
Appeal Decision

Hearing Held on 14 December 2022

Site visit made on 14 December 2022

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 FEBRUARY 2023

Appeal Ref: APP/M3645/W/20/3252200

Land off Green Lane, Outwood, Redhill, Surrey, RH1 5QR.

- 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 Francis Coyle against the decision of Tandridge District Council.
 - The application Ref. TA/2019/1584, dated 2 September 2019, was refused by notice dated 7 November 2019.
 - The development proposed is the change of use of land for the stationing of caravans for residential purposes for 2 Gypsy pitches, together with the formation of a hardstanding and utility/day rooms ancillary to that use and erection of a stable.
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Decision

1. The appeal is allowed and planning permission is granted for a limited period of 5 years for the change of use of land for the stationing of caravans for residential purposes for 2 Gypsy pitches, together with the formation of a hardstanding and utility/day rooms ancillary to that use and erection of a stable at land off Green Lane, Outwood, Redhill, Surrey, RH1 5QR, in accordance with the terms of the application, Ref. TA/2019/1584, dated 2 September 2019, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Preliminary matters

2. At the hearing the appellant made an application for partial costs against the Council. This is the subject of a separate decision.
3. The Council is no longer pursuing an objection to the proposal on the grounds of the sustainability of the location of the appeal site.
4. Since the lodging of the appeal the appellant has submitted an additional statement about his status as a Traveller. The Council is now satisfied that it is appropriate to apply the policy set out in the 'Planning policy for traveller sites' (PPTS) to the proposal as the appellant is a Traveller and I have no reason to disagree.

Main Issues

5. The appellant agrees that the proposal constitutes 'inappropriate development' in the Green Belt, as set out in paragraphs 149 and 150 of the National

Planning Policy Framework (the Framework). Within this context the main issues are:

- The effect on the openness of the Green Belt;
- The effect on the character and appearance of the area;
- The effect on biodiversity;
- The need for traveller sites locally and whether the Council can demonstrate a five year supply of new sites;
- The intended occupiers' personal circumstances including the best interests of any children; and
- Whether the harm due to inappropriateness, and any other harm is clearly outweighed by other considerations so as to constitute very special circumstances.

Reasons

Background

6. The appeal site is part of an area of open field/paddock which lies between Green Lane and the M23 and there is an area of woodland to the north. The surrounding area is mainly countryside with fields lined by hedges and large tracts of woodland. Locally, dwellings tend to be dispersed and there is a modest Gypsy and Traveller site and a commercial area based around a former sawmill to the west. The site has an existing access to Green Lane and the paddock appears to have been little used recently and is partly overgrown. The appeal site and paddock form part of the Metropolitan Green Belt.
7. It is proposed to form two residential pitches in a corner of the paddock each with a static caravan, a small day room and site for a touring caravan and erect a stable block close to the road.

Policy context

8. The development plan includes the Council's Core Strategy adopted in 2008 and the Local Plan Part 2 (2014). The Council is also preparing a new local plan but following the initial Examination in 2019 and the Inspector's preliminary conclusions, the Council has paused progression pending further work on the plan, including the strategic effect on the capacity of junction 6 of the M25 and possible changes to the plan-making process at national level. The provisions of the emerging plan are therefore not relevant to this appeal.
9. In terms of the relevant policies in the development plan the Statement of Common Ground (SCG) lists CSP9 and DP10 as the most important in this case.
10. Core Strategy Policy CSP9 relates to Gypsy and Traveller sites and while it states that provision will be made for these within a new Site Allocations DPD this has not been progressed by the Council so far. The remainder of the policy sets out criteria for considering sites put forward to meet unexpected and proven need. Of these the only criterion that is relevant to this case and not met is (b) concerning whether a proposal would significantly harm the visual amenities and character of an area. There is a difference of view between the

parties over whether part (a) applies but this appears to me to refer to an aspect of what may be included when assessing if 'very special circumstances' apply and I do not see 'the lack of alternative sites within non-Green Belt locations' as setting an additional test beyond the scope of the policy in the Framework.

11. In terms of Policy DP10 regarding development in the Green Belt this is consistent with the Framework.
12. Concerning Policy CSP21 on Landscape and Countryside I find this to be partly inconsistent with the Framework as it applies to all landscapes and countryside whereas the Framework relates in paragraph 174(a) to *valued* landscapes. The landscape around the appeal site has no special landscape designation. Nevertheless, paragraph 174 goes on in part (b) to advise that planning decisions should enhance the natural environment by recognising the intrinsic character and beauty of the countryside. The Policy CSP21 can therefore be given moderate weight.

