



Appeal Decisions

Hearing Held on 15 February 2022

Site visit made on 15 February 2022

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd August 2022

South View, Hockenden Lane, Swanley BR8 7QH

Appeal A Ref: APP/G5180/C/19/3243792

- 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 William Friend against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice, numbered ENF/19//00289/UNAUTH, was issued on 3 December 2019.
- The breach of planning control as alleged in the notice is the erection of a stable block, in the area marked 'A' and the creation of hardstanding in the area hatched green on the attached plan.
- The requirements of the notice are:
 - (1) Remove the hardstanding and stable block.
 - (2) Remove all the materials associated with paragraph 5 (1) above.
 - (3) Restore the land to its original condition.
 - (4) Leave the land in a tidy condition.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) 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.

Appeal B Ref: APP/G5180/C/19/3243790

- 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 William Friend against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice, numbered ENF/19//00289/UNAUTH, was issued on 3 December 2019.
 - The breach of planning control as alleged in the notice is the material change of use of the land for the stationing of a mobile home for residential use in the area marked 'B', and the storage of a touring caravan shown in the area marked C on the attached plan and associated paraphernalia.
 - The requirements of the notice are
 1. Remove from the land the mobile home, touring caravan.
 2. Remove all material associated with the residential use of the land.
 3. Remove all paraphernalia associated with paragraph 5 (1) and 5 (2) above.
 4. Restore the land to its original condition.
 5. Leave the land in a tidy condition.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) 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.
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Appeal C Ref: APP/G5180/C/19/3238224

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr William Friend against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/18/04216/FULL2, dated 12 September 2018, was refused by notice dated 3rd April 2019.
 - The development proposed is for change of use of land to a residential caravan site for one Romani family. The site to contain one static caravan, one touring caravan, parking for 2 cars with associated hardstanding, and infrastructure.
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by the removal of the words 'stable block' and their substitution with the words 'timber building' in the breach of planning control; Varied by the removal of the words 'stable block' and their substitution with the words 'timber building' at step (1) at paragraph 5; and the deletion of step (4) at paragraph 5. Subject to the corrections 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 erection of a timber building, in the area marked 'A' and the creation of hardstanding in the area hatched green on the attached plan, on land as shown on the plan attached to the notice and subject to the attached schedule of conditions for Appeal A:

Appeal B

2. It is directed that the enforcement notice is corrected by the deletion of the words 'the storage of' and varied by the deletion of step 5 at paragraph 5. Subject to this correction, Appeal B 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 of use of the land for the stationing of a mobile home for residential use in the area marked 'B', and the touring caravan shown in the area marked 'C' on the attached plan and associated paraphernalia, on land as shown on the plan attached to the notice and subject to the attached schedule of conditions for Appeals B and C.

Appeal C

3. The appeal is allowed, and planning permission is granted for the change of use of land to a residential caravan site for one Romani family. The site to contain one static caravan, one touring caravan, parking for 2 cars with associated hardstanding and infrastructure, at South View, Hockenden Lane, Swanley BR8 7QH, and subject to the attached schedule of conditions for Appeals B and C.

Preliminary matters and the notices

4. The Council has issued 2 notices; (Appeal A) targets the operational development including the stable block; the second (Appeal B) relates to the alleged change of use of the land; and (Appeal C) relates to a section 78 appeal against the refusal of the Council to grant planning permission for the change of use of land to residential (in connection with adjacent Gypsy site) for

