



Appeal Decisions

Inquiry held on 21 & 22 March 2023

Site visit made on 22 March 2023

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2023

Appeal A Ref: APP/M3645/C/21/3284447

Land adjacent to Caravan Site, Beech Farm Road, Warlingham CR6 9QG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Brien against an enforcement notice issued by Tandridge District Council.
- The notice was issued on 9 September 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from woodland to use for the stationing of residential caravans and touring caravans for residential purposes.
- The requirements of the notice are:
 - i) Cease the use of the land for the stationing of caravans for residential purposes;
 - ii) Remove all caravans from the land.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/M3645/C/21/3284448

Land adjacent Caravan Site, Beech Farm Road, Warlingham CR9 9QG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Brien against an enforcement notice issued by Tandridge District Council.
- The notice was issued on 9 September 2021.
- The breach of planning control as alleged in the notice is without planning permission the formation of a new access track, hardstanding, cess pool, sheds and other domestic paraphernalia in association with the use of the land for the stationing of residential caravans and touring caravans for residential purposes.
- The requirements of the notice are:
 - i) Remove the access track, hardstanding, cess pool, sheds and other domestic paraphernalia from the land
 - ii) Dig and out and remove the sub-base for the access track and hardstanding
 - iii) Following compliance with steps (i) and (ii) above remove all resultant debris and unused materials from the land to an unauthorised place of disposal, level the land and reseed the land to grass.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal on ground (d) is dismissed, the appeal on ground (a) is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Matters concerning the notices

1. The notice relating to the alleged material change of use of the land shall be referred to as Notice A. The notice relating to the operational development shall be referred to as Notice B. Step 5 (ii) of notice B contains a superfluous 'and', which will be deleted for clarity.
2. The relevant periods for taking enforcement action in respect of operational development and material changes of use are 4 years and 10 years respectively. While the operational development carried out on this land is inherently linked to and facilitates the unauthorised change of use, this does not change the period within which enforcement action can be taken against it. Furthermore, the 1990 Act makes no provision for the reasons for issuing the notice to be amended, which rest with the local planning authority. The 4-year period referenced in the reasons for issuing notice B cannot therefore be amended to 10 years as requested by the Council.
3. Where a material change of use is alleged, the steps required to be taken could include the removal of development that facilitates the alleged use. Notice A only requires the unauthorised use to cease and the caravans to be removed from the land. Extending the steps to be taken on Notice A to include the removal of the operational development would make it more onerous, resulting in injustice to the appellant. Varying the terms of Notice A in this manner would not therefore accord with s176(1)(b).
4. I shall continue to determine both appeals on their own merits, having regard to the written and oral evidence provided.

Preliminary Matters and Background

5. Oral evidence in respect of the ground (d) appeal was given under affirmation.
6. A proposal for a material change of use of land for the stationing of four static caravans for residential occupation by gypsy-travellers with new access, access track, hard standing, utility block, cess pool, storage area for up to four touring caravans and fencing was dismissed on appeal on 26 September 2019¹ (the 2019 Appeal). The Inspector in that case found that the matters in favour of the development did not outweigh each of the substantial Green Belt, loss of openness and highway safety harms, the moderate character and appearance harm, and the limited biodiversity harm. The 2019 Appeal was therefore dismissed.

Appeal B – the ground (d) appeal

7. An appeal on this ground is that, at the time Notice B was issued, the time had passed to take enforcement action. The onus of proof is on the appellant and the relevant test is the balance of probability. The relevant period for operational development is 4 years and the material date is 2 September 2017.
8. Written evidence on this issue relates to paragraph 2 from the previous inspector's decision letter, which asserts that *"the appeal site has been in use*

¹ APP/M3645/19/3228261

as a gypsy and traveller caravan site since 2016". The evidence before the previous Inspector is not however before me and there is nothing to show me how the previous Inspector reached that conclusion. Even if there was, it relates to the use of the appeal site and provides no information as to what, if any, operational development, in the form of sheds or hardstanding, had taken place.

