



## Appeal Decisions

Hearing and site visit held on 28 November 2017

**by Mr A U Ghafoor BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5 March 2018**

---

### **Appeals at The Pines and land to the north of Green Lane East, Flexford, Normandy GU3 2JL**

- The appeals are made by Mr John Searle against the decision of Guildford Borough Council as the local planning authority [the 'LPA'].
  - The appeals are made under section 78 and 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 [the 'Act'].
- 

#### **Appeal A Ref: APP/W/16/3165526**

- The appeal is made under section 78 of the Act against a refusal to grant planning permission under section 73 of the Act for the use of land for the stationing of caravans for residential purposes for 1 No. gypsy pitch together with a utility/dayroom ancillary to that use for which a previous planning permission was granted for a limited period.
- The application ref 15/P/06/02363 is dated 11 December 2015.
- The application sought planning permission for the use of land for the stationing of caravans for residential purposes for 1 No. gypsy pitch together with a utility/dayroom ancillary to that use granted planning permission for a limited period ref 10/P/00507, dated 14 June 2011.
- The permission is subject to a condition requiring the cessation of the use on or before 14 June 2016.
- The reason given for the condition is: *'There is an un-met need for pitches, but a reasonable expectation that by 2016 the Council will have found new sites and made pitches available'*.

**Summary of Decision: The appeal is allowed and temporary planning permission is granted subject to conditions in the terms set out below in the formal decision.**

---

#### **Appeal B Ref: APP/W/16/3165528**

- The appeal is made under section 78 of the Act against a refusal to grant planning permission under section 73 of the Act for the use of land for the stationing of caravans for residential purposes for 1 No. gypsy pitch together with a utility/dayroom ancillary to that use for which a previous planning permission was granted for a limited period.
- The application Ref 15/P/02364 is dated 11 December 2015.
- The application sought planning permission for the use of land for the stationing of caravans for residential purposes for 1 No. gypsy pitch together with a utility/dayroom ancillary to that use granted planning permission for a limited period ref 13/P/00825, dated 22 October 2013.
- The permission is subject to a condition requiring the cessation of the use on or before 22 October 2016.
- The reason given for the condition is: *'In granting this permission regard has been had to the special circumstances of the case, in accordance with the following policy numbers RE2 and H13 of the Guildford Borough Local Plan 2003 (as saved by CLG Direction on 24/09/2007) and Planning Policy for Traveller Sites'*.

**Summary of Decision: The appeal is allowed and temporary planning permission is granted subject to conditions in the terms set out below in the formal decision.**

---

### **Appeal C Ref: APP/C/17/3170046**

- The appeal is made under section 174 of the Act.
- The enforcement notice was issued on 3 February 2017 [the 'notice'].
- The breach of planning control alleged in the notice is failure to comply with conditions No. 3 of planning permission refs 10/P/00507 granted on 14 June 2011 by appeal ref APP/Y3615/A/12/2140630 and condition no. 3) of a planning permission granted on 22 October 2013 by ref 13/P/00825.
- The developments to which the permissions relate is the use of the land for the stationing of caravans for residential purposes for 1 gypsy pitch, with ancillary utility/day room.
- The condition in question is No. 3 imposed on planning permission ref 10/P/00507, which states that: *'The use hereby permitted shall be for a limited period being the period of 5 years from the date of this permission. At the end of that period, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought onto the land in connection with the use, including the utility/dayroom hereby approved, shall be removed. Within 6 months of that time the land shall be restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority'*. The notice alleges that the condition has not been complied with in that the land continues to be used for the stationing of caravans.
- The condition in question is No. 3 imposed on planning permission ref 13/P/00825, which states that: *'The use hereby permitted shall be for a limited period being the period of three years from the date of this permission. At the end of that period, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought onto the land in connection with the use, including the utility/dayroom hereby approved, shall be removed. Within 6 months of that time the land shall be restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority'*. The notice alleges that the condition has not been complied with in that the land continues to be used for the stationing of caravans.
- The requirements of the notice are to:
  - (1) Cease the use of the land for the stationing of caravans for residential purposes and all associated uses permitted under the temporary permissions,
  - (2) Remove all caravans (and associated domestic paraphernalia), structures, materials, equipment, machinery, apparatus and vehicles brought onto the land in connection with the temporary permissions,
  - (3) Remove any utility/dayrooms erected pursuant to the temporary permissions,
  - (4) To remove any hardstandings and/or materials deposited on the land in connection with the temporary permissions, and
  - (5) Restore the land to its previous condition for the avoidance of doubt this requires you to reinstate the land to a condition suitable for equestrian/agricultural use.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

**Summary of Decision: The appeal is dismissed and the enforcement notice upheld subject to corrections in the terms set out below in the formal decision.**

---

### **Procedural matters**

1. For reasons that will become clearer later, I will evaluate the section (s) 78 Appeal A and B first and then Appeal C.
2. The second reason for refusing the applications for planning permission relates to the absence of a planning obligation to provide a financial contribution to mitigate potential harm caused by the residential use to the Thames Basin Heaths Special Protection Area. The site is located within the 400 metre – 5 km buffer zone.

