



Appeal Decision

Inquiry held on 18 - 21 November 2025

Site visit made on 21 November 2025

by H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th December 2025

Appeal Ref: APP/Z5630/W/25/3363669

Land Rear of Kenwood, Green Lane, Chessington KT9 2DS

- 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 Mrs Bridgett Casey and Mrs Kathleen Doherty against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref is 25/00005/FUL.
 - The development proposed is the creation of 2 additional residential pitches for Gypsy/Travellers at an existing Gypsy/Traveller caravan site, each with 1 static caravan, 1 touring caravan and a brick built day room, and retrospective permission for the erection of a retaining wall together with land levelling engineering works.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellants against the Council. This application will be the subject of a separate decision.

Preliminary Matters

3. A case management conference (CMC) was held on 24 June 2025 with representatives of the appellants and the Council. Procedural matters including the main issues and the format of the inquiry were discussed and clarified during the CMC, but the merits of the appeal development were not discussed.
4. The Council's decision notice does not explicitly include a reason for refusal in relation to the structural stability of the appeal site. However, the associated officer report refers to the inadequate testing of the site's stability and the Council's Statement of Case escalated the issue of whether the retaining wall constructed was fit for purpose with an accompanying report¹ in connection with the same. At the CMC, it was agreed that despite being raised belatedly, this was a main issue in connection with the appeal.

The Appeal Site and its Planning History

5. The appeal site, as shown edged red on the submitted plans, constitutes part of an existing residential caravan site, which I shall describe in short as the "family site".

¹ Perega Report dated 25 February 2025, prepared by Rick Mallett BEng. (Hons), CEng. FIStctE, based on site walkover undertaken on 17 December 2024, trial pit investigations on 17 January 2025, and a review of the calculations within the Samuely Report (submitted by the appellants)

The planning permission governing the family site was granted on 5 October 2018 on appeal², and so I refer to the “2018 permission”.

6. The 2018 permission was for the "continued use of land for 2no. gypsy [sic] pitches together with...hardstanding and utility/day room...without complying with [a temporary] condition attached to “[the 2012 planning permission³]” and that was pursuant to s73A of the Town and Country Planning Act 1990 (TCPA90) for development already carried out. The 2018 permission was not temporary but subject to other conditions including (in short):
 - 1) A “personal condition” which restricted “residential occupation” to named persons (and their resident dependents) and which did not include the current appellants as other than dependants at that time.
 - 3) That there shall be no more than four caravans on the land, of which no more than two shall be static.
 - 6) That the caravans shall be sited in accordance with drawing no. 11_459_12 and no hardstanding or siting of caravans shall be carried out further to the south east of the site than at present.
 - 7), That, further to [the approval of an application to discharge another condition imposed on the 2012 permission], any remaining works are to be carried out within six months or as agreed with the Council.
7. The appeal site is the south eastern half of the family site, and outside of the area where caravans may be sited in accordance with condition 6) or drawing 11_459_12. The proposed pitches are numbered as 3 and 4 on the submitted plans, denoting that pitches 1 and 2 are those subject to the 2018 permission. The appeal site red line area excludes pitches 1 and 2.
8. The appellants are living on the family site already, because they are residing with relatives on pitches 1 and 2. Pitches 3 and 4 are not yet created, and planning permission is sought on a prospective basis for that component of the appeal development. However, as the description of development quoted above suggests, unauthorised works have already taken place to level and retain the appeal site, which slopes from north west down to south east.
9. On 2 May 2019, the Council served a Breach of Condition Notice in respect of failures to comply with conditions 3) and 7) which was subsequently withdrawn.
10. Following the undertaking of the unauthorised works described above, the Council applied for and was granted an interim and then final injunction⁴, with the latter requiring the removal of hardstanding, the materials used to raise the land, and the retaining wall on the site, save insofar as retrospective planning permission is granted via this appeal. I must be clear that this decision is without prejudice to all other proceedings.
11. I have recorded the planning history to understand what is before me. The Council decided the application on the basis of a revised description of development, which the appellants have stressed that they accept. However, from the written

² Appeal ref: APP/Z5630/W/17/3191630

³ Permission reference 12/10099/FUL dated 12 October 2012

⁴ In 2024

representations and the evidence and submissions put to the inquiry, I prefer the appellants' original description. Planning permission is sought not only for engineering works and operational development in the form of a day room, land levelling works and a retaining wall, but also for "pitches", meaning the stationing of caravans for residential purposes.

