



Appeal Decision

Hearing Held on 7 September 2022

Site visit made on 7 September 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2022

Appeal Ref: APP/L3625/W/21/3282272

Alnebury, Norwood Hill Road, Norwood Hill RH6 0EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Jean Cash Knight against the decision of Reigate & Banstead Borough Council.
 - The application Ref 20/01685/S73, dated 7 August 2020, was refused by notice dated 4 March 2021.
 - The application sought planning permission for the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/dayroom without complying with conditions attached to planning permission Ref 16/00922/F (appeal Ref APP/L3625/W/16/3163732), dated 17 August 2017.
 - The conditions in dispute are Nos 2 and 3 which state that:
 - *2 - The use hereby permitted shall be carried on only by Jean Cash Knight and Priscilla Bowers and their resident dependants, and shall be for a limited period being the period of three years from the date of this decision.*
 - *3 - When the site ceases to be occupied by those named in Condition 2 above, or at the end of three years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, and works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.*
 - The reasons given for the conditions are:
 - *2...to restrict occupancy to the named residents*
 - *3 to limit the duration of the permission to three years.*
-

Decision

1. The appeal is allowed and planning permission is granted for the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/dayroom at Alnebury, Norwood Hill Road, Norwood Hill, RH6 0EB, in accordance with application Ref 20/01685/S73 dated 7 August 2020, without compliance with conditions 2 and 3 previously imposed on planning permission Ref 16/00922/F (appeal Ref APP/L3625/W/16/3163732), dated 17 August 2017 and subject to the conditions in the attached schedule.

Preliminary Matters

2. The 2017 permission was also granted for the benefit of the named occupants and for a temporary period of either three years, or until the departure of the named occupants, if sooner. It is claimed that the named residents have not changed since the original permission was granted, but all remain at the site in breach of the time-limiting condition.

3. The appellant is seeking a full, permanent permission with a personalised condition only should it be necessary, albeit expanded to include reference to the increased number of resident adults at the site.

Main Issues

4. The main issues are:
 - a) the effect of the proposed development upon the openness of the Green Belt, and upon the purposes of the Green Belt in relation to safeguarding the countryside from encroachment;
 - b) the effect of the proposed development upon the character and appearance of the area;
 - c) the need for, and provision of, accommodation for gypsies and travellers within the area;
 - d) the accommodation needs and other personal circumstances of the proposed occupiers, and consideration of relevant statutory duties and rights, and;
 - e) if inappropriate development, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the scheme in the Green Belt.

Reasons

5. The development plan for the area includes the *Reigate and Banstead Local Plan Development Management Plan* (DMP) which was adopted in 2019, i.e. since the 2017 permission was granted. Whilst its Policy NHE5 refers to inappropriate development in the Green Belt, the Council conceded at the hearing that it refers specifically to extensions or alterations to buildings, and replacement buildings and, thus, does not apply to the proposal.
6. The key development plan Policy relating to development in the Green Belt is CS3 of the *Reigate and Banstead Local Plan: Core Strategy (Core Strategy)*, adopted 2014 and found not to need updating in 2019. This Policy states that planning permission will not be granted for inappropriate development unless very special circumstances clearly outweigh the potential harm to the Green Belt. The Planning Policy for Traveller Sites document (PPTS) sets out that traveller sites in the Green Belt are inappropriate development.
7. The appellant accepts that the scheme, by definition, is inappropriate development in the Green Belt. I too find that this is the case and that the development is in conflict with Policy CS3 of the Core Strategy and contrary to the Framework and PPTS.

Openness of the Green Belt

8. One of the essential defining characteristics of the Green Belt, as set out in the Framework, ¹is its openness, and this is generally understood to mean an absence of built development.
9. The caravans have been positioned on site and the dayroom building has also been constructed. They sit within a relatively compact site of around 260 square metres which sits to the rear of the lawful stable buildings. Vehicle

¹ Paragraph 137

parking and manoeuvring space appeared more closely related with the stables and access from the road than with the caravans, and despite there being some domestic paraphernalia, this was situated within the modest leftover spaces within the site.

10. The change from an open area of field to the formation of a traveller site has clearly reduced openness in this part of the Green Belt. Condition No 3 of the permission required the use to have ceased by August of 2020. Granting a permanent permission would result in a permanent loss of openness which would be a clear conflict with Core Strategy Policy CS3 and the Framework.
11. However, in my view, the site is compact and the fixed and movable features related to this scheme are closely related to permanent lawful stable buildings within the Green Belt. These factors reduce the actual harm to the Green Belt's openness.

