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## Appeal Decision

Hearing Held on 14 January 2020

Site visit made on 14 January 2020

**by Andrew McGlone BSc MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> January 2020**

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**Appeal Ref: APP/A3655/W/19/3227697**

**Boyd's Farm, Murray's Lane, Byfleet, Easting: 505862 Northing: 160464**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Nathan Smith against the decision of Woking Borough Council.
  - The application Ref PLAN/2018/0940, dated 29 August 2018, was refused by notice dated 8 November 2018.
  - The development proposed is change of use of land to 2 No. Gypsy / Traveller pitches including 2 No. mobile homes, 2 No. semi-detached dayrooms, 1 No. package treatment plant, 2 No. touring caravans, hardstanding, and associated works.
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### Decision

1. The appeal is allowed and planning permission is granted for change of use of land to 2 No. Gypsy / Traveller pitches including 2 No. mobile homes, 2 No. semi-detached dayrooms, 1 No. package treatment plant, 2 No. touring caravans, hardstanding, and associated works at Boyd's Farm, Murray's Lane, Byfleet, Easting: 505862 Northing: 160464 in accordance with the terms of the application, Ref PLAN/2018/0940, dated 29 August 2018, subject to the conditions in the attached schedule which includes a limitation on the occupation of the site to Nathan Smith Senior, Nathan Smith Junior, Joseph Brazil and their resident dependants.

### Preliminary Matters

2. I have, for completeness, used the appellant's full name which is set out on the appeal form in my decision. At the Hearing, it was confirmed that the appellant is Mr Nathan Smith Senior.
3. A signed and dated Statement of Common Ground (SoCG) and a signed and dated Unilateral Undertaking (UU) were submitted at the Hearing. I have had regard to both in reaching my decision. The UU provides a Strategic Access Management and Monitoring (SAMM) contribution in relation to the Thames Basin Heaths Special Protection Area (TBHSPA). I shall turn to the UU later in my decision.
4. The Council dispute whether the intended occupants of the 2 no. pitches proposed would accord with the definition as set out in Annex 1 of the Planning policy for traveller sites (PPTS). I shall turn to the personal circumstances of the intended occupants (Mr Nathan Smith Senior; Mr Nathan Smith Junior; Miss Charmaine Valler; and Miss Lily-Marie Smith) in due course. However, given that the appellant proposes the change of use of land to, among other

things, 2 no. pitches to be occupied by gypsies/travellers who are gypsies and travellers having regard to the PPTS definition, and as the appeal site is in the Green Belt, I agree with the main parties position that the proposal would represent inappropriate development in the Green Belt having regard to Policy CS6 of the Woking Core Strategy (CS) and Policy DM13 of the Development Management Policies Development Plan Document (DPD), the National Planning Policy Framework (the Framework) and the PPTS.

### **Main Issues**

5. Consequently, the main issues in this case are the effect of the proposed development on: (i) the openness of the Green Belt; (ii) the purposes of including the land within the Green Belt; (iii) the character and appearance of the site and the surrounding area; and (iv) the TBHSPA. The final main issue is: would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

### **Reasons**

6. The appeal site is roughly 0.23 hectares in size. The site is part of a larger parcel of land that falls within the appellant's ownership on the western edge of Byfleet. The appeal site is currently used for agricultural purposes for the grazing of animals consistent with the wider parcel of land. Following the grant of planning permission in January 2017<sup>1</sup>, a livestock barn has been erected outside of, but next to the appeal site. Beyond the site's western boundary is the M25 Motorway, while a scout hut is to the east. A gypsy/traveller site which benefits from permanent planning permission<sup>2</sup> for 4 pitches is to the south across Murray's Lane. Residential properties are to the east and north-east of the site. Access to the site is from Murray's Lane, which is a gated public highway and a public right of way. A high voltage overhead power line extends across the wider parcel of land and part of the appeal site. The site is around 1.3km from the TBHSPA.

### *Openness*

7. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
8. Openness has a visual and a spatial dimension. The site is presently open and the proposed development would urbanise the land, despite some of the proposed works being away from Murray's Lane and next to the motorway which offers a degree of enclosure. Given this, the proposal would result in a significant reduction in openness over a considerable period of time if permanent planning permission were granted. The degree of harm would be reduced to moderate in the event of a temporary planning permission, notwithstanding the time periods (3 or 5 years) suggested by the parties. Even so, the appellant accepts that in either scenario that the Framework requires substantial weight be attached to any harm to the Green Belt.
9. On this issue, I conclude that the proposed development would result in a loss of openness of the Green Belt. The proposal would not accord with CS Policy CS6 and Framework paragraph 133.

