



Appeal Decision

Hearing held on 20 October 2022

Site visit made on 20 October 2022

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2022

Appeal Ref: APP/M3645/W/21/3269882

Woodlands, Weatherhill Common, Smallfield, Horley, Surrey RH6 9JF

- 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 Mrs Katie Connors against Tandridge District Council.
 - The application Ref TA/2020/1186, is dated 7 July 2020.
 - The development is the use of land for the stationing of caravans for residential purposes.
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Decision

1. The appeal is allowed, and planning permission is granted for the use of land for the stationing of caravans for residential purposes at Woodlands, Weatherhill Common, Smallfield, Horley, Surrey RH6 9JF in accordance with the terms of the application Ref TA/2020/1186, dated 7 July 2020, subject to the conditions set out in the schedule to this decision notice.

Preliminary Matters

2. This appeal against the Council's failure to give notice of a decision has transpired due to a validation dispute between the main parties. An assessment by the Council of the scheme's planning merits took place prior to the Hearing and it concluded that the appellant had not demonstrated very special circumstances to outweigh the harm caused to the Green Belt and the sites ecology.
3. At the Hearing the Council confirmed that it now considered that the planning application should have been validated. Having viewed the evidence on this matter I would agree. The Council had requested elevations of the caravans and a renewable energy strategy for them before validating the application. However, the application was for the use of the land and would not be operational development. I have therefore proceeded on the basis that the Council was unreasonable in requesting the additional information, and that the application should have been validated, a position which the Council now supports.
4. Prior to the Hearing the appellant submitted further details regarding their personal circumstances including letters of support from the Traveller Education Support Worker at Surrey County Council and a Health Visitor in the Gypsy Roma Traveller Health Team at the Surrey NHS. On receipt of this information the Council reconsidered its case and following discussion with the appellant at the Hearing, confirmed that it now considered that the personal

- circumstances of the appellant amounted to very special circumstances to outweigh the harm caused to the Green Belt and ecology by the development.
5. The council would therefore support the development subject to a number of conditions including one which restricted the occupation of the appeal site to the appellant, her husband and their resident dependents. In doing so the Council confirms that it accepts that the appellant and her husband have gypsy status with regard to the Government's Planning Policy for Traveller Sites (2015) (PPTS). From the evidence before me I see no reason to disagree.
 6. The appellant still considered that any planning permission should not be restricted to the appellant given the need for sites, the lack of available alternative sites and the ongoing policy failure of the Council to ensure ongoing provision of pitches in the District.
 7. On that basis parties were content, following some questioning for my clarification, that I determine the appeal on the basis of the written evidence before me. I have proceeded on that basis.
 8. From the evidence before me and my observations on the site visit it is apparent that the change of use of the land has taken place and caravans are stationed in accordance with the submitted plans. I have therefore considered the appeal on that basis.
 9. An application for costs submitted by the appellant prior to the Hearing was subsequently withdrawn at the Hearing.
 10. After the Hearing, and prior to the decision being issued, the Court of Appeal issued a judgement regarding the interpretation of the PPTS and the application of that policy to Gypsies and Travellers who have ceased to pursue nomadic lifestyles¹. The Court of Appeal found that the PPTS definition change was unlawfully discriminatory with its main objective to make it harder for elderly and disabled ethnic Gypsies and Travellers to obtain planning permission. Parties were invited to make comments on the judgement and I have taken those into account in my determination of the appeal.
 11. The Council considers that the Secretary of State for DHLUC must decide whether to take the Court of Appeal decision to the Supreme Court or submit to judgement and whether to accept the opinion of the Court Appeal that the PPTS definition is discriminatory. Consequently, it considers it would be premature as part of the determination of this appeal to take this judgement into account.
 12. While the PPTS itself has not been quashed or declared unlawful, in my view this judgement, which finds the definition change unlawfully discriminatory, is a material consideration which limits the weight to be given to that change. I return to the matter later in my decision.

