



Appeal Decision

Hearing held on 19 November 2024

Site visit made on 19 November 2024

by **T Shields DipURP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 May 2025

Appeal Ref: APP/U2235/C/24/3340982

Plot A, Three Sons, Hampstead Lane, Nettlestead, ME18 5HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act").
- The appeal is made by Mr Moses Brazil against an enforcement notice issued by Maidstone Borough Council.
- The notice was issued on 15 February 2024.
- The breach of planning control as alleged in the notice is a breach of Condition 2 of planning permission Ref: APP/U2235/C/15/3138039, granted on appeal, in respect of the matters stated in an enforcement notice (Ref: ENF/500852) issued on 2 October 2015.
- The development to which the permission relates is: *"the change of use of the land from agriculture to a mixed use comprising agriculture and the stationing of caravans in residential occupation, and the carrying out of operational development being the laying of areas of hardstanding; the erection of fencing; and the erection of two day rooms"*.
- The condition in question is Condition 2 which states:
"When the premises cease to be occupied by those named in condition 1 above, or at the end of 5 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials 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 condition before the development took place".
- The notice alleges that Condition 2 has been breached because the mobile homes, dayrooms and domestic residential paraphernalia, hardstanding, walls, fences and gates remain on site and the land has not been restored to its former condition.
- The requirements of the notice are:
 - a) Cease the use of the land for residential purposes within the red line of the attached plan
 - b) Remove from the land all mobile homes within the red line of the attached plan.
 - c) Demolish all buildings, gates, walls and fences within the red line of the attached plan.
 - d) Remove from the land all associated paraphernalia including hard standing, plainings/shingle and any subterranean features such as oil tanks, sewage treatment tanks and utilities from the Land as shown within the red outlined plan attached, and to return land to its previous condition/levels by ripping the ground in two directions, re-spreading topsoil over that land to a depth of 150mm (or more where necessary) to fill in any depression and grading, allowing the regeneration of the natural grass sward.
 - (e) Remove all resultant materials, rubbish, paraphernalia, and debris from complying with step (a) (b) and (c) above, from the Land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Act. 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.

Decision

1. It is directed that the enforcement notice is corrected by:
 - in Section 1 after the word "paragraph" delete "(a)" and insert "(b)";

- in Section 3, first line, after the word “granted” insert “on 1 June 2017”;
 - in Section 3, third line, after “2015”, insert the following words:-
“The planning permission granted was for the change of use of the land from agriculture to a mixed use comprising agriculture and the stationing of caravans in residential occupation, and the carrying out of operational development being the laying of areas of hardstanding; the erection of fencing; and the erection of two day rooms”.
 - in Section 3, under the heading The Breach of Condition Concerned, delete all of the words and substitute instead the following words:-
“It appears to the Council that the condition is in breach because the use has not ceased and the caravans, dayrooms, structures, hardstanding, materials and equipment, walls, fences and gates remain on site and the land has not been restored to its former condition”;
 - in Section 5(a), delete all of the words and substitute the following words:-
“Comply with Condition 2 of planning permission APP/U2235/C/15/3138039 granted on 1 June 2017 by ceasing the use of the site for residential purposes”;
 - in Section 5(b), delete the words “mobile homes” and insert “caravans”;
 - in Section 5(d), first line, delete the word “paraphernalia” and substitute:-
“works undertaken in connection with the use”;
 - remove the plan attached to the enforcement notice and substitute instead the plan attached in the Annex to this Decision.
2. Subject to the corrections 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 Act for the development already carried out, namely; use of the land as a mixed use comprising agriculture and the stationing of caravans in residential occupation, and the carrying out of operational development being the laying of areas of hardstanding; the erection of fencing; and the erection of two day rooms, as shown on the (corrected) plan attached to the notice and subject to the conditions in the attached Schedule.

Preliminary Matters

3. There are some minor drafting errors in the enforcement notice and its attached plan. I agreed with the parties’ conclusions at the Hearing these could be corrected without injustice to their respective cases. Using powers available to me under s176(1) of the Act I have therefore corrected the notice accordingly as set out in paragraph 1 above.
4. Following the close of the Hearing the parties were invited to submit further written comments in respect of the latest versions of the Framework¹ and PPTS², and how they might have relevance to their cases, but neither party did so. I have taken the current Framework and PPTS into account in reaching my Decision.
5. On 19 February 2025 the Council adopted the Maidstone Borough Council Local Development Scheme (2025-2027). I have taken it into account so far as it is relevant to the appeal.

