



Appeal Decision

Hearing (Virtual) held on 28 November 2024

Site visit made on 29 May 2024

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 March 2025

Appeal Ref: APP/R4408/C/22/3305546

Land on the West side of Sandybridge Lane, Shafton, Barnsley S72 8PL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Kevin Rogers against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The notice was issued on 21 July 2022.
- The breach of planning control as alleged in the notice is “Without planning permission, the material change of use of the Land for:
 - i. The siting of caravans for human habitation with associated infrastructure (as marked in Appendix 1).
 - ii. Importation of a skip and a shipping container (as marked in Appendix 1)
 - iii. The storage of vehicles (as marked in Appendix 1) as well as other miscellaneous items and general detritus
 - iv. The erection of outbuildings (as marked in Appendix 1)
 - v. The erection of gates, walls, and fences (as marked in Appendix 1)”
- The requirements of the notice are:
 - (i) Cease the unauthorised use described in paragraph 3
 - (ii) Remove from the land all caravans and vehicles
 - (iii) Remove from the land all walls and fences and gates on the land
 - (iv) Remove from the land all materials, items and waste associated with the use described in paragraph 3
- The period for compliance with the requirements is eight months from the date the notice takes effect.
- 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). 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.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Matters Concerning the Enforcement Notice

1. An enforcement notice must enable the recipient to know what the matters alleged are. Thus, an enforcement notice may be invalid if it is unclear. The appropriate test is whether the enforcement notice is hopelessly ambiguous and uncertain, either as regards the description of the planning breach, or the necessary remedial steps, as set out in *Miller-Mead v MHLG* [1963] 2 WLR 225.
2. Section 3 of the enforcement notice (notice) alleges a material change of use of the land has occurred and cites five elements; two or three of which are, or could be, operational developments and two or three of which are, or could be, primary or incidental uses. As written, the allegation tells the appellant what they have done wrong, but it lacks precision.
3. There is agreement that at least one of the outbuildings predates the material change of use of the land (the MCU). The erection of gates, walls and fences around the boundaries serve the purpose of enclosure and would be required in

- some form whatever use the land is being put to. Therefore, not all the operational development elements identified in the allegation facilitate the MCU.
4. There is no dispute that the land is being used (i) for the siting of caravans for human habitation or that (iv) outbuildings, (v) gates, walls, and pillars have been erected, and I find these elements to be sufficiently precise. However, (ii) identifies the *'Importation of a skip and a shipping container'*. The importation of a skip for the collection of refuse is incidental to the residential occupation of the land. It is not operational development or a primary use and does not need to be identified in the allegation. I saw, and it was agreed, during my site visit that the *'shipping container'* is in fact a metal sheeted building.
 5. There is no suggestion that any businesses are being operated from the land. *'The storage of vehicles...as well as other miscellaneous items and detritus'* identified in (iii) is ancillary to the residential occupation of the land. Only primary uses should be identified in the allegation.
 6. The keeping of horses is an integral part of the gypsy and traveller nomadic habit. During the Hearing, Mr Brown claimed that, prior to the material change of use occurring, the land was used for the keeping of horses. I have no evidence to show that to be the case. While there is no need for the former land use to be identified in the allegation, Mr Brown argued that the allegation should identify an MCU to a mixed use of the land as a caravan site for human habitation and for the keeping of horses.
 7. While there were no horses on the land at the time of my visit, I did see that at least one of the buildings was capable of accommodating horses. I was told that one of the families residing on the land was travelling for the Appleby Horse Fair at the time of my site visit. It would therefore be reasonable to conclude that the absence of horses on the land was due to them having been taken to the Appleby Horse Fair.
 8. The keeping of horses could relate to the siting of caravans for human habitation by gypsies and travellers, and the allegation could be corrected to identify such a mixed use of the land. The notice does not require the demolition of the buildings where the horses are presumably stabled, and the grazing of horses on the land would not of itself require planning permission. The correction of the allegation in this manner would not therefore cause injustice to the Council.
 9. For the reasons given above and for clarity, I shall correct the allegation to read *'Without planning permission, a material change of use of land to a mixed use of a caravan site for human habitation and the keeping of horses, and the erection of buildings, gates, walls and fences (as marked by yellow dots on the photographs attached to the notice).'*
 10. Turning now to what the notice requires to be done to remedy the breach of control. The requirements of the notice do not include the demolition of the buildings. The demolition of the buildings could not be added as a requirement as it would make the notice more onerous, causing injustice to the appellant. The Council is therefore under enforcing.
 11. The requirements need to be varied to reflect the corrected allegation set out above and to provide precision. The requirements shall be varied so that Step (i) shall require the mixed use to cease; Step (ii) shall require the removal of all caravans,