12. Planning permission is required for the stationing of caravans for residential purposes where that would result in a material change of use of the land, perhaps through intensification, or to carry out such use without complying with conditions imposed on a previous permission.
13. As part of the family site, the appeal site is subject to the 2018 permission for the use of land for 2no. Gypsy pitches⁵. Through reliance on the 2018 permission, the appellants assert that the proposed pitches would not result in a material change of use of the site. However, that is not strictly a matter within the remit of this appeal. The appellants are entitled, again without prejudice, to apply for a lawful development certificate under s192 of the TCPA90 to ascertain whether the proposed siting of caravans for residential use on the appeal site would be lawful.
14. Furthermore, the 2018 permission is also restricted by the conditions discussed above. The application subject to this appeal was not made under s73 or s73A so as to vary or remove conditions under the 2018 permission. Since I cannot speculate on what planning permission may be required for, and since the appellants have not applied to vary or remove conditions on the 2018 permission, I have taken the appeal as including both operational development (retrospectively) and a material change of use of land (prospectively), which may then also necessitate other prospective operational development. It is necessary for me to take that approach because the appellants have advanced, for example, the need for Gypsy/Traveller sites and the circumstances of the site occupiers as reasons for allowing at least a part of the appeal.
15. Even if I had accepted that the development included the "erection of pitches", there would be a tension between what is proposed and what is already permitted. If I allowed this appeal and granted planning permission in respect of either the appellants' or the Council's description of development, the result would be that the family site is subject to both the 2018 permission for two pitches with the use restricted by conditions including 1), 3) and 6), and then the appeal permission for two [more] pitches at odds with those conditions. However, I do not need to consider if there is a risk of material incompatibility with the 2018 permission because I have considered this appeal on its merits and decided that it should not succeed for the reasons given below.

The Appeal Plans and Option for a Split Decision

16. The application subject to this appeal was submitted with a location plan, elevations/floor plans of the proposed day rooms and separate layout plans for Plots 3 and 4. Other plans were submitted prior to the inquiry in relation to the potential retaining wall alterations, the contamination remediation scheme and the proposed landscaping scheme. However, some of those later drawings differ from those submitted originally and/or each other. Having accepted the plans, I will

⁵ This is the permitted description of development although I note that neither the 2018 nor 2012 permission was subject to any condition restricting occupation to Gypsies and Travellers.

address what is shown on the revised plans and their implications in my reasoning on the main issues below.

17. The appellants submitted to the inquiry that the appeal effectively concerns two applications. That is factually inaccurate, but it is true that a “split decision” can be made on any planning application or appeal where the development has clearly severable components. The Council objects that the appellants did not raise the prospect of a split decision until late in the proceedings, but that does not matter because I can and should exercise that power where appropriate in any event.
18. I have already noted that the appeal site slopes and the appellants imported a significant quantity of material to level it, suggesting that engineering works of at least some description would be required to station caravans on the land. Even so, although I shall return to that matter later, I accept that the merits of the proposed use of land do not depend on the merits of the specific engineering works and operational development that has been carried out, or vice versa. I shall consider the appeal on this basis.

Main Issues

19. The main issues are:

- whether the engineering works and operational development, or the proposed use of the site to provide two residential pitches amount to inappropriate development in the Green Belt and if so, the effects on the openness of the Green Belt;
- whether the appeal site is safe for human habitation with particular regard to land contamination and whether there would be any related effects on surface water quality;
- whether the site is, or could be made structurally safe for its intended purpose;
- the effects of the development on the landscape character and visual quality of the area;
- its effects on the biodiversity value of the site and surrounding area, including the Bonesgate Stream Site of Nature Conservation (the SINC);
- whether the location of the appeal site accords with the development plan in terms of access to facilities and minimising dependency on private vehicles;
- the general need for Gypsy and Traveller accommodation in the area and the personal circumstances of the appellants and their needs for accommodation; and
- if relevant, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

Green Belt

20. The appeal site lies within the Metropolitan Green Belt and next to the upper bank of the Bonesgate Stream. The surrounding area around Green Lane is predominantly residential, but there are some commercial uses in the vicinity, such as dog boarding kennels adjacent to the site. At paragraph 153, the Framework

states inappropriate development is harmful to the Green Belt and it should not be approved except in very special circumstances. Policy E of the PPTS says Gypsy and Traveller site proposals are inappropriate development in the Green Belt unless they accord with paragraph 155 or any other exception as set out in chapter 13 of the Framework, i.e. paragraph 154.