- siting of 1 static caravan and 1 touring caravan with 2 car parking spaces, associated hardstanding and infrastructure.
5. I note that the Council has not alleged in their notices that any equestrian use is taking place on the appeal site. I acknowledge that the timber building referred to as a stable block in Appeal A, has the external appearance of stables. However, it has timber flooring and at the time of my site visit there was no evidence of any equestrian activity, either past or present. The storage use was clearly connected to the residential use of the site. Consequently, this building would be better described as a timber building in the allegation. Accordingly, I shall correct the notice with a consequential correction to the steps. I consider this can be carried out without causing injustice to either party.
 6. In their enforcement notice (Appeal B) the Council have alleged the storage of a touring caravan which suggests a storage use in its own right. From the evidence it is clear that the touring caravan is being used in connection with the residential use and this was not disputed at the Hearing. For this reason, I intend to correct the notice to reflect this position.
 7. I note that during the course of the s78 application, the description of the development as described on the application form, was amended slightly by the Council. The appeal form does not reflect this change and I have no evidence that the appellant has agreed to it. Accordingly, I shall use the description as applied for, for the purposes of considering Appeal C.
 8. Whilst no concerns were expressed by the parties at the Hearing, I have reviewed the wording of the notices. The scope of the notice is limited by s173(4)(a) and (b) to simply restore the land to its previous condition. It is an established principle that the developer and the landowner are generally best placed to know the condition of the land, before the breach occurred. With that in mind, I consider that Steps 1 to 3 in notice A (Appeal A) and steps 1 to 4 in notice B (Appeal B), make it clear what is required to remedy the breach and comply with s173 (3). There is no need to specify that the land is to be left in a tidy condition, which is open to interpretation, leading to uncertainty for the appellant. Moreover, this final step imposes more onerous requirements than to restore the land to its previous condition. I consider that I can vary the notices by deleting step (4) of Notice A; and step 5. of Notice B, in paragraph 5, without causing injustice to the parties.
 9. The plans submitted as part of the planning application and the notice plan, show the site accessed through Southview. However, at the time of my visit the access was closer to the junction of Hockenden Lane and Trunks Alley. The appellant confirmed that this new access, with associated fencing and gates has been constructed since the notice was issued. The original access has been closed with fencing. Similarly, at the time of my visit a further outbuilding had been sited close to Trunks Alley. These were not included in the planning application or referred to in either of the notices. Accordingly, this outbuilding, the relocated access, fencing and gates do not form part of the matters before me. I note that the touring caravan has been relocated next to the mobile home to the rear of the site. I have no evidence before me to indicate that the siting of the touring caravan represents operational development, rather than part of the alleged material change of use. I have therefore taken its new siting into consideration.

10. In view of the above, the accuracy of the plan attached to the operational development notice was considered at the Hearing. The parties agreed that notwithstanding the relocated tourer and the change to the access, the notice plan still represents the development that has been carried out.
11. The National Planning Policy Framework (the Framework) was revised on 20 July 2021, and the parties were given an opportunity to consider whether the revised Framework had any bearing on their cases. Both parties stated that they had no comments to make on the recent changes. The London Plan (2021) has been adopted since the notice was issued and I have therefore taken the relevant policies into consideration.

Main Issues

12. The definition of Gypsies and Travellers is set out in Annex 1 of the Planning Policy for Traveller Sites 2015 (the PPTS). It is agreed by the parties that the appellant and his family currently meet that definition. Having regard to the evidence, I have no reason to come to a different view. Accordingly, the PPTS is a material consideration in the determination of this appeal.
13. It is common ground that the appeal site lies within the Metropolitan Green Belt. It is also agreed that the developments to which these appeals relate constitute inappropriate development as set out in paragraph 14 of the PPTS. On this basis I consider that the main issues are:
 - The effect of the operational development on the openness of the Green Belt and the purposes of including land within it;
 - Effect of the development on the character and appearance of the area; and
 - Whether the harm to the Green Belt and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the grant of planning permission.

Ground (a) and the deemed application

Reasons

14. The site is located to the south of Hockenden Lane, at its junction with Trunks Alley, which is understood to be a byway and a public footpath. The appeal site lies immediately adjacent to the existing site known as Southview, owned by the appellant's father. Rosedale lies to the west, separated by paddocks. There is a ribbon of residential properties to the northwest known as Kiddens. The wider area is more generally open countryside, and the parties agree that it is best described as semi-rural. I have no reason to disagree.
15. At my site visit there was one static caravan and one tourer on the appeal site. The timber building was being used for domestic storage, with the second outbuilding also used for storage. Hard surfacing provided onsite parking and turning for vehicles, with a modest area of grass. There are some existing hedges and trees around the boundary of the site. This gives some screening, although the mobile home, caravan and stables could readily be seen from either direction when travelling along Hockenden Lane, and from the adjacent footpath. I was also able to see at my visit that the development is visible from the front gardens of the dwellings at Kiddens.

