



Appeal Decision

Hearing held on 8 September 2025

Site visit made on 8 September 2025

by **T C King BA(Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 November 2025

Appeal Ref: APP/Y3940/C/25/3363348

Land at Greenacres Mobile Park, Littleton, Semington, Wiltshire, BA14 6HL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Patrick Ward against an enforcement notice issued by Wiltshire Council.
- The notice was issued on 26 February 2025.
- The breach of planning control as alleged in the notice is The breach of conditions 2 & 3 of the planning permission referenced 17/10025/FUL, which state the following.
- “2. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for traveller sites (DCLG, 2012).
- REASON: Planning permission has only been granted on the basis of a demonstrated unmet need for accommodation for gypsies and travellers and it is therefore necessary to keep the site available to meet that need.
- 3. There shall be no more than 14 pitches on the site and on each of the pitches no more than 2 caravans shall be stationed at any time and of these, only 1 caravan on each pitch shall be a static caravan, all as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968.
- REASON: In order to define the terms of this permission.”.
- The requirements of the notice are:
 - 1) Cease the residential use of the Land in breach of condition 2 of planning permission ref 17/10025/FUL;
 - 2) Remove caravans from the Land so that there are no more than 25 pitches on the Land and so that on each of these 25 pitches there are no more than 2 caravans, of which only 1 caravan shall be a static caravan; and
 - 3) Remove caravans from the Land so that there are no more than 14 pitches on the Land and so that on each of these 14 pitches there are no more than 2 caravans , of which only 1 caravan shall be a static caravan.
- The periods for compliance with the requirements are:
Step 1 – within 9 months of the date that this notice takes effect;
Step 2 – within 12 months of the date that this notice takes effect;
Step 3 – within 18 months of the date that this notice takes effect.
- The appeal is proceeding on the ground[s] set out in section 174(2)(a), (b), (f), (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.]

Decision

1. It is directed that the enforcement notice be corrected by, under ‘Reasons for Issuing this Notice’, deleting requirement 1 thereto, and substituting it with the following wording:
2. ‘Cease the residential use of the Land in breach of condition 2 of the planning permission ref 17/10025/FUL) but, to this end, apply the revised definition of gypsies and travellers in the government’s Planning Policy for Traveller Sites, December 2024’, In addition, requirement 2 is deleted.

3. The enforcement notice is also varied by increasing the period for compliance on requirement 3 from 18 months to 24 months.
4. Subject to these corrections and variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Section 73 applications

5. It has been held in law, specifically by way of the judgement of *Finney v Welsh Ministers & Ors* [2019] EWCA Civ 1868, that s73 applications, where it is proposed that development is carried out without regard to one or more conditions imposed on a planning permission, or s73A applications, relating to where development has already been carried out without complying to one or more conditions imposed, may consider only the question of conditions and only choose between two options; either grant the same planning permission subject to different conditions (or with no conditions) or, alternatively, refuse the application.
6. In this particular instance, due to the appeal made under ground (a), there is a deemed planning application to be determined which relates to whether or not the acceptability of the development carried out without regard to conditions 2 and 3 imposed on permission ref 17/10025/FUL would be appropriate within the relevant legal framework.
7. Accordingly, section 73 contains no power to grant a new planning permission with a different operative part or description of development from that contained in the original permission, the development's description cannot be changed.
8. In other words, as a matter of statutory interpretation, s73 applications cannot be lawfully used to amend the description of development. In this particular instance the description, approved under planning permission ref 17/10025/FUL, allowed for 14 pitches, with each pitch accommodating not more than one static and one touring caravan, thereby permitting 28 in total. Notwithstanding that condition 3 thereto is worded to this effect, the fact that the description of the development specifies a total of 14 pitches means that it is not possible to vary the planning permission to increase the number of pitches over and above this number, as requested by the appellant.

Matters concerning the enforcement notice, and preliminary matters

9. The enforcement notice was issued under paragraph (b) of s171A(1) of the 1990 Act, as amended. This specifies a failure to comply with any condition or limitation subject to which planning permission has been granted. The notice does not specify the number of caravans present on the land at the time it was issued. Instead, it merely refers to the presence of additional mobile homes, static and touring caravans, in breach of a conditional planning permission, and requires for their removal. Thus, the baseline is the 28 caravans, comprising of 14 statics and 14 tourers, approved under planning permission ref 17/10025/FUL.
10. The Council's case, as set down in the reasons for issuing the enforcement notice, is that the increase in caravans is not sustainable development, and also that the status of the occupiers, insofar as they can be categorised as gypsies and travellers, has not been confirmed.

