



Appeal Decision

Hearing held on 28 February 2024

Site visit made on 28 February 2024

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 08 March 2024

Appeal Ref: APP/Z5630/W/23/3322170

The Piggery, Green Lane, Chessington KT9 2DT

- 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 Mrs Mary Stacey against the decision of the Council of the Royal Borough of Kingston upon Thames.
- The application Ref 19/02985/FUL, dated 13 November 2019, was refused by notice dated 18 November 2022.

The development proposed the retention of Gypsy/Traveller site for the use of one Gypsy/Traveller family with ancillary wash house on a permanent basis.

Decision

1. The appeal is allowed and planning permission is granted for the retention of Gypsy/Traveller site for the use of one Gypsy/Traveller family with ancillary wash house on a permanent basis at The Piggery, Green Lane, Chessington KT9 2DT in accordance with the terms of the application, Ref 19/02985/FUL, subject to the 9 conditions set out in the attached schedule.

Preliminary Matters

2. The appeal site address is known interchangeably as The Piggery or The Piggeries and is also recorded on Ordnance Survey mapping as Green Lane Piggeries. The parties have confirmed that they are content for the address on the application form to be used for the purposes of this appeal.
3. A revised version of the National Planning Policy Framework (NPPF) was published on 19 December 2023. There were no substantive changes of relevance to this appeal proposal. A revised version of the Planning policy for traveller sites (PPTS) was also published on the same day. The main change of relevance to this appeal is the definition of gypsies and travellers in Annex 1 which reinstates those who have ceased to travel permanently.
4. The appellant submitted a costs application the day before the hearing opened along with appeal and costs decisions for a nearby site¹. Following the discussions at the hearing, the appellant withdrew the costs application. The nearby appeal and costs decisions have been included as hearing documents.
5. At the hearing, it was confirmed that in addition to the appellant (Mrs Mary Stacey), the site is also occupied by her adult daughter Miss Mary Stacey and her 15 year old grandson. While this information was not provided until the hearing, the Council did not seek to dispute the presence of these additional individuals and was afforded time at the hearing to consider any implications.

¹ Appeal ref APP/Z5630/W/17/3191630 (Land rear of Kenwood, Green Lane, Chessington KT9 2DS)

There was also agreement between the parties that the above occupants meet the PPTS definition of gypsies and travellers. Therefore, I have proceeded on this basis. I do not consider that this is prejudicial to any party.

6. It was also revealed at the hearing that two other relatives of the appellant live in a small static caravan within the site. However, the appellant accepted that these relatives and the small static caravan do not form part of the appeal development. Consequently, they have not formed part of my considerations.

Main Issues

7. The main issues are:

- (a) the effect of the development on the openness and character of the Green Belt; and
- (b) whether any harm is clearly outweighed by other considerations (such as the need for and supply of gypsy and traveller sites and the personal circumstances of the occupiers of the site) so as to amount to the very special circumstances required to justify the development.

Reasons

The site and its surroundings

8. Green Lane extends from the junction with Church Lane into the countryside to the south of Chessington. From Hunting Gate Drive onwards, Green Lane contains a line of detached properties on the southeast side of the lane and open space to the northwest side. To the rear of many of these properties are further buildings including backland houses and structures associated with boarding kennels and authorised gypsy/traveller pitches. The topography drops to the southeast towards a stream and shallow valley.
9. The site comprises an access track from Green Lane and land to the rear of properties at Felstead, Eidon and Cavalla. The main part of the site is broadly rectangular with a number of structures in the upper half including a large static caravan (marked as Chalet on drawing ref J003408-DD02), an ancillary wash house (marked as UT on the same drawing), a storage building with corrugated metal roof, and stables. Concrete hardstanding occupies the space between the structures in this part of the site. The lower half of the site is currently separated by a tall fence and is largely undeveloped. At my site visit, there were some parked vehicles on site including touring caravans.
10. Mature trees form the site boundary on three sides. Glimpses through to the surrounding countryside were possible given the lack of foliage at the time of my site visit. Directly to the northwest of the large static caravan is a separate gypsy/traveller site with one mobile home that has the benefit of a personal permanent planning permission². The backland property known as Green Lane Nurseries is situated immediately to the north of the storage building.

