

Appeal Decision

Hearing held and site visit undertaken on 10 October 2024

by Tom Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/Q3630/W/24/3340733

Land at New Oak Farm, Hardwick Lane, Chertsey, Surrey KT16 0AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended (the '1990 Act') against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Foster Lee against Runnymede Borough Council ('RBC').
 - The application is ref. RU.23/0916.
 - The development proposed is described on the application form as 'change of use of land to provide an extension to an existing Gypsy/Traveller site comprising the siting of 4 mobile homes and 4 additional touring caravans.'
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Decision

1. The appeal is allowed and planning permission is granted for the establishment of 4 traveller pitches, each hosting 2 caravans of which only 1 would be static, along with associated access and landscaping at land at New Oak Farm, Hardwick Lane, Chertsey, Surrey KT16 0AA in accordance with the terms of application ref. RU.23/0916, subject to the conditions below (and to the obligations within the unilateral undertaking under section 106 of the 1990 Act dated 2 December 2024, the 'UU').

Preliminary matters

Site name and location

2. If New Oak Farm referred to the name of a landholding hereabouts at some point, the appeal site may be said to be part of it.¹ In the evidence before me, however, New Oak Farm tends to refer to land owned by Maurice Black immediately to the south of the site. For brevity I have followed that convention. Both the appeal site and New Oak Farm are in the Green Belt.
3. RBC and the appellant (the 'main parties') agreed a statement of common ground (signed respectively on 28 and 29 May 2024, the 'SoCG'). The SoCG lists the plans reflecting the current proposal.² The appeal site, however,

¹ The appeal site appearing signed New Oak Park or New Oak Paddocks at the time of my site visit (accepting those signs may not reflect current land apportionment or use).

² Drawing nos. J004516-DD-01, J004516-DD-02 Rev. A, J004516-DD-03 Rev. A, J004516-DD-04 Rev. A, and J004516-DD-05 Rev. A.

includes a small element of land owned by Maurice Black at New Oak Farm in addition to that owned by the appellant.³

4. Notification of the proposal was, however, served on Maurice Black on 2 September 2024. He also participated at the hearing, in particular setting out the history to New Oak Farm and speaking in support of the scheme. I understand that New Oak Farm is, more or less, tolerated as a longstanding traveller site; references to 'travellers' in this decision are as in Planning Policy for Traveller Sites (published 19 December 2023, 'PPTS23').

Policy context

5. Each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise.⁴ In this instance the development plan includes policies of the Runnymede 2030 Local Plan (adopted 16 July 2020) and policy NRM6 of the Regional Strategy for the South East (published originally in 2009, the 'RSS'). The latter relates to the Thames Basin Heaths Special Protection Area ('TBHSPA').⁵ Neither main party have drawn my attention to any emerging development plan approach that either signals a divergence from existing policy, or is yet at a sufficient stage of preparation such that it may be accorded significant weight.
6. I have had regard to various other material considerations in addition to PPTS23, including the National Planning Policy Framework ('NPPF'),⁶ the planning practice guidance ('PPG'), various supplementary planning documents ('SPDs'),⁷ along with relevant appeals and case law. Of particular relevance is that this appeal follows a successful appeal decision of 5 April 2023.⁸ The plans showing the previously permitted scheme are set out at condition 1 to that decision.⁹ The site is occupied. There is no indication that its occupants would relocate elsewhere irrespective of the outcome of this appeal. Much of this decision therefore legitimately focusses on the relationship between what is now proposed and what was previously permitted.

The relationship of the site to the previous permission

7. Currently the nature of the appeal site is not entirely consistent with the previously approved plans. Notably gravel or hardstanding,¹⁰ extends slightly further eastwards. That is in the direction of land, left to its own devices, owned in association with the Great Cockrow Railway between the site and the M25. At some point a second static mobile home appears to have been put on site. There are also other structures. Access directly via Hardwick Lane to the west has been established, albeit in a slightly

³ Described in correspondence on behalf of the appellant of 2 September 2024 as a 'slight discrepancy' with reference to the site encompassing part of land held under title number SY651108.

⁴ Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended.

⁵ Established under the Birds Directive, EC Directive 79/409/EEC.

⁶ The latest iteration of which was published on 20 December 2023.

⁷ RBC having referenced the Thames Basin Heaths SPD (adopted 14 April 2021), the Green and Blue Infrastructure SPD (adopted 21 November 2021) and the Design SPD (adopted 23 June 2021).

⁸ Ref. APP/Q3630/W/22/3306901, to which details in respect of condition 2 were subsequently approved via permission ref. RU.23/1372.

⁹ Drawing nos. J003970-DD-03, J003970-DD-02 and J3970-DD-01 Rev. A.

¹⁰ Hardstanding accorded its ordinary meaning of land which is reinforced for vehicle parking.

different location to that which is shown on the proposed plans (in contrast to permitted access winding through New Oak Farm).

8. RBC have not specifically indicated that the existing nature of the site is subject to enforcement action or investigation. In fairness to both RBC and the appellant, the current nature of the site has evolved on account of circumstances central to this appeal; application ref. RU.23/0916 was made well over a year ago. As such there has been, and is now the opportunity, to address the nature of the site and development proposed (without necessarily recourse to enforcement action).¹¹
9. There is, moreover, no dispute that there is an insufficient forward supply of traveller sites in the Borough relative to needs. That is including if any fractional implications of in migration are discounted (with reference to paragraph 1.12 of the Runnymede Gypsy and Traveller Accommodation Assessment of January 2018, the 'GTAA'). Unauthorised sites are somewhat inevitable as the logical corollary of travellers maintaining their way of life hereabouts. The concept of intentional unauthorised development therefore carries no weight against the scheme.
10. For clarity, though, my decision relates to determining the acceptability of the scheme shown on the proposed plans. It does not address the acceptability of the site as it is. As in any other instance, if there is any divergence between the nature of a given site and what has been permitted, that is a separate matter to be addressed by RBC as necessary.