9. From what I saw at the site visit, the photograph dated 9 February 2016² was taken from somewhere within the land edged orange³. The view depicted looks across part of the orange land and the appeal site, towards the wooded area beyond. It was agreed that the pile of rubble in the foreground is on the orange land, as is the static caravan which is partially visible to the right-hand side of the photograph. There are no sheds visible in this photograph and the land is overgrown. A close boarded fence can be seen to the left-hand side of the photograph, which runs along the western boundary of both the appeal site and the orange land. A black bin is visible adjacent to the fence, which the appellant asserts is on the hardstanding. There is however no hardstanding visible beneath this black bin or anywhere else in this photograph. Even if I were to accept that there was some hardstanding on the site in the vicinity of the black bin, its exact location and extent has not been shown.
10. Mr Brien was also unclear as to when the shed was erected and the hardstanding laid. In his oral evidence, he claimed it was in 2016, but then went to suggest it was some 20 or 25 years ago. Mr Brien also asserts that static caravans can only be stationed on hardstanding. I saw that the 2 static caravans stationed on the land are on hardstanding and therefore find Mr Brien's assertion likely. The 9 February 2016 photograph does not however show any caravans on the appeal site. Furthermore, there is no evidence before me to show that any caravan was stationed on the appeal site before the material date.
11. Historic aerial imagery⁴ (dated 2003, 2008 and 2012) shows trees and other vegetation on the land. The trees have been cleared from the land by the time the image dated 2015 was produced, but the land's surface is still green. The next chronological image is dated 2018 and this shows the land hard surfaced, as it is now. This evidence provides little to corroborate the appellant's oral evidence. While the appellant's own evidence does not have to be corroborated to be accepted, it should be sufficiently precise and unambiguous.
12. For the reasons given above, Mr Brien's evidence lacks precision as to when the shed was erected and the hardstanding laid, and the photograph and aerial imagery cast doubt on the dates and periods suggested by Mr Brien. The appellant has therefore failed to demonstrate, on the balance of probability, that the operational development consisting of the hardstanding and shed(s) occurred on or before the material date.
13. The appeal on ground (d) fails.

² Appendix iii of Ms Lander's Rebuttal Proof

³ ID4 Aerial photograph

⁴ Appendix A of the Council's Proof of Evidence

Appeals A and B – the ground (a) appeals and the deemed planning applications

14. An appeal on this ground is that planning permission should be granted for the use of land for the stationing of residential caravans and touring caravans for residential purposes, and the formation of a new access track, hardstanding, cesspool, shed and other associated domestic paraphernalia. While a Statement of Common Ground was not provided, the appeal parties agree that the development is inappropriate development in the Green Belt; the appellant and his family have Gypsy and Traveller status; and the location of the development is sustainable. From the evidence before me, I see no reason to disagree with the appeal parties on these matters and I shall proceed on that basis.
15. The site lies within an area of Metropolitan Green Belt. The **main issues** are:
- The effect on Green Belt openness and purposes;
 - The effect on the character and appearance of the area;
 - The effect on biodiversity;
 - Whether a safe and suitable access can be achieved; and
 - Whether the harm to Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to very special circumstances required to justify the development.

Green Belt openness and purposes

16. The essential characteristics of Green Belts are their openness and their permanence. The fundamental aim of Green Belt is to prevent urban sprawl by keeping land permanently open. The five purposes of Green Belt include safeguarding the countryside from encroachment. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
17. Policy DP10: Green Belt of the Tandridge Local Plan Part 2: Detailed Policies 2014 – 2029 (July 2014) (the DP) confirms that inappropriate development in the Green Belt will normally be refused, except in very special circumstances. Policy DP13: Buildings in the Green Belt provides guidance for development that is acceptable in the terms of the Framework. Policy CSP9: Gypsy and Traveller Caravan Sites of the Tandridge Core Strategy (Oct 2008) (the CS) clearly envisaged that land for gypsy and traveller sites would be allocated within the Green Belt, if the allocation of land in urban areas was not possible. The subsequent failure to adopt a Site Allocations Development Plan Document (SAD) means no land for gypsy and traveller sites has been allocated.
18. Structures, hardstanding, and activity has occurred where there was previously none. The development therefore conflicts with the Green Belt purpose of safeguarding the countryside from encroachment.
19. The assessment of impact on openness is about considering the presence of the development in the context of national policy. This specific assessment is not about the quality of the development or its effect on the character and

appearance of the area. The Court of Appeal has confirmed that the openness of the Green Belt has spatial and visual aspects⁵.

