



Appeal Decision

Hearing held on 22 and 23 November 2022

Site visit made on 23 November 2022

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2023

Appeal Ref: APP/Y3615/W/20/3260351

Land between Clasford Bridge & Cobbett's Close, Cobbett Hill Road, Normandy, Guildford GU3 2AA

- 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 & Mrs W & V Lee against the decision of Guildford Borough Council.
 - The application Ref 20/P/00052, dated 13 January 2020, was refused by notice dated 2 April 2020.
 - The development proposed is the material change in use of land to provide single showman yard for stationing of caravans for residential occupation and storage of rides and equipment, with associated development (hard standing, fencing and package treatment plant).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site address differs between the application form, appeal form and the Council's decision notice. At the Hearing, the main parties confirmed the correct site address for the proposed development. I have therefore proceeded on this basis, and the correct site address is set out in the banner heading above.
3. At the Hearing the main parties clarified that the description of the proposed development should be taken from the application form. The change of use of the land would result in a single showman yard for the storage of rides and equipment, with the stationing of 1 static mobile home and 3 touring caravans for residential occupation. It was also agreed that elements of the proposal had already been undertaken. These included engineering operations including earth moving/bund, land level changes, small area of hardstanding and the erection of boundary treatments (fencing). Therefore, I have dealt with the appeal on this basis and insofar that the proposal is part retrospective.
4. A signed and dated revised Statement of Common Ground (SOCG), was submitted at the Hearing. I have accepted it as part of the evidence base for the appeal.
5. Prior to the Hearing, I was supplied with an updated position of the appellants, and the Council due to the appeal timeframe. Several documents were also submitted at the Hearing, from both the appellants and the Council. These included additional plans of the A48 and site designations, boundaries, a copy

of an Injunction, and correspondence relating to the Showman's Guild. As copies were also made available for other parties, and the contents discussed at the Hearing including with virtual attendees, I consider no prejudice would occur as a result of me taking these into account.

6. At the Hearing, the matter of the emerging Guildford Borough Local Plan: Development Management Policies, Submission Local Plan, June 2022 (LPDMP) was raised, and potential mitigation of the Thames Basin Heath Special Protection Area (TBHSPA), and there were several matters that could not be clarified by the Council's representative due to the time frame of his appointment.
7. Consequently, in the interests of natural justice the main parties were invited to make written representation following the Hearing, including providing missing documentation that had been previously requested. Both main parties have had the opportunity to comment. All parties, have seen this evidence, including an update and copies of any relevant emerging policy, updates for the TBHSPA and SANGs/SAMMs¹. I consider no party would be prejudiced if I were to take this additional evidence into account, insofar it is relevant to the appeal.
8. In regard to the LPDMP, the emerging plan was independently examined in November, and will require main modifications to be undertaken. As such, in accordance with paragraph 48 of the National Planning Policy Framework (the Framework), and given the stage of the plan preparation, I attribute little weight to the emerging policies in the appeal decision.
9. Planning permission was granted in 2018 at the appeal site for formation of a vehicle access². The same vehicular access is shown for the proposal on the plans. However, from the evidence provided the conditions precedent were not discharged, thus there is no extant permission. Nevertheless, the appellants in support of their appeal provided a transport assessment³, additional plans for visibility, parking and swept path analysis. The Council are satisfied that this addresses the reason for refusal No.5, and as such this reason for refusal falls away.

Main Issues

10. Consequently, having regard to the above, the main issues in this case are:

- The need for, and provision of sites, and the availability of alternative sites, with particular regard to Site Policy A48;
- The effect of the proposal on the openness of the Green Belt and the purposes of including the land within it;
- The effect of the proposal on the character and appearance of the surrounding area;
- Biodiversity, with particular reference to any direct effects on the Thames Heath Special Protection Area (TBHSPA), Ash to Brookwood Heaths Site of

¹ Suitable Alternative Natural Greenspace / Strategic Access Management and Monitoring

² 18/P/00557 Erection of fencing, formation of vehicle access and installation of security gate

³ Transport Statement, Motion, Dated 06/09/2020

Scientific Interest (SSSI), and the Thurley, Ash Pirbright and Chobham Special Area of Conservation (SAC);

- The effect of the proposal on ecology, including protected species;
- Whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding;
- Whether the proposal would provide adequate provision for surface water drainage, and non-mains foul drainage;
- The effect of the proposal on the living conditions of the occupants of Cobbett's Close, with particular regard to fumes, noise and disturbance;
- The effect of the use of the land on the living conditions of future occupants of the site, with particular regard to contamination; and
- Would the harm by reason of inappropriateness, any other harm, be clearly outweighed by other considerations as to amount to the very special circumstances required to justify the proposal.

