



Appeal Decision

Site visit made on 26 June 2023

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 JULY 2023

Appeal Ref: APP/Y3615/W/22/3300834

Land to the Rear of 75 Glaziers Lane, Normandy, Guildford GU3 2EA.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr John Lee Snr against Guildford Borough Council.
 - The application Ref 21/P/02647, is dated 17 December 2021.
 - The development proposed is for 2 no. Gypsy/Traveller pitches to be occupied by Gypsies and Travellers who fulfil the definition of Gypsies and Travellers in Annex one of the Planning Policy for Travellers Sites.
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Decision

1. The appeal is dismissed and planning permission for 2 no. Gypsy/Traveller pitches to be occupied by Gypsies and Travellers who fulfil the definition of Gypsies and Travellers in Annex one of the Planning Policy for Travellers Sites is refused.

Application for costs

2. An application for costs was made by Mr John Lee Snr against Guildford Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. The Council provided putative reasons for refusal in their statement of case, including a reason for refusal relating to dormer windows and a parking and turning area. It was clarified by the Council that this putative reason for refusal is not relevant. I have not therefore considered this matter in my decision.
4. The Guildford Borough Local Plan: Development Management Policies (LPDMP) was examined and adopted in March 2023. The Council has provided the relevant LPDMP policies and has confirmed that some saved policies have been superseded. The appellant had the opportunity to comment on the newly adopted policies. I have had regard to these policies in reaching my decision.

Main Issues

5. The main issues in this appeal are:
 - a) whether the proposal would be inappropriate development in the Green Belt, and its effect on openness and the purposes of including land within the Green Belt;
 - b) the effect of the proposal on the character and appearance of the area;

- c) the effect of the proposal on the living conditions of future occupiers, with reference to amenity and play space;
- d) whether the proposal would make appropriate provision of measures to address climate change, sustainable design, construction and energy use;
- e) the effect of the proposal on the Thames Basin Heaths Special Protection Area (SPA), with particular regard to recreational disturbance; and
- f) whether any harm would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

a) Inappropriate development, openness, and purposes

6. The site lies within the Metropolitan Green Belt. Policy E, paragraph 16 of the Planning policy for traveller sites 2015 (PPTS) states that inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. It confirms that traveller sites (temporary or permanent) in the Green Belt are inappropriate development.
7. The National Planning Policy Framework 2021 (the Framework) at paragraph 137 confirms that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
8. As defined by paragraph 138 of the Framework, the Green Belt serves five purposes. I consider that the relevant purpose for this appeal is purpose c) on assisting in safeguarding the countryside from encroachment.
9. Policy P2 of the Guildford borough Local Plan: strategy and sites 2015 – 2034 (adopted 25 April 2019) (LPSS) states that the Metropolitan Green Belt, as designated on the Policies Map, will be protected against inappropriate development in accordance with the Framework. Inappropriate development will not be permitted unless very special circumstances can be demonstrated. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations. LPSS Policy P2 also confirms that the construction of new buildings in the Green Belt will constitute inappropriate development unless one of certain exceptions are met, including limited infilling outside settlement boundaries in villages such as Normandy.
10. Given that the proposal is for pitches for Gypsies and Travellers who are considered to meet the definition set out in PPTS Annex 1 and the PPTS confirms that traveller sites (temporary or permanent) in the Green Belt are inappropriate development, I conclude that the proposal would be inappropriate development in this instance.
11. The appellant has drawn my attention to the Framework, in particular to exception g) of paragraph 149 in respect of limited infilling or the partial or complete redevelopment of previously developed land. I understand that the

Council considered that a new house on the same site (Ref: 21/P/01730) would not represent limited infilling or be on previously developed land under paragraph 149. However, as caravans are not buildings, this proposal would fall outside paragraph 149 which refers solely to the construction of new buildings.