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<sup>1</sup> Council Ref: PLAN/2016/1011

<sup>2</sup> Council Ref: PLAN/2018/1072

### *Purposes*

10. The main parties agree that the proposal would result in encroachment of the countryside. The appellant also accepts that as the site is on the edge of a large built-up area, the proposal can be said to conflict with the purpose of: to check the unrestricted sprawl of large built-up areas. I agree with the appellant's assessment, though the effect from the latter would be reduced by the motorway and the site's proximity to the urban area. The limited effect caused in the event of a permanent planning permission would be over a considerable period. There would be a modest degree of harm caused in the event of a temporary planning permission.
11. Even so, I attach substantial weight to the proposal's conflict with the purposes of including land in the Green Belt. I conclude that the proposal would in terms of this issue conflict with the purposes of including the land within the Green Belt and not accord with CS Policy CS6 and Framework paragraph 134.

### *Character and appearance*

12. CS Policy CS14 sets out a number of criteria that will be considered when determining proposals for non-allocated gypsy and traveller sites. Of those listed, bullet point 3 says that the site should not have unacceptable adverse impacts on the visual amenity and character of the area. CS Policy 21 also explains that new development should respect and make a positive contribution to the street scene and the character of the area in which they are situated, paying due regard to the scale, height, proportions, building lines, layout, materials and other characteristics of adjoining buildings and land.
13. The appeal site forms part of a large, open field that has the character of a village edge. The scout hut, a livestock barn and the gypsy/traveller site to the south of Murray's Lane have been built since an appeal<sup>3</sup> was dismissed on the appeal site for an agricultural small holding, including the erection of a milk barn, a mobile home for an agricultural workers dwelling, hard surfacing and associated works. Hence, the character and appearance of the area has evolved since that decision.
14. The appellant confirmed at the Hearing that planning permission does not exist for an earth bund on the site. I understand discussions between the main parties will mean that this will be removed by the end of January 2020. This is a matter for the main parties to resolve outside the scope of this appeal. Aside to this, the main parties confirmed that landscaping, approved as part of the planning permission granted in January 2017, has been implemented along the boundaries of the wider parcel of land within the appellant's ownership to the north and east.
15. The development would be positioned next to the site's boundary with the motorway and viewed in conjunction with the scout hut, livestock barn and the pitches to the south of Murray's Lane. As such, the site has a semi-rural character due to the nearby development and infrastructure. Even so, the proposal would urbanise the site and thus change its character and appearance. The proposal would be separate from the residential dwellings to the east and north-east of the site and would not blend with their urban character. However, the proposal would not be 'away from' this settlement or physically and visually separate from the permanent pitches to the south of

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<sup>3</sup> Appeal Decision Ref: APP/A3655/W/16/3164914

Murray's Lane or the scout hut. The proposal would not be dissimilar in terms of its scale, layout and materials to the pitches to the south of Murray's Lane. The proposal would also respect the scale of and would not dominate the nearest settled community and it would not place undue pressure on local infrastructure.

16. Appeal decisions relating to a scheme in Tewkesbury<sup>4</sup> and a scheme in Reading<sup>5</sup> are cited by the main parties, but I do not have the full details of either scheme. I recognise the Council's point about gypsy and traveller sites not being commonplace in the countryside in the Borough. While this may well be currently true, this statement does not fit squarely with the approach being proposed by the Council in the emerging Site Allocations Development Plan Document (SADPD) which would see site allocations for gypsy and traveller pitches within the Green Belt.
17. In this case, I consider that the proposed layout, coupled with the existing and proposed landscaping, would assist with assimilating the scale development proposed into the semi-rural character of the site. While, the proposal would urbanise the site and change its character and appearance, I do not consider that an unacceptable adverse impact would be caused in the context of the permanent gypsy and traveller pitches to the south of Murray's Lane.
18. I conclude, on this issue, that the proposed development would accord with CS policies CS14, CS21 and CS24 and the Woking Design SPD which jointly seek, among other things, development not to have an unacceptable adverse impact on the visual amenity and to conserve, and where possible enhance the existing character of the area.
19. The Council refer to DPD Policy DM13 in respect of this issue, but this policy is not relevant to the appeal scheme as it relates to new buildings facilities within Major Developed Sites; extensions and alterations; replacement buildings; the re-use of buildings and development adjacent to the Green Belt.