21. The exception that is claimed to be relevant in this case is paragraph 154 g) which relates to limited infilling or the partial or complete redevelopment of previously developed land (PDL) including a material change of use to residential or mixed use including residential, whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to openness.
22. The appellants claim that the site constitutes PDL by virtue of falling within the same planning unit of the permanently permitted Traveller pitches (Plots 1 and 2) and its alignment with the Framework definition of PDL that refers to land which has been lawfully developed and/or was occupied by a permanent structure and any associated fixed surface infrastructure, including the curtilage of the developed land, or otherwise land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been lawfully developed.
23. I find that the appeal scheme, and in particular, the extent of hardstanding over the site, the increased site levels and the substantial wall which have been constructed, result in both spatial and visual harm to the openness of the Green Belt. The visual harm to Green Belt openness is of a substantial nature. Thus, irrespective of whether the site constitutes PDL, the substantial harm to the openness of the Green Belt results in a finding that Framework paragraph 154 g) is not applicable and that the appeal scheme represents inappropriate development in the Green Belt.
24. The appellants also posit that the appeal scheme qualifies under Framework paragraph 155 which sets out that the development of homes, commercial and other development in the Green Belt should also not be regarded as inappropriate where *all* the following apply (my emphasis):
 - a) The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
 - b) There is a demonstrable unmet need for the type of development proposed;
 - c) The development would be in a sustainable location, with particular reference to [Framework] paragraphs 110 and 115; and
 - d) Where applicable the development proposed meets the 'Golden Rules' requirements set out in [Framework] paragraphs 156-157.
25. Taking 155 c) and d) first, the Council no longer maintains that the site's location would be unsustainable for a Traveller development and for this particular scheme, the Golden Rules under 155 d) are not applicable in any event.
26. In respect of whether a demonstrable unmet need exists for the type of development proposed, the Council has accepted that there has been a failure of policy by the Council to meet the needs of Gypsies and Travellers and that a five year supply of Traveller pitches cannot be demonstrated. Thus, there is a demonstrable unmet need for part of the proposal involving the creation of pitches for Gypsies and Travellers. However, it cannot be argued that there is any need for

the deposition of substantial volumes of material and the construction of a retaining wall in the form presented, let alone a demonstrable unmet need. As such, irrespective of whether the appeal site constitutes Green Belt land or any degree to which the scheme would undermine the purpose of the Green Belt, the retrospective element of the application fails to meet *all* of the relevant necessary conditions of Framework paragraph 155. I cannot therefore find otherwise than that the development would be inappropriate development in the Green Belt.

27. The appeal scheme therefore conflicts with Policy G2 of the London Plan 2021 and policies DM5 of the Kingston Local Development Framework Core Strategy (2012) (Core Strategy) which seek to protect the Green Belt from inappropriate development except where very special circumstances exist. The appeal scheme also conflicts with the Green Belt protection aims of the Framework which requires that substantial weight is given to any harm to the Green Belt, including harm to its openness.
28. Taking the proposed use of the site separately of the works already undertaken, there is a greater prospect of such preserving spatial and visual openness, and thus, compliance under paragraph 155 of the Framework could be more readily achievable. However, reaching such a finding would depend on the extent of alternative engineering works and operational development that would be necessary to facilitate such a use of land, of which no such details are before me. The use of a planning condition to secure such details would risk prejudice to interested parties considered in the context of relevant caselaw⁶.

Contamination

29. The hardstanding, landfill or waste materials used to raise the site, and the retaining wall all remain on the appeal site along with some other structures (including a stable/storage building on Plot 4), although no caravans in residential use were present at the time of my visit.
30. The agreed Statement of Common Ground⁷ (SoCG) outlines that based on the results of laboratory testing, sampled soils on the appeal site were found to contain some levels of contaminants. The Proof of Evidence (PoE) of Simon Pike⁸ outlines that the contaminants include benzo(a)pyrene, benzo(a)fluoranthene, dibenzo(ah)anthracene and asbestos which pose a hazard to human health for a residential use of the site. The Remediation Strategy⁹ submitted on behalf of the appellants also indicates that the significant thickness of made ground encountered at the site was considered to have the potential to cause vertical ground gas generation, although monitoring of such has not yet been undertaken.
31. The appellants' Remediation Strategy would involve containment or 'capping' through the installation of hardstanding to a minimum depth of 100mm and where soft landscaped areas are proposed, providing a minimum depth of 600mm of clean topsoil (through either excavation of existing materials and/or raised planting beds etc.). These outline measures are intended to interrupt the contamination pathway and protect against residual contamination risk and appear to involve some degree of disruption of the contaminated material in any event.

⁶ Wheatcroft Ltd v SSE [1982]; Holborn Studios Ltd v Hackney LBC [2017] EWHC 2823