20. The site is located east of Beech Farm Road, behind a grass paddock, its access runs along the paddock's northern boundary. The site is roughly rectangular in shape and, prior to development taking place, was covered by trees and other vegetation. The hard standing itself, owing to its lack of three-dimensional form, would have no impact on openness. However, the small shed located in the south-western corner of the site, the static caravans located adjacent to the eastern boundary, vehicles and associated residential paraphernalia inevitably takes up space in what was previously open land. The development is however small scale in the overall Green Belt context. The harm to spatial openness arising from the development is therefore moderate.
21. The hard-surfaced driveway, tall gates, close boarded fencing and the tops of the caravans are visible from Beech Farm Road. When the gates are open, some domestic activity and vehicles are also visible. Mr Thurlow and Mr Woods agreed that the site could not readily be seen from any other viewpoints.
22. The majority of the site forms part of a narrow, contained parcel of land running north-eastwards from a group of buildings and caravans served by a separate access. Moreover, there are already caravans and other structures nearby, many of which are authorised. The development is not an isolated incursion into a swathe of open Green Belt. It is also possible to soften and screen the effects of the development by providing native species planting around the site boundaries and alongside the southern edge of the driveway. The harm to visual openness arising from the development is therefore limited.

Character and appearance

23. As with the 2019 Appeal, there is no Landscape and Visual Impact Assessment before me and limited evidence about landscape and visual effects. The site falls within an Area of Great Landscape Value (AGLV), a local designation that extends across a large tract of countryside which is the width of Surrey. Local Landscape designations are not referred to in the Framework. The preferred approach is for planning decisions to be based on relevant criteria in relation to landscape rather than 'blanket' local designations. A review in 2007 suggested that parts of the AGLV, including the area where the site lies, shared identical characteristics to the Surrey Hills Area of Outstanding Natural Beauty (AONB) and should be included within a revised AONB boundary. That proposal has not been taken forward. However, in the absence of any other evidence I find the site lies within a valued landscape as referred to in paragraph 174 of the Framework.
24. The surrounding countryside is not devoid of development, being interspersed with farmsteads and dwellings, small areas of woodland and other groupings of buildings, including that located to the south-west of the appeal site. The PPTS implicitly accepts that traveller sites will be located in rural areas, where caravans are frequently seen. Policy CPS9 of the CS follows this approach. The 2019 Appeal, proposed development over and above that captured by the notices. Paragraphs 21 to 24 of the 2019 Appeal decision deal with landscape and visual effects. It identifies that '*some localised adverse landscape effects*' would be caused, and that limited views of the development would be

⁵ *Turner v SSCLG & East Dorset Council* [2016]

available. In conclusion, the previous Inspector found there would be *'moderately adverse landscape effects, taking into account the value of the wider landscape within which the development lies'* and *'visual effects would be minor adverse'*. Given the appeal site's position and the surrounding landscape features, I see no reason to disagree.

25. Unlike the 2019 Appeal, this appeal is accompanied by a landscaping scheme that proposes several enhancements to the development. The close boarded boundary fencing would be replaced with post and rail fencing, the laurel hedging would be replaced by 'native linear woodland', the conifers adjacent to the access track would be replaced with native trees and hedging, and other native planting is proposed, as shown Drawing Number: 990-L-01 dated January 2023⁶. While this plan does not include specific details of species, size of plants at time of planting or planting densities, these matters can be adequately controlled by condition.
26. The reduction in scale of development from that previously proposed to that carried out provides for more undeveloped space within the site, which could be utilised for landscape enhancements. The proposed landscaping enhancements would take some time to become effective, I am however satisfied that they would address the moderately adverse landscape and minor adverse visual effects caused by the development. The inclusion of a landscape maintenance plan would also protect and enhance the landscape in the long term, making a positive contribution to the protection and enhancement of the wider valued landscape.
27. For these reasons, the development complies with policies CSP9, CSP18, CSP20 and CSP21 of the CS and policy DP7 of the DP, which seek to protect and enhance visual amenity amongst other things.

