



Appeal Decisions

Site visit made on 16 October 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 OCTOBER 2025

Appeal Ref APP/U2235/C/25/3369052

Land at Plot 1 (Woodside), West of Water Lane, Harrietsham, ME17 1DH

- The appeal is made by Ms Elvina Matthews against an enforcement notice issued by Maidstone Borough Council.
 - The notice was issued on 3 July 2025.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of land to a mixed use of keeping of horses and residential for Gypsies and Travellers including the stationing of caravans and associated operational works including the laying of hard surfacing, installation of a septic tank, erection of close boarded timber fencing and the erection of three stable buildings, two which are used as utility buildings.
 - The requirements of the notice are to (1) cease the unauthorised keeping of horses and residential use of the Land; (2) remove all caravans and those labelled as 1 & 2 and the septic tank from the Land; (3) remove the three stable buildings labelled A, B & C, as indicated on the attached plan; (4) excavate and remove all the hardcore/Type 1 surfacing from the Land, including the concrete aprons located beneath the stables and mobile home(s); (5) remove all timber close board fencing from the site; (6) restore the Land to its previous condition and levels by ripping the ground in two directions to facilitate natural regeneration; and (7) clear the Land of all materials, rubble, rubbish and debris resulting from compliance with steps (2) to (5) above from the Land.
 - The period for compliance with the requirements is six 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.
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Decision

1. It is directed that the enforcement notice is varied by deleting the words “*within six months from the date this notice takes effect*” in section six, and their substitution with the words “*within twelve months from the date this notice takes effect*”. Subject to the variation, the appeal is dismissed, and the enforcement notice is upheld.

Appeal on ground (a) and the deemed planning application

Main Issues

2. The appeal made on ground (a) of section 174(2) of the Act is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice.
3. The breach of planning control includes mobile homes and two stable buildings (used as amenity blocks) on the front part of the site and stables/associated development to the rear of the site. The appellant has specifically requested that I consider the deemed planning application solely on the basis of the development to the front part of the site (i.e., two mobile homes, hardstanding and associated development) and not in respect of the rear part of the site, i.e., that highlighted in blue on the aerial photograph in paragraph 7.10 of the appellant’s ‘facts and grounds’ statement. Therefore, the appellant is asking me to consider a split

decision which would essentially see part of the notice being upheld and planning permission being granted for part of the matters alleged.

4. The appellant puts forward mitigation in the form of the use of a decompaction air probe (airspace method) and the drenching of soil (over three days) relating to the rear part of the site and a narrow strip of ancient woodland which runs immediately adjacent to the site (as highlighted in blue on the above aerial photograph). She says that this will ensure that the soil can recover from the current compaction and, in time, allow the ancient woodland to regenerate following replanting.
5. I have considered the reasons for issuing the notice and the statements of case of the main parties. In this regard, the main issues are i) the effect of the loss of ancient woodland and protected trees, ii) the effect of the development on the character and appearance of the area, iii) whether the site is accessible to local services by means of sustainable modes of transport, and, iii), if planning harm is identified, whether any such harm is outweighed by other considerations sufficient to justify granting planning permission.

Reasons

Loss of ancient woodland and protected trees

6. The evidence is that prior to the breach of planning control occurring, the land was vegetated and included many trees. Indeed, it formed part of an ancient woodland (i.e., an irreplaceable habitat), and the trees were afforded protection given the existence of the blanket woodland Tree Preservation Order No. 22 2009 (TPO). The making of a TPO is to prevent harm to trees that have significant amenity value and contribute to the local environment.
7. Paragraph 193(c) of the National Planning Policy Framework 2024 (as amended in 2025) (the Framework) states that when determining planning applications *‘development resulting in the loss or deterioration or irreplaceable habitats (such as ancient woodland and ancient veteran trees) should be refused, unless there are wholly exceptional reasons, and a suitable compensation strategy exists’*. Footnote 70 of the framework adds clarity in terms of *‘wholly exceptional reasons’*. It states, *‘for example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat’*.
8. I deal with the other considerations below including Gypsy and Traveller pitch need and provision, personal circumstances (including the best interests of the children on the land) and the availability of alternative sites. The other considerations below are not wholly exceptional reasons which justify granting planning permission on the site in the context of paragraph 193(c) of the Framework and footnote 70. In my judgement, the identified public benefits would not clearly outweigh the loss or deterioration of habitat on the land.
9. Moreover, the appellant’s ground (a) appeal and deemed planning application is made based on retaining part of the land as a Traveller site. The appellant comments that part of the development would be removed and, following compaction works, would enable part of the site, including that relating to a narrow strip of ancient woodland which runs immediately adjacent to the site, to regenerate including from replanting. However, given the extent of hardstanding, structures, caravans and domestic paraphernalia that would be retained on part of the land, I