⁷ SOCG, dated 17 July 2025

⁸ PoE Simon Pike, Appx 2

⁹ Oakshire Environmental, 11 June 2025

32. The Council's witness questioned the feasibility of such a capping scheme, particularly where it would need to deal with areas of slope. The parts of the made ground that are most sloping onto which material has also been deposited appear to fall beyond the boundary of Plot 4 towards the Bonesgate Stream, outside of the red line site area. How any final remediation scheme would deal with this interaction of the site and adjoining land is also unclear at this stage.
33. In any event, it is clear that the basics of the Remediation Strategy put forward are just that. At the present time, it is not a comprehensive solution and its feasibility will depend on the outcomes of ground gas monitoring. It would also need to be compatible with any wall strengthening works and schemes relating to drainage and landscaping. Where relevant, I address these below.
34. Another aspect touched upon in the appellants' Remediation Strategy is that it is unlikely to be financially viable to remove the quantity of material imported to the site. However, beyond this point, the evidence has limited detail on the costs or related considerations of removal compared with other potential options.
35. Therefore, the site is presently not safe for human habitation with particular regard to land contamination and, even taking account of the ability to use planning conditions, there is insufficient certainty on the way in which remediation could make it safe. Consequently, the appeal scheme conflicts with Core Strategy Policy DM1 which seeks, amongst other things, to ensure new development minimises air, noise and contaminated land impacts and where development proposals include contaminated land, they should include remediation measures. For similar reasons, it conflicts with the Framework, paragraphs 187 and 196, where they require a site to be suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination.
36. Given that the appeal site was previously a largely grassed and treed area and that the imported material is the identified source of contamination, it is probable that the use of the land for residential purposes was once and could be remade safe for human habitation through, at least, the removal of the material.
37. Though the main issue on this matter was agreed at the CMC to encapsulate the potential effects on surface water quality, this aspect is more relevant to the potential effects on the SINC; a matter to which I return below. Additionally, Core Strategy Policy DM4 deals with water management and thus, I reach no conclusion on compliance or otherwise with this policy here.

Structural Stability

38. Immediately prior to the opening of the inquiry, a plan detailing three potential wall strengthening options was submitted, each of which required the wall being altered beyond at least part of all three sides. This may have resulted in encroachment on one side beyond land owned by the appellants.
39. Subsequently, during the early part of the inquiry, a Structural Report (the Joint Structural Report) was submitted¹⁰ which outlines a number of options as to how the retaining wall could potentially be strengthened given the agreement that it is presently unsafe to withstand the applied design loads over its lifetime. Such strengthening works would also need to be fully designed following intrusive site

¹⁰ Joint experts structural report of Rick Mallett and Peter Evans, dated 19 November 2025, Document ID2

investigations to better establish the physical properties, dimensions, configuration and reinforcement of the existing wall and supporting foundations. The final design would also need to be prepared with a sequence of operations and including details of any necessary temporary underpinning measures.

40. The option provided in an overview plan with the Joint Structural Report focusses on the strengthening of the wall internally within the site, utilising ground anchors affixed to deep ground beams recessed from the wall and on virgin ground beneath the deposited material. Such a scheme would involve excavating trenches to enable the construction of the beams and laying of the anchors. The wall may also need some measures to provide further lateral stiffening.
41. The appellants allege that it had not been possible to undertake the additional intrusive site investigations before now due to the injunction and because the extent of the deficiency of the structure has only recently become clear. In the absence of the intrusive site investigations, it is not clear which strengthening scheme is likely to be most feasible to take forward to a detailed design stage. What is clear however, and as agreed in the Joint Structural Report, is that of the options currently presented, a requirement for further building and engineering operations would be involved in retaining and strengthening the wall. Again, I do not have details of these works and conditioning such would be unreasonable and prejudicial to interested parties.
42. As such, I conclude that, in its present form, the site is not structurally safe for its intended purpose. Whether and how it could be made so is as yet uncertain but will at least necessitate building and engineering operations beyond the scope of the appeal scheme as defined and detailed in the plans before me. As such, the proposal conflicts with paragraphs 187 and 196 of the Framework where it requires a site to be suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination.
43. In terms of whether the use of land would be safe without the unauthorised works in situ, the creation of two Traveller pitches on the appeal site would be on the same area of site onto which the material has been deposited and the retaining wall constructed. The pitches could not be created unless and until all of the unauthorised works had been removed. The site would be in an entirely different physical condition to that presented in the plans before me and the sloping nature of the site will necessitate some degree of engineering works and operational development to facilitate such. Caravans could not be readily secured onto the site or occupied safely without adequate bases that take account of the sloping nature of the site. I have no details as to how the site would be made structurally safe for such a use of land and it would be unreasonable to impose a condition requiring works which are not even loosely described in the submissions before me, let alone subject of any greater level of detail. As such, the use of the land absent of further unspecified works would therefore pose a risk to future occupiers, in particular to children and vulnerable people.

Landscape Character and Visual Effects

44. The site is situated part-way along the ribbon of development that extends along Green Lane in a south-westerly direction away from the built-up area of Chessington. The area on the opposite side of Green Lane is green, vegetated and undeveloped, and to the other side of the Bonesgate Stream is a large extent

of open agricultural land. The land levels fall from Green Lane down towards Bonesgate Stream. Whilst the main concentration of development is towards the roadside, some plots have development that extends partway or in some form down towards the Stream. The existing Plots 1 and 2 form a part of the landscape and visual baseline and are visible, albeit modestly, from wider landscape viewpoints. Another Traveller site reportedly exists nearby on Green Lane, but it did not appear visible from any areas visited on the site visit.