Reasons

The provision of sites / Site A48

11. The appeal site relates to a parcel of land to the north-eastern side of Cobbett Hill Road. The appeal site is bounded to the south by the existing Gypsy and Traveller site at Cobbett's Close and to the north-west is the river of Clasford Brook.
12. Policy A48 of the Guildford Borough Local Plan: Strategy and Sites 2015-2034, 2019 (LPSS), relates to the land allocation at Cobbett's Close. The policy allocates 20 Gypsy and Traveller pitches, which are of public tenure. It sets out, amongst other matters that additional pitches will only be provided as part of a comprehensive redevelopment of the site, and not as a site extension without overall site improvements. Redevelopment must significantly improve living conditions and infrastructure of all residents, and the Council will seek to maintain defensible site boundaries sensitive to the countryside setting, whilst not enclosing the site.
13. The Council assert that the proposal directly contravenes this policy criteria of A48 as a portion of the appeal site falls within the land allocated under this policy. The allocation for A48, is for Gypsy and Traveller pitches and does not include Travelling Showpeople plots. There are currently 17 pitches on the Cobbett's Close site, and the proposal would compromise the availability to deliver the identified need for the 3 additional pitches.
14. Nevertheless, it was clear at the Hearing, and as I saw from the site visit that the boundaries and whole extent of any encroachment of the land from the appeal site into Cobbett's Close cannot be certain. There was significant disagreement between the parties, and this is due to pitches encroaching within the private land of the appellants', and the extent of unauthorised works which have taken place over time.

15. Furthermore, it would appear to me that the Council do not own the additional land, outside of those boundaries with Cobbett's Close which would need to be developed to accomplish the extension of the site A48. I have also considered the need for sites, and that the Council assert they do not have a shortfall in provision, I will return to this matter later in other considerations.
16. There is no substantive evidence from the Council to suggest that there is a greater than theoretical possibility that the Council would pursue extending the site A48, into private land other than aspirational design drawings. Moreover, the land where any extension would need to take place is not within the Council's ownership, and Policy A48 (1) sets out all pitches are to be in public tenure. The Council at the Hearing acknowledged that it would be difficult to pursue the redevelopment of all the land, given the ownership constraints. They also set out that a more realistic option would be to re-configure the existing land for Gypsy and Traveller pitches as they are somewhat outdated within the public boundaries of the site, but at this present time there was no realistic prospect or timescale to do so.
17. Consequently, although the appeal site is likely to partially encroach into the land allocation of A48, it would not compromise the Council's deliverability of providing the 3 additional pitches at Cobbett's Close, as part of a comprehensive redevelopment of the site itself. I, therefore, conclude that the proposal on balance would not be in conflict with the overall aims of Policy A48, and the strategic approach for suitable provision in LPSS Policy S2, as I have set out above.

Green Belt - Openness and purpose

18. The Framework sets out the Government's planning policies for England and is an important material consideration in all planning decisions. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Planning Policy for Traveller Sites, 2015 (PPTS), Policy E, sets out that traveller sites in the Green Belt are inappropriate development.
19. The main parties have agreed that the proposal would represent inappropriate development in the Green Belt, as defined in Policy PS2 of the LPSS, and the Framework. I concur with that position.
20. As set out in paragraph 137 of the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, the essential characteristics thereof being its openness and permanence. The Courts⁴ have held that perceptions of openness can be visual as well as spatial, and that matters relevant to openness in any particular case are a matter of planning judgement, rather than a matter of law⁵.
21. The appeal site is within open countryside and for the purposes of the appeal the majority of it lies within the designated Green Belt. The land, although it has been subject to unauthorised development over time remains free to a degree from built form, and retains its openness. The land previously was open grassland with significant wooded areas, and this previous untouched state forms the baseline for the assessment of Green Belt impacts.

