

## **Response to the Napier Barracks planning application Open consultation**

### **Bail for Immigration Detainees (BID)**

#### **About BID**

BID exists to challenge immigration detention and ensure access to justice for detained people. With the assistance of barristers acting pro bono, BID prepares and presents bail applications in the Immigration and Asylum Chamber of the First-tier Tribunal. Our casework feeds into our policy and campaigning work providing a robust evidence base from which to challenge all forms of immigration detention. Our aim is to end immigration detention. We have also recently begun a project supporting people housed in military barracks and other forms of Home Office accommodation.

#### **Consultation process:**

Firstly, it is frustrating that the Home Office has chosen to consult at such a late stage so that the views of those consulted are unlikely to be incorporated into the decision. As the first sentence of the consultation states, the Home Office has already secured permission to use Napier barracks to hold asylum seekers until 20 September 2026 through [a Special Development Order](#) laid before parliament on the 27<sup>th</sup> August 2021. It would therefore appear to us that the decision has already been taken and the response to this consultation is therefore unlikely to have a material effect.

The Home Office told the Secondary Legislation Scrutiny Committee, in procedures relating to the Special Development Order to extend the use of Napier Barracks, that “An extension for a five-year period enables the Home Office certainty of occupation and will allow the Department to plan for and invest in the site<sup>1</sup>”. This also suggests that the Home Office has already taken the strategic decision to extend the use of Napier Barracks for five years.

In its Windrush ‘Comprehensive Improvement Plan’ the Home Office committed to greater ‘openness to scrutiny’ and emphasized at various points the importance of “meaningful consultation”. That means providing stakeholders and civil society groups the opportunity to provide expert views at an early stage, when there would be an opportunity to meaningfully influence policy, rather than consulting on proposals that are already effectively in a finalized form and not subject to change. In this case, the Home Office has consulted.

#### **The inappropriateness of Napier Barracks as asylum accommodation:**

BID is opposed to the use of Napier barracks to house asylum seekers. The site is entirely inadequate to the needs of asylum seekers, as has been found by a number of authoritative sources including the High Court, Her Majesty’s Inspector of Prisons, the Independent Chief Inspector of Borders and Immigration, the All-Party Parliamentary Group on Immigration Detention. Asylum-seekers should be given the chance to live with dignity and to rebuild their lives in the UK and participate in society. This type of housing prevents asylum-seekers and survivors of torture and trauma from being able to rehabilitate and continue with their lives and leaves people stuck in a physical as well as a legal limbo, as well as being physically segregated from the rest

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<sup>1</sup> Secondary Legislation Scrutiny Committee 13th Report of Session 2021–22  
<https://committees.parliament.uk/publications/7347/documents/79400/default/>



of society. This has a harmful effect on the mental health and wellbeing of asylum seekers. This type of housing for asylum seekers is also damaging to community cohesion as a whole.

Evidence from Her Majesty's Inspector of Prisons and the Independent Chief Inspector of Borders and Immigration report described the site as impoverished, run-down and unsuitable for long-term accommodation. Some areas were described as "filthy". They found "fundamental failures of leadership and planning by the Home Office." Conditions in the barracks appear to be woefully inadequate and not fit for human habitation. and particularly inappropriate for asylum-seekers, many of whom are particularly vulnerable due to experiences on their journey or in their country of origin.

The High Court case (*R (NB & Ors) v Secretary of State for the Home Department*) found that Napier Barracks provided inadequate accommodation for asylum seekers and that residents were unlawfully detained for a period. The High court made a number of significant findings, that the dormitory style accommodation and poor, unhygienic and overcrowded conditions contributed to a deterioration in the mental and physical health of residents housed at the barracks. The court also criticised the lack of adequate screening processes to ensure that vulnerable people were not housed at Napier. The Home Office has so far failed to make meaningful improvements to address the unlawfulness identified in the judgment.