The effect on openness of the Green Belt

13. The effect on the openness of the Green Belt can have both spatial and visual dimensions. In spatial terms the two pitches would have mobile homes and spaces for the touring caravans and a cojoined day room structure. These would all be single storey elements within an expanse of loose surfaced hardstanding around them. I find that there would be a moderate adverse effect on the openness of the Green Belt in spatial terms.
14. At the site visit I considered the visual effect of the development proposed from around Green Lane and from the public footpath that runs alongside the cutting for the M23. The frontage of the site and paddock alongside Green Lane is generally enclosed by a mature field hedge. This would limit and contain most views of the proposed caravans and associated residential paraphernalia from the sweep of the lane with only a very limited view through the gap formed by the widened access. The structures would be seen against the backdrop of the adjacent woodland. The roof of the stable block would likely be seen over the present state of the hedge but this would be a small and unobtrusive structure related to outdoor recreation. The openness of the area would be maintained and therefore this proposed structure need not be regarded as inappropriate development in the Green Belt.
15. I find that the proposed two residential pitches would have a limited visual effect on the openness of the Green Belt over a short space. Therefore overall there would be a limited to moderate effect on the openness of the Green Belt and as such the proposal conflicts with the policy in the Framework and Policy DP10.

The effect on the character and appearance of the area

16. In terms of the effect on the wider landscape similar considerations apply. From the public realm along Green Lane and the public footpath the proposed use/development would not be prominent in the landscape and views of it would be local and limited. The development also has to be seen in the wider context in that although the site lies in the countryside, locally this includes dispersed housing and other more intensive commercial and residential uses.

Neither does it appear to me that the local area is part of a *valued* landscape as referred to in paragraph 174 of the Framework.

17. I find that the visual impact of the proposal on the landscape character of the area would be limited and would not result in significant harm to the visual amenities and character of the area. As such it would not conflict with criteria (b) of Policy CSP9.
18. In relation to policy CSP21 there would be some limited change to the undeveloped rural character of the site but as this would neither conserve or enhance landscape character there would be limited conflict with this policy.
19. Overall on this issue the proposal would cause limited harm to the character and appearance of the countryside landscape and conflict with one of the relevant policies but not conflict with the relevant part of the main policy on the location of gypsy and traveller sites.

The effect on biodiversity

20. Since the determination of the application the appellant has commissioned a Preliminary Ecological Appraisal of the site and its surroundings. This Assessment, and additional individual species surveys and reports, examine the habitats, the effects of the development and propose a mitigation strategy which includes a managed cutting and grazing regime on the grassland and the protection of the adjacent pond. The Council is now generally satisfied with the measures put forward however it raises concern over whether the appellant is committed to implement them in practice and doubts if implementation can be secured by a condition.
21. On the basis of the specialist evidence from Mr Davies I am satisfied that the biodiversity issue has been properly addressed and Mr Green emphasised that the appellant would be bound by and would implement the mitigation set out in a condition. As the main parties had not agreed a condition by the time of the hearing they were given a further period to liaise and submit one. I have considered the agreed condition submitted on the 9th February and find that this takes proper account of the effect on biodiversity.

The need for and supply of gypsy and traveller sites locally

22. At the time that the application was considered the Council accepted that there was a shortfall in the provision of gypsy and traveller sites compared to the need for 63 pitches between 2013 and 2016 as identified in the Gypsy and Traveller Accommodation Assessment (GTAA) produced to support the Core Strategy. Since then an updated GTAA based on definitions set out within the 2015 PPTS was undertaken to inform the policy of the emerging Local Plan. The Council now says that there is a need for 5 gypsy pitches between 2016 - 2021 to meet 'known' needs and a potential need for a further 15 pitches for 'unknown' traveller households that may meet the PPTS definition.
23. This compares with the agreed position on new pitches granted planning permission between April 2016 and December 2022 as set out in the SCG. This supply totals 14 permanent pitches in this six year period although I note that of these 7 pitches were allowed on appeal rather than granted by the Council. Mr Thurlow for the Council accepted that there was probably a need for the Council to grant permission for more pitches going forward but submitted that

this was an issue for the Local Plan Inspector to consider rather than through individual appeal decisions.

