



Appeal Decision

Hearing held on 21 March 2025

Site visit made on 21 March 2025

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29 April 2025

Appeal Ref: APP/G5180/C/24/3339726

Land South West of Hangrove Hill, Downe

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Keith Shilling against an enforcement notice issued by the Council of the London Borough of Bromley.
- The notice was issued on 30 January 2024.
- The breach of planning control as alleged in the notice is *Without the required planning permission, the material change of use of the land to a mixed use of storage and siting of a caravan used for residential purposes, with, for the purpose of that mixed use, the provision of a hard surface.*
- The requirements of the notice are to: cease using the land for storage and for the siting of a residential caravan; to remove from the land all stored items, the caravan and the hard surface; and to restore the land to its condition before the breach of planning control took place.
- The periods for compliance with the requirements are three months in respect of the storage use and items and six months for all other requirements.
- 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 Decision: the appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

Notice of the hearing

1. The Council's notice of the hearing arrangements did not describe the full development enforced against, but referred only to a 'change of use'. The appellant questioned whether this was sufficient to comply with the legislative requirements found in the Hearing Procedure Rules (SI 2002/2684) which require that the notice of a hearing shall contain a brief description of the subject matter of the appeal, and I was invited to adjourn the proceedings.
2. I declined to do so because in the round I am satisfied that third parties given notice of the hearing are well aware of its subject matter. They were previously notified of the appeal having been made, and that notice sent by the Council described the development more fully. Some third parties attended the hearing, including the two immediate neighbours. I was unable to detect any prejudice to any party's interests arising from the Council's truncated description of the development, which is in any event accurate even if somewhat imprecise.

Representations

3. The Council's notice of the appeal and the hearing was given to a large number of people, not all of whose interest in the development is immediately obvious. No representations were received during the course of the appeal (save from the principal parties).

4. A planning application relating to part of the appeal site was made by the appellant some time before the notice was issued, and the Council determined to refuse that application around a week after issuing the notice. The subject matter of the application did concern residential development, including the provision of a mobile home, but the Council took the view that the development enforced against was so sufficiently different from that applied for that the appellant was not entitled to a waiver of the appeal fee on the enforcement notice (under the 'free go' provisions). No appeal was brought against the refusal of planning permission.
5. It was pointed out to the Council in correspondence before the hearing that none of the representations made on the planning application had been provided in the course of the appeal against the notice. The Council then submitted those representations to the Inspectorate, but they were returned and I have not read them. On the Council's own case, they relate to a substantially different development from that enforced against.
6. I acknowledged at the hearing to those third parties present that this may appear to be a 'technicality' and that, in their minds, the developments might be similar enough that I should see the representations made on the planning application. Nonetheless, the Council's notice of the appeal did invite representations to be made on the appeal against the notice, and did not suggest that any previous representations made in response to the planning application would be brought to my attention. The general flavour of the views of nearby residents was cogently summarised by Ms Johansson during the course of the hearing.

Updates to Statements of Case

7. The notice was issued in January 2024 and the appeal brought shortly afterwards. Since the parties' statements of case were submitted there have been significant changes to national policy, particularly in respect of the Green Belt and in relation to Gypsies and Travellers. Accordingly the parties were invited to submit addendum statements before the hearing, and the Council did so.

Main Issues

8. The main issues in the appeal arise from the Council's reasons for issuing the enforcement notice. The principal issues are the effect of the development on the openness of the Green Belt, including now whether the land amounts to Grey Belt, its effects on the character and appearance of the area, its effects on the nature conservation site, and its effects on trees.
9. Other matters for consideration include whether the development was intentionally unauthorised, the need for Gypsy and Traveller sites in the area, whether the appellant is a Gypsy or Traveller, and the suitability and availability of any alternative sites. In the event that conflict with the development plan is found, it may also be necessary to consider any personal circumstances put forward by the appellant to justify any grant of planning permission.
10. The appellant requested a hearing because of the need to discuss (1) his gypsy status (2) his personal circumstances and (3) the availability of alternative sites. Together with the changes to national policy and the Council's assessment of the need for Gypsy and Traveller sites in the area, these formed the main focus of discussion at the hearing.