Main Issues

13. Paragraph 16 of the PPTS states that Traveller sites in the Green Belt are inappropriate development. There is no dispute between the parties that the development is inappropriate development in the Green Belt. In that context, the main issues are:

¹ *Smith v SSLUHC & Ors [2022] EWCA* (the 2022 judgement)

- the effect of the development on the openness of the Green Belt;
- the effect of the development on the purposes of including land within the Green Belt;
- the effect of the development on ecology;
- 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

Openness/Purposes

14. The appeal site was previously garden land, following its plot division from the neighbouring residential property. It contained a hardstanding and some small outbuildings and a gravel driveway but was otherwise grassland. It was therefore relatively open in nature in itself.
15. The introduction of a mobile home and touring caravan onto previously mostly open land reduces its openness. In this instance though the mobile home is of a modest size and scale to match the surrounding houses. Consequently, the large majority of the site remains open.
16. Both caravans are sited to the rear of a substantial conifer hedge, the mobile home being placed on the existing hardstanding and the site as a whole is well screened by dense trees and fencing. Consequently, the caravans and any domestic paraphernalia are not visible within the surrounding area. There is an increase in activity over and above the use of the land as a garden but given the scale of the use such increase is limited. As a result, while there is some spatial reduction in openness, the visual impact is minimal restricted to the immediate site with no long views available. Indeed, the site is well planned and has been soft landscaped to enhance the environment.
17. Therefore, for the reasons above, I conclude that there is a minor adverse impact on the openness of the Green Belt.
18. In addition, given the location of the appeal site between two residential properties and its previous use as garden land, there is no unacceptable encroachment into the countryside. There is no impact on the other four purposes of the Green Belt.

Ecology

19. The Council considers that as the change of use has already occurred then the effect on ecology cannot be quantified in a retrospective manner.
20. However, the appellant's Preliminary Ecological Survey (PES) was carried out on the site in August 2020. The appellant advised at the Hearing that they moved onto the site in 2021 and this was unchallenged by the Council.
21. The PES recognised that the woodland habitat adjacent to the appeal site could support foraging bats, but no roosting opportunities were available on the site. It recommended therefore that a lighting plan be produced to ensure that the woodland edge was not illuminated. This could be secured by a suitably worded

condition. It therefore recommended no further surveys were required in terms of bats.

22. With respect to Great Crested Newts the PES found that the appeal site may be used for migration between surrounding waterbodies outwith the site. It recommended additional surveys of those waterbodies be undertaken. Those surveys were undertaken, although the results were not submitted until June 2022. The additional surveys found that it would be highly unlikely that Great Crested Newts would be impacted by the development and no further surveys were required.
23. The results of the studies and investigations, together with evidence of substantive evidence to the contrary, leads me to conclude that the use of the land has not had a harmful impact on the ecology of the appeal site. There is therefore no conflict with Policy CSP17 of the Tandridge Core Strategy 2008 (the CS) and Policy DP19 of the Tandridge Local Plan Part 2: Detailed Policies 2014 (the Local Plan). These require that development proposals should protect and enhance biodiversity.

Other Considerations

Need

24. The Council relies on its Traveller Accommodation Assessment (GTAA) 2017 which is being used as part of the evidence base for the emerging Tandridge District Council Our Local Plan:2033 currently undergoing examination. The GTAA identifies a need for 5 gypsy and traveller pitches between 2016 and 2021. It also establishes a potential need for a further 15 pitches up to 2033 for the gypsy and traveller households who may meet the PPTS definition within those households where those undertaking the GTAA were unable to ascertain if households meet the definition or not.
25. The appellant has submitted a wealth of evidence demonstrating that the need in the district is considerably higher than that identified within the GTAA whether or not the need for pitches is constrained to those who meet the PPTS definition or not.
26. Whilst it is for the local plan process to assess the robustness of the GTAA, it seems to me from the evidence before me that the need is likely to be higher than that contained within it, not least because of the high level of households that were unable to be interviewed and therefore the need is just not known, including concealed, doubled up and hidden need. Furthermore, the appellant has demonstrated that the figure of 10% of unknown households meeting the PPTS definition used within the GTAA should be closer to 30%. I have also had regard to the 2022 judgement.
27. I also have before me two appeal decisions regarding gypsy and traveller sites within the District which reach a similar conclusion², one of which was determined very recently in mid-October 2022. While these have not been determinative, they reinforce the conclusion that I have reached based on the evidence before me. I give this need significant weight.

