



Appeal Decision

Hearing Held on 28 February 2023

Site visit made on 28 February 2023

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 April 2023

Appeal Ref: APP/Q3630/W/22/3306901

Land at New Oak Farm, Hardwick Lane, Chertsey KT16 0AA

- 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 F Lee against the decision of Runnymede Borough Council.
 - The application Ref RU.21/1553, dated 2 September 2021, was refused by notice dated 14 June 2022.
 - The development proposed is change of use of land to provide an extension to an existing Gypsy/Traveller site comprising the siting of 1 Mobile Home, and 2 touring caravans, alongside the siting of a portable utility block.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land to provide an extension to an existing Gypsy/Traveller site comprising the siting of 1 Mobile Home, and 2 touring caravans, alongside the siting of a portable utility block at Land at New Oak Farm, Hardwick Lane, Chertsey KT16 0AA under the terms of the application Ref RU.21/1553, dated 2 September 2021, and subject to the conditions in the attached schedule.

Procedural Matters

2. The appeal site comprises part of a paddock accessed from Hardwick Lane and close by and to the west of the M25. The west side of the site alongside Hardwick Lane has been developed through the laying of hardstanding, the addition of fencing, and the introduction of caravans alongside a portable utility block. The site is being used for residential purposes. I therefore assessed the appeal with reference to the plans before me and what I observed on site, on the basis that the development has been carried out.
3. Adjoining the site to the south, and through which the site access passes, is the gypsy and traveller caravan site at New Oak Farm. One pitch within the caravan site has the benefit of planning permission, under Ref RU.98/0122, and the rest of the site, comprising around 18 pitches, does not. The entire paddock is also subject to an injunction which restricts the bringing onto the land of any further caravans, mobile homes for residential occupation, portable structures associated with residential occupation, and associated works.
4. The appeal site is inside the Green Belt, and it is common ground between the main parties that the proposed development is inappropriate development within the Green Belt. It was also clarified at the hearing that the Council does not dispute that the appellant and his family members on site have gypsy and traveller status, both in terms of the definition of such as set out within the

2015 Planning Policy for Traveller Sites (PPTS) and as Romany Gypsies. I have no reason to reach any different finding as to these matters of agreement.

5. Prior to the Hearing, the Court of Appeal issued a judgement¹ (hereafter Lisa Smith) regarding the definition of gypsies and travellers in the PPTS, with specific reference to those who have permanently ceased to pursue nomadic lifestyles. The PPTS definition was found to be unlawfully discriminatory, with its main objective to make it harder for elderly and disabled ethnic gypsies and travellers to obtain planning permission. I sought the views of the main parties as to the implications of this judgment before and during the Hearing.
6. Following the Hearing, the appellant submitted a completed Unilateral Undertaking (the UU). The UU seeks to secure a financial payment towards mitigation for any effect of the proposal on the Thames Basin Heaths Special Protection Area (the SPA). I return to this matter later.

Main Issues

7. Against this background, the main issues are:
 - the effect of the proposal on the openness and purposes of the Green Belt;
 - the effect of the proposal on the integrity of the Thames Basin Heaths Special Protection Area (the SPA);
 - the issue of biodiversity net gain (BNG);
 - the question of the need for and supply of gypsy / traveller sites;
 - the personal circumstances of the appellant; and,
 - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the scheme in the Green Belt.

Reasons

Openness and Green Belt purposes

8. Paragraph 137 of the National Planning Policy Framework (the Framework) states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and permanence. The openness of the Green Belt has a spatial aspect as well as a visual aspect. Policy EE19 of the Runnymede 2030 Local Plan (adopted 2020) (the RLP), together with its supporting text, seek to exercise strict control over development involving change of use within the Green Belt in accordance with the Framework.
9. The site was previously part of the open paddock. It is quite well enclosed by belts of trees and fencing, and thus views of it are filtered from Hardwick Lane. The caravans and utility block are largely glimpsed through or above existing boundary treatments, and the development has therefore had a limited effect on the visual aspect of openness. In terms of the spatial aspect, changing the site from a paddock to an area delineated by fencing and populated by caravans, the utility block, vehicles and associated residential trappings, has

¹ Lisa Smith v SSLUHC & Ors [2022] EWCA Civ 1391

had an unavoidable, albeit modest, effect. The site has sprawled into and added slightly to the sense of encroachment into the Green Belt.

