



Appeal Decision

Hearing held on 4 July 2024

Site visit made on 4 July 2024

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

an Inspector appointed by the Secretary of State

Decision date: 16 July 2024

Appeal Ref: APP/D3640/W/23/3332001

Land at Pumping Station, Guildford Road, Bisley, Woking GU24 9EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 M Cash against Surrey Heath Borough Council.
 - The application Ref is 23/0769/FFU.
 - The development proposed was described on the application form as “demolition of existing structures and change of use of land for the creation of 2no. Gypsy/Traveller pitches comprising the site of 1 mobile home and 1 touring caravan, alongside erection of 1 dayroom per pitch”.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing structures and change of use of land for the creation of 2no. Gypsy/Traveller pitches comprising the site of 2 mobile homes and 2 touring caravans, alongside the erection of 1 dayroom per pitch, together with ancillary landscaping at Land at Pumping Station, Guildford Road, Bisley, Woking GU24 9EQ in accordance with the terms of the application, Ref 23/0769/FFU, subject to the 8 conditions in the attached schedule.

Preliminary Matters

2. The parties agree that the description of development should refer to 2 mobile homes and 2 touring caravans for the purposes of greater clarity. The amended description was subject to public consultation. My formal decision above refers to this description.
3. The appeal site is defined by the red line boundary shown on drawing ref J004448-DD-01. The appellant and his family moved onto the land in April 2023 and erected close boarded fencing and access gates. However, the enclosed land is larger than the appeal site with the fencing extending further to the south and west. At my visit, two touring caravans were situated on the land and the existing building was being used for residential purposes. Nevertheless, I have assessed the appeal based on the submitted plans rather than what currently exists on site.
4. At the hearing, the appellant provided evidence of his ownership of the appeal site and adjoining land to the south and west. The Council did not dispute this information.
5. Two completed Section 106 (S106) agreements were presented at the hearing. Both seek to address the effect of the proposal on the Thames Basin Heaths

Special Protection Area (SPA). The only difference is that one agreement relates to a permanent permission and the other relates to a temporary permission (with the levels of financial contribution adjusted accordingly). The Council has indicated they are content with both agreements. I address this matter in more detail below.

6. The emerging Surrey Heath Local Plan (eLP) was subject to regulation 18 consultation in spring 2022, with a follow-up consultation on site allocations for Gypsy, Traveller and Travelling Showpeople in summer 2022. Consultation on a regulation 19 version of the eLP is not expected until later this year. The parties concur that little weight can be afforded to the eLP at this stage.
7. At the hearing, it was confirmed that the appellant intends to live on the appeal site with his wife and their two primary school age children on one pitch, and his parents in law on the other pitch. There was no dispute about them meeting the definition of gypsies and travellers set out in the current version of the Planning policy for travellers sites (PPTS).
8. Two witness statements from the appellant and his mother in law, along with medical information relating to the father in law, was submitted at the hearing. It was unclear why this information was not available beforehand. However, the Council was afforded sufficient time to consider this evidence and I have taken it into account as part of my decision.

Main Issues

9. The main issues are:
 - (a) whether the proposal would be in a suitable location having regard to the development plan;
 - (b) the effect of the proposal on the openness and purposes of the Green Belt;
 - (b) the effect of the proposal on the character and appearance of the area, including trees;
 - (c) the effect of the proposal on highway safety;
 - (e) whether the proposal represents an acceptable form of development in flood risk terms;
 - (f) the effect of the proposal on the Thames Basin Heaths SPA; and
 - (g) whether any harm would be clearly outweighed by other considerations (including the need for 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 proposal.

Reasons

Location

10. The appeal site is situated on the western side of the A322 Guildford Road between the settlements of West End and Bisley. The northern boundary of the site is bounded by the River Bourne and a belt of mature trees, the eastern boundary by the A322, while to the west and the south is a large field. In policy

terms, the site is outside of the defined settlement boundaries and is within the Metropolitan Green Belt which covers much of the eastern part of the Borough.