⁴ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466

⁵ *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC

22. The proposal comprises a change of use of land to a Showpeople's site. This would introduce the formation of a yard area to store rides, the siting of a substantial size static caravan, 3 touring caravans, domestic and commercial paraphernalia. The formation and siting of the boundary treatments, adds to the developed nature of the site. There would also be significant vehicle movements and activity, resulting in diminishing the spatial and visual openness of the site. I accept that over time there maybe scope to lessen the effects of the development, within the site with landscaping. However, it would still result in an incursion of an isolated parcel of freestanding development into an open area of Green Belt.
23. Therefore, I conclude that the development fails to preserve the openness of the Green Belt and would not assist in safeguarding the countryside from encroachment. It would be contrary to Policy PS2 of the LPSS, and the Framework.

Character and appearance

24. The appeal site is located within distinctly rural surroundings, within the open countryside. The site fronts Cobbett Hill Road, and to the immediate frontage of the site it is generally flat, and the site identified previously as agricultural fields. There is significant tree and vegetation coverage along the boundaries and woodland within the wider site, although it is sparse when looking back and across into the site from various viewpoints when walking along Cobbett Hill Road.
25. The appellants acknowledge that there would be some localised harm to the character and appearance of the area. The proposal would introduce 1 static caravan, 3 touring caravans, rides and equipment. There would be associated parking, hardstanding and domestic paraphernalia associated with the household. In contrast to the existing situation, albeit land has been excavated and moved, the proposal would introduce modest residential use, as well as the commercial storage on land which is relatively open and currently has limited built form. The caravans and equipment would be screened to a degree due to the boundary treatments, but this would be limited.
26. Furthermore, the gates I saw, combined with the fencing boundary treatment are prominent, and there is little scope with the ditch and context of the site frontage to add further landscaping to the frontage of the site. Moreover, such landscaping would be outside of the scope of the red line of the appeal site.
27. I acknowledge that the Cobbett's Close site is adjacent, but this is only to the south of the site, whereas Cobbett Hill Road to the north is of an open verdant character, with areas of woodland and it positively contributes to the rural character and appearance of the area. I saw there would be clear views of the site from the adjacent residential land, and in addition from road users passing the site along Cobbett Hill Road to reach nearby public transport and the surrounding area.
28. Therefore, given the flat nature of the land, the caravans, equipment, storage, vehicles, and associated domestic and commercial paraphernalia the proposal would lead to a notable intrusion. It would appear as an alien and urbanising feature within the immediate setting, and to the detriment of the character and appearance of the localised street scene and wider area.

29. Accordingly, I conclude that the proposal would cause adverse harm to the character and appearance of the area. This would be in conflict with Policies H1 and D1 of the LPSS, taken together these policies, amongst other matters require that new development, types and sizes are appropriate to the site size, characteristics and location; and require to achieve high quality design that responds to distinctive local character (including landscape character) of the area.

Biodiversity / TBHSPA

30. The majority of the appeal site would be within the exclusion zone within 400m of the TBHSPA. However, from the evidence presented at the Hearing, the site would also partially lie outside of the 400m zone but therefore within 400m to 5km. Natural England (NE) have objected to the proposal, and that mapping indicates at least part of the residential development is within the exclusion zone.
31. Therefore, the proposal could have potential significant effects on the SSSI, which forms part of the TBHSPA, and the SAC. The Avoidance Strategy, Local Plan and the Thames Basin Heaths Delivery Framework indicates that mitigation measures are unlikely to protect the integrity of the TBHSPA, where an increase in residential development should not be permitted, particularly within 400m of the boundary of the SPA. NE advise that where there is uncertainty over the potential location of the residential development, including mobile touring caravans, the precautionary principle should apply.
32. The TBHSPA is designated for its internally important habitat which supports breeding for three internationally rare bird species, namely nightjar, woodlark and Dartford Warbler. There is, therefore, the potential to adversely affect these interest features, being internationally rare bird species for which it is classified. This includes the increase in the number of residents living close to the heaths, increase in recreational use, dog walking, damage to the habitat and disturbance to protected species.
33. Even if, residential development is outside of the 400m zone and within 5km of the SPA boundary, the proposal alone or in combination with other plans or projects, would be likely to have a significant effect on the TBHSPA. However, if the development would accord with Local Plans, Avoidance and Mitigation Strategies and the Delivery Framework, it would not be likely to have a significant effect on the TBHSPA because they will provide, or make an appropriate contribution to, acceptable avoidance and mitigation measures.
34. The Council in the absence of evidence at the Hearing, have now confirmed that there is potential mitigation available, by way of a financial contribution that would need to be secured by legal agreement within the western parts of the Borough for any development outside the 400m exclusion zone. Such financial contributions towards the SANGs/SAMMs are required based on either the number of bedrooms or the number of adult occupants in line with the Council's contribution SPD, with justification remaining as set out in the TBHSPA Avoidance Strategy.
35. Notwithstanding that the appellants indicated that any legal agreement had not been sought in the first instance, and they would be likely to support the provision of any mitigating financial contributions required by the Council if the development was outside of the exclusion zone. I consider the precautionary