We share the view of the All-Party Parliamentary Group on Immigration Detention that the barracks share many features in common with immigration detention, including "visible security measures, surveillance, shared living quarters, reduced levels of privacy and access to healthcare, legal advice and means of communication, and isolation from the wider community"<sup>2</sup>. The APPG also cited the military/prison-like nature of the site as being potentially retraumatising for survivors of torture, trafficking or other survivors of trauma.

### **Lack of safeguards compared to immigration detention:**

We are concerned that the use of military barracks to house people represents a form of detention without the associated limits on the circumstances in which detention can be used, how long detention can be used for, and safeguards designed to ensure that detention is kept under review and to prevent the wrongful detention of vulnerable people.

To be clear, BID has consistently argued and remains of the view that there are too few limits and safeguards governing the use of detention. Of particular concern is the lack of a time limit or judicial oversight of the decision to detain. In our experience those safeguards that do exist often do not work properly and Home Office decision-making is often flawed<sup>3</sup>, and detention is used when it is not necessary or removal is not imminent. However, no matter how meagre and insufficient the safeguards that exist in the context of immigration detention, there is no equivalent in the context of quasi-detention in military barracks.

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<sup>2</sup> All-Party Parliamentary Group on Immigration Detention Report of the Inquiry into Quasi-Detention December 2021  
<https://appgdetention.org.uk/wp-content/uploads/2021/12/211209-APPG-on-Immigration-Detention-Report-of-Inquiry-into-Quasi-Detention.pdf?x81395>

<sup>3</sup> See for example, *Risky Business: Immigration Detention decision-making during the COVID-19 pandemic*, (BID report published May 2020)



For instance, Home Office policy states “detention must be used sparingly, and for the shortest period necessary<sup>4</sup>. Successive legislation in the UK has developed a specific but wide-ranging set of purposes for which immigration detention can be used by the Home Secretary<sup>5</sup>. In addition to statutory powers to detain and policy guidance on the use of detention there are common law limitations on the power to detain, contained in what are known as the ‘Hardial Singh principles’<sup>6</sup>. Each individual’s detention must be subject at least to a monthly internal review by the Home Office; automatic bail hearings take place every four months (for non-FNOs) and case progression panels review detention every three months. In addition there are legal advice surgeries in detention.

there are no such equivalent safeguards in relation to people being held in military barracks. People are held there for an indefinite amount of time and do not know where or when they will be transferred to a different location. They are held there simply for the purpose of accommodation and the Home Office is not required to demonstrate that the military barracks are being used sparingly, or for the shortest period necessary, or when alternatives have been exhausted.

The barracks are very remote, and there is very little access to legal advice or practical or emotional support. We are aware that after a recent legal decision the Home Office is now urgently trying to provide immigration providers who are able to assist asylum seekers held at Napier barracks. However at the time that the Home Office opened up Napier and Penally barracks we are not aware of any efforts made to ensure provision of legal advice at either centre.

We are not aware of any policies or processes in place to systematically review whether housing in barracks remains appropriate in individual cases.

Overall, although the safeguards and limits on immigration detention are woefully inadequate, the practice of housing asylum seekers in military barracks is even less regulated despite sharing many features in common with immigration detention.

*For more information please contact Rudy Schulkind, BID’s research and policy co-ordinator, via [rudy@biduk.org](mailto:rudy@biduk.org)*

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<sup>4</sup> Home Office, ‘Enforcement Instructions & Guidance, Chapter 55 Detention and Temporary Release, section 55.1.3. Use of detention’. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/400022/Chapter55\\_external\\_v19.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400022/Chapter55_external_v19.pdf)

<sup>5</sup> Including Immigration Act 1971 Schedules 2 and 3 (amended and supplemented by subsequent legislation); UK Borders Act 2007.

<sup>6</sup> See R v. Governor of Durham Prison, Ex parte Singh, [1984] 1 All ER 983, [1984] 1 WLR 704, [1983] Imm AR 198, United Kingdom: High Court (England and Wales), 13 December 1983. Available at <http://www.bailii.org/ew/cases/EWHC/QB/1983/1.html>