vehicles and domestic paraphernalia associated with the use of land as a caravan site for human habitation from the land; Step (iii) shall require the removal of all gates, walls and fences, with the exception of the blockwork wall along the northern boundary adjacent to the public right of way; and Step (iv) shall require the removal of all materials and waste arising from step (iii) from the land.

12. The land identified by the red line on the plan attached to the notice includes part of the public highway, part of a public right of way, and land beyond the appellant's control to the south of the watercourse. An amended plan was provided at the Hearing¹, which shows these elements excluded from within the red line. The amended plan was agreed to be an accurate representation of the land in the appellant's control. I shall substitute the plan attached to the notice for the one provided at the Hearing (HD2).

13. I shall proceed on the basis of the corrected and varied notice.

Preliminary Matters

14. This appeal was originally scheduled to follow the Hearing procedure. However, as no detailed information in support of the appellant's case was received within the statutory timescales, the procedure was changed to Written Representations. A written statement was then received from the appellant within the additional time provided and the Council had time to respond to this.

15. My accompanied site visit (ASV) took place on 29 May 2024. At the ASV it became clear that the site was being occupied differently to what had been set out in the appellant's case. Furthermore, the Council had introduced flood risk as a restrictive constraint to the development of the land in their response to the appellant's written statement. Following the ASV a further period was given for written submissions addressing these issues and to comment on each other's respective submissions.

16. The final written submissions resulted in matters needing to be clarified. The appeal procedure was changed to a Hearing. The parties agreed to the Hearing being held virtually, which took place on 28 November 2024. It was agreed that a further ASV was not required as part of the Hearing procedure.

17. A revised National Planning Policy Framework (the Framework) and a revised Planning Policy for Traveller Sites (the PPTS) were published in December 2024. The appellant and Council have had an opportunity to comment on the revised documents and each other's submissions on these documents. I shall have regard to the written responses received.

The appeal on ground (a) and the deemed application for planning permission

18. An appeal on this ground is that planning permission should be granted for the corrected matter alleged. The **main issues** are:

- The effect of the development on the character and appearance of the locality;
- The effect of the development on highway safety;
- The effect of the development on neighbouring occupiers' living conditions;
- The effect of the development in terms of flood risk;

¹ HD2 Agreed Amended Enforcement Notice Plan

- Whether the development is inappropriate development in the Green Belt having regard to the Framework and development plan policy;
- If the development is inappropriate, its effect on openness; and
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify inappropriate development in the Green Belt.

Character and appearance of the locality

19. The appeal site lies within an undulating, predominately rural landscape, interspersed with hedgerows, built development and pockets of woodland. Shafton is close by, and it has a mix of residential estates and industrial buildings along its periphery near the appeal site.
20. The appeal development is of a similar scale to the built development located in the surrounding landscape. Short range views of the development are limited due to the road alignment and topography. What short range views are available are screened by boundary features and mature trees and hedgerows. Given the elevated position of dwellings on Greenside and Green View, longer range views of the development are available. However, caravans are not an uncommon feature within a rural landscape. Furthermore, the nature of the development ensures that it seen against the backdrop of the undulating landscape.
21. The high gates and blockwork walls may not be traditional features in a rural landscape. Any visual harm arising from their presence could however be mitigated by requiring the provision of suitable planting and/or the painting or covering of the walls in accordance with a scheme that has been previously agreed.
22. For these reasons, as a matter of fact and degree, the development has no significant adverse effect on the character and appearance of the locality. The limited conflict with policies GD1 and D1 of the Barnsley Local Plan (January 2019) (the BLP), which seeks amongst other things to deliver high quality development and landscaping, can be addressed by conditions.