3. A completed unilateral undertaking (UU) has been submitted which binds the appellant, Mr Searle, in making financial contributions towards a mitigation scheme. The UU is necessary to make the development acceptable in planning terms; directly relates to the development permitted and is fairly and reasonably related in scale and kind to the development. On that basis, the LPA did not pursue this matter. I will proceed on that basis. In Appeal C, there are few matters relating to the notice which I will examine later.
4. After the Hearing, additional comment was invited within certain timescales on matters relating to the level of current and future need for additional gypsy and traveller pitches. I am grateful for all of these representations which shall be taken into account.

### **Appeals A and B – the s78 appeals**

#### *The site and history, the nature of the proposals, and gypsy and traveller status*

5. The site is located in the designated Green Belt. It is a large rectangular plot adjoining an access. It meets Green Lane East, which is a single carriageway and links with Westwood Lane. These highways have frontage dwellings located on both sides. Mr Searle's land is defined by tall coniferous vegetation and there is a paddock. Along the access lane, the frontage has a tall fence and gates. The surrounding area comprises a loose-knit residential area with dwellings situated in reasonably sized plots. There are two houses located in proximity to the site.
6. On 14 June 2011, planning permission for a residential caravan site was granted on appeal<sup>1</sup>, subject to condition 3) limiting its duration to five years (the 2011 decision). On 22 October 2013 the LPA granted permission for similar type of development on adjacent land subject to a condition limiting the duration to three years [the '2013 permission']<sup>2</sup>. The entire land is owned by Mr Searle and Plot A and B are occupied by his family. There are two pitches each with a static caravan and space for a touring caravan. There is an amenity building on each pitch.
7. The 2011 decision records the inappropriate nature of the development within the Green Belt. She found that a permanent planning permission was not appropriate but temporary permission was justified pending the identification of alternative sites. In view of the timetable for preparation of the local plan and the delivery of alternative sites, she opined that a three-year temporary period should be appropriate. Whilst the findings of the previous Inspector are material and there is a need for consistency in the planning process, I am not bound to reach the same conclusions provided there are sound planning reasons for departing from her approach.
8. Mr Searle submitted two separate applications for planning permission for removal of condition 3) imposed on the 2011 and 2013 permission before the temporary period expired. He seeks a permanent planning permission in respect of Plot A and B. Alternatively, I am asked to consider a temporary planning permission.
9. There is agreement between the appeal Parties that the occupants of both pitches are Romany Gypsies and that status was accepted in the 2011 appeal decision. *Planning policy for traveller sites 2015 (PPTS)*, at Annex 1, changes the planning policy definition of *gypsies and travellers*. In respect of Mr Searle and occupiers of the site, the evidence presented satisfactorily shows a travelling lifestyle that is nomadic in character. All of the occupants have a clear cultural and family history

---

<sup>1</sup> Appeal ref: 2140630 and Council ref: 10/P/00507.

<sup>2</sup> Council ref: 13/P/00825 condition 3).

of travelling. This lifestyle was, and remains, for the purposes of work and for attending the traditional gypsy fairs, indeed sometimes often attending fairs and seeking work would coincide. There was no suggestion that either intended to give up travelling. Mr Searle and his family want a settled base from which to travel. I have no reason to take a different approach to status.

10. The Guildford Borough Local Plan was adopted January 2003 and certain policies were saved by Direction of the Secretary of State in 2007 (the LP). Policy H13 has been identified as relevant to the consideration of these Appeals, because it sets out criteria for gypsy caravan sites. Policy RE2 relates to development within the Green Belt. The latter does not specifically refer to material change of use. While the phraseology does not reflect national policy found in the National Planning Policy Framework (the NPPF) or the PPTS, I find no significant conflict<sup>3</sup>.
11. The Guildford Borough Local Plan Local Development Scheme 2017 sets out a timetable and project plan for the new Local Plan. The latter will comprise the Local Plan Strategy and Sites, which will set out the spatial objectives and all development sites up to 2033. The timetable indicates it will be submitted for examination to the Secretary of State in December 2017 and adoption is programmed by December 2018. A second element of the new Local Plan, Development Management Policies, is programmed for preparation during 2018 and adoption is planned in December 2020. The emerging Local Plan is yet to be scrutinised and might change in the future. I concur with the parties that it carries limited weight in the context of these Appeals<sup>4</sup>.

### **Main issue**

12. The NPPF, paragraphs 89 – 90, sets out policy for assessing proposals inside the Green Belt. Paragraph 88 indicates any Green Belt harm attracts substantial weight. PPTS, Policy E, describe material changes of use of land to traveller sites in the Green Belt as inappropriate development. The Parties agree that the change in the use of the site amounts to inappropriate development inside the Green Belt which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
13. Against all of that background, the common main issue is whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and, if so, whether very special circumstances exist to justify the development. An assessment of the following matters is necessary in order to address the main issue: 1) The effect of the development upon the openness and purposes of the Green Belt; 2) The level of current and future need and existing provision; 3) The availability, or lack of, alternative accommodation taking account of whether there is a supply of specific deliverable sites and the policy response to address any under-provision of traveller sites in the district and 4) To what extent the personal circumstances and human rights of the residents contribute to the need for the development.

### **Reasons - Openness and purposes**

14. Although there is residential development nearby, the site is a flat area of land located within a mainly agricultural landscape. Plot A and B are roughly rectangular in shape and the residential caravan site extends over a significant part of the site. The introduction of static mobile homes and touring caravans

---

<sup>3</sup> NPPF paragraph 215 applied.

