



Appeal Decision

Hearing held on 12 June 2024

Site visit made on 12 June 2024

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2024

Appeal Ref: APP/Q3630/W/24/3338481

Willow Farm, Chobham Road, Ottershaw, Surrey KT16 0QE

- 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 under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by K Rooney against Runnymede Borough Council.
- The application Ref is RU.23/1432.
- The application sought planning permission for the change of use of the land to create 4 pitches for an extended Traveller family without complying with conditions attached to planning permission Ref RU.22/0109, dated 3 August 2023.
- The conditions in dispute are Nos 1, 3, 6 and 8 which states that:
 1. The use hereby permitted shall be carried on only by Michael Rooney, Michael Rooney Jr, John Rooney, Jacqueline, Martin Rooney, Bridget Rooney, Kelly Rooney, Danny Rooney and their respective dependants for a period of 5 calendar years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter. When the caravans cease to be occupied by the persons named above and children etc. or at the end of 5 years, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment brought on to the premises in connection with the use (including the sheds hereby approved) shall be removed and the land restored to its former condition in accordance with a scheme of work submitted to and approved in writing by the local planning authority.
 3. Notwithstanding that which is shown on the approved site survey (RSPR2100115/01), within 6 months of the date of this permission, there shall be no more than 4 pitches occupied at the site and no more than 2 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 1 shall be a static caravan or mobile home per pitch), stationed on each pitch on the site at any one time.
 6. No more than one commercial vehicle per plot shall be kept on the land for use by the occupiers of the caravans hereby permitted, and they shall not exceed 3.5 tonnes in weight.
 8. Within 3 months of the date of this permission, a hard and soft landscaping scheme shall be submitted to the Local Planning Authority. The scheme shall include a proposal to return the strip to the front of the site within the Tree Preservation Order Area 7 back to soft land and for new trees/planting to be provided within this area. In addition, the landscaping scheme shall include details of hard surfacing, walls, fences, access features, minor structures, bin/refuse storage details and the existing trees and hedges to be retained. All hard and soft landscaping works shall thereafter be carried out in accordance with the approved details within 3 months of such details being approved. Any trees or plants which, during the course of the permission/occupation of the site by the applicant (whichever is the sooner), die, are removed, or become seriously damaged or defective, shall be replaced as soon as practicable with others of similar

size and species, following consultation with the LPA, unless the LPA gives written consent to any variation.

- The reasons given for the conditions are:
 1. In order to comply with the terms of the application and to comply with Policy EE19 of the Runnymede 2030 Local Plan, and guidance in the National Planning Policy Framework and Planning Policy for Traveller Sites.
 3. To ensure that the change of use has an acceptable impact on the openness of the Green Belt and to comply with policy EE19 of the Runnymede 2030 Local Plan and paragraph 150 (e) of the National Planning Policy Framework.
 6. In the interests of the visual amenity of the area and to accord with guidance in the NPPF and Planning Policy for Traveller Sites.
 8. To preserve and enhance the character and appearance and biodiversity of the surrounding area and to comply with Policies EE1, EE9 and EE11 of the Runnymede 2030 Local Plan and guidance within the NPPF.
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Decision

The appeal is allowed and planning permission is granted for the change of use of the land to create 4 pitches for an extended Traveller family at Willow Farm, Chobham Road, Ottershaw, Surrey KT16 0QE in accordance with the application Ref RU.23/1432, without compliance with condition numbers 1, 3, 6 and 8 previously imposed on planning permission Ref RU.22/0109 dated 3 August 2023 and subject to the conditions set out in the attached schedule.

Background and Main Issues

1. The appeal results from the failure of the Council to determine the application within the prescribed period. Since the appeal was submitted the Council has confirmed that if it had made a decision, it would have refused to grant consent for all of the amendments sought.
2. The effect of the proposed variation of condition number 1 would be to make the planning permission permanent, as opposed to the current 5-year temporary planning permission.
3. Varying condition number 6 as proposed would remove the restriction on the number of commercial vehicles per plot to be parked on the site, but the 3.5 tonnes weight limit would remain.
4. Condition number 8 refers to hard and soft landscaping works and a variation is sought to include the first planting season as the required compliance/implementation period. There is no dispute between the parties that amending the condition in this manner would be appropriate and based on the evidence before me I find no substantive reason to conclude otherwise.
5. The appellant seeks to remove condition number 3 to eliminate the restriction on the number of pitches, and the number of caravans that can be stationed on each pitch. The restriction has the effect of prohibiting a number of mobile homes that are shown on the submitted plan, allowing only 4 pitches and no more than 2 caravans per pitch of which no more than 1 shall be a static caravan or mobile home per pitch.
6. None of the caravans prohibited by condition number 3 have been removed from the site and are currently occupied. Furthermore, there are currently additional caravans/mobile homes, not shown on the previously approved plan, present on the appeal site and these are being occupied by persons not named in condition number 1. A number of these occupiers were resident dependents

