



Appeal Decision

Hearing held and site visit made on 30 November 2022

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal Ref: APP/Q3630/W/22/3304173

Land adjacent to Lynn's Park, Stonehill Road, Ottershaw, Surrey KT16 0EW

- 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 B Doran against the decision of Runnymede Borough Council.
 - The application Ref RU.21/0777, dated 27 May 2021, was refused by notice dated 27 May 2022.
 - The development proposed is change of use to residential, comprising the siting of one mobile home and the formation of a new access.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use to residential, comprising the siting of one mobile home and the formation of a new access, at land adjacent to Lynn's Park, Stonehill Road, Ottershaw, Surrey KT16 0EW in accordance with the terms of the application Ref RU.21/0777, dated 27 May 2021, subject to the conditions set out in the schedule attached to this decision.

Preliminary Matters

2. Whilst not specified in the description of the proposal, the appellant's case relates to his status as a member of an Irish Traveller family. There is no dispute between the Council and appellant over Mr Doran meeting the 'gypsies and travellers' definition in Annex 1 of the Planning policy for traveller sites¹ (PPTS). However, the appeal site is within the Green Belt where Policy E of the PPTS is clear in that traveller sites (temporary or permanent) are inappropriate development. Indeed, the main parties both agree the proposal would represent inappropriate development in the Green Belt, as defined also in both the Runnymede Local Plan² (RLP) and the National Planning Policy Framework³ (the Framework) and I concur with this.
3. The appeal site is located within five kilometres of the Thames Basin Heaths Special Protection Area (the SPA). The appellant has provided a Unilateral Undertaking (UU) to make a financial contribution towards measures to mitigate for the proposal's impact on the SPA. This impact would derive from the mobile home contributing to the increased recreational pressure arising from general housing growth in the area. This is then having a harmful effect on the populations of ground nesting birds within the SPA, because of their susceptibility to disturbance. The mitigation measures comprise Suitable Accessible Natural Greenspace (SANG), offering alternative areas for

¹ August 2015 Department for Communities and Local Government.

² Runnymede 2030 Local Plan Adopted 16 July 2020

³ As last updated 20 July 2021.

recreation, and the Strategic Access Management and Monitoring (SAMM) project. The requirements are set out in a Supplementary Planning Document⁴ (the SPD) and I will return to this matter later.

Main Issues

4. The main issues in the appeal are as follows:

- the proposal's effect on the openness of the Green Belt and the purposes of including land within it;
- its effect on the character and appearance of the area, particularly in respect of tree cover;
- whether the harm to the Green Belt 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 proposal.

Reasons

Effect on Green Belt openness and purposes

5. The proposal relates to a plot of land fronting Stonehill Road, within countryside outside the settlement of Ottershaw. The proposed mobile home would be occupied by the appellant and his family. The appellant's close relatives occupy the adjacent Lynn's Park, which is somewhat larger than the appeal site and has permission⁵ for two caravans. Lynn's Park is part of a loose aggregation of residential and other development along the same side of the road as the appeal site. Otherwise, this particular part of the Green Belt is characterised in the main by large tracts of woodland. The front part of the appeal site is covered by a woodland Tree Preservation Order (TPO) which runs along this section of Stonehill Road, extending 30m back from its centre.
6. As confirmed by the Framework, Government attaches great importance to Green Belts, where the fundamental aim of policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and their permanence. The Green Belt covers the majority of Runnymede outside its main urban areas, amounting to approximately 79% of the Borough's total area. This part of the Green Belt serves three of the purposes set out in the Framework, by checking the unrestricted sprawl of built-up areas, preventing neighbouring towns merging into one another and generally assisting in safeguarding the countryside from encroachment.
7. The appeal site has at some earlier point been largely cleared of the mature trees it once contained and there already exists an access from Stonehill Road. A pair of quite large sheds and a container occupy the rear of the site. The appellant has suggested a condition requiring the removal of these should permission be granted, as a means to reduce the overall loss of Green Belt openness.
8. This proposal would still lead to a reduction in Green Belt openness, both spatially through the mobile home and associated hardstanding occupying part

⁴ Runnymede 2030 Local Plan Thames Basin Heaths Special Protection Area Supplementary Planning Document (SPD) April 2021

⁵ Appeal Ref: APP/Q3630/W/19/3220303 Lynn's Park, Stonehill Road, Ottershaw KT16 0EW. Decision date: 4 November 2019

of an undeveloped area, and visually, through reducing space for tree cover. The change of use would thus be in conflict with RLP Policy EE19, by having a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing situation.

