic benefit arising from a settled base, and there is a deficiency in that there is no up-to-date five year supply of traveller sites. The lack of an alternative site is linked to the absence of deliverable sites. There is a recognised national and regional need for additional traveller pitches, but these should be provided in a planned and co-ordinated manner. In the context of this Appeal, there was considerable debate about need and perceived shortcomings in the GTAA's methodology; all of these issues will be subjected to the rigours of local plan making. Nonetheless, my deliberations above suggest there is a substantial unmet need for additional pitches in the short-to-medium term arising from households who meet the PPTS definition. Need arising from caravan dwellers, and those gypsies whose status remains unknown, should not be disregarded. I accept that a single pitch makes a small contribution overall; nevertheless, I attribute significant weight to my findings on unmet need.

55. I attach little, if any, weight to the emerging plotland policy, because it is yet to be independently scrutinised and could change in the future. Nevertheless, I am satisfied steps are now being taken to address the perceived historic shortcomings in meeting needs of gypsies and travellers via the local plan making process. In assessing this kind of scheme, the LPA rely on national policy and a new Local Plan is programmed for adoption in 2019 or thereabouts; the threat of intervention from the Ministry should and will, in all probability, focus minds and avoid further slippage in the submission and adoption timetable. The debate suggests the authority will proceed, expeditiously, in adopting a new Local Plan that addresses the needs of travellers. I attach limited weight to the historic failure of traveller site provision.

56. I have not lost sight of the fact that there is no other site available at the current time. If the family is forced to leave the site right now, it is likely they would resort to living on an unauthorised roadside encampment, which is not environmentally friendly nor is it conducive to occupants' health and wellbeing. A roadside existence is a realistic prospect given the action taken so far, but it remains unclear as to what steps, if any, Mr Bennett undertook in finding suitable accommodation. I attach this factor modest weight in favour.

57. I am cognisant of the voluminous appeal decisions and court judgements submitted in the bundle of evidence. The case in favour of planning permission has been forcefully put, and the case against is strong. In my planning judgement, the advanced considerations in support of the appeal, whether taken individually or collectively, do not, on balance, clearly outweigh harm to the Green Belt by reason of inappropriateness and the other identified harms. I will next examine whether personal circumstances can tip the balance in favour of a permanent planning permission.

58. The personal circumstances presented are relevant factors. However, Government policy is 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.

59. Mr Bennett needs a permanent pitch which would facilitate his travelling lifestyle but the development causes significant environmental harm. Presently, the family has a need to

access health facilities and educational services in future. Being close to extended family also assists in welfare matters. These facilities and services do not necessarily have to be accessed from this particular site, although I acknowledge there is no suggestion of an alternative suitable available site. Nonetheless I attach moderate weight to the personal circumstances presented.

60. Of primary importance is the fact that the site is the home of Mr Bennett's very young children but, as the PPG makes clear, these interests do not always outweigh other considerations. The best interests of the children involved would clearly be served if the family has a settled base, which carries significant weight in favour. In my assessment, these considerations, individually or collectively with the other considerations advanced, do not clearly outweigh the substantial harm to the Green Belt and the other identified harms. The material change of use is contrary to policy in the NPPF and the PPTS.

61. Interference with a person's right to respect for his private and family life and the home may be justified in the public interest. In this case, the interference would be in accordance with the law provided that planning policy and relevant statutory duties are appropriately and lawfully applied. The interference would be in pursuit of a legitimate aim – the economic well-being of the country, which encompasses the protection of the environment through the regulation of land use. The means that would impair individual rights must be no more than necessary to accomplish that objective.

62. There are close family ties with members of the extended family who live on pitches elsewhere in the district. Mr Bennett's grandparents reside on land adjacent to the appeal site. There is help and support provided to Mr Bennett by the extended family. Eviction from this site may well result into a roadside existence as there is no alternative pitch to move to right now, potentially cause hardship and have an adverse welfare consequence. However regulation of the land-use is in accordance with the statutory framework. More specifically importance is attached to protecting the Green Belt both at national and local level. An essential characteristic is its permanence and openness. Consideration of the main issue confirms that the purpose of the Green Belt in which the site is situated fulfils an important function. The conclusion on other environmental harm relates to the countryside.