Green Belt

11. The site is within the Green Belt, which encompasses the whole of Green Lane south of Hunting Gate Drive. PPTS paragraph 16 states that gypsy and traveller sites in the Green Belt are inappropriate development. NPPF paragraph 142

² 15/10101/FUL (Land adjoining The Piggery, Green Lane, Chessington)

states that 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 permanence. NPPF paragraph 143 sets out five Green Belt purposes including checking the unrestricted sprawl of large built-up areas, safeguarding the countryside from encroachment, and assisting in urban regeneration by encouraging the recycling of derelict and other urban land.

12. Amongst other things, Policy CS3 of the Kingston Core Strategy 2012 (KCS) and Policy G2 of the London Plan 2021 (LP) seek to protect the Green Belt from inappropriate development, with Policy G2 also stating that development proposals that would harm the Green Belt should be refused except where very special circumstances exist. Both policies are consistent with the NPPF for the purposes of this appeal.
13. The site has been occupied by a gypsy/traveller family since the early 1980s with temporary planning permissions granted in 1984, 1988, 2001 and 2014. Prior to that, there is general agreement between the parties that the site had an agricultural use, although the evidence is lacking in terms of what structures existed and how the land was laid out.
14. It is not my role in a planning appeal under Section 78 of the Town and Country Planning Act 1990 (the Act) to decide whether something is lawful or not. There is a separate statutory process under Section 191 of the Act involving certificates of lawfulness for existing use or development. Taking a precautionary approach therefore, I have regarded all structures on the site as post-dating any agricultural use.
15. The various structures when taken together are not insignificant in terms of their footprint and volume. Spatially, they clearly detract from the openness of the Green Belt. In visual terms though, the structures are only obvious from within the site itself, as surrounding buildings and boundary treatments screen them from public viewpoints along Green Lane and elsewhere.
16. In respect of Green Belt character, the structures along with the extent of hardstanding, fencing, vehicles and general domestic paraphernalia result in an urbanised form of development in contrast to the surrounding countryside. However, there are authorised gypsy/traveller sites next door and to the rear of Kenwood along with various backland structures behind Green Lane which create a less rural character.
17. Turning to Green Belt purposes, the development causes some urban sprawl and encroachment into the countryside although this is tempered by the lack of public visibility and the prevailing character along Green Lane.
18. In conclusion, the development has a moderate harmful effect on Green Belt openness and character and a moderate conflict with the Green Belt purposes in NPPF paragraph 143(a) and (c). Opportunities to mitigate these effects are limited by the already mature tree planting along the site boundaries and the restricted amount of space within the site for landscaping.

Other considerations

19. The Royal Borough of Kingston upon Thames Gypsy and Traveller Accommodation Needs Assessment (GTANA) from September 2018 forms the current evidence base for the Council's current and future need. A London-wide GTANA is being prepared but will not be published until after the Mayoral

elections in May 2024. Therefore, while the Council accepts that its GTANA is out of date by virtue of being more than 5 years old, it is the most recent and publicly available data source for the purposes of this appeal.

20. The Council's GTANA was prepared following the publication of the 2015 PPTS which amended the definition of gypsies and travellers to exclude those who have ceased to travel permanently. Over the plan period of 2018 to 2041, the GTANA identified a need for 44 additional pitches for households that met the 2015 PPTS definition, a need for 23 pitches for those households who did not, and up to 7 pitches for unknown households.
21. Following the publication of the 2023 PPTS, the parties agree that the overall need within the Borough is 74 pitches across the plan period based on the Council's GTANA. In the absence of the London-wide GTANA, it is not possible to say whether this need has increased since 2018. The caravan count data shows 66-68 unauthorised caravans in 2022, but this is only a snapshot. Nevertheless, the need for an additional 74 pitches is a significant figure.
22. The adopted development plan does not allocate any sites for gypsies or travellers, with KCS Policy DM16 only safeguarding the existing public site at Swallow Park and setting out a criteria-based policy for windfall sites. The policy also anticipated the production of a Gypsy and Traveller Development Plan Document in the first half of the plan period of 2012-2027 but this has not been progressed.
23. The emerging Local Plan is proceeding towards Regulation 19 consultation later this year prior to an estimated examination in 2025 and adoption in 2026. However, there are several uncertainties with this timetable including the production of evidence, the views of any examining Inspector, the need for additional (main modification) consultations, and a general election.
24. Moreover, it is not clear whether the emerging Local Plan will include any gypsy or traveller site allocations. A call for sites exercise in the autumn of 2023 resulted in 7 potential gypsy and traveller sites being put forward, but these are still being assessed by the Council and may or may not be considered suitable. Therefore, I have limited certainty that a new Local Plan would be adopted soon or that it would make specific provision for gypsies and travellers other than another criteria-based policy for windfall sites.
25. Based on the 2015 PPTS definition alone, the Council's GTANA identified a need for 30 pitches in 2018-2023 and 3 more in 2023-2028. Since 2018, no more than 4 pitches have been granted permission. The Council acknowledges that no sites are due to come forward soon and that there is no 5 year supply.
26. While the development if approved would only contribute one additional pitch, there is a significant unmet need within the Borough, very little in the way of new sites, and no 5 year supply. The adopted development plan makes little active provision towards meeting the needs of gypsies and travellers and it is too early to say that the emerging Local Plan would improve things markedly. Therefore, I afford substantial weight to these considerations.
27. Unsurprisingly, given the above, the parties at the hearing were unable to identify any alternative sites in the local area that would be suitable, available and acceptable to the appellant and her daughter and grandson. The Council's spatial strategy focuses on development within the urban area, but no sites