The description of development

11. The previous appeal decision granted permission for development described as: 'change of use of land to provide an extension to an existing Gypsy/Traveller site comprising the siting of 1 Mobile Home, and 2 touring caravans, alongside the siting of a portable utility block'.
12. Condition 5) to the previous appeal limited the benefit of that permission to 6 named individuals and their resident dependants (i.e. those who live with, and rely upon, those individuals). Application ref. RU.21/1553 was also accompanied by a unilateral undertaking dated 14 March 2023, pursuant to section 106 of the 1990 Act regarding ecological mitigation (the 'UU2023').
13. The description of development given in the application form in respect of application ref. RU.23/0916, the subject of this appeal, is 'change of use of land to provide an extension to an existing Gypsy/Traveller site comprising the siting of 4 mobile homes and 4 additional touring caravans'.
14. I understand that supporting plans were amended during RBC's determination of application ref. RU.23/0916 'in order to include the proposed new access which did not initially form part of the submission.'¹²

¹¹ With reference to the Written Ministerial Statement of 17 December 2015, official record HCWS423.

¹² RBC statement of case, paragraph 1.5.

The nature of the proposal

15. It appears that the phrase 'change of use' in describing the current proposal has been used offhand. In all likelihood it borrows from the description of the development used previously. On behalf of the appellant, Alan Masters argued at the hearing that no material change of use is, in actuality, proposed. The site is presently in use as a traveller site and has, for the most part, permission to be used as such (whether or not it might be regarded as 'an extension to' New Oak Farm).
16. Section 55(3)(a) to the 1990 Act sets out that the use as two or more separate dwellinghouses of any building previously used as a single dwelling house involves a material change of use. Under the 1990 Act 'land' means 'any corporeal hereditament, including a building...', but neither a building nor planning unit necessarily includes surrounding land. Via the previous appeal, permission was not granted for a single pitch, but for the use of land as a traveller site (on a personal basis).
17. The judgements in *Reed* and *Hertfordshire* were brought to my attention at the hearing.¹³ Both concern the threshold at which 'intensification' may amount to a change of use. Paragraph 12 of the judgement in *Reed* is that while intensification is capable of amounting to a material change of use, for it to do so it must result in 'a material change in the definable character of the use of the land'. That is consistent with the relevance of the judgement in *Hertfordshire* to this appeal.
18. In respect of the scheme to which the judgement in *Reed* relates, the appellant there argued that the doubling of caravans on site for a Gypsy family would not have amounted to change of use. On the face of it there are parallels with circumstances here, where the number of caravans proposed on site would increase. Nevertheless the scheme here is expressly described on the application form as for the 'change of use of land'.
19. For three reasons in addition to my reasoning in paragraph 15 above, however, I need not follow that matter further (aside from insofar as it has implications for the description of the scheme). Firstly, and whether or not intensification amounts to change of use, additional caravans are proposed. They have implications beyond use alone, namely in respect of the openness of the Green Belt. Secondly, the appeal site is not precisely the same as previously on account of access now being proposed via Hardwick Lane. And thirdly, in any eventuality, there is an appeal to be determined.
20. Condition 4 to the previous appeal decision set out that the site should be occupied by no more than 3 caravans, of which no more than 1 should be static. The description of development here refers to 4 mobile homes and '4 additional touring caravans'. Foster Lee clarified at the hearing that the intention was for each proposed pitch to accommodate a static and touring caravan, rather than any of the latter being 'additional' to those already permitted via the previous appeal decision.

¹³ Hearing documents 1 and 2.

21. In short there remains very little of the description of development applied for which is either accurate or agreed between the main parties.
22. Nevertheless, including with reference to the supporting plans, the intent of the proposal is clear. Section 79(1) of the 1990 Act allows me to deal with the application as if made to me in the first instance. Having spent some time at the hearing discussing the nature of the development proposed, the main parties agreed that the proposal may fairly be described as set out in paragraph 1 to this decision.

Evidence and correspondence

23. There has been extensive correspondence between the main parties in respect of the processing of the application and in the run up to the hearing. Amongst that which I have seen, there is an email from Christine Ellera, RBC's representative at the hearing, to the appellants of 30 April 2024. That correspondence sets out how, in RBC's view at that time, 'there was a lack of personal circumstances put forward with the planning application submission to justify Very Special Circumstances'.
24. With reference to PPTS23 paragraph 16, traveller sites (temporary or permanent) are inappropriate development in the Green Belt and should not be approved except in very special circumstances ('VSCs'). That paragraph continues 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'.
25. The correspondence of 30 April 2024 continues 'were a clear and robust case submitted as part of the planning application then our position *may* have been different. – this is a key point as we don't know what personal circumstances there as none were provided...'. In RBC's view, at that stage, it was 'not clear' if the proposal was still for the same individuals as those to which the previous appeal related.
26. A fair chunk of the hearing was given over to considering the personal circumstances of Foster Lee's extended family as, in fairness to RBC, the written evidence in that respect is very limited.
27. Paragraph 38 of the previous Inspector's decision set out the following: 'whilst there are other, additional considerations at play in this case, in my view the issues around need and supply, and the personal circumstances of the appellant with particular regard to the best interests of the child, are decisive. Together with all other considerations before me, they tip the balance towards the existence of very special circumstances'. Paragraph 41 of that decision states that the Inspector found personal circumstances to be 'critical' in respect of VSCs.
28. Maurice Black contended at the hearing that RBC had nevertheless been aware of circumstances at the appeal site through previous conversations. Andrew Masters alluded to the requirement under section 124(3) of the Housing Act 1985 as amended, in that each local housing authority must

periodically review housing needs in their area, including those residing on sites on which caravans can be stationed.