9. However, the proposal allows for most of the trees at the front of the site to be retained, with the potential to provide further tree planting. In the context of being immediately adjacent to an existing traveller site, in a section of road serving a significant amount of sporadic development, the overall loss of Green Belt openness as perceived visually would here be relatively small. The removal of the existing sheds would limit the net loss of Green Belt openness in a spatial sense. A scheme of this small scale and low density would have little impact in respect of the sprawl or merging of built-up areas but would nevertheless involve further encroachment of development into the countryside. Overall, the proposal would result in a moderate degree of harm through detracting from the openness of the Green Belt and its purposes.

Character and appearance, including tree cover

10. The Council's second reason for refusal was over the habitat fragmentation caused by the removal of the TPO protected group of silver birch trees to the front of the site. However, my site visit confirmed the findings of the appellant's Arboricultural Statement⁶, that nearly all these trees were unaffected. The two species to be removed, a dead sweet chestnut and one silver birch, could be subject to suitable replacement. With the prospect of securing additional tree planting within the site, I find little further harm to arise through conflict with RLP Policy EE11 over protecting Green Infrastructure.

Other considerations

Need for and supply of Gypsy and Traveller sites

11. In determining this appeal, Policy H of the PPTS requires consideration of, amongst other matters, the existing level of local provision and need for Traveller sites. PPTS Policy B requires that Councils set pitch targets for Gypsies and Travellers to address the likely accommodation needs in their area, working collaboratively with neighbouring authorities. Local Plans should, amongst other things, identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against locally set targets.
12. The RLP sets a strategy for providing accommodation for Gypsies and Travellers through the delivery of sites on a number of the housing allocations and by considering proposals outside the allocated sites against the criteria in Policy SL22 and national guidance. The Council had not found this proposal to conflict with the Policy SL22 criteria, which respond to the need to ensure that Traveller sites are accessible and that there are convenient connections to local services, including education and welfare.
13. Policy SL22 refers to a need for 83 Gypsy and Traveller pitches in the period 2015-2030; 71 by 2022 and 12 by 2027. The appellant referred to the Council's 2020/21 Monitoring report showing the delivery of only five pitches

⁶ David Archer Associates 6 July 2022.

since 2015, four of which were not specifically for Gypsies and Travellers and one was that allowed on appeal⁷ at next door Lynn's Park.

14. The Council has at present authorisation to grant planning permission for 10 pitches. There is also a current application for an allocated site in the Local Plan which includes an additional two spaces. Runnymede is also progressing the return of 48 Gypsy and Traveller pitches to their authorised use, as outlined in Policy SL22. However, on the basis of the evidence provided overall, the actual delivery of planned pitches has been minimal.
15. There was further evidence from the appellant over the need for pitches being much greater than provided for in RLP Policy SL22. For example, following the injunction relating to the occupation at New Oak Farm, it was alleged that there were now at least 19 pitches accounted for in the 2018 Gypsy and Traveller Accommodation Assessment⁸ that are unauthorised. The appellant referred to the caravan count figures and a need to rely on Green Belt allocations as indicative of a chronic unmet need for pitches in the wider Surrey sub-region within which Runnymede sits. Although insufficient evidence was provided for me to fully share this view, there is quite clearly a significant need for Gypsy and Traveller sites in Runnymede, which the Council is not currently meeting. A failure to demonstrate an up-to-date five-year supply of deliverable sites for Gypsies and Travellers weighs in favour of this unallocated proposal.

Personal needs

16. In addition to the existing level of local provision and need for sites, Policy H of the PPTS requires me to also consider the availability (or lack) of alternative accommodation for the appellant, and other personal circumstances. Mr Doran is part of an extended Irish Traveller family which occupy adjacent Lynn's Park. He and his wife have a young child and another one on the way. The appellant has no alternative settled home for his family and relies on doubling up at either his father's site at Lynn's Park or on his wife's family site in Hampshire. Other family members take up the authorised capacity on Lynn's Park. Now married and with a growing family, the proposal would provide Mr Doran a settled base next to his extended family.
17. The provision of a settled base gains support from Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, but interference with this would not be justified in the public interest, relative to the proposal's level of harm on the Green Belt.
18. Article 3(1) of the United Nations Convention on the Rights of the Child provides that this shall be a primary consideration where such issues arise. The health, future education and general welfare of the appellant's young child, and of his unborn sibling, would be best provided for through a settled base. This would secure continuity in health care for the appellant's wife before and after the arrival of the second child, as well as additional support from extended family members. The best interests of the children become an influential component of the appellant's personal needs case.
19. I have also had regard to the Public Sector Equality duty (PSED) in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful

⁷ Appeal Ref: APP/Q3630/W/19/3220303 op. cit.