at the time of the original application. The application to vary and remove conditions from which this appeal results did not include details of these persons or the tourer and mobile homes, this was acknowledged by the appellant at the hearing.

7. The appellant has not sought to include these persons in condition 1. To include them and the additional mobile homes now would represent an evolution of the scheme that would be prejudicial to the Council and interested parties. I have therefore determined the appeal on the basis of the submitted evidence and the terms of the variation sought.
8. Appellant accepts that the appeal scheme is inappropriate development in the Green Belt, harms the openness of the Green Belt and would conflict with the reasons for designating land as Green Belt. Based on the evidence before me I find no substantive reason to conclude otherwise. There remains a dispute between the parties as the level of harm to the openness of the Green Belt.
9. Consequently, the main issue is whether the disputed conditions are necessary and reasonable and whether they meet the other tests for to conditions set out in the National Planning Policy Framework (the Framework) and PPTS. In order to reach a conclusion on this issue it is necessary to consider the effects of the development on openness of the Green Belt and the Council's provision for Gypsy and Traveller sites, as well as issues relating to policy harm, the Human Rights Act and the Equalities Act.

Reasons

Openness of the Green Belt

10. One of the five reasons set out in the Framework for the existence and protection of the Greenbelt is to safeguard the countryside from encroachment. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. This can have a spatial or visual aspect as found by the courts¹.
11. The site is located in a wooded area and while I understand the Appellant has removed some of the trees from within the appeal site and from its periphery, nonetheless the majority of the appeal site is significantly screened by trees thereby limiting any visual harm to the openness of the Green Belt.
12. With regards the spatial impact, the introduction of mobile homes, touring caravans, hardstanding, fencing, gates, access, vehicles and domestic paraphernalia within the appeal site has a clear spatial impact on the openness of the Green Belt. The variation of condition 1, as proposed by the appellant, would make this permanent and the variation of condition 3 would allow a greater number of mobile homes on the appeal site.
13. I therefore find that the appeal scheme would result in harm to the openness of Green Belt and Green Belt purposes by way of encroachment into the countryside. The level of harm is, as a result of the scale of the appeal site in the context of the wider Green Belt in the area, moderate. However, even this harm carries substantial weight.

The need for sites and Council provision

¹ Turner V SSCLG & East Dorset Council [2016] EWCA Civ 466

14. The appellant and their extended family have been resident on the site for a considerable period of time through numerous periods of temporary consents and unauthorised occupation, as reflected in the long planning history of the site.
15. At the hearing the Council detailed that the Gypsy and Traveller Accommodation Assessment 2018 (GTAA) and Policy SL22 of the Local Plan identify a need for 83 pitches. This figure is based on the superseded PPTS definition of Gypsy and Traveller and as such, the figure is likely an underestimation of need. The Council advised that 7 pitches have been delivered, 14 granted planning approval and 13 pitches on allocated sites were under consideration. A further 48 pitches currently not in Gypsy and Traveller use may be brought into use, dependent upon the success of enforcement action.
16. Overall, the Council acknowledge that they are unable to demonstrate a 5-year supply of sites that there is a lack of alternative sites for the occupiers of Willow Farm. They describe the level of unmet need as "significant"².
17. In addition, Policy SL22 seeks to permit windfall Gypsy Traveller accommodation such as this subject to 6 criteria. It is not disputed between the parties that the appeal scheme accords with criterion (i), (iv) and (v) of the Policy. In addition, the Council's Statement of Case does not state that the appeal site is contrary to criterion (ii), (iii) and (vi). Thus, I am satisfied that the appeal scheme is not contrary to policy SL22.
18. At the hearing it was acknowledged by the Council that in seeking to allocate new sites for Gypsy and Traveller accommodation in the emerging local plan, that could be adopted as early as December 2027, there was a high probability that these additional sites will be in the Green Belt. Furthermore, even if the plan were to be adopted in December 2027, it is likely that the sites would be delivered sometime later.
19. I recognise that the Council has made material progress in allocating and granting planning permission for new Gypsy and Traveller accommodation. Nonetheless, on the basis of the evidence before me it is clear that a significant unmet need remains, and this is unlikely to be resolved for many years. If the Appellants cannot continue to live on this site, it would necessitate a return to a largely roadside existence in the next 5 years. On this basis I afford the lack of alternative available sites and policy failure to provide appropriate sites, significant weight.