Reasons

Green Belt

11. The appellant did not initially dispute that the development is inappropriate in the Green Belt, and no written update to his statement was received despite the invitation to submit one. Nonetheless I understood from his agent's remarks at the hearing that the inappropriateness of the development is now in issue.
12. Paragraph 155 of the National Planning Policy Framework ('the Framework') provides that the provision of homes or other development should not be regarded as inappropriate where a number of conditions are met. These firstly include that the development would utilise grey belt land. That is defined, as relevant here, in the glossary to mean land that does not strongly contribute to one of three of the five Green Belt purposes found in paragraph 143. The Council contend that the site plays a role in preventing the coalescence of Orpington and Biggin Hill (purpose (b)): whilst the site is located between those towns it is not of itself a size that could 'strongly' contribute to that purpose. The further requirement under paragraph 155(a) is that the development would not fundamentally undermine the purposes of the remaining Green Belt across the area of the plan. Whilst the appeal site undoubtedly contributes to the purpose of safeguarding the countryside from encroachment, I cannot be satisfied that the development of a single caravan pitch would fundamentally undermine the purposes of the remaining Green Belt, given what paragraph 155 is seeking to achieve.
13. Criterion (b) of paragraph 155 requires that there be a demonstrable unmet need for the type of development proposed. This will be discussed below in relation to the residential aspect of the use, but there is no suggestion that it applies to the storage element. Accordingly the development fails this criterion. The undisputed mixed use alleged here is not of the same flavour as those examples given in the previous Framework paragraph, 154(h)(v), and the use for storage, with an array of materials spread across the site, necessarily fails to preserve openness and conflicts with the purpose of safeguarding the countryside from encroachment.
14. Criterion (c) requires that the development be in a sustainable location. The relevant footnote cross-refers to paragraph 13 of Planning Policy for Traveller Sites ('the PPTS') although this lies in the plan-making rather than decision-taking part of the PPTS. For decision-taking, the PPTS continues to advise that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements. This is broadly reflected by paragraph (b) of Policy 12 of the Bromley Local Plan, requiring that new Traveller sites are well-related to schools, medical facilities, shops and public transport.
15. The appeal site although lying close to a small cluster of three dwellings is otherwise far from services or facilities, accessed from a narrow unlit lane beyond reasonable walking distance of any settlement. The site has a PTAL rating of zero. It is not in a sustainable location. The final criterion of paragraph 155, relating to the Golden Rules, does not apply to Traveller Sites.
16. Thus I find that the development is inappropriate in the Green Belt. That is by definition harmful to the Green Belt and should not be approved except in very special circumstances. As well as being inappropriate by definition, the development also gives rise to significant localised harm to the openness of the Green Belt. Formerly undeveloped, the site now contains an array of structures

and materials: along with the caravan there are vehicles, a storage container and machinery as well as stacks of sheet metal fencing, paving slabs and the like. Much woodland clearance has taken place, although I understand much of this to be attributable to the need to keep the overhead power lines clear. Use is however made of the cleared areas for the storage of items thus encroaching on land formerly forming part of the undeveloped countryside.

17. The Framework demands that I give substantial weight to any harm to the Green Belt including to its openness.

Character and appearance of the area

18. Policy 37 of the Bromley Local Plan is a general design policy requiring all developments to be of a high standard of design that are attractive to look at. The appeal site is broadly trapezoidal, narrowing to the front, and on rising ground above Cudham Road above a small cluster of dwellings closer to the road and all accessed at the same junction. It lies within a swathe of mature woodland through which the narrow Cudham Road passes between the small settlements of Downe and Cudham.
19. The clearing of the site and the emplacement of the caravan and various other structures and stored items are not commensurate with the existing character of the area which is largely rural, wooded and undeveloped. Although adjoining a few houses, the development on the site is not commensurate with those because it is not purely residential but carries some extensive open storage of fencing and building materials which is not otherwise a feature of the area. The development is contrary to the requirements of Policy 37 requiring that it be attractive in appearance.

Nature Conservation

20. Policy 69 of the Bromley Local Plan is generally preclusive of development proposals that may significantly affect the nature conservation interest or value of locally important sites including the Site of Importance for Nature Conservation (SINC) that is relevant here. The adjoining dwellings and the site access are excluded from that designation but the site itself lies within the designated area. Parts of the nearby woodland also lie within a Site of Special Scientific Interest although excluding the appeal site and land to either side of it.
21. A preliminary ecological appraisal ('PEA') dated 20 February 2024 has been supplied in support of the appeal, although it describes the survey as having been required to inform a planning application involving the provision of a mobile home and a touring caravan. It describes the site as comprising woodland, grassland, introduced shrubs, scrub and unvegetated unsealed surface. It refers to the removal of an area of modified grassland and describes a number of foreseen impacts in relation to trees and vegetation, bats, birds, reptiles, amphibians, badgers, riparian animals, dormice and others. Avoidance and compensation measures were proposed including precautionary working methods and habitat creation measures.
22. The PEA does not address the retrospective nature of the permission by then being sought, but anticipates works to carry out the development it describes. This means that it does not address any harm that might already have arisen from the development, and it ignores the storage aspect of the use which is taking place

extensively throughout the site. I cannot be satisfied that it adequately appraises the development for which permission is now sought on the deemed application. Applying a precautionary approach, it follows that I cannot be satisfied that no significant effects on the value of the SINC would arise (or have arisen).