Openness

16. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 137 of the revised National Planning Policy Framework (the Framework) makes clear that openness and permanence are the essential characteristics of the Green Belt.
17. In accordance with the Framework, the material change of use, as alleged in the notice, represents a form of development that should not be regarded as inappropriate development in the Green Belt, provided that it would preserve openness and would not conflict with the reasons for including land within it. The introduction of a mobile home and touring caravan, whether stored or used for residential purposes, harms the openness of the Green Belt and thus constitutes inappropriate development in accordance with the PTTS.
18. Turning to the operational development, the Framework confirms that the construction of new buildings should be considered as inappropriate development. There is no suggestion that either the timber building or the hard surfacing have been laid for any purpose, other than to facilitate the residential use of the appeal site, and consequently, do not benefit from any of the exceptions to inappropriateness.
19. Paragraph 147 of the Framework explains that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless other considerations exist that would clearly outweigh the harm by reason of inappropriateness and any other harm. Paragraph 148 requires that substantial weight must be given to any harm to the Green Belt.
20. Whilst the appeal site is fairly modest in size the introduction of the timber building and the hardstanding, even when taken alone, has nonetheless introduced development into an area where there was previously none. This harm is exacerbated when combined with the mobile home, the touring caravan, vehicular parking and domestic paraphernalia associated with the residential use. Consequently, I find that in combination the developments result in a moderate loss of openness and are thus in conflict with policy 49 of the LP, and Policy G2 of the London Plan (2021), that in summary set out that development will not be permitted in the Green Belt, except for uses that are appropriate to the Green Belt.

Character and appearance

21. I accept that the PTTS does not preclude suitable sites in rural areas and the countryside, and caravans are not uncommon features of rural areas. This may then have consequences in respect of the impact and visual harm. The site is not away from an existing settlement where PPTS says development should be strictly controlled.
22. The original site at Southview is set back from Hockenden Lane with its vehicular access taken from Trunks Alley. It is therefore viewed at an oblique angle from Hockenden Lane. In contrast, the appeal site partially fills the gap between Southview and Rosedale extending the built development towards the west. This more prominent position results in a greater impact in the street scene, being more visible to both passers-by and the residents of Kiddens, than Southview.

23. Overall, the appeal site was previously undeveloped, making a positive contribution to the character of the area. The introduction of the timber building and hardstanding, mobile home, touring caravan, together with the residential paraphernalia normally associated with a residential use, has an overly urbanising effect that jars with the surrounding semi-rural character of the area. Although to a lesser degree, this would be the case even if the timber building and hardstanding were considered in isolation. Consequently, I find that the developments cause moderate harm to the character and appearance of the area. The development is therefore contrary to Policy 49 of the LP and Policy G2 of the London Plan (2021)
24. I have considered the appellant's suggestion that additional native planting to the boundaries could be provided. However, whilst this might in time provide additional screening to the site, the degree of screening would be likely to change from season to season and would not overcome the harm I have identified. Moreover, it would itself, add to the sense of enclosure.

Other considerations

The need for sites for gypsies and travellers

25. It is agreed that unmet need is a material consideration for this appeal. Policy 12 of the LP sets out that the Council will firstly seek to meet any identified need for additional sites within the allocated sites. The policy confirms that it will monitor and seek to address any additional need, setting criteria for assessing any new sites where there is identified need.
26. The Council's GTAA was published in 2016 and is therefore now rather dated. The council explained at the Hearing that they were in the process of commissioning another assessment, although there was no clear timescale for its delivery. The 2016 GTAA, indicated that an additional 6 pitches would be required by 2021, with a further 13 to 14 by 2031. I have no evidence from them to show that they have carried out annual reports, setting out the five year supply position for gypsy and traveller sites. That said, a number of sites have been allocated in the LP to provide additional pitches. However, of these, four pitches are waiting for the outcome of appeals having been refused planning permission, despite being allocated in the LP. This is a clear failure of policy. Consequently, to my mind little progress has been made to provide the known need of six pitches that were required by 2021.
27. The appellant drew my attention to the results of the bi-annual Gypsy Caravan Count and in particular the results for July 2021. It is important to point out, that this represents a snapshot in time and refers to occupied caravans rather than pitches, which often consist of one mobile home plus one tourer. It therefore cannot be taken, in itself, to equate to an indicator of need, although it can be a useful indicator of additional need on the ground.
28. Between January 2020 and July 2021, the published count seems to suggest that the number of 'tolerated caravans' had increased from 81 to 98, with the number of 'not tolerated caravans' reduced from 21 to 0. This suggests that there may be a large number of caravans being tolerated, albeit without planning permission. The Council were unable to explain this anomaly, although it was suggested that this could be a result of one or two particular sites where a number of the designated pitches are being occupied by non Gypsy and Traveller families. The Council acknowledged that these allegations

need to be investigated. Until the facts are known, the relevance of these figures on any unmet need cannot be established with any certainty.