do not find that the appellant has put forward a suitable compensation strategy for the land as a whole. The appellant's agent appears to accept this finding in so far that he says *'we do however acknowledge that the remainder of the site will continue to be used as a Gypsy and Traveller site and will, as a result, not be restored in the same way as the rear half of the site. As a result, we need to demonstrate that wholly exceptional reasons are required to justify the loss of the ancient woodland'*.

10. To the extent that the development has resulted in the loss of ancient woodland and its habitat, and without wholly exceptional reasons to justify granting planning permission for all or part of the development in conjunction with a suitable compensation strategy, I conclude that there is a failure to comply with the habitat and biodiversity requirements of paragraph 193(c) of the Framework, and policies LPRHOU8 1(f) and LPRSP14(A) of the adopted 2024 Maidstone Local Plan 2021-2038 (LP). Given my conclusion in respect of the impact of the loss of ancient woodland, paragraph 193(c) of the Framework states that development should be refused.
11. In respect of policy LPRSP14(A), it is also noteworthy that it requires new development to incorporate measures to deliver a minimum 20% biodiversity net gain (BNG) on new residential development. In the absence of the submission of detailed baseline biodiversity information prior to the unauthorised development occurring, I do not know if it would be possible to achieve 20% BNG as required by the policy. Moreover, there is no scheme or controlling mechanism before me to achieve this requirement even if it were possible to provide BNG in accordance with the requirements of policy LPRSP14(A) of the LP. To this extent, I cannot conclude that the development would be capable of according with paragraph 187 of the Framework which requires that decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.

Character and appearance

12. As part of my site visit, I was able to consider the appeal development in its surrounding environmental context. There is a relatively large existing Traveller site on the opposite side of the road. While this is experienced as being of a more urban/residential form in what is otherwise a predominantly undeveloped and wooded environment, there is nonetheless a noticeable absence of development on this side of Water Lane which includes the appeal site. Prior to the unauthorised development occurring on the appeal land, it included many trees which formed part of a wider ancient woodland and TPO. The land provided an undeveloped, bosky, more tranquil, and unbroken woodland edge to the development on the other side of the road, and, to the passer-by, it contributed positively and distinctively to the character and appearance of this countryside location, including to the wider landscape character.
13. In the context of the above, and accounting for the proposed retention of only part of the unauthorised development, I find that such development, which includes hardstanding, the siting of caravans and other domestic paraphernalia, constitutes a materially harmful incursion into what was otherwise ancient woodland. It has had the effect of unacceptably eroding what was otherwise a more bosky and tranquil character to Water Lane and is visually experienced as being an ad-hoc and disconnected expansion of existing residential development in the locality to the

overall detriment of the character and appearance of the area. I acknowledge that owing to the existence of many trees on surrounding land, the harm is essentially confined to the way that the area is experienced by passers-by in Water Lane and hence from localised public viewpoints. Nonetheless, the harm caused is still significantly adverse.