Trees

23. A longstanding tree preservation order applies to the site and to the adjoining woodland. Policy 73 of the Bromley Local Plan requires development proposals to take particular account of existing trees.
24. An Arboricultural Survey ('AS') to British Standard 5837:2012 has been supplied, although dating from May 2023 and prepared in support of an earlier planning application relating to a smaller parcel of land rather than the wider appeal site now under consideration. Again the proposed scheme under consideration was that of the earlier planning application rather than the mixed use now under appeal.
25. Felling of trees has taken place and there appears little reason to be confident that the 2023 survey of existing trees remains accurate. The recommendations of the AS, to ensure that there were no irrevocable issues to the proposed retained trees, were to obtain a further arboricultural report to include an arboricultural impact assessment, an arboricultural method statement and a tree protection plan drawing. That further report has not been supplied and I cannot be satisfied that the AS accounts for the existing development for which permission is now sought, including the extensive storage uses across the site. Accordingly the proposal has not taken particular account of existing (or former) trees on the site and does not meet the requirements of Policy 73 in this respect.

Intentional Unauthorised Development

26. The site is the subject of previous enforcement action relating to storage uses and the appellant was plainly aware of the need for planning permission here. The government is concerned about the harm that is caused when development of land takes place in advance of obtaining planning permission, where there is no opportunity to appropriately limit or mitigate any resulting harm. Because of the potential sensitivity of the site in the SINC I attribute this matter some weight.

The need for Gypsy and Traveller sites

27. The Council's need assessment dates back to 2016 and assessed the needs of Gypsies and Travellers in accordance with earlier iterations of the PPTS that, at the time of publication of the local needs assessment, excluded from the planning definition of Gypsies and Travellers those who had permanently ceased to travel. The appellant draws my attention to the now significantly expanded definition of Gypsies and Travellers that is more akin to that found in the relevant Housing Regulations of 2006 (SI 2006/3190) as well as to the particularly high local concentrations of Gypsies and Travellers housed in bricks and mortar housing. The age of the needs assessment is a further factor affecting, in the appellant's view, the understatement of local need and the lack of a five-year supply of deliverable pitches.
28. As of 2016 the current need for Traveller provision was assessed as between 10 and 14 pitches, with a need for an additional six pitches by 2021 and the

subsequent need for a further 13 to 14 pitches over the remainder of the plan period to 2031. The findings were said to be robust by the Examining Inspector of the Local Plan in a report published in 2019. Nonetheless I accept that the more recent and expanded definition of Gypsies and Travellers applicable in national planning policy may mean that the existing level of need is somewhat underestimated.

Suitability and availability of alternative sites

29. A contrary indication is given by the existing vacancy rate on the Council's own sites, however, which has increased from nine to 12 during the course of this appeal. The appellant describes these sites as being more akin to transit sites, being unwelcoming and not nice. The Council deny that those sites are similar to transit sites, saying that there are some residents who have been there for many years and there is no reason why they could not be a reasonable alternative here.
30. My attention is drawn to an earlier appeal decision in the Borough in which the family there had vacated one of the Council-owned sites. The Inspector there found that the site would not be a suitable location for that family, and that the other might not be suitable because of a health condition affecting one of the children affected by that decision. However this does not explain why either site would be unsuitable for the appellant. He has referred to 'vendettas' but these are unexplained, and he has not explained any particular cultural concerns other than that the sites are not very nice. In the absence of any detailed articulation by the appellant to justify why the Council-owned sites are unsuitable, I do not give any weight to the asserted lack of suitable and available alternative sites.