10. As such, the development has had a limited harmful effect on the openness of the Green Belt and the purposes for its designation. Even so, the Framework advises that substantial weight be given to inappropriate development in the Green Belt and any other harm and that is the weight I apply in this case.

Thames Basin Heaths

11. The site is inside the 5km zone of influence of the SPA. The SPA is designated for its habitats which support ground nesting birds, namely Dartford Warblers, Woodlarks, and Nightjars. The SPA is a recreational resource, and it is likely that occupants of the development would visit it. On this basis, there is no dispute between the main parties, nor Natural England (NE), that it cannot be ruled out that the development when considered alone or cumulatively with other schemes may have significant effects on the features of interest of the SPA due to increased recreational disturbance. I agree.
12. The main parties and NE are also in agreement that to mitigate against such effects a financial contribution should be secured. The amount, which is reflected in the UU, is determined by a formula in the Thames Basin Heaths Special Protection Area Supplementary Planning Document (2021) (the SPD). This will contribute towards the delivery of Strategic Access Management and Monitoring (SAMM) and the delivery and maintenance of existing Sustainable Accessible Green Space (SANG), as set out in the SPD. With regard to SAMM, it was suggested that a contribution could potentially be made to survey work being undertaken to monitor the number of people visiting the SPA.
13. As such, I am satisfied that the UU provides a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the Council's strategy for development which could affect the SPA. It follows that the UU complies with Community Infrastructure Levy regulation 122 in that it is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.
14. Accordingly, I conclude within my Appropriate Assessment that, with the provided mitigation, the proposal will not have an adverse effect on the integrity of the SPA. In this respect, it accords with Policy EE10 of the RLP, the provisions of the Habitats Regulations and the Framework.

Biodiversity net gain

15. Policy SD7 of the RLP, amongst other things, requires development to protect existing biodiversity and include opportunities to achieve net gains in biodiversity. There was discussion at the Hearing as to whether or not the policy wording imposes a strict requirement for proposals to deliver BNG.
16. Those discussions notwithstanding, the site has been used in the past for little more than horse grazing and dog exercising. I also observed the modest spread of discarded domestic items from New Oak Farm onto the land. These circumstances strongly suggest to me that the biodiversity offer of the site as it stood before the proposed development would have been very limited. There is no compelling evidence that it acted as a movement corridor for wildlife. Whilst trees along the site boundaries have been pollarded, I understand the trees in question to be beyond the appeal site and the control of the appellant.

17. The site layout contains a large amenity area at its east side. Part of this area near the east site boundary could be modestly planted with trees and potentially an area of wildflowers without compromising the overall use of the space for activities such as child's play. There is also the prospect of tree or shrub planting along the part of the north site boundary aside the amenity area. As this could be addressed by a condition, BNG could be achieved.
18. I therefore conclude on this issue that the proposal is acceptable with regard to the issue of BNG. It accords with Policy SD7 of the RLP and the Green & Blue Infrastructure Supplementary Planning Document (2021) insofar as they require proposals to protect biodiversity and include opportunities for BNG.

The question of the need for and supply of gypsy / traveller sites;

19. The PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their area over the lifespan of the development plan. The PPTS also states that local planning authorities should identify a 5-year supply of specific deliverable sites.
20. Policy SL22 of the RLP addresses the need for and supply of gypsy and traveller pitches in the Borough, pursuant to the Council's latest, 2018 published, Gypsy and Traveller Accommodation Assessment (GTAA). The policy identifies a need for 83 gypsy and traveller pitches to be delivered over the plan period. 35 are allocated as part of the RLP's major housing allocations, specifically to address people who comply with the PPTS definition. Beyond the allocations, sites are to be delivered in other ways listed in the policy. This includes a criteria-based element, which the Council does not find the proposal to conflict with.
21. At the Hearing it was explained that the GTAA counted gypsies and travellers living on certain unauthorised, yet labelled as 'tolerated', sites. The people on these sites were not carried forward into the need figure of 83 pitches set out in Policy SL22. This indicates that there is a degree of need in the Borough which is not being directly met by Policy SL22. That aside, the policy sought to have delivered 71 pitches by now, but as agreed by the parties at the Hearing, a significantly lower amount, of at best 22 pitches, have been delivered or granted permission so far. This also gives a strong indication of unmet need.
22. Policy SL22 goes on to refer to 48 existing pitches which are authorised for occupation for Gypsies and Travellers but are not currently being used for such. The policy states that the Council will be working proactively to bring them back into gypsy and traveller use, and this is clearly an important component of the Council's approach to supply. The 48 pitches, it transpires, relate to two conjoined sites nearby: Little Almnors Caravan Park and Walnut Tree Farm.
23. At the Hearing it became apparent that, despite enforcement notices upheld in 2010 which require the cessation of the non-gypsy occupancy of these sites by 2011, not one of these 48 pitches have been returned to gypsy and traveller use to date. I also heard that a number of gypsies and travellers at New Oak Farm were displaced from Little Almnors Caravan Park and Walnut Tree Farm and that the manner of their displacement may well act as a disincentive for the future return of members of the gypsy and traveller community. This compounds my view that Policy SL22 is failing to operate as was intended.
24. As Lisa Smith found the PPTS definition to be unlawfully discriminatory, it calls into question the integrity of the RLP's strategy for the allocation of pitches,