¹ National Planning Policy Framework (2024)

² Planning Policy for Traveller Sites (2024)

Appeal on ground (a)/deemed planning application

6. The appeal on this ground is that planning permission ought to be granted.

Main Issues

7. These are:

- (i) Whether the use of the site as a residential caravan site would be inappropriate development in the Green Belt;
- (ii) The effect on openness of the Green Belt;
- (iii) The effect on the character and appearance of the area;
- (iv) Flood risk;
- (v) If inappropriate development in the Green Belt, whether any harm to the Green Belt, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Whether inappropriate development in the Green Belt

8. PPTS confirms that traveller sites (temporary or permanent) are inappropriate development in the Green Belt unless they fall within one of the exceptions in Chapter 13 of the Framework.
9. The site is within an area at high risk of flooding. For the reasons I set out later in respect of flood risk, this provides a “*strong reason for refusing or restricting development*” and hence does not fall within the definition³ of Grey Belt land. Consequently, the development is not an exception within paragraph 155 or any other paragraph in the Framework. The development is therefore inappropriate development in the Green Belt, in conflict with Policy LPRSP9⁴, and which is harmful by definition. I attach substantial weight to this harm.

Effect on openness of the Green Belt

10. There is some boundary screening limiting views from outside the site. Nonetheless, the caravans, hardstanding and other structures on site, together with typical domestic activities, reduce the openness of the Green Belt in both a visual and spatial sense. In doing so the development of the site also represents an encroachment into the countryside in conflict with one of the Green Belt purposes at Framework paragraph 143. The reduction in openness results in further harm to which I attach additional weight.

Character and appearance

11. The appeal site is within the Nettlestead Green Farmlands Character Area (CA) in the Council’s LCA⁵, the key features of which include a relatively flat low-lying landscape with native hedgerows, traditional farmsteads and a small but irregular field pattern. These and other more traditional key features are fragmented resulting in some incoherence of the overall character of the CA. The LCA guidelines for improvement advises that new development should improve the strength of character through promoting the use of local materials and having regard to the style of development.

³ Grey Belt definition in the Glossary and footnote 7 to the Framework

⁴ Maidstone Borough Local Plan Review (2024)

⁵ Landscape Character Assessment (2013) (LCA).

12. Notwithstanding the LCA guidelines, PPTS recognises that traveller sites can be in countryside locations and Policy LPRHOU8 also allows for sites to be located in the countryside subject to the development not resulting *“in significant harm to the landscape and rural character of the area”* including with particular regard to local landscape character, cumulative effect, and existing landscape features.
13. Policy LPRQD4 sets out design principles for all new development in the countryside. As far as design principles are assessed in relation to traditional Gypsy and Traveller site accommodation, which would typically include caravans and single storey dayroom buildings, the LPRQD4 policy requirements are also reflected in the criteria of LPRHOU8, which specifically provides for this type of development.
14. The development as carried out is a relatively small scale site, with its layout and appearance reflective of the design and appearance of typical Gypsy and Traveller site accommodation. It occupies a more tucked-in and inconspicuous location than would otherwise be the case if it were further to the south (within the area subject of previous enforcement and legal proceedings). Additionally, while there is no requirement or need to screen Gypsy and Traveller sites so as to prevent them from being visible, the existing roadside vegetation provides some natural screening which helps to assimilate the site with its surroundings.
15. While the landscape in the CA is incoherent with low sensitivity to change, I am mindful that development of all types should reflect the aspiration to reduce or minimise fragmentation, and to improve the quality and strength of the landscape character. In this regard, while I acknowledge there is a degree of harm to the overall character and appearance of the landscape, I find on balance that it does not cross the threshold in LPRHOU8 of resulting in a level of *“significant harm”*. As such, there would be no material conflict with LPRHOU8.

Flood risk

16. The appeal site is within Flood Zone (FZ) 3a in the Environment Agency’s (EA) flood maps, thereby having the highest vulnerability to the risk of flooding in any one year. Highly vulnerable forms of development, including caravans for permanent residential occupation, would not normally be permitted in FZ3a as set out in Policy LPRHOU8(e) and the Framework.
17. The Framework⁶ states that a sequential risk-based approach should be taken to individual applications in areas known to be at risk now or in future from any form of flooding and that *“the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding”*.
18. In support of the appeal the appellant has submitted a flood risk assessment (FRA) dated June 2022 which I understand to have been submitted previously in respect of an earlier appeal. With regard to this current appeal it fails to demonstrate that the development within the site boundary, including the caravans and the access route, would not be located on an area at risk of flooding from any source, now or in the future. Accordingly, a sequential test (ST) is required.