#### *Thames Basin Heaths Special Protection Area*

20. The site is within the 400m-5km buffer zone of the TBHSPA. CS Policy 8 explains that any proposal (including permanent stationing of gypsy and traveller caravans or mobile homes) with potential significant impacts (alone or in combination with other relevant developments) on the TBHSPA will be subject to Habitats Regulations Assessment to determine the need for Appropriate Assessment. The policy goes on to require new residential development beyond a 400m threshold, but within 5km of the TBHSPA boundary to make an appropriate contribution towards the provision of Suitable Accessible Natural Greenspace (SANG) and SAMM to avoid impacts of such development on the SPA. The dispute between the parties focusses on the SAMM contribution which provides for access management of the TBHSPA.
21. The proposal would, in combination with other residential development, have the potential to adversely affect the integrity of the TBHSPA through urbanisation and general recreational use. Thus, a precautionary approach is warranted as it is unclear that residential developments within the buffer zone would not have an adverse effect on the TBHSPA. Hence, there seems to be a need for the contribution sought by the Council that satisfies the 3 tests in CIL

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<sup>4</sup> Appeal Decision Ref: APP/G1630/W/17/3192162

<sup>5</sup> Appeal Decision Ref: APP/T0355/W/15/3031132

Regulation 122 and Framework paragraph 56.

22. The submitted UU would provide for the relevant SAMM contribution to mitigate any potential impact on the integrity of the TBHSPA. I have no reason to form a different view to the Council who confirmed at the Hearing that the UU would address the third reason for refusing planning permission as the adverse effect on the TBHSPA can be mitigated.
23. The Council say that a SAMM contribution is not necessary in the case of a temporary planning permission on the basis that the additional short-term consequences of a small-scale residential development would be insignificant in terms of the ecology of the TBHSPA. However, this is not the approach, from what I can see, taken by development plan policies.
24. I conclude on this issue that the proposed development would accord with CS Policy CS8, saved Policy NRM6 of the South East Plan-Regional Spatial Strategy for the South East, the Thames Basin Heaths Special Protection Area Avoidance Strategy 2010-2015 and the Conservation of Habitats and Species Regulations 2010. Jointly, these seek to prevent harm to protected species and habitats so that development does not adversely affect European sites and species.

*Other considerations*

*Other policy considerations*

25. I consider that, subject to the imposition of planning conditions, the proposal would not harm the living conditions of nearby residential properties, the living conditions/wellbeing of future occupants of the site, highway safety and it would be well located to a range of services and facilities. I agree with the view of the main parties that the proposal would not place undue pressure on local infrastructure and that it would not be at a high risk of flooding. The site would, subject to planning conditions, benefit from mains electricity and water, while a package treatment plant is proposed to manage foul water. There is also no reason to believe occupants of the site would not co-exist with the local community. Interested parties raise concerns about wildlife, and that there would be an increase in crime, fly tipping or anti-social behaviour, but there is no substantive evidence before me to support the claims made. These matters carry neutral weight.

*The need for, and provision of, traveller sites*

26. The PPTS seeks to promote more private traveller site provision and to ensure that local planning authorities develop fair and effective strategies to meet the need for sites in appropriate locations, to address under provision and maintain an appropriate level of supply, including a five-year supply of specific deliverable sites. The Travellers Accommodation Assessment (2013) (TAA) identifies a need for 19 pitches between 2012 and 2027.
27. This figure has since been revised upwards and then downwards to account for the loss of 3 permanent pitches at Ten Acre Farm<sup>6</sup> and the 4 permanent pitches granted at Murray's Lane<sup>7</sup>. As a result, the Council identifies that there is a need for 18 additional pitches during the plan period of up to 2027. The appellant queried the accuracy of Table 8 within TAA and outlined their view about an unmet need in the neighbouring planning authorities of Elmbridge, Guildford, Runnymede and Surrey Heath. Specifically, in relation to Woking,

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<sup>6</sup> Council Ref: PLAN/2017/1063