Highway Safety

23. Access to the site from Sandybridge Lane is located within a national speed limit area. However, I saw that the 30mph sign for entering Shafton and the national speed limit sign when leaving Shafton are located just beyond the southern end of the site frontage. It would therefore be reasonable to conclude that vehicles travelling into and out of Shafton, past the site, would be travelling at speeds closer to 30 mph than 60 mph. Furthermore, the sweeping bends, carriageway topography and other nearby vehicular access points are all potential hazards to existing road users. The hard surface adjacent to the site access also seems to be a popular parking place for walkers to park to access the Rabbit Ings Country Park and the adjacent public right of way (PROW).
24. The appellant has provided aerial images that show, if vegetation in the highway verges or overhanging them were to be cut back, visibility splays of 2.0m by 80m could be achieved on the traffic approach side and 2.0m by 150m could be achieved on the traffic departure side. There is a footway along the western side of

Sandybridge Lane and I saw that it was somewhat overgrown by vegetation. It seems a realistic expectation that maintenance of the verges adjacent to the appeal site entrance would not only benefit the appellant but other highway users, including pedestrians.

25. The gates preventing vehicles entering the land are set a significant distance back from the carriageway edge. I see no reason that a vehicle towing a caravan could not pull clear of the carriageway even with the gates closed. I therefore find it unlikely that highway users would be presented with stationary vehicles waiting to enter the site.
26. In the absence of any empirical evidence to show that the continued use of the access would constitute a hazard to other highway users, for the reasons given above, I find that the development does not cause any significant highway safety concerns and does not conflict with policy T4 of the BLP, which amongst other things seeks to provide all transport users with safe and convenient access.

Living conditions of neighbouring occupiers

27. As already established, the appeal site lies outside of Shafton and there are no neighbouring residential occupiers. Interested parties located on Greenside and Green View have raised concerns that the development causes disturbance through the comings and goings of vehicles and activities taking place on the land. Greenside and Green View are however located some considerable distance away from the appeal site and are separated from it by the main road, adjacent fields, and a not insignificant change in topography. It is difficult to comprehend how vehicular activity at and associated with the appeal site could be distinguished from traffic generally using the main road and members of the public parking adjacent to the site entrance to access the PROW and Rabbit Ings Country Park.
28. Activity taking place on the land is screened by mature vegetation around the periphery and by the gates, walls and fences. Views of activities would only therefore be available from some considerable distance away. In my judgement, the development does not have any significant adverse effect on neighbouring occupiers' living conditions or those occupiers living in the wider locality.
29. The development does not therefore conflict with policy Poll1 of the BLP, which seeks amongst other things to ensure there would be no unacceptable nuisance to people.

Flood Risk

30. The appeal site sits in an elevated position above a watercourse, which runs approximately parallel with its southern boundary. Information provided from the Environmental Agency's flood maps shows that the watercourse is located in flood zone 3. While the westernmost tip of the appeal site, a grass paddock, is partially washed over by flood zone 3, the remainder of the appeal site is shown to be in flood zone 1.
31. The caravans used for human habitation are currently sited in flood zone 1. Their continued siting in flood zone 1 can be secured by an agreed Site Development Scheme condition, should I find that planning permission should be granted. The risk to the development from flooding does not therefore provide a strong reason for refusing planning permission for the development.