29. Nonetheless the onus falls principally on an applicant to substantiate their case.¹⁴ Evidently, as of 30 April 2024, RBC had forewarned Foster Lee that they did not consider that they had sufficient information to determine the case and had invited further clarification.
30. Nonetheless, the statement of case on behalf of the appellant prepared by Brian Woods is instructive. Paragraph 7.43 of that statement is that the 'current proposal would serve the same four households [as previously], and address their future needs. It would provide the four households a pitch each, and such provision would ensure to meet their needs for the foreseeable future'.
31. If there were any doubt on that point, paragraph 9.3 of the appellant's statement of case is that 'in light of the previously granted personal permission on the land, that the Inspector, if minded to allow the appeal, should do so on a Personal Basis'.

The appellant's extended family

32. As set out by the previous Inspector and holding true, Foster Lee and his extended family are Romany Gypsies and 'gypsies and travellers' within the terms of the PPTS23 and also the 2015 iteration thereof ('PPTS15'). For fairness and openness it is necessary to set out family relations, though in so doing I have been as circumspect as possible.
33. Foster Lee and a further 5 members of the extended family are named in condition 5 to the previous appeal decision. One individual present at the time of the previous appeal, the appellant's daughter in law Demi married to Foster Lee's eldest son of the same name as the appellant, is not listed in that condition.¹⁵ That must have been an error given that Foster and Demi's daughter is instead listed.
34. Since the previous application and appeal, the appellant's middle son Harry has married Bianca. They have welcomed a child. The appellant's youngest son, Terry, is now in a relationship with Isabella. As with any extended family, households will grow and individuals will form their own households in time.
35. In short, however, I heard that there are now 10 named individuals who make use of the site as a settled base. In other words the site now accommodates 1 extended family comprising 4 households. The proposal is therefore for 4 pitches for 4 households presently comprising 10 named individuals.
36. There is, for comprehensiveness, nothing to indicate that the terms of condition 5 to the previous appeal have been breached. As reflected in paragraph 16 of this decision, the previous appeal granted permission for

¹⁴ Section 62(3) to the 1990 Act.

¹⁵ Albeit that Demi is referenced at paragraph 29 of the previous appeal decision.

the site rather than for a single pitch. Each of the 4 households referenced above is represented by at least one individual listed within that condition.

The dispute between the main parties

37. In addition to the reference in paragraph 22 above, section 79(1) of the 1990 Act sets out that I may allow or dismiss the appeal or reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not).
38. RBC did not, though, reach a decision in respect of application ref. RU.23/0916 within the relevant statutory period. RBC's statement of case sets out that they would have refused permission for the proposal had they been in a position to do so.¹⁶ It is important to look at that carefully.
39. RBC fairly observe that the site is only previously developed or brownfield land by consequence of the previous appeal, and that it would need to revert to its former greenfield status following cessation of use by the individuals listed in condition 5 to the previous appeal decision.¹⁷
40. Rationally, and following the logic of the previous Inspector, RBC address both the spatial and visual implications of the scheme in terms of the openness of the Green Belt. NPPF paragraph 142 sets out how the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
41. Openness is not, however, expressly defined in spatial and visual terms in the NPPF. In essence, and although not a landscape character designation, openness represents the absence of operational development (which changes of use may, or may not, enable). Determining the effect of a proposal in respect of its effect on openness is reliant on judgement, and judgement taking account of context-specific factors.
42. Nevertheless, RBC's sole objection to the current scheme is in respect of its spatial effects as a result of what they characterise as a more formal arrangement on site. That aligns with the position in RBC's statement of case, where visual effects are said to be limited (consistent with the previous Inspector's weighting of visual harm).
43. The statement of case on behalf of the appellant appears to accept much of RBC's reasoning; it was not initially the appellant's case that the scheme would not be inappropriate development in the Green Belt, as 'whilst the prior permission granted at appeal is relevant, it is of a lesser scale, and clearly there is a greater impact on the openness of the Green Belt'.¹⁸
44. Brian Woods explained at the hearing that the foregoing position related to the visual dimension of openness, including as regards access provision. As

¹⁶ Paragraph 6.3, which effectively summarises the reasoning in the associated officer report.

¹⁷ Statement of case, paragraph 5.1, with reference to the previous Inspector's decision (condition 6 and paragraph 35).

¹⁸ Statement of case, paragraph 7.2.

above, however, RBC have no objection to the scheme in that respect. The SoCG records as an area of disagreement between the main parties whether there are VSCs. That would, clearly, only be relevant were the scheme inappropriate development in the first instance.

45. Alan Masters, however, advanced the argument at the hearing that the scheme would not be inappropriate development. That was on the basis that it would reflect the circumstances set out in NPPF paragraph 154.g), namely representing redevelopment of previously developed land that would not have a greater impact on the openness of the Green Belt. I will return to that rationally raised argument.
46. Importantly, in the light of the evidence presented at the hearing in respect of personal circumstances summarised above, RBC withdrew their objection to the proposal. That was on the basis that the permission would be personal to the appellant and the appellant's extended family. That position is logically congruent with Christine Ellera's correspondence of 30 April 2024 referenced above.
47. Nonetheless Alan Masters further argued at the hearing that there was no necessity for permission to be granted on a personal basis. NPPF paragraph 55 sets out that consideration should be given to whether 'otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations'. I will also return to that argument.

Main issues

48. As in paragraphs 22 and 37 above I am not bound to agree with the position of RBC, or anyone else, and will instead determine the proposal having addressed the following main issues: whether the proposal is inappropriate development in the Green Belt, the effect of the proposal on the openness of the Green Belt, and if any harm would result, whether there are very special circumstances ('VSCs') to justify allowing the appeal.

