

## DELEGATED REPORT

REF No:	19/1451/FUL
SITE:	FORMER FIELD 3680, LEATHERHEAD ROAD, CHESSINGTON
WARD:	Chessington South

--

### PROPOSAL:

Demolition of stable building and change of use of land to a private Gypsy and Traveller caravan site, consisting of one mobile home and associated development.

Plan Type: Full Application

Expiry Date: 30/07/2019

### APPLICANT'S PLAN NOS:

Site Location	Received	02/02/2016

### PLANNING POLICY GUIDANCE/PLANNING POLICY STATEMENTS

DEVELOPMENT PLAN:	<p>Mayor for London          London Plan March 2015          LDF Core Strategy Adopted April 2012          Kingston Town Centre AAP 2008          National Planning Policy Framework 2019          National Planning Practice Guidance          Planning Policy for Traveller Sites 2015          Green Belt Protection and Intention Unauthorised Development Written Ministerial Statement 2015</p>
-------------------	---

### POLICIES

	LDF CORE STRATEGY CORE POLICIES
CS 03	The Natural and Green Environment
CS 08	Character, Heritage and Design
	LDF CORE STRATEGY DEVELOPMENT MANAGEMENT
DM05	Green Belt, Metropolitan Open Land (MOL)
DM09	Managing Vehicle Use for New Development
DM10	Design Requirements for New Developments
DM16	Gypsy and Traveller Sites

PREVIOUS RELEVANT HISTORY

01/02300/FUL	Erection of 25m 'dead tree' telecommunications mast with 6 panel antennas, equipment cabin and access track, (BT cellnet)	Refused 01/03/2002
03/10168/FUL	Demolition of existing buildings. Erection of 7 stables and hay barn. (Opposite Chessington Nurseries)	Permit 5 Year Condition and Conditions 19/09/2003
03/10433/FUL	Demolition of existing buildings on adjoining land. Erection of 7 stables and hay barn. Provision of 40 x 20m 'sand school' with post and rail fencing and car parking on land to north of British Gas Compound	Permit 5 Year Condition and Conditions 01/04/2005
14/10280/FUL	Demolition of existing stables and shed and erection of replacement stables, tack room and fencing.	Not proceeded with 22/01/2015
15/10076/FUL	Erection of stables, tack room and entrance gates, together with the retention of permeable hardstanding for the use of the site for the keeping of horses belonging to the applicant.	Permit with conditions 30/07/2015
16/10035/FUL	Change of use of land to mixed use comprising the keeping of horses and the stationing of a mobile home for residential purposes for 1 gypsy traveller family.	Refused 21/0719 Appeal. Dismissed 19/05/2017
18/10023/FUL	Change of use to provide 2.no mobile home units with detached drying rooms/utility blocks and associated parking for 2 gypsy families	Refused 25/4/2018
18/10025/LDE	Existing Caravan for use as dwelling for more than 10 years	Refused 21/3/2018

CONSULTATIONS

1. Neighbour notification: 82 properties along Fair Oak Lane, West Road Church Lane, Kingston Road and Leatherhead Road, were notified of the application. To date, 8 letters of objection have been received, along with 8 letters of support.
2. The letters of objection are summarised below:
  - The proposal would have a detrimental impact on the openness of the Green Belt.

- The proposal is unauthorised development
- Impact on highway safety, it is difficult for pedestrians to cross the road to access the site
- The proposal would result in extra traffic and pollution
- The proposal would result in a loss of value of properties
- The proposal would result in mess
- Would have an impact on views
- The site plan indicates that the applicant has control over a much larger parcel of land surrounding the application site. More mobile homes could be erected on the site and infindge the setting of Chessington Woods.