approach from NE to be the correct position, as there is reasonable uncertainty with the extent of the overlap of the zone in this case, and the development proposal. Therefore, this has the potential that it would be unlikely to ascertain that this proposed residential development would not adversely affect the integrity of the THBSPA, SSSI and SAC in combination with other plans and projects. In addition, NE have objected to the proposal on this basis.

36. Nevertheless, as I have found that the proposed development to be unacceptable for other reasons. Consequently, there is no need for me to further consider the implications of the development or the absence of a secured legal agreement in regard to the integrity of the TBHSPA, SSSI, SAC or the provisions of the Conservation and Habitats and Species Regulations 2017 (as amended).
37. For these reasons, I conclude, that the proposal would contrary to the objectives of Policy P5 of the LPSS, Policy NE4 of the Guildford Borough Local Plan, 2003 (LP) and conflicts with Saved Policy NRM6 of the South East Plan 2009, with seeks to protect biodiversity, and the integrity of the TBHSPA.

Ecology / Protected Species

38. The appeal site, prior to works already taking place at the site was undeveloped and well established with mixed woodland scrub, grassland vegetation and significant mature tree coverage. It is also closely related to the Clasford River, Brook and its bed. I saw at the site visit that there was still a significant number of trees in and around the site. These would have had, and still do the potential of ecological value and that it is likely priority habitats were present within the site and adjoining land.
39. In support of the appeal, the appellant's have submitted a Preliminary Ecological Appraisal⁶. This identifies that the site contains priority habitats including amphibians, reptiles, birds, badgers and hedgehog. It also sets out that great crested newts were recorded within the study and there is suitable terrestrial habitat present on the site.
40. The appraisal clearly sets out at paragraph 3.5.1 that proposed mitigation measures would address the potential impacts upon the Clasford Bridge SNCI. However, it states that the planning application does not adhere to relevant legislation or planning policy. At section 4, '*Extended Phase 1 Habitat Survey*' it identifies the different habitats across the site, including those priority habitats that are of principal importance.
41. The recommendations of the report indicate additional work and surveys will still need to be undertaken in order to avoid injury or death to animals. Including a reptile refugia search and further surveys for great crested newts which would assess presence or likely absence. In terms of bats, the recommendations are that there is potential for these to be harmed if further trees are required to be removed. This would then require further surveys and or/mitigation to be undertaken.
42. The appellants asserted that the matters of mitigation could be dealt with by suitably worded conditions. There is little evidence regarding the loss of further trees within the site, other than the front hedgerow would be retained. Neither does the fact that there is hardstanding in situ, or that no ponds are to be

⁶ Thomson environmental consultants, Preliminary Ecological Appraisal, dated September 2020

constructed within the site itself mean that protected species being present should be ruled out.

43. I have given little weight to the consideration to the reference of the southern section of the site through the site allocation A48, as this policy requires that an application-level Habitat Regulations Assessment is undertaken, which would be the case for any redevelopment of this site. Furthermore, I have no evidence on details of the original consent, and it is not the proposal before me.
44. Therefore, I cannot be certain that any harmful effects arising from the proposal could be adequately avoided or mitigated against, and consequently that the ecological value and protected species would not be adversely affected. Moreover, Circular 06/2005⁷ advises that *'it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed'*.
45. In the absence of detailed information that negative impacts would be avoided to protected species, I conclude the proposed development would be contrary to Policy NE4 of the LP, which does not grant permission for any development that would be liable to cause any demonstrable harm to a species of animal or plant or its habitat. Moreover, it would also be at odds with the guidance contained within the Framework, relating to habitats and biodiversity.