<sup>4</sup> NPPF paragraph 216 applied.

combined with all of the trappings associated with residential living diminishes the open aspect of this part of the Green Belt. The location and introduction of caravans with all attendant features, such as dayrooms and domestic paraphernalia, inevitably result in loss of openness. All of these features are in stark contrast to the generally open nature of the site and rural landscape. An essential characteristic of Green Belts is their openness and permanence, which I consider has been appreciably eroded due to the extent of the residential caravan site.

15. Theoretically, at least, the static caravans could be moved on or off the site. In practice, mobile homes would remain on the land for considerable period of time because they sustain the residential use; moving static caravans on and off the site requires special apparatus. The tops of the caravans protrude above physical boundary treatments like the fence, because of their overall height. In addition the caravan site has, and would, introduce comings and goings and parking of vehicles in the open which, in turn, cause harm to the visual amenities of the Green Belt.
16. In this location, the caravan site represents encroachment into the countryside and conflicts with the fundamental aim of Green Belt policy, which is to prevent urban sprawl by keeping land permanently open. I consider that the loss in openness is significant and the proposal would fail to meet with purposes of including land inside the Green Belt. There is therefore conflict with the aims of Green Belt protection policies set out in LP RE2 and H13, NPPF paragraphs 79 and 80.

#### Other considerations<sup>5</sup>

17. The level of need should be considered generally and separately of the personal need of the occupiers of the site. Although the evidence focused on Guildford district, I agree with the Parties that there is a national and regional need for gypsy and traveller pitches. However, the duty<sup>6</sup> upon the Council as a local housing authority is, amongst other things, to assess the needs of people residing in or resorting to their district with respect to the provision of sites on which caravans can be stationed and places on inland waterways where houseboats can be moored.
18. For planning purposes, the PPTS has policies on making such assessments and collating an evidence base for plan-making and planning for sites providing for gypsies and travellers who meet the policy definition set out in Annex 1. The policy requires a robust evidence base to establish accommodation needs to inform the preparation of local plans and make decisions; set pitch targets for travellers; identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against locally set targets. There is agreement that there is no up-to-date development plan policy that has a pitch target, that identifies a five years' supply of deliverable sites, or which makes provision for caravan dwellers in general. These issues will be addressed in the new Local Plan.
19. The change in the PPTS definition meant an up-to-date assessment of the level of need was required to inform the decision and local plan making process. The current and future need for traveller sites as well as demand and supply is to be

---

<sup>5</sup> The following arguments are advanced by Mr Searle as considerations that might weigh in favour of the appeal schemes.

<sup>6</sup> The relevant statutory provision is found in the Housing and Planning Act 2016.



found in the *Gypsy and Traveller Accommodation Assessment* June 2017 (the 'GTAA'). Establishing gypsy status usually has been carried out at the point of decision-making, which normally involves a balance of judgement or requiring a lot of detailed information on travelling patterns, past and future intentions and so on. It should be borne in mind that gypsy status for planning purposes may change over time; indeed, the policy definition may change over time. So, in order to update the previous assessment in the light of the recent definition change, a major element of the research that led to the production of the GTAA was a survey of the local traveller community between 16 and 27 January 2017, which is the base date. The results of the surveys have been used to determine the status of each household against the new policy definition<sup>7</sup>.

20. About 122 households were identified of which 121 were interviewed mainly made up of 26 households on public sites, 53 on private sites and 25 living in bricks-and-mortar housing. The GTAA, at table 4 page 22, illustrates the response rate although officers recognise that not all households have actually been surveyed. Mr Green believes that the assessment should not seek to split gypsies and travellers up into those that do and those that do not meet the PPTS definition because, he argues, that is the only sensible and practical way to assess the need of caravan dwellers. However, the GTAA has to be prepared, and operate, within a statutory and policy framework. I consider that the approach of identifying travellers who meet the PPTS definition, those who are 'unknown' households<sup>8</sup> and households who do not meet the definition is reasonable and appropriate.
21. Essentially, the GTAA concludes that there is a need for two additional pitches for travellers meeting the planning definition over the next five-year period. It states that the needs of those who do not meet the definition should be determined within the context of general housing. The assessment has identified the need for 27 pitches for households not meeting the definition over the same period. It finds that up to three pitches for travellers of unknown planning status over the same period should be identified.
22. For the duration of the emerging Local Plan period, it identifies the need for four traveller pitches meeting the definition but a separate general accommodation need for 41 pitches for the settled gypsy and traveller households who do not meet the definition and a potential additional need for up to eight pitches for those travellers falling within the 'unknown' status. The authority acknowledges that the total number of pitches is lower than the previous assessment in comparison. The superseded assessment identified the need for 73 pitches from 2012 to 2027. Since 2012, planning permission for a total of 24 traveller pitches has been granted; 11 of these are public pitches and 13 are private pitches. The authority seeks to meet the identified need over the plan period via the emerging Local Plan strategy and sites document, which identifies sites for pitches.
23. Policy H1, homes for all, of the draft Local Plan outlines the approach towards the provision of traveller pitches. The wording proposed suggests development sites of 500 or more homes to provide pitches or plots. The authority argues that, as of May 2017, sufficient sites have been allocated within the proposed submission to meet the needs of travellers as defined by PPTS and identified within the GTAA; including a supply of deliverable sites in the next five years. In addition, the Local Plan also allocates sites to meet the assessed needs of unknown households and

---

<sup>7</sup> Section 3.0 to the GTAA explains level of engagement with the local gypsy and traveller community.

