



Appeal Decisions

Inquiry held on 21-22 February 2023

Site visit made on 22 February 2023

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 27 April 2023

Appeal A Ref: APP/G5180/C/21/3282993

Land on the North West side of Shire Lane, Keston, 'Plot 37'.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr T Williams against an enforcement notice issued by London Borough of Bromley.
 - The notice, numbered 21/00300/CHANGE, was issued on 13 August 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the Land for the stationing of a mobile home and touring caravan for residential use and associated paraphernalia.
 - The requirements of the notice are: 1) Remove from the Land the mobile home and touring caravan; 2) Remove all material associated with the residential use of the Land; 3) Remove all paraphernalia associated with the above 1) and 2); 4) Prepare the ground to enable the Land to revert to its former condition as fallow land; and 5) Leave the Land in a clean and tidy condition.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.
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Appeal B Ref: APP/G5180/C/21/3282992

Land on the North West side of Shire Lane, Keston 'Plot 37'.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr T Williams against an enforcement notice issued by London Borough of Bromley.
 - The notice, numbered 21/00300/CHANGE, was issued on 13 August 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the installation of hardstanding in connection with the use of the Land as a Gypsy and Traveller site and to facilitate its use for the stationing of a mobile home.
 - The requirements of the notice are: 1) Remove the hardstanding described in paragraph 3, from the Land; 2) Restore the Land to its original condition as fallow land; and 3) Leave the Land in a tidy condition.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (e), (f), (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.
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Appeal C Ref: APP/G5180/C/21/3282991

Land on the North West side of Shire Lane, Keston.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr T Williams against an enforcement notice issued by London Borough of Bromley.
- The notice, numbered 21/00300/CHANGE, was issued on 13 August 2021.

- The breach of planning control as alleged in the notice is Without planning permission, the erection of a metal gate fronting Shire Lane, in breach of the Article 4 Direction affecting the Land in the approximate position marked with a blue cross on the attached plan.
 - The requirements of the notice are: 1) Remove the metal gate described in paragraph 3, from the Land; 2) Restore the Land to its original condition as fallow land; and 3) Leave the Land in a tidy condition.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (e), (f), (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.
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Appeal D Ref: APP/G5180/W/21/3282990

Land North West Of Sevenoaks Lodge, Shire Lane, Farnborough, BR6 7HH

- 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 T Williams against the decision of London Borough of Bromley.
 - The application Ref 21/01633/FULL1, dated 1 April 2021, was refused by notice dated 12 July 2021.
 - The development proposed is Change of use of land from agricultural/equestrian paddock to Gypsy and Traveller site comprising one pitch accommodating one mobile home, one touring caravan, and one dayroom, together with hardstanding area, 1.8m close board fence and access drive.
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Decisions

Appeal A

1. It is directed that the enforcement notice is varied by:

the insertion in section 5 of the notice of the following: "1. Cease the use of the Land for the stationing of a mobile home and touring caravan for residential use and associated paraphernalia.";

by the deletion in requirement 4 of the words "as fallow land";

by the re-numbering of the requirements to reflect the additional requirement;

and by the substitution of 12 months as the period for compliance.

Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. It is directed that the enforcement notice is varied by:

the deletion in requirement 2 of the words "as fallow land";

and by the substitution of 12 months as the period for compliance.

Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

3. It is directed that the enforcement notice is corrected by the insertion of the words "2008" immediately before the words "Article 4 Direction";

and varied by:

the deletion in requirement 2 of the words "as fallow land";

and by the substitution of 12 months as the period for compliance.

Subject to the correction and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D

4. The appeal is dismissed.

Appeal D

5. The appellant owns a plot of land, Plot 37, within a former agricultural field that has been sub-divided and sold in individual plots arranged around putative internal access-ways. The field is in the open countryside between Keston and Orpington. Aside from the developments the subject of these appeals, the former agricultural field is undeveloped. The individual appeal sites vary. The Appeal A (use) enforcement notice plan comprises Plot 37 only, as does the planning application site in Appeal D, though the latter also proposes hardstanding or surfacing of the putative internal access-way leading from the field access to Shire Lane. The enforcement notice the subject of Appeal B (hardstanding) has plans showing the whole of the former agricultural field and Plot 37 separately, but it is clear that the notice is aimed solely at development on Plot 37. The Appeal C (gate) site comprises the whole of the former agricultural field, but it concerns the gate only. The development comprised in Appeals A-C combined broadly mirrors that sought in Appeal D, the main differences being the proposed dayroom building, which has not been erected and hence does not feature in the deemed planning applications, and that no gate is shown on the plans. For simplicity I shall deal with Appeal D first.
6. The site is in the Metropolitan Green Belt. Planning Policy for Traveller Sites (PPTS) states that Gypsy and Traveller sites are to be considered as inappropriate development in the Green Belt. As set out in the National Planning Policy Framework (NPPF) and reiterated in the development in policies Policy 49 of the Bromley Local Plan (BLP) and Policy G2 of the London Plan (LP), inappropriate development in the Green Belt is harmful by definition and should not be approved except in very special circumstances. Hence the main issue is whether the harm by reason of inappropriateness, and any other harm, in this case in terms of Green Belt openness, the purposes of including land in the Green Belt, the effect on rural character and appearance, and site location relative to services and facilities, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development. I note that the Council's concerns about highway safety, biodiversity and archaeology have been satisfactorily addressed.