12. I turn to the effect of the proposal on openness. Located east of rear gardens of residential properties on Glaziers Lane, the roughly triangular site is accessed via a hard-surfaced track without pavements. Enclosed by 2 metre close-boarded timber fencing and gates, the site comprises hardstanding and two outbuildings. There are also the remains of other outbuildings and a considerable heap of vegetated soil and rubble on site. Beyond the site, further dwellings are located to the north and east. A small, wooded area lies to the south, while a Gypsy and Traveller site of at least six pitches is situated to the north-east and buildings for an animal feed and soil transfer company are located to the east at the end of the access track.
13. The aforementioned residential and commercial development is interspersed with fields and paddocks. While there is a rural character to this part of the Green Belt, it contains built development which becomes increasingly sporadic east of the linear development along Glaziers Lane. Given the intervening vegetation, buildings, and boundary treatments, the site and its existing outbuildings are presently only visible from outside the site on the access track.
14. Despite the presence of existing structures on site, the removal of the existing outbuildings and hardstanding and their replacement with two mobile homes and a touring caravan and associated parking and domestic paraphernalia would reduce the openness of the Green Belt spatially in terms of their number and distribution. In visual terms, the site is presently quite enclosed. The appellant has suggested removal of the existing fencing to enhance living conditions and highway safety, though this is not indicated on the proposed block plan GP/01/21 Rev A and the proposal would use the existing vehicular access. While the fence's removal would alter the sense of enclosure, this would result in the increased visual presence of two mobile homes, a touring caravan, parked vehicles and domestic paraphernalia on site. There is no indication that this would be lessened by any soft landscaping. Accordingly, there would also be a negative effect on visual openness.
15. The appellant has referred to prior notifications, pre-application requests, and planning applications nearby with regard to the Council's approach to assessing the effect of development on Green Belt openness. Though it is difficult to understand these cases fully from the limited information provided, most of these examples do not appear to be for the same use and are not directly relevant. Mention is made of the Palm House Nurseries site where permission was granted by the Secretary of State for six pitches for Romany Gypsies. However, in the absence of the Secretary of State's decision, it is not clear that they are comparable, and I have considered this appeal on its particular merits.
16. The proposal would be inappropriate development and would have a negative spatial and visual effect on openness. There would also be some encroachment into the countryside, at odds with the relevant Green Belt purpose c) of safeguarding the countryside from encroachment. However, given the existing outbuildings on site and the relatively small increase in development proposed, I consider that the degree of harm of this proposal to Green Belt openness and to the relevant Green Belt purpose would be no more than moderate.

b) Character and appearance

17. I have outlined the proposal, the existing nature of the site, and its surroundings in the paragraphs above. Having acknowledged the site's poor condition and the benefit of removing the existing outbuildings, the Council's concern pertains to the lack of information on soft landscaping.
18. Generally, this would be addressed by condition. However, given the scope for removal or reduction in fencing, the site's small size, and the lack of clarity over the extent of the site to be covered by parking and turning areas, hard landscaping, and mobile homes and caravans, it is not possible to ascertain whether there is sufficient space for the native hedging referred to in the appellant's planning statement in addition to post and rail chestnut fencing or for any further soft landscaping within the site.
19. I therefore conclude that it has not been demonstrated that the proposal would not have a harmful effect on the character and appearance of the area. This conflicts with LPDMP Policy D4 and PPTS paragraph 26. LPDMP Policy D4 requires proposals to demonstrate how they will achieve well-designed places and high quality design, respect local distinctiveness, and respond positively to prevailing character and landscape. PPTS paragraph 26 expects local planning authorities to give weight to, amongst other things, sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase their openness.

c) Living conditions

20. The proposed block plan GP/01/21 Rev A shows car parking and space for one touring caravan and two mobile homes, but no indication is given on plan or in the accompanying appeal documents as to how much soft landscaping would be provided on site and where and how it would be provided. As such, it is not possible to ascertain what amenity and play space would be delivered.
21. In conclusion, it has not been demonstrated that the proposal would not have a harmful effect on the living conditions of future occupiers, with reference to amenity and play space. It is contrary to LPDMP Policy D4 and PPTS paragraph 26 in respect of achieving high quality design and promoting opportunities for healthy lifestyles.

d) Climate change, sustainable design, construction and energy use

22. LPSS Policy D2 addresses climate change, sustainable design, construction and energy use and requires applications to include information on sustainable design and construction. The policy sets out matters such as waste minimisation; layout, massing, orientation and landscaping to reduce energy consumption; water efficiency; and electric vehicle charging. LPDMP Policy D14 deals with sustainable and low impact development and requires a fabric first approach, minimisation of embodied carbon, energy improvements, waste management and water efficiency.
23. The Council's Climate Change, Sustainable Design, Construction and Energy Supplementary Planning Document 2020 (SPD) requires the submission of a Climate Change, Energy and Sustainable Development questionnaire or an energy and sustainability information statement. No such questionnaire or statement was provided. While the Council acknowledges that the proposal would include the siting of caravans which could be located to make effective

use of solar gain, no information has been provided in respect of use of water harvesting, soft landscaping, permeable surfaces and renewable energies.