<sup>8</sup> Households who either refused to take part in the survey or were not contactable at the date of the fieldwork.

travellers who do not meet the PPTS definition. It should however be borne in mind that the Local Plan is yet to be examined.

24. Mr Green has strong reservations about the findings on current need. His analysis suggests that there should be a minimum of 129 pitches by 2022. Taking into account current supply of 79 pitches, there is a need for 50 pitches within the next five years, and a further 21 pitches over the emerging Local Plan period. I will confine my consideration to areas of disagreement.
25. A total of 25 interviews were completed with residents in bricks-and-mortar accommodation, but officers conceded this does not reflect the actual number of households. The GTAA finds none of the travellers living in housing met the planning definition. It has identified 12 households in need of a pitch, but Mr Green's analysis suggests a permanent site is sought by about 19 households. Travellers can be a hard-to-reach section of the community. Evidently, effort has been made to make contact with households living in bricks-and-mortar. Nevertheless, a greater level of engagement is required given the potential implication upon the figures. The accommodation needs of those households living in bricks-and-mortar needs to be thoroughly assessed and evaluated. There may well be some unidentified households who require a pitch and satisfy the PPTS definition. I consider that there is a possibility that those residing in housing have not yet been properly identified and interviewed, which is unfortunate and a shortcoming as they make up a large section of the local traveller population.
26. The GTAA recognises many temporary planning permissions for pitches have been granted on sites where there is an in principle objection. There are 11 pitches with temporary planning permission due to expire within the next five-year period; permission for four pitches has already expired. It remains unclear whether all sites have been properly considered as there is confusion about the number of households at The Paddocks. There is a lack of clarity regarding the need for additional pitches arising from households residing on sites with temporary planning permission. I take the view that the level of need arising from these households is yet to be adequately and satisfactorily assessed.
27. Mr Searle says he was not interviewed by the authority's representatives, but his daughter was questioned. On the basis of her responses, the GTAA identified all of the site occupants as non-travellers. The LPA concede that, had all of the evidence about occupants' travelling habits and lifestyle been made available, occupants would have met the PPTS definition. Three households' accommodation needs have not been properly accounted for and Mr Jarman acknowledged that the GTAA figures would need to be revised. I accept that it would be down to individuals to demonstrate compliance with the PPTS definition, but there may well be other households in similar circumstances. This creates a possibility that the methodology applied has not correctly identified all potential households and their accommodation needs have not been satisfactorily surveyed. To me, this casts considerable doubt over the veracity of the LPA's claim that the GTAA properly accounts for concealed, doubled-up or hidden households.
28. The demand for future pitches is recorded as three between 2017 and 2022 arising from those households who do not meet the PPTS definition. A zero requirement is set for those who meet the definition and those who have an unknown status. Mr Green is very critical of the growth rate applied. He suggests the 1.5% growth rate is too low and suggests a 10.11% rate for the first five years reducing to 8.69% and 6.87% over the Local Plan period.

29. There is significant debate about household formation rates and the need to meet future growth in the district. The obvious point to make is that this issue is likely to be debated at the local-plan examination. In my opinion, projecting growth rates is not an exact science and the debate demonstrates some divergence of opinion between the experts. Different methodologies could be applied producing a wide range of data. However, on the available evidence it seems to me that the figures used in the GTAA are probably appropriate given that they are derived by using local demographic evidence. In my opinion, the use of a national growth rate and its adaptation to suit local or regional variation, or the use of local base data to refine the figure, is a reasonable approach.
30. Contrary to the LPA, the evidence presented highlights some anomalies and inaccuracies that require further clarification and additional revision and research. That said, however, the robustness of the GTAA will be subjected to examination via the local plan-making process. The matters raised by Mr Green can be thoroughly assessed before an independent local plan Inspector. While there is a question mark over the robustness of the research, the assertion that it is fundamentally flawed can be properly aired, discussed and considered at the public examination.
31. For the purposes of this appeal and this particular case, despite my findings above, the GTAA is the single indicator of current and future need right now. It shows that the pitch requirement to meet the needs of those who meet the PPTS definition is small in scale. Nevertheless, it should be borne in mind that the number of pitches required for those who do not meet the planning definition and unknown households is significant and should not be overlooked as they account for a large component of the local traveller population.