Encroachment

12. The Green Belt is intended to assist with protecting the countryside from encroachment and the Framework makes clear that this is one of its five purposes².
13. Whilst the introduction of development onto a site further into the undeveloped countryside amounts to a degree of both spatial and visual encroachment into the Green Belt, by reason of the compact site size and its siting in conjunction with permanent lawful development, I consider the actual effect of the encroachment is limited. Nevertheless, any degree of harm in this regard is still contrary to the expectations of Core Strategy Policy CS3 and the Framework.

Summary of Green Belt Harm

14. It is accepted that there would be definitional harm to the Green Belt through inappropriate development. There would also be limited harms to the Green Belt through a loss of openness and encroachment. The Framework advises that any harm to the Green Belt is to be attributed substantial weight³, and, consequently, I find that the totality of Green Belt harms attract such weight in this case.

Character and appearance

15. It was agreed between the parties that the generally rural character of the area was little changed and that existing development nearby was sporadic in nature and mostly situated in close proximity of the road within spacious plots. I found this to be accurate but noted that the permanent dwellings nearby were relatively prominent within both the immediate and wider surroundings.
16. The road frontage development at the site comprises the cluster of stable buildings either side of the access drive. The buildings are low lying and have a layout and appearance which befits their countryside location. Though the presence of an opening and fencing at the access draws the eye into the site, the buildings are not particularly visible in the wider surroundings.
17. The scheme has been situated immediately behind the stable buildings and the darkened timber-effect external treatment on the mobile home gives it some

² Paragraph 138

³ Paragraph 148

consistency with the stable buildings. The dayroom is both modest and discreetly sited, and it appears to me that domestic paraphernalia is limited to areas which are generally out of view, even from within the site but particularly from the roadside. The only anomaly in this regard is the white touring caravan which is situated at the end of the site, in alignment with the access drive. It's more stark and unnatural appearance is unlike the other features on site, but it is still modest in scale and nestled in amongst low-lying buildings which minimise its visibility. Even then, passers-by are more likely to be driving and would catch only glimpses into the site and on occasion, the touring caravan may be absent for travelling purposes.

18. The topography of the area lends some degree of visibility towards the site from higher ground to the north, but this is generally of a minimal amount of the roofscape of the lawful buildings and mobile home above the hedges. Even with the vegetation affording sparser cover during winter months, I consider that there would still be screening of the structures by the hedgerows that minimise the public visibility of the site. The planting around the site itself is yet to mature and at this point in time, has little overall effect at screening the site, but when it does so, this will further minimise the ability to see the site in views across the appellant's and other adjoining privately-owned land.
19. Taken collectively, I consider that the nature, scale, design and appearance of the scheme is compatible with and respectful of its countryside location. There has been some degree of consolidation with the pre-existing development but not to the extent that the site could be considered urbanised. Given the topography and existing landscape features, the visibility of the site is minimal and I consider that efforts have been made by the appellant to keep the residential use contained and subordinate in scale and presence to their lawful use of the wider land for the keeping of horses.
20. Therefore, in my view, the appeal site does not have a harmful effect on the character and appearance of the area. Policy DES1 of the DMP expects that all new development will be of a high quality design that makes a positive contribution to the character and appearance of its surroundings. As I do not consider that the effects of the scheme are positive, it falls a degree short of the expectations in DMP Policy DES1.

Need for and supply of sites

21. At the time of the previous appeal in 2017, the examination of the DMP was underway and as part of this, the Council had produced the *Reigate and Banstead Borough Council Gypsy and Traveller Accommodation Assessment Final Report (2017)* (GTAA) to inform the site allocations and policy approach to providing for gypsies and travellers in the plan area as required by Policy B of the PPTS. The Council's evidence draws attention to the examining Inspector's report which says that: "*The methodology undertaken makes justified assumptions, forms a robust assessment of need and is soundly based*".
22. The DMP went on to be adopted with the minor modifications suggested by the examining Inspector and it includes Policy GTT1 of the DMP which allocates 29 new pitches for gypsies and travellers comprising either new or intensified existing sites and with a proportion intended to be delivered through Sustainable Urban Extensions (SUEs). The provision of 29 pitches is intended to

deal with both PPTS-compliant gypsies and travellers and needs arising from those who do not meet the current definition.