63. The site occupants are Romany Gypsies and are persons who share a protected characteristic for the purposes of the Equality Act 2010. Having regard to the public sector equality duty [PSED], I have borne in mind the need to eliminate discrimination; advance equality or opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. I have taken into account their need for a settled base and the present lack of a suitable available alternative site. The deliberations above suggest that the level of current and future need for traveller site provision requires further refinement and testing via the local plan making process.

64. A lack of success in the appeal would cause disruption to home and family life. Greater weight is attached to the best interests of children. Interference is serious given the absence of alternative site right now. However, given the nature of the development, I conclude the legitimate aim of protecting the environment in the public interest has very substantial weight. The land is not in a suitable location for a traveller site even for a single pitch. Permanent long term provision should be plan-led in the wider community interest. In this case, interference with the Convention Rights is necessary and proportionate. I shall, however, consider the grant of temporary planning permission next.

65. The material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. The latter might be appropriate where planning circumstances will change in a particular way at the

end of that period. The totality of harm to the Green Belt is substantial. Although it would be reduced were it for only a limited period, the PPTS states that even temporary traveller sites are inappropriate development in the Green Belt which again should only be granted permission on the basis of very special circumstances.

66. Mr Bennett asserts that temporary planning permission is required for five years. This is because of a lack of progress relating to the new Local Plan and the likelihood of alternative sites coming forward and delivered within that period. It would give sufficient time to allow for examining alternative site options, addressing the need and identifying a five-year deliverable supply of sites. It would allow for the possibility of the provision of a gypsy site through the grant of planning permission once suitable sites have been identified.

67. There remains a deficiency in that there is no up-to-date five year supply of deliverable traveller sites. This should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. However, as PPTS paragraph 27 points out, the exception is where the proposal is on land designated as Green Belt, such as this site.

68. The NPPF and PPTS provide a strong incentive to proceed quickly with site allocations in a planned and coordinated manner; reinforced by the Secretary of State's threat to intervene where there is an unjustified delay in preparing, submitting and adopting a new Local Plan. I believe the authority is responding to previous shortcomings and action is now being taken to address the needs of travellers via local plan-making. It is serious and proactively taking steps to address the perceived past failings by identifying, and updating any research where necessary, the needs of travellers. The evidence presented is persuasive and shows to me there is a reasonable prospect of planning circumstances changing in the near future, which relates to the potential adoption of a new Local Plan. There is a timetable for change. So, having regard to all of the evidence presented on this topic, and the particular circumstances including the lack of an available alternative site right now potentially resulting in a roadside existence, I am of the firm opinion that a three year temporary planning permission is wholly appropriate and reasonable.

69. At a local level, the state of affairs is likely to change in a particular way at the end of this three-year period. If temporary permission is granted, it would avoid the site occupants becoming homeless and in immediate need of suitable re-housing; there is no evidence to indicate that this family could be satisfactorily re-housed elsewhere. A temporary use of the site would provide a base from which the family could continue to access health facilities. It would give them an opportunity to pursue a site through the local planning process to facilitate their traditional lifestyle as travellers. I am thus satisfied that this would be a proportionate approach to the legitimate aim of protecting the environment, and it would have no greater impact on the occupants than would be necessary to address the wider public interest. I have had regard to the PSED, and a grant of temporary planning permission is, in my view, reasonable.

70. In my assessment of the merits in support of the development, I have borne in mind representations made by interested parties. However, on the particular circumstances of this case, I conclude that the points raised in support of the proposal, including best interests of the children, are sufficient to clearly outweigh the harm identified so that very special circumstances exist, provided that the use is limited to a period of three years from the date of my decision.