Biodiversity

28. Historic aerial imagery shows that trees and other vegetation were cleared to make way for the development. The previous Inspector concluded that *'to find no [biodiversity] harm would be to condone the clearance of the site in advance of seeking planning permission'*. The implementation of a landscaping scheme, which includes measures to encourage nesting birds and other fauna, could be capable of mitigating the degree of harm previously identified. Drawing number: 990-L-01 provides for biodiversity improvements as well as showing the landscape proposals.
29. Since the previous appeal, the appellant has purchased land to the north of the site. That parcel of land is substantially larger than the appeal site. While no ecological survey of this land has been carried out, I saw that it contains unmanaged woodland and grassland habitats. In addition to the landscape enhancements in the appeal site, the appellant proposes to carry out native broadleaf tree planting, wildlife meadow planting, provision of deadwood piles, open glades, and bird and bat boxes on this additional parcel of land. While details of species, size at time of planting, densities, number and location of bird and bat boxes are not provided, it would not be unusual for these details to be secured through condition. While the land to the north is outside the land identified in the notice, conditions can relate to works on land in the appellant's ownership, as is the case here.

⁶ Appendix 6 to Mr Brien Woods' Proof of Evidence

30. I am satisfied that the harm arising from the site clearance is capable of being successfully mitigated through the implementation and maintenance of an approved scheme. The development would accord with policy CSP17 of the CS and policy DP19 of the DP, which seek to protect and enhance biodiversity, amongst other things.

Vehicular access

31. The vehicular access into the site is on the inside of a gradual bend in the road. The appellant proposes visibility splays having a 2.4 m set back by 46.5 m to the north and a 2.0 m set back by 39.9 m to the south, as shown on drawing numbers: 2301069-01 Revision D and 2301069-02 Revision D. The local highway authority has confirmed these splays to be acceptable, subject to securing their on-going maintenance.
32. At the time of the 2019 Appeal, both splays were shown to cross third-party land. The previous Inspector found that visibility to the south was acceptable without relying on third party land. Given the road width and alignment to the south, approaching vehicles are likely to be travelling at low speed, with little likelihood of overtaking. Approaching vehicles are therefore sufficiently visible to drivers of vehicles emerging from the access track so as not to represent a severe hazard to highway safety. Taking these factors together, I see no reason to disagree with the previous Inspector's findings on this matter.
33. In respect of the northern splay, despite the neighbouring landowner confirming that the visibility splay could be maintained, the previous Inspector found there was insufficient certainty that the northern splay would be retained for the lifetime of the development. Since the 2019 Appeal, the appellant has purchased the relevant third-party land to the north.
34. There is an area of land between the carriageway edge and a boundary fence located on the land purchased by the appellant. The Council contend that this area remains land in third-party ownership, and uncertainty therefore remains that the splay would not be retained for the lifetime of the development.
35. I was provided with documentation⁷ showing that Land Registry plans show only a general boundary to land ownership and setting out legal presumptions relating to certain types of boundary feature. This documentation shows the surface of roadways maintainable at the public's expense, and some air space above, is vested with the highway authority. There is also a common law presumption that the owner of land abutting on a road is the owner of the adjoining section of the road up to the middle line (*ad medium filum*). I have also been shown that, if vegetation on any land is obstructing the view of drivers or pedestrians, the highway authority can require the owner of that vegetation to do work to remove that obstruction (section 79 of the Highways Act 1980).
36. The land between the carriageway and the appellant's general boundary of his land is of limited width. It has the appearance of roadside verge. Furthermore, there is no evidence before me to show that it has been used for any other specific purpose or that it is owned by someone other than the appellant.
37. Taking all these factors together, I am satisfied that the splay to the north of the junction can be provided and maintained for the lifetime of the

⁷ ID9, ID10, ID11 and ID12

development. The imposition of a condition to provide and maintain the splay free of vegetation or other obstruction above 600 mm in height would provide the Council with control over the provision and maintenance of the splay.

38. For these reasons the development conforms with policy CSP9 of the CS, which seeks to ensure that development is accessible by safe highway access.