11. The site was previously owned by Thames Water and contains a small red brick building that served as a pumping station. There is an existing vehicular access onto the A322 and areas of hardstanding. The parties agree that the site is previously development land (PDL) as defined in the National Planning Policy Framework (NPPF) as it comprises land which is occupied by a permanent structure with associated fixed surface infrastructure.
12. Policy CP1 of the Surrey Heath Core Strategy and Development Management Policies 2021 (CSDM) sets out a spatial strategy that directs most new development to come forward through the redevelopment of PDL in the western part of the Borough (chiefly the urban areas such as Camberley and Frimley). The policy also states that within the countryside the current extent of the Green Belt will be maintained.
13. CSDM Policy DM6 addresses the delivery of Gypsy and Traveller and Travelling Showpeople Accommodation against two criteria. Firstly, sites should promote the effective use of land within settlement areas in particular PDL, and secondly be accessible to public transport, cycling or pedestrian networks and facilities capable of meeting day to day needs. Applications will be considered in rural locations outside of the Green Belt giving priority to rural fringe locations that comprise PDL and meet the second criterion above. Any proposal within the Green Belt will have to demonstrate very special circumstances.
14. There is no dispute that the site is close to a range of services and facilities including shops, schools, surgeries and frequent bus services. Nevertheless, while the site is PDL, it is evidently not within a settlement area. Existing built form either side of the site is sporadic, with detached houses set back from the road. The presence of these buildings and the A322 means that the site is not located within open countryside but instead forms part of a green buffer between West End and Bisley.
15. There is no definition of rural fringe in the CSDM to be certain that it only refers to sites immediately next to the edge of a settlement. However, even if the site was regarded as rural fringe, it is within the Green Belt. Therefore, compliance with CSDM Policies CP1 and DM6, and any conclusion on the suitability of the location, will depend on whether very special circumstances can be demonstrated. This is assessed below.

Green Belt

16. PPTS paragraph 16 states that gypsy and traveller sites in the Green Belt are inappropriate development. NPPF paragraph 142 confirms 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 (b) preventing neighbouring towns merging into one another and (c) safeguarding the countryside from encroachment. CSDM Policies CP1 and DM6 are consistent with the NPPF in Green Belt terms.
17. There is no disagreement between the parties regarding the footprint and volume of the former pumping station, the proposed dayrooms, or the typical dimensions of a mobile home (static caravan). It was also accepted that while

mobile homes are not permanent structures, they usually remain in place for long periods of time while touring caravans come and go. The two dayrooms and mobile homes would have a greater footprint and volume than the pumping station and would be more spread out across the site. There would also be two touring caravans at certain times. In spatial terms, all these structures would detract from the openness of the Green Belt.

18. The photographic evidence reveals that the site was previously well-screened by vegetation although it was possible to see the roof of the pumping station from certain angles. The existing and proposed planting along the site boundaries would help to screen the mobile homes, touring caravans and dayrooms and can be delivered and maintained as the appellant owns the relevant land beyond the red line area. Planting would take some time to establish and reach sufficient height. Moreover, there would be glimpses of structures in views across the site access. Therefore, they would cause some harm to Green Belt openness in visual terms.
19. Fencing could also have an impact, but it would depend on the design, with low level post and rail fencing likely to have a limited effect compared to taller close boarded panels. The same applies to any entrance gate. The parties disagree on the extent of existing lawful hardstanding, but this is likely to increase if the structures are located around the edges of the site with a yard in-between. Residential activity and paraphernalia are also likely to have a spatial and visual effect on openness. Therefore, taken as a whole, the proposal would cause moderate harm to Green Belt openness.
20. Turning to Green Belt purposes, the proximity of West End and Bisley means that there is a risk of coalescence between the two settlements. However, the proposal is relatively small scale and adjoins open and undeveloped land on three sides. Therefore, any conflict with NPPF paragraph 143(b) would be very minor. There would be some encroachment into the countryside with a more developed and residential site, notwithstanding the scope for boundary screening. Thus, there would be moderate conflict with NPPF paragraph 143(c).