² APP/M3645/W/18/3205027 (the 2019 appeal decision) & APP/M3645/W/22/3296204 (the 2022 appeal decision)

Alternative sites

28. If the appellant and their family were not able to live on the appeal site then the family would have nowhere else to go. The evidence before me indicates that there are no pitches available within the district at the current time with little likelihood of any availability in the immediate future. I give the lack of suitable and available alternative sites considerable weight.

Failure of Policy

29. There is no dispute between the parties that the Council cannot demonstrate a 5 year supply of pitches for Gypsies and Travellers.
30. That in itself though is not sufficient to demonstrate that there has been a policy failure by the Council. There must be evidence of a persistent failure of the Council to put policies or other measures in place to meet the accommodation needs of Gypsies and Travellers and of a corresponding long-standing unmet need for sites.
31. Prior to the 2017 GTAA the Council's Traveller Accommodation Assessment (TAA) provided the evidence base for the adopted CS. That identified a need for 63 pitches between 2013-2028 of which 48 were required during the initial five year period up to 2018. The Inspector in the 2019 appeal decision found that there had been a persistent and woeful failure on the part of the Council to meet the needs of the gypsy and traveller community both historically and going forward. This was largely due to the council having failed to meet any of the need identified in the TAA and the fact that the Site Allocations Plan referred to in the CS was not progressed to completion.
32. I understand that since the 2019 appeal decision only 5 pitches have been granted planning permission. Consequently, in my view the Council's policy has failed to meet the needs of the gypsy and traveller community over a lengthy period of time also taking into account the lack of delivery against the previous TAA.
33. Turning to future provision, the 2022 appeal decision records that the Council is likely to propose extensions to four sites for Gypsies and Travellers to address the district's need as part of its work on the emerging local plan. The Council is hoping to be able to adopt the emerging plan towards the end of 2023. However, even if this timescale was able to be met and the allocations were made within the plan, it is unlikely they would come forward until sometime after.
34. In the meantime, any need would require to be met through the determination of planning applications. As some 94% of the District is located within the Green Belt, then this reinforces my view that there are few alternatives based on the evidence before me.
35. Based on the above therefore I consider that there continues to be a failure of policy to deliver unmet need within the District, to which I give appreciable weight.

Personal circumstances

36. The appellant updated the personal circumstances that were submitted within the original appeal statement at the Hearing. The appeal site is occupied by the

appellant, her husband and their five children ranging in age between 9 months and 11 years. The children of school age attend the local school. Prior to occupying the appeal site, they were living with other family, but had to leave as there was not enough space for the two families.

37. Letters of support from the local school and community Public Health Nurse emphasise the importance for this family of being near to education as the children are settled at the local school, and health facilities due to family members having existing medical conditions. This would clearly be disrupted if the appellant and their family had to revert to a roadside existence, given their inability to return to their previous accommodation and the lack of alternative accommodation to the detriment of their health and the children's education. I give this matter substantial weight.

Whether the harm is clearly outweighed by other considerations

38. I have found that the development is inappropriate within the Green Belt and causes minor adverse harm to the openness of the Green Belt. Together these attract substantial weight. No harm would be caused to ecology and this carries neutral weight.
39. To be balanced with this, I have found that the likely need within the District is higher than what the Council maintain within its GTAA. In addition, the Council is unable to demonstrate an adequate supply. There has been a failure of policy over a number of years to deliver the needs of Gypsies and Travellers, which means that there are no alternative or available sites for the appellant and their family to move to. It is uncertain when any would be available in the future. It is also likely that, given the extent of Green Belt within the District, if any sites do come forward, they too would be in the Green Belt.
40. I have had regard to the PPTS that states that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt and any other harm so as to establish very special circumstances. However, in this instance, the matters I have identified above, carry such great weight that they clearly outweigh the harm to the Green Belt. Looking at the case as a whole, I consider that very special circumstances exist which justify the development. As such there would be no conflict with Policy DP10 of the Local Plan which states that proposals involving inappropriate development in the Green Belt will only be permitted where very special circumstances exist, to the extent that other considerations clearly outweigh any potential harm to the Green Belt by reason of inappropriateness and any other harm.
41. It is not therefore necessary for me to include the personal circumstances of the appellant and their family or the best interests of the children into the balancing exercise or restrict occupation on this basis as suggested by the Council.