Other considerations

Need

39. The appellant explained how he and his brother had originally occupied the authorised pitches located on the land to the south. As their respective families grew up, the appellant and his extended family had to vacate the authorised pitches on the land to the south due to overcrowding. The Council also brought to my attention that pitches located on the orange land, immediately south of the appeal site, are unauthorised. The appellant and his family clearly demonstrate an immediate need for pitches.
40. Turning to general need, the previous Inspector confirmed that the GTAA identified a need for 63 pitches between 2013 and 2028 (the 2013 GTAA) of which 48 pitches were required in the first 5-year period. I understand that, at the time of the 2019 Appeal, only 11 pitches had been granted permanent planning permission since the base date. This demonstrates a significant deficit in pitch provision during the first 5-year period.
41. The Council relies upon the 2017 GTAA, which is being used as part of the evidence base for the emerging Tandridge District Council Our Local Plan: 2033 (the eLP) currently undergoing examination. The 2017 GTAA identifies a need for 5 gypsy and traveller pitches between 2016 and 2021. It also establishes a potential need for a further 15 pitches up to 2033 for Gypsy and Traveller households who may meet the PPTS definition but who did not take part in the survey. The Council advises that between April 2016 and April 2021 fourteen permanent pitches were granted planning permission, which addresses their identified need for sites.
42. Given the extent of the shortfall in provision during the first 5-years of the 2013 GTAA, it seems unlikely to me that the significant difference in identified need for pitches between it and the 2017 GTAA can be explained away by the change to the PPTS definition alone. What other factors may have influenced the outcome of the 2017 GTAA is unclear. Furthermore, it is some 6 years since the 2017 GTAA was published, and it cannot be considered up to date.
43. The PPTS definition in Annex 1 has recently been found in *Smith*⁸ to be discriminatory, which also makes the approach taken in the 2017 GTAA discriminatory. While the PPTS definition has not yet been amended, the use of a wider definition of Gypsy and Travellers will undoubtedly increase the need for pitches above that identified in the 2017 GTAA.
44. While it is for the local plan process to test the robustness of the 2017 GTAA, from the evidence before me, it seems likely that need will be higher now. This may be because of the low number of households interviewed for the 2017 GTAA, which would limit available information relating to overcrowding and doubling up on pitches, concealed households, and emerging households. The

⁸ *Smith v SSLUHC & Anor* [2022] EWCA Civ 1391

appellant advised that his family had not been interviewed to his knowledge, and it is likely that he was living on the authorised site to the south at the time of the survey took place for the 2017 GTAA.

45. It was also brought to my attention that there is a significant number of outstanding applications and an additional appeal, which provide for a total of 18 pitches. While it is not clear whether all these proposals are retrospective, it adds weight to there being a general unmet need for sites within the district.
46. Other appeal decisions for this site and another site within the district⁹, both reach a similar conclusion on the unmet need for pitches. While these are not determinative, they reinforce my conclusion that there is a general unmet need for Gypsy and Traveller sites within the district.

Failure of policy

47. The PPTS requires local planning authorities to identify, and update annually, a 5-year supply of specific deliverable sites. The Council cannot demonstrate a 5-year supply of deliverable sites for Gypsies and Travellers. The Council however claim that by granting planning permission for 14 pitches between April 2016 and April 2021, more than two-thirds of their identified pitch requirement for the eLP has been met. While that may well be the case, for the reasons set out above, I do not consider the 2017 GTAA identified need to be reflective of the immediate general need for pitches within the district.
48. I have had regard to advice in the PPTS when considering Green Belt locations. This indicates that in such locations the absence of an up to date 5-year supply of deliverable sites should not amount to a significant material consideration, as it may otherwise do in less strictly controlled areas. The lack of supply of itself is also not sufficient to demonstrate that there has been a policy failure by the Council.
49. The development plan does not include the allocation of any land for Gypsy and Traveller sites. Despite policy CSP9 indicating that a Site Allocations Development Plan Document would make provision for sites, that has never happened. Instead, the Council has relied upon applications for private sites to come forward for assessment against the criteria within policy CSP9. This approach does not fully comply with policy B of the PPTS.
50. As part of the eLP evidence base, potential sites for allocation were identified through the Council's Housing and Economic Land Availability Assessment. All the potential sites identified are in the Green Belt, and the AONB in some cases. As such the Council found them all to be inappropriate development and concluded the exceptional circumstances needed to release Green Belt sites for Gypsy and Travellers did not exist. The eLP does not therefore propose to allocate land for Gypsy and Traveller sites.
51. Some 94% of the district is in the Green Belt, including all areas of countryside. The Council acknowledges that most new traveller sites will be in the Green Belt. The previous Inspector opined that, *"in relying on criteria which include the need to demonstrate very special circumstances, the Council could be seen as setting the bar higher for applications than for allocations in the Green Belt which require exceptional circumstances to be fully evidenced and justified as part of a Plan-led approach. This is reflected in the limited number of*

⁹ APP/M3645/W/19/3228261 and APP/M2645/W/21/3269882

permissions since the adoption of the CS and failure to determine other longstanding applications.” I see no reason to disagree with those findings.