⁶ National Planning Policy Framework (2024) paragraphs 173, 174

19. The Planning Practice Guidance (PPG) makes it clear that it is the local planning authority's responsibility to consider if the ST has been satisfied, informed by evidence provided by the developer. However, no such evidence relating to the consideration and discounting of alternative sites is before me, or of the ST having been applied. Consequently, the ST has not been passed.
20. If the ST is passed, which is not the case here, the PPG⁷ provides a flood risk vulnerability table in respect of applying an exception test (ET). However, for highly vulnerable development proposals in FZ3a, as is the case in this appeal, the PPG indicates that the ET is not applicable and that the development should not be permitted.
21. Consequently, for these reasons it has not been demonstrated the site is suitably located in respect of flood risk, thereby in conflict with the Framework and the requirements of Policy LPRHOU8(e).
22. As to whether the site could be safely managed in accordance with Framework paragraph 181(a) to (e) with safe access and escape routes in an emergency, I am satisfied that this could be achieved subject to a planning condition being imposed. While this does not overcome the conflict with Policy LPRHOU8(e) and the Framework, I will take account of this factor later in the in the overall planning balance.

Other considerations

23. Other considerations argued by the appellant in support of allowing the appeal include that there is a significant unmet need for pitches identified in the latest GTAA⁸ for traveller accommodation in the Borough and that the emerging DPD⁹ to address the supply of sites to meet current and future need is unlikely to be adopted soon.
24. The Council's LDS sets out the current timetable for delivering the emerging DPD indicating that adoption is currently expected to be January 2028, assuming no slippage in the timetable. The Council also acknowledges they are only able to demonstrate 1.2 year supply of deliverable pitches against current need. Neither party were able to suggest any currently available alternative sites to which the appellant and his family could relocate. These factors, taken together carry substantial weight in support of the appeal.
25. Additionally, undisputed oral evidence, supported by documentary evidence at the Hearing, set out the personal social, health and welfare circumstances of the appellant and his family, and the educational status and needs of his children.
26. With regard to these personal circumstances I note that making the appellant and his family homeless would engage Article 8 of the European Convention on Human Rights, set out in UK law within Schedule 1 of the Human Rights Act 1998, which is the right for respect for private and family life. This is a qualified right, requiring a judgment as to whether or not such an interference would be necessary and proportionate in the wider public interest and well-being of the country, which includes the protection of the environment and upholding planning policies.

⁷ Flood Risk - Table 2: Reference ID: 7-079-20220825

⁸ Maidstone Borough Council Gypsy, Traveller, and Travelling Showpeople Accommodation Assessment (2023)

⁹ Maidstone Gypsy, Traveller and Travelling Showpeople Development Plan Document

27. Article 3(1) of the United Nations Convention on the Rights of the Child “*the best interests of the child*” is also engaged. As such, the best interests of the children on site is a primary consideration and no other consideration can be inherently more important. It is well established that children in Traveller communities are likely to have lower educational attainment and experience other harm from disruption if they miss school regularly or have to move between different schools.
28. I attach significant weight to the family’s personal circumstances and with particular regard to them being made homeless and the disruption that would bring to the children’s education. The provision of a stable family home and uninterrupted access to social, welfare and education would be a benefit in terms of meeting the need to facilitate the Gypsy way of life as set out in the Framework.

Green Belt balance

29. Framework paragraph 153 sets out that inappropriate development in the Green Belt should not be approved except in very special circumstances, and that these will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
30. For the reasons previously set out earlier I attach substantial weight to the harm resulting from the definitional harm to the Green Belt. Further weight is added to the harm I have identified in respect of the reduction in openness of the Green Belt and flood risk.
31. In support of allowing the appeal I attach substantial weight to the scale of unmet need for pitches and the lack of available sites, and further significant weight is added with regard to the appellant and his family’s personal circumstances.
32. Although I have found no significant harm to the character and appearance of the countryside, and hence no conflict in this regard with Policy LPRHOU8, this lack of conflict is neutral in the overall planning balance.
33. To conclude, I find that that the other considerations in support of allowing the appeal do not clearly outweigh the totality of harm I have described in respect of the Green Belt and flood risk. Consequently, very special circumstances have not been demonstrated.