23. The Council's written evidence highlighted that a need figure had been derived through a formal plan preparation process with a tested evidence base. It was precisely this process that the Inspector was anticipating with the grant of a three year temporary permission in 2017 to enable this process to conclude and bring about possible alternative site options for the appellant. On the other hand, the appellant's evidence offers a revisitation of the needs assessment with a need figure of around double that included within Policy GTT1 and an assertion that there is clear unmet need now, a persisting policy failure and lack of a five year supply.
24. During the hearing, in discussions about some of the site allocations, evidence was provided by both parties about recent events involving the inward migration of a large number of travellers into the Borough and planning applications having been submitted in relation to the same, although at very early stages of processing. The number of additional pitches created appeared to be in the order of the total number of pitches provided for in Policy GTT1 and that anticipated by the GTAA over the whole plan period to 2027.
25. Despite its limited nature, the evidence was acknowledged by both parties and indicates a significant material change of events on the ground since the adoption of the Policy. It is not possible to quantify what precise additional need has arisen, what proportion of it stems from PPTS Annex 1-compliant travellers and how much of it existed in the Borough at the time the GTAA was produced. However, it is clear that a situation has arisen that signifies a pressing and unmet need. The Council conceded this point during the hearing and, consequently, for the purposes of this appeal and without evidence to indicate otherwise, I find DMP Policy GTT1 to be out of date through a change in circumstances on the ground.
26. Clearly, if the Policy setting the traveller pitch target is found to be out of date, the supply calculations monitoring progress against the same cannot be regarded as up-to-date either. So whilst I note that the Council has made healthy progress towards addressing the shortage of pitches noted at the time of the 2017 appeal, with evidence to suggest that 35 pitches had been approved between 2016 and the date of the hearing, I do not regard that a five year supply can be robustly demonstrated at this point in time.
27. In terms of factors in relation to need and supply that have remained constant since the last appeal, there are still no public sites in the Borough. Despite the lack of evidence that a systematic search for an alternative site has been undertaken, the appellant knows of no other alternative available sites onto which she and her family could relocate with most of the other permissions discussed having been granted to specific traveller family groups of which they are not a part.
28. In summary, the position agreed at the hearing between the parties is that there is a current, pressing unmet need in the Borough and, flowing from that, an inability to demonstrate a five year supply as required by PPTS.

Personal circumstances

29. The Council accepted that the appellant and family group meet the PPTS definition and I had no evidence to reach an alternative view in this regard.
30. The site occupants are the same as at the time of the previous appeal and the keeping and trading of horses as lawfully permitted on the remainder of their land is a key means of income and facilitates their lifestyle. The dual purpose of the site as both home and workplace reinforces its suitability for the appellant's family and minimises the need for some occupants to travel for work.
31. There has been little change in terms of the health and other personal circumstances of the occupants since the previous appeal decision. Two children (the appellant's grandchildren) would continue to reside on site and it was stated that they may choose to attend Ashcombe School which is where other family members attend or have previously attended. It was identified that a further occupant would likely reach adulthood by the time of my decision but that his degree of dependency on the family would not warrant their particular name being added to any condition making it personal to the family. This family member is also attending college and receives both practical and financial support for challenges they face, with the appellant being a named carer and other family members providing support with these caring duties.
32. I read and heard sufficient evidence to corroborate the validity of the health and educational needs of the family, and the opportunities sought, not only by the resident children but by a vulnerable young adult for whom stability and routine is an essential requirement of life.
33. The dismissal of this appeal would be likely to lead to the loss of the home where the family have resided for a number of years and where their business is primarily based. The loss of a home and the absence of any obviously immediately available or suitable alternative accommodation would amount to a breach of Article 8 of the European Convention on Human Rights in relation to respect for private and family life, and also of Article 1 of the First Protocol in relation to protection of property, both as incorporated by the Human Rights Act 1998.

Best interests of the children

34. There would remain two children on site for whom Article 3 of the United Nations Convention on the Rights of the Child are engaged. This requires that the children's best interests are a primary consideration and caselaw has established that no other consideration in a subsequent assessment of individual circumstances, should be regarded as more important or be given greater weight.
35. There is no doubt in my mind that the best interests of the children would be served by the family continuing to reside at their long-established home and business base. Their needs are being met presently at this base, and whilst the school they may attend is some distance away, I understand the rationale for attending there as a preference to others that may be situated closer to the site. The opportunities the children would be denied by having to leave their home and live a roadside existence or double-up on pitches elsewhere would inevitably be damaging.

36. As such, the best interests of the children is a factor that attracts substantial weight.

Other Matters

37. I have taken into account the comments from the Parish Council in respect of the case-specific circumstances which are addressed in this decision. I also note the views of a local resident about the need to preserve the Green Belt and maintain the pleasant character and appearance of the area, which has also been a key factor addressed in the determination of this appeal.