Flood Risk

46. The appeal site is adjacent to the Clasford Brook, a main river, and the majority of the site falls within Flood Zone 2 (FZ2), at the point of the river this extends to Flood Zone 3. The Framework, Annex 3 for flood risk vulnerability classification, identifies that caravans, mobile homes and park homes intended for permanent residential use are highly vulnerable to flooding. As set out in the Planning Practice Guidance (PPG) table 1, the land is therefore defined as having a medium probability of flooding.
47. The Framework at paragraph 163 and footnote 55, requires an application for a Traveller site in FZ2, should include a site-specific Flood Risk Assessment (FRA). Paragraph 168 and footnote 56 also expects that the sequential and exceptions are applied as appropriate to any application for a change of use to a caravan, or to a mobile home or park home site.
48. The Environment Agency (EA) has significantly objected to the proposed development, and in the absence of an FRA. In this case, I do not consider that the appellant's has undertaken a comprehensive FRA, which is credible and fit for purpose in line with the required objectives and the PPG. They seek to rely on the submission contained within their original planning statement.
49. However, even in the absence of such a FRA, under the sequential test, development should not be permitted in areas known to be at risk now or in the future from any form of flooding. An assessment of reasonably and appropriate sites in relation to flood risk should be undertaken. The appellants at the Hearing, contended that there is a general need and personal need for

⁷ ODPM Circular 06/2005: Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system.

Traveller sites, at this location and within the area. Reference was made to the 'Whittles Drive' and 'Four Acres' sites in which parts of the site are in FZ2. Nevertheless, I have no substantive evidence of the specific flood risks, zones or mitigation for those sites, and in any case the FRA should be site specific.

50. Therefore, there is an absence of evidence to show that the appellant's have considered alternative appropriate sites in a lesser degree in relation to flood risk. Consequently, I find that the Sequential Test has not been satisfied as it has not been shown that suitable sites at a lower risk of flooding are not available.
51. However, in considering the scheme to satisfy the Sequential Test, the appellant's have gone on to undertake the Exception Test in the planning statement, in which it is considered has been passed. The Exception Test should comprise of 2 elements to be satisfied. Firstly, to consider whether wider sustainability benefits outweigh flood Risk, and the second being to assess whether the development will be safe for its lifetime, without increasing flood risk elsewhere.
52. Although, I will discuss this in coming to my conclusion, at this point it is sufficient to say that no substantive evidence concerning sustainability benefits, including any sustainability appraisal, was submitted and I am aware of no such benefits existing. Again, the PPG advises that if a scheme does not score positively against a sustainability appraisal or similar, and the Exception Test has not been satisfied then planning permission should be refused.
53. The appellant's contend that there would not be any permanent buildings, hard standing is permeable, and the specific area for the storage of rides/equipment would be in FZ2, which equipment would be on wheels/trailers and could be easily removed off site in the event of a flood. They assert that the access is on the edge of the flood zone and would not flood to any significant depth. Mobile homes and associated parking could all be sited in Flood Zone 1 (FZ1), and could have a finished floor level above the flood limit. Therefore, the basis for these findings though is not well substantiated. There is little evidence to show how the safety of those living at the site would be protected, particularly as there is considerable overlap of the flood risk zones, and there is little evidence before me of mitigation or that flood water would be shallow or could displace within the site.
54. Furthermore, for areas at risk of river flooding, it can also include an area within FZ1, including where there are critical drainage issues. The appeal site adjoins the boundary of the river, and interchangeably uses across the whole site area. The PPG⁸ advises that consideration is given to the safety of people around a building and in adjacent areas, including people less mobile or who have a physical impairment, and that flood risk should not be increased elsewhere. Therefore, if flooding did occur there is little evidence to show how the safety of those occupying the whole site would be protected.
55. For these reasons, I conclude that the siting of this highly vulnerable development in FZ 2, would result in an unacceptable flood risk, and conflicts with Policy P4 of the LPSS that only permits development provided that the vulnerability of the proposed use is appropriate for the level of flood risk on the site; passes the sequential and exception tests (where required); and that it

⁸ Paragraph: 005 Reference ID: 7-005-20220825 Revision Date: 25 08 2022

incorporates flood protection, flood resilience and resistance measures and appropriate flood warning and evacuation plans are in place and approved. It would further be contrary to the Framework, paragraph 167 in which ensures that flood risk is not increased elsewhere, and the most vulnerable development is located in areas of lowest flood risk and development is appropriately flood resistance and resilient.