45. The Kingston Borough Character Study (2011) (Character Study) includes the appeal site within Neighbourhood Area 21 'Chessington South' and Neighbourhood Character Area (NCA) 8 'Green Lane'. NCA8 is described as a

"...semi rural lane in Green Belt with Chessington Golf Centre and Green Lane area of nature conservation importance on western side. Detached properties set back from lane behind wide landscaped verges. Very long plots extending into green belt with significant views between properties through to open space beyond. Transition to open countryside beyond via unmade lanes between houses and at end of lane. Properties of mixed age and quality, but semi rural character creates a cohesive area. Coachworks at end of lane has harmful impact on semi-rural character of lane due to number of parked vehicles. Townscape character of 20C single plot, compact footprint, small holdings, of one or two storey scale on extended plots with well planted gardens. The landscape character is twofold— from the street; a greened, low density, well-spaced string of small scale buildings along a country lane; from the open countryside beyond, a view up a green hillside to a collection of rural scale buildings barely distinguishable behind the long rear garden plots."
46. Despite the passage of time since its publication, the description of the NCA lifted verbatim from the Character Study still holds relatively true of the area. With the establishment of trees since that time, the views between the properties to open space beyond appears to have reduced, and through some additional development of plots, the number of long rear gardens has reduced slightly, with a minor degree of effect on the overall cohesion. However, in the main, the appeal site surrounds are recognisable from the description as semi-rural, well greened, or 'outer suburban' with characteristics which largely contribute in a positive way to the sense of place.
47. The visual receptors of the site are relatively limited in number. There are views from Green Lane at the appeal site entrance and there are views from the rear on the footpath that runs alongside the farmland that connects with Horton Country Park. The views from within Horton Country Park are largely limited by woodland cover, but there are more open views from the evidently used paths on the field edge running outside of the Park. Of the six viewpoints (VPs) selected by Mr Crandon, one has been taken from the site entrance, one has been taken from the definitive public footpath at the edge of Horton Country Park and the other four are from where the appeal site cannot be readily seen.
48. The raised site levels, wall and the fence above it are partially visible from Green Lane at the entrance to the site, between other features and structures. This is a narrower, more angled view than is available from the rear of the site. However, further caravans and structures would also be visible from this viewpoint once introduced.

49. The raised site levels, hardsurfacing and retaining wall with fence above are also highly visible from VP5 and at points between VP4 and VP5 when receptors are walking in a north-westerly direction towards Green Lane. From these views, it is clear that the site sits prouder of the natural ground levels as seen on adjacent plots and the wall is a monolithic horizontal structure which appears highly incongruous with the context of the surrounding area. The close boarded fence above the wall exacerbates the harmful visual impact by increasing the height of the overall feature by around another 1.8 metres. The overall effect is of a harmful scar on the landscape, which, in comparison to neighbouring plots, is little screened by tree canopy structures during these winter months, meaning that it is highly visible. The magnitude of such harm does not appear reflected in the assessment of VP5 by Mr Crandon, though some leaf cover on the trees would have explained some of the differences between what was previously photographed compared to what was seen on the site visit. The effects on views from some points along the recreational/informal viewpoints along the outer edge of Horton Country Park are adversely affected to a greater extent than VP5.
50. The Planning Policy for Traveller Sites (December 2024) (PPTS) refers to the need to ensure that schemes for Traveller plots are not so 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. The elevated site levels and the wall give more of an impression of dominance rather than isolation but still point to a finding that overuse of hard landscaping, high walls and fences combine to harmful effect which do not assimilate with the area.
51. The landscaping proposed by Mr Crandon for the appeal scheme includes numerous trees and areas of vegetation to soften the urbanising effects. Mr Crandon also suggested the removal of the close boarded fence and its replacement with a lower post-and-rail fence, though the safety of such would appear questionable given the height of the retaining structure and intended occupation of the site by children. In any event, even assuming that the landscaping scheme were compatible with the contamination remediation scheme and wall strengthening works, I consider the potential for the urbanising effects to be reduced through landscaping have been overstated.
52. Given the scale, mass and incongruity of the substantial engineering operations and wall, I can only find that the urbanising effects of the appeal scheme are seriously harmful in landscape and visual impact terms. Some degree of additional harm would arise through the introduction of caravans, vehicles and domestic paraphernalia across both of the Plots. For these reasons, despite a relatively limited visual envelope, the appeal scheme involving retention of these aspects conflicts with, in particular, policy DM10 of the Core Strategy which seeks to protect the character and local distinctiveness of the Borough and ensure that new development incorporates principles of good design.
53. Whilst Policy DM4 is referred to in the Council's decision notice in relation to this issue, as a policy that deals with water management and flood risk, I do not find it particularly relevant.
54. In terms of whether the use of land would be harmful to the character and appearance of the area without the unauthorised works in situ, there would still be a degree of harm from the introduction of caravans and structures extending down the site, on presumably, closer to natural ground levels as similar to those on

either side. The extent of other necessary engineering works, hardstanding, soft landscaping and other structures to facilitate such a use would influence the degree of harm. Whilst I envisage that this would be less than the harm arising from the appeal scheme, the limited details of such renders it difficult to reach a more definitive conclusion and inviting the submission of details of this nature would be both unreasonable and prejudicial to interested parties.