Personal circumstances

20. 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.
21. The Council has acknowledged and thus it is not at dispute between the parties that significant weight should be afforded to the need for the occupiers of the site for a settled base, access to medical facilities, and substantial weight to the obvious benefit to children of having a stable and consistent education.

² LPA statement of case appendix 1 Officer Report

22. There are 12 children under the age of 18 of residing at the appeal site with their parents who are named in condition number. I am satisfied that the evidence provided at the hearing demonstrates that the extended family group has a close and supportive relationship.
23. At the hearing a personal statement by one of the occupiers of pitch 2 details that they are only able to occupy the home on a part time basis. The husband is permanently based on the appeal site, but the wife is based elsewhere because she cares for a child. Therefore, causing the family to be split and necessitating frequent travel between homes to the detriment of family relationships and access to family support.
24. The statement explained that the child's care and education is adversely affected by the temporary nature of the existing consent and would benefit from the permanency of occupation sought by the variation of condition number 1.
25. It is clear, on the basis of the evidence before me and the discussion at the hearing, that if this appeal were to be dismissed there would be an infringement of the occupiers' human rights under Article 8 of the European Convention on Human Rights. This refers to the right to a family life and the home.
26. Furthermore, the appellants have experienced an extended period of uncertainty surrounding their home, albeit exasperated by the unauthorised occupation and works carried out to the site. To my mind, to be in such an uncertain position for an extended period of time places an unreasonable burden on the appellants as well as requiring applications for renewal on a cyclical basis.

Other Harm

27. Local residents have referred to "numerous breaches of planning control" in respect of the appeal site and surrounding land. I note that the determination of this appeal would resolve some of the issues raised while many other works, such as those related to a strip of land to the northwest of the appeal site and the stone gabions at the entrance, would not be resolved through the determination of this appeal. This would be matters for the Council to deal with following the determination of this appeal.
28. Reference has also been made to unauthorised works to TPO protected trees. This matter would be partially addressed by the landscaping condition to which an amendment is sought and is not at dispute between the parties.
29. Residents have made reference to drainage issues affecting a neighbouring property South Lodge, I have not been presented with any substantive evidence to support these concerns, it has not been raised as an issue by the Council and I did not observe any particular issue at the site visit.

Green Belt Balance

30. Substantial weight attaches to the harm by inappropriateness. The development also impacts on the openness of the Green Belt. In this case I regard the loss of openness to be moderate. The development also encroaches into the Green Belt, in conflict with one of the purposes of Green Belts set out in the Framework.

31. I turn now to other considerations advanced in support of the development, the Council accepts that it cannot demonstrate a 5-year supply of sites and no alternative accommodation for the occupants has been identified. These are significant material considerations in favour of the appeal.
32. While the Council has made some material progress in the provision of additional gypsy traveller site provision it is self-evident that this under provision is persistent and that it will take a number of years to be alleviated. Furthermore, I have found that the proposal accords with policy SL22 and the Council acknowledged at the hearing that any search for new sites would include land within the Green Belt.
33. There are a number of children resident on the site. A stable home allows for access to regular education and health care which is in the best interests of the children and this is not disputed between the parties. Making this permission permanent would create a settled base with the benefit of family support. This matter is of substantial weight in favour of the proposal.
34. Dismissal of the appeal would result in the site occupiers residing on the site for 5 years, only to again face the uncertainty of seeking a new planning permission to remain on the site or seeking alternative accommodation after a period of many years residing in this location following a serious failure of policy by the Council.
35. In this instance the balance is abundantly clear. The harm to the Green Belt carries substantial weight, but the substantial weight to be given to the best interests of the children on site, together with the failure in policy over many years, and the lack of any alternative sites available to the Appellants, carry yet more weight.
36. Other considerations clearly outweigh the harm by inappropriateness and other harm referred to previously, very special circumstances have therefore been established. It follows that I conclude that planning permission should be granted on a permanent basis.