Planning Balance

38. The scheme is inappropriate development and would incur harm to the Green Belt. As directed by the Framework, substantial harm should be attached to the totality of Green Belt harm. Though there would not be actual harm, there would be a degree of policy harm given the scheme's inability to accord with DMP Policy DES1. For these reasons, the scheme is in clear conflict with the development plan, when read as a whole, and fails to meet the expectations of the Framework to ensure the preservation of the Green Belt.
39. As also set out in the Framework, very special circumstances to justify inappropriate development in the Green Belt will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. It is set out in PPTS⁴ that 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.
40. A number of considerations weigh in favour of the development. Firstly, I note that allocations for traveller sites have involved former Green Belt sites. This suggests that there is an extremely limited prospect of accommodating alternative traveller sites outside of the Green Belt. The current and pressing unmet need for traveller pitches also adds great weight in favour of the scheme, as too does the current absence of a suitable alternative site for the occupants. The best interests of the children and personal circumstances of the family unit are the most compelling of reasons to justify a grant of permission in this particular case. However, it is the combination of all of these considerations that results in the demonstration of the very special circumstances to outweigh the harm to the Green Belt and other harms.
41. These considerations indicate that a decision should be taken other than in accordance with the development plan to allow permanent occupation of the site by the named occupants.

Conditions

42. The potential conditions were discussed at the hearing and have been further considered in light of the advice in the Framework.
43. As the personal circumstances of the appellant and resident family members have factored heavily in my decision, a personal condition is necessary. A related condition is necessary to ensure that if the named occupants cease to reside at the site, then its residential use shall cease.

⁴ Paragraph 16 of PPTS

44. In the interests of certainty, a condition is necessary to define the approved plans. To minimise the effect of the development on its surroundings, a condition concerning the number and type of caravans is necessary. Conditions are also required to prevent the storage of large vehicles and the undertaking of commercial activities on site in the interests of the character and appearance of the area.
45. As the development has taken place already, a number of conditions previously imposed have already been complied with, i.e. in relation to landscaping, materials, lighting, refuse, visibility splays and parking provision. The approved plans detailing these features have been included within condition 3 to ensure retention of the development therewith, in the interests of clarity. However, where a related condition required specific action or upkeep, such as in the case of the access visibility splays, it is necessary to impose a similar condition to reflect the current position.

Conclusion

46. For the foregoing reasons, the appeal is allowed.

Hollie Nicholls
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Matthew Green	Green Planning Studio Limited
Ms Jean Cash Knight	Appellant
Ms Priscilla Bowers	Appellant's daughter and site resident

FOR THE LOCAL PLANNING AUTHORITY:

Ms Hollie Marshall	on behalf of Reigate & Banstead Borough Council
Ms Tanya Mankoo-Flatt	on behalf of Reigate & Banstead Borough Council
Ms Natalia Achilleos	on behalf of Reigate & Banstead Borough Council

DOCUMENTS:

Document 1	Decision notice for Blackhorse Lane, Lower Kingswood
Document 2	Updated witness statement of Ms Jean Cash Knight
Document 3	Updated witness statement of Ms Priscilla Bowers

SCHEDULE OF CONDITIONS

- 1 The use hereby permitted shall be carried on only by Jean Cash Knight, Thomas Cash and Priscilla Bowers and their resident dependants.
- 2 When the site ceases to be occupied by those named in Condition 1 above, the use hereby permitted shall cease and all caravans, buildings, structures, materials, and equipment brought on to the land, and works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 3 The development hereby permitted shall be retained in accordance with the following approved plans Ref: 15_747_001; 15_747_002; 15_747_003; 15_747_004; 15_747_005; 15_747_011 and 15_747_012.
- 4 No more than two caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the land at any one time, of which no more than one shall be a static caravan or mobile home.
- 5 No commercial activities shall take place on the site, including the storage of materials.
- 6 No vehicles over 3.5 tonnes shall be stationed, stored or parked on the site.
- 7 The vehicular access and visibility zones of 2.4 metres by 120 metres in both directions shall be retained in accordance with approved plan Ref: 15_747_011, and shall thereafter be kept permanently clear of any obstruction over 1.05 metres in height above ground level.
- 8 The approved vehicle parking and turning areas shown in plan Ref: 15_747_011 shall be maintained for such purposes for as long as the site is occupied in accordance with condition 1.