29. I am mindful that there are some vacancies on Council owned sites, and the outcome of the current appeals may affect the supply of pitches on the allocated sites. However, I share the appellant's concerns over the anomalies identified in the count data. Whilst I am unable to arrive at any figure of general need with any certainty, from the evidence, there is some evidence of need. Overall, I find that the lack of progress on providing permissions on the allocated sites and lack of clarity on the scale of the current unmet need, weigh significantly in favour of the development.

Personal circumstances

30. Policy E, paragraph 16 of the PPTS states: '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'. It further provides guidance for considering matters relating to the need and supply of Gypsy and Traveller sites, through robust assessment of local need being carried out.
31. As with all those who travel, a settled base would enable the family to have access to medical care and education. The appellant and his wife gave evidence at the Hearing about their personal circumstances. They confirmed that they moved to the site in about May 2019, after travelling for some time, having been forced to move from the site they were occupying. The land has since been purchased from the appellant's father.
32. The appeal site is occupied by the appellant, his wife and their three children who range in age from 4 to 14 years. The two eldest children are home schooled with support from Bromley Education Services. This is the family's personal choice, and it is envisaged that their youngest daughter will also be home schooled. I recognise that a settled base makes this an accessible service, which may not be possible to organise if the family were on the roadside or moving from place to place. Whilst the children are generally in good health, their eldest daughter has some undiagnosed health issues. The appellant also referred to a number of health issues that he and his wife have. These are currently being treated with medication, with the appellant under the care of Queen Marys Hospital in Sidcup, and his wife at Darent Valley Hospital.
33. The appellant referred to the cultural tradition of providing mutual support to his wider family. In particular to his father at Southview who also suffers from a number of health issues. Whilst I acknowledge the benefits of mutual family support, I am mindful that Southview already has permission for two pitches. The second pitch, until recently, was occupied by the appellant's sister who was able to provide assistance. She has left the site temporarily, but that pitch is now occupied by the appellant's brother. This is one of the Council's allocated sites and it is the intention to apply for an additional permanent pitch for the appellant's brother, bringing the total number of pitches to three.
34. Intentional unauthorised development has been a material consideration since 2015. The appellant applied for planning permission in September 2018, prior to moving onto the site. This application was refused on 3 April 2019, with the appellant and family moving onto the site in May 2019. The appellant has made it clear that despite the refusal of permission, the site was occupied as a result

of the family and children being evicted from their previous site with nowhere else to live. Nevertheless, the appellant was aware of the refused planning permission, and thus it was intentional unauthorised development to which I attach some weight against the grant of planning permission.

35. At the time the appellant moved onto this site, he submits that he had no alternative. However, the Council owns two sites and confirmed that there are currently 9 vacancies. Case law has established that alternatives should be both available and suitable. The appellant accepted that these were available to him but explained that due to reputational and recent law enforcement issues, he and his family would be very reluctant to move onto either of them. I acknowledge the appellant's concerns about these sites in the light of the evidence produced. However, in response the Council confirmed that any matters of criminality arising on their sites would be investigated and action taken where necessary. I have no reason to doubt this. Accordingly, this reduces the weight I can give to the appellants concerns about suitability.
36. I give substantial weight to the best interests of the children and acknowledge that the appellant has a personal need for a site, and preference to stay on the appeal site. It is also clear that this is a close knit family. However, I have no substantive evidence before me to indicate that, when considered in combination, that the personal circumstances of the appellant and his family could not be met on the alternative sites. Accordingly, I have attributed limited weight to the personal circumstances of the appellant and his family.

Other matters

Planning balance

37. The development is inappropriate development and harm by reason of inappropriateness in the Green Belt must be afforded substantial weight. Added to this I have identified additional harm to openness from the associated operational development, the character and appearance of the area and the intentional unauthorised occupation of the site, despite the appellant being aware of alternative pitches on the Council's sites.
38. Set against this harm is the general need for additional pitches and a number of other considerations that weigh in favour of the appeals, including the personal circumstances of the appellant and his family and their wish to remain as a family unit. I have given substantial weight to the best interests of the children who are in supported home schooling, and the benefits for this to be provided from a settled base. However, even when taken together, unmet need and the personal circumstances of the appellant and his family do not outweigh the substantial weight attributed to the harm to the Green Belt and other harm, such as to justify the grant of a permanent planning permission.
39. It is clear that a refusal of planning permission would interfere with the Article 8 rights of the appellant and his family, and any such interference must be balanced against the public interest in upholding planning policy to protect the environment. I have had due regard to the Public Sector Equality Duty (PSED), contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Nonetheless,

for the above reasons, I consider that my decision is proportionate and necessary in the circumstances.