Reasons

The site and its context

49. The site is essentially flat. It is enclosed by varying forms of fencing, vegetation and sparse trees. To the west is Hardwick Lane. Hardwick Lane, described by RBC as a classified A road, is part of a convenient route between Virginia Water and Chertsey or St. Peter's Hospital.
50. As above, to the east is a stretch of untended land owned in connection with the Great Cockrow Railway dotted with various trees. Beyond the latter by the M25 is a line of trees and a bund. To the south is New Oak Farm. There is a small parcel of open land immediately to the north by hardsurfaced parking provision associated with the Farm Shop Lyne.
51. The Green Belt at Runnymede effectively covers all but substantial built up areas (some 79% of the land area of the Borough). The Green Belt hereabouts also washes over much built development including the M25, what might be characterised as ribbon development along Alnners Road a

short distance away, and also Fangrove (mobile home) Park. Here the Green Belt serves, in particular, to separate the built form of Chertsey from that of buildings of and around St. Peter's Hospital.

Whether inappropriate development

52. As above, Alan Masters argued that the scheme should not be assessed as inappropriate development with reference to NPPF paragraph 154.g), namely that it would represent the redevelopment of previously developed land that would not have a greater impact on openness.
53. That is one of a number of exceptions to the general position that the construction of new buildings should be assessed as inappropriate development in the Green Belt. That proposition relies on several assumptions. It is also contingent on having first assessed effects in respect of openness.
54. There is logic in one of the assumptions on which that argument is premised. Although not formerly,¹⁹ as a consequence of the previous appeal the site may now fairly be described as, for the most part, previously developed land.
55. Engineering operations are defined as development in section 55(1) of the 1990 Act. In line with what is now NPPF paragraph 155.b) Local Plan policy EE18 relates to engineering operations including the 'laying of roads and hardstanding'. As in paragraph 7 above much of the site has been laid with hardstanding to make it suitable for the parking of vehicles.
56. Whilst technically the site would revert to something like its former state pursuant to condition 6 to the previous appeal following the cessation of use, its use may nonetheless persist for at least 2 generations. Whether that equates to a 'temporary' use of the site is something of a distraction; people are not temporary (other than in a metaphysical sense).
57. Nevertheless thereafter the argument that the proposal reflects the circumstances set out in NPPF paragraph 154.g) founders for 2 reasons (which stand independently of one another).
58. Firstly, NPPF paragraph 154.g) is not replicated in PPTS23. The closest comparable reference in PPTS23, whether equitable or not with other forms of development, is paragraph 26. That sets out that 'when considering applications, local planning authorities should attach weight to the following matters: a) effective use of previously developed (brownfield), untidy or derelict land'.
59. Attaching 'weight' to something is a different position to the 'substantial weight' that should be attributed to any harm to the Green Belt (by virtue of inappropriateness and any other harm as in NPPF paragraph 153). PPTS23 paragraph 23 states flatly that 'traveller sites (temporary or permanent) in the Green Belt are inappropriate development'.

¹⁹ As reflected in paragraph 35 of the previous Inspector's decision.

60. Secondly, as in paragraph 47 above, Alan Masters also argued that there was no necessity to impose a personal condition in the eventuality I were to allow the appeal (i.e. limiting its benefit only to members of the appellant's extended family). That argument is relevant here.
61. Personal circumstances were, in the words of the previous Inspector, 'critical' to allowing that appeal. They were therefore critical also to permitting the site to become, in large part, brownfield land. If I am invited to disregard personal circumstances, so too should I therefore logically disregard their consequences for the nature of the site.
62. I have consciously not concluded at this juncture whether the proposal represents inappropriate development for the reasons given at paragraph 53 of this decision. I note, however, that the argument that the scheme should be considered under NPPF paragraph 154.g), which relates to the 'construction of new buildings', reinforces my reasoning above that whether or not the proposal might accurately be termed a change of use is incidental.

Effect on the openness of the Green Belt

63. Although I am not of the view that harm to openness can rationally be said to result from a more 'formal' arrangement on site as RBC characterise it, there would nonetheless be some spatial reduction in openness.
64. The proposal is for 8 caravans in place of 3 previously. The scheme would inherently add to the footprint and volume of accommodation on site. Consolidated access would also be formed beyond the confines of the site considered by the previous Inspector. The scheme would therefore be detrimental to openness in a spatial or mathematical sense.
65. Whilst NPPF paragraph 152 guides that substantial weight should be given to any harm to the Green Belt, not all harm is equal. In my view the spatial implications of the proposal before me relative to the development previously approved would be limited for two principal reasons.
66. Firstly, the extent of gravel or hardsurfacing proposed would be unaltered.²⁰ According spatial its ordinary meaning of occupying or taking up space, no greater square meterage of the Green Belt would be occupied by development aside from in respect of access (a very modest element of the scheme to which RBC have no objection).
67. Secondly, cross-referring my reasoning in paragraphs 19 and 49 to 51 above, there are several context-specific aspects to the spatial nature of openness here. An appeal is not some form of re-examination of a local plan or its underlying evidence, nor is its purpose to establish whether exceptional circumstances exist to release Green Belt. Nevertheless different elements of the Green Belt possess different degrees of openness,

²⁰ Comparing plan nos. J004516-CD-05 Rev. A and approved plan J003970-DD-03.

and also value in respect of the five purposes of the Green Belt articulated in NPPF paragraph 143.

