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## Appeal Decision

Hearing Held on 17 May 2022

Site visit made on 17 May 2022

**by Tim Wood BA(Hons) BTP MRTPI**

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

**Decision date: 21 June 2022**

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**Appeal Ref: APP/Y3615/W/20/3255071**

**Longacre, Outdowns, Effingham, Leatherhed, Surrey KT24 5QR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Joseph Cooper and Ms C Brazil against Guildford Borough Council.
  - The application Ref 20/P/00685, is dated 20 April 2020.
  - The development proposed is the change of use of land to one Gypsy pitch with residential caravans, 1 day room and hardstanding for occupation by the applicants and their family.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The appeal relates to the Council's non-determination of the planning application within the prescribed time period. The Council has resolved that, had it been in a position to do so, it would have refused the planning application and the Council has set out its putative reasons for refusal.

### Main Issues

3. Based on the Council's submissions, which have also been modified during the course of the appeal, the main issues in this appeal are;
  - Whether the development is inappropriate development in the Green Belt
  - Whether any other harm to the Green Belt results from the development
  - The effects of the proposal on the character and appearance of the area
  - The effects of the proposal on highway safety
  - The need for and supply of such sites
  - The personal circumstances of the appellants including the effects on the children.

### Reasons

***Whether the development is inappropriate development in the Green Belt***

4. The appeal site is a roughly rectangular parcel of land located within the Green Belt. The appellants and the Council agree that the development amounts to inappropriate development within the Green Belt. The National Planning Policy Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I attach substantial weight to the harm to the Green Belt that arises from its inappropriateness and the proposal would be contrary to Policy P2 of the Guildford Local Plan; Sites and Strategy 2015-2030 (LPSS) and the advice in the National Planning Policy Framework.

***Whether any other harm to the Green Belt results from the development***

5. Prior to the occupation of the site by the appellant, the photographic evidence submitted by the Council indicates that the site was open and free from buildings and structures. The existing and proposed use of the site involves the stationing of a number of caravans, vehicles, a dayroom and a playroom, as well as other domestic paraphernalia. Compared to its previous state, the proposed use would have a significantly deleterious effect on the openness of the site. In addition, the development would conflict with one of the main purposes of the Green Belt of assisting in safeguarding the countryside from encroachment. This gives rise to additional conflict with Policy P2 of the LPSS and the Framework.

***The effects of the proposal on the character and appearance of the area***

6. The site is located within the Surrey Hills Area of Outstanding Natural Beauty (AONB) and an Area of Great Landscape Value. There is woodland to the west and south of the site and on the eastern side of Outdowns opposite the site. Land to the south of the site is designated as a Site of Nature Conservation Importance and Area 1 of a Tree Preservation Order (TPO) applies to the eastern and southern part of the site.
7. Due to the topography and presence of woodland in the surrounding land, it is generally agreed that there would be no wider negative effects on the landscape and the designations referred to above. However, the track and pathways nearby are used by members of the public and the structures and features of the site would have some negative effects on the character and appearance of the area from these more immediate parts of the surroundings, in conflict with Policy D1 of the LPSS and Policy ENP-G2 of the Effingham Neighbourhood Plan as well as saved policies G1 and G5 of the Guildford Local Plan 2003.

***The effects of the proposal on highway safety***

8. The available visibility for drivers emerging from the junction of Outdowns with the A246 when measured using an X distance of 2.4m back from the carriageway edge at the minimum 1.05m driver's eye height is restricted to lower than the 120m, which is the County Council's stated requirement here. It is restricted to the west by a fence and vegetation and to the east by vegetation. Discussion at the Hearing concentrated on the visibility to the east, the 'leading' direction as vehicles approaching from that direction are closer to the edge of the carriageway and more critical for vehicles emerging from Outdowns.