40. In coming to this decision, it is then necessary to consider whether a temporary or personal grant of planning permission would be appropriate. Planning policy guidance makes clear that a temporary condition is only likely to be appropriate in certain circumstances, including where a trial run is needed to assess the effect of the development on an area, or it is expected that the planning circumstances will have changed in a particular way by the end of the temporary period.
41. In this case, a temporary planning permission would allow time for the Council to clarify the updated position with regard to need through a new GTAA, investigate the caravan count figures and the associated occupancy allegations, and for the outstanding appeals on the allocated sites to be determined.
42. I consider that these provide particular circumstances where a temporary grant of planning permission is justified, subject to the conditions as set out in my decision. I consider that a temporary period of three years is appropriate and proportionate, allowing time for the Council to carry out and consider whether there is any additional unmet need and for the family to make suitable alternative arrangements if required.

Conditions

43. I have considered the list of conditions suggested by the Council in the light of the advice in Planning Policy Guidance (PPG). Some amendment to these were discussed at the Hearing. As I am granting temporary planning permission for the developments, it is necessary to impose time limiting conditions. Similarly, as permission has been granted, in part, due to the personal circumstances of the appellant and his family, a personal condition restricting occupation is also required. A condition limiting occupation to gypsies and travellers is required as my decision, in part, relies on unmet need.
44. I consider that conditions restricting the number of caravans, to control external lighting and commercial uses are required in the interests of protecting the semi-rural character and appearance of the area and the living conditions of nearby residents. As the touring caravan has been relocated since the application plans were submitted to the Council and the notices were issued. I consider that, with this exception, a condition specifying the remaining approved plans is necessary to provide certainty.

Appeals under Ground (f) and (g)

45. As I am granting temporary planning permission for Appeals A and B, the appeals under grounds (f) and (g) do not need to be considered further.

Conclusion

Appeal A

46. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the erection of a timber building, in the area marked 'A' and the creation of hardstanding in the area hatched green on the attached plan, as described in the notice, as corrected, and varied.

Appeal B

47. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the material change of use of the land for the stationing of a mobile home for residential use in the area marked 'B', and the storage of a touring caravan shown in the area marked C on the attached plan and associated paraphernalia, as described in the notice, as corrected, and varied.

Appeal C

48. I have had regard to all of the matters raised and conclude that the appeal should be allowed subject to the attached schedule of conditions.

Hilary Orr

INSPECTOR

Schedule of conditions.

Appeal A

1. When the premises cease to be occupied by William Friend, Julie Friend and their resident dependants, or a period of 3 years from the date of this decision, whichever is the sooner, the timber building, hardstanding and resultant materials shall be permanently removed from the Land and the land restored to its original condition.
2. The development hereby permitted shall only be used in connection with the residential use of the site.
3. The development hereby permitted shall be carried out in accordance with the following approved plans: Site plan drawing No LP-01-2018; Drawing No HS-01-2018.

Appeals B and C

1. The occupation of the site hereby permitted shall be carried on only by the following: William Friend, Julie Friend and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the sooner.
2. When the premises cease to be occupied those named in condition 1. above, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials, residential paraphernalia 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 previous condition.
3. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of Planning policy for traveller sites, August 2015 (or its equivalent in replacement national policy).

4. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No BP-01-2018 (Except in respect of the siting of the touring caravan shown on that plan); Site plan drawing No LP-01-2018; Drawing No HS-01-2018; Proposed Change of use Drawing *[sic]* No SC-01-2018-A
5. 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 site at any time.
6. No commercial activities shall take place on the land, including the storage of materials and no vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
7. Details of any external lighting to be installed shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

End of schedules

Appearances

FOR THE APPELLANT:

Joseph G Jones	Agent
William Friend	Appellant
Julie Friend	Wife of Appellant
William Friend Snr	Father of the appellant

FOR THE LOCAL PLANNING AUTHORITY:

David Bord BA(hons)	Principal Planner
PC Dip MRTPI	

INTERESTED PERSONS:

None