⁸ Runnymede Borough Council Gypsy and Traveller Accommodation Assessment (GTAA) Final Report January 2018

discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the proposed occupiers are Irish travellers, they are persons who share a protected characteristic for the purposes of the PSED. Although it does not automatically follow that the appeal should succeed, the need for sites and lack of planned provision indicates inequality of housing opportunity for this Irish Traveller family. These equality implications add further weight to the personal needs advanced.

Green Belt balance

20. The RLP adheres to Framework policy by establishing that inappropriate development is harmful to the Green Belt and should not be approved unless very special circumstances exist which outweigh the harm. The Framework confirms that very special circumstances 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.
21. The proposal would constitute inappropriate development within the Green Belt, which would, by definition, be harmful. There would be a further moderate amount of harm due to a conflict with maintaining the openness of the Green Belt and supporting the purposes of including land within it. To accord with Framework paragraph 148, this combined Green Belt harm is given substantial weight. There would be some additional harm to character and appearance, by the use occupying space that might otherwise revert to woodland. However, the retention of trees at the front of the site and the potential for further planting limits the proposal's harmful effect on the character and appearance of the area, adding little further weight against the proposal.
22. On the other side of the scales, the evidence suggests there to be a significant need for Gypsy and Traveller accommodation in Runnymede, which the Council has barely started to provide for. In this context, given the scale of unmet need for additional sites, I attach significant weight to this consideration.
23. The proposal would provide a settled base for the appellant and his family, who currently rely on doubling up on other sites or other unauthorised means of accommodation. Meeting the needs arising from these circumstances could be assured through a planning condition making any permission personal to the appellant and his family, which I will return to later.
24. As paragraph 16 of the PPTS makes clear, 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, the best interests of one young child, and a sibling yet to be born, apply to and form a critical part of the personal need case put forward in the Green Belt balance.
25. In addition to being personal, I have considered whether the permission should be temporary, having regard to Green Belt harm. However, I have no firm evidence to conclude that the circumstances over the availability of sites will change after a reasonable period. Furthermore, through the passage of time the family might well grow and the existing children will reach school age, adding further weight to the need for a permanent settled base.

26. The best interests of the child is a primary consideration, and Green Belt policy is not inherently more important than this. The appellant's personal circumstances, the lack of any alternative means to secure a suitable and authorised settled base and the inability of the Council to make separate provision to meet this need, either now or in the reasonably foreseeable future, combine to form a very strong case in favour of a grant of a permanent personal permission.
27. I find that the other considerations in this case clearly outweigh the Green Belt and other harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.

Unilateral Undertaking

28. I have considered the UU against the tests set out in paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. The obligation to make the SANG/SAMM contributions meets the required tests and is a) necessary to make the development acceptable in planning terms, b) directly related to the development and c) fairly and reasonably related in scale and kind to the development.

Habitats Regulations Assessment

29. The European Court of Justice has judged⁹ that the mitigation secured through the UU does not avoid the requirement for an Appropriate Assessment made under the Conservation of Habitats and Species Regulations 2017 (as amended). Having considered the likely significant effects of the appeal scheme, in the context of the SPD and the mitigation measures secured in the UU, I am able to conclude that the proposal would not have an adverse effect upon the ecological integrity of the Thames Basin Heaths SPA.

Conditions and Conclusion

30. Suggested conditions were discussed at the Hearing. These have been assessed against the tests in paragraph 56 of the Framework which require these be kept to a minimum and only imposed where necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Based on those suggested, I have attached conditions which meet the relevant tests and are proportionate with the nature of this proposal.
31. I have applied the standard three-year time limit for commencement. For certainty, I have specified the details and drawings that should be adhered to in carrying out the development. As these include an Arboricultural Method Statement, I find no necessity for a separate condition requiring submission of further such details.
32. Certain matters are fundamental to the proposal being acceptable and require conditions that ensure these are satisfactorily addressed before the change of use is allowed to take place. Such conditions are necessary relating to site drainage, landscaping (including the retention of existing trees, new planting and measures to enhance biodiversity) and the prior removal of the existing sheds.