currently exist other than Swallow Park. Turnover at that site is acknowledged to be small with a long waiting list, and so it does not present a reasonable option. Therefore, I afford significant weight to the lack of alternative sites.

28. The appellant is in her 70s and has lived on the site for over 40 years. She has no desire to move and has multiple health issues as evidenced by her medical records. She has been registered at a local doctors surgery since the early 1980s and frequently attends appointments both at the surgery and a nearby hospital. Her adult daughter (Miss Mary Stacey) has been registered at the same surgery for the same time period. She also has several health issues and attends surgery appointments on a regular basis. The appellant's 15 year old grandson has various health issues and is home schooled. The appellant's nephew and family live on the authorised gypsy/traveller site next door.
29. There is a need for the above occupants of the site to access health and education services, which is best achieved from a settled base. At the hearing, the Council confirmed that enforcement action could take place against the development if this appeal was dismissed. While the most recent planning permission on this site expired over 7 years ago, there is little evidence that there are any alternative sites locally. As such, there is a genuine risk that the occupants would end up resorting to a roadside existence, which would have detrimental effects on their ability to access important services. This would represent an interference with the occupants' home, private and family life. Thus, I attach substantial weight to the personal circumstances in this case.
30. For the avoidance of doubt, given the appellant's age and health issues and lack of alternative places to live, I would have attached this weight to personal circumstances even without the presence of the daughter and grandson. Nevertheless, there is no reason why these two extra individuals cannot be considered as forming part of the gypsy/traveller family.
31. The parties disagree whether the site represents previously developed land as defined in the NPPF glossary. Although there are permanent structures on site, land that is or was last occupied by agricultural buildings is excluded from the NPPF definition. As noted above, it is not my role to determine the lawful status of this site. The effective use of previously developed land is promoted by the NPPF, but in the absence of clarity on the site's lawful status, I give this consideration little weight in favour of the development.
32. The site is located within PTAL 1 in terms of its accessibility to public transport. However, there are bus stops within walking distance of the site, just beyond the northern end of Green Lane, that have frequent services between Chessington and Kingston. Chessington South train station is also walkable along with various services and facilities including shops and schools. The site is not located in an area of high flood risk or on contaminated land. The parties agree that the development accords with the criteria in KCS Policy DM16. This consideration weighs in favour of the development.

Other matters

33. Intentional unauthorised development has been a material consideration to weigh in the determination of planning applications and appeals received from 31 August 2015 onwards (as set out in the Government's policy statement of the same date). However, the appellant has lived on the site for over 40 years and wishes to remain there. No reasonable alternative options have been

demonstrated. The appellant has attempted to gain planning permission several times including the application that has led to this appeal. Temporary permissions have been granted on 4 occasions. Therefore, it has not been demonstrated that occupation of the site is intentional unauthorised development and so I give no weight to this matter in the overall balance.