52. There was some discussion at the Inquiry that the South Godstone Garden Community could allocate land for Gypsy and Traveller sites. Any such potential provision would however come forward towards the end of the plan period. This would not address the existing general need for pitches, nor would it contribute to the 5-year supply of deliverable sites. Furthermore, it would not meet the immediate needs of Gypsy and Traveller families.
53. Taking these factors together, I find there has been a persistent failure of policy over approximately the last 10 years.

Alternative sites

54. If the appellant and their family were not able to live on the appeal site, then the family would have nowhere else to go. The evidence before me indicates that there are no other pitches available with the district at the current time with little likelihood of any availability in the immediate future.

Personal circumstances

55. Article 8 of the Human Rights Act 1998 states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic wellbeing of the country, which has been held to include the protection of the environment and upholding planning policies. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
56. The appellant and his extended family have long standing connections to the area. The families need a settled base. Two of the households are still stopping at the road side, doubling up on pitches or staying on illegal encampments or other unauthorised sites.
57. There is one child of secondary school age, three children of primary school age and three children of pre-school age. One of the families that would move to the site is also expecting their third child. The appellant confirms that his daughter attends school when they are not travelling, and other children would be placed in education when they are residing on the appeal site.
58. Two of the adults who are occupying the site have long standing health conditions that are being treated by local doctors’ surgeries. While other occupiers’ medical records are provided, there are no other on-going health needs. Those on site are registered with medical centres in Warlingham or New Addington and the other families would register when they are residing on the appeal site.
59. The benefits of a settled base are well-documented in terms of education and access to health care. There would also be advantages for the general well-being of the families in being settled and having continued access to basic amenities and a secure living environment. A settled base would be in the best interests of the children and their education, health, safety and welfare.

Planning Balance and conclusion

60. The Framework attaches great importance to Green Belt. The development is inappropriate development and therefore harmful to the Green Belt. The residential use, associated development and residential paraphernalia causes encroachment into the countryside, resulting in moderate harm to a Green Belt purpose. Harm to openness has occurred, albeit that the degree of harm in visual terms is limited. In accordance with the Framework, I give the identified Green Belt harms substantial weight.
61. The moderate harm to character and appearance and the limited harm to biodiversity can be overcome by conditions. The severe risk to highway safety has been overcome by the appellant's purchase of the adjacent land and the ability to impose conditions to secure the provision and maintenance of visibility splays. These are neutral factors in the planning balance, and do not weigh for or against the development.
62. There are other considerations which support the appeal. I attach significant weight individually to the immediate need for pitches supported by the lack of available alternative sites, the failure to provide a 5-year supply of deliverable sites over an approximately 10-year period, and the Council's lack of assurance as to when this position might be addressed. In addition, I give moderate weight to the likelihood that when Gypsy and Traveller pitches are allocated, a significant proportion of pitches will be located within the Green Belt in any event. I also attach significant weight to the site occupiers' personal circumstances, when considering the benefits of a settled base for the relatively large number of young children that would be present at the site. Taking all these supporting factors together leads me to conclude that an exception to the probable position, as set out in the PPTS, would be justified in this case.
63. I have balanced the harm to the Green Belt and any other harm against the other considerations referred to above. Having regard to the PPTS, I find that they clearly outweigh the harm identified. The very special circumstances necessary to justify the development have been demonstrated. Consequently, the proposal accords with the strategy for the protection of Green Belt land as set out in the Framework.

Conditions

64. I have considered the conditions discussed at the Inquiry. A condition confirming that planning permission is restricted for residential use by Gypsies and Travellers is required in order to safeguard the site for this purpose. However, in light of *Smith*¹⁰, in order to avoid discrimination, the condition should include those Gypsies and Travellers who have ceased to travel permanently. As the personal circumstances of the appellant and his family have contributed to tipping the balance in favour of the development, a personal condition is required.
65. A condition limiting the number of caravans stationed is needed to protect the character and appearance of the area. In the interests of openness of the Green Belt, only single unit caravans should be permitted. Conditions limiting the size of vehicles parked and preventing commercial activity on the site are

¹⁰ *Smith v SSLUHC & Anor* [2022] EWCA Civ 1391

required in the interests of helping to safeguard the character and appearance of the area and the living conditions of adjacent residents.