which is built upon this unduly restrictive definition. There is an emerging Supplementary Planning Document which seeks to define the credentials of people to be accommodated within the allocated sites, which could reflect Lisa Smith. However, this does not address the fundamental issue posed by Lisa Smith about the adequacy of the number of pitches that have been allocated.

25. There are several gypsy and traveller permissions in the pipeline, either awaiting the completion of legal agreements or an appearance before the planning committee. Nonetheless, the quantum of potential pitches mentioned would do little to dent the significant level of unmet need that likely exists. A refresh to the GTAA will add clarity, but the Council is delaying this process until after the outcome of the consultation on the new Framework. Yet, it was accepted at the Hearing that as this type of research is usually and best undertaken over the winter during the more settled period for the gypsy and traveller community, so any GTAA refresh is unlikely to be published this year. The Runnymede 2040 Local Plan is at such an early stage of preparation that it has little weight.
26. There are County Council owned sites in the Borough. They are full and have substantial waiting lists. The appellant cannot be expected to return to New Oak Farm, as it is already overcrowded and is not an authorised site in any event. As such, the evidence before me shows, and the Council has accepted, that there is an absence of suitable, affordable, acceptable alternative sites available to the appellant at this moment in time.
27. Consequently, there is significant unmet need, no five-year supply of sites, no realistic other site for the appellant, and little indication the situation may improve in at least the short to medium term. These factors each weigh substantially in favour of the appeal.
28. The concept of policy failure is less clear cut. The RLP was adopted in 2020. It seeks to allocate sites for those who fulfil the PPTS definition through allocations and windfall sites, and the development plan also caters for people who do not in other ways, albeit the policy approach has faltered. This faltering is not to such significance nor persistence that the issue of policy failure attracts any more than moderate weight in favour of the development.

Personal Circumstances

29. The appellant, Foster Lee, lives at the site as part of a family group. It contains himself and his partner Michelle Lee, two adult sons, and a third son, daughter in law and a two-year-old child. The family have ties to the area, and Foster and Michelle Lee are registered with a local doctor's surgery.
30. It has been a challenging period for the family, owing particularly to bereavement during the Covid pandemic, the stress from which created health problems. These factors, and the benefit of the family group being together for mutual care and support within the settled base of the appeal site, attract significant weight.
31. It is also in the best interest of the child and their early years development for them to have a stable, settled base. Given the absence of a realistic alternative site for the appellant, and the injunctive proceedings ongoing at New Oak Farm, the real term implications of the dismissal of this appeal would likely be a roadside existence for the family including the child. This is a paramount consideration which attracts substantial weight in favour of the development.

32. Furthermore, dismissal of this appeal would amount to a breach of Article 8 of the European Convention on Human Rights in relation to respect for private and family life, and also of Article 1 of the First Protocol in relation to the protection of property, both as incorporated by the Human Rights Act 1998.
33. Given the Romany Gypsy status of the appellant and the age of the child on site, I have also had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race and particular age groups constitute relevant protected characteristics for the purposes of the PSED.