68. Hereabouts it would be fair to summarise that the openness of the Green Belt is qualified. It is rational to contextualise the implications of the scheme relative to that baseline. As set out above the Green Belt nearby encompasses part of the M25, Hardwick Lane, New Oak Farm and The Farm Shop Lyne (setting aside Almnors Road and Fangrove Park). In that context the implications of the scheme to the spatial openness of the Green Belt may fairly be said to be only fractionally greater than 'modest' (the previous Inspector's characterisation of the effects of that scheme).
69. It is curious that the appellant's statement of case ascribes harm to the visual openness of the Green Belt whereas RBC do not. Nevertheless in my view the visual effects of the scheme, relative to that which has been permitted, would be somewhere between the positions of the main parties.
70. On the one hand there would be slightly greater visibility into and across the site on account of access provision. Given that boundary features elsewhere are somewhat sparse, and a greater number of caravans and intensity of use is proposed, the proposal would be more visually prominent (including from certain vantage points to the north).
71. On the other hand, however, the majority of boundary features would be retained. New planting would be undertaken to close off the previously permitted access. A utility block would be removed. The proposed mobile homes would be well set into the site, at a greater distance relative to Hardwick Lane compared to the permitted location for stationing one touring caravan at present, and also relative to the site's northern boundary.²¹
72. Moreover, inherent in my reasoning in paragraphs 49 to 51 above, the site is neither widely visible, nor forms a significant part of visually open vistas. Consequently, although the proposal would have some greater effect on the visual openness of the Green Belt, that would be fractional (the previous inspector identifying only a 'limited' effect in that respect).
73. Therefore, although the proposal cannot rationally be said to entail no effect on openness, all told any adverse implications would be minimal. That finding effectively resolves that the development proposed would be inappropriate development, which must be viewed through the lens of NPPF paragraph 153.
74. I note, subject to appropriately worded conditions and obligations, that RBC do not contend that 'any other harm' would result from the proposal with reference to NPPF paragraph 153 (other than in respect of the inappropriateness of development and its effects to the openness of the Green Belt). There is nothing before me to indicate otherwise.

²¹ Comparing plan nos. J004516-CD-05 Rev. A and permitted plan no. J003970-DD-03.

Whether VSCs exist

75. It is common ground between the main parties that RBC cannot demonstrate a supply of deliverable sites sufficient for 5 years' worth of provision relative to locally set pitch targets with reference to PPTS23 paragraph 10.a). Local Plan policy SL22 sets out the intention to provide a total of 83 pitches between 2015 and 2030. The appellant contends that only 24 pitches may have been delivered since the start of the Local Plan period (both from allocations and other permissions).
76. That is broadly consistent with RBC's position that 7 pitches have been delivered since the start of the plan period, albeit that they contend that there has either been approval for, or consideration of, a further 27 pitches.²² There is also only slight divergence between the main parties as to whether allocations would in time enable the delivery of 32 or 35 pitches respectively.²³ RBC does not specifically counter the appellant's point that none of the 48 pitches envisaged to be brought back into active use via Local Plan policy SL22 have, in actuality, been brought back into use.
77. Between 2015 and 2022, within the terms of Local Plan policy SL22, at least 71 pitches should have been provided. As above, far fewer have come forward. Circumstances now in terms of pitch provision relative to locally set targets appear little different to those at the time of the previous appeal. Fairly, RBC summarise that 'not as much progress has been made in addressing the needs of gypsies and travellers as anticipated...'.²⁴
78. The previous Inspector addressed the judgement in *Smith*.²⁵ That judgement found the deletion of 'or permanently' in terms of the planning definition of travellers via the PPTS15, compared to the previous iteration thereof, to be unlawfully discriminatory.
79. At the time of the previous appeal hearing and decision the planning definition of travellers had not changed, as it now has in PPTS23 (reinstating 'or permanently'). Nonetheless the previous Inspector set out that no emerging RBC work addressed 'the fundamental issue posed by Lisa Smith about the adequacy of the number of pitches that have been allocated'.²⁶ That appears to remain true.
80. In short, the implications of *Smith* and the PPTS23 for Runnymede are significant, the Local Plan and GTAA both being prepared with reference to PPTS15 (whether or not that might be characterised as 'policy failure').
81. The appellant's position is that, taking account of those who would now fall within the planning definition of gypsies and travellers, the GTAA indicates a need for 205 pitches over the period 2017 to 2035 (significantly greater than the target in Local Plan policy SL22).

²² RBC statement of case, paragraph 5.15.

²³ Appellant statement of case, paragraph 7.17, RBC statement of case, paragraph 5.13.

²⁴ RBC statement of case, paragraph 5.14.

²⁵ *Smith v SSLUHC & Ors [2022] EWCA Civ 1391*.

²⁶ Paragraph 24 of that decision.

82. Whilst the implications of *Smith* and the PPTS23 mean that travellers' needs will effectively have risen significantly, that may not necessarily amount precisely to a need for 205 pitches. The figure of 205 pitches counts those whose needs were 'unknown',²⁷ and there is no clear evidence before me as to whether the GTAA assessed what proportion of those who did not fall within the PPTS15 definition of were seeking pitches.
83. The precise figure aside, however, lack of provision at Runnymede has existed for quite some time. It has, and will, become more acute. It is also likely to persist for some time until resolved, in one way or another, whether via ad-hoc provision or through plan-making (in respect of which there is currently no advanced progress).²⁸
84. There is, however, important qualifier to the foregoing in this instance.
85. If I were to assess the scheme as for the same extended family as previously accommodated, it would entail limited effect in terms of increasing supply (despite being for 4 pitches). There would not be no effect whatsoever; the proposal seeks to practically accommodate some growth in traveller households, an important factor in respect of future needs.²⁹ Any accommodation has a finite capacity to host further individuals, dependant on various factors.
86. The benefits in terms of pitch provision would not, however, be as significant as provision of 4 pitches might suggest on paper; there is recourse for the intended occupants to remain on site under the previous permission (albeit a cramped arrangement). The benefits of the scheme in terms of accommodating travellers' needs in Runnymede in the face of a significant lack of supply therefore only carry moderate weight in favour of the scheme.
87. Turning to personal circumstances, the appellant's statement of case explains how the personal circumstances of the extended family 'remain generally unchanged' relative to previously. That underplays, however, that members of the extended family have grown older, established their own households, and welcomed new members including children.
88. Living in an extended family group, and the support that provides,³⁰ is an important aspect of Gypsy culture and community. I note the importance thereof in relation to Article 8 to the European Convention on Human Rights ('ECHR') as incorporated into domestic statute via the Human Rights Act 1998 as amended. I also note that Article 3(1) of the United Nations Convention on the Rights of the Child, which dovetails ECHR Article 8, is a primary or paramount consideration.³¹

²⁷ GTAA paragraph 7.21,

²⁸ Noting that the appellant draws my attention to plan-making at Dartford Borough Council, specifically the flexible emerging approach to traveller sites in the light of Green Belt constraints.

