



Appeal Decision

Hearing Held on 30 January 2024

Site visit made on 30 January 2024

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th March 2024

Appeal Ref: APP/Y3615/C/23/3325063

**Land and Buildings to the east of Glaziers Lane, Normandy, Guildford
GU3 2SF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Martin Purcell against an enforcement notice issued by Guildford Borough Council.
- The enforcement notice, numbered EN/20/00168, was issued on 24 May 2023.
- The breach of planning control as alleged in the notice is (i) The making of a material change of use to the use of the land for residential purposes through the stationing of caravans; (ii) The erection on the land of three buildings, gate and fencing; (iii) The laying of hardsurfacing to facilitate the stationing of caravans and the development outlined in (i) and (ii) above.

The requirements of the notice are:

- (i) Cease the residential use of the Land;
 - (ii) Remove from the Land all caravans, vehicles, buildings, fencing, gates and all paraphernalia brought onto the Land to facilitate the residential use of the Land
 - (iii) Dig up and remove all hardstanding from the Land;
 - (iv) Remove from the Land all materials, rubble, rubbish and debris arising from steps (ii) to (iii) above; and
 - (v) Reseed the Land with grass.
- The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds 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.
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Decision

1. It is directed that the enforcement notice is corrected, by the deletion of step (v) at paragraph 5 of the notice; and varied by the deletion of 9 months and the substitution of 12 months as the time for compliance.
2. Subject to the correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background and preliminary matters

3. The allegation in the notice set out in the heading above, refers to both operational development and a change of use of the land, to the residential stationing of caravans. At the Hearing it was clear that the Council consider

that the associated operational and engineering works have been carried out in order to facilitate the residential use of the land. I have no reason to come to a different view and have dealt with all the matters together. At the Hearing, the appellant clarified, that for the purposes of the deemed application, they are seeking permission for a single family pitch, comprising two static caravans and one touring caravan.

4. The Council confirmed that following additional advice from the Highways Authority, they no longer wished to pursue the highway objection to the development. I have therefore considered the appeal on this basis.
5. The appellant submitted that there had been a limited area of hardsurfacing on the land, prior to the works subject of the notice, being carried out. The Council acknowledged the existence of this at the Hearing. However, there is no substantive evidence from either party to show its nature, or extent to allow me to amend the plan with any degree of certainty.
6. Notwithstanding this, the steps required by the notice are limited by s173(4)(a) and (b), to simply restore the land to its previous condition. It is an established principle that the developer and the landowner are generally best placed to know the condition of the land, before the breach occurred. With that in mind, I consider that the steps specified at (i) to (iv) at paragraph 5 of the notice, make it clear what is required to remedy the breach and comply with s173 (3). Moreover, there is no need to specify that the land is reseeded with grass as this imposes a more onerous requirement than to simply restore the land to its previous condition. The parties agreed that I can correct the notice in this regard without causing injustice.

Main Issues

7. Planning Policy for Traveller Sites 2015 (the PPTS) provides national policy guidance for considering matters of need and the supply of traveller sites. It is agreed by the parties that the appellant and his extended family currently meet the definition of Gypsies and Travellers, as set out in Annex 1 of the PPTS (as amended in December 2023). Having regard to the evidence, I have no reason to come to a different view. Accordingly, the PPTS is a material consideration in the determination of this appeal.
8. It is common ground that the appeal site lies within the Metropolitan Green Belt. In accordance with the Framework, the material change of use, as alleged in the notice, represents a form of development that should not be regarded as inappropriate development in the Green Belt, provided that it would preserve openness and would not conflict with the reasons for including land within it. Whilst there is no dispute that the development harms openness and thus constitutes inappropriate development in accordance with the PPTS, the degree of that harm is disputed.
9. On this basis I consider that the main issues are:
 - The effect of the operational development on the openness of the Green Belt and the purposes of including land within it;
 - The effect of the development on the Thames Basin Heaths Special Protection Area (TBHSPA); and
 - Whether the harm to the Green Belt and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the grant of planning permission.

Reasons

Policy background

10. The Development Plan comprises the Guildford Borough Local Plan: Strategy and Sites 2015 – 2034 (2019) (LP) and the Guildford Borough Local Plan: Development Management Policies (2023) (DMP). The Council do not have a criteria-based policy that deals with the specific needs of Gypsy and Travellers and they advised that they largely rely on sites coming forward through the site allocation process, as part of the Local Plan. Any additional windfall sites would be assessed on their particular merits and in the context of their location.
11. Since the appeal was submitted there have been a number of changes in the Council's policies, with a more up to date version of the Council's Traveller and Travelling Showpeople Accommodation Land Availability Assessment 2023 and a new Green Belt Supplementary Planning Document which was adopted in November 2023.
12. Therefore, it is the policies of the adopted planning policy documents which prevail, alongside Government's planning policies set out in The National Planning Policy Framework (the Framework) and any relevant Planning Practice Guidance (PPG), which are of particular relevance to this appeal.

Openness and purposes

13. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 142 of the Framework makes clear that openness and permanence are the essential characteristics of the Green Belt. The Court of Appeal in *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect.
14. The Framework confirms that the construction of new buildings should be considered as inappropriate development. As the hard surfacing, gates, fencing and the buildings have not been carried out for any purpose other than to facilitate the residential use of the caravans, they do not benefit from any of the exceptions to inappropriateness.
15. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless other considerations exist that would clearly outweigh the harm by reason of inappropriateness and any other harm. The harm by reason of inappropriateness must be afforded substantial weight.
16. The appeal site lies immediately to the west of an existing traveller site with planning permission for six pitches (18/P/02345). Access to the site is from a narrow lane that serves a small number of residential and commercial properties. There is an internal access road which leads from the lane to the appeal site and the remaining six pitches. The site comprises an irregular shaped plot located between the residential properties to the south and west, and the permitted traveller site to the east. Public views of the site are generally limited to views from the access and the neighbouring properties.
17. From my visit the site is fairly constrained with one static caravan and two tourers. There was a substantial area of hardstanding laid across the site. A

sizable timber building has been built close to the access. This building has the appearance of a stable block, comprising two loose boxes and a smaller storage section. However, there was no internal wall between the loose boxes and no concrete floor. I have no evidence that this has ever been used for the stabling of horses, and its position close to the fence would make access for horses difficult. It was being used for domestic storage and a modest number of tools.

18. There were also two moderate plastic garden style buildings and several smaller plastic garden storage sheds. At the time of my visit all were being used for domestic storage. It is not in dispute that these are buildings. Whilst part of the site is bounded by hedge, the remainder is marked with a domestic style close boarded timber fencing and an entrance gate. Some additional planting has been carried out alongside the fence.
19. Whilst the appeal site is modest in size, the introduction of the various buildings, hardstanding, fencing and gate, have introduced an urbanising form of development into an area where there was previously none. This harm is exacerbated when combined with the caravans, vehicular parking and domestic paraphernalia associated with the residential use.
20. Overall, in my judgement I find that the laying of hardstanding and siting of caravans along with the activity and vehicles associated with the residential use has led to a moderate loss of openness. The development is therefore in conflict with Policy P2 of the LP that seeks to protect the Green Belt from inappropriate development.

Other considerations

Personal circumstances

21. Policy E, paragraph 16 of the PPTS states: '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'. The needs of the children are thus a primary consideration of substantial weight but are not necessarily determinative.
22. As with all those who travel, a settled base would enable the family to have better access to medical care and education. The appellant has provided a witness statement setting out his and his families personal circumstances.
23. In summary, the static caravan is occupied by the appellant and his grandson aged six, who has now lived with the appellant for over a year. Two letters have been submitted to demonstrate that he regularly attends a local school. It is understood that the appellant's daughter, (the child's mother) lives elsewhere with her other children. However, little evidence was forthcoming, regarding the whereabouts and circumstances of his daughter and whether his grandson would be able to return to live with her, if the appeal was dismissed.
24. The appellant's son and his new wife live in the second caravan and the third caravan is occupied by his adult daughter and his youngest daughter who is aged 16.
25. It is pertinent that the appellant previously lived on the adjacent site where planning permission has already been granted. He stated that as this site expanded, they chose to purchase the appeal site, although no further explanation has been provided. After clearing the overgrown land he laid the

hardsurfacing, built the timber stable building, other buildings and fencing before moving caravans onto the land.

26. At my site visit I took the opportunity to view the adjacent site. Although there were a number of caravans, it was apparent that there was one empty plot. It was not clear why this was empty, or how long ago it was vacated. The appellant indicated that the occupiers were travelling, although the Council advised that it had been vacated for a number of months to their knowledge.
27. I accept that the land has been bought for the purposes of providing pitches for gypsy and traveller families with a permanent home. However, from the evidence I have, there is little to suggest that this needs to be provided at this particular site, rather than one in a more appropriate location.
28. Overall, I give substantial weight to the best interests of the two children living on the site. I also acknowledge that the appellant has a personal need for a site, and his preference is to stay on the appeal site. For these reasons, the appellant's personal circumstances, those of his family, together with the advantages of providing a settled base for these families, weigh significantly in favour of the development.

The need for sites for gypsies and travellers

29. At the Hearing the Council gave an update to their position on need. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) was carried out in 2017. This identified a need for 4 pitches for those meeting the 2015 PPTS definition between 2017 to 2022. It also identified a further need for 41 permanent pitches for those not meeting the definition and a further 8 for those of unknown status. A total of 53 pitches.
30. The sites allocated by the Council through the Local Plan would provide 31 public sites, plus a further 26 private sites, making 57 in total. This would provide a buffer and potentially exceed the identified need for sites. I have nothing before me to suggest that these are not deliverable and from the evidence given at the Hearing, the Council have approved 33 of these sites.
31. The appellant disputes the robustness of the GTAA survey that was carried out. He also points out that the Council's figures represent a minimum requirement. Nonetheless, to my mind the GTAA represents an appropriate indicator of present and future need. Moreover, the Inspector in the Local Plan examination accepted the Council's approach, and it has been accepted in other recent appeal decisions. Furthermore, I have no compelling empirical evidence before me, to suggest that it is incorrect, or allow me to come to a different view on the Council's need for sites.
32. The Council however, confirmed that they do not currently have any suitable, acceptable, affordable and alternative sites available for the appellant and his family to move onto. There is a waiting list of some 24 families and a slow turnover for pitches. However, the current circumstances and need of these particular families on the waiting list, is not known and there may be a range of reasons why an individual may wish to be added to the waiting list. I therefore do not consider that this alone is a reliable indicator of unmet need. The lack of alternative sites is however, a consideration for this appeal and I give this significant weight.

33. Overall, the Council are intending to carry out a further GTAA as part of the overall review of the general housing need, although this is some time off. Nonetheless, I am satisfied that, on the available evidence, the approach the Council has taken, includes provision for those who at the time of the survey, did not meet the PPTS definition. Accordingly, I am satisfied that the Council can demonstrate a 5 year supply of deliverable sites.

Planning balance

34. The development is inappropriate development and the harm by reason of inappropriateness in the Green Belt must be afforded substantial weight. Added to this I have identified additional moderate harm to openness, from the three caravans, the various buildings, fencing, hardsurfacing, vehicle parking and associated residential paraphernalia.
35. Set against the totality of this harm, are the personal circumstances of the appellant's family and the benefits that a settled base would have, including allowing them better access to schooling and medical care. I have also identified a number of other considerations that weigh in favour of the development, including the contribution that additional pitches would make to the Borough's overall supply, the advantages of keeping the family together, the lack of alternative sites, alongside other social and economic benefits, which all weigh in favour of the development.
36. However, even when taken together, the lack of alternative sites and the personal circumstances of the appellant and his family do not outweigh the substantial weight attributed to the harm to the Green Belt and other harm, so as to comprise the very special circumstances necessary. I therefore find that a grant of permanent permission is not justified.
37. It follows that, it is still necessary to consider whether a temporary grant of planning permission would be appropriate. Planning Policy Guidance makes clear that a temporary condition is only likely to be appropriate in certain circumstances, including where a trial run is needed to assess the effect of the development on an area, or it is expected that the planning circumstances will have changed in a particular way by the end of the temporary period. The appellant has suggested that a period of either three or five years would be appropriate.
38. I accept that the grant of temporary planning permission would reduce the permanent harm to the Green Belt. However, I have nothing before me to suggest that the circumstances of either the Council, or the appellant are likely to substantively change by the end of either temporary period. It is understood that the Council intends to conduct a further housing needs survey, including the needs of gypsy and travellers, as part of their Local Plan review. To achieve this a report went to their Executive Committee on 21 February 2024. Once agreed in principle, the Council can agree the details and a timeframe for the survey to be carried out. The process is therefore at a very early stage, with no certainty about when any new assessment will be carried out, or how any subsequent identified need will be addressed.
39. I acknowledge that a temporary permission would give time for sites already identified to come forward. However, I am not satisfied that this, in itself, provides sufficient justification for the grant of a temporary permission.

40. Overall and for the above reasons, I do not consider that the lack of alternative sites and the particular personal circumstances set out above, are sufficient to justify the grant of planning permission on either a permanent or a temporary basis. I note that the time for compliance with the notice is 9 months. Whilst there is no ground (g) appeal, I shall extend the time for compliance to 12 months to allow additional time to find and secure an alternative site in a more appropriate location.
41. I am very mindful of the appellant's personal circumstances and the effect that this decision is likely to have, in dismissing this appeal. I have carefully considered the Human Rights issues that are pertinent to the appeal.
42. I have also had due regard to the Public Sector Equality Duty (PSED), contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. However, the protection of the public interest cannot be achieved by means which are less interfering of the appellant's rights and I consider that the decision is both proportionate and necessary in the circumstances.

Other matters

43. At the Hearing the appellant provided three signed and dated Unilateral Undertakings (UU) to mitigate the effect of the development on the TBHSPA. They undertake to pay the Suitable Alternative Natural Green Space (SANGS), the Strategic Access Management and Monitoring (SAMMS) contribution together with all other sums to the Council in respect of the TBSPA.
44. These would only have come into effect if the appeal was upheld, and planning permission granted. The scope of each UU is dependent on whether a permanent planning permission is granted, or a temporary permission for either three or five years. However, as I have found that neither a full, or temporary grant of planning permission is justified, there is no need to consider this further.
45. I have had regard to a number of other submitted appeal decisions submitted by the parties. However, the particular circumstances of these decisions differ from that before me. The application at The Pines Green Lane (APP/Y3615/W/21/3287182) had already been granted permission and sought planning permission without compliance with conditions, including occupancy and time limiting conditions. Accordingly, I do not consider that these set a precedent, nor do they lead me to a different finding.

Conclusion

46. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANT:

Mr Michael Rudd	Barrister Kings Chambers instructed by the appellant
Mr Martin Mennell	Agent Trever Mennell Planning
Ms Kath Mennell	Partner Trever Mennell Planning
Mr Martin Purcell	Appellant
Mr Michael Purcell	Appellant's son and landowner

FOR THE LOCAL PLANNING AUTHORITY:

Joanna Searle	Planning Enforcement Team Leader
Kate Lines	Senior Planning Officer (Policy)
Riaan Van Eeden	Principal Planning Officer