Character and appearance

21. The area between West End and Bisley is generally green and lacking in built development, with mature trees and vegetation along site boundaries and the River Bourne. The southern built-up edge of West End is visible from the road past the site, but there is still separation provided by the river and green spaces. The site, prior to its current occupation, contributed to this character and appearance due to the extent of boundary planting and the modest proportions and design of the pumping station. On the north edge of the site, there are four large alders, with one quality specimen rated as Category A.
22. Without any screening, the proposed dayrooms, mobile homes, and touring caravans, along with any fencing and gates, would be highly visible and incongruous within the surrounding area. Boundary planting would, over the course of a few years, provide an effective visual barrier from the A322 once established, although glimpses would remain possible from the site access. The planting would be sited close to dayrooms and caravans based on the proposed site plan but there would still be a usable amount of yard space. The site plan shows that the touring caravans would be sited under the alders with some risk of damage from falling branches and leaf litter as well as reduced light levels. However, these are more easily moveable structures that would not necessarily

be on site as often or lived in whilst on site. Moreover, the trees could be subject to regular pruning to reduce the risks without affecting their quality.

23. Hardstanding would encroach into the root protection area for the alders, particularly the Category A specimen, by around 30%. However, there is some existing hardstanding, and any new surfacing could be porous to limit any harm to roots. The details could be secured by condition, along with measures to protect and retain the trees.
24. In conclusion, subject to an adequate landscaping and tree management scheme, the proposal would have an acceptable effect on the character and appearance of the area, including trees. Therefore, it would accord with CSDM Policy DM9 which, amongst things, promotes high quality design that respects and enhances the character of the local environment and protects trees and vegetation worthy of retention.

Highway safety

25. CSDM Policies CP11 and DM11, amongst other things, seek the efficient and safe operation of the highway network, as well as safe and well-designed vehicular access. Development which would adversely impact the safe and efficient flow of traffic movement will not be permitted unless it can be demonstrated that measures to reduce or mitigate such impacts to acceptable levels can be demonstrated.
26. NPPF paragraphs 108, 109 and 114 promote a range of transport modes, while paragraph 114 also seeks safe and suitable access to sites for all users, and the mitigation of any significant impact from development on highway safety. NPPF paragraph 115 states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.
27. The A322 has a speed limit of 40mph past the site. The road connects the M3 in the north to Guildford in the south. The parties agree that there are over 18,000 vehicles using this section of road per day. The road bends in both directions from the site access. There is a pavement on the opposite side of the road to the site which provides pedestrian links between West End and Bisley.
28. An automatic traffic count (ATC) carried out by the appellant recorded 7-day 85th percentile speeds of 35.8mph northbound and 34.3mph southbound. Using Manual for Streets 2 (MfS2), the appellant contends that visibility splays of 52m to the north and 55m to the south would be required. These splays can be provided within land owned by the appellant or the local highway authority (LHA), apart from the space above the river, and are the maximum extent of such land from the site access. It would require the splays to be kept from any obstructions above 1.05m, but this can be achieved through maintenance and secured by condition.
29. However, the appellant's ATC location was on a bend where vehicles would be braking, which means that the speeds may not be accurate. The LHA has provided ATC data from 2015 and 2023 which were taken at positions further to the south and the north respectively than the appellant's location. The 2023 data shows very similar southbound traffic speeds to the appellant's ATC at 34.2mph. The 2015 data shows 85th percentile speeds of 41.2mph northbound.
30. The 2015 ATC is more than 8 years old and so considered to be contrary to the recommended guidance. However, it was taken from a more logical location

approaching the site access. Furthermore, although new housing at Bourne Close on the southern edge of West End has been built since then, this would have little effect on traffic speeds heading north. No other changes since 2015 have been brought to my attention. Therefore, it is reasonable to take the 2015 data into account. There is no guarantee that proposed works to the bridge over the river will proceed and speed limits reduce to 30mph, so I have had regard to the recorded speeds.