⁹ People Over Wind, Peter Sweetman v Coillte Teoranta C-323/17

33. For highway safety reasons, the site access details approved shall be put in place prior to occupation. To facilitate the use of more sustainable, electric vehicles, the same applies to installing an approved charging point. As the Traveller's site would offer ample space for secure cycle storage, a condition requiring approval of such details, as normally applied to higher density housing schemes, is not necessary.
34. The permission is justified for personal reasons and relates to a single mobile home, so appropriate compliance conditions are applied. As the permission is personal to one particular family, who meet the definition of 'gypsies and travellers' in Annex 1 to the PPTS, a further condition tying occupation to such a status is not required. The proposal is for a single mobile home and, for certainty, a condition specifies that the permission relates to just one Traveller pitch, allowing a second caravan provided it is a touring not a static one. In the interests of the general amenities of this area, a condition is necessary ensuring that no commercial, industrial or business activities take place on the site.
35. Subject to these conditions, and for the reasons given above, I conclude that the appeal should succeed.

Jonathan Price

INSPECTOR

SCHEDULE OF CONDITIONS

The standard time limit condition for commencement of development

- 1) The change of use hereby permitted shall begin not later than three years from the date of this decision.

The details and drawings subject to which the planning permission is granted

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: J003598-DD01, J003598-DD02, J003598-DD03 Rev B, J003598-DD04 Rev A, supporting letter from WS Planning and Architecture dated 8/4/2021 and Arboricultural Method Statement February 2021.

Pre-commencement conditions

- 3) The development hereby permitted shall not commence until details of site drainage arrangements have been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out in accordance with these approved details.
- 4) The development hereby permitted shall not commence until a scheme with a timetable for clearing and landscaping areas with existing storage buildings and other structures has been submitted to and approved in

writing by the local planning authority. The scheme shall thereafter be carried out as approved.

- 5) The development hereby permitted shall not commence until details of both hard and soft landscaping works have been submitted to and approved in writing by the local planning authority and thereafter carried out as approved prior to occupation. These details shall include timings of all works, measures to improve and enhance biodiversity, the existing trees and vegetation to be retained, new planting to be carried out, hard surfacing and any further walls, fences, access features or other structures to be provided.

Any trees or plants, which within a period of five years of occupation die, are removed, or become seriously damaged or defective, shall be replaced in the next planting season with others of similar size and species.

Prior to occupancy conditions

- 6) The mobile home hereby approved shall not be occupied until the proposed vehicular access to Stonehill Road has been constructed and provided with visibility zones in accordance with the approved plans and thereafter the visibility zones shall be kept permanently clear of any obstruction over 1000mm high.
- 7) The mobile home hereby approved shall not be occupied until a fast charge socket (current minimum requirements – 7KW Mode 3 with Type 2 connector – 230 V AC 32 Amp single phase dedicated supply) has been provided on the site in accordance with details that shall have had the prior written approval of the local planning authority.

Compliance conditions

- 8) The occupation of the site hereby permitted shall be carried on only by Mr B Doran and his resident dependants. When the land ceases to be occupied by these persons, the use hereby permitted shall cease and the mobile home and any ancillary buildings, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
- 9) The use hereby permitted shall be limited to one pitch with no more than two caravans, as defined in The Caravan Sites and Control of Development Act 1960 and The Caravan Sites Act 1968, stationed at any time, of which no more than one shall be a static caravan.
- 10) No commercial, industrial or business activities, including storage of vehicles, equipment and materials, shall take place on the land.

DOCUMENTS

Note from Stephen Cottle on material circumstances, dated 30 November 2022 and read out at the Hearing

Smith v SSLUHC & Ors [2022] EWCA Civ 1391

Wychavon District Council v SSCLG [2008] EWCA Civ 692

Zoumbas v Secretary of State for the Home Department [2013] UKSC 74

ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4

Appeal Ref: APP/H1705/W/20/3251951 Use of land for the stationing of caravans for residential purposes and erection of 4 no utility/dayrooms at Newbury Road, Headley, Hampshire RG19 8JZ - allowed 11 November 2022

Appeal Refs: APP/V1505/C/20/3265750, 3265751, etc. allowed 16 November 2022 for land west of Hillview, Southend Arterial Road, Wickford, Essex

Common Ground: Equality, good race relations and sites for Gypsies and Irish Travellers - Commission for Racial Equality May 2006 (extract)

Email from Brian Woods to Justin Williams dated 30 November 2022 – wording for condition regarding removal of existing storage buildings

Extract from Runnymede Authority Monitoring Report 2020/21

Copy of Land Registry title for appeal site

Copies of local hospital appointments for appellant's wife

APPEARANCES

FOR THE APPELLANT:

Stephen Cottle of Counsel
Brian Woods BA(TP) MRTPI - WS Planning and Architecture
Mr and Mrs B Doran

FOR THE LOCAL PLANNING AUTHORITY:

Justin Williams - planning dept., Runnymede Borough Council
Will Rendall - planning dept., Runnymede Borough Council