Conditions

71. Suggested conditions 1), 2) and 3) limit occupancy to gypsies and travellers as well as named individuals. Bearing in mind the need to allow sufficient time to find an alternative site with planning permission, and the local planning process to take its course, I consider

three years is justified. The stipulation will require a restoration scheme to be agreed. So, a condition limiting occupation of the site to Mr Bennett and his resident dependants is required because the family's personal circumstances are pivotal weighing in favour of a grant of temporary permission in the overall balance. Since I have placed weight on status, it is necessary to additionally impose a condition restricting occupation to those persons who fall within the planning policy definition.

72. In the interests of visual amenity, commercial activity and motor vehicle sizes should be restricted. I consider that it would be too onerous to require a comprehensive landscaping scheme due to the temporary nature of the scheme. Further, suggested condition 4) prohibits construction of buildings but this is unnecessary, because erection of any building might require a separate planning permission.

73. The grant of planning permission will generally be for the use of the land as a residential caravan site. A condition specifying the maximum number of caravans or pitches either in total or per pitch is necessary to limit the scale of the development. There is a lack of clarity regarding the location of the caravans, the hard-surface, the type of boundary treatment and location of any external lighting. These matters can be resolved by the submission of a site layout plan for approval. It is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of these matters nonetheless they need to be addressed in order to make the development acceptable in planning terms. Therefore, an enforceable retrospective condition is reasonable and necessary in this case to reflect the significance that I attach to the various matters mentioned above. I am content that this type of stipulation will impose a strict and certain timescale to ensure submission of the details and allow time for approval of those matters, or appeal if necessary.

Conclusions

74. Having considered all other matters, for all of the above reasons, my conclusion is that ground (a) should not succeed in terms of a permanent planning permission, but I grant planning permission on a temporary basis subject to conditions. On the particular facts and circumstances presented, this is a proportionate response. As the notice will be quashed, there is no need to consider ground (g).

Appeal B – ground (a)

75. The deemed application is for the formation of hardstandings. Mr Bennett and the LPA chose to consider the operational development at issue as part of an overall assessment of the change of use. The SoCG also does not distinguish the two forms of development. As such there was limited specific consideration of whether the development amounts to inappropriate development.

76. The **main issues** to consider are: (1) whether or not the formation of hardstandings amount to inappropriate development, (2) effect upon character and appearance of the surrounding area, and (3) if the development amounts to inappropriate development, whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and, if so, whether very special circumstances exist to justify the development.

Reasons – *Inappropriate development*

77. The formation of the hardstanding was an engineering operation, because it involved works that changed the physical nature of the land and probably required some degree of pre-planning. The openness of the Green Belt is harmed because of the scale of the paved area.

Even without parked motor vehicles in the open-air, the nature of the development harms openness due to the extent and location of the hard surface.

78. The site is visible from public vantages and the covered area is clearly noticeable from Thames View and Grays Avenue. The hard-surface has turned otherwise mainly undeveloped land into a permanently covered space with materials of a type and nature that are incongruous. There is a recognisable loss of openness of the Green Belt. Due to the positioning and location of the paved area, I take the view that the scheme intrudes into this part of the Green Belt and conflicts with the objective of safeguarding the countryside from encroachment.

79. I conclude that the engineering operation amounts to inappropriate development inside the Green Belt and conflicts with NPPF paragraph 90.

Character and appearance

80. My earlier assessment of the area's character is also relevant to the consideration of this Appeal. The caravans are stationed on a hard-surfaced area. The space immediately around and about has been covered by stone to form an extensive hard-surface. In the surrounding area, there are residential properties with forecourt parking however in comparison these spaces are limited in size and appear domestic in scale. In contrast, the development covers a sizeable area and is less domestic in quality. The hard-surfacing extends well into the site away from the adjacent highway. The hardcore is noticeable from various public vantages and it has an urbanising impact; it has a visually harmful effect. The development appears out-of-keeping with the plotland settlement pattern and conflicts with LP policy BAS BE12.

Planning balance

81. The argument advanced in support of planning permission is that the hard standing is required to support the residential caravan site. An area of hardsurfacing would be justified to provide a solid surface for circulation and to assist protecting the inside of the home, but I am concerned about the extent of the development. In my planning judgement, this consideration does not, on balance, clearly outweigh the identified harm to the Green Belt by reason of inappropriateness to which I attach substantial weight. I also attribute significant weight to my concern about the effect upon the character of the surrounding area.