24. I conclude therefore that it has not been demonstrated that the proposal would make appropriate provision of measures to address climate change, sustainable design, construction and energy use. Accordingly, the proposal conflicts with LPSS Policy D2, LPDMP Policy D14, and the Council's Climate Change, Sustainable Design, Construction and Energy SPD as set out above.

e) Thames Basin Heath SPA

25. The site lies within the 400m to 5km zone of influence of the Thames Basin Heaths SPA, a network of heathland sites. The SPA is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and provides a habitat for Woodlark, Nightjar and Dartford Warbler, all of which are internationally important bird species. The aforementioned birds nest on or near the ground and, as a result, are very susceptible to predation, and to disturbance from informal recreational use, particularly walking and dog walking. In this instance, the Council has referred to the scope for increased dog walking, general recreational use, damage to the habitat, disturbance to the protected species, and road traffic emissions. I see no reason to disagree with the Council's concerns.
26. Both Policy NRM6 of The South East Plan: Regional Spatial Strategy for the South East of England 2009 (RSS) and LPSS Policy P5 require the SPA to be protected from new residential development that is likely to have adverse effects on the SPA's ecological integrity, and require avoidance and mitigation. LPDMP Policy P6 seeks to protect and enhance priority species and habitats. Policy NE4 of the Guildford Borough Local Plan 2003 is no longer saved and has been superseded by the LPDMP.
27. I consider that there remains a probability or risk that the proposal, in combination with other plans or projects, could have a likely significant effect on the SPA, as it would be likely to exacerbate existing recreational pressures. I am therefore required to carry out an appropriate assessment.
28. It is necessary for me to consider whether any potential effects could be mitigated. The Council has adopted the Thames Basin Heaths Special Protection Area Avoidance Strategy SPD (July 2017 and factually updated October 2021). This sets out a framework for providing or contributing towards the delivery, maintenance, and management of Suitable Alternative Natural Green Space (SANGS) and to Strategic Access Management and Monitoring (SAMM). The Council has confirmed that both SANGS and SAMM contributions would be necessary, and a legal agreement would be required. This is consistent with Natural England's standing advice on securing mitigation measures.
29. No legal agreement has been provided to alleviate the effect of the proposal. While the appellant refers to uncertainty as to whether such requirements would be imposed on caravan pitches, no further action was taken by the appellant in their final comments following receipt of the Council's statement. Consequently, there is no mechanism in place to secure mitigation measures for recreational disturbance. As such, adverse effects on the integrity of the SPA would not be avoided.

30. In conclusion, the proposal would have a negative effect on the Thames Basin Heaths SPA, with particular regard to recreational disturbance. In the absence of any mitigation, it would fail to comply with RSS Policy NRM6, LPSS Policy P5, LPDMP Policy P6, the Thames Basin Heaths Special Protection Area Avoidance Strategy SPD, and the requirements of the Habitats Regulations.

Other Matters

31. Concerns have been raised about issues including drainage, flood risk, licensing, asbestos, Japanese Knotweed, capacity of local medical and education infrastructure, site size, location, distance to services, contaminated land, the refusal of other planning applications on site, highway safety, affordable and social housing need, and effects on living conditions. However, given my decision, I have not addressed these matters in detail.

f) Other considerations

32. I turn now to the other considerations advanced by the appellant, that they consider would collectively amount to very special circumstances.
33. Firstly, the appellant has referred to a fallback position under The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class Q which relates to changes of use of agricultural buildings to dwellinghouses. However, this would require prior approval in order to ensure that all the relevant requirements under Class Q were met. No such prior approval is before me. Furthermore, the appellant refers to the site being used previously for car preparation and repairs as well as for the storage and distribution of cut flowers. In the absence of any certificate of lawful use in relation to any industrial or commercial use or an extant prior approval for Class Q, it has not been demonstrated that a fallback position exists and could realistically be implemented. As such, I afford the fallback position no weight.
34. It is necessary to consider the existing level of local provision of Gypsy and Traveller sites and the need for such sites. The PPTS confirms at paragraph 10 that local planning authorities should identify and annually update a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. LPSS Policy H1 states that new residential development is required to deliver a wide choice of homes to meet a range of accommodation needs.
35. LPSS Policy S2 deals with the borough's spatial development strategy and, amongst other things, sets out that provision has been made for four permanent pitches for Gypsies and Travellers (as defined by PPTS) between 2017 and 2034. Policy S2 also confirms that while the needs of Gypsies and Travellers who do not meet the planning definition fall outside this allocation, in order to meet their assessed needs, the Council will seek to make provision for 41 permanent pitches for Gypsies and Travellers who do not meet the PPTS definition and for eight permanent pitches to meet potential additional need of households of unknown planning status. There is a total need of 53 pitches.
36. Having taken account of the recent judgment *Smith v SSLUHC & Others* [2022] EWCA Civ 1391, the Council has confirmed that its Land Availability Assessment identifies sufficient sites to meet the need for Gypsies and Travellers who do and do not meet the PPTS definition and those of unknown planning status over the plan period to 2034. The Council has confirmed that