Overall Planning Balance

34. PPTS paragraph 28 confirms that in the absence of an up to date 5 year supply of deliverable sites Framework paragraph 11(d) is engaged. This means that permission should be granted unless either of the following applies:
 - (i) *The application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development.*
 - (ii) *Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.*

35. With regard to the whether full planning permission should be granted I have found, for the reasons given earlier, that the harm to the Green Belt and in respect of flood risk is not clearly outweighed. Turning to the application of the Framework's policies on these matters, they provide a strong reason for refusing planning permission; and the adverse impacts of granting permission would significantly outweigh the benefits, in conflict with Framework paragraph 11(d)(i) and (ii).
36. As to whether a temporary permission should be granted, the harm to the Green Belt and in respect of flood risk would be reduced by being time limited. Harm from flood risk would be further reduced by way of a planning condition to ensure the site is flood resilient and occupied in accordance with an agreed emergency plan.
37. In these circumstances the balance shifts and I find that the other considerations previously set out would clearly outweigh the harm to the Green Belt, and other harm, such that very special circumstances are demonstrated. Furthermore, with regard to the overall balance and Framework paragraph 11(d)(i) and (ii), the Framework's policies on these matters do not then provide a "strong reason" for refusing a temporary permission, and the adverse impacts would not significantly and demonstrably outweigh the benefits of doing so.
38. The appellant argued that a period of 5 years would be appropriate. However, given the scale of unmet need for pitches in the Borough and the earliest adoption of the emerging DPD to address that need being January 2028, I consider that a temporary permission for a period of 4 years is justified.

Conditions

39. A number of conditions that might be appropriate to impose in the event of the appeal succeeding were discussed at the Hearing.
40. Since the permission is in part justified on the appellant and his family's personal circumstances conditions are required to tie the permission to those named persons, and for the use to cease in the event of them no longer occupying the site or at the end of 4 years, whichever may be the case.
41. For the sake of clarity a site plan showing the site layout and position of caravans and structures is required to be submitted and approved.
42. In the interest of preventing harm to the character and appearance of the countryside and to the openness of the Green Belt, conditions are required to limit the total number of caravans to 4, of which no more than 2 shall be of a static/mobile home type; to prohibit commercial activities and the stationing of vehicles over 3.5 tonnes; and to prevent further addition of temporary buildings and structures by removing permitted development rights.
43. To ensure the safety of occupiers for the lifetime of the permission a condition is required to ensure the site is occupied at all times in accordance with a Flood Emergency Plan, which shall include evidence of registration to the Environment Agency's 'Floodline' warning service.
44. I have not imposed a landscaping condition given that there is adequate boundary treatment and the permission is time limited.

Conclusion

45. For all the above reasons, while there is conflict with the Development Plan policies, material considerations in this case indicate that the decision should be taken otherwise than in accordance with the Plan. The appeal on ground (a) therefore succeeds.
46. In these circumstances there is no need to consider the appeal on ground (g).

Thomas Shields

INSPECTOR

Schedule of Conditions

- 1) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Mr Moses Brazil, Mrs Goliea Brazil and Nancy Brazil.
- 2) When the premises cease to be occupied those named in condition 1 above, or at the end of 4 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials 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 condition before the development took place.
- 3) No more than 4 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 2 shall be a static caravan/mobile home) shall be stationed on the land at any time.
- 4) Within 3 months of the date of this decision a site layout plan, to include positions of all caravans and structures, shall be submitted to and approved in writing by the local planning authority. Thereafter the site shall not be occupied other than in accordance with the approved plan.
- 5) Within 3 months of the date of this decision a Flood Emergency Plan (FEP), to include details of finished floor levels of caravans and means of their tethering/anchoring, and evidence of registration to the Environment Agency's 'Floodline' warning service, shall be submitted to and approved in writing by the local planning authority. The site thereafter shall not be occupied other than in accordance with the FEP.
- 6) No commercial activities shall take place on the land including the storage of materials, and no vehicle over 3.5 tonnes shall be parked or stationed on the site.
- 7) Notwithstanding the provisions of Schedule 2, Part 4, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no temporary buildings or structures shall be stationed on the land other than those expressly authorised by this permission.

