



Appeal Decision

Site visit made on 12 November 2024

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2024

Appeal Ref: APP/R3650/W/24/3340254

Land south of Goose Cottage, Green Lane, Dockenfield, Farnham GU10 4JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Phil Rowe against the decision of Waverley Borough Council.
- The application Ref is WA/2023/02444.
- The development proposed is change of use of land for single gypsy pitch in the alternative to permission granted for double garage under WA/2017/1498.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was made, a revised National Planning Policy Framework (the Framework) and a revised Planning Policy for Traveller Sites (PPTS) were published on 12 December 2024. I have taken the revised Framework and PPTS into account as part of the determination of this appeal. There is an extensive planning history related to the site, which includes 3 previous appeal decisions¹, all of which were dismissed. These decisions related to new detached market dwellings on the appeal site. I have had regard to these decisions insofar as they are relevant to the proposal before me now.
4. The Council's reasons for refusal referred to a number of policies from the Waverley Borough Local Plan (Local Plan) (2002), notably Policies D1, D4, D6, D7 and C2. However, the Council has confirmed that these have been superseded by the Waverley Borough Local Plan Part 1: Strategic Policies and Sites (LPP1) (adopted 2018) and the Waverley Borough Local Plan Part 2: Site Allocations and Development Management Policies (LPP2) (adopted 2023). The Council has provided me with the relevant policies and the appellant has had the opportunity to comment on these. I have therefore determined the appeal on the basis of the relevant policies of LPP1 and LPP2.

Main Issues

5. The main issues in this appeal are: -
 - whether there is a requirement to demonstrate gypsy status under Policy DM37 of the LPP2;
 - whether the gypsy pitch would be suitably located, having regard to the effect of the proposal on the character and appearance of the area;

¹ Appeal References APP/R3650/W/19/3242100/, APP/R3650/W/22/3290216 and APP/R3650/W/23/3319178.

- the effect of the proposal on ecology/biodiversity and on protected trees; and
- whether any harm arising from the proposal would be outweighed by other considerations.

Reasons

Gypsy Status

6. The appeal site lies within an area designated as Countryside Beyond the Green Belt. The Council's position was that as there was no evidence of gypsy status or personal circumstances submitted for the proposal, the development was 'assessed as a mobile home in the Countryside Beyond the Green Belt', as set out in its Committee Report. It states that the proposal 'does not fall to be considered under Policy ANH4 [of LPP1] and Policy DM37 [of LPP2] do not apply'. Accordingly, the Council assessed the proposal against general housing and other plan policies.
7. However, whilst no information was put forward in regard to the gypsy status of the future occupants, the description of development refers to the provision of a single gypsy pitch. Whilst the proposal is for a speculative gypsy pitch, the appellant considers that the proposal should be assessed against relevant Gypsy and Traveller policy, and not general housing policy, as the occupation would be subject to a planning condition restricting occupancy to Gypsies and Travellers.
8. Policy DM37 of LPP2 sets out the design principles for Gypsy and Traveller Sites. However, it is not referenced anywhere in the policy that in order to comply with the principles, that it must be demonstrated that there is evidence of gypsy status. I am satisfied that even though there is currently no identified occupant for the proposal, if I were minded to allow the appeal, I would attach a condition which would restrict the future occupation of the site so that occupiers would meet the definition of Gypsies and Travellers contained within the PPTS. I note that the Council has also included such a condition in their suggested conditions. With this in place I am satisfied that I can consider the proposal as a new gypsy site against the relevant Gypsy and Traveller policies rather than those regarding open market housing.
9. The Council has not advanced any other arguments that the proposal would conflict with the design principles for the size and contents of Gypsy and Traveller sites set out in Policy DM37. I have no substantive evidence before me to come to a different conclusion on this matter. Therefore, based on the evidence before me, the criteria set out in Policy DM37 would thus be broadly met. I therefore consider that there is no policy basis for the Council's approach to refuse the proposal against Policy DM37 of the LPP2.
10. It is noted that paragraph 7.35 of the LPP2 sets out that 'planning applications received for the provision of new gypsy and traveller accommodation where the future occupants of the site do not meet the planning definition of a gypsy and traveller as set out in the PPTS, will be considered in accordance with the relevant policies in LPP1 and LPP2'. However, as set out above, a condition would be attached to ensure that the future occupants of the proposal would meet the relevant gypsy and traveller definition.