32 pitches have extant planning permission or have been built out since January 2017. The Council considers it has a five year supply of sites. The appellant has not disputed this in any detail. I therefore afford the provision of the two additional pitches moderate weight.

37. In terms of alternative sites, the Council has confirmed that another partially implemented site is unlikely to be available. Additionally, there are no empty pitches on the borough's public sites and there is a lengthy waiting list. As such, there are no available alternatives. I give this matter moderate weight.
38. The Human Rights Act 1998 at Article 8 confirms that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, where interference may be justified in the public interest. Interference may be justified where it is in the interests of, amongst other things, the country's economic well-being, including protection of the environment and upholding planning policies. Article 3(1) of the United Nations Convention on the Rights of the Child also provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
39. As required by Section 149(1) of the Equality Act 2010, the Public Sector Equality Duty is also applicable as the future occupiers are likely to be gypsies and travellers and would therefore have a protected characteristic. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity, and fostering good relations.
40. With regard to personal circumstances, the pitches are to be occupied by Romany Gypsies meeting the PPTS definition. However, no further information has been provided on the intended occupiers, their specific personal circumstances and need for a settled base. As such, I give very limited weight to the stated personal circumstances.

Planning balance

41. National planning policy attaches great importance to Green Belts. Accordingly, substantial weight should be given to any harm to the Green Belt. The proposal constitutes inappropriate development in the Green Belt. In addition, the proposal would cause a loss of visual and spatial openness and would encroach into the countryside, therefore causing harm to the purposes of including land in the Green Belt, albeit that the degree of harm to openness and purposes would be no more than moderate.
42. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that development should be in accordance with the development plan unless material considerations indicate otherwise. I have also found that there is conflict with the development plan with regard to the effect on the character and appearance of the area; the living conditions of future occupiers, with reference to amenity and play space; provision of measures to address climate change, sustainable design, construction and energy use; and the likely significant effect on the Thames Basin Heaths SPA, with particular regard to recreational disturbance. Together, these have significant weight.
43. The provision of two pitches and the absence of alternatives have moderate weight, while the personal circumstances have very limited weight. The benefit of the removal of the existing outbuildings and hardstanding on the site have

limited weight as they would be replaced by structures that harm the openness and purposes of the Green Belt. The purported fallback position has no weight.

44. I have balanced the harm to the Green Belt and any other harm, against other considerations. Having regard to paragraph 16 of the PPTS which states 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, I find that the identified harms clearly outweigh the benefits. The very special circumstances necessary to justify the proposal have not been demonstrated. Therefore, the proposal would conflict with LPSS Policy P2, paragraph 147 of the Framework, and PPTS paragraph 16, as set out above.
45. Furthermore, it would not be suitable to allow either a temporary or a personal permission in this instance. In the absence of information on the intended occupiers, a personal permission has not been established to be necessary or suitable. Both temporary and personal permissions would give rise to harm to the Thames Basin Heaths SPA, which would not be mitigated.
46. The human rights interference associated with my findings is in accordance with the law and is necessary to protect environmental interests which is a legitimate objective. The public interest cannot be achieved by means that cause less interference with human rights. As such, dismissing the appeal is a proportionate response in these circumstances and a violation of rights under Article 8 would not occur.

Conclusion

47. The proposal would conflict with the development plan as a whole and other material considerations do not indicate a decision otherwise than in accordance with it. The appeal should therefore be dismissed and planning permission should be refused.

Joanna Gilbert

INSPECTOR