7. The stationing of caravans, be they static or touring, the proposed dayroom and the associated infrastructure, hardstanding and domestic paraphernalia, have the effect of reducing the openness of the land, which was previously undeveloped. There is also a visual dimension. Although landscaping, including 1.8m high close-boarded fencing, is proposed which would have the effect of screening much of the development from Shire Lane, the extent of development and loss of openness would be clearly evident from the public footpath that crosses the field, passing directly alongside the site and its proposed entrance. The development would also conflict with one of the purposes of including land in the Green Belt, that of protecting the countryside from encroachment.
8. In terms of local character, Shire Lane in the vicinity of the appeal site has a rural character, with only sparse and dispersed development for much of its length. At present the appeal development is noticeable from Shire Lane despite an intervening belt of trees, and adding to the evident development along the lane diminishes its rural character and the contribution made to that by the undeveloped field. Even with the proposed landscaping I consider that development would be evident to passers-by on Shire Lane, but in any case an adverse effect on the rural character of the field would be experienced by those using the cross-field public footpath on its definitive line. I appreciate that the line of the footpath is currently overgrown, but this is likely to be temporary in view of the statutory duties related to public rights of way. The development would thus conflict with BLP Policy 37(b), which expects development to positively contribute to the landscape.
9. So far as accessibility to services and facilities is concerned, however, while Shire Lane itself is not suited to non-vehicular traffic and not well served by public transport, the site is reasonably well connected to Farnborough and Orpington via the public footpath network, so notwithstanding that it will likely rely on private transport for many or most journeys, there are viable alternatives. As such, the location is not un-suited to the proposed use in this respect.
10. Turning to the other considerations, PPTS requires local planning authorities to, among other things, assess the need for sites, develop fair and effective strategies to meet need through the identification of land for sites, and increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply. In producing their Local Plan local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of sites against their local targets. The most recent assessment of need is the 2016 Bromley Traveller Accommodation Assessment, which identified a need for 10-14 pitches at that time, with a projected need for a further 6 pitches to 2021, 6 pitches in 2022-2026, and 7-8 pitches in 2027-2031. BLP Policy 12 aims to seek to meet the identified by first considering the potential within allocated Traveller sites, such sites being excluded from the Green Belt. The BLP allocated 11 sites, comprising sites already with permissions or lapsed temporary permissions, to meet the immediate need and with potential for 24 additional pitches to address projected future need. The use of potential pitches to meet projected need requires, in most cases, private owners to seek permission for the additional plots, which introduces an element of uncertainty around their deliverability for PPTS purposes, although an increase in 'tolerated' caravans on allocated sites suggests that appropriate

planning applications may come forward in due course. However, there are currently 8 pitches available on the 2 Council owned sites in the Borough, Star Lane and Old Maidstone Road, which is sufficient to meet the policy requirement for a 5-year supply of sites.

11. The appeal family have previously lived at Star Lane and there is no prospect of them returning there. From the evidence I am satisfied that that site is not a suitable location for them. They also consider Old Maidstone Road to be unsuitable and say they will not move there. This is because one of the children suffers from tinnitus and the Old Maidstone Road site, being sited alongside the very busy A20 dual carriageway, is noisy, which can exacerbate the condition. The affected child will soon be an adult, so the Old Maidstone Road site may be a viable option in the near future, and the Council has also advised that some of the available pitches are well away from the A20, so it may be that the site is not as unsuitable as claimed, though this would require further investigation. I accept, however, that it should not currently be considered as a suitable alternative.
12. So far, it is the case that the children have never had to live on the roadside, so while there may be no suitable alternative accommodation available at present, the evidence suggests that resorting to the roadside would not be an inevitable outcome of refusing planning permission. Nonetheless, I accord some weight to the current lack of a suitable alternative site.
13. The family are reluctant to move to a public Traveller site, partly for cultural reasons but also because they fear discrimination because of their Christian beliefs, which they believe brings them into conflict with other Travellers. Living at the appeal site has also helped family cohesion, the appellant in particular being relatively inflexible about what constitutes a satisfactory environment, in part for health reasons. It is a location from which the younger adult members of the family have been able to access employment and education, and living there, in the circumstances, is in the best interests of the children, providing a stable base from which to access services and resources and facilitating a stable family environment, and I accord this considerable weight. While there is no certainty that only a single pitch site might reasonably meet their requirements, the family's Christian and cultural concerns may make many alternative sites unsuitable. Nonetheless, the benefits of the appeal site in this regard are clear and can be given considerable weight, as can its general suitability in location terms, Green Belt policy considerations aside.
14. In balancing these considerations, substantial weight must be given to any harm to the Green Belt, the definitional harm, loss of openness and conflict with the purposes of including land in the Green Belt in this case, and there is also harm to the character and appearance of the area, adding further weight against the proposal. The intentional unauthorised nature of the site's establishment also weighs against the development. To justify a grant of planning permission for inappropriate development in the Green Belt, on either a permanent or temporary basis, there must be considerations which clearly outweigh the definitional and other harm. However, the weight I accord to the personal circumstances of the family, the lack of currently available and suitable alternative sites and the best interests of the children, which is a primary consideration, are not sufficient in this case to outweigh the totality of the harm identified. While a temporary permission would mean that the harm would be time limited, and therefore of lesser weight, there would still be very