82. I have concluded that a temporary planning permission should be granted for the residential caravan site. It will be subject to a condition requiring a scheme illustrating the extent of the hard-surface. Given that there is a strong link between the residential use and the hardstandings, I consider that the latter facilitates the former. In practice, the hard-surface provides parking and turning space for occupants and visitors. Therefore, it is reasonable to retain the hard-surface for a specific period of time. So, the harm caused to the Green Belt would be limited in time and the land would be restored. I therefore find very special circumstances exist for a grant of a temporary planning permission.

Conclusions on Appeal B

83. On the particular facts and circumstances presented, I conclude that ground (a) should not succeed in terms of a permanent planning permission but I shall grant a temporary planning permission subject to a condition. As the notice will be quashed, there is no need to consider ground (g).

Formal decisions - Appeal A

84. It is directed that the enforcement notice be corrected by:

(1) The deletion of all of the text in section 3, the breach of alleged breach of planning control alleged, and the substitution therefor by the following text:

Without planning permission, the material change in the use of the land to a residential caravan site facilitated by the stationing of caravans, and

(2) the deletion of the following text in section 5, what you are required to do, '*Cease using the land for the stationing of caravans by removing all caravans/mobile homes from the land*', and substitute therefor by the following text:

'*Cease using the land for residential purposes by removing all caravans/mobile homes from the land*'.

85. Subject to the above corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change in the use of the land to a residential caravan site facilitated by the stationing of caravans, on land north of Freelands, Grays Avenue, Langdon Hills Basildon SS16 5LP referred to in the notice, subject to the following conditions:

1) The use hereby permitted shall be for a limited period being the period of three (3) years from the date of this decision.

2) The occupation of the site hereby permitted shall be carried on only by Mr Ernie Bennett and his resident dependants. When the land ceases to be occupied by Mr Ernie Bennett and his resident dependants, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place, in accordance with a scheme and timetable of works that shall first have been submitted to, and approved in writing by, the local planning authority.

3) 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).

4) There shall be no more than one (1) pitch on the site and on the pitch hereby approved no more than two (2) caravans shall be stationed at any time of which only one (1) caravan shall be a static caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended.

5) No more than one commercial motor vehicle shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 7.5 tonnes in weight. No commercial activities shall take place on the land, including the storage of materials.

6) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 56 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 for external lighting within the site, the layout of the pitch including detail of the siting of the static and touring caravan, and the location and extent of any hard surfaced area and boundary treatment shall have been submitted for the written approval of the local planning authority and the 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 scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, 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 scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

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

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.

Appeal B

86. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the formation of hardstandings on land north of Freelands, Grays Avenue, Langdon Hills Basildon SS16 5LP referred to in the notice, subject to the following conditions:

1) The development hereby permitted shall be for a limited period being the period of three (3) years from the date of this decision. At the end of 3-year period, all hardstandings and materials brought on to the land shall be removed, and the land shall be restored to its condition before the development took place, in accordance with a scheme and timetable of works that shall first have been submitted to and approved in writing by the local planning authority.

A U Ghafoor

Inspector

APPEARANCES

FOR THE APPELLANT:

Mathew Green	Green Planning Studios instructed by the appellant to appear as advocate witness
He called	
Ernie Bennett	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Richard Langham	Of Counsel instructed by Basildon District Council Legal Services
He called	
Neil Costen BSc (Hons) PGDipTP MRTPI	Planning Enforcement Manager
Steve Jarman BSc PGDipTP, PGCert Sutainable Leadership	Senior Research Executive, Opinion Research Services

INTERESTED PERSONS:

Councillor Stephen Hillier	Langdon Hills Member.

DOCUMENTS HANDED IN AT THE INQUIRY

1) Letter of notification and those consulted
2) Signed witness statement by Ernie Bennett (appellant)
3) Signed amended version of the statement of common ground
4) Proposed conditions.