



## Appeal Decision

Inquiry held on 16 November 2016 and 31 January 2017

Site visit made on 31 January 2017.

by **Stephen Brown MA(Cantab) DipArch RIBA**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 November 2017

**Appeal Ref: APP/E2205/C/15/3137477**

**Cherry Tree Paddock, Bromley Green Road, Ruckinge, Ashford TN26 2EG**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is by Richard Wood against an enforcement notice issued by Ashford Borough Council.
- The Council's reference is EN/14/00209.
- The notice was issued on 25 September 2015.
- The breach of planning control alleged in the notice is without planning permission the change of use of the land from a use for forestry to a use for the stationing of a caravan (mobile home) in residential use; the siting of a portable cabin used in connection with the residential use of the caravan (mobile home); and facilitating operational development comprising the laying of an additional area of hard surfacing and the installation of a septic tank and associated pipework.
- The requirements of the notice are to:
  - (i) Cease permanently the use of the land for the stationing of a caravan (mobile home) in residential use.
  - (ii) Remove permanently from the land the caravan (mobile home) (shown located in the approximate position marked on plan 'B' attached to the notice).
  - (iii) Cease permanently the use of the land for the siting of a portable cabin used in connection with the residential use of the caravan (mobile home).
  - (iv) Remove permanently from the land the portable cabin (shown located in the approximate position marked on plan 'B' attached to the notice).
  - (v) Excavate and remove permanently from the land the additional area of hard surfacing (shown located in the approximate position marked on plan 'B' attached to the notice).
  - (vi) Excavate and remove permanently from the land the septic tank and associated pipework (shown located in the approximate position marked on plan 'B' attached to the notice).
  - (vii) Remove permanently from the land all materials, waste and debris resulting from compliance with steps (i)-(vi) above.
  - (viii) Following compliance with steps 5(v)-5(vi) above, restore the surface of the land to its condition immediately prior to the laying of the additional area of hard surfacing and the installation of the septic tank and associated pipework.
- The periods for compliance with the requirements are six months for steps (i), (ii), (iii) and (iv), seven months for steps (v) and (vi), and eight months for steps (vii) and (viii).
- 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. The prescribed fees have been paid within the specified period, and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

**Summary of decision: the appeal is dismissed except to a limited extent on ground (g), and the enforcement notice is upheld with variations.**



**Background matters**

1. Bromley Green lies within the countryside for planning purposes, and is about 5 kilometres to the north-west of Ruckinge and 5 kilometres to the north of Hamstreet. It comprises almost continuous development of detached houses extending for about 2.5 kilometres along both sides of Bromley Green Road.
2. The appeal site is set back by about 70 metres from the northern side of the road, behind a residential plot and a pumping station. Access is along a private unmade track shared with another property further to the north. The site is about 0.5 of a hectare in area. It lies within an area of woodland protected under a Tree Preservation Order<sup>1</sup>, and forms part of the Bishops/Forty Acre Wood Ancient Woodland.
3. To the westward side of the site is the appellant's mobile home, close to the northern boundary, with an area of hardstanding to the front consisting of compacted road planings. To the east of the mobile home, close to the access gate is an open barn-like building in which there was a touring caravan. There was also a horse kept there. To the south of the access is a dilapidated shed. There is a recently constructed close-boarded timber fence along part of the western and northern site boundaries, and rustic post and rail fences along the eastern boundary, and across the site from east to west, dividing the site roughly in halves.
4. The hardstanding extends virtually the full width of the site. However, the part to the east - to the front of the open barn - was there before Mr Wood's occupation of the site, and clearly provided access to the barn. The part of the hardstanding to the west is an extension of this area, constructed by Mr Wood. It is this latter area that is subject of the enforcement notice.
5. It is generally accepted that before the appellant's ownership there had been quantities of rubbish deposited on the site - as is still the case for the adjacent sites to the north and west. However, in the Council's view the planning use had been for agricultural/forestry purposes.
6. The Council issued a stop notice on 25 September 2015 - the same day as issue of the enforcement notice. This sought to prevent any further stationing of mobile homes, caravans, or portable cabins used in connection with the residential use of the mobile home already on the site. It also sought to prevent any further facilitating operational development comprising the laying of hard surfacing, and engineering operations comprising installation of any further septic tanks and associated pipework.
7. I note that a planning application for the change of use of the appeal site to use as a residential caravan site for one gypsy family with two caravans, including the retention of hardstanding and erection of a utility building was refused in November 2015<sup>2</sup>.

**The appellant's gypsy status**

8. Richard Wood lives on the appeal site with his partner Amy Hodges, and their 2-year old son. Mr Wood is an ethnic gypsy, and claims that he leads a traditional nomadic way of life, travelling and working at various activities

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<sup>1</sup> The Ashford Borough Tree Preservation Order No. 13, confirmed on 2 August 1991.

<sup>2</sup> Decision notice ref. 15/01273/AS, dated 19 November 2015.

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including landscape gardening, trading in vehicles, and building maintenance. He intends to continue living part-time as a traveller, and to bring up his son in the traditional gypsy way of life. Ms Hodges is not an ethnic gypsy.

9. The appellant claims that his case should be considered in the light of his gypsy status and the relevant planning policy that comes into play as a result. Although the Council accept that Mr Wood is a Romany Gypsy, and comes from a gypsy background, they dispute his claim of gypsy status in the terms set out in the Glossary to the government document 'Planning Policy for Traveller Sites' (PPTS) of August 2015. This says that for the purposes of that policy 'gypsies and travellers' means:

*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.*

10. I understand Mr Wood had grown up in Bromley Green Road, at first on a plot now called 'Yew Tree House'. There was originally a shack on the plot, but his grandfather had built a house, which was completed by his father, and Mr Wood had lived there as a child. He and his parents had then moved to Park Farm for 5 months, before returning to Bromley Green Road where they lived on another plot, now called 'The Ranch' where there was another shack. Mr Wood, who was born in 1987, was 12 or 13 years old at that time, and lived in a touring caravan to the front of the shack. He said in cross-examination that he had moved to Kingsthorpe Farm when his father bought it in about 2002. However, in a request for information from the Council, dated 21 September 2015, he stated that he had lived there in a touring caravan for eight years previously before moving to the appeal site.
11. Mr Wood says that he travelled away in caravans with his father and grandfather during his childhood, visiting traditional horse fairs, and that he was himself dealing in horses when he was 18 or 19 years old - in 2005/06. He then began working with his cousin doing landscape work and external building maintenance such as guttering, roofing and driveways around south-eastern England. He continues to operate his landscaping and exterior home maintenance business, which is styled 'UK Landscape and Exterior Homecare'.
12. As to the extent and nature of his travels and work, Mr Wood said that in summer he sought work mainly in areas along the south coast - Southampton, Chichester and Selsey were mentioned - where he seeks work such as landscaping or building by distributing leaflets, or employing others to distribute them. He says that he travels in a camper van or touring caravan, whichever he has available. He also goes to horse fairs in various places, including Ballinsloe in Ireland, where he deals in horses and caravans. In winter months he says that he travels around farms - as far away as Wales - looking to buy commercial vehicles and agricultural plant/machinery suitable for export to Africa, where there is a need for older vehicles (mainly pre-1997) that do not rely upon electronic control systems. These are transported to Tilbury docks from where they are exported. He also continues to visit horse fairs, where he deals in horses and caravans,
13. A Council enforcement officer had visited Kingsthorpe Farm in April 2014, to investigate the stationing of a caravan belonging to Mr Wood's sister and her