



Appeal Decision

Inquiry Held on 15 June 2021

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 July 2021

Appeal Ref: APP/G5180/C/19/3233490

Westview Nursery, Maidstone Road, Sidcup, DA14 5AU

- 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 appeal is made by Mr J Friend against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice, numbered 19/00143/CHANGE, was issued on 21 June 2019.
 - The breach of planning control as alleged in the notice is the use of the land from use for agriculture to land used for the stationing of a mobile home and touring caravans for residential occupation on the Land edged in red on the plan attached to the enforcement notice.
 - The requirements of the notice are: a) Cease the Use of the Land for residential purposes; b) Remove from the Land the mobile home, the touring caravans and any material associated with the unauthorised residential use of the land and; c) Remove from the Land any resulting debris and; d) Restore the Land to its former condition.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. It is directed that the enforcement notice be corrected by the substitution of the following allegation for the allegation in the enforcement notice: *'Without planning permission, the material change of use of the land edged red on the plan attached to the enforcement notice from a residential use to a mixed use of residential and use as a transit site for travellers which comprises the stationing and residential use of touring caravans.'*
2. It is also directed that the following requirements are substituted for the requirements of the enforcement notice: *a) Cease the use of the land as a transit site for travellers which comprises the stationing and residential use of touring caravans; b) Remove from the Land the touring caravans and any material associated with the residential use of touring caravans and; c) Remove from the Land any resulting debris.*
3. It is also directed that the time for compliance with the requirements of the notice is increased from 2 months to 3 months. Subject to these corrections and variation the appeal is dismissed and the enforcement notice is upheld.

Application for costs

4. Prior to the Inquiry, an application for costs was made by the appellant against the Council of the London Borough of Bromley for an appeal¹ that was withdrawn before the opening of this Inquiry. This application will be the subject of a separate Decision from the Costs branch of the Planning Inspectorate.

Appeal site

5. The appeal site is a parcel of land accessed off Maidstone Road which is a one way road that gives access to the A20 trunk road. It contains a residential property, a mobile home that is accepted to be ancillary to the authorised residential use of the site, a stable block and a barn and a toilet block that serve an area of hardstanding to the south of the site which is used as a transit site for gypsy and traveller touring caravans.
6. The entrance drive to the site originally served the whole property but aerial photographs show that sometime between 2015 and 2017, it had been split into 2 arms, one serving the top half of the site and the house and the other giving access to the hardstanding and adjacent toilet block to the south. Additional fencing had also been erected along the driveway providing a clearer definition between the 2 areas.

Procedural matters

7. At the Inquiry it was confirmed that the Council now accepts that the residential mobile home on the land, which is occupied by the appellant's daughter, is authorised and the wording of the enforcement notice should be reflected to reflect this. Following this concession, the appellant has withdrawn the appeal on ground (c). The suggested change to the wording of the allegation in the notice is as follows: *'Without planning permission, the material change of use of the land to a transit site for travellers for the stationing and residential use of touring caravans.'*
8. There was discussion at the Inquiry about the 'red line' area on the enforcement notice plan. The Council suggested that it could either stay as it is at present, that is around the whole of the appellant's land ownership, or be amended to delineate a new planning unit that encompasses the southern area of hardstanding on which the transit site is situated and the access way to it .
9. However, the appellant's case is that it is the whole site, including the areas closer to the house, on which the touring caravans have been sited over the years and it seems to me that there is no reason to redraw the site plan 'red line'. Should the appeal fail, the authorised residential use of the site would not be affected, nor would any authorised ancillary uses. In order to make this clear, I propose to amend the allegation, with slightly modified wording to that suggested to mention the mixed use, and delete the requirement to remove the mobile home. All authorised residential uses would therefore be unaffected.
10. Following the amendments, the appellant also confirmed that the appeal originally made on ground (f) was also withdrawn.

¹ Ref: APP/G5180/C/19/3233491

Main Issues

11. I therefore consider that the main issues in this case are now:

On ground (d): whether the alleged breach of planning control is immune from enforcement action through the passage of time and

If this ground fails then on ground (g): whether the time for compliance is reasonable.