32. For these reasons, I find the development to be acceptable in flood risk terms.

Planning Policy

33. While policy GB3 of the BLP deals with changes of use in the Green Belt, the detailed text within it only relates to the conversion or change of use of buildings. The development does not include the conversion or change of use of buildings. The Council conceded at the Hearing that policy GB3 is not relevant, and I concur.
34. Policy GT1 of the BLP is a subject based policy dealing specifically with sites for travellers and show people. While this policy suggests the broad location of sites should be in urban areas, it does not preclude sites being provided in the Green Belt. Given that over 70% of the Council's administrative area is located within Green Belt, it was accepted by the Council that new traveller sites would, more likely than not, be provided in the Green Belt.
35. The appeal site is located just outside Shafton, which has a range of local services, including a primary school, convenience stores, and pharmacy, amongst other facilities. There is an unlit footway that provides pedestrian access into the village, where it becomes lit. Further, regular bus services provide access to other facilities in the wider locality. I therefore find the development to be sustainably located.
36. The main appeal parties agreed at the Hearing that the land occupied by caravans is not at risk from flooding or contamination. The appeal site provides a safe living environment. Any deficit in the standard of residential amenity could be addressed through the imposition of a site development scheme condition, which requires, amongst other things, details of foul water disposal facilities to be approved, implemented and maintained. I have already established that the development is acceptable in terms of highway safety, subject to the imposition of a condition to secure the provision of cleared visibility splays.
37. The development therefore complies with the detailed criteria set out in policy GT1 of the BLP against which traveller site applications for planning permission will be assessed.

Supply and Need for Traveller Pitches

38. Policy GT1 also confirms that '*sites will be allocated to meet the shortfall in provision of permanent sites*'. Policy GT2 confirms that two sites were allocated with a capacity to accommodate a total of 19 pitches; 8 of which would be in the Green Belt. Planning applications to develop these two allocated sites have not yet been brought forward. These pitches are not therefore available and in the absence of a planning permission, there is considerable uncertainty about if or when they would come forward for development.
39. The Council's 'Barnsley Gypsy and Traveller Five Year 'Deliverable' Land Supply Report April 2023 – March 2028' (July 2023) ('the LRS 2023') relies on evidence provided in the 2015 GTAA, which identified a shortfall of 15 pitches. The GTAA 2015 is approximately 10 years old, it predates the *Lisa Smith* judgement and the revision of the traveller definition in the PPTS. For these reasons I find the GTAA 2015 to be out of date and consequently the LRS 2023, in my judgement, does not provide justified or reliable need and supply figures.
40. Even if I were to accept the GTAA 2015 is not out of date, I remain unconvinced that the LRS 2023 provides an accurate assessment of supply. While several

planning permissions for traveller pitches have been granted in the Borough, these were predominantly for development already carried out. There is nothing before me to show that these permitted pitches contributed to meeting the GTAA 2015 need for 15 pitches. These planning permissions have however been counted in the LRS 2023 supply calculation, as have the 19 allocated pitches. In my judgement, the planning permissions granted, more likely than not, met a previously unidentified need. Consequently, combining the limited supply of pitches with the likely increased demand figure, I find it more likely than not, that there is a significant shortfall of pitch provision and therefore unmet need.

41. The Council conceded at the Hearing that there are no reasonably available alternative sites to accommodate the occupiers of the appeal site. The absence of available alternative pitches to meet the accommodation needs of the occupiers of the appeal site further demonstrates that there is an unmet need for this type of development.

Grey Belt

42. The recent changes to the Framework included the introduction of 'grey belt'. The Framework defines grey belt as *'land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b) or (d) in paragraph 143.'* The appeal site is in the countryside, it does not contribute to checking unrestricted urban sprawl, prevent the merging of neighbouring towns or preserve the setting or special character of historic towns. The application of policies relating to matters set out in footnote 7 of the Framework would not provide a strong reason for refusing or restricting the development. For these reasons the appeal site is Grey Belt land.

Whether the development is inappropriate in the Green Belt

43. The fundamental aim of Green Belt is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. The five purposes of Green Belt include safeguarding the countryside from encroachment.
44. Paragraph 155 of the Framework confirms that *"the development of homes, commercial and other forms of development in the Green Belt should also not be regarded as inappropriate where:*
 - a. The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;*
 - b. There is a demonstrable unmet need for the type of development proposed;*
 - c. The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of [the] Framework; and*
 - d. Where applicable the development proposed meets the 'Golden Rules' requirements set out in paragraphs 156-157."*
45. The development constitutes 'other development' in the Green Belt. Paragraph 18 of the PPTS confirms the Golden Rules do not apply to traveller sites. I have already found the development to be sustainably located, and to be grey belt land. Furthermore, there is a demonstrable need for this type of development. The scale

of the development is such that it would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan.