14. While the appellant has indicated that she would be prepared to remove part of the development to the rear of the site, and that some planting and/or natural regeneration could take place on this land (including the strip of land to the side), coupled with the potential for some additional planting on the part of the Traveller site which is proposed to be retained, any such planting would take several years to reach maturity. Moreover, and, given the fact that part of the land would still include extensive hardstanding, caravans, structures and other domestic paraphernalia, I do not find that site would be capable of being experienced in the same positive way as the former wooded/vegetated environment when experienced from Water Lane.
15. In reaching the above findings, I also note that the Traveller site that is proposed by the appellant to be retained immediately fronts Water Lane, as distinct from being set well back from the road and with intervening and significant planting. Therefore, such development would still appear as a harsh and intrusive break in the ancient woodland and hence would be conspicuous and out of character in the street-scene, even accounting for the request for me to issue a split decision and the potential for some new planting.
16. For the above reasons, I conclude that even accounting for the removal of part of the matters alleged in the breach of planning control (i.e., the provision of a smaller Traveller site), significant harm would still be caused to the character and appearance of this countryside location. Consequently, such development would not accord with the design, landscape character or appearance requirements of policies LPRHOU8(1)(c), LPRSP15 and LPRSP9 of the LP, and paragraph 187(b) of the Framework.

Accessibility to local services by sustainable modes of transport

17. The Council accepts that the LP, including policy LPRHOU8, does not prohibit Traveller pitches in the countryside as a matter of land-use principle. Indeed, this is also the position as outlined in the PPTS.
18. Policy LPRHOU8(1)(b) of the LP states that Traveller site proposals will be granted planning permission if '*local services, in particular school, health and shopping facilities, are accessible from the site preferably on foot, by cycle or on public transport*'. The Council's evidence is that the appeal site is about 3.5 miles from some day-to-day services (including a supermarket) in Harrietsham which is a defined Rural Service Centre in the LP. The route to Harrietsham until it meets the A20 is without footpaths and is unlit. The roads are narrow up to this point and, in my judgement, are not conducive to safe walking or likely regular cycling. Moreover, there is no evidence before me to indicate that there are any bus stops or services within convenient or safe walking distance of the appeal site.
19. While the LP does not seek to define what is meant by an accessible distance, I find that 3.5 miles is on the margins of acceptability in terms of an acceptable walking or cycle distance to local services. In any event, and, for the reasons outlined, there is no evidence before me to indicate that local services, in particular

school, health and shopping facilities, would be suitably accessible from the site on foot, by cycle or by public transport. In other words, the occupiers of the appeal site would likely be reliant on the private motor vehicle for most trips when seeking to use the nearest local services. I therefore conclude that the unauthorised development does not accord with the accessibility and sustainability requirements of policy LPRHOU8 of the LP.

Other Considerations

Whether occupiers of the site are Travellers

20. Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998 (HRA) states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
21. Furthermore, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Gypsies and Travellers are ethnic minorities and thus have the protected characteristic of race.
22. There is no dispute between the parties that the occupiers of the land are Travellers as defined in annex 1 of the Government's Planning Policy for Traveller Sites 2024 (PPTS). I have no reason to disagree with this common ground position.

Personal circumstances including the best interests of the children

23. The site is occupied by two adults. One adult has three children, one aged ten and two aged eight. She spent most of her young life on the established Traveller site opposite the appeal site. The other adult has two children, aged two and three respectively.
24. The evidence is that both adults had to vacate other Traveller sites prior to occupying the appeal site for personal and overcrowding reasons. One adult occupied a pitch in Knoxfield Caravan site in Darenth Wood Road, Dartford and the other on a pitch at the local authority site at Windmill Lane, West Malling. The evidence is that the latter adult has some health conditions, which result in a disability. She is registered at West Malling Group Practice (GP) and the evidence is that she has been on the Council's waiting list for a Traveller pitch for about the last three years.
25. I do not doubt that the site offers stability and security for the children on the site from an education and emotional well-being point of view. This level of stability and security would be unlikely to be achieved to the same extent from a roadside or more transient existence.
26. Furthermore, I do not doubt that the site gives the adults the security of a settled base and from which they can bring up the children in a manner which is befitting of the Traveller cultural way of life. Moreover, it is reasonable that I take the view that having a settled base and being registered with a GP provides the necessary support and assistance in terms of dealing with the identified health and disability

matters. Such support and assistance would not likely be the same if the occupiers of the land were forced to live a roadside existence. In addition, I am acutely aware that if the notice was upheld, it would likely result in some anxiety and some upheaval for existing residents, thereby potentially exacerbating existing health/disability conditions.