Reasons

12. The appellant's case is that, from 2003, he has always had touring caravans occupied by members of the gypsy and traveller community staying on the site on a transitory basis. He says he erected the toilet block and laid the hardstanding to the rear of the site to facilitate this use between 2006 and 2007 and submits that this is evidence that the use was active by this date.
13. Aerial photographs show that the hardstanding and barn were present in April 2007, but do not show the toilet block. There are no aerial photographs available that show the site between 2007 and 2011 and the toilet block first appears in the photograph from 2012 when, apart from this, the site still appears to be in a similar condition to that in 2007.
14. By 2013, it can be seen that further works were being undertaken to provide a more formal layout of pitches on the southern hardstanding with the addition of individual electricity supplies. In 2014, for the first time in the aerial photographs, there are multiple caravans seen on this area.
15. After this date, each aerial photograph shows a number of caravans stationed on the southern part of the site and the Council submits that this marks the time when the use first commenced and that the 10 years continuous use necessary for immunity from enforcement action had therefore not been achieved by the time the notice was issued in 2019.
16. It is for the appellant to provide precise and unambiguous evidence to demonstrate that, at any time during the 10 years prior to the issue of the enforcement notice, the Council could have taken enforcement action against the use. However, it seems to me that there is little evidence to show that the use was anything other than sporadic until 2014. Every aerial photograph produced by the appellant to support his case prior to this date fails to show caravans to the south of the site. Whilst there are caravans on the hardstanding close to the house in 2006, this is outside the relevant period and may well have been those owned by the appellant himself.
17. There is very little evidence to show that any caravans using the site prior to 2014 were actually stationed on an organised transit site and were not merely in use by family or friends legitimately visiting the appellant. Such a use would be ancillary to the residential use of the site and would not have triggered a change of use that could be enforced against.
18. Although the appellant claims that the photographs are only a snapshot in time and do not necessarily demonstrate that the use had not been taking place at other times, they nevertheless represent the main basis of his case and do not show an active transit site prior to 2014. It is not necessary for the Council to produce evidence of its own to counteract that of the appellant, if on the balance of probabilities, the appellant's evidence is ambiguous or imprecise.

19. Although I have been provided with some letters from travellers claiming to have stayed at the site over the last 10 years, they are not dated, give little specific detail and do not in my view, contribute greatly to the available evidence in favour of the appellant's case.
20. If the Council officers had visited the site at the times the pre-2013 aerial photographs were taken, they would have found no evidence to confirm the transit site use. The electricity to the southern hardstanding was not installed until 2013 and even though the toilet block was in position, it would have been within the authorised residential site. Therefore, it could not necessarily have been enforced against if there was no evidence to show that it was part of an unauthorised mixed use. The appellant stated that he, too, would travel during the summer months in the earlier part of the relevant period and that the gates to the site would be locked if no-one was there, preventing any travellers from using the site at these times.
21. It seems to me that the appellant has failed to demonstrate that, had the Council visited the site prior to 2014, officers would have been more than likely to find a transit site in operation. I accept that the use of such a site may be sporadic but, if it is hoped to gain immunity from enforcement, the burden of proof is firmly on the appellant and it is for him to provide convincing evidence to support his claims. Where there are gaps in the chronology of the evidence, it is not necessary for the Council to provide contrary information to support its own understanding of the situation.
22. Here, there are clear gaps in the evidence and nothing in the way of supporting documentation to show precise dates or levels of occupation of the site throughout the relevant period. I therefore consider that the appeal on ground (d) has not been supported by sufficient evidence to meet the level of proof required to demonstrate 10 years continuous use.

Ground (g)

23. At the Inquiry both parties agreed that the time for compliance should be varied to 3 months. I will therefore vary the notice accordingly.

Conclusions

24. For the reasons given above, I find that it has not been shown, on the balance of probabilities, that the site was in the continuous mixed use enforced against for at least 10 years prior to the issue of the enforcement notice and I therefore conclude that the appeal should not succeed.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

Janes Barron BA(Hons) DipTP MRTPI
He gave evidence and
also called

Planning Director, BarronEdwards

James Friend

Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson

Of Counsel instructed by the Head of Law,
Council of the London Borough of Bromley

He called

David Bord BA(Hons) DipTP
MRTPI

Principal Planning Officer, London Borough of
Bromley