9. Visibility to the east is restricted by epicormic vegetation growing from the base of a tree, which is included within a Tree Preservation Order. The tree is apparently on private land and there is disagreement between the Council and the appellant about the extent of the private land and the highway boundary here. The Council considers that the private land extends towards the edge of the running surface of the road and so includes land over which the epicormic growth occurs, whilst the appellant casts doubt in the confidence that may be placed in the available information.
10. The epicormic growth interrupts visibility such that a splay of 2.4m x 120m is not clear of obstruction. It is evident that this growth is periodically cut back, mostly with the agreement of the owners; conversely, it would also be the case that it periodically grows back and interrupts visibility. At the time of the Hearing the level of growth allowed visibility to be achieved if the X distance were to be reduced to 2.0m rather than 2.4m, and it appeared to be generally accepted that this is the case when the growth occurs. It was also notable that the visibility is not negatively affected by the curvature of the main road, as has been previously considered to be the case.
11. The County Council are of the view that it would be unacceptable to accept the application of a reduced X distance of 2.0m due to the possibility of vehicles emerging from Outdowns having to project partly into the main road. The appellant indicates that it may not be necessary for vehicles to encroach onto the main road but visibility may be gained simply by the driver leaning forwards within the car. He adds that, even if a car were to project very slightly, then there is sufficient space within the carriageway for vehicles on the main road to safely avoid it, or, in more significant cases, enough forward visibility to stop. From this position also, it would be the case that visibility to the west would be improved and where a solid central line would prevent vehicles overtaking on that section of the road and so not placing them on the nearest side when approaching Outdowns. In this context, there is discussion about whether to use the guidance in Manual for Streets/Manual for Streets 2 or DMRB. The main road here carries significant numbers of vehicles and is certainly not lightly trafficked. The speed limit is 40mph and the 85<sup>th</sup> speed is recorded as being at 40mph or very close either side to it. Taking account of the contents of MfS2 and DMRB, I consider that it is more appropriate to consider the guidance in DMRB in relation to visibility at the junction and there is the possibility that a vehicle emerging from Outdowns could project into the main road, seeking to get a better view, whilst an approaching vehicle on the main road was already at a distance less than the stopping distance but obscured from the view of the driver from Outdowns. The guidance in DMRB indicates that for a simple priority junction the X distance should be a) 9.0m or b) 2.4m. DMRB states that the minimum distance should be the a) figure and only where it is not feasible to provide that distance, it should be as close to a) as possible and not less than b). In this case it envisages that the absolute minimum would be 2.4m.
12. There was some discussion about the extent of third party ownership of land adjacent to the road and to powers available to the Council to seek to improve visibility here. There is disagreement about the certainty that can be attached to some of the submitted evidence; the Council appear to accept the evidence from the owner of the land to the east of the junction whilst the appellants state that doubts over the accuracy of the plans means that this cannot be relied on. In my view there is sufficient doubt about the land being within the

highway such that I consider that it would be unwise to seek to rely on any restriction by way of a planning condition about visibility over this land, as it may be outside the control of the appellant and highways authority. Similarly, some discussions about powers available to the highways authority about the removal of the tree or parts of it were discussed. I consider that there are sufficient doubts about the outcomes and possible repeated need for such measures, to mean that these cannot be relied on either.

13. Whilst I acknowledge that records indicate that there have been no personal injury accidents at this junction for over 10 years, I consider that the increase in the use of the junction brought about by the existing/intended use of the appeal site would represent a marked increase in the numbers of vehicles that use it. Whilst it would seem unlikely that the layout of the junction is likely to change in the near future and the existing properties will continue to use the road, I consider that the increase in the use of the unsafe junction would be significant and weighs substantially against the appeal scheme. The consequences of a collision here could have profound consequences and could affect the appellants and their family. Therefore, the development would be in conflict with Policy ID3 of the LPSS.

### ***The need for and supply of such sites***

14. There is agreement that the Council can demonstrate a suitable supply of such sites. However, the appellants stress that there is a general need for such sites and that the Council's provisions mean that sites may not be available for some years.

### ***The personal circumstances of the appellants including the effects on the children***

15. The appellants and their family have submitted evidence of their healthcare needs, their educational needs and their family ties and commitments to the area. A number of the family require health services which they gain access to from the appeal site. Four of the children attend school or pre-school locally and some have special/additional needs. In addition, care is provided for an elderly relative who lives a short distance from the appeal site. I have no doubt that moving from the appeal site would represent a significant disruption for the appellants family in continuing to gain access to healthcare, family commitments and particularly to the continued education and welfare of the children. I attach moderate weight to these matters in determination of this appeal and I have considered the effects on the children as a main consideration.