31. The stopping sight distances (SSD) in MfS2 are intended for use on roads with average speeds of up to 37mph, although they can be used on roads that are 40mph if they are more like residential or high streets with parked cars and higher traffic flows that limit the speeds. Only where speeds are over 40mph for significant periods of the day should the SSD in the Design Manual for Roads and Bridges (DMRB) be used.
32. Given that the 85th percentile speeds southbound towards the access are almost the same in the appellant's and the LHA's ATC, and are under the 37mph threshold in MfS2, then the SSD in MfS2 can be used instead of the DMRB. The LHA argues that the use of the A322 by buses and HGVs, which have different deceleration rates, is significant and so the SSD even using MfS2 should be 57m. However, the LHA's ATC data from 2015 and 2023 shows that such traffic represents no greater than around 5% of total flow, which does not seem significant. Therefore, I am satisfied that a visibility splay of 52m to the north is appropriate and can be provided.
33. The A322 has a residential character as it travels through West End. However, it appears more like a rural distributor road south of Bourne Close and past the site due to the lack of housing and its greater openness. Speeds are also over 40mph for significant periods of the day based on the 2015 data. Therefore, applying DMRB standards would require a desirable minimum visibility splay of 108m to the south and an absolute minimum of around 80m. Even if MfS2 standards were used, the 85th percentile speed of 41.2mph would mean that the visibility splay would need to be around 70m (excluding any allowance for larger vehicles). The achievable visibility splay of 55m would be insufficient by around 15-25m at least.
34. Vehicles turning either way out of the site access may not see oncoming traffic approaching from the right until it is too late to react. Consequently, there would be a risk to highway safety in terms of accidents and collisions. However, this is an existing access point. The pumping station would have been served by vehicles, although there would likely have been fewer movements than a residential use. Even with up to 12 vehicle movements per day (as suggested by the LHA), the access would not experience an overly intensive or very frequent use. A visibility splay of 55m can be maintained by condition. These factors moderate the extent of risk and harm. Thus, the proposal would not have a significant or unacceptable impact on highway safety in terms of traffic movements.
35. At my late afternoon site visits (including the pre-hearing visit on 3 July), there was a frequent flow of traffic along the A322 including some lorries and buses. Nevertheless, it was possible to cross the road at the site access after a short wait for a gap in the traffic. This is only a snapshot, but the traffic is not seemingly relentless, and the road is not an absolute barrier to safe crossings or vehicle movements. Therefore, the nearby services and facilities, including

frequent bus services, would be accessible without a significant risk to highway safety, even if the appellant and his family chose to drive rather than walk.

36. Concluding on this main issue, while not significant or unacceptable, the proposal would nevertheless cause moderate harm to highway safety due to the restricted visibility to the south. Therefore, it would not accord with CSDM Policies CP11 and DM11 or NPPF paragraph 114(b). However, the proposal would allow for a range of transport modes in accordance with NPPF paragraphs 108, 109 and 114(a), and would not have a significant or unacceptable impact on highway safety in accordance with NPPF paragraphs 114(d) or 115.