<sup>7</sup> Council Ref: PLAN/2018/1072

- the Council summarise the unmet need to range between 2.6 pitches and 8.3 pitches. The figure depends on whether temporary planning permissions are included and which monitoring year is used. In any event, even if I were to accept the lowest of the Council's figures to be true, there is still an unmet need for sites for gypsy and travellers in the Borough.
28. Progress is being made by the Council with the emerging SADPD. This document identifies a supply of 24 permanent pitches for the plan period. The SADPD is not yet adopted, but it has been Examined in Public at Hearing sessions in December 2019. While the Inspector's Report is yet to be published, the Council is proposing to provide pitches for Travellers in the Borough. The glossary of the TAA defines 'Traveller' as meaning 'gypsies and travellers' and 'travelling showpeople' as defined by the PPTS.
29. All the sites identified in the emerging SADPD are within the Green Belt. As part of the SADPD process, the Council has considered 2 pitches on the appeal site. There remains an unresolved objection to the Council's proposed approach to the appeal site, but this is a matter for the Examining Inspector to consider. Similarly, the merits of the proposed 6 pitches at Land at Five Acres and the 15 pitches at West Hall is for the Examining Inspector to consider given that the PPTS says that Green Belt boundaries should be altered only in exceptional circumstances, as a specific allocation in the development plan and not in response to a planning application.
30. Aside to the merits of these sites, the Council's proposed sequential approach, would see, if the SADPD is found 'sound', the sites at south of Murray's Lane, Stable Yard and land south of Gabriel Cottage granted permission in principle for permanent use. The site at south of Murray's Lane already benefits from permanent planning permission for 4 pitches. At the Hearing, both parties confirmed that a proposal for a single pitch at Land South of Gabriel Cottage is currently being considered by the Council. This site was granted planning permission granted on appeal<sup>8</sup> for 3 years. At the Stable Yard<sup>9</sup> 2 pitches were granted temporary planning permission for 3 years to allow the family an opportunity to pursue a site through the emerging SADPD.
31. The Council is also proposing to identify specific site(s) to provide Traveller accommodation on safeguarded land through a future review of the SADPD or the CS. At this stage, it is anticipated that this would be likely to address the need identified in the TAA for 11 net additional permanent pitches between 2027 and 2040. Even so, the Council accept that it is likely that any future pitches identified would also be within the Green Belt due to the Borough's constraints. I understand that the Council anticipate receiving an interim note from the Examining Inspector towards the end of January. If found 'sound', the SADPD would be adopted in 2020, but a period to facilitate the delivery of the proposed sites must then be allowed for. Nevertheless, in the current context, the Council accept that they are unable to demonstrate a five-year supply of gypsy and traveller sites to meet the identified need.

#### Alternative sites

32. In terms of alternative sites, existing sites within the Borough are either full and/or only have permission for a particular family. Although there was no supporting substantive evidence, the appellant explained at the Hearing that

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<sup>8</sup> Appeal Decision Ref: APP/A3655/W/16/3144784

<sup>9</sup> Council Ref: PLAN/2018/0804

they had looked at other sites in the area for a number of years, but many were not suitable due to their affordability. The appellant also held discussions with the Chief Executive of the Council about a land exchange, but this did not come to fruition. While I note the appellant's wish to live near to the wider family, who live on the site to the south of Murray's Lane, I have no reason to disagree with the main parties agreed position that there are no known alternative vacant pitches available in the Borough that the intended occupants could potentially use.

33. That said, Miss Valler and Miss Smith occupy a pitch at Ash Bridge Gypsy and Traveller site, some 21 miles away in Guildford. Miss Valler confirmed that she has been a long-term resident of this site and there is no reason why she could not remain living here. By extension, the evidence also points to that pitch also available to Miss Smith. However, there does not seem to be any reasonable alternative accommodation for the appellant and Mr Smith Junior, who currently live roadside along with Mr Smith Junior's partner.