11. Notwithstanding the above, at the Hearing the appellant produced a Witness Statement, dated 8 September 2025, which would suggest that the Ward extended family occupy 22 caravans on individual pitches. In addition, there are also five persons living at the site who rent mobile homes from the appellant. In total, the appellant states that, at the time the Witness Statement was signed, there were 61 mobile homes stationed on the site along with five touring caravans. This would indicate that there are a number of mobile homes which are stationed at the site that are not occupied. Indeed, this is consistent with my site visit observations which suggested that a considerable number of static caravans at the site were not occupied. The rather unkempt nature of the grassed areas outside these caravans would tend to confirm this.
12. The appellant, who owns the land, has advanced two site plans. Plan no 11_4158-002 shows 14 pitches to accord with that currently permissible, and it depicts 14 static caravans, 14 tourers vans, and a number of dayrooms. Plan no 11_4158-003, instead, shows 28 individual pitches accommodating 28 statics, 28 tourers, and one dayroom for the whole site. Although I have had regard to the judgement of *Ahmed v SSCLG & Guildford BC* [2017] EWCA Civ 231 which brought to the fore the consideration of alternative schemes, given the limitations of s73 applications, which I have set out above, the enforcement notice's requirement 2, which would allow for up to 25 pitches at the site, would not represent a lawful remedial step for reasons I explain later. Accordingly, it follows that I am unable to accept plan no 11_4158-003 for consideration.

The appeal on ground (b)

13. An appeal under ground (b) is that the appellant disputes that the alleged breach has occurred as a matter of fact. In this regard the appellant, in his Statement of Case, says that the allegation is incorrect as the number of caravans stationed at the site has resulted in a material change of use of the land, and also that the occupation of the caravans on the land by persons other than gypsies and travellers may have resulted in a material change of use. However, the latter reason was then retracted with the appellant mentioning that all non-gypsy and traveller occupants who had been resident at the site at the time the enforcement notice was issued, had vacated the land.
14. Although the latter point is dealt with by amending the wording of requirement 1 to accord with the widened definition of gypsies and travellers in the government's Planning Policy for Traveller Sites, 2024 (PPTS) the former point, as to whether an increase in the number of pitches and caravans has resulted in a material change in the use of the land, requires assessment.
15. In the judgement of *Hertfordshire County Council v SSCLG and Metal and Waste Recycling Limited* [2012] EWCA Civ 1473, cited by the appellant, it was considered whether an intensification in the use of a scrap yard constituted a material change in the use of the land. The Inspector had allowed appeals against enforcement notices issued against the use, finding that there had not been a breach of planning control.
16. The judge indicated that the Inspector had correctly considered what must be determined as to whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a

matter of fact and degree, it has resulted in such a change in the character of the use so that it amounts to a material change in planning terms.

17. The underlying principle in the above case is that mere intensification is not sufficient to amount to a material change of use should it fall short of materially changing the definable character of the use of the land. Impact cannot be considered in isolation from what is happening on the land. It is the overall character of the use that must be considered.
18. Turning to the current case the appellant's Witness Statement, which includes a list of the current occupiers, indicates that his extended family occupy 22 caravans/mobile homes at the site, and there are a total 24 children accommodated within. He also says that there are four other caravans occupied by unrelated gypsies, giving a total of 26 static vans being currently occupied. Apparently, during the appeal process, the owner asked a number of non-gypsies, who were living at the site to leave, but a number of caravans remain. As such, he acknowledges that there are currently 61 mobile homes stationed on the land, the majority of which must therefore be unoccupied.
19. Indeed, from observations at my site visit, it was clear to me that a significant number of the static caravans/mobile homes are not occupied and are effectively being stored on the land. As mentioned, it is obvious that the number of caravans present on the land represents a substantial increase on that permissible under the most recent planning permission.
20. However, the storage element is passive in nature and, moreover, it does not mean that the caravans are not available for occupation at short notice. At my site visit I noted that the general feel from the site is one of a caravan park and, given that the general character of the surrounding area, is one of agricultural fields, but with other caravan sites in the locality I am not of the view that the breach of planning control, involving an increase in the number of habitable units along with those unoccupied but stored on the land, and with adequate ingress and egress arrangements, has been to such a degree so as to have given rise to significant on-site and off-site effects.
21. I do not, therefore, consider that a material change in the use of the land has occurred. There has been no change in the use's definable character. Accordingly, no breach of planning control has occurred in the above regard.
22. Nonetheless, on the other hand, I am satisfied that the enforcement notice, in indicating that a breach of control had arisen due to a failure to comply with conditions imposed on a planning permission, was correct in planning terms.
23. Given also the change I am making to the wording of the requirement 1, I must conclude that the alleged breach of planning control has occurred as a matter of fact.
24. Accordingly, the appeal under ground (b) does not succeed.