11. Therefore, for the reasons set out above, there is no requirement to demonstrate gypsy status under the design principles set out in Policy DM37 of the LPP2 and there is no conflict with this policy in terms of the design of the proposed pitch.

Suitable Location having regard to Character and Appearance

12. The appeal site is a rectangular parcel of land to the south of Goose Cottage, situated off Green Lane. Whilst it is now fenced off, it would have previously formed part of the private garden of Goose Cottage, which is a timber cladded, detached dwelling. It is situated outside of any recognised settlement boundary, within the open countryside. As stated above, it is in an area designated as Countryside Beyond the Green Belt, as well as being within an Area of Great Landscape Value (AGLV).
13. In regard to the location of the proposal, the Council refused the application against the now superseded Policy C2 from the 2002 Local Plan. This policy strictly controlled development in the open countryside, only supporting development in exceptional circumstances. However, the Council has confirmed that this policy has now fallen away, and a replacement policy has not been provided. Nevertheless, given that I have determined that the proposal should be considered as a gypsy pitch and not against general housing policies, any alleged conflict with Policy C2 is not determinative in these circumstances.
14. However, Policy AHN4 of the LPP1 sets out the approach for Gypsies, Travellers and Travelling Showpeople Accommodation, including a number of criteria relevant to proposals for new gypsy pitches. Whilst the Council has not referred to this policy in its refusal of the appeal proposal or in its Statement of Case, given that I have concluded that I am considering the proposal as gypsy accommodation, I must assess the proposal against this policy. One of the criteria set out in Policy AHN4 that would be applicable to proposals for permanent and transit sites for Gypsies, Travellers and Travelling Showpeople is that they will only be permitted if the site does not have an unacceptable impact on the physical and visual character of the area.
15. I recognise, as the appellant submits to me, that there is a variety in the 'format' of dwellings in the area, with a mixture of brick, render and timber cladding used for their construction. However, the prevailing character of the area is of detached dwellings in relatively informal but substantial sized plots. I agree with the Inspector on the 2023 appeal² who found that 'combined with the existing mature landscape features adjacent to the lane [Green Lane] and the denser areas of substantial trees in the wider surroundings, this creates a semi-rural character to Green Lane'. Consequently, the prevailing character of detached dwellings in larger plots with associated landscaping contributes positively to the character and appearance of the area, including the intrinsic character of the countryside and appropriate to their semi-rural setting.
16. The proposal would result in the stationing of a mobile home, with associated hardstanding, which could be used for the siting of a touring caravan and other vehicles, as well as associated domestic paraphernalia. Rather than being sympathetic and harmonious with local characteristics, as alleged by the appellant, the proposal, by virtue of its single storey, flat roofed form of the mobile home, would represent an incongruous addition to the locality, failing to

² Paragraph 6, APP/R3650/W/23/3319178.

integrate satisfactorily with the prevailing character of the area. As recognised by the earlier Inspectors, the sub-division of the Goose Cottage plot would also result in small plot sizes for both Goose Cottage and the appeal site. This would in itself be against the prevailing pattern and character of development in the surrounding area.