Biodiversity Effects

55. The appeal was submitted with a Preliminary Ecological Appraisal (PEA) undertaken in November 2024 which was after the material was deposited on site and works undertaken. The biodiversity baseline prior to these works having taken place is an unknown quantity. The PEA makes recommendations for some biodiversity enhancements within the site but fails to specify the applicable requirement for Biodiversity Net Gain (BNG).
56. Though the appellants allege that a BNG exemption applied by virtue of the retrospective nature of at least part of the application, this is only available to applications made under s73 of the TCPA90. Given the scale of the proposal and that an application has been made under s70 of the TCPA90 (and appealed under s78), there appears to be no reason why the mandatory 10% BNG requirement would not apply. As such, the 10% BNG would need to be secured by way of condition.
57. Despite the PEA acknowledging the existence of the stream adjacent to the south-eastern boundary¹¹, the potential effects of the appeal scheme from contaminants on the SINC were not fully explored in the PEA or other evidence. Mr Turner indicated verbally that, absent any remediation scheme to address such, some suspended particulates could reach the SINC through surface water, though he suspected that the effects of such would be of limited consequence. The potential remediation schemes put forward to date have not included aspects specifically to deal with any potential harms from suspended particulates reaching the SINC. As such, I can only adopt a precautionary principle and assume that harm would be likely, in conflict with, in particular, Policy G6 of the London Plan and Policies DM4 and DM6 of the Core Strategy. Amongst other things, these policies seek to protect Sites of Importance for Nature Conservation and require development proposals to demonstrate that there is no adverse impact on water resources.
58. Taking the use of land separately of the unauthorised works, it is likely that planning conditions could be used to secure the BNG uplift and any necessary biodiversity enhancements.

Accessibility and Sustainability

59. The appeal site is located on the southern built up edge of Chessington and is within reasonable proximity of a primary school, shops, bus stops, community buildings and other everyday facilities. Its distance from these facilities means that it scores only a level 1b under the rating for *public transport access levels* (PTAL) under the London Plan.

¹¹ Notwithstanding the PEA reference to the Bonesgate Stream's adjacency to the appeal site, the red line appeal site excludes an area of third party land forming the wooded embankment to the Stream

60. The PoE of Mr Hughes for the Council indicates that Traveller sites are generally located in areas less accessible than bricks and mortar housing and though there would be some degree of conflict with policy, the harm attracts limited weight.
61. I find no reason to disagree with the position that, despite its PTAL rating, the site is sustainably located for the use of land for occupation by Gypsies and Travellers. This is a neutral factor in the overall balance.

General Need, Personal Needs and Circumstances

General

62. The SoCG outlines that the Council are unable to identify a 5 year supply of sites, to provide for the clear, pressing need in the Borough, although the extent of the shortfall was not numerically defined beyond this given the age of the latest *Gypsy and Traveller Accommodation Needs Assessment* (2018).
63. Through the evidence of Mr Hughes, the Council also accepts that policies have failed to meet the needs of Gypsies/Travellers given the absence of allocations for sites and given the shortfall that exists. Any emerging plan to supersede the current Core Strategy is some way off and this policy failure will persist until at least that point in time. Mr Hughes also conceded that the Borough is largely built up or otherwise covered by Green Belt designation, resulting in a high likelihood of any new Traveller sites being formed on land within the Green Belt.
64. The PPTS and Framework indicate that where a Council cannot demonstrate a 5 year supply of Traveller sites, the provisions of Paragraph 11(d) of the Framework are relevant. I return to this below in connection with the use of the land.

Personal Need and Circumstances

65. It is agreed that the appellants meet the definition of Travellers as defined in Annexe 1 of the PPTS.
66. The intended occupiers of Plot 3 include Mrs Casey and her two adult sisters, all of whom are daughters of Mr Casey (senior), of Plot 2. Mrs Casey's daughter would also reside with her, and as a single parent household, the support of nearby family would be a desirable outcome. Most of these residents have lived at Plot 2 and this area of Green Lane for all of their lives. They wish to establish a settled base and enrol Mr Casey's daughter in a local school.
67. The intended occupiers of Plot 4 include Mrs Doherty, her husband and their child and they are related to Mr Doherty of Plot 1. Mrs Doherty's husband attended the inquiry and indicated that he has been a resident of the site for most of his life and went to school in the area. At a point in time more recently, he and his family unit were residing with another family member at a dwelling in a neighbouring authority but it was clarified by Mr Doherty at the inquiry that option is no longer available.
68. There is extensive information about the medical needs of the Child that would occupy Plot 4, from which it can be derived that a settled base would be advantageous in terms of a reliable electricity supply for medical equipment and storage space for the same. As this child attends a specialist school when well enough to do so, a settled base would offer advantages as to preparedness for school and for bespoke transport arrangements. The hospital that they attend for

medical appointments is not strictly the most local to the site but I understand the logic in attending the hospital best suited to providing ongoing care for this child.