*Failure of the Development Plan & emerging policy*

32. The previous Inspector observed that for various reasons, the authority has made disappointingly slow progress on its Local Development Plan. It was suggested that the Core Strategy is expected to be adopted in 2014 or 2015. The Council was confident that by 2016 new sites will have been allocated and additional pitches made available but this has not come to fruition. Mr Green claims there has been a stark failure of local plan policy and there is no guarantee sites will be identified for private and small-scale developments because of the poor track record in delivering sites. He maintains that the underestimation of need goes to the heart of a failure of policy. He contends that the emerging Local Plan would not meet the requirements of the travelling community, and the proposed plan policies would be based on an inaccurate assessment of need. The spatial vision is to deliver about 58 permanent pitches and plots for travellers between 2017 and 2034 but it remains unclear as to the robustness of the evidence base. Draft policy H1, homes for all, suggests sufficient sites will be provided on a number of small and large sites to create a mix of communities.
33. I have reviewed all of the issues raised by Mr Green but these are matters that would be more appropriately considered through a Local Plan examination. The new Local Plan is under preparation and is yet to be tested in public examination. It is intended to address requirements of the PPTS and deliver sites in a planned and co-ordinated manner. That said, I have not lost sight of the fact that there has been some slippage in the programme and there is no five-year supply of deliverable sites. It appears to me that in the past the authority has not fully responded to the requirements of Government policy and guidance in relation to the provision of gypsy and traveller sites. But circumstances have now changed;



the NPPF and PPTS provide a very strong incentive to allocate sites via the plan-making process. The LPA is now proactively seeking to address identified shortcomings. Even if it reacted slowly to the accommodation needs of travellers in its area before, I consider that a realistic timetable has now been established and sites are likely to come forward in the near future.

#### *Alternative sites*

34. The availability or lack of alternative accommodation is a relevant consideration. To be a realistic alternative, accommodation has to be suitable, affordable, available and acceptable; it is reasonable to consider whether alternative accommodation is suitable. Evaluation of alternatives can involve considerations of the particular needs of the occupants, requirements and financial resources and the rights of the local community to environmental protection.
35. The two public traveller sites at Ash Bridge and Cobbetts Close are full and there is a waiting list. The intention is to develop additional six pitches but these are yet to be developed. The PPTS requires LPAs, in producing their Local Plan, to identify and update annually, a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set targets. There is still a deficiency in that the authority cannot demonstrate a five-year supply in respect of traveller sites. That said, however, the LPA indicates that these matters are likely to be addressed in the very near future given the progress made so far with the new Local Plan which is likely to be adopted in 2018.
36. Mr Searle and occupants' need for traveller pitches in the district is undisputed, due to an aversion to bricks-and-mortar accommodation he cannot move in with his current partner who lives in rented accommodation. There is no alternative public site and there is also no privately owned land on which applications could be made right now. As things stand there is no suitable alternative accommodation available and so there is a real possibility that, should the families be required to move given the pending enforcement action, occupants of this site would be in immediate need of accommodation. There is no indication that alternative accommodation would be available to address that need in the short or medium term. There are currently no vacant pitches which would meet the occupiers' needs in the district and I have not been made aware of any in adjoining districts. I consider there is a real possibility Mr Searle would resort to unauthorised roadside encampment or double-up on pitches occupied by extended family.

*The likely location of any new site, if and when they become available, is on land designated as the Green Belt*

37. Some 89% of the district is designated as Green Belt land. There is, therefore, a high probability that any new sites allocated by the authority will be in the Green Belt. The location of the appeal site, whilst not ideal, has to be considered in that context. Mr Green's submission is that if Mr Searle was not seeking use of this Green Belt site, it would be quite likely to be another site inside the Green Belt, given that the spatial constraints. PPTS, paragraph 17, states that Green Belt boundaries should be altered only in exceptional circumstances via a plan-led approach; not in response to a planning application. Any alteration to Green Belt boundaries to accommodate traveller sites, or any other development, should be carried out as part of the plan-making process with all available sites being considered. That approach would meet the Government's objectives of delivering sustainable development in a planned and co-ordinated manner. Whilst this

application does not seek alteration of any Green Belt boundary, the effect of a permanent planning permission would be similar.

*Personal circumstances<sup>9</sup>, best interests of children and Human Rights*

38. The domestic arrangements are detailed in the 2011 decision. Mr Searle needs a permanent pitch which would allow the family to function as a unit. The personal circumstances and dependence upon various local services has been explored and explained in a precise and clear manner. I received a range of detailed written and oral evidence relating to the occupants and their medical and educational needs. The LPA do not dispute the nature of the particular circumstances appertaining to this family. I have heard and read sufficient evidence to satisfy me of the validity of these claims.
39. The best interests of children are a primary consideration<sup>10</sup>. It is, and would be, in the best interest of the children to continue to have access to health services and education from a settled base. It would be preferable for those facilities to be the same that they access at present and are familiar with. However, it is not uncommon for families to move home from time-to-time. It is not that unusual for people to change health providers as a consequence of moving home.
40. The evidence presented does not show that it is necessary to access health and education facilities from this site. However, having regard to the particular domestic circumstances in this case, I consider that the aims of safeguarding the interests of the children who require a safe and secure home as well as a stable family life would be best met if Mr Searle has access to a permanent site instead of a roadside existence, which is unlikely to be conducive to the long-term wellbeing of the children involved in this case.
41. Mr Searle and occupants' rights including those of the children, under Article 8 of the European Convention on Human Rights<sup>11</sup>, must be taken into consideration. This includes not only respect for their home but also their private and family life and their traditional gypsy lifestyle. The dismissal of planning permission could result in occupiers being evicted. Interference with their home, private and family life is therefore serious but must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8. In this location, the inappropriate nature of the development represents a grave land-use objection. There is a need for restrictive policies to be applied to such areas, and this restriction is an appropriate proportional response to that need.
42. There is no alternative site presently suitable or available for occupation in the district, or indeed, the wider area. The lack of available alternative suitable accommodation makes the interference more serious and, as indicated above, given that background, it would be in the best interests of the children for Mr Searle to remain on the site. This is a primary consideration in the assessment required by Article 8. It is necessary to consider whether it would be proportionate to refuse planning permission in all the circumstances of this case. I shall consider

<sup>9</sup> Personal circumstances will be relevant if a planning permission for general gypsy and traveller site is unacceptable.