Personal circumstances and PPTS definition

34. The PPTS explains in paragraph 16 that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. However, this does not mean that there will not be cases that do not amount to very special circumstances. Annex 1 of the PPTS defines gypsies and travellers for the purpose of planning policy.
35. The appellant and his family comprises of the appellant and his former partner (Miss Valler) and their adult aged children (Mr Smith Junior and Miss Smith). Each are Romany Gypsies, a matter not disputed by the Council. However, the Council dispute whether the intended occupants of the site would accord with the PPTS definition. I agree with the main parties agreed position, based on the evidence before me, that Miss Smith does not fall within the PPTS's definition of gypsy and traveller. I have also had regard to the oral evidence provided at the Hearing about Miss Smith's health condition, living arrangements, reliance on Miss Valler especially and the potential long-term situation. I also recognise that her health and well-being may well benefit from interaction with animals.
36. In terms of Miss Valler, I am mindful of her current social travelling, which is not by her own accounts, as regular as it once was, and her current and ongoing health conditions, which mean that she is not well enough to travel for an economic purpose. Nor is there any evidence about the extent and nature of her prior travelling for an economic purpose before me. In this context alone, it is difficult to assess whether Miss Valler's future intention of travelling for an economic purpose will become a reality or it will not. The unclear situation is added to by the circumstances relating to the appellant and Mr Smith Junior. Before setting these out, both Miss Valler and Miss Smith would benefit from a settled base, access to health care and support from family. The existing pitch at Ash Bridge currently provides all three, though I understand their wish to be able to live with or close to immediate and wider family members on the appeal site and on the site to the south of Murray's Lane. I attach moderate positive weight to the circumstances of Miss Valler and Miss Smith.
37. Substantive written and oral evidence has been provided in respect of the appellant and his health condition, which has and will continue to require ongoing access to health care and access to the internet and electricity to be able to communicate health readings to health care professionals. The

appellant requires help with day-to-day tasks such as taking medication, showering and with preparing food. At present this care and assistance is provided by Miss Valler and Mr Smith Junior, though neither are registered carers. The appellant submits that keeping livestock is of great importance to him as a means of providing for his family, but that he relies on Mr Smith Junior considerably for support with the care and management of livestock and the land. Regular ongoing health care appointments are necessary for the appellant, who has lived on the roadside with his son since around July 2018. I agree with the Council that there are inconsistencies in terms of the dates relating to July 2018 in the written evidence<sup>10</sup>, but I must consider the case based on the current circumstances.

38. The appellant travels on occasion socially with his son but does also stay with Miss Valler on occasions if Mr Smith Junior is away for more than a few days as health readings need to be communicated to health care professionals. This is not, however, a permanent living arrangement and does require the appellant to be picked up/dropped off as his driving license is no longer valid<sup>11</sup>. He would benefit from having a settled base, access to power and the internet, access to health care and family support.
39. Mr Smith Junior used to live with the rest of his immediate family on the site at Ash Bridge. From the written and oral evidence provided, he leads a nomadic habit of life that involves travelling to various parts of the country for work. He likes to work all year round, but work can be harder to find during the winter months. He would like to set up his own business in the future but pointed to the lack of a fixed abode as a factor that could potentially affect this. Although the Council say that they would expect more detailed information about where and how frequently Mr Smith Junior travels for economic purposes, the evidence before me leads me to consider that Mr Smith Junior accords with the PPTS definition. The lifestyle of Mr Smith Junior explained in written<sup>12</sup> and oral evidence at the Hearing, means that he is no longer able to go onto the Ash Bridge site and he explained that he is not welcome at other gypsy and traveller sites or to travel as part of the wider community, save for those of family and friends around the country. This situation has led to him living by the roadside with his partner, and his father.
40. Based on the current living arrangements and the health needs of the appellant, I consider that the appellant is dependent on his son in part for his support. Mr Smith Junior is not dependent on the appellant or Miss Valler. The appellant is to an extent currently dependent on Miss Valler, but not to the same degree as Mr Smith Junior given the current living arrangements. Miss Valler does not seem to be dependent on either, and it is also unclear whether or not Miss Valler accords with the PPTS definition or she doesn't. However, there are unique reasons relating to the appellant and his son from the need for a settled base, the appellant's dependency on his son for day-to-day tasks, access to health care and support from family and friends that weigh in favour of the appeal scheme.
41. The partner of Mr Smith Junior is also a Romany Gypsy, and I understand that they travel with one another. However, there is no substantive evidence before me setting out whether this individual travels for an economic purpose or

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<sup>10</sup> Personal Circumstances Statement, PB02, Appendix 01, Pages 5 and 7

<sup>11</sup> Personal Circumstances Statement, PB02, Appendix 04

<sup>12</sup> Personal Circumstances Statement, PB02

whether they are dependent on Mr Smith Junior. Thus, I am not able to reach a firm conclusion on whether or not they accord with the PPTS definition. Even so, they would benefit from having a settled base and they could provide for and receive support from family members.