24. On the evidence put to me I find that the permissions granted do not meet the identified local need for gypsies and travellers who meet the PPTS definition and therefore the requirement to demonstrate a five year supply, as per paragraph 10 of the PPTS, is not met at the moment. Moreover, the recent level of need was a considerable reduction in the previous level of need brought about by the change to the definition of Gypsies and Travellers in the Annex to the 2025 PPTS which has now been found to be unlawful and discriminatory by the Court of Appeal¹. Neither has it been demonstrated in this case that the 2017 GTAA has been undertaken so as not to discriminate in its surveying of individual households in terms of age or disability.
25. In relation to the positive allocation of sites to meet the needs of gypsies and travellers, it is clear to me that none have materialised through the present development plan in the form of the Core Strategy or a Site Allocations DPD. Therefore the initial part of Policy CSP9 has not been fulfilled and there has been a significant failure of policy over time. Moreover, there appears little chance that the emerging Local Plan will have reached a stage where new allocations will come forward soon. Mr Thurlow suggested this might be about two to three years but this seems to me to be too optimistic and I agree with Mr Green that up to five years is a more realistic period for any implementation on the ground.
26. Overall on this issue I find that the Council cannot demonstrate an adequate supply of gypsy and traveller sites to meet the identified local need, nor is it likely to do so through the plan making process for some time.
27. Linked to this conclusion the Council accepted that it was not aware of any alternative sites that were suitable and available for the appellant and family to turn to at the moment. These are both factors which command significant weight.

Personal circumstances including the best interests of any children

28. A witness statement from the appellant sets out his personal circumstances and those of his son and family who would occupy the second pitch. In essence none of the family have a stable base at the moment from where they can lead a traveller life despite having lived around Surrey for most of their lives. The proposal would give the appellant and his son and family a settled base where they would be more able to mutually support each other, access the necessary health care and allow the present young child to go to the local school on a permanent basis for her educational and social development.

Planning and Green Belt balance

29. At the start of the planning balance I have borne in mind the requirements of the Public Sector Equality Duty and placed no single factor above the best interests of any child.
30. It is clear that the proposal would involve 'inappropriate development' in the Green Belt and I have found that it would have a limited to moderate effect on its openness which would harm one of the essential characteristics of the Green

¹ *Smith v SSHCLG & Others [2022] EWCA Civ 1391*

Belt. Substantial weight must be given to this harm and to the conflict with Policy DP10.

31. I have also found that the development proposed would have a limited adverse effect on the landscape character of the local area of countryside. However the degree of harm would not be significant nor is the local area recognised to be a valued landscape. On this basis the proposal would not conflict with the relevant main policy in the development plan on the location of gypsy or traveller sites although there would be a conflict with policy CSP21 which attracts moderate weight.
32. Overall I find that the proposal conflicts with the development plan when this is read as a whole
33. To be balanced with this is the factor that the Council cannot demonstrate a five year supply of gypsy and traveller sites at the moment to meet the requirements of the PPTS and given the recent court judgement over the Annex to the PPTS the level of local need is likely to be significantly greater than that established in the latest GTAA. Moreover it is significant that the Council has not made provision for Gypsies and Travellers through the development plan process for some time and are unlikely to do so soon as the emerging local plan has been paused.
34. The PPTS indicates in paragraph 16 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 to establish very special circumstances. However, in this case the continuing failure of policy must be given significant weight, especially where most land outside of settlements, and where gypsy and traveller sites could be expected to locate, is designated as Green Belt.
35. The harm identified and the local and national policy conflict means that a permission on a permanent basis is not justified. However, the unmet need, the lack of any alternative sites at the moment, or likely to come forward though the development plan system in the short to medium term, greatly outweighs the other considerations in favour of a temporary permission. On that basis I find that that very special circumstances have been demonstrated. I will therefore allow the appeal on a temporary basis for five years.
36. I am conscious that as well as the change of use the proposal involves operational development with the erection of a stable and day rooms. The appellant will need to consider whether the length of the permission justifies the erection of these structures on a temporary basis.

Conditions

37. The Council recommends 16 conditions which I will consider under the same numbering. Conditions 1 and 3 are not necessary as personal circumstances have not been a determining factor in this case and so a personal condition is not justified. As great weight has been given to the need for a gypsy or traveller site I will impose a condition on such occupancy although modify this in the light of the Court of Appeal decision on *Smith* as referred to above. I will also add a condition to clarify that the permission is for a limited period only and when that expires the use shall cease and all operational development shall be removed from the site. I will also add a condition on the timing of the

implementation of the permission but limit this to two years to ensure that the site is available at the time of the recognised need.