²⁹ Including as recognised in GTAA paragraph 35.

³⁰ Including as referenced in paragraph 7.47 of the appellant's statement of case.

³¹ Including as in *Collins v SSCLG* [2013] EWCA Civ 1193 referenced by the appellant.

89. The public sector equality duty, pursuant to section 149 of the Equalities Act 2010 as amended, in brief, requires that I have due regard to the objectives under paragraphs (1)(a)(b) and (c) concerning those with protected characteristics relative to others. Protected characteristics, including race and age, are particularly pertinent in this instance.
90. With that legislative context in mind, PPTS23 paragraph 3 sets out how the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.
91. PPTS23 aim 4.j. is 'to enable provision of suitable accommodation which travellers can access education, health, welfare and employment infrastructure.' The importance of access to school, health services and of a settled base is also reflected in PPTS23 paragraph 13. The disadvantages faced by travellers relative to others are significant and well documented. The provision of suitable sites cannot easily be overstated in terms of its importance in addressing those disadvantages.
92. Moreover, compared to the inevitably cramped confines of a single static mobile home, and by virtue of ensuring adequate landscaping and play areas for children in line with PPTS23 paragraph 26.c), I accord personal circumstances substantial weight in favour of the scheme. I note that there is no dispute that the scheme would comply with the criteria to Local Plan policy SL22.
93. Planning is not reduceable to an equation. Words are inevitably imprecise and different words relate to different matters as well as representing different degrees. Nevertheless in this instance, as a combination of the moderate weight attributable to pitch provision and the substantial weight to personal circumstances, there are very special circumstances to justify the scheme relative to the harm that would result (in line with PPTS23 paragraph 16 and NPPF paragraph 153).

Other matters

Whether a personal permission is necessary?

94. As in respect of considering whether or not the scheme would fall for assessment under NPPF paragraph 154.g), there is some force in Alan Masters' contention that there may not be a need for a condition limiting the benefit of the permission to the appellant's extended family. That argument rationally responds to the implications of *Smith* and the PPTS23 for traveller provision in Runnymede set out above.
95. Setting personal circumstances of the appellant's extended family aside, however, would effectively set the 'numerical' benefits of the scheme in terms of pitch provision against a significant shortfall relative to PPTS23 needs on the other.
96. As above, PPTS23 paragraph 16 sets out that personal circumstances and unmet need are unlikely to amount to VSCs, let alone individually. I have

reasoned above that the scheme would have a greater effect on Green Belt openness than previously.

97. Furthermore were I to allow the appeal without a personal condition, there would be nothing to prevent the sale of one or more pitches (irrespective of the clear current intention of the appellant). Therefore the personal circumstances of the appellant's extended family would not only no longer weigh as strongly in favour of the scheme, there would be potential disadvantages to weigh against the proposal in terms of the potential lack of a settled base.³²
98. Moreover the argument that there is no necessity of a personal condition is a line of argumentation that emerged only at the hearing itself, at odds with the written evidence. The implications of diverging from that, including for the reasons above, do not appear to have been thoroughly considered by either main party; there is, for example, no evidence as to the likelihood of development similarly affecting the Green Belt elsewhere.³³
99. I further have a real concern that the absence of a 'personal' condition would conflict with the guidance in the PPG by dint of making the development proposed substantially different from that set out in the application.³⁴ Consequently limiting the benefit of the permission to named individuals is necessary.

Ecology, on site

100. The general biodiversity objective applies to my assessment of the proposal.³⁵ Although there are various environmentally protected sites nearby, the site is not within or adjacent to one. I understand that it was in part previously used as a paddock. There is nothing to indicate that it is, or was, of particular environmental value.
101. Whilst application ref. RU.23/0916 was made before the statutory requirement for biodiversity net gain was commenced, both criterion b) to Local Plan policy SD7 and criterion d) to NPPF paragraph 180 seek to minimise the effect of development on biodiversity and advocate providing for net gains. Appendix 5 to the RBC Design SPD also encourages the incorporation of green infrastructure at traveller sites specifically, with the Green and Blue infrastructure SPD providing broader guidance too.
102. The proposal includes both an 'amenity play space' and 'wild flower meadow'. Subject to a suitable approach to landscaping or ecological enhancement measures, it is common ground between the main parties that the scheme could readily achieve biodiversity improvements on site in line with Local Plan policy SD7 and NPPF paragraph 180.d).

³² Noting that paragraph 9.3 c) to the appellant's statement of case explains how considerations should be given to 'the consequences of the appeal being dismissed and the harm to the welfare of the appellant and his family which would result from a continued roadside existence'.

³³ Although 79% of the Borough is Green Belt there are, for example, no studies of the relative value of any brownfield sites or other measures that might be taken to limit the extent of any development in the Green Belt.

³⁴ PPG reference ID: 21a-012-20140306.

³⁵ Section 40 of the Natural Environment and Rural Communities Act 2006 as amended.