The letters of support is summarised below:

- the applicant and their family are nice people
- need support to keep their children in local schools that they have been settled into for many years
- The Council does not provide site or pitches for travellers
- The site is well kept
- Only 1 mobile home is proposed and is not causing any problems

3. Neighbourhood Traffic Engineer: No objection.

SITE AND SURROUNDINGS

4. The application relates to land on the eastern side of Leatherhead Road, opposite Chessington Garden Centre. The site is located within the Green Belt.
5. Planning permission was granted in July 2015 (ref:15/10076) for the erection of a tack room, stables, new entrance gates and the laying down of hardstanding, along with the change of use of the land for the keeping of horses.
6. The part of the site to which this application relates to measures 765 square metres. The eastern side of Leatherhead Road mainly comprises fields and further to the rear is Chessington Wood. Opposite the site (western side) is Chessington Garden Centre, which comprises many large single storey buildings. A large car park fronts Leatherhead Road. There are also car parks to the north of the site, which serves the Garden Centre.
7. The mobile home/caravan has been placed on the site. It is understood that it has been on the site since the 1st February 2016.

PROPOSAL

8. Planning permission is sought for the demolition of the existing stable amd change of use of land to a private Gypsy and Traveller caravan site, consisting of one mobile home and associated development.

9. The main considerations to be taken into account in assessing the application are the principle of the development, impact on the Green Belt, impact on the landscape, impact on highways, very special circumstances and impact on visual amenities.

**Principle**

10. Paragraph 143 of the National Planning Policy Framework (NPPF) states: Inappropriate development, is by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
11. Paragraph 144 of the NPPF further states when considering any planning application, local authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very Special Circumstances' will not exist unless the potential harm to the Green Belt by reasons of inappropriateness, and any other harm, is clearly outweighed by other considerations.
12. It is a matter of trite law that any development in the Green Belt is treated as prima facie "inappropriate development" and can only be justified by reference to 'very special circumstances' save in defined circumstances set out in paragraphs 144 and 145 of the NPPF.
13. Furthermore, it has been widely accepted by the courts that the list of development in paragraph 145 and 146 of the NPPF are closed 'lists' i.e. development which falls outside of the lists is inappropriate development.
14. The material change of use of the land, to allow for the stationing of mobile home for residential purposes, is not included within the lists in Paragraphs 145 and 146 of the NPPF. However, the applicant is stating that the proposal is on previously developed land as set out in sub paragraph g of paragraph 145 which states:
  - g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
    - not have a greater impact on the openness of the Green Belt than the existing development;
    - or – not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
15. The NPPF defines previously developed land as Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously

developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape

16. Planning permission was granted for the stables in July 2015, as this was considered not inappropriate development within the Green Belt as it fell within the list of appropriate uses within the Green Belt set out in the NPPF.
17. Whilst the site has been previously developed due to the implementation of the stables (ref:16/10035/FUL. The definition of previously developed land states that it should not be assumed the whole curtilage of the site is developed.
18. The applicant has advised that they would remove the stables if they were granted planning permission for the use of the site for a mobile home.
19. It is considered that the proposed mobile home by reason of its size, design and location together with the residential paraphernalia associated with a residential use would cause substantial harm to the openness of the Green Belt and therefore would not fall into the category as an exception as set out in paragraph 145 of the NPPF. On this basis the proposal is harmful to the Green Belt.
20. Paragraph 16 of the Government's Planning Policy for Traveller Sites (PPTS) (DCLG, August 2015) states: Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Subject to the best interests of the child, personal circumstances and unmet needs are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish 'very special circumstances'.
21. Policy DM16 of the Council's LDF Core Strategy refers to Gypsy and Traveller sites and advises that the Council will protect the existing authorised gypsy and traveller plots. Proposals for new sites should meet the following criteria:
  - (a) have access to local services including shops, schools, GPs and other health service
  - (b) have good access to and from the public highway, bus routes and other transport modes
  - (c) not be located in areas of high flood risk
  - (d) not be located on contaminated land
22. The application will be considered in light of the above policy framework.

### **The Impact on the Green Belt**

23. The material change of use of the land is inappropriate development within the Green Belt. Furthermore officers consider that the introduction of structures onto the site would have a detrimental impact on the openness of the Green Belt. The previous application for the erection of a tack room, stables and new entrance gates and the laying down of hard surfacing was considered to be a not inappropriate form of development

in the Green Belt as it fell in the exceptions within paragraphs 89 and 90 of the NPPF 2012 as was then the current NPPF.

#### Intentional Unauthorised Development

24. On 31 August 2015 the Department of Communities and Local Government (DCLG) published a planning policy statement on Green Belt protection and intentional unauthorised development. The policy came into force on that date