69. The Council has failed to identify any suitable alternative pitches that might be available to the appellants at the present time. I therefore accept the appellants' position that dismissal of this appeal would probably leave them with no resort except to roadside living. That would be liable to lead to the kind of environmental damage which the PPTS seeks to avoid, and to the appellants and their dependants living in worse conditions than they already do.
70. Having regard to all of the available evidence, I consider that the appellants need settled bases where they can live with their extended families in the Traveller tradition and their children can benefit from the security of uninterrupted access to healthcare and education. The personal needs and circumstances of the appellants and their families carry substantial weight in favour of a grant of permission for the proposed use of land for two additional pitches.

Intentional Unauthorised Development

71. The Written Ministerial Statement (WMS) made on 27 December 2015 confirms changes to national planning policy, initially made by a letter to Chief Planning Officers, to make 'intentional unauthorised development' a material consideration to be weighed in the determination of planning applications and appeals received since 31 August 2015. Despite not explicitly having been incorporated into the Framework since then, the current version of the Framework refers to the potential materiality of statements of government policy, including WMSs, in determining planning applications. As such, and given that this particular WMS has not been withdrawn, I am not bound by the decisions of others and I consider that the WMS still has relevance and can attract weight as a material consideration.
72. In my view, given the timing and duration over which the unauthorised works took place, in addition to the extensive nature of the works involved, it is highly doubtful that no thought was given to requiring any allegedly responsible organisation/s to cease works and to potentially undo works that went beyond the scope of what they were allegedly instructed to carry out on the appellants' behalf.
73. The unauthorised works therefore represent intentional unauthorised development and this aspect weighs heavily against granting permission for this aspect of the appeal scheme.

Planning Balance

74. The unauthorised works constitute inappropriate development in the Green Belt, which is harmful by definition and which give rise to spatial and visual harm to the openness of the Green Belt. These harms attract substantial weight. The Green Belt harms also represent a strong reason for refusal in the context of paragraph 11 d) i) of the Framework.
75. Furthermore, the site is not presently safe for human habitation with regard to its levels of land contamination or structural properties. It causes harm to the landscape character and visual quality of the area and, absent of any evidence or detailed preventative measures to the contrary, it has the potential to harm the SINC. I must also take account of the development comprising intentional unauthorised development in the Green Belt, to which I attach great weight.

76. The retrospective aspect of the scheme therefore conflicts with the development plan when taken as a whole. There are no benefits or considerations advanced specifically in relation to this aspect of the appeal scheme that should be balanced against these harms such as to indicate that a decision should be made other than in accordance therewith. The very special circumstances needed to approve the development in the Green Belt do not therefore exist.
77. Considering the use of land for the creation of two additional Traveller pitches without the retrospective element, there would be fewer harms and of those that would arise, many would be reduced.
78. However, there would be necessary engineering works and operational development to facilitate such a use of land which are not specified in the evidence before me. Absent of detail as to how the site could at least be made safe for the stationing of caravans on the sloping site, the risk to future occupiers is an unknown quantity that attracts significant weight against the scheme. In the context of caselaw that has established the principles of fairness and transparency, I have not found that these objections to the scheme could be overcome through the use of planning conditions. Considering the prospective element of the appeal scheme as operational development rather than relating to the use of land gives rise to the same issues of absent or limited details that could not be reasonably addressed by planning conditions.
79. As such, the prospective element of the scheme also conflicts with the development plan when taken as a whole. However, there are factors that attract positive weight against this element of the scheme, and these must be balanced against these harms.
80. There is an identified shortfall of pitches for Gypsies and Travellers in the Borough, with the Council incapable of demonstrating a five year supply of sites. There is also a persistent and ongoing failure of policy to cater for the accommodation needs of Gypsies and Travellers, which attract substantial weight. The appeal scheme would help to address the shortfall in a modest yet meaningful way.
81. In addition, there are a range of personal considerations that also weigh greatly in the overall balance, including the appellants' need for pitches, lack of obvious alternative long-term pitch options and the continuing role for support from the wider family at Plots 1 and 2.
82. However, taking account of the provisions of the Framework, the totality of the harms is not clearly outweighed by other considerations and the very special circumstances to justify the development in the Green Belt do not exist.

Temporary Permission

83. I have given consideration to the imposition of a condition limiting the residential occupation of the two pitches to a temporary duration of either 3 or 5 years.
84. One suggestion put to me is that I could grant a temporary permission for the occupation of the site even with the 'current problems in regard to the wall and contamination' to allow time for further investigations and a fresh application. Given that it has been conceded that the site is unsafe, both structurally and in terms of the levels of land contamination, I do not consider that a temporary residential use would be in the best interests of the children or other affected

family members and the unauthorised works should not remain for such a prolonged period.