Flood risk

37. Based on mapping from the Environment Agency (EA), most of the site is Flood Zone 2, while the north-west corner next to the river is Flood Zone 3. Although the appellant queried the flood zone status based on topography and historic flood data, it was accepted that flood risk policies should be applied to this proposal. It is possible for the caravans and dayrooms to be located outside of Flood Zone 3.
38. NPPF paragraph 165 states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, and that where development is necessary in such areas, it should be made safe for its lifetime without increasing flood risk elsewhere. NPPF paragraph 168 sets out the aim of the sequential test which is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposal in areas with a lower risk of flooding.
39. The sequential test is required for this proposal given its location in an area at risk of flooding. No test has been carried out by the appellant. At the hearing, it was agreed that the area of search would be the whole Borough. However, the Council has advised that there is an unmet need for gypsy and traveller accommodation and that no alternative sites can be identified within the Borough. Therefore, while it is incorrect to say that the sequential test has been passed on that basis, it is unlikely that it would identify any reasonable available sites that are sequentially preferable.
40. NPPF paragraph 169 states that if it is not possible for development to be in areas with a lower risk of flooding, the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and the development proposed in line with NPPF Annex 3 which sets out flood risk vulnerability classifications. Caravans, mobile homes and park homes intended for permanent residential use are classed as highly vulnerable. Table 2 of the flood risk section of the Planning Practice Guidance (PPG) ¹ requires the exception test for such development in Flood Zone 2.
41. NPPF paragraph 170 says that the exception test should be informed by a site-specific flood risk assessment (FRA) and demonstrate that (a) the development would provide wider sustainability benefits to the community that outweigh the flood risk and (b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and,

¹ Reference ID: 7-079-20220825

where possible, will reduce flood risk overall. NPPF paragraph 173 sets out the various requirements for site-specific FRA.

42. The EA has lodged an objection to the appellant's FRA. The objection focuses on the failure to take climate change into account, to show that flood risk would not increase elsewhere, and to show that finish floor levels would be sufficient.
43. It is evident that the FRA has used modelled flood levels provided by the EA that include the 1:100 year +20% event. The FRA has used those levels to assess the effect of flooding both on and off site. Therefore, the FRA has taken the impact of climate change into account.
44. The dayrooms would have a smaller footprint than the former pumping station, while the mobile homes would be raised on legs as is the standard practice. Floodwater from the river would be no more impeded than at present. Therefore, there would be no loss of floodplain storage and so no increase of flood risk elsewhere.
45. The mobile homes would be raised by around 450mm above the ground level. The modelled flood levels indicate a depth of up to 300mm during a flood event. Therefore, the finished floor levels would be set above the 1:100 year +20% event to reduce the risk of flooding to the health and safety of the site's occupants.
46. It would also be possible to evacuate the site via the A322 and head south to higher ground if floodwaters were under 250mm. Flood warning measures can also be put in place. Sustainable drainage would provide wider community benefits by addressing surface water runoff. Foul water drainage is also achievable given that the site is on the main sewer network. All the above measures, including finished floor levels, can be secured by condition and would outweigh the overall flood risk. Therefore, I am satisfied that the proposal would pass both parts of the exception test outlined in NPPF paragraph 170.
47. In conclusion, the proposal would represent an acceptable form of development in flood risk terms. Therefore, while the sequential test has not been applied and passed, it would nevertheless accord with CSDM Policy DM10. Amongst other things, the policy takes a sequential approach to determining planning applications and requires the sequential and exception tests to be applied and passed with a form of development that is compatible with the level of risk. The policy also requires through a site FRA that the proposal would reduce risk both to and from the development or at least be risk neutral, and implement flood resilient and resistant design along with appropriate mitigation and adaptation.
48. The proposal would adhere to NPPF paragraphs 165, 168, 169, 170 and 173 as referenced above. It would also adhere to PPTS paragraph 13(g), which seeks to ensure that traveller sites are not located in areas at high risk of flooding, given that the placing of caravans in Flood Zone 3 can be avoided. Finally, it would follow the guidance set out in the flood risk section PPG including the requirements for FRA at paragraphs 20 and 21.