The appeal on ground (a); the deemed planning application (DPA)

25. In view of the stated reasons for issuing the enforcement notice the DPA's main issues are limited to:

- a) the current provision and the level of need of pitches for gypsy and traveller purposes;
- b) whether the occupiers satisfy the 2024 PPTS definition of gypsies and travellers; and
- c) whether the proposal represents a sustainable form of development.

Reasons

Provision and need

- 26. The Council acknowledges that it cannot demonstrate an up-to-date five year supply of deliverable sites for gypsy and traveller purposes in the Wiltshire Council area. In such circumstances the PPTS explains that this should be a significant material consideration when considering applications for such development. Accordingly, policy CP47 of the Wiltshire Core Strategy (2015), which is concerned with meeting the needs of gypsies and travellers, is not now achieving its purpose, and is thereby out-of-date. This lack of supply is a matter that I afford significant weight.
- 27. Along with a general lack of supply there is also a waiting list for pitches on the Council owned gypsy and traveller sites and, by way of the Statement of Common Ground it is agreed between the main parties that there are no suitable, acceptable and affordable alternative sites available within the Council's area.
- 28. On the above basis I conclude there is a clear unmet need for land which could be used for gypsy and traveller purposes, and this must amount to a failure of policy.
- 29. In the above regard the ten year old Core Strategy will continue as the development plan for the foreseeable future given that the emerging new Local Plan is currently at its examination stage, with its hoped for adoption in the second quarter of 2026. However, there is no guarantee of such a timeline being achieved.

Status

- 30. As already mentioned, the appellant, in his Witness Statement explains that his extended family currently occupy 22 mobile homes at the site which would amount to eight more statics than that permitted under planning permission 17/10025/FUL.
- 31. As regards the occupiers of the additional four caravans stationed, the appellant states in paragraph 17:
- 32. *'...As far as I am aware they are gypsies and travellers. I asked them if they were, they said they are.'*
- 33. From the list of named persons provided they all, bar two, have the surname Ward. Whilst I am satisfied that the extended Ward family, in its entirety, have gypsy and traveller status no statements or statutory declarations have been submitted from the persons resident who, apparently, are not related to the Wards. That said, the appellant has commented that, during the appeal process, he asked the then occupiers, who he realised did not have such status, to leave the site.
- 34. Accordingly, whilst I find that the vast majority of the occupants do fall within the PPTS's definition, the remaining persons only might be, but I have no first hand or compelling, corroborated evidence to support the appellant's claims. There is also

no guarantee that non gypsies and travellers might not return to the caravans, currently not occupied.

Sustainability

35. The Council indicates in its Statement of Case that the residential occupation of the land by persons who do not meet the definition of gypsies and travellers is not sustainable development. However, no evidence of real substance was advanced in this regard. Accordingly, I have turned to the Council's case report relating to the 2017 planning permission.

36. On this issue the report states:

'The site is located outside of any defined town or village policy limits. Local and national policy makes provision, however, for traveller development to be located in the countryside. It has to be acknowledged that the site has been deemed acceptable in sustainability terms by Inspectors on the previous appeals at the site and at the other two sites in the vicinity that are physically further from Semington village and separated by more roads.'

37. The report then concludes on this issue that, whilst each case is assessed on its own merits, in light of a previous Inspector's comments, and the striking similarities on this issue then the site must be considered to be sustainable within the PPTS's meaning.

38. From the evidence provided at the current appeal I have no reason to disagree with this assessment, and must consider that this is a reasonably sustainable location; at least insofar as the extent of my assessment of the DPA allows, due to the *Finney* ruling.