<sup>10</sup> The Planning Practice Guidance (PPG) [Ref 21b-028-2015091] states that; *Local authorities need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, they will want to ensure their approach is proportionate. They need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community. This will include considering the scope to mitigate any potential harm through non-planning measures, for example through intervention or extra support for the family through social, health and education services.*

<sup>11</sup> The ECHR protections have been codified into UK law by the Human Rights Act 1998.

later whether refusal would have a disproportionate effect on the occupiers of the site.

### *Other matters*

43. The Parish Council and local residents have some concern about the amount of traveller sites in the area. However, there is nothing before me to indicate that the scale of the development dominates the settled community when considered on its own or cumulatively. I note that the PPTS, at paragraph 25, encourages traveller sites should be very strictly limited in open countryside that is away from existing settlements or outside areas allocated in the development plan. The site is situated on the outskirts of Flexford which includes limited amount of local facilities. Guildford is a short journey away and is accessible by public transport. In my assessment, the site is located within reasonable distance to local facilities. Additionally, the limited scale of the development is unlikely to have adverse effect upon wildlife and local infrastructure, highway safety as well as neighbours' living conditions. These matters have a neutral effect in the planning balance.

### ***The planning balance***

44. I find that the development has harmful implications for the Green Belt in terms of inappropriateness, erosion of openness and encroachment into the countryside: this is a serious planning objection. In accordance with national policy, such harm carries substantial weight. Accordingly, there is conflict with the Green Belt protection objectives found in the NPPF and PPTS, and LP policy RE2 and H13.
45. On the other side of the scales, there would be some social and economic benefits from a settled base and there is deficiency in that there is no up-to-date five year supply of deliverable traveller sites. This should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. However, as paragraph 27 to the PPTS points out, the exception is where the proposal is on land designated as Green Belt, such as this site.
46. The PPTS sets out the Government's policy 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. That said, there is a national and regional need for traveller sites, which should be provided in a planned and co-ordinated manner. There is unmet need for additional pitches arising from households who meet the PPTS definition and those who do not satisfy the planning policy definition. However, since all of the travelling community has not been properly identified and surveyed there is, in my mind, a huge question mark over the veracity of the GTAA's findings. I therefore attach limited weight to this factor.
47. Steps are now being taken to address past shortcomings via the local plan-making process. The LPA rely on national policy and a new Local Plan is programmed for adoption in 2018; the NPPF and PPTS provide real incentives to expedite the local plan-making and adoption process. It appears to me that the authority will proceed expeditiously in adopting a new Local Plan; the recent threat by the Ministry of direct action where local-plan making is unjustifiably slow will also act as an incentive to deliver. I attach little weight to arguments about a failure of policy and the future location of traveller sites in the designated Green Belt.
48. I have not lost sight of the fact that there is no other site available at the current time and there is deficiency in the supply of deliverable sites. If Mr Searle and his

family are forced to leave the site now, it is likely they would either double-up on other pitches or resort to living on an unauthorised roadside encampment. This is a realistic prospect given the action taken thus far by the enforcement authority; nonetheless, it remains unclear as to what steps Mr Searle undertook in finding suitable accommodation and I attach this factor modest weight in favour.

49. Accessing educational and health facilities from a settled base is much easier compared to an existence on the roadside. These facilities do not necessarily have to be accessed from this particular site, but there is no suggestion of an alternative suitable available site. Personal circumstances carry significant weight in favour. Of primary importance are the best interests of the children which are aligned to the adults' interests. However, as the PPG makes clear, these interests do not always outweigh other considerations. The best interests of the children involved would clearly be served if the family has a settled base..
50. Interference with a person's right to respect for his private and family life and the home may be justified in the public interest. In this case, the interference would be in accordance with the law provided that planning policy and relevant statutory duties are appropriately and lawfully applied. The interference would be in pursuit of a legitimate aim – the economic well-being of the country, which encompasses the protection of the environment through the regulation of land use. The means that would impair individual rights must be no more than necessary to accomplish that objective.
51. There is evidence of close family ties and support provided to each other given the current domestic arrangements. The site enables Mr Searle and his family to follow a traditional traveller lifestyle. Eviction from this site may well result in a roadside existence, or unauthorised doubling-up thereby putting pressure elsewhere, and potentially cause hardship and have adverse consequences for welfare. On the other hand, regulation of the land-use is in accordance with the statutory framework. More specifically importance is attached to protecting the Green Belt both at national and local level. An essential characteristic is its permanence and openness.
52. The occupants are Romany Gypsies and are persons who share a protected characteristic for the purposes of the Equality Act 2010. I have borne in mind the need to eliminate discrimination; advance equality or opportunity between persons who share a relevant protected characteristic and persons who do not share it, and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. I have taken into account their need for a settled base and the present lack of a suitable available alternative site. The deliberations above suggest that the level of current and future need for traveller site provision requires further refinement and testing via the local-plan making process.
53. A lack of success in the appeal would cause disruption to home and family life. Greater weight is attached to the best interests of children. Interference is serious given the absence of an available suitable alternative right now. However, given the nature of the development, permanent long term provision should be plan-led in the wider community interest. I have considered the possibility of granting a permanent planning permission personal to Mr Searle given his circumstances, however, I find that the legitimate aim of protecting the environment in the public interest has very substantial weight and in this case, interference with the Convention Rights is necessary and proportionate.