Condition 3

37. Both the description of development set out on the application form and details within the application form, refers to 4 pitches.
38. Nonetheless the approved plan³ (the plan) referred to in the Decision Notice, clearly shows pitches 1, 2 and 4 accommodating two mobile homes, often referred to as 'doubling-up'. Furthermore, evidence presented at the hearing detailed that there are additional mobile homes and tourers currently located on the site. All these units are occupied.
39. In respect of pitch 1, the two mobile homes shown on the plan are occupied by a father and adult son respectively, each person is named in condition 1. Plus, evidence heard at the hearing identified an additional unit (not identified as either a mobile home or tourer) and a tourer, currently occupied by persons not named in condition 1, that are not shown on the plan.
40. Turning to pitch 2, the first mobile is occupied full time by a person named in condition 1 and the remainder of their family on a part time basis. The second

³ Site survey dwg. No. RSPR2100115/01, dated February 2022.

- mobile home is occupied by a person named in condition number 1. Evidence at the hearing identified a third mobile home not shown on the plan but that the occupiers were present at the time of the application as resident dependents of the occupiers of the other mobile home on the same plot.
41. With regards to pitch 3, this pitch is occupied by a single mobile home and thus is in compliance with the existing condition number 3 or the proposed amendment.
42. Pitch 4 is show on the plan as hosting a mobile home occupied by persons named in condition number 1, a second mobile home occupied by persons not named in condition number 1, and at the hearing evidence was provided regarding an additional touring caravan occupied by persons not named in condition number 1.
43. In summary, the submitted plan shows 4 pitches, three of which are doubled up with a total of 7 mobile homes on site. The existing planning permission includes named persons but excludes their mobile home and in seeking to remove condition 3 in its entirety, the effect would be to include mobile homes and caravans which are not occupied by any person named in condition 1.
44. The Council has referred to Runnymede Design SPD appendix 5 that refers to the design of Gypsy and Traveller and Travelling Show People sites and sets out that pitches should "as a guide... provide space for a mobile home and touring caravan". I note however that this, and other criteria, are referred to as "a minimum". Based on the evidence before me and my observations at the site visit, I am satisfied that there is sufficient space to accommodate the proposed caravans.
45. The appellant has referred to the guidance set out in the National Planning Practice Guidance (PPG) with regards the use of conditions to modify plans and specifically it states: "It would not be appropriate to modify the development in a way that makes it substantially different from that set out in the application." In this regard, I find that condition number 3 is contrary to the PPG because it would require the removal of caravans show on the approved plan, including those occupied by persons named in Condition number 1, thereby making it substantially difference from that set out in the application.
46. While the Council details that the condition is necessary to ensure that the proposal has an acceptable impact on the openness of the Green Belt, I have previously found very special circumstances have been established that justifies the appeal scheme.
47. It is reasonable and necessary to control the number of mobile homes and caravans on the site and define the permission. As such I have amended the wording of condition 3 to refer to the number of mobile homes shown on the plan.

Condition 6

48. The approved plan⁴ does not show any vehicle parking spaces. At the site visit I saw several vehicles, including work vehicles, parked informally in front of the 4 pitches. The appellant is seeking a variation to the condition to remove the

⁴ Site survey dwg. No. RSPR2100115/01, dated February 2022

restriction on the number of vehicles but to maintain the exclusion of vehicles exceeding 3.5 tonnes in weight.

49. Furthermore, I saw at the site visit that the visual impact of the vehicles, the Council's reason for imposing the condition, is largely contained within the site and there is negligible visual effect of the cars outside of the appeal site. This is inline with my findings with regards openness.
50. Nevertheless, it is not unreasonable to control car parking within the site, in terms of the size of vehicles and the layout of the site. I have therefore included conditions to achieve this.

Condition 8

51. As referred to previously, condition number 8 refers to hard and soft landscaping works and the appellant has sought a variation to include the first planting season as the required compliance/implementation period.
52. There is no dispute between the parties that amending the condition in this manner would be appropriate and based on the evidence before me I find no substantive reason to conclude otherwise. I have therefore included such conditions accordingly.