17. The set back into the site would reduce its prominence in the street scene and it is recognised that there is some vegetation along the front boundary, with some established trees. However, due to the inappropriate scale and form of the proposal, the existing boundary treatments would not sufficiently screen or filter the visible impact of the proposal. It would clearly be seen from Green Lane, from which it would be seen as an incompatible addition to the immediate area. I acknowledge that the appellant would be happy to accept a landscaping condition to maintain and improve the landscaping around the boundary. However, given the incongruity of the proposal, even if landscaping helped to reduce public views, such visibility is not a prerequisite for harm to occur and does not make up for the unsuitable nature of the proposed development.
18. Furthermore, the advice in paragraph 27 of the PPTS is that new traveller sites should not be enclosed 'with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community'. Therefore, further landscaping would not be appropriate in these circumstances.
19. The appellant states that the proposal has been designed 'to simple and sound architectural principles', which 'can be further controlled by conditions including materials etc'. However, the single storey nature of the mobile home, whilst it would be subordinate to Goose Cottage, would not respect the local distinctiveness of the area and the design and scale of the proposal would result in harm to the prevailing characteristics of the locality. I am not convinced that any conditions would be able to mitigate the significant harm identified.
20. Reference has been made to an application for the 'change of use of land for stationing of 3 static caravans and 3 touring caravans' at Land North of Lydia Park³. I have been provided with the relevant decision notice and case officer report. The appellant claims that it would be 'logical to argue that similarly our sustainably located proposal would represent infill development with no significant harm arising from the proposal'. However, from the limited information before me, I note that this site was situated alongside Lydia Park Gypsy and Traveller Site, which was an established site. It adjoined existing pitches and thus was found to be an 'infill development of the existing Lydia Park site'. This is a notable difference to the proposal before me now, highlighting that the circumstances in each proposal are likely to be different.
21. The appellant also makes direct comparisons between the appeal site and that of an earlier appeal at Land off Tongham Road⁴. I only have the relevant appeal decision before me. However, I note that this again relates to an extension of an existing gypsy pitch, and there were also personal circumstances of the future occupants of the additional pitches, so this other appeal decision is again

³ Application reference WA/2023/00443

⁴ Appeal Reference APP/R3650/W/21/3288515

not directly comparable to the proposal before me now. I have determined this appeal on its own merits and have found harm for the reasons set out above.

22. My attention has also been drawn to a previous permission for the garage at the appeal site. The appellant alleges that 'the siting of a caravan could analogously also be clearly viewed as an ancillary building to the host dwelling'. However, apart from a site plan, I have been provided with little information in regard to this 'previous permission' in order to conclude that it would be directly comparable to the proposal before me now, albeit I note an earlier Inspector's reference to it⁵. Nevertheless, a new garage, which would be directly associated with Goose Cottage, would function, and thus interact, with its surroundings differently in character terms to that of the proposal before me, which would be sub-divided from Goose Cottage with its own parking and curtilage, with associated paraphernalia. The same arguments would also be applicable to 'the owners of Goose Cottage having a caravan as ancillary accommodation' which the appellant also submits as a fallback position, which is an entirely different proposal to that before me now. Therefore, based on the limited evidence submitted, I can only attach these potential fallback positions little weight.
23. The appeal scheme would therefore not be suitably located and would cause harm to the character and appearance of the area. It would be contrary to Policy ANH4 of the LPP1 and Policy DM4 of the LPP2. In combination, these policies seek to ensure that all new development is of a high quality design and that new accommodation for Gypsies, Travellers and Travelling Showpeople do not have an unacceptable impact on the physical and visual character of the area. Development should respond effectively to its surroundings, reinforcing local distinctiveness and landscape. The principles of good design should be incorporated by, amongst others, being sympathetic and responsive to the prevailing pattern of development, responding to the local context, taking in to account the scale of development and building plot sizes.
24. The Council has also alleged conflict with Policy DM1 of the LPP2, which relates to the environmental implications of development. However, the Council has not directed me towards which criterion of Policy DM1 the proposal would conflict with. Therefore, in the absence of any specific evidence or harm, any conflict with Policy DM1 would not be determinative in these circumstances.

Ecology/Biodiversity and Trees

25. The proposal was accompanied by an Ecological Mitigation and Enhancement Plan⁶ (EMEP). Whilst the submission of the EMEP is welcomed, especially given that an earlier Inspector noted the absence of an EMEP⁷, I note that the Surrey Wildlife Trust remain concerned regarding the content of the EMEP. The deficiencies include lack of shrub planting, log piles or enhancements for hedgehogs, a lack of details on the proposed grassland mix and lack of specifications for hedgerow planting and bird/bat boxes. It states that the area of planting shown is also limited and that it is not clear why the grassland planting cannot continue along the entire length of the southern boundary to provide more habitat connectivity across the site. The report also refers to both

⁵ Paragraph 18, APP/R3650/W/23/3319178

⁶ Prepared by Sylvatica Ecology Ltd, dated 5 December 2023

⁷ Paragraph 13, APP/R3650/W/23/3319178

a sparrow nest box and a swift box, the latter of which the Wildlife Trust state would not be suitable for the proposal.