27. The above matters weigh in favour of allowing the appeal, but it is still necessary that I weigh such matters against the identified planning harm.

Gypsy and Traveller pitch need and provision

28. There is no dispute between the parties that the local planning authority (LPA) cannot demonstrate a five-year supply of deliverable Traveller sites based on the need identified in the Maidstone Revised Gypsy and Traveller Accommodation Assessment July 2024. The Council's annual pitch delivery report published in May 2025 states that the LPA can demonstrate only a 3.8-year supply of deliverable Traveller sites. The evidence is that the Council intends to submit for examination a Gypsy and Traveller and Travelling Showpeople DPD in 2027 which will allocate new pitches. It is anticipated that it would be adopted in January 2028.¹
29. In the context of a Traveller sites undersupply position, the provision of the site to accommodate the needs of two Traveller families makes a positive contribution. This weighs in favour of allowing the appeal as a significant material consideration.
30. Paragraph 28 of the PPTS states that if an LPA cannot demonstrate an up-to-date five-year supply of deliverable sites, the provisions in paragraph 11(d) of the Framework apply. However, the presumption in favour of sustainable development does not apply in this case as paragraph 11(d)(i) of the Framework states that planning permission should be granted unless *'the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed'*.
31. Given my conclusion in respect of the loss of ancient woodland, which is an irreplaceable habitat as defined in footnote 8 of the Framework, I find that this is a strong reason for refusing the development which the appellant has requested to be retained.

Availability of alternative sites

32. There is no requirement for the appellant to demonstrate that there are no alternative available Traveller sites in the area. However, it is noteworthy that the Council has not indicated that any suitable or alternative Traveller sites are available to accommodate the needs of the occupiers of the site. In this regard, I have determined this appeal on the basis that there are currently no alternative available Traveller pitches in the area for those that are occupying the appeal site. This weighs in favour of allowing the deemed planning application.
33. The above is, however, tempered to some degree in so far that policy LPRHOU8 of the LP does permit new Traveller sites in the Borough subject to the identified criteria being met. In other words, it remains a possibility that the adult occupiers of the appeal land could collectively or separately find/source a site elsewhere, including, if necessary, seeking planning permission for residential use in accordance with all the criteria in policy LPRHOU8 of the LP. In other words, it

¹ Evidence drawn from appeal decision APP/U2235/W/25/3360441 and the Council's statement of case

need not necessarily be the case that upholding the notice and the loss of homes on the land would mean that the current occupiers had to live a roadside existence. I return to this matter again as part of the consideration of the ground (g) appeal which relates to a notice compliance period of six months.

Intentional unauthorised development

34. The Department for Communities and Local Government policy statement 2015 introduced planning policy to make intentional unauthorised development (IUD) a material consideration that would be weighed in the determination of planning applications and appeals from 31 August 2015.
35. In respect of IUD, planning permission should not be refused simply on the basis that the development was carried out without planning permission or is unlawful. A finding of IUD must be supported by evidence of something more than this, i.e., that the appellant intended the development to be unauthorised or actively sought to harmfully flout the rules.
36. In this case, the evidence is that the appellant submitted a planning application to use the site for residential purposes in 2022². While planning permission was sought, it was made on a retrospective basis. I do not doubt that the appellant would have been aware that the removal of ancient woodland and the formation of a Traveller site (including the keeping of horses) required planning permission. I acknowledge the reasons why the two adults and their respective children occupied the site. Nonetheless, and, on the evidence that is before me, I find that such action was intentional. The IUD clearly prevented the proper application of planning policies, including a more informed position about the baseline position of the site from a biodiversity point of view, and the potential avoidance of the loss of ancient woodland.
37. Notwithstanding the above, I do not doubt that there was a pressing need for the families to have a new settled base prior to occupation of the land. There is no evidence before me that casts doubt about the claim that they had nowhere else to live at this time and that the alternative, even if only on a short-term basis, would have been to live a roadside existence or potentially to 'double up' on a plot(s) elsewhere. I can fully understand that such living arrangements would not have been advantageous in relative terms, particularly given the number of children that are being cared for by the adults.
38. Moreover, I do not doubt that the families have an aversion to bricks and mortar accommodation given the evidence about their cultural way of life. Collectively, these matters temper the adverse weight that I afford to IUD.
39. For the reasons outlined above, I therefore conclude that the IUD carries limited adverse weight in decision making terms.