66. To make the development acceptable in planning terms, it is also necessary for electric vehicle charging points to be provided in accordance with a previously agreed scheme. The visibility splays shown on the submitted drawings also need to be provided and thereafter maintained, in the interests of highway safety. The provision of external lighting, other than that provided in accordance with the Site Development Scheme, needs to be strictly controlled in the interests of the character and appearance of the area and biodiversity.
67. A condition confirming the loss of the permission unless details are submitted for approval (including a timetable for implementation) concerning the site layout, boundary treatments, drainage details, external lighting arrangements, biodiversity enhancements and soft landscaping works, including their replacement if necessary, is required in order to help safeguard the character and appearance of the area and living conditions of the site occupiers.
68. The form of this condition is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Conclusion on ground (a)

69. For the reasons given above, I conclude that the appeals succeed on ground (a). I shall grant planning permission for the use described in Notice A subject to conditions and for the development described in the corrected Notice B. The enforcement notices will be quashed.

Formal Decisions

Appeal A

70. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the land from woodland to use for the stationing of residential caravans and touring caravans for residential purposes, at land adjacent to Caravan Site, Beech Farm Road, Warlingham CR6 9QG and subject to the conditions set out in the attached Appeal A: Schedule of Conditions.

Appeal B

71. It is directed that the enforcement notice is corrected by the deletion of the word 'and' between 'Dig' and 'out' in step 5 (ii).

72. Subject to the correction, the appeal on ground (a) is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the formation of a new access track, hardstanding, cess pool, sheds and other domestic paraphernalia in association with the use of the land for the stationing of residential caravans and touring caravans for residential purposes at land adjacent to Caravan Site, Beech Farm Road, Warlingham CR6 9QG and subject to the conditions set out in the attached Appeal B: Schedule of Conditions.

M Madge

INSPECTOR

Appeal A: Schedule of Conditions

1. The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of 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.
2. The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants:
 - Mr John Brien (senior) and Mrs Elizabeth Brien
 - Mr John Brien (junior) and Mrs Ann Brien
 - Ms Mary Brien and Mr Michael Casey
 - Mr Tom Brien and Ms Teresa Collins
 - Mr Patrick Brien
3. No more than EIGHT 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 FOUR shall be a static caravan) shall be stationed on the site at any time.
4. No caravans falling within the definition of a twin unit caravan set out in the Caravan Sites Act 1968 as amended shall be stationed on the site.
5. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
6. No commercial activities shall take place on the site, including the external storage of materials.
7. Within six months of the date of this decision each pitch shall be provided with a fast charge electricity socket, (7Kw Mode3 with a Type 2 Connector-230V/AC32 Amp single phase dedicated supply), which shall be retained thereafter.
8. Within one month from the date of this decision the visibility splays shown on drawing numbers: 2301069-01 Revision D and 2301069-02 Revision D shall be provided and retained thereafter. Nothing shall be sited, erected or allowed to grow in excess of 600 mm within the 2.4 m by 46.5 m splay.
9. No external lighting shall be put in place or operated on the site at any time other than that which has been previously submitted to and approved in writing by the local planning authority.
10. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought on to the site for the purposes of such use and the hardstanding shall be removed within 30 days of the date of failure to meet one of the requirements set out in (i) to (iv) below:
 - (i) Within **3 months** of the date of this decision a scheme to achieve measurable biodiversity net gain of at least 10% and mitigation

including a timetable for implementation, monitoring and management shall have been submitted for the written approval of the local planning authority.