26. Whilst some of these errors and enhancements are minor, collectively I do consider that the concerns of both the Surrey Wildlife Trust, and consequently the Council, are valid. Whilst the appellant has set out their agreement to bat boxes and bee bricks, which they suggest can be secured by planning condition, this would not be sufficient to resolve the overall shortcomings of the EMEP. Similar to that of the earlier 2023 Inspector, I consider that the inadequacies of the EMEP are matters which need to be resolved before planning permission is granted, rather than it being left to a planning condition.
27. In regard to protected trees, there are 3 small groups of trees and 1 individual tree on either side of the existing vehicular entrance and along the southern boundary which are protected by a Tree Preservation Order (TPO). Whilst the appellant has submitted a 'Arboricultural and Planning Integration Report'⁸, the Tree Protection Plan included as Appendix A to this document appears to show an earlier scheme for a dwelling on the site, and not the proposed development before me now.
28. Nevertheless, whilst I acknowledge the Council's concerns regarding the inaccuracies of the information submitted, the amount of hardstanding incorporated under the proposal before me now would be similar to that shown as part of this earlier scheme. The proposal before me now would put no further pressure on the protected trees than the earlier proposal for a house on the appeal site. The proposed bin storage remains to be within the RPA of the trees along the frontage. The Inspector⁹ under this earlier scheme concluded that whilst a bin and cycle store was to be located within the root protection area as shown on this plan, they were satisfied that had they been minded to allow the appeal, a condition could have been attached requiring details of the construction design and materials to be approved by the Council as part of a landscaping scheme.
29. However, I am concerned that the proposal, as a gypsy pitch, would have an associated trailer/touring caravan, plus another vehicle. This would put extra pressure on the pruning of the tree canopies, which, due to the report referring to the incorrect proposal, has not been adequately addressed. The proximity of the canopies to the areas of hardstanding does not rule this out as being necessary and I cannot determine that with certainty, due to the inaccuracies of the report, that tree works would not be required. Accordingly, the long term retention and potential growth of the protected trees cannot be secured.
30. Furthermore, if any trees would be impacted, a bat roost assessment, undertaken by a suitably experienced ecologist in line with best-practice guidance, should be undertaken prior to determination. It is essential that the presence or otherwise of protected species, in this case bats, and the extent that they may be affected by the proposed development, is established before any planning permission is granted. Therefore, it would not be suitable to condition any further survey work in these circumstances.
31. I appreciate that an earlier Inspector was happy to condition any further tree work but that was for a different proposal and that application was supported

⁸ Prepared by GHA Trees Arboricultural Consultancy, dated February 2023.

⁹ APP/R3650/W/23/3319178

by an accurate arboricultural assessment. Therefore, this is a notable difference to the proposal and associated evidence before me now.

32. Consequently, for the reasons set out above, as a result of the deficient EMEP and an inaccurate Arboricultural Report, I cannot be satisfied that the proposal would not have an adverse effect on ecology/biodiversity and protected trees. It would be contrary to Policies DM4 and DM11 of the LPP2 and Policy NE1 of the LPP1. In combination, these policies require development to take in to account existing features of the site including trees and should adequately protect trees during all phases of development to avoid damage and to provide adequate separation between trees and hedgerows and the proposed development so as to secure their long-term retention and potential growth. Development will be permitted provided that it retains, protects and enhances features of biodiversity interest and ensures any adverse impacts are avoided, or if unavoidable, are appropriately mitigated.
33. By virtue of the conflict with Policy NE1 of the LPP1, the proposal would also conflict with Policy ANH4 of the LPP1 which states that proposals for Gypsies, Travellers and Travelling Showpeople accommodation will only be permitted if it accords with other policies in the Plan.