### **Balance and Conclusions**

16. The development is inappropriate in the Green Belt and the NPPF advises that inappropriate development should not be approved except in 'very special circumstances', which will not exist unless the harm to the Green Belt by way of inappropriateness, and any other harm, is clearly outweighed by other considerations. It adds that inappropriate development is, by definition, harmful to the Green Belt. I give substantial weight to this harm to the Green Belt. Furthermore, the development would have an unacceptably harmful effect on the openness of the Green Belt and one of its main purposes of keeping land permanently open. I attach significant weight to this harm.

17. The proposed access is currently used by a small number of properties and the use of the appeal site would add to this (as does its current occupation). I consider that the layout of the junction falls short of what can be considered as desirable and safe and an increase in its use would add unacceptably to the risk of a collision here. I have noted the appellants comparison with the Dirtham Lane junction but I am informed that it brought about a significant improvement in the layout of that junction such that the Council considered it to be an improvement overall. I do not under-estimate the effects of a road accident and have considered this matter very carefully, including the risk that it poses to the appellants and their family members. The effects of this matter weigh considerably against the appeal proposal.
18. There would not be unacceptable harm to the AONB and AGLV, subject to certain measures which could be controlled by planning conditions, relating to landscaping and boundary treatment. There would not be any unacceptable effects on ecological interests or to protected trees either, matters that could also be controlled by suitable conditions. However, I have identified some localised harm to the character of the area arising from the proposal, to which I attach moderate weight.
19. The appellants are gypsies with a right to have his traditional way of life respected and there is a general need for traveller sites in the area, and the development plan process would seek to bring forward provision of suitable sites but not generally within the next few years. In this respect, the appellants asked that 5 years temporary permission be considered as a minimum. Significant weight should be attached to this consideration in considering an application for a temporary permission, although less weight in the case of a permanent permission.
20. There is also no identified alternative site for the appellants to move to. The likelihood is that dismissing the appeal would lead to them camping on unauthorised sites or on the roadside and I attach significant weight to the harmful effects that this would have. I also attach moderate weight to the resultant disruption to access to health services and education that would arise from this.
21. Dismissing the appeal would result in interference in the appellants' and their family's right to a home and family life under Article 8 of the European Convention on Human Rights. That right is qualified and may be interfered with in accordance with the law and if it is necessary in a democratic society. The public sector equality duty also applies here, because the appellants and their family members are gypsies and as a minority are vulnerable.
22. Having taken account of all of these considerations, I consider that the harm to the Green Belt, and the other harm identified, is considerable. The other considerations which weigh in favour of the appeal do not clearly outweigh that harm, so as to amount to the very special circumstances necessary to justify the grant of a permanent permission. Granting a permanent permission would therefore conflict with the LPSS and with national planning policy relating to Green Belts and traveller sites in the NPPF and the PPTS.
23. Alternatively, the appellant seeks a temporary permission. Notwithstanding the general position in relation to the supply of sites, it would seem unlikely that the appellant would be able to find an alternative site within the next few years. A temporary permission would not be as harmful to the Green Belt,

because the effect on openness and the Green Belt purposes would be relatively short-lived and not permanent. However, the junction of Outdowns with the main road of the A246 does not provide suitable visibility for drivers and cannot be considered as safe, in my judgement, a matter to which I attach substantial weight. My conclusion is that the increase in the use of the junction represented by the appeal scheme would unacceptably add to the safety concerns here, even over a temporary period.

24. In view of the above matters, I consider that the harm identified is not clearly outweighed by the 'other considerations' relied on by the Appellant so as to justify granting permission, even for a temporary period of time. Consequently, a temporary permission would also conflict with relevant local and national policy. Dismissing the appeal would result in an interference in the human rights of the appellants and their family. However, that interference would be no more than is necessary to control the use of the site in the general public interest, bearing in mind the legitimate planning policy considerations, and would not be disproportionate in this case.
25. In relation to the Public Sector Equality Duty, I consider that none of its aims would be furthered by granting planning permission, given the objections to it that I have identified.
26. For the reasons set out, the appeal is dismissed.

*T Wood*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

M Willers QC  
T Matthews  
J Hurlstone

### FOR THE LOCAL PLANNING AUTHORITY:

E Drabkin-Reiter, of Counsel  
K Lines  
K Jethwa  
J Searle  
K Wilkinson