

Appeal Statement of Case

Local Planning Authority

Town and Country Planning Act 1990
Section 174 Enforcement Appeal

Appeal: APP/W0340/C/24/3351139

Site: Land adjacent Blacksnest, Brimpton Common.

Proposal: Unauthorised change of use of land to the stationing of a mobile home for the gypsy and traveller community. Associated works including day room and shed with fencing and new access point for vehicles.

Date: 21 October 2024

Council Reference: 23/00682/15UNAU

INTRODUCTION

1. The Council issued an enforcement notice (“the notice”) in respect of unauthorised development on the appeal site on 7th August 2024, served on 11th August. The breach of planning control alleged is :

Without planning permission, the material change of use of the Land by the stationing of a mobile home for residential use (the “Unauthorised Development”)

2. The notice has been appealed on grounds (a), (b) and (g) of section 174(2) Town and Country Planning Act 1990.
3. The Council’s position on each of those grounds is summarised in this statement of case.

Ground (a) : that planning permission ought to be granted for the breach of planning control stated in the notice.

4. The Council has already submitted statements of case on planning, emergency planning and ecology in respect of the s.78 appeal against refusal of permission for development on the same site (23/02984/FUL), on which the Council continues to rely in response to the ground (a) appeal. Those matters will not be repeated in any detail. The development refused planning permission is :

“Change of use of land to Gypsy/Traveller site comprising the siting of 1 mobile home and 1 touring caravan plus 1 dayroom”

5. The appeal against the notice and the s.78 appeal will be heard and determined together. The appellant has reiterated its case on the planning merits under its ground (a) appeal (document J005000 dated 30 August 2024). The key points in the Council’s case remain as follows:



6. The site does not lie in a sustainable location. This will be expanded upon in the Council's planning proof of evidence.
7. The site lies in the detailed emergency planning zone (DEPZ) for AWE Aldermaston and fails to comply with policy CS8 in the West Berkshire Core Strategy (WBCS) in terms of public safety: the presence of a day room on site is not sufficient to allay these fears/concerns for the safety of the occupiers of the site. In any event, the Council will be inviting the Inspector to amend the notice so that the day room is included in the matters enforced against.
8. The Council maintains that the presence of the mobile home with the unauthorised works associated do cause visual harm to the local landscape character, and the appeal site is situated on land which policy CS18 of the WBCS designates as green infrastructure.
9. Notwithstanding the need over the local plan review period to 2038 for an additional 17 Gypsy plots/pitches, this does not automatically mean any new pitch in the rural area will be acceptable. The criteria in policies CS7 in the WBCS and policy TS3 in the HSADPD will be relied on in this regard.
10. It is acknowledged that the Council has not allocated additional sites for the Gypsy and Traveller community, but it will show that this does not mean planning permission need necessarily be granted for every application. The Council's approach to applications as they come forward is reasonable, and in accordance with relevant local and national planning policies.
11. Application number 23/00815/FUL will be relied on in this regard: a retrospective application for 5 Traveller pitches at Hermitage is being recommended for approval by officers at Committee on the 23rd October 2024. The result of this is clearly not known at the time of writing, however it demonstrates that sites which are considered to comply with the relevant policies are coming forward.

12. The Council will show in its proof of evidence that whilst it has taken full account of the personal needs of the appellant in terms of their Gypsy and Traveller status, it considers that these matters do not overrule the significant planning harm caused by the unauthorised development.
13. At the time of writing the LPA is unable to confirm its response to the appellant's Preliminary Ecological Assessment, which was submitted late and with insufficient time for a response to be included in this statement of case. The Council's Ecologist will give evidence on this issue. It is possible (without prejudice) that the ecology matters will be withdrawn from the Council's case. This will be clarified in due course with the appellant and PINS.
14. The Council will not be presenting evidence in relation to the Highways matters at this appeal : this is withdrawn as a reason for refusal.
15. The Council will submit that the matter of intentional unauthorised development, as was very clearly the case in this appeal, is a material consideration. The Council considers this to be a serious issue causing much distress to the local community as evidenced by the Brimpton Common Resident's Group (Rule 6 Party at in the section 78 appeal only).
16. The precedent created by granting permission for unauthorised development is a material consideration. The Council will provide evidence of two refused retrospective applications on land in the vicinity of the appeal site.

Ground (b) : the alleged breach of planning control has not occurred

17. The appellant contends that the notice should be withdrawn since it "under enforces" in relation to the appeal site, because it does not identify the day room present on the site. This is misconceived : "under enforcement" does

not demonstrate that the alleged breach of planning control has not occurred.

18. The Council will be inviting the Inspector to vary the Notice, which can be done without prejudice to any affected party. There is no merit in the ground (b) appeal.

Ground (g) : that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed

19. The appellant contends that the period of time for the appellant to vacate the site if the grounds (a) and/or (b) appeals are dismissed should be varied from 3 months to 1 year.

20. This is not accepted by the Council. At the time of writing the appellant has not submitted evidence demonstrating that 3 months is unreasonable. The Council considers, and will call evidence to demonstrate, that this is sufficient time to comply with the notice.

CONCLUSION

21. The appellant identifies three possible outcomes for the appeal, save for dismissal which the Council supports.

22. The Council considers that a permanent permission should not be granted. It will be shown that, in addition to the planning harms identified in it is evidence, a permanent permission will undoubtedly set a very harmful precedent for further Gypsy and Traveller sites across the Common.

23. A temporary permission is not an acceptable outcome. The planning harm persists during the period of permission. The Council will call evidence to show that once a temporary permission is granted, it becomes increasingly difficult for Councils to clear such sites after the temporary permission expires.

24. A personal permission is not an acceptable outcome. The Council will show that the particular personal circumstances of the appellant do not justify such a permission, which should occur in only exceptional circumstances as identified in the NPPF and NPPG advice.

25. For all those reasons the Inspector will be requested to dismiss the appeal against the notice.

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