Conditions

42. Some discussion had occurred between the appellant and the Council regarding draft conditions for the development and these formed the basis of the discussion at the Hearing. I have had regard to those conditions and considered them against the tests in the Framework and the advice in the Planning

Practise Guidance (PPG), making such amendments as necessary to comply with those documents.

43. There is justification for the site to be occupied by Gypsies and Travellers to safeguard the supply of the site for this purpose and as such a condition is necessary to restrict occupation. In order to avoid discrimination to the elderly or disabled, the condition should include those Gypsies and Travellers who have ceased to travel permanently. Even though I am not aware that any of the current occupants have ceased to travel due to age or disability, that may not always be the case and to apply such a condition restricting their occupation of the site would, in the light of the 2022 judgement, be unlawfully discriminatory.
44. It is necessary to restrict the number of pitches and caravans to protect the character and appearance of the area. It is also reasonable to impose a condition to ensure that commercial activities do not take place on the site and no vehicle over 3.5 tonnes is stationed, parked or stored on the site to protect the character of the area and residents' living conditions.
45. A condition requiring the development to be maintained in accordance with the submitted layout will ensure that the access and parking area will be retained.
46. A condition is imposed to ensure that details of lighting are submitted, implemented and maintained, together with a requirement to implement measures within the Biodiversity Assessment, all to protect the ecology and biodiversity of the appeal site and the surrounding area. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the matters outlined in this condition before the development commences. The condition will ensure that the development can be enforced against if the details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable. Another condition restricting further lighting in the interest of protecting bats is also necessary.
47. The Council had also requested a number of other details including drainage, refuse storage, details of a day room/utility room and boundary treatment. However, following discussion at the Hearing it was agreed that these were not necessary given the details shown on the layout plan and that were present on the appeal site.
48. The Council also suggested that a landscaping plan be required. However, I observed at my site visit that not only is the appeal site adjoined by dense woodland, but there has also been a high level of planting on the appeal site and none further is necessary for the site to integrate satisfactorily with its surroundings.
49. The Council also requested a condition preventing the erection of buildings, fences or other structures on the appeal site in the interests of the proper planning of the area and the openness of the Green Belt. The PPG states that area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and

necessity³. While the openness of the Green Belt is imperative, permitted developments rights have not been removed in the Green Belt in the GPDO and I see no particular reason to do so here given the relationship of the proposal to surrounding residential development. I have not therefore imposed the condition.

Conclusion

50. For the reasons given above I conclude that the appeal should be allowed.

Zoe Raygen

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Cliff Thurlow

Interim Chief Planning Officer,
Tandridge District Council

FOR THE APPELLANT

Matthew Green

Green Planning Studio Limited

Mrs Katie Connors

Appellant

Mr John Patrick Connors

Appellant's husband

Nick Henson

Biocensus

DOCUMENTS SUBMITTED AT THE HEARING

- 1 List of agreed conditions
- 2 Updated statement of personal circumstances – Katie Connor

CONDITIONS

- 1) The development shall be retained in accordance with the approved layout drawing 19 _1068 _003.
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites but including those Gypsies and Travellers who have ceased to travel permanently.

³ Paragraph: 017 Reference ID: 21a-017-20190723

- 3) There shall be no more than one pitch on the site and on that pitch hereby approved no more than two caravans, shall be stationed at any time, of which only one shall be a static caravan.
- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 6) The use of the land hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to v) below:
 - i) Within 3 months of the date of this decision details of the external lighting shall be submitted to and approved in writing by the local planning authority;
 - ii) If within 9 months of the date of this decision the local planning authority refuse to approve the scheme or details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The lighting shall be implemented in accordance with the approved details within three months of the approval.
 - v) Within 6 months of the date of this permission the post-development habitat creation and enhancement measures contained within the Biodiversity Assessment 2022 shall be implemented on site

Upon implementation of the approved lighting scheme specified in this condition the scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 7) No external lighting shall be put in place or operated on the site at any time other than that which has been previously submitted to and approved in writing by the Local Planning Authority as part of the scheme approved under Condition 6 of this permission.

*****END OF CONDITIONS*****