WA/2026/01044 – Change of Use of land for 1 traveller pitch (retrospective) at PITCH 1, LAND NORTH OF LYDIA PARK COORDINATES 502359 137819 STOVOLDS HILL CRANLEIGH

Applicant:	Mr B Doherty
Parish:	Bramley
Ward:	Bramley & Wonersh
Grid Reference:	E: 502359 N: 137819
Case Officer:	John Bennett
Neighbour Notification Expiry Date:	10/07/2026

RECOMMENDATION	That the local planning authority DECLINE TO DETERMINE the application

1. Proposal

Change of Use of land for 1 traveller pitch (retrospective).

2. Relevant Planning History

Ref	Proposal	Decision/Date
WA/2025/00495	Change of use of land to provide 1 gypsy pitch comprising 1 mobile home and 1 touring caravan; erection of 1 day room with associated parking hardstanding	APPEALED FOR NON-DETERMINATION 01/07/2025 Appeal pending
WA/2021/02307	Change of use to use as a residential caravan site for 4 gypsy/traveller families, each with two caravans, together with laying of hardstanding and erection of 4 No. amenity buildings (part retrospective).	REFUSED 04/01/2022

An enforcement Notice ref. EN/2025/02 was issued in respect of the development of the land on 22/04/2025 (‘the Notice’).

The Notice relates to following breaches of planning control:

Without planning permission:

"(i) The material change of use of the Land to a residential caravan site for occupation by Gypsies and Travellers. And all the associated development facilitating the material change of use, which includes:

i) The erection of fencing on the Land;

ii) The erection of an outbuilding;

iii) The installation of services;

(ii) An engineering operation comprising the laying of hardstanding within the area outlined in red on the attached plan."

The requirements of the notice are:

"1) Cease the use of the Land as a residential caravan site

2) Remove from the Land:

(i) All mobile homes/caravans and touring caravans

(ii) All structures

(iii) All domestic paraphernalia

(iv) All services provided for the purposes of residential accommodation

(v) All fencing and gates

3) Remove the hardstanding (including that constructed over and within an ordinary watercourse) in the area outlined in red on the attached plan.

4) Remove from the Land all resultant materials arising from compliance with step (3) above.

5) Restore the land to its condition before the breach took place."

An appeal has been submitted against the Council's decision to issue the enforcement notice. The enforcement appeal is proceeding on ground(g) only ('*that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed'* (s174(g) of the Town and Country Planning Act 1990 (as amended))).

A separate s78 planning appeal is also pending against the non-determination of planning application ref. WA/2025/00495.

The aforementioned appeals are not formally linked; however, they are due to be determined by the same Inspector, with the s78 appeal to be heard by way of Inquiry opening on 15th September 2026 and the enforcement appeal to be determined by way of the Written Representation procedure following the conclusion of the s78 appeal

3. The current application

Application ref. WA/2026/01044 seeks permission for the "*Change of Use of land for 1 traveller pitch (retrospective).*"

The application is accompanied by additional evidence relating to flooding, ecology and landscape matters. This material was not submitted with the WA/2025/00495 application but has been submitted to the Planning Inspectorate in connection with the s78 appeal. In relation to this evidence submitted for the appeal, the Council's position is that much of this evidence should not be accepted at appeal because it would amount to a substantial change to the proposal, contrary to the principles established in *Bernard Wheatcroft Ltd v SSE [1982] JPL 37*. The appointed Inspector has not yet provided a final view as to whether this evidence will be accepted in relation to the s78 appeal.

4. Legislative context

Section 70C of the Town and County Planning Act 1990 (as amended) affords local planning authorities the power to decline to determine planning applications to which a pre-existing enforcement notice relates and the proposed development for which permission is sought would overlap with the development the subject of an enforcement notice. S70C provides:

> *"(1) A local planning authority may decline to determine an application for planning permission [or permission in principle] for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.*
>
> *(2) For the purposes of the operation of this section in relation to any particular application for planning permission [or permission in principle], a "pre-existing enforcement notice" is an enforcement notice issued before the application was received by the local planning authority."*

The power is discretionary and was clarified by the Court of Appeal in *Moran v Medway Council* [2026] EWCA Civ 484, which held that the purpose of s70C is: "*the potential for the occupier of the land subject to the enforcement notice to insist upon more than one determination of the planning merits of the breach of planning control*".

For s70C to apply, two conditions must be met: first, an enforcement notice must have been issued before the application was received; and second, granting permission for the application would involve granting permission for the whole or any part of the matters specified in the notice as breaches.

5. Assessment

The Notice identifies as a breach:

"*The material change of use of the Land to a residential caravan site for occupation by Gypsies and Travellers*" *(EN/2025/02 – Breach (i))* and associated development.

The current application seeks permission to regularise that same use on the same land, albeit in a different form and supported by additional evidence. Although the scale and supporting evidence differ from earlier proposals, the essential nature of the development remains the same: it seeks to authorise the continued use of the land as a residential caravan site. Granting permission would therefore involve granting permission for matters specified in the enforcement notice. The statutory test under s70C(1) is therefore clearly satisfied.

The Notice was issued by the Council on 22/04/2025 and the WA/2026/01044 application was received by the Council 06/05/2026 and subsequently made valid on 04/06/2026. The Notice was issued before the receipt of WA/2026/01044 application, and therefore the statutory test under s70C(2) is also satisfied.