Surface Water Drainage / Non-Mains Foul Drainage

56. The EA originally objected to the proposal on the basis of inadequate information relating to surface water and pollution to Clasford Brook and Wood Street Brook. The EA have removed their objection following submission of the appeal evidence, that no commercial activities would take place other than storage. At the Hearing, the Council confirmed they did not wish to defend reason for refusal No.9 on the decision notice, in regard to pollution and the risk of deterioration through the potential hazardous substance from industrial runoff in relation to washing and maintenance of machinery.
57. I am therefore satisfied from the evidence that suitably worded conditions could be imposed relating to a surface water drainage scheme prior to occupation and the storage of equipment/ridges, and restrictions for the change of use. However, this does not outweigh the other harm I have identified, or overcome the concerns raised in regard to flood risk.
58. The appellants propose using a non-mains foul drainage system for the proposal at the site. In support of their appeal, the appellants have provided a report⁹ on existing sewage facilities in the area. This confirms there are no existing sewage facilities on the site, and there is currently no infrastructure in place. The nearest main sewer would be a considerable distance away to connect and this would be at a significant cost to the appellants. The solution would be to manage via a private sewage treatment facility, before discharging into a dry ditch at the site.
59. The EA have seen this report, and maintain an objection to the proposal in that proliferation of individual treatment plants can cause deterioration in local water quality (ground and surface water), which is contrary to the Water Framework Directive, and in line with paragraph 174 of the Framework in regard to preventing new development from contributing to, being put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution.
60. The EA state that a permit for the discharge of the package treatment would be required. However, the EA state the report has insufficient detail to determine if a permit could be issued. They would not issue any permit where it would discharge to ditches, given that they tend to dry up frequently and this would not meet general binding rules for surface water, where a ditch or a surface water does not contain flowing water throughout the year.
61. I acknowledge that the EA have stated that if the Council were satisfied with the justification, the appellants would need an Environmental Permit from the EA and a condition has been suggested. The Council's written evidence suggest that the appellant's view is a reasonable argument not solely based on cost but distance. Therefore, at the Hearing the Council's position was clarified given

⁹ Moody Sewage, dated 27 May 2020

the EA objection, and it remained that there is some ambiguity given the objection with the EA had not been resolved. Interested parties, at the Hearing also raised concern regarding such discharge and the use of a dry ditch.

62. Whether or not the permit is obtained under separate legislation, I must be satisfied that foul water drainage is acceptable for the proposal, and at the site location. I have considered the facts and circumstances of the case, and whether I could impose the suitably worded condition, which requires details of how the system would meet the general binding rules or qualifies for a permit. However, given the uncertainties described above and based on the evidence, including the EA objection, I do not consider that the condition is capable or reasonable of overcoming the concerns.
63. For these reasons, I conclude that in the absence of sufficient evidence to the contrary, I cannot be certain there would not be an unacceptable risk, or that the existing water courses would not be adversely affected by water pollution at the site through a non-mains foul drainage system, and whether the method of discharge would be acceptable for the proposal. Thus, it would be in conflict with paragraphs 174 and 180 of the Framework.

Living conditions existing occupants

64. The appeal site is in close proximity to the existing occupiers who reside on the pitches at the Cobbett's Close site. The Council consider there would be the potential impact of the use, including storage of plant and equipment when used or stored would give way to excessive noise and emit fumes under test of maintenance. The use could also give rise to late night and early morning movements to and from the site, and in the absence of any noise assessment they would not be satisfied that there would be no unacceptable harm to those occupiers of Cobbett's Close.
65. However, from the evidence presented at the Hearing, and by the Council's Environmental Health Officer, it is not clear as to why the Council did not request a noise survey or other such assessment at the time of the planning application.
66. At the Hearing, it was clarified there is no business / commercial activity use proposed to take place at the site. The proposal would include the storage of 2 small scale children rides. These rides would be stored at the furthest point away from the residential occupiers of Cobbett's Close. The rides would be taken off site, when required for events which is likely to be bank holidays, some weekends and during long periods in the summer. As such, there is nothing before me, to suggest that such activities the Council claim, or that there would be excessive fumes from the rides or that the appellants would seek to move rides and vehicles, continuously during the night-time or at unneighbourly hours.
67. Therefore, I consider that suitable mitigation and use of the site could be controlled by way of a Noise Management Plan, and suitably worded conditions including limiting the use of the site to no commercial activities / maintenance or repair, limiting the commercial vehicles, restriction of number and rides, and that it is for the purposes of storage of the equipment.
68. For these reasons, I conclude that the proposed development would not harm the living conditions of the occupants of Cobbett's Close, with particular regard

to fumes, noise and disturbance. It would not be contrary to Saved Policy G1(3) of the LP, that seeks to ensure the protection enjoyed by occupants from unneighbourly development in terms of noise, vibration, pollution, dust and smell. It would also not be conflict with the requirements of the Framework in respect of paragraph 185(a).