*Whether the harm is clearly outweighed by other considerations*

42. I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. Given the intended site occupiers, are Romany Gypsies, they have a protected characteristic for the purposes of the PSED. Article 8 of the HRA requires that decisions ensure respect for private and family life and the home. In reaching my decision, I have kept these interests at the forefront of my mind. However, these are qualified rights and interference may be justified where in the public interest, such as the protection of the Green Belt. The concept of proportionality is key.
43. The Framework states that inappropriate development should not be approved except in very special circumstances, which will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The proposal would result in substantial harm by reason of its inappropriateness and cause a significant impact on the openness of the Green Belt and a limited impact on the purposes of including the land within the Green Belt. These matters, however, carry substantial weight against the proposal. The proposal would not, however, result in harm in terms of character and appearance and the TBHSPA. I attach neutral weight to these two matters.
44. There is an identified need for sites within the Borough and there is no five-year supply of land for such sites. There are also no alternatives open to the appellant, Mr Smith Junior and his partner to move to. As Miss Valler and Miss Smith could continue to live on the pitch at the Ash Bridge site, they would have a settled base, access to health care and would not become homeless. I do, however, recognise that, by being away from the appellant and Mr Smith Junior, this could affect the support that they could individually and collectively receive from and provide for family members as a result of their and other family members personal circumstances. Miss Smith may also benefit from interaction with animals next to the site. These considerations weigh in favour of granting permission, as do the personal circumstances of the intended occupants, and in particular to the need for a settled base, access to health care and support from family and friends.
45. Taking all of these considerations into account, I conclude that the identified harm that would arise from the proposed development outweighs the other considerations, and indicates that a permanent permission should not be granted for the appeal scheme at this time.
46. However, it is necessary, given the appellant's case, to consider whether the grant of a temporary planning permission would be justified. There is no identified five-year supply of land for traveller sites in the area. Typically, this is a significant material consideration when considering the grant of a temporary planning permission, but the site's location in the Green Belt means that this is an exception to this stance. It remains, however, to be a relevant consideration of considerable weight given the Borough's constrained nature. I also attach significant weight to the absence of alternative accommodation for the appellant, Mr Smith Junior and his partner. Miss Valler and Miss Smith have alternative accommodation available to them.

47. If planning permission were to be refused, the outcome would be that the appellant, Mr Smith Junior and his partner would continue to live by the roadside. This would represent a serious interference with these individuals' rights to respect for private and family life and the home (Article 8 of the HRA). I also recognise that by being away from the appellant and Mr Smith Junior, that there would be interference with the Article 8 rights of Miss Valler and Miss Smith insofar as the support that they could individually and collectively receive from and provide for immediate and wider family members as a result of their and other family members personal circumstances.
48. I am mindful of the Council's proposed approach in the emerging SADPD, and its advanced stage, but a period to facilitate the delivery of the proposed sites must then be allowed for. The Council's 3 year period seems somewhat optimistic at this stage, though the Council is being proactive. The longer 5 year period suggested by the appellant would provide all concerned with a suitable period of time whereby: a settled base is secured for the appellant, Mr Smith Junior and his partner, who would not then be roadside; for the proposed sites in the emerging SADPD to come forward; and allow the current personal circumstances of the intended occupants to be reviewed. By the appellant and Mr Smith Junior having a settled base, this would in my view reduce any dependency the appellant has on Miss Valler, especially as wider family members are near to the site.
49. A condition for the site's restoration at the end of the 5 year period would help mitigate the Green Belt harm I have identified because the small-scale of the proposed development means that it could easily be removed at the end of either period. It would not, however, mean that Green Belt harm would not arise in the intervening time.
50. A permission for a limited period would be a proportionate approach to the legitimate aim of protecting the environment and not require a Green Belt boundary alteration for the site. It would also respond to the proposed review of the CS and the emerging SADPD and for sites to be allocated through the development plan process, and not on an ad hoc basis. Granting such a permission would have no greater impact on the appellant, Mr Smith Junior and his partner than would be necessary to address the wider public interest.
51. With regard to Miss Valler and Miss Smith, I conclude, with respect to a temporary planning permission, that the identified harm to the Green Belt is not clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify inappropriate development in the Green Belt. Having regard to the legitimate and well-established planning policy aims in this regard, a refusal of temporary planning permission in respect of these individuals would be proportionate and necessary.
52. For the reasons explained, I consider that the appropriate balance would be struck between the rights of the individuals and the protection of matters of acknowledged public interest by the grant of a five year planning permission, subject to appropriate conditions, such that the action would not be disproportionate and would not result in a violation of the rights of the individuals concerned.