The Council accepts that this application is not identical to the WA/2025/00495 application and that additional technical evidence has been provided. However, the existence of new or expanded evidence does not alter the fact that the application seeks to regularise development that forms part of the breaches identified in the enforcement notice. S70C does not require the application to be identical to the enforced development; it requires only that the application relates to development that overlaps with the matters specified in the Notice. The present application plainly does so.

The planning merits of the enforced development have already been considered by the local planning authority when issuing the Notice. The appellant also has a live and imminent opportunity for the planning merits of the development to be tested through the s78 appeal relating to the WA/2025/00495 application. That appeal will be determined by the same Inspector who is dealing with the enforcement appeal. The Inspector will therefore have the opportunity to consider the planning merits of the development in a comprehensive and coordinated manner.

To determine this application would create a second route for the appellant to seek a determination of the planning merits of the same underlying breach. This would be contrary to the purpose of s70C, as articulated in *Moran*, and would undermine the efficiency and coherence of the planning and enforcement processes.

6. Human Rights

The local planning authority has had full regard to the Human Rights Act 1998, including the rights enshrined in Article 8, Article 6, and Article 1 of the First Protocol (A1P1) of the European Convention on Human Rights (ECHR). The decision to decline to determine the application under Section 70C does not determine the planning merits of the development or require the removal of the occupiers from the land. It simply prevents the duplication of planning processes in circumstances where the statutory test under s70C is met.

The use of the land as a residential caravan site engages Article 8 rights (right for respect for private and family life). The authority recognises that declining to determine the application may be perceived by the applicant as limiting an avenue through which they might seek to regularise their occupation of the land. However, Article 8 is a qualified right, and interference may be justified where it is lawful, necessary and proportionate in the interests of the economic well-being of the country, the protection of the environment, and the upholding of planning control.

The decision under s70C does not itself interfere with the applicant's occupation of the land. Any interference arises from the Notice itself and not from the decision to decline to determine this application. The enforcement notice is already under appeal, and the appellant will have a full opportunity to present their case, including any Article 8 arguments, before the appointed Inspector. The s78 appeal relating to the WA/2025/00495 application also provides a full merits forum. The applicant is therefore not deprived of a fair opportunity to have their circumstances considered.

In this context, declining to determine the application is a proportionate and necessary step to prevent multiple parallel determinations of the same underlying breach, consistent with the purpose of s70C.

Having regard to Article 1 of the First Protocol (protection of property), Article 1 does not guarantee a right to develop land or to obtain planning permission. The Notice seeks to regulate the use of the land, and a decision under s70C does not impose any new restriction. The applicant retains the ability to challenge the enforcement notice and to pursue the s78 appeal. There is therefore no disproportionate interference with Article 1 Rights.

There is also no interference with Article 6 rights (Right to a fair trial) as the applicant has a live s78 appeal in which the planning merits will be determined by an independent Inspector. This decision simply prevents the duplication of proceedings.

7. Public Sector Equality Duty

Section 149 of the Equality Act 2010 requires the authority to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between persons who share a protected characteristic and those who do not.

The applicant and his family fall within two protected characteristics:

1. Race – being Irish Travellers, a recognised ethnic group.
2. Disability – due to medical conditions that amount to disabilities.

The Council has therefore given careful and explicit consideration to the PSED in reaching this decision.

The decision to decline to determine the application does not, in itself, determine the planning merits of the development or require the removal of the applicant from the land. The applicant retains the ability to pursue the current s78 appeal, where the planning merits, including the personal circumstances of the appellant, their cultural needs, and the availability of alternative sites, will be fully considered by the Inspector. The enforcement appeal also remains available to address issues relating to the timing of compliance.

The Council also recognises that the applicant and family members have medical conditions amounting to disabilities, which may affect their housing needs, access to healthcare, and ability to relocate. These circumstances are also relevant to the planning merits and to the proportionality of enforcement action.

The Council has had due regard to all relevant protected characteristics. Declining to determine this application does not prejudice the applicant’s ability to present their case or to have their circumstances properly considered. The authority is therefore satisfied that it has complied with its duties under Section 149 of the Equality Act 2010.

8. Conclusion

The application seeks permission to regularise development that forms part of the breaches identified in a pre-existing enforcement notice. Although the application includes additional technical evidence, this does not alter the fact that the proposal relates to development to which a pre-existing enforcement notice applies. The statutory test under s70C is therefore met.

The planning merits of the development have already been considered by the Council through enforcement action and will be examined at the forthcoming s78 appeal. Determining the application would result in a duplicative and unnecessary reconsideration of the same underlying breach of planning control, contrary to the purpose of s70C.

Recommendation

That the local planning authority DECLINE TO DETERMINE the application under Section 70C of the Town and Country Planning Act 1990 (as amended) for the following reason:

1. The application relates to development of land to which a pre-existing enforcement notice relates and seeks permission for the retention of matters specified in the enforcement notice as constituting a breach of planning control.

Case Officer John Bennett

Signed: John Bennett Date: 26/06/2026

Agreed by Team or DC Manager: Joanne Hollingdale Date: 26.06.2026

Time extension agreement in writing seen by signing off officer: N/A

Agreed by Development Manager or Head of Planning Services N/A