Other Considerations

34. This is inappropriate development that has harmed openness. The Framework states that inappropriate development in the Green Belt should not be approved except in very special circumstances and very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
35. The site access passes through the part of New Oak Farm which has planning permission and therefore can be considered Previously Developed Land (PDL). However, the mainstay of the site is beyond it on land which was a discrete area of the paddock. I do not find the site to fulfil the definition of PDL overall.
36. That said, there are other aspects of Paragraph 26 of the PPTS that are relevant. Given that biodiversity net gain could be achieved, the development would be soft landscaped in such a way as to positively enhance the environment. The sizable amenity space would promote opportunities for healthy lifestyles, particularly with regard to child's play. The site does not give the impression that its occupants are deliberately isolated from the rest of the community. These matters attract moderate weight in the scheme's favour.
37. Around 79% of the Borough is Green Belt, and much of the rest is either built up or constrained by flood risk. Given such, I accept the contention that it is both logical and likely that sites will be located, allocated or otherwise, in the Green Belt going forward. Given that the proposal is otherwise free from other constraints, it does appear that the appeal site would be a possible candidate for allocation. Whilst the Council prefers sites a little closer to a settlement edge, I accept that land in those locations is likely to be less affordable for smaller family groups. I attribute these matters moderate weight in the appeal's favour.

Green Belt Balance

38. Policy E of the PPTS provides that, 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. Whilst there are other, additional considerations at play in this case, in my view the issues around need and supply, and the personal circumstances of the appellant with particular regard to the best interests of the child, are decisive. Together with all other considerations before me, they tip the balance towards the existence of very special circumstances. These very special circumstances clearly outweigh the harm to the Green Belt by reason of inappropriateness and loss of openness.

39. Consequently, I conclude that the proposal accords with Policies EE19 and SL22 of the RLP and the Framework insofar as they address and manage inappropriate development in the Green Belt.

Conditions

40. I have considered the conditions suggested by the Council and discussed at the Hearing. A condition is necessary to specify the approved plans in the interest of certainty. For the same reasons, a condition will preclude commercial activity and a further condition is necessary to restrict the number of caravans on the site to the quantum applied for. A condition shall require the agreement and implementation of a site development scheme in order to secure the landscaping details within the site, including additional planting in order to secure enhancements to biodiversity. It will also secure details as to drainage in the interest of flood prevention, and also cycle facilities and electric vehicle charging points.
41. As the personal circumstances of the appellant have been critical in contributing to the existence of very special circumstances, it is essential that a condition restricts occupation of the site to the appellant and his family on a personal basis. This creates the need for a condition which will require the restoration of the site when the named persons move on, but omits the need for a condition restricting occupation of the site to gypsies and travellers generally. The site is expansive with generous parking and turning space. Therefore, it is not necessary in the interest of highway safety that a condition secures parking and turning areas within the site.

. Conclusion

42. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be allowed.

Matthew Jones
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Masters	of Counsel
Brian Woods BA(TP) MRTPI	Agent
Foster Lee	Appellant
Michelle Lee	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Justin Greenwood	Principal Planning Officer
Tom Fry	Enforcement Planning Officer

INTERESTED PERSONS

Tony White	White Planning
Maurice Black	Interested person

DOCUMENTS SUBMITTED DURING THE HEARING

1. Runnymede Borough Council Gypsy and Traveller Accommodation Assessment (GTAA) (2018)
2. Appeal Refs APP/Q3630/C/10/2127815 and APP/Q3630/C/10/2127816 Land at Walnut Tree Farm, Almnors Road, Lyne, Chertsey, Surrey
3. Appeal Ref APP/Q3630/W/22/3304173 Land adjacent to Lynn's Park, Stonehill Road, Ottershaw, Surrey KT16 0EW

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: J003970-DD-03, J003970-DD-02 and J3970-DD-01 Rev A.
- 2) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 6 months of the date of this decision, a scheme for all hard landscaping; the means of surface water drainage of the site; proposed external lighting within the site; electrical vehicle charging points; cycle storage facilities, and all soft landscaping including tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities and means to secure biodiversity enhancement, (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. Any trees or plants, which within a period of five years of the commencement of any landscaping works in pursuance of the development die, are removed, or become seriously damaged or defective, shall be replaced as soon as practicable with others of similar size and species.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable and shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been determined.
- 3) This permission is for residential purposes only and no commercial operations shall be undertaken at the site.
- 4) No more than 3 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 1 shall be a static caravan shall be stationed on the site at any time.
- 5) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Foster Lee and Michelle Lee, Foster Lee and Benita Lee, Harry Lee, Terry Lee.

- 6) When the land ceases to be occupied by those named in condition 5 above the use hereby permitted shall cease and all caravans, 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.