### **Conditions**

53. I have had regard to the suggested list of planning conditions provided by the main parties in the SoCG and their comments on them made at the Hearing. I

have amended or combined some of those conditions in the interests of satisfying the tests set out in Framework paragraph 55. I have also had regard to the main parties' joint submission about suggested conditions 10, 12, 13 and 15 as a result of discussions held at the Hearing.

54. In the interests of certainty an approved plans condition is necessary. Given my findings about the intended occupants and their accordance with the PPTS definition, a condition to tie the occupation of the land to gypsies and travellers is necessary. Moreover, conditions are necessary to limit the occupancy of the land for five years for the avoidance of doubt and as the personal circumstances of these individuals weigh heavily in my decision. I have also imposed conditions, in the interests of certainty and the character and appearance of the area, to control: the number and type of caravans on the pitches; the implementation and maintenance of the soft landscaping scheme; and to prevent commercial activities and the parking of heavy vehicles.
55. In the interests of the character and appearance of the area, conditions are necessary so that the land is restored to its existing condition at the end of the time period; for the materials to be used for the dayrooms; and for any means of enclosure, including a bin store. I have imposed a condition restricting any further means of enclosure as the scope of the condition is precisely defined and given the site's location/surroundings. So that the development does not adversely affect highway safety, I have imposed conditions about the access, parking and circulation areas, and to secure refuse and recycling management arrangements. For the same reason, I have imposed a condition about mains water supply and the package treatment plant.
56. As suggested by the main parties, I have imposed a condition which sets out precise requirements for a Construction Management Plan. I have also imposed a condition about waste and debris next to the motorway boundary. Both are necessary in the interests of the integrity of the motorway which forms part of the national system of traffic routes and neighbouring residents living conditions. I have imposed a condition about generators and external air conditioning/handling units in the interests of the living conditions of nearby residential occupants. In the interests of future occupants living conditions due to the proximity of the motorway, I have imposed a condition so that any mobile home is provided with suitable sound insulation from external noise.

## **Conclusion**

57. For the reasons given above, relevant considerations indicate that planning permission should be granted for development that is not in accordance with the development plan as a whole. I conclude that a case has been made, in respect of the appellant, Mr Smith Junior and his partner, to clearly outweigh the harm to the Green Belt, thereby justifying the proposal on the basis of very special circumstances.
58. However, the case insofar as Miss Valler and Miss Smith, as a result of their settled base, means that the considerations relevant to them do not tip the balance in favour of either a temporary or permanent planning permission as they do not clearly outweigh the harm to the Green Belt.
59. I therefore conclude that the appeal should be allowed on this basis.

*Andrew McGlone*

INSPECTOR

## SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan NS18-SLP; Proposed Site Layout Plan NS18-PROPOSED; and Day room elevations and floor plan NS18-DAYROOMS.
2. The occupation of the site hereby permitted shall be carried on only by Nathan Smith Senior, Nathan Smith Junior, Joseph Brazil and their resident dependants and shall be for a limited period being the period of 5 years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.
3. When the land ceases to be occupied by those named in condition 2 above, or at the end of 5 years, whichever shall first occur, the use hereby permitted shall cease and all mobile homes, caravans, buildings, structures, materials and equipment brought on to, erected on the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place in accordance with a scheme of work and timescale that shall previously have been submitted to and approved in writing by the Local Planning Authority.
4. The site shall not be occupied by any persons other than gypsies and travellers as defined by Annex 1 of the Planning Policy for Traveller Sites published in August 2015 or its equivalent in replacement national policy and not as a transit site or as a temporary stopping place.
5. No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 2 shall be a static caravan) shall be stationed on the site at any time in the positions marked on plan Ref: NS18-PROPOSED.
6. No part of the development shall be occupied until the modified access to Murrays Lane has been constructed in accordance with a scheme to be first submitted to and approved in writing by the Local Planning Authority and retained thereafter in accordance with the approved details.
7. The development hereby permitted shall not be occupied until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained for their designated purposes.
8. Any mobile home on the site shall meet the criteria specified within BS3632:2005 para 4.9.4 for sound insulation from external noise. The mobile homes shall comply with the mobile home glazing and ventilation performance requirements set out within the submitted Noise Impact Assessment by 24 Acoustics (Ref: R4623-1 Rev 0) dated 3rd April 2013 to meet reasonable internal noise levels as described in BS 8233. The mobile home glazing and ventilation performance requirements shall be complied with upon first occupation of the land and shall thereafter be retained in accordance with these details.
9. The development hereby permitted shall not commence until details of the proposed refuse and recycling management arrangements (to include the appointment of a private contractor by the applicant to collect and dispose of refuse and recycling from the site on a regular basis) have been submitted to and approved in writing by the Local Planning Authority. The approved management arrangements shall be implemented upon first occupation of the land and maintained thereafter for use by the occupants of the land.