Thames Basin Heaths SPA

49. The site is within the 400m-5km Thames Basin Heath SPA buffer zone. The SPA is designated for its population of three heathland bird species (Dartford

Warbler, Nightjar and Woodlark). New residential development in this zone, including mobile homes, has the potential, either alone or in combination with other projects, to have a likely significant effect on the integrity of the SPA through increased dog walking and recreational use. Therefore, it is necessary to carry out an appropriate assessment (AA) as part of my decision.

50. Within the AA, it is necessary to consider whether any potential effects could be addressed through specific measures. The Thames Basin Heaths SPA Avoidance Strategy Supplementary Planning Document (SPD) 2019 seeks financial contributions towards the provision of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) as promoted by Natural England. Such measures aim to reduce and better manage recreational pressures on the SPA.
51. The two completed S106 agreements, both dated 4 July 2024, would provide financial contributions towards SANG and SAMM measures. One of the S106 agreements would provide full contributions based on permission being granted on a permanent basis. The other S106 agreement would provide contributions equivalent to five years plus an additional year of occupation, or any other duration of temporary permission.
52. Both S106 agreements would accord with CSDM Policies CP14A and CP14B as well as Policy NRM6 of The South East Plan 2009, which seek to conserve biodiversity and avoid and mitigate adverse effects on the SPA. They would also follow the SPD. Both agreements would meet the three tests set out in NPPF paragraph 57 and regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). Therefore, I can take both S106 agreements into account as part of my decision, even though only one would take effect if permission is granted. Consequently, the proposal would not result in a significant effect on the Thames Basin Heaths SPA.

Other considerations

53. The Surrey Heath Gypsy and Traveller Accommodation Assessment (GTAA) from June 2020 provides the evidence base for the Council's current and future need. The GTAA was prepared based on the 2015 version of the PPTS which defined gypsies and travellers to exclude those who have ceased to travel permanently. The 2023 PPTS no longer has that exclusion. In any case, the GTAA considers the needs of all gypsies and travellers with a total of 65 pitches needed between 2020 and 2040, with 39 pitches in the first five years.
54. The Statement of Common Ground (SOCG) confirms that only four permanent pitches have been delivered against the identified needs, with a shortfall of 61 pitches in total. It goes on to say that it is unlikely that the Council will be able to demonstrate a five year supply of deliverable sites within its Local Plan, with a significant shortfall totalling 58 pitches overall.
55. The CSDM via Policy CP7 seeks the provision of 19 pitches up to 2027, but the plan does not allocate specific sites, while Policy DM6 is a criteria based policy to inform applications and allocations. It is not evident that site allocations were progressed following adoption of the CSDM or that the target in Policy CP7 will be met.
56. The eLP from March 2022 identified one site with scope for four pitches. Further eLP consultation in August 2022 suggested a further three sites with up

to 30 pitches, but the Council now acknowledges that some of these sites may not be deliverable, hence the significant shortfall noted in the SOCG. It is anticipated that the regulation 19 version of the eLP will be consulted on later in 2024 with examination and adoption not expected until later in 2025. Even if the eLP proceeds as planned, it is uncertain whether it would contain sufficient sites to meet the identified need set out in the GTAA.