Other Matters

53. The site is within the Thames Basin Heaths Special Protection Area (SPA). The consultation response from Natural England sets out that "that mitigation was not requested in 2013 given that the site was occupied prior to the designation of the Thames Basin Heaths Special Protection Area (SPA). However, if the removal of Condition 3 would allow for an increased number of mobile homes / caravans on site, then this would likely to result in increased recreational impacts on the SPA."
54. I am satisfied that, because the proposed amendment/removal of the conditions does not in effect permit any additional mobile homes/caravans on the site, the proposal would not have an adverse impact on the SPA.

Conditions

55. I have revised the wording of condition number 1 to add a surname to 'Jacqueline' and to include a second Jacqueline Rooney. Evidence from Mrs Rooney detailed that she resided at the site with her husband, who is named in the condition, on a part time basis only because of family health issues that are exasperated by the temporary nature of the planning permission. Failure to include Mrs Rooney as a named person in condition 1 could force the family to live apart to the detriment of the family relationship and wellbeing of the children.
56. Furthermore, I have amended the condition to remove reference to the temporary nature of the permission, in effect making the planning permission permanent. Nonetheless I have also included a condition to ensure that should occupation of the site cease, it shall be restored to its original condition.
57. Turning to condition number 3, I have amended the condition to include the pitches and caravans that are shown on the approved plan, thus removing the consequential requirement to remove those static caravans shown on the submitted plan from the site.

58. I have amended condition 6 to require the submission of a vehicle parking layout and I have retained the restriction on the size of vehicles.

59. I have amended the landscaping condition to reference the first planting season, this matter was not at dispute between the parties.

60. I have retained the conditions regarding the boundaries of the pitch, that the sheds on the site shall only be used as ancillary to the residential use. I have also included a condition prohibiting commercial activities on the site. The conditions are not at dispute between parties and remain relevant.

Conclusion

61. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting some of the disputed conditions and substituting others.

Mr M Brooker

INSPECTOR

Schedule of Conditions

- 1) The occupation of the site hereby permitted shall be carried on only by Michael Rooney, Michael Rooney, John Rooney, Jacqueline Rooney, Jacqueline Rooney, Martin Rooney, Bridget Rooney, Kelly Rooney, Danny Rooney and their resident dependants.
- 2) When the land ceases to be occupied by those named in condition 1 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan
 - Site Survey (RSPR2100115/01)
- 4) In accordance with plan 'Site Survey' (dwg. no.RSPR2100115/01) there shall be no more than 4 pitches on the site and; on pitches 1, 2 and 4 hereby approved no more than 2 caravans [as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended], shall be stationed on each pitch at any time, all the caravans shall be static caravans; on pitch 3 hereby approved no more than 1 caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended], shall be stationed on each pitch at any time, the caravan shall be a static caravan.
- 5) The boundaries of each pitch shall be denoted by 1-metre-high post and rail fencing only and no other walls, fences or gates shall be erected.
- 6) The sheds on the site shall be used solely in connection with the residential use of the site and for no other purposes. No further buildings, sheds or utility blocks shall be erected without the prior written approval by the Local Planning Authority.
- 7) Within 3 months of the date of this permission a plan showing the layout of vehicle parking on the site shall be submitted to and approved in writing by the Local Planning Authority and laid out within 3 months of the approval of those details, that space shall thereafter be kept available at all times for the parking of vehicles.
- 8) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 9) No commercial activities shall take place on the land, including the storage of materials and no burning of materials shall take place within any pitch.
- 10) Within 3 months of the date of this permission, a hard and soft landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a proposal to return the strip to the front of the site within the Tree Preservation Order Area 7 back to soft land and for new trees/planting to be provided within this

area. In addition, the landscaping scheme shall include details of hard surfacing, walls, fences, access features, minor structures, bin/refuse storage details and the existing trees and hedges to be retained.

- 11) All hard and soft landscaping works comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the approval of those details; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

End of Schedule

APPEARANCES

FOR THE APPELLANT:

Simon Ruston

FOR THE LOCAL PLANNING AUTHORITY:

Georgina Pacey
Adam Jackson
Tom Coleman Fry

INTERESTED PARTIES:

Nigel Eastment, Chairman of the Ottershaw Park Estate Company

Jacqueline Rooney

PLANS

An annotated version of 'site survey' Dwg No. RSPR2100115/01 dated February 2022 indicating the residents and additional mobile homes and tourer caravans.