10. No works shall commence on site until a Construction Management Plan (CMP), has been submitted to and approved in writing by the Local Planning Authority who shall consult Highways England. The plan shall provide for:
- (i) Storage of plant and materials used in constructing the development;
  - (ii) Loading and unloading of plant and materials;
  - (iii) The parking of vehicles of site operatives and visitors;
  - (iv) Details confirming that Highways England shall be afforded access to inspect the operational boundaries of the M25 bund and fencing adjacent to the application site, prior to the commencement of construction, during construction and following the completion of construction.

Only the approved details shall be implemented during the construction of the development hereby permitted.

11. The Mains water supply for mobile and touring caravans, and ancillary buildings, shall be taken from the site mains water supply. Sewage shall be dealt with through the package treatment plant as referenced in planning application PLAN/2018/0940 which shall be provided on site in full, in accordance with details which shall have been first submitted to and approved in writing by the Local Planning Authority prior to the first use of the development hereby permitted. Thereafter the development shall be maintained operational in accordance with the approved details.
12. No waste or debris from the application site shall be deposited on or adjacent to the operational boundary of the M25.
13. No external lighting shall be installed on the land until details of any external lighting (demonstrating compliance with the recommendations of the Institute of Lighting Engineers 'Guidance Notes for Reduction of Light Pollution' and the provisions of BS 5489 Part 9) have been submitted to and approved in writing by the Local Planning Authority. Any such approved lighting scheme shall be installed and maintained in accordance with the agreed details thereafter.
14. No generators and external air conditioning/handling units or similar equipment shall be sited on the land until details of such equipment, including acoustic specifications, have been submitted to and approved in writing by the Local Planning Authority. Such equipment shall thereafter be installed and maintained in accordance with the agreed details.
15. The soft landscaping scheme shown on approved plan Ref: NS18-PROPOSED shall be carried out in the first planting season (November - March) after completion of the development unless otherwise agreed in writing by the Local Planning Authority and shall be maintained for a period of 5 years. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the Local Planning Authority.
16. No commercial activities shall take place on the land, including the storage of materials and no more than one commercial vehicle per pitch, which shall be kept on the land for the use by the occupiers of the land hereby permitted and this vehicle(s) shall not exceed 3.5 tonnes in weight.
17. Prior to construction of the development beyond foundation level, and notwithstanding the material details outlined on the approved plans, details and samples of the materials to be used in the external elevations/surfaces of the proposed dayrooms have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and thereafter retained in

accordance with the approved details.

18. Before first occupation of the development hereby permitted details (including position, materials, height and design) of any gates, fences or other means of enclosure, including the proposed bin store on the site shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and thereafter retained in accordance with the approved details.
19. Notwithstanding the provisions of Article 3, Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), (or any orders amending or re-enacting that Order with or without modification) no further means of enclosure (including walls or fencing) shall be erected on the land other than those means of enclosure as approved under condition 20, without planning permission being first obtained from the Local Planning Authority.

END OF SCHEDULE

## **APPEARANCES**

### **FOR THE APPELLANT:**

Simon Ruston MRTPI  
Nathan Smith Senior  
Charmaine Valler  
Nathan Smith Junior  
Joseph Brazil  
Thomas Valler  
Georgina Valler

Ruston Planning  
Appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Joanne Hollingdale BSc (Hons),  
DIPTP, MRTPI

Woking Borough Council

### **INTERESTED PERSONS:**

Eleanor Grady  
Councillor Amanda Boote  
Councillor Mary Bridgeman  
Louise Jelly

Woking Borough Council  
Woking Borough Council

## **DOCUMENTS**

- 1 Signed and dated Statement of Common Ground
- 2 Appendix 08, Woking Borough Council Traveller Accommodation Assessment
- 3 Signed and dated Unilateral Undertaking
- 4 Representation, Byfleet, West Byfleet and Pyrford Residents Association
- 5 Health evidence, Mr Smith Senior