46. For these reasons, the development is not inappropriate development in the Green Belt. As such, there is no need to assess the development's effect on openness. Nor is there any requirement for very special circumstances to be demonstrated.

Conditions

47. A condition confirming that planning permission is restricted for residential use by Gypsies and Travellers (as defined in the PPTS) is required in order to safeguard the site for this purpose.
48. A condition limiting the number of caravans stationed is needed to protect the character and appearance of the area. Conditions limiting the size of vehicles parked and preventing commercial activity on the site are required in the interests of safeguarding the character and appearance of the area.
49. To make the development acceptable in planning terms, the visibility splays shown on the submitted aerial images also need to be provided and thereafter maintained, in the interests of highway safety.
50. A condition confirming the loss of the permission unless details are submitted for approval (including a timetable for implementation) concerning the site layout, boundary treatments, drainage details, external lighting arrangements, biodiversity enhancements and soft landscaping works, including their replacement, if necessary, is required in order to help safeguard the character and appearance of the area. This will take the form of a 'Site Development Scheme' (SDS).
51. The form of the SDS condition is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

The planning balance

52. The development is not inappropriate development in the Green Belt. There is a demonstrable need for the development. Any limited harm arising from the development can be mitigated by the imposition of suitably worded conditions. I therefore find the development accords with the development plan taken as a whole.

Conclusion on ground (a)

53. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use and development as described in the notice as corrected.
54. In these circumstances the appeal on ground (g) does not fall to be considered.

Formal Decision

55. It is directed that the enforcement notice is corrected by:

- *In section 3. **The breach of planning control alleged**, the deletion of all the words and their substitution with the words ‘Without planning permission, a material change of use of land to a mixed use of a caravan site for human habitation and the keeping of horses, and the erection of buildings, gates, walls and fences (as marked by yellow dots on the photographs attached to the notice).’*
- *The deletion of the plan attached to the enforcement notice and its substitution with the plan annexed to this decision.*

And varied by:

- *In section 5. **What you are required to do**, the deletion of all the words and their substitution with the words ‘(i) Cease the mixed use; (ii) Remove all caravans, vehicles and domestic paraphernalia associated with the use of land as a caravan site for human habitation from the land; (iii) Remove all gates, walls and fences, with the exception of the blockwork wall along the northern boundary adjacent to the public right of way; and (iv) Remove all materials and waste arising from step (iii) from the land.*

56. Subject to the corrections and variations, 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 of use of land to a mixed use of a caravan site for human habitation and the keeping of horses, and the erection of buildings, gates, walls and fences at land on the west side of Sandybridge Lane, Shafton, Barnsley S72 8PL, as shown on the plan attached to this decision and subject to the conditions set out in the Schedule of Conditions annexed to this decision.

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philip Brown	Agent
Kevin Rogers	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Chris Byrne	Planning Enforcement Officer, Barnsley MBC
Paul Doherty	Group Leader, Planning Building Control and Enforcement, Barnsley MBC

DOCUMENTS

HD1	Barnsley Gypsy and Traveller Five Year 'Deliverable' Land Supply Report April 2024 – March 2025
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PLANS

HD2	Amended Enforcement Notice Plan Scale 1:1000
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SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 2) No more than 6 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 3 shall be static caravans) shall be stationed on the site at any time.
- 3) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 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: the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas; tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities; the means of foul and surface water drainage of the site; proposed and existing external lighting; boundary treatment within and around the external site boundaries, and the provision of visibility splays, hereafter referred to as the site development scheme 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 Site Development Scheme specified in this condition, the matters approved and implemented shall thereafter be maintained/retained/remain in use.

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.

- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order with or without modification), no development permitted by virtue of Class B, of Part 5 of Schedule 2 to the Order shall be undertaken.
- 5) No commercial or industrial activities, including storage of vehicles, equipment and materials, shall take place on the land, and no vehicles above 3.5 tons in weight shall be parked on the site.

- END -



Plan

This is the plan referred to in the appeal decision dated: **[Date]**

by **M Madge**

Land on the west side of Sandybridge Lane, Shafton, Barnsley S72 8PL

Reference: APP/R4408/C/22/3305546

Scale: Not to Scale