Ecology, off site

103. In terms of ecological implications, the site is also within the zone of influence around the TBHSPA, which comprises various sites of special scientific interest.³⁶ The TBHSPA is protected on account of the value of its habitat to wildlife reliant upon it (notably ground nesting birds). Whilst not a precise correlation, particularly recreational pressure associated with additional population within the zone of influence has the potential to adversely affect the ecological integrity of the TBHSPA.
104. Local Plan policy EE10, which draws from RSS policy NRM6, sets out that all residential development within the zone of influence will need to put in place adequate measures to avoid and mitigate potential adverse effects to the TBHSPA. Typically that takes the form of contributions via planning agreements or obligations towards suitable alternative natural green space ('SANGS') to divert recreational pressure to other locations, and strategic access management and monitoring arrangements ('SAMM') to effectively address those residual implications which remain. RBC's approach in respect of mitigation, and how contributions are calculated, is set out in the associated TBHSPA SPD (April 2021).
105. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 as amended (the 'Habitats Regulations') requires that, before deciding to give any permission or other authorisation for a project which is likely to have a significant effect on a European site, a competent authority must make an appropriate assessment of its implications (including in combination with others). I have undertaken that an appropriate assessment in a reasonable and proportionate manner relative to the circumstances here as follows.
106. As above the UU2023 related to ecological mitigation associated with the implications of application ref. RU.21/1553, the application to which the previous appeal related. On the basis of the mitigation that the UU2023 would have secured, the previous Inspector reasoned that the integrity of the TBHSPA would be maintained.³⁷ To add to that, the TBHSPA SPD is endorsed by Natural England (the appropriate nature conservation body under Habitats Regulation 63(3)).
107. The UU2023 made provision for a contribution of £5,601.70 towards SANGS and £2,232 in respect of SAMM. Both amounts were calculated multiplying the respective 'per occupant' figure of £903.50 and £360 by 6.20.³⁸ The multiple of 6.20 appears to have derived from the indicative occupancy rate of a traveller pitch in respect of SANGS; table 4 to the SPD setting out that traveller pitches have an indicative occupancy level of 3.60 individuals.³⁹
108. At the time of the hearing the proposal was supported by an unexecuted or draft unilateral undertaking ('DUU'). The DUU intended to make provision for occupation of the site by 16 individuals.

³⁶ In respect of which the duty at section 28(G) of the Wildlife and Countryside Act 1981 as amended applies.

³⁷ Paragraphs 11 to 14 of their decision.

³⁸ SPD paragraphs 5.1.11 and 6.1.3.

³⁹ There being no comparable occupancy level in the SPD in respect of SAMM in SPD table 8.

109. It is, however, unclear where the figure of 16 individuals in the DUU was derived from. As above, only 10 named individuals were discussed at the hearing. It may be, cross-referencing my reasoning in paragraphs 30 and 34 of this decision, that the appellant sought to 'future proof' contributions anticipating further household growth in time. That is not, however, necessary in terms of mitigating environmental effects within the terms of the TBHSPA SPD (nor equitable with members of the settled community).
110. As above, the TBHSPA SPD has, as its base unit, individuals rather than households.⁴⁰ There is no provision for additional contributions where occupants of a dwelling increase over time (that is hypothetical, and may cut both ways). Consistent with my reasoning throughout this decision and at paragraph 35 in particular, contributions to off-site mitigation should therefore be based on 10 individuals.⁴¹
111. At the time of the hearing, however, neither the UU2023 nor DUU made appropriate provision. I therefore sought the views of the main parties on 21 October 2024 regarding the potential for a negatively worded condition to address this matter.⁴² Neither main party supported that approach.
112. Thereafter a revised unilateral undertaking pursuant to section 106 of the 1990 Act was executed on 2 December 2024 (simply the 'UU'). The UU makes provision for contributions related to 3.80 individuals, based on per occupant figures of £903.50 in respect of SANGS and £428.13 in respect of SAMM. The former is consistent with the SPD, the latter with RBC's current position in that respect (the figure of £360 in the TBHSPA SPDA having been uplifted to account for inflation since, with effect from 1 April 2024).
113. In combination with the UU2023, the UU has the effect of making contributions associated with the occupancy of the site by 10 individuals in respect of the TBHSPA. RBC agree the amounts provided for in the UU, and, by consequence, are satisfied that likely adverse ecological effects off-site would be avoided. I agree.
114. Inherent in the foregoing reasoning is that the provisions of the UU, combined with those of the UU2023, meet the requirements of NPPF paragraph 57 and Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended. By consequence, taking account of my reasoning above in respect of biodiversity on site, and given that ecology is protected via other regimes,⁴³ I am satisfied that the proposal would suitably safeguard ecological integrity, including that of the TBHSPA, in line with Local Plan policy EE1, RSS policy NRM6 and NPPF paragraph 180.
115. As an addendum to that, I heard at the hearing that the UU2023 had been signed only by Foster Lee. Consequently it did not account for part of the

⁴⁰ Noting that table 4 refers to an indicative occupancy level of traveller pitches of '3.60* unless evidence demonstrates otherwise on a case by case basis'.

⁴¹ A position which, incidentally, reinforces my reasoning in paragraph 86 of this decision (that moderate weight should be accorded to the benefit of the scheme in terms of accommodating travellers' needs).

⁴² With particular reference to PPG Reference ID: 21a-010-20190723.

⁴³ Notably via the Wildlife and Countryside Act 1981 as amended.

site under title SY651108 being within Maurice Black's ownership (a matter which had only emerged in the course of this appeal). Nevertheless Maurice Black is a signatory to the UU, in addition to the UU2023 which has already taken effect, addressing that discrepancy.

Conclusion

116. Having taken account of the development plan as a whole along with all other relevant material considerations, I therefore conclude that the appeal should be allowed subject to the conditions below and provisions of the UU.