Other Considerations

34. No personal circumstances have been advanced by the appellant, as it is a speculative site. Accordingly, the only other consideration put forward in support of the site relates to need.
35. The appellant states that the LPP2 sets out that there is a residual need of 17 further pitches to be met through allocations in the LPP2. Therefore, the appellant states that although the Council is meeting its 5 year land supply in relation to Gypsy and Traveller pitches, there is still an outstanding need up to 2032 that needs to be met. The appellant also maintains that post the *Smith* judgement¹⁰, 'the Council's Gypsy policies for providing sufficient sites have failed', although they have not provided any substantive evidence to support this allegation.
36. The Council has not specifically responded to this claim under this appeal. However, it is noted from the Council's case officer's report in relation to the application at Land North of Lydia Park¹¹ that 'although the Council can at present demonstrate a five year supply of pitches, this does not prevent the grant of further pitches which are in accordance with the development plan'. I also note the conclusions of the Council in regard to the implications of the *Smith* judgement in relation to another application at Lydia Park¹² that 'the Inspector who recently examined LPP2 had regard to the *Smith* judgement and was content that the Council's supply position remained robust. Neither did he find the GTAA [Gypsy and Traveller Accommodation Assessment (2018)] to be out of date'. They continue to state that even taking in to account the *Smith* judgement, the Council can demonstrate a 5 year supply of pitches and that 'this does not in itself prevent the grant of further pitches but does mean that little weight can be given to need'.

¹⁰ Smith v SSLUHC & Others [2022] EWCA Civ 1391

¹¹ Application reference WA/2023/00443

¹² Application reference WA/2023/00371

37. I also note the findings of the Inspector under the earlier appeal at Land off Tongham Road¹³ who found that 'it is necessary to maintain a rolling supply of pitches given the likelihood of a continuing, if not increasing need. The additional 3 pitches that this appeal would provide would make a positive contribution to future supply'.
38. Therefore, based on the evidence before me, regardless of whether the Council is able to demonstrate a 5 year supply of pitches, this does not in itself prevent the grant of further pitches in order to assist in maintaining a rolling supply of pitches. I therefore attach moderate weight to the provision of an additional pitch in the borough.

Other Matters

39. The appeal site is situated within the buffer zone of Wealden Heaths, which is classified as a Special Area of Conservation (SAC) and a Special Protection Area (SPA) and a Ramsar site. However, given my conclusions on the main issues, I do not need to carry out an appropriate assessment as required under the Habitats Regulations and do not need to consider the matter any further.

Conclusion

40. I have found that there is no requirement to demonstrate gypsy status under the design principles set out in Policy DM37 of the LPP2. Therefore, subject to an occupancy condition, the site can be considered as a Gypsy and Traveller site without named occupiers. I have also afforded moderate weight to the provision of an additional pitch in the borough.
41. However, I have also found that the proposed gypsy pitch would not be suitably located and would harm the character and appearance of the area, harm which would be significant and long lasting. In addition, further accurate information is required in respect of protected trees and ecology/biodiversity, in the absence of which it is not possible to conclude the development to be acceptable. Accordingly, it would conflict with the development plan as a whole.
42. Paragraph 28 of the PPTS states that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, the provisions in paragraph 11(d) of the Framework apply. The appellant has not provided substantive proof to dispute the Council's evidence that they can demonstrate a 5 year supply of pitches. Nevertheless, in these circumstances, even if the Council are unable to demonstrate a 5 year supply of pitches, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits in my view. Accordingly, the material considerations in this case do not indicate that the development should be determined other than in accordance with the development plan.
43. I acknowledge that gypsies share the protected characteristic of race for the purposes of the Public Sector Equality Duty under s149 of the Equality Act 2010 which sets out the requirement to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not. I consider the harms resulting from the development, as identified above, would outweigh the benefits in terms of advancing equality.

¹³ Appeal Reference APP/R3650/W/21/3288515

44. I have also considered whether a temporary grant of planning permission would be appropriate for this appeal. The Planning Policy Guidance advises that temporary permissions may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of the permitted period. However, by virtue of the Council's evidence that it is able to demonstrate a 5 year supply in pitches, even if this does not in itself prevent the grant of further pitches in order to assist in maintaining a rolling supply of pitches, I have not been provided with sufficient evidence to demonstrate that there is a current need for an additional pitch to be provided now, in response to an undersupply or lack of availability of sites. Consequently, a temporary permission is not justified in this instance.
45. Accordingly, I conclude that the proposal would fail to accord with the development plan as a whole. There are no material considerations that indicate that a decision should be taken otherwise than in accordance with it. As such, the appeal is dismissed.

Laura Cuthbert

INSPECTOR