Ground (a) Appeal Planning Balance and Conclusion

40. The occupiers of the appeal site would likely be reliant on the private motor vehicle when using the nearest local services. Indeed, I have concluded that the site is not accessible by foot, by cycle or on public transport to local services. Therefore, I conclude that the unauthorised development does not accord with the accessibility and sustainability requirements of policy LPRHOU8 of the LP. This is a matter which weighs against allowing the development.

² Planning application reference 22/500526/FULL

41. I have concluded that even based on considering part of the matters alleged (i.e., a smaller Traveller site), the development fails to comply with the habitat and biodiversity requirements of paragraph 193(c) of the Framework. Namely, there are not wholly exceptional reasons to justify the loss of ancient woodland, and, furthermore, a suitable compensation strategy has not been provided. This constitutes a strong reason for refusing development. In fact, paragraph 193(c) of the Framework indicates that, in this case, planning permission should be refused.
42. In addition, the appellant has not provided sufficient evidence for me to conclude that the proposal would be capable of delivering BNG in accordance with policy LPRSP14(A) of the LP and based on the baseline biodiversity position prior to the unauthorised development occurring. Furthermore, I have concluded that significant harm has been caused to the character and appearance of the area, including to landscape character, even if a smaller Traveller site is considered and there was to be some new planting.
43. Weighed against the above harms, are the other considerations outlined above. These weigh in favour of allowing the appeals. However, I conclude that the positive weight that I collectively afford these matters is not sufficient to justify granting permanent planning permission for the deemed planning application.
44. I have considered whether a temporary planning permission would be justified. The appellant refers to a temporary planning permission of three years. I acknowledge that the collective harm that I have identified would be diminished if temporary planning permission were to be approved. Indeed, the harm to the character and appearance of the area, including to landscape character, would not endure forever if temporary planning permission was approved. However, the collective planning harm from the development would still be significant even if the development were to continue for a temporary period. In conclusion, the harm caused would not be outweighed by the other considerations outlined above to justify granting temporary planning permission. For the avoidance of doubt, I reach this finding based on the appellant's proposed smaller Traveller site.
45. Overall, I conclude that the deemed planning application, whether considered on a temporary or permanent basis, would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the ground (a) appeal fails.

Appeal on ground (g)

46. The appeal on ground (g) is made on the basis that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
47. The period specified in the notice is six months. The appellant comments that if the notice is upheld, it would mean that the residents would be made homeless. In the context of needing to find an alternative Traveller site, which may necessitate the need to secure/source a new Traveller site elsewhere, including, if necessary, obtaining planning permission, I do not find that a six-month compliance period is reasonable or proportionate.
48. For the above reasons, coupled with the identified health and disability conditions, as well as the best interests of the children on the site, I conclude that a compliance

period of twelve months, as requested by the appellant, strikes a reasonable and proportionate balance in terms of bringing the unauthorised development to an end in the public interest, while also considering the rights of the family in respect of Article 8 of the HRA and the best interests of the children on the land. I find that a compliance period of twelve months is necessary and proportionate.

49. To the extent that I shall vary the compliance period from six months to twelve months, I conclude that the ground (g) appeal succeeds.

Overall Conclusion

50. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

D Hartley

INSPECTOR