54. Voluminous appeal decisions and court judgements have been submitted. The case in favour of planning permission has been forcefully put; the case against is also strong. In my planning judgement, the advanced considerations in support of Appeal A and B, whether taken individually or cumulatively, do not, on balance, clearly outweigh the identified harms. I therefore find permanent planning permission is unjustified. I next turn to considering a temporary permission.

### ***Temporary planning permission***

55. It should be borne in mind that the material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. The latter might be appropriate where planning circumstances will change in a particular way at the end of that period. The totality of harm to the Green Belt is substantial. Although it would be reduced were it for only a limited period, the PPTS states that even temporary traveller sites are inappropriate development in the Green Belt which, again, should only be granted permission on the basis of very special circumstances.
56. Mr Searle asserts that temporary planning permission is required for five years. This is because of a lack of progress relating to the new Local Plan, the likelihood of alternative sites coming forward and delivered within that period. He maintains that the 2011 Inspector found alternative site provision to meet current and future need would come forward within 4/5 years, but none have actually materialised. It is submitted that a longer period would give sufficient time to allow for the examination of alternative site options, address the need for additional pitches and identify a five-year deliverable supply of sites. The argument is that five-years would allow for the possibility of the provision of a gypsy site through the grant of planning permission once suitable sites have been identified.
57. However the NPPF and PPTS provide a very strong and considerable incentive to proceed quickly with site allocations in a planned and coordinated manner. I consider that the discussion at the Hearing was persuasive and the authority is now responding to shortcomings. Action is being taken to address the needs of travellers via the local plan-making process. On this occasion, it is serious and proactively taking steps to address the needs of travellers in its administrative area. The possibility of planning circumstances changing appears realistic and relate to the potential adoption of a new Local Plan in the very near future. There is a timetable for change at a local level. I consider that a shorter period of three years is therefore reasonable.
58. The PPG states that it will rarely be justifiable to grant a second temporary permission - further permissions should normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning permission should be granted permanently. Having regard to all of the evidence presented on this topic and the particular circumstances in this case including domestic circumstances and the lack of alternative site available right now, thus forcing occupants to a roadside existence or seeking alternative accommodation on other pitches in the area, I am of the firm opinion that a three year temporary planning permission is justified as local planning circumstances are likely to change at the end of that period in a particular way.
59. Additionally, temporary permission would give Mr Searle and the occupants a base from which they can access health and educational facilities. It is in the best interests of the children to allow the occupants to remain on the site for a limited



period while attempts are made to find a suitable permanent site with planning permission. I am satisfied that this would be a proportionate approach to the legitimate aim of protecting the environment, and it would have no greater impact on the occupiers than would be necessary to address the wider public interest.

60. On the particular circumstances and facts of this case, it is concluded that the points raised in support of Appeal A and B, including best interests of the children, are sufficient to clearly outweigh the harm identified so that very special circumstances exist, provided that the use is limited to a period of three years from the date of my decision.

### **Appeals A and B - conditions**

61. In the interests of visual amenity, there is a need to control the nature, site layout, scale of development and commercial activity. Bearing in mind the need to allow sufficient time to find an alternative site with planning permission and the local planning process to take its course, three years is justified. A restoration scheme would need to be agreed with the LPA. It is necessary to limit occupancy to those who satisfy the planning policy definition, or its equivalent in replacement national policy that is in force, because I have placed weight on status. In a similar vein, the evidence before me includes extensive information about domestic arrangements; it is the personal circumstances that are pivotal in justifying a grant of a temporary planning permission. The conditions imposed are reasonable, enforceable and relevant to the development permitted. They meet the necessary statutory and policy tests<sup>12</sup>.

### **Appeal C - the s 174 appeal**

62. Mr Green questioned the validity of the notice because it was unclear whether constitutional procedures had been followed. Sufficient evidence was presented at the Hearing. On the balance of probabilities, I am satisfied that the evidence demonstrates that when the notice was actually issued, Mr Tim Dawes, as a Planning Development Manager employed by the LPA, had proper authority to exercise the issuing of the document.
63. It is apparent that the site plan attached to the issued notice is incorrect. It covers the entire land owned by Mr Searle. The residential use is actually taking place on the cross-hatched area shown on the site plan attached to this decision, which benefits from temporary planning permissions granted in 2011 and 2013. The notice identifies the occupied land and sensibly describes the breach of planning controls. The Parties agreed with me that the notice can require the cessation of the residential use and removal of caravans as set out in step (1) and (2) to section 5. Mr Searle was under no illusion as to what is alleged and required. I consider that the notice, as corrected, would not be any more onerous than first issued. I am satisfied that no injustice is caused to any party if the notice is corrected and varied<sup>13</sup>, which I will do.