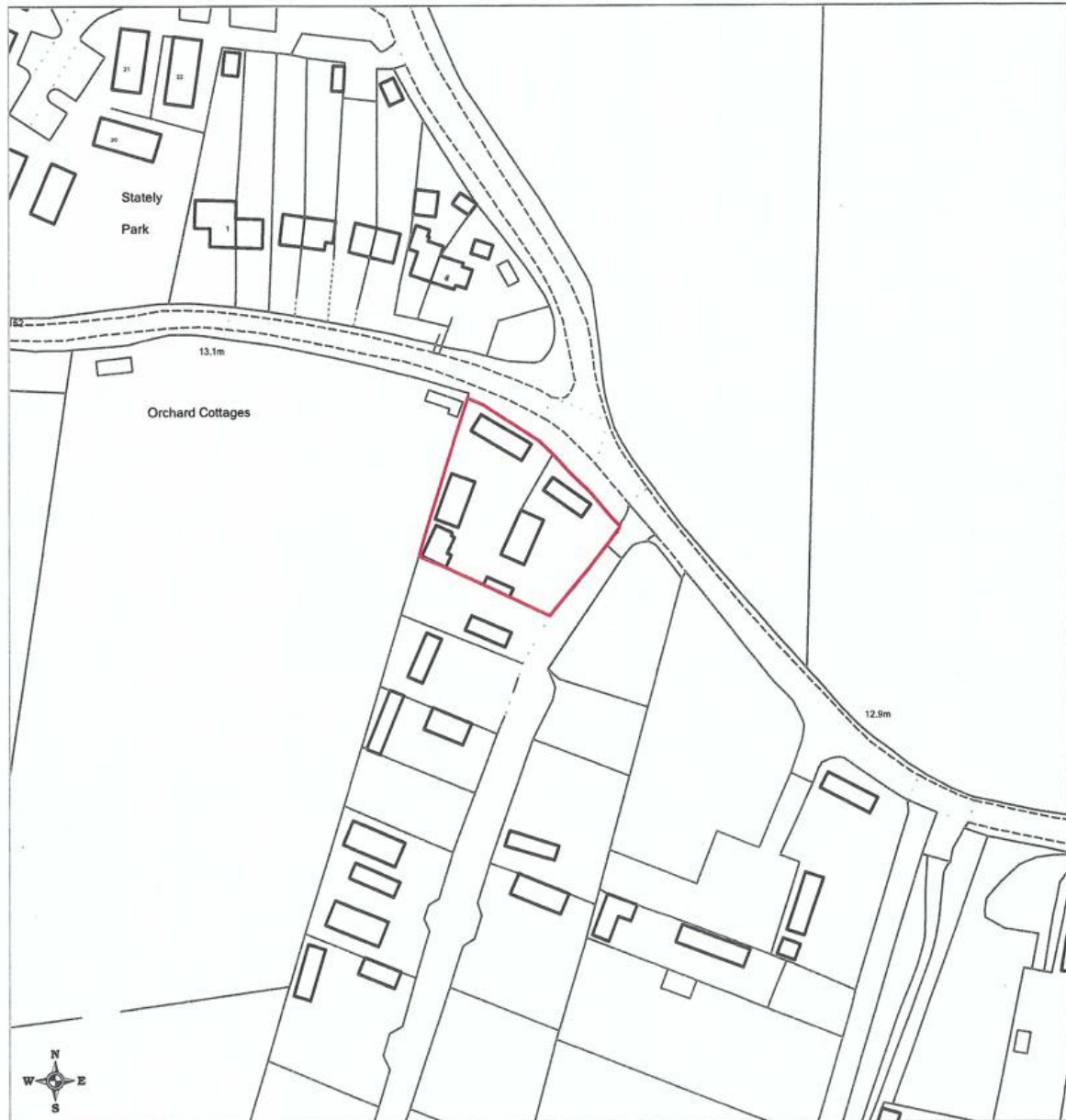
ANNEX – corrected enforcement notice plan

THE MAIDSTONE BOROUGH COUNCIL

PLAN REFERRED TO IN PLANNING ENFORCEMENT NOTICE

Address: Plot A
Three Sons
Hampstead Lane
Nettlestead
ME18 5HN

Reference: 24/500067/CRVNP2



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APPEARANCES

FOR THE APPELLANT:

Simon McKay BSc MA MRTPI	Director, SJM Planning Ltd
Moses Brazil	Appellant
Nancy Brazil	Occupier

FOR THE LOCAL PLANNING AUTHORITY:

Sue King	Planning Enforcement Team Leader
Peter de Villiers	Senior Planning Enforcement Officer

DOCUMENTS SUBMITTED DURING THE HEARING

- 1 Landscape Character assessment extract for Nettlestead Green Farmlands
- 2 Appellant's family health and welfare information
- 3 Plan showing Green Belt and Flood Zone 3 area
- 4 Plan showing Green Belt and National Landscape area