38. I will impose a modified condition No.4 on the need for ecological mitigation measures as these have been shown to be necessary in the interests of biodiversity. A modified condition No.5 is also necessary to regulate the scale of the use in the interests of amenity and the appearance of the area. For similar reasons I will impose conditions 9 and 10 but not No.11 as a restriction on the overall number of vehicles on site is not necessary and would be difficult to enforce.
39. Further details of part of the development are necessary and I will amend condition No.6 as appropriate as discussed at the hearing. The details have to be submitted to and agreed by the Council before development commences, which the appellant agrees to, but as the development is not retrospective most of the wording suggested in the condition is not necessary. This condition can incorporate the suggested No.12 on exterior lighting. Likewise the suggested conditions 13 and 14 can be accommodated in the agreed condition No. 6 to safeguard biodiversity.
40. In respect of suggested condition No. 8 regarding the removal of 'permitted development' rights these would not normally apply to a residential caravan site and no clear exceptional justification has been put forward for the withdrawal of any part of the GPDO².
41. Finally I will impose condition 15 as it is necessary to ensure that space is kept available on site for the parking and manoeuvring of vehicles off the public highway in the interests of highway safety and condition 16 is appropriate in order to help promote and facilitate sustainable transport.

Conclusion

42. For the reasons given above I conclude that the appeal should be allowed on a temporary basis for a limited period of 5 years.

David Murray

INSPECTOR

² The Town and Country Planning (General Permitted Development) (England) Order 2015.

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than two years from the date of this decision.
- 2) The development hereby permitted shall be for a limited period being the period of 5 years from the date of this decision. The use hereby permitted shall cease, the building hereby permitted shall be removed, and the land restored to its former condition on or before that date.
- 3) The site shall not be occupied by any persons other than gypsies and travellers, defined as persons of a nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 4) No more than four caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, of which no more than two shall be static caravans, shall be stationed on the site at any time.
- 5) The development, with the exception of the ecological mitigation measures the subject of condition 6 below, shall be carried out in accordance with drawing numbers 18_968_001; 18_968_003; 18_968_005 and 18_968_06.
- 6) 'No development, including site clearance, shall commence until an Ecological Mitigation and Enhancement Scheme carried out during an appropriate season or seasons of the year, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be developed in consultation with an experienced and qualified ecological consultant and shall incorporate the recommendations and measures described in the following reports by RSK Biocensus: 'Preliminary Ecological Appraisal Report (April 2020)', 'Dormouse Survey Report (October 2020)', 'Great Crested Newt (GCN) Survey report (October 2020)', 'Reptile Survey (October 2020)', and 'National Vegetation Classification Report (October 2020)'.

The Scheme shall include:

- i) Appointment and duties of a suitably qualified Ecological Clerk of Works to undertake and/or oversee works that might impact protected species;
- ii) Amphibian and Reptile Method Statement;
- iii) Planting scheme for new tree or shrub planting;
- iv) Aftercare and management of pond, meadow/pasture, woodland, and other habitats;
- v) Detail of a sensitive lighting scheme to protect the site for bats.

The development shall be delivered in accordance with the approved Ecological Mitigation and Enhancement Scheme and the mitigation and enhancement shall be maintained thereafter.'

- 7) No development shall take place until the following details within a Site Development Scheme have been submitted to, and approved in writing by the local planning authority:
- i) The means of foul and surface water drainage from the site;
 - ii) Facilities for the storage and collection of refuse and waste;
 - iii) Details of external lighting;
 - iv) Details of a scheme of landscaping within the site and other land including the retention of existing trees and shrubs on the site boundary.

The Scheme shall include the timing of the work and the approved details shall remain for the duration of the permission.

- 8) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 9) No commercial activities shall take place on the land, including the storage of materials, plant and equipment.
- 10) The hardstanding of loose bound permanent material shall be kept free for parking, turning and manoeuvring within each plot.
- 11) The two pitches shall not be occupied unless and until each have been provided with a fast charge electricity socket. (7Kw Mode3 with a Type 2 Connector- 230V/AC32 Amp single phase dedicated supply.

APPEARANCES

FOR THE APPELLANT:

Mr M Green BA (Hons)	Planning Consultant
Mr Coyle	Appellant
Mr Davies BSc, MSc (FCIEEM) CECOL	Consultant on Biodiversity

FOR THE LOCAL PLANNING AUTHORITY:

Mr C Thurlow MA (Hons) Dip TP MRTPI	Chief Planning Officer - Tandridge District Council.
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DOCUMENTS (Handed in at and after the Hearing)

- 1 Statement of Common Ground.
- 2 Recommended ecological condition submitted by email from agent dated 9 February 2023.

End