### **Ground (b)**

64. The site was in use for residential purposes during the period leading up to the issuing of the notice. Caravans and domestic paraphernalia as well as features usually found in this type of development existed at the time of my site visit. At the date the notice was actually issued, the residential caravan site existed in

---

<sup>12</sup> The case *R v Coventry City Council Ex p. Arrowcroft Group plc* [2001] P.L.C.R. 7, as well as the commentary in the Encyclopedia of Planning Law and Practice, at P73.05 and 06, was referred to by the Parties.

<sup>13</sup> Section 176(1) of the Act applied.

breach of condition 3) imposed on planning permissions granted in 2011 and 2013 respectively. The matters described in the corrected notice in fact occurred. Ground (b) must therefore fail.

### **Ground (g)**

65. Extending the period of compliance to two years, as suggested by Mr Green, would undermine the urgency of seeking an alternative site. The period specified on the notice is reasonable and proportionate given the notice's requirements as varied. In my assessment, this period would strike a fair balance between the competing interests of the wider public and individuals involved in this case. I am content that there would be no violation of the rights of the occupiers under Article 8 of the Human Rights Act. Therefore, ground (g) fails.

### **Appeals A, B and C - overall conclusions**

66. For the reasons given above and having regard to all other matters, I conclude that the Appeals A and B should be allowed for a limited period of three years. In Appeal C, I conclude that the appeal should not succeed. The enforcement notice will be upheld subject to correction and variations. The notice will remain extant. To the extent that the planning permissions granted by virtue of the s78 Appeals are inconsistent with the terms of the notice, s180 of the Act<sup>14</sup> will ensure that the former prevails.

### **Formal decisions - Appeal A Ref: APP/W/16/3165526**

67. The appeal is allowed and planning permission is granted for the use of land for the stationing of caravans for residential purposes for 1 no. gypsy pitch together with a utility/dayroom ancillary to that use at land to the north of Green Lane East, Flexford, Normandy GU3 2JL in accordance with the application Ref 15/P/06/02363, dated 11 December 2015, without compliance with condition number 3) previously imposed on planning permission Ref 10/P/00507, dated 14 June 2011, and subject to the following conditions:

- 1) The use hereby permitted shall be carried on only by the following individuals: John Searle (senior) and John Searle (junior) and their dependants, and shall be for a limited period being the period of three (3) years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the premises cease to be occupied by those named in condition 1) above, or at the end of three (3) years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 3) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 4) There shall be no more than one pitch on the site and on the pitch hereby approved no more than two (2) caravans shall be stationed at any time of which only one (1) caravan shall be a static caravan.

---

<sup>14</sup> Where a planning permission is subsequently granted for the same development, or for some part of it, the permission overrides the Notice to the extent that its requirements are inconsistent with the planning permission, but the Notice does not cease to have effect altogether.

- 5) The caravans shall be sited in accordance with plan no. 09\_319B\_001.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 7) No commercial activities shall take place on the land, including the storage of materials.

**Appeal B Ref: APP/ W/16/3165528**

68. The appeal is allowed and planning permission is granted for the use of land for the stationing of caravans for residential purposes for 1 no. gypsy pitch together with a utility/dayroom ancillary to that use at land to the north of Green Lane East, Flexford, Normandy GU3 2JL in accordance with the application Ref 15/P/02364, dated 11 December 2015, without compliance with condition number 3) previously imposed on planning permission Ref 13/P/00825, dated 22 October 2013, and subject to the following conditions:

- 1) The use hereby permitted shall be carried on only by the following individuals: Jade Searle and her dependants, and shall be for a limited period being the period of three (3) years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the premises cease to be occupied by those named in condition 1) above, or at the end of three (3) years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 3) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 4) There shall be no more than one pitch on the site and on the pitch hereby approved no more than two (2) caravans shall be stationed at any time of which only one (1) caravan shall be a static caravan.
- 5) The caravans shall be sited in accordance with plan no. 09\_319C\_001.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 7) No commercial activities shall take place on the land, including the storage of materials.

**Appeal C Ref: APP/C/17/3170046**

69. It is directed that the enforcement notice be corrected by:

- 1) The deletion of the site plan attached to the issued enforcement notice and substitution therefor by the site plan attached to this decision.
- 2) The deletion of all of the text in section 2, the land to which the notice relates, and substitution therefor by the following text: *Land at the Pines and land to the north of Green Lane East, Normandy, Guildford GU3 2JL shown edged in red and cross-hatched identified as Plot A and Plot B on the site plan attached to this decision.*

70. It is directed that the enforcement notice be varied by:

- 1) The deletion of all of the text in section 5, what you are required to do, subsection (1), and the substitution therefor by the following number and text: *(1) Cease the use of the land for residential purposes.*
- 2) The deletion of the following in section 5, what you are required to do, subsection (3), (4) and (5).

For the avoidance of doubt, the steps required to comply with the notice now state:

(1) Cease the use of the land for residential purposes and (2) Remove all caravans (and associated domestic paraphernalia), structures, materials, equipment, machinery, apparatus and vehicles brought on to the land.

71. Subject to the above corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

*A U Ghafoor*

Inspector







## Plan

This is the plan referred to in my decision dated:

**by Mr A U Ghafoor BSc (Hons) MA MRTPI**

**Land at the Pines and land to the north of Green Lane East, Normandy, Guildford GU3 2JL shown edged in red and cross-hatched on the site plan attached to this decision identified as Plot A and Plot B.**

**References: APP/C/17/3170046**

**Scale: Not to scale.**