85. Alternatively, any temporary period of 3 or 5 years from the grant of planning permission will be delayed by the duration of the removal of all materials and the wall. This would undermine the benefit of any temporary permission to the appellants and still leaves the uncertainty as to how the site, once returned to its former condition, would need to be engineered in some way to enable the creation of two pitches.
86. In any of the above scenarios, whilst the definitional harm to the Green Belt, harm to openness, harms from the landscape character and visual changes and harm to the SINC would reduce to a temporary period, thus reducing the weight to be attached to these aspects, the overall balance does not weigh in favour of a grant of permission on a temporary basis either.

Proportionality

87. Article 8 of the European Convention on Human Rights (ECHR) is incorporated into UK law through the Human Rights Act 1998 and provides that everyone has the right to respect for their private and family life, home, and correspondence. The duty to facilitate the Gypsy and Traveller way of life is part of that, and Article 8 must also be considered in the context of Article 3(1) of the United Nations Convention on the Rights of the Child. This states that the best interests of the child shall be a primary consideration. Whilst those interests can be outweighed by other factors, no other consideration can be inherently more important. I have taken account of these rights and duties in the context of caselaw put to me by the appellants¹².
88. The appellants are in an ethnic minority and have a protected characteristic under the Equality Act 2010. The Public Sector Equality Duty (PSED) means I must have due regard to the aims of eliminating discrimination and other prohibited acts; advancing equality of opportunity; and fostering good relations between persons who share a relevant protected characteristic and those who do not. Furthermore, by virtue of Article 14, ECHR rights, including under Article 8, shall be secured without discrimination.
89. I have acknowledged that the dismissal of the appeal would give rise to a degree of interference with the appellants' Article 8 rights. However, there is a strong public interest in ensuring the enforcement of planning control. There is also a public interest in providing certainty of outcomes through the planning process, which would be denied through the grant of detailed planning permission or a split decision on the numerous and highly variable options before me.
90. As such, the dismissal of the appeal is proportionate and the public interest cannot be achieved by any means less interfering. This decision has regard to rights under Article 8 of the ECHR, the best interests of the affected children and the PSED.

¹² Including *AZ v SSCLG and South Gloucester* [2012] EWCA 3660 (Admin), *Chapman v UK* (2001) ECHR 43, *Collins v SSCLG and Fylde BC* [2013] EWCA Civ 1193 and *Stevens v SSCLG and Guildford BC* [2013] EWHC 792 (Admin).

Other Matters

91. Though the issue of compliance or otherwise with waste policies was omitted from the defined main issues as agreed at the CMC, the Council sustained its objection to the scheme on the basis that the deposited material is waste, that it has been deposited without the necessary Environment Agency permit under section 33 of the Environmental Protection Act 1990 and the Environmental Permitting (England and Wales) Regulations 2016 and that it has been prevented from moving up the waste hierarchy.
92. However, for the reasons already outlined, I have found that the unauthorised works are unacceptable irrespective of whether it is waste and a finding of a further serious conflict with the development plan would not alter the outcome of the appeal in any event. As such, it is not necessary for me to reach a definitive conclusion on this aspect.

Conclusion

93. The appeal scheme, considered as a composite application and as separate elements, conflicts with the development plan when taken as a whole. There are no considerations, including the provisions of the Framework, which indicate that the decision should be made other than in accordance with the development plan.
94. Consequently, the appeal should be dismissed.

H Nicholls

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Alan Masters	Counsel for the appellants
Tony White	White Planning and Enforcement
Peter Evans	Structural Engineer, Brookwood Structures
Rhodri Crandon	Landscape Architect, Tirlun Design
BA(Hons), PG Dip	
Joe Turner	Contamination, Oakshire Environmental
Tom Doherty	Prospective site resident

FOR THE LOCAL PLANNING AUTHORITY:

Charles Streeten	Counsel for the Council, instructed by South London Legal Partnership
------------------	---

He called:

Phillip Hughes	PHD Town Planners Ltd
BA (Hons), MRTPI, FRGS, FRSA, Dip Man, MCMI	
Simon Pike	Principal Geo-Environmental Engineer, Jomas
MSc, BSc (Hons)	
Rick Mallett.	Structural Engineer, Perega Ltd
CEng, FIStructE	

INTERESTED PARTIES:

Rob Robb	Committee Member of Chessington District Residents Association
----------	--

INQUIRY DOCUMENTS:

ID1:	Opening statement of Kingston Council
ID2:	Structural stability statement of common ground and appended plan
ID3:	Site visit route
ID4:	Letter from St George's university hospital
ID5:	Copy of breach of conditions notice
ID6:	List of suggested of planning conditions on a without prejudice basis
ID7:	Council closing statement
ID8:	Appellants closing statement
ID9:	Amended list of suggested of planning conditions
ID10:	Council's costs application response (following close of inquiry)
ID11:	Appellants' final response on costs application (following close of inquiry)