Living conditions future occupiers

69. It was acknowledged at the Hearing by the main parties that there has been continuous fly tipping at the site for several years, and has been the subject of intervention from the Council. It was also evident to a degree, as I saw at the site visit that this continues, even though fencing has been erected and there is significant fly tipping along parts of Cobbett Hill Road.
70. At the Hearing, the appellant's described the activities that had taken place and mitigation since they purchased the site. The appellant's had been in constant engagement with the Council's Environmental Health department over these matters. The appellant's set out that they had undertaken considerable restoration of the site by removing items over time through the correct process. The Council's Environmental Health Officer confirmed this position, and that fly tipping had been removed in accordance with other legislation.
71. Other than the fly tipping taking place, there is no substantive evidence that the previous historic use of the site, that being agricultural land had been contaminated land. Neither was it clear at the Hearing, why the Council did not seek a phase 1 contamination survey prior to the validation of the planning application if they knew the site had been subject to fly tipping.
72. Furthermore, I acknowledge that interested parties have raised the issue over the site being used for oil exploration in past years. However, the Council confirmed that they were not aware of this, and even if this was the case it did not fall within the confines of the red line of the appeal site. Therefore, I have no substantive evidence to support any of these concerns.
73. Consequently, it appears to me that the matters relating to contamination at the site for any residential occupation, given that the proposal would be for modest residential use could be dealt with by suitably worded conditions. These could include the reporting of any unexpected contamination prior to the occupation or the use taking place. Moreover, the Council at the Hearing acknowledged that this would be a suitable way forward, with suggested conditions put forward.
74. On this basis, I conclude that there would be no harm to the living conditions of future occupants of the appeal site, with particular regard to contamination. There would be no conflict in respect of the Framework, at paragraph 180 in which it seeks to prevent harm to health by suitable mitigation.

Other Considerations

Need / alternative sites

75. The Council assert that sufficient plots to meet the identified accommodation needs of Travelling Showpeople over the plan period has been met. In doing so, it relies on The Traveller Accommodation Assessment 2017 (TAA), which identified a need for 4 plots for Travelling Showpeople up to 2034. An update for the TAA has also been provided for the assessment in 2021 as part of the

new local plan, Appendix 6 which sets out the expected delivery and timescales over the plan period.

76. LPSS Policy S2(3) sets out that provision has been made between 2017-2034, the Council has also sought to make provision for 4 permanent plots who do not meet the PPTS definition. 8 plots were allocated within the LPSS through site specific sites of A41 land at Garlicks Arch (6 plots) and site A47 Whittles Drive (net 2 plots). The sites are considered deliverable and there is a realistic prospect all the developments will take place.
77. The appellants argue that the need for sites is greater than the Council has identified, and that identified sites fall short of suitable requirements in terms of size, constraints and accessibility. Also, that there are no other suitable and available sites or plots accessible in the Borough to meet the needs of the family.
78. Whilst I acknowledge the parties' differing positions on this matter, and there is potentially a degree of uncertainty of the current and future need, including how private plots are being allocated. The TAA forms the most-up-to date and robust assessment of need in the Borough. It was also examined through the local plan process in 2019. Nevertheless, in the context of 1 additional plot being provided, it would not have a significant detrimental effect on the Council's strategic approach to site provision, and I consider that a settled base for the appellants would result in a number of benefits for them and their family that weigh in favour of the proposal.
79. I acknowledge that future allocated sites are within the Green Belt, with the same or similar levels of harm to the Green Belt as in this case. However, I cannot be certain that those sites have the same combination of factors, and balancing of issues and harms, as to those in this appeal. As such, I have considered the appeal site on its individuality and the evidence that has been presented before me.

Personal Circumstances

80. The appellants' Mr and Mrs Lee gave evidence at the Hearing and detailed personal circumstances of those who intended to occupy the appeal site. The appellant's confirmed they come from a long line of Travelling Showpeople and the family are known to the Showman's Guild. They have links to the area of Guildford, and they continue to live a travelling showpersons lifestyle through choice. At present they are residing on an unsuitable yard with other family members.
81. The appellants seek permission for their extended family, who work together to have a settled base and live together as a unit on the appeal site. There were no young children identified who would occupy the site, and none of the intended occupiers being adult children had educational or health needs identified in support of the proposal. The Council did not contest the situation of the appellant's and their family or dispute the appellant's traveller status. Nonetheless, in light of the above the personal circumstances of the appellant adds weight in support of the proposal.