- (ii) Within **3 months** of the date of this decision a Site Development Scheme (SDS) showing details of:
 - (a) the means of foul and surface water drainage of the site;
 - (b) facilities for the storage and collection of refuse and waste;
 - (c) details of the siting, scale and appearance of any day room or utility room;
 - (d) the areas of the site to be reserved solely for the parking or turning of vehicles including details of the layout of the parking area or areas showing the maximum number of vehicles to be parked on the land at any one time
 - (e) details of the external lighting;
 - (f) Notwithstanding the details shown on the landscape proposals and biodiversity improvement plan, details of species, plant sizes, proposed numbers and densities, including a timetable for implementation, maintenance and management. Any trees, hedges or plants planted in accordance with the approved scheme which are removed, die or become diseased or seriously damaged within 10 years of completion of the approved scheme shall be replaced within the next planting season by trees, hedges or plants of a similar size and species to that originally approved.
- (iii) Within **11 months** of the date of this decision the local planning authority refuse to approve the biodiversity net gains scheme and/or the site development 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.
- (iv) If an appeal is made in pursuance of (iii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
- (v) The approved schemes shall have been carried out and completed in accordance with the approved timetable.
- (vi) Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be maintained.
- (vii) 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 the legal challenge has been finally determined.

Appeal B: Schedule of Conditions

1. The development hereby permitted shall be removed within 30 days of the date of failure to meet one of the requirements set out in (i) to (iv) below:
 - (i) Within **3 months** of the date of this decision a scheme to achieve measurable biodiversity net gain of at least 10% and mitigation including a timetable for implementation, monitoring and management shall have been submitted for the written approval of the local planning authority.
 - (ii) Within **3 months** of the date of this decision a Site Development Scheme (SDS) showing details of:
 - (a) the means of foul and surface water drainage of the site;
 - (b) facilities for the storage and collection of refuse and waste;
 - (c) details of the siting, scale and appearance of any day room or utility room;
 - (d) the areas of the site to be reserved solely for the parking or turning of vehicles including details of the layout of the parking area or areas showing the maximum number of vehicles to be parked on the land at any one time
 - (e) details of the external lighting;
 - (f) Notwithstanding the details shown on the landscape proposals and biodiversity improvement plan, details of species, plant sizes, proposed numbers and densities, including a timetable for implementation, maintenance and management. Any trees, hedges or plants planted in accordance with the approved scheme which are removed, die or become diseased or seriously damaged within 10 years of completion of the approved scheme shall be replaced within the next planting season by trees, hedges or plants of a similar size and species to that originally approved.
 - (iii) Within **11 months** of the date of this decision the local planning authority refuse to approve the biodiversity net gains scheme and/or the site development 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.
 - (iv) If an appeal is made in pursuance of (iii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - (v) The approved schemes shall have been carried out and completed in accordance with the approved timetable.
 - (vi) Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be maintained.

- (vii) 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 the legal challenge has been finally determined.

APPEARANCES

FOR THE APPELLANT:

Mr Stephen Cottle, counsel for the appellant

Instructed by WS Planning & Architecture

He called:

Mr John Brien (Senior)

Appellant

Mrs Elizabeth Brien

Appellant's wife

Mr Brian Woods
BA (Hons) MRTPI

Managing Director of WS Planning & Architecture

FOR THE LOCAL PLANNING AUTHORITY:

Mr Stephen Whale, counsel for the Local Planning Authority

Instructed by Lidia Harrison, Head of Legal Services & Monitoring Officer, Tandridge District Council

He called:

Mr Clifford Thurlow

Interim Chief Planning Officer,
Tandridge District Council

Ms Fiona Lander

Principle Enforcement Officer,
Tandridge District Council

DOCUMENTS

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| ID1 | Highway Response to Fiona Lander dated 16 March 2023 |
| ID2 | Drawing Number: 2301069-01 Revision D |
| ID3 | Drawing Number: 2301069-02 Revision D |
| ID4 | Google Earth Aerial Image dated 10/10/2022 – Annotated |
| ID5 | Tandridge District Council Gypsy and Traveller Accommodation Assessment Final Report (January 2017) |
| ID6 | Email from F. Lander to P. Brownjohn sent: 17 January 2012 15:14 |
| ID7 | Email from F. Lander to P. Brownjohn sent: 17 January 2012 17:27 |
| ID8 | Draft planning conditions |
| ID9 | HM Land Registry plans: boundaries (practice guide 40, supplement 3) |
| ID10 | Boundaries and boundary rules, Practical Law UK Practice Note 2-107-4452 |
| ID11 | Other statutory powers of the highway authority regarding trees |
| ID12 | <i>Leigh v Jack</i> : CA 11 December 1879 |