57. While the proposal, if approved, would only contribute two additional pitches, there is a significant shortfall of sites against the identified need, insufficient new sites coming forward, and no five year supply. The CSDM contains little in the way of site provision to meet needs and it is not clear whether the eLP would improve things considerably. Therefore, I afford substantial weight to the above considerations.
58. The parties at the hearing were unable to identify any alternative sites in the local area that would be suitable, available and acceptable as accommodation for gypsies and travellers. The existence of large areas of Green Belt, along with buffer zones for the Thames Basin Heaths SPA, and the difficulty and unaffordability of developing urban sites, means that site opportunities are limited. Thus, significant weight can be given to the lack of alternative sites. Significant weight can also be attached to the re-use of PDL given the local and national policy objectives to make more efficient use of such land.
59. The appellant and his family were evicted from a nearby site on Lye Road in the neighbouring borough of Woking in April 2023. They had been living there for 10 years. The family then moved onto the appeal site at Easter 2023 and were served with an interim injunction by the Council 10 days later. No enforcement action was taken before the injunction, and it would appear to be a dramatic first step to make in response to the site occupation.
60. The appellant's two children attend a local primary school and have done so since nursery. They are settled at school with friends and are reportedly doing well in classes, with the youngest receiving support for their educational needs. The appellant's father in law has several complex and severe medical issues and is under the care of a psychiatrist via the hospital in Guildford. The family are registered at a local doctors surgery. A letter from their doctor dated 28 April 2023 notes various health issues for different family members caused in part by the eviction, as well as the support the appellant's wife provides to her parents with their health issues.
61. Should this appeal be dismissed, the appellant and his family would have to comply with the injunction and leave the site. The Council accepted that due to the lack of alternative sites, the family would likely resort to a roadside existence. This would be highly disruptive to the family and their ability to access education and health services. It would represent an interference with their home, private and family life. Having regard to the best interests of the child as a primary consideration, I attach substantial weight to the personal circumstances in this case.

Overall planning balance

62. 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 paragraphs 16 and 24 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.

63. The proposal would represent inappropriate development in the Green Belt and would result in moderate harm to Green Belt openness, moderate conflict with one of the Green Belt purposes, and very minor conflict with another purpose. This carries substantial weight against the proposal. There would also be moderate harm to highway safety, which carries moderate weight.
64. I have afforded substantial weight to the level of unmet need, the lack of new sites, the absence of a five 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 and the re-use of PDL carry significant weight.
65. Cumulatively, the other considerations clearly outweigh the harm to the Green Belt and the harm to highway safety. Looking at the case as a whole, and having regard to the Public Sector Equality Duty which seeks to eliminate discrimination, advance equality, and foster good relations between those with protected characteristics and those without, very special circumstances exist which justify the development. Therefore, the proposal would accord with NPPF paragraphs 152 and 153, PPTS paragraphs 16 and 24, and CSDM Policies CP1 and DM6. Despite some conflict with CSDM Policies CP11 and DM11 (and NPPF paragraph 114(b)), the proposal would be in a suitable location and accord with the NPPF and the development plan taken as a whole. This points towards the grant of planning permission.
66. I have considered whether a temporary planning permission of five 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 and highway safety). However, there is no certainty regarding the likely adoption of the eLP 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 to the health and education issues of the appellant's family. In any case, a permanent personal permission would be acceptable based on the planning balance. Thus, I have not considered a temporary permission further.

Other Matters

67. Interested parties refer to an Article 4 direction from the 1950s that restricts the stationing of caravans on the site. However, Article 4 directions are normally used to remove permitted development rights, rather than prevent development altogether. They allow applications for planning permission to be made and granted if appropriate. Therefore, the existing direction does not prohibit the grant of planning permission in this case. The existing occupation of the site is unauthorised, but there is an acceptable proposal before me that can be implemented.

68. It should be possible to improve the site's biodiversity via a landscaping scheme that can be secured by condition. The site is sufficient distance from any existing properties such that its use for residential purposes is unlikely to have an adverse effect on neighbouring occupiers in terms of noise and disturbance. There is little evidence that the land is contaminated or that the electricity supply locally is inadequate.
69. I have had regard to the Chobham decision and the various appeal decisions provided by the appellant. However, I have assessed this appeal on its own merits in terms of the effects on Green Belt and other issues.