Conditions

117. In addition to requiring commencement within the relevant statutory period via condition 1, for clarity and so as to ensure that the proposal is implemented as assessed above, I have imposed condition 2 requiring adherence to the relevant supporting plans.
118. Similarly, and so as to place limits on the operation of the site consistent with my reasoning throughout this decision, I have imposed conditions 3, 4 and 5 (ensuring solely a residential use, limiting the number of caravans and their type, and specifying that the permission relates to certain named individuals and their resident dependants). Condition 6 is necessary to ensure site restoration following the cessation of use, which must logically revert to the condition of the land before the previous appeal.
119. To ensure compliance with NPPF paragraph 114.b), condition 7 is also necessary regarding access provision. Similarly, albeit to ensure the development hereby permitted accords with policy SD7 in respect of bicycle and electric vehicle charging points, I have imposed conditions 8 and 9 (which need only apply on a pitch-by-pitch basis as opposed to forestalling the scheme as a whole).
120. Following on from my reasoning in respect of ecology on-site, I have imposed condition 10. In contrast to conditions 8 and 9, biodiversity enhancement measures need to be agreed initially; any development may affect the characteristics of the site in that respect. Given that biodiversity enhancement would relate to the site as a whole, that must also bite before any of the pitches hereby permitted is first occupied as approved. That is similarly the case in respect of drainage with reference to Local Plan policy EE2, addressed via condition 11 (as any development has the potential to affect the drainage characteristics of the site or the overall scheme design).
121. In imposing conditions I have had regard to relevant provisions of statute, of the NPPF and the PPG. In that context I have amended the wording of certain conditions put to me to ensure that all are appropriate, without altering their fundamental aims.

Tom Bristow

INSPECTOR

SCHEDULE 1, CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

J004516-DD-01,
J004516-DD-02 Rev. A,
J004516-DD-03 Rev. A,
J004516-DD-04 Rev. A, and
J004516-DD-05 Rev. A.
- 3) The development hereby permitted is for residential purposes only, and no commercial operations shall be undertaken at the site.
- 4) No more than 8 caravans, as defined in the Caravan Sites and Control of Development Act 1960 as amended, and the Caravan Sites Act 1968 as amended, of which no more than 4 shall be static caravans, shall be stationed on the site at any one time. Only 2 caravans, of which no more than 1 shall be static, shall be stationed at each of the 4 pitches hereby permitted in accordance with approved plans J004516-DD-04 Rev. A and J004516-DD-05 Rev. A.
- 5) The occupation of the site hereby permitted comprising 4 pitches shall be carried on only by the following individuals and their resident dependants: Foster Lee, Michelle Lee, Foster Lee, Demi Lee, Harry Lee, Bianca Lee and Terry Lee.
- 6) When the land ceases to be occupied in accordance with condition 5, the development hereby permitted shall cease, including the use of the land, and all caravans, structures, materials and equipment brought on to or erected on the land, and any works undertaken to it in connection with the development hereby permitted including by virtue of other conditions (aside from condition 10 in respect of works for biodiversity enhancement) shall be removed, and the land shall be restored to its condition before the development hereby permitted, and the development to which planning appeal ref. APP/Q3630/W/3306901 relates, took place.
- 7) No vehicle shall access the site to which the development hereby permitted relates from Hardwick Lane until vehicular access to the site has been constructed and made available for its intended use in accordance with the approved plans (including with visibility splays in line with a scheme that shall have previously been submitted to, and approved in writing by, the local planning authority). There shall be no obstruction to visibility greater than 600mm above ground level within the approved visibility splay. Once access via Hardwick Lane has been constructed and made available as approved, including in line with approved visibility splays, it shall thereafter be retained only for its intended use, and visibility splays shall be maintained as implemented. Access and visibility splays shall only be extinguished in line with condition 6.

- 8) No pitch hereby permitted shall be occupied until bicycle parking or storage serving that pitch has been provided and made available for use in line with a scheme that shall have previously been submitted to, and approved in writing by, the local planning authority (which shall include facilities for the charging of e-bikes). Once provided and made available for use as approved, bicycle parking or storage shall thereafter be maintained only for its intended purpose.
- 9) No pitch hereby permitted shall be occupied until it is provided with a fast charge electric vehicle charging point in line with a scheme that shall have been previously submitted to, and approved in writing by, the local planning authority (which shall include details of a suitable specification). Once provided and made available for use as approved, electric vehicle charging points shall thereafter be maintained.
- 10) No development hereby permitted shall take place until a biodiversity enhancement scheme ('BES') has been submitted to, and approved in writing by, the local planning authority (which shall include details in respect of implementation and maintenance). The BES shall be implemented in accordance with approved details before any pitch hereby permitted is first occupied, and thereafter maintained as approved.
- 11) No development hereby permitted shall take place until a foul and surface water drainage scheme ('FSWDS') has been submitted to, and approved in writing by, the local planning authority. The FSWDS shall be implemented in accordance with the approved details before any pitch hereby permitted is first occupied and thereafter maintained as approved.

SCHEDULE 2, APPEARANCES

For the appellant

Foster Lee	Appellant
Alan Masters	of Counsel
Brian Woods	WS Planning & Architecture

For RBC

Christine Ellera	RBC
Paul Nunn	RBC

Interested parties

Maurice Black	Neighbouring landowner
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SCHEDULE 3, HEARING DOCUMENTS

- 1) Reed v Secretary of State for Communities and Local Government and Bracknell Forest District Council [2014] EWCA Civ 241, which refers to,
- 2) Hertfordshire County Council v Secretary of State for Communities and Local Government & Anor [2012] EWCA Civ 1473.
- 3) Runnymede Gypsy and Traveller Accommodation Assessment (January 2018, the 'GTAA') noting that at the hearing it was identified that interviews which informed it were conducted in October and December 2017 (paragraph 1.3).
- 4) Unilateral Undertaking pursuant to section 106 of the 1990 Act regards SANGS and SAMM related to application ref. RU.21/1553, the application to which the previous appeal relates.