Other Considerations

Public Sector Equality Duty (PSED), Human Rights and the Best Interests of the Child

39. In instances where unauthorised gypsy and traveller accommodation is at issue and targeted by planning enforcement action I am required to have regard to persons with protected characteristics when applying the duties under s49 of the Equality Act 2010. There is also a positive duty by virtue of Article 8 of the Human Rights Act to facilitate the traditional and nomadic way of life of travellers. However, in considering the proportionality of a requirement to leave one's home it is relevant to assess whether or not the home was established unlawfully.

40. Article 8 of the European Convention on Human Rights provides that there should be respect for private and family life, home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and that necessary, amongst other things, for the protection of the rights and freedoms of others.

41. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is for a legitimate aim, in accordance with the law and necessary in the public interest. In this particular instance I am of the view that the Council's remedial actions serve a clear and justifiable planning purpose, albeit to ensure an appropriate site layout and a satisfactory standard of development .

42. Article 3(1) of the United Nations Conventions on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. Obviously, in an attempt to ensure the childrens' welfare, a roadside existence should be avoided and the appellant has indicated that there is currently a total of 24 children residing at the site. This is clearly an important factor to be taken into account, and my decision, taken as a whole, will reflect this.

Pending planning application

43. As I understand it there is currently a new planning application ref PL/2025/05344, submitted to the Council in June 2025, pending determination, proposing that the use of the land be intensified to accord with the 28 pitches shown on plan no 11_4158-003, as already referred to.
44. Accordingly, by way of the application it is proposed that the layout thereto be granted planning permission. As explained, that option is not available to me through the DPA.

Temporary Planning Permission

45. Whilst mindful of the above I shall extend the period for compliance which, although tantamount to a time limited planning permission, does lie within my remit here.

Planning Balance

46. Whilst there is a recognised unmet need of land for gypsy and traveller purposes, a s73 application cannot be used to change the fundamental description of the development for the original planning permission. The *Finney* judgement reinforced this limitation and, given the description of development for planning permission ref 17/10025/FUL it is not open to me to balance out the planning merits and impacts of the intensified scheme with its various elements depicted on drawing no 11_4158-003, whereby 28 pitches are shown.
47. As such the 'tilted balance', as set out in paragraph 11d) of the Framework, cannot apply in this appeal due to its very nature. Although I have commented on the main issues and other material considerations which arise from the DPA, as part of this appeal, I do not wish to fetter any future decision maker, particularly with regard to the pending planning application. Besides, I noted at the Hearing that the Council witnesses took issue with the layout shown in the said drawing, considering it cramped in parts. This must, of course, be taken in the round, with regard had to all factors arising.
48. Accordingly, I do not, and cannot, make any recommendations as to the proposed scheme's acceptability. That must remain a matter for the Council and, if necessary, negotiations between the two main parties.
49. I could grant planning permission on the DPA, but the appellant would be no further forward as the planning permission already exists. Instead, the rewording of condition 2, by way of correcting the enforcement notice's requirement 1, achieves the necessary purpose in this regard.

Conclusion on the DPA

50. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the deemed application.

The appeal on ground (f)

51. An appeal under ground (f) is that the stated requirements of the enforcement notice go beyond what is necessary to address the considered degree of harm caused by the breach.

52. For the reasons given requirement 2 is being deleted, and requirement 1 is being re-worded to reflect contemporary advice. Accordingly, there will not now be any staggered reduction in the number of pitches at the site.

53. Moreover, there has been no justification put forward for requiring anything other than compliance with the terms and conditions of planning permission ref 17/10025/FUL.

54. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

55. An appeal under ground (g) is that the time periods for compliance with an enforcement notice's requirements are unreasonably short.

56. I have already discussed the issue surrounding the PPTS definition of gypsies and travellers, and how it applies to the circumstances in this instance. Accordingly, I consider that the period of 9 months for complying with requirement 1 of this enforcement notice is adequate.

57. Given my consideration that the vast majority of the people present satisfies the PPTS definition of gypsies and travellers and, moreover, the fact that a substantial number of children reside at the site, I shall extend the period of compliance with requirement 3 from 18 months to 24 months.

58. The appeal succeeds to this extent.

T C King

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green – of Green Planning Studio Ltd
Patrick Ward - appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jack Smyth – of counsel
Henning Totz – Senior Planner (Policy)
Daniel Tyrell – Senior Planner (Enforcement)