Intentional unauthorised development

82. On 31 August 2015 the government introduced a policy statement on Green Belt protection and intentional unauthorised development. This states that intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals. In this case, there have been significant alterations to the land, and works as part of the appeal development without permission, and having regard to the evidence of the main parties at the Hearing and in written evidence, including a copy of the Injunction at the site, this clearly represents intentional unauthorised development. I have therefore, attached moderate weight to this consideration.

Planning Balance and Conclusion

83. PPTS paragraph 16 states that inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. 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. PPTS paragraph 24 sets out a range of relevant matters to consider when considering proposals for traveller sites.

84. The proposal would be inappropriate development in the Green Belt. This is harmful by definition and to which I attach substantial weight to that harm. The development would reduce the Green Belt's openness, which gives rise to additional harm, and it does not assist in safeguarding the countryside from encroachment.

85. Additionally, I have found adverse harm to the character and appearance of the area, and which I afford this moderate weight. I have found harm arising from biodiversity, protected species and flood risk to which I attach very substantial weight. The substantial harm renders the development contrary to the requirements of the Council's Development Plan policies and in conflict with the Framework.

86. Against the substantial harm I have identified, the other considerations advanced by the appellants are not sufficient, either individually or cumulatively, to clearly outweigh the harm to the Green Belt, and the other harm I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

87. The absence of harm to highway safety, surface water drainage, the living conditions of neighbouring occupiers, future occupiers, potential control of fly tipping and the sustainability and accessibility of the site's location are neutral factors in the determination of the appeal.

88. In reaching the above conclusions, I have considered whether suitably worded conditions could make the proposal acceptable. However, although conditions could mitigate the harm to highway safety, living conditions for existing and future occupiers, and surface water runoff, conditions could not mitigate the substantial harm to make the development acceptable overall.

89. I have also considered whether a temporary or personal permission would be appropriate, if I were to dismiss the appeal on the basis that planning circumstances may change at the end of such a period. Although a temporary permission would time-limit the Green Belt harm and that caused to the

character and appearance of the area. A period of occupation of the site would still lead to considerable harm to the Green Belt and other significant harm, including flood risk, protected species, biodiversity and the TBHSPA which would not be outweighed by other material considerations.

90. I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. The appellants and their family, who intend to occupy the site have protected characteristics for the purposes of the PSED. However, after having regard to all material considerations, I am satisfied that the aim of avoiding unacceptable harm to biodiversity, protected species, flood risk and safeguarding the Green Belt can only be adequately addressed by dismissal of the appeal. Any interference with the human rights of the appellants, their family and potential occupants of the site is therefore necessary and proportionate.
91. The development would be contrary to the development plan and the Framework taken as a whole. There are no other material considerations that would indicate that the development should be determined other than in accordance with the development plan.
92. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

K A Taylor

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

A Heine Planning Consultant
Mr Lee Appellant
Mrs Lee Appellant

FOR THE LOCAL PLANNING AUTHORITY:

C Ward Planning Consultant
J Wu Planning Officer
G Durrant Environmental Health Officer

INTERESTED PARTIES:

Mr Sutcliffe
Mr Evason
Mrs Evason

Documents submitted at the Hearing

- 1 Agreed SOCG
- 2 GBC-CW1, GBC-CW2
- 3 2014 SHLAA Plan
- 4 Aerial View Photograph Cobbetts Close
- 5 Email correspondence Showmans Guild (Garlick's Arch)
- 6 Legal Order (Injunction)
- 7 GIS/OS Map showing Green Belt, A48, SPA Boundaries (1:1250)
- 8 GIS/OS Map showing Green Belt, A48, SPA Boundaries (1:5000)
- 9 Revised Conditions List
- 10 Suggested Environmental Health Conditions (Contamination / Noise)

Documents submitted after the Hearing

- 1 Guildford Borough Local Plan: Development Management Policies, Submission Local Plan, June 2022 (LPDMP) (Front Cover; Contents Page; Emerging Policies P6-P7; P8-P9; P10; P13; D4, D5(1).
- 2 Note from Policy Officer on the Local Plan Examination
- 3 Contributions SPD Update Contributions for the period April 2022-March 2023
- 4 Council Sample S106 Agreement SPA
- 5 TBHSPA Mitigation