substantial harm. Further, on the evidence available, and having regard to the Council's approach to site provision, there does not appear to be any realistic likelihood of a site coming forward that would meet the family's particular needs within an appropriate timeframe.

15. Dismissal of the appeal would make the family homeless, and could have implications for the stable family environment that the site facilitates, which I recognise would represent interference with home and family life. However the harm caused by the development in terms of its effect upon the interest of the economic well-being of the country, which includes the well-established and legitimate aims of Green Belt policy and the protection of the character and appearance of the countryside, cannot be ignored. I consider that the protection of the public interest cannot be achieved by means which are less interfering of the appellant and his family's rights. They are proportionate and necessary and hence would not result in a violation of rights under Article 8 of the First Protocol of the European Convention on Human Rights.
16. In coming to this view I have had regard to my duty under the Equality Act to avoid discrimination and promote equality, but the very substantial harm and conflict with the development plan read as a whole, and with national planning policy, outweigh its benefits in terms of eliminating discrimination against persons with protected characteristics, advancing equality of opportunity for those persons and fostering good relations between them and others. I conclude accordingly that it is proportionate and necessary to dismiss the appeal and refuse planning permission.

Appeals A, B and C

Ground (e)

17. This ground, pleaded in Appeals B and C, is that the enforcement notice was not properly served. However, the notice was served on the owner of the wider parcel of land including the gate and prospective or putative accessways, and on the previous owner of Plot 37, along with the appellant. The owners of the other plots do not, in my view, have an interest in the land that might be prejudiced by the failure to serve them with a copy of the notice, and no other party has been identified that may have suffered injustice. The appeals on this ground cannot be sustained.

Ground (a) and the deemed planning application

18. This ground is that planning permission should be granted for the matters enforced against. I need only deal with these briefly. The planning merits of the use of Plot 37 and the provision of the hardstanding were considered in Appeal D and found not to warrant planning permission.
19. The erection of the metal gate, the subject of Appeal C, requires planning permission because permitted development rights for such development were removed by a Direction made under Article 4 of the GDPO. The erection of the metal gate constitutes inappropriate development in the Green Belt, harmful to its openness and visual amenity. No other considerations have been advanced that might clearly outweigh the harm to the Green Belt by reason of inappropriateness and other harm, and the development is therefore contrary to BLP Policy 49 and LP Policy G2, and indeed to the development plan read as a whole. Accordingly planning permission should be refused.

20. The appeals on ground (a) cannot therefore succeed.

Ground (f)

21. This ground is that the requirements of the notice exceed what is required to remedy the breach of planning control. The point raised concerns the requirement, in each case, to restore the Land to its original condition as fallow land. It is argued that this requirement is tantamount to requiring an agricultural use be restored, whereas a notice cannot require a use to be restored or reinstated. I accept however that there was no intention on the part of the Council to require an agricultural use to be resumed, the reference to fallow land being merely a means of describing the condition of the land before the development took place. For clarity, I shall vary the relevant requirements to make the purpose of the notices clearer, that is to remedy the breach by restoring the land to its condition before the breach took place. No injustice arises from this variation. The appeals on this ground succeed to that limited extent.
22. For clarity, I shall also vary the Appeal A notice to add a requirement that the use should cease. Again, I consider that there is no injustice to the parties as the intent of the notice is clear and has been understood. Similarly, a correction of the allegation in the Appeal C notice to add the date of the Article 4 Direction causes no injustice.

Ground (g)

23. This ground is that the period for compliance, 4 months, is too short. In view of my conclusion on the current lack of a suitable available alternative site and the best interests of the children I consider that 12 months is a more reasonable and proportionate period to allow the family to look for an alternative site. The appeals on this ground succeed accordingly.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Tamsett

He called

Tony Williams

Lydia Smith

David Penfold

Anthony Williams

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson

of Counsel

He called

Gill Slater

Site provision

David Bord

Planning

INTERESTED PERSONS:

Cllr Andrews

Cllr Joel

DOCUMENTS

- 1 Statement of Common Ground
- 2 Public footpath photographs
- 3 Lydia Smith – personal statement
- 4 Council's closing submissions
- 5 Appellant's closing submissions