The overall planning balance

34. NPPF paragraph 152 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. NPPF paragraph 153 advises that substantial weight should be given to any harm to the Green Belt and that 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. PPTS paragraph 16 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. PPTS paragraph 24, which sets out a range of relevant matters to consider when assessing proposals for traveller sites, makes the same point regarding the Green Belt.
35. The development represents inappropriate development in the Green Belt and results in moderate harm to Green Belt openness and character and moderate conflict with Green Belt purposes. This carries substantial weight.
36. I have afforded substantial weight to the level of unmet need, the lack of new sites, the absence of a 5 year supply, and the planning policy context. Substantial weight has also been given to the personal circumstances in this case. The lack of alternative sites carries significant weight, and the development complies with the criteria for windfall sites in KCS Policy DM16.
37. Cumulatively, the other considerations clearly outweigh the harm to the Green Belt. Looking at the case as a whole, and having regard to the Public Sector Equality Duty, very special circumstances exist which justify the development. Therefore, the development accords with NPPF paragraphs 152 and 153, PPTS paragraphs 16 and 24, KCS Policies CS3 and DM16, and LP Policy G2.
38. I have considered whether a temporary planning permission of 3 to 5 years would be appropriate as it would be time limited and lessen the interference with the appellant's human rights while protecting the public interest (in this case relating to the Green Belt). However, there is no certainty regarding the likely adoption of the emerging Local Plan and whether it would make adequate provision to meet local need and the needs of the site's occupants. Moreover, a temporary permission would not provide the long-term stability for the occupants having regard in particular to the health issues of the appellant. In any case, a permanent personal permission would be acceptable based on the planning balance. Thus, I have not considered a temporary permission further.

Conditions

39. Condition 1 specifying the approved plans is necessary for clarity and compliance. As the need for gypsy and traveller pitches has been a key part of my decision, Condition 2 is necessary to ensure all occupiers fall within the definition contained in the PPTS. The personal circumstances of the appellant and the occupants of the site has also been a key consideration and so

Condition 3 is required to name the adult occupants. I have amended the wording of this condition to clarify who is permitted to occupy the site. Condition 4 is necessary as the permission is personal one and ultimately temporary, requiring the cessation of the use and the removal of any materials and equipment once the site is vacated by those named in Condition 3.

40. Condition 5 limiting the number of caravans on site and Condition 9 removing permitted development rights for additional structures and means of enclosure are necessary in the interests of Green Belt openness and character. Conditions 6, 7 and 8 are necessary to safeguard the character and appearance of the area and the living conditions of occupiers of neighbouring properties. It is not necessary to require a landscaping scheme by condition given the existing boundary treatment and limited opportunities within the site for any works.

Conclusion

41. For the reasons set out above, I conclude that the appeal should be allowed.

Tom Gilbert-Wooldridge

INSPECTOR

Appearances

For the Appellant:

Brian Woods BA TP MRTPI	WS Planning and Architecture
Peter Brownjohn AssocRTPI	WS Planning and Architecture
Mrs Mary Stacey	Appellant
Miss Mary Stacey	Appellant's daughter
John Wenman	Appellant's relative

For the Local Planning Authority:

Toby Feltham DipTRP MRTPI	Royal Borough of Kingston upon Thames
Tom Bright	Royal Borough of Kingston upon Thames
Hakeem Ahmed	Royal Borough of Kingston upon Thames

Documents submitted at the Hearing

1. Costs application from the appellant (subsequently withdrawn)
2. Appeal decision APP/Z5630/W/17/3191630 (Land rear of Kenwood)
3. Costs decision APP/Z5630/W/17/3191630 (Land rear of Kenwood)

Schedule of Conditions (9)

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: J003408-DD01 and J003408-DD02.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 3) The occupation of the site hereby permitted shall be carried on only by Mrs Mary Stacey and Miss Mary Stacey and their resident dependants and by no other persons whatsoever.
- 4) When the land ceases to be occupied by those named in condition 3 above, the use hereby permitted shall cease and all materials and equipment brought onto the land in connection with the use shall be removed, and the land shall be restored to its former condition in accordance with a scheme previously submitted to and approved in writing by the local planning authority.
- 5) The use hereby permitted shall be limited to one pitch. No more than two 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 one shall be a static caravan) shall be stationed on the site at any time.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 7) No commercial activities shall take place on the land, including the storage of materials, plant or equipment.
- 8) No external lighting shall be installed on the site unless details of the position, height and type of lights have been submitted to and approved in writing by the local planning authority. The external lighting shall be installed and operated in accordance with the approved details and no other external lighting shall be installed or operated.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no sheds or amenity/utility buildings, or other buildings or structures, gates, walls, fences or other means of enclosure, including bunding, other than those shown on the approved plans, shall be erected on the site.