Gypsy or Traveller status of the appellant

31. That foregoing analysis assumes that the appellant is a Gypsy or Traveller whose need to live in a caravan is one the Council should seek to accommodate. From the evidence before me, however, I am not satisfied that this is the case.
32. The Council served a Planning Contravention Notice ('PCN') that was answered at the end of 2023. Questions were asked about the appellant's living arrangements before moving on to the site but these were largely unanswered. The use of the caravan for residential purposes was said to have begun in April 2023. Although at the hearing the appellant suggested that he had previously moved around in the caravan, any previous locations were unspecified. When the caravan became the appellant's sole residence was an unanswered question in the PCN response. At the hearing the appellant indicated that any previous moving around in the caravan was due to having been moved on from unauthorised sites, and confirmed he had not ever moved the caravan around for work purposes.
33. The appellant was raised in bricks and mortar accommodation although his PCN response stated that he is 'not comfortable in a house'. The lack of detail as to his whereabouts before moving onto the site however make it impossible for me to conclude that he is of a nomadic habit of life. Nor do I have sufficient information upon which to conclude that he has a 'cultural tradition' either of nomadism or of living in a caravan. It appears to be a recent preference in response to changing family circumstances. Although the appellant 'defines as' an English Traveller, whether or not the requisite cultural tradition or nomadic habit is established is a matter not of self-definition but of objective consideration upon receipt of adequate information.

Personal circumstances of the appellant

34. The appellant expressed his wish to live on the site because of his ownership of it. He works locally, carrying out all sorts of jobs including landscaping and digging and occasionally on the railways as a welder. He has two daughters, of whom one is now an adult. Those daughters have not previously stayed overnight on the site although if permission is granted he would seek to acquire a larger caravan in order that they could do so. The younger daughter is settled in school and both live with their mother in a house reasonably close by. By achieving a lawful site and permanent base the appellant would hope to reconcile with his wife. If permission is refused he anticipates becoming homeless or resorting to a roadside existence.

Planning Balance and Conclusions

35. Inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances in which the harm to the Green Belt and other harm is clearly outweighed. I give substantial weight to the harm to the Green Belt both by definition and by reason of the impact on openness and conflict with the purpose of safeguarding the countryside from encroachment. Additional harm is caused to the visual amenity of the area and its character by the development. The absence of any adequate assessment of the impacts (past or future) on nature conservation interests or of trees also weigh against the development. Were I to consider granting a temporary permission, although the harm would be time limited and therefore carry less weight, the harm would nonetheless still be substantial.
36. I have been unable to conclude with any confidence that the Council are able to demonstrate a five-year supply of Gypsy and Traveller pitches owing mainly to recent definitional changes that carry implications for the 2016 assessment of need in the area. This carries some weight in favour of the proposal, but such weight is limited because I have found no reason why, if he is a Gypsy or Traveller, the appellant could not suitably relocate to an alternative site given the dozen vacancies that presently exist on Council-owned sites.
37. I have had regard to my duty under the Equality Act to avoid discrimination and promote equality, but because I am not satisfied that the appellant is a Gypsy or Traveller I am not satisfied that my duty arises in this case. If it is the case that the appellant is a Traveller then the substantial harm arising from the development would clearly outweigh any benefits from eliminating discrimination, advancing equality of opportunity or fostering good relations. I have also had regard to the Human Rights implications of my decision and specifically that dismissing the appeal will amount to an interference with the appellant's home and family life. However this is proportionate and necessary. I am not satisfied that the appellant would need to resort to a roadside existence, and the development was carried out in the knowledge that permission was required. The best interests of any children, who presently reside with their mother and have never stayed at the site, appear to me unaffected.
38. Although there are some factors in its support, the considerations weighing in favour of the appeal proposal are wholly insufficient to amount to the very special circumstances required to justify the development, for the above reasons.
39. For these reasons, and having had regard to all considerations put before me and raised at the hearing, I conclude that the appeal on ground (a) should not succeed.

I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The appeal on ground (g)

40. The appeal on ground (g) seeks a minimum period of 12 months to comply with the notice's requirements if the ground (a) appeal is dismissed, with no further explanation or justification given in the appellant's grounds of appeal letter. At the hearing the requirement for 12 months was largely founded on the appellant's assertion of there being no suitable available alternatives. As I have concluded that this assertion lacks merit, the respective three and six months given by the notice appear to me an adequate period in which to vacate the site and restore the land to its previous condition. Therefore the appeal on ground (g) will fail.

Formal Decision

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

Laura Renaudon

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Brian Woods, WS Planning (Agent)

Keith Shilling, appellant

FOR THE LOCAL PLANNING AUTHORITY:

David Bord, Principal Planning Officer

INTERESTED PARTIES:

Cllr Jonathan Andrews, local Member

Dr Robert Wickham, Howard Sharp & Partners LLP, representing the Diocese

Elaine Johansson, neighbour

David Evans, Chairman of the local residents' association