Conditions

70. As the proposal has already been partly implemented, it is not necessary to impose the standard time limit condition. However, specifying the approved plans in Condition 1, and the total number of pitches and structures in Condition 2, is necessary for clarity and compliance. As the need for gypsy and traveller pitches has been a key part of my decision, Condition 3 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 4 is necessary to name the adult occupants.
71. Conditions 5 and 6 are necessary to safeguard the character and appearance of the area. Condition 6 is also necessary to control the provision of surface and foul water drainage and to ensure that the land is restored should the approved use cease or the permitted occupants vacate the site. Condition 7 is necessary in the interests of flood risk and the safety of future occupants. The floor level is based on the average site level of 34.00m AOD and the likely maximum depth of floodwater of 300mm, which would allow 150mm above this depth. Condition 8 is necessary to ensure that the maximum achievable visibility splays are provided and maintained in the interests of highway safety.

Conclusion

72. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Tom Gilbert-Wooldridge

INSPECTOR

Appearances

For the Appellant:

Alan Masters	Counsel
Brian Woods	WS Planning and Architecture
Rory Spiller	The Transportation Consultancy
Adam Flack	Marks Heeley Ltd
Martin Mark Cash	Appellant
Leanne Barr	Appellant's wife
Louise Barr	Appellant's mother in law
Albert Barr	Appellant's father in law

For the Local Planning Authority:

Navil Rahman	Surrey Heath Borough Council
Ian Williams	Surrey Heath Borough Council
Richard Peplow	Surrey County Council
Tricia Gurney	Surrey County Council

Documents submitted at the Hearing

1. Officer Report for 21/0875/FFU (Land east of Four Oaks Nursery, Chobham)
2. Letter, map and land registry extract showing ownership of appeal site
3. Witness statements of Martin Mark Cash and Louise Barr relating to injunction
4. Medical letters and information relating to the appellant's family

Documents submitted after the Hearing

1. Signed and executed Section 106 agreements (x2)
2. Emails between the parties regarding the wording of additional conditions

Schedule of Conditions (8)

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: J004448-DD-01, J004448-DD-04, J004448-DD-05, J004448-DD-06 and TPP 01.
- 2) The site shall be occupied by no more than a total of two gypsy/traveller pitches, two mobile homes, two touring caravans, together with one dayroom per pitch.
- 3) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 4) The occupation of the site hereby permitted shall be carried on only by Martin Mark Cash, Leanne Barr, Albert Barr, Louise Barr, and their resident dependants.
- 5) No external lighting shall be installed at the site.
- 6) The use hereby permitted shall cease and all caravans, vehicles structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within 6 months of the date of this decision, notwithstanding the details shown on approved plan J004448-DD-05, a site development scheme ('the scheme') shall be submitted for the written approval of the local planning authority and shall include a timetable for its implementation and
 - (a) details of all hard and soft landscaping of the site, including means of enclosure; measures to improve and enhance biodiversity; the existing trees and vegetation to be retained; all new tree, hedge and shrub planting with details of species, plant sizes and proposed numbers and densities; as well as a schedule of maintenance for a period of 5 years to include provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size and that originally planted;
 - (b) details of surface water drainage, including management and maintenance arrangements;
 - (c) details of foul water drainage, including management and maintenance arrangements; and
 - (d) details of a scheme to restore the land to its condition before the development took place (or such other restoration as agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use or the site is occupied by those permitted to do so, as appropriate.

(ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

(iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

(iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable and shall be retained for the duration of the use of the site and the development.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 7) Within 6 months of the date of this decision, the following flood mitigation measures shall be carried out, and thereafter permanently retained:
- (i) the floor level of the mobile homes shall be set at a minimum of 34.45m AOD;
 - (ii) the mobile homes shall be secured to the ground in accordance with details that have first been submitted to and agreed in writing by the local planning authority; and
 - (iii) a flood evacuation plan shall be submitted to and approved in writing by the local planning authority.
- 8) Within 6 months of the date of this decision, the proposed modified vehicular access to A322 Guildford Road shall be constructed and provided with a 2.4m x 52m visibility splay to the north and 2.4m x 55m visibility splay to the south in accordance with a scheme to be submitted to and approved in writing by the local planning authority. Thereafter the visibility splays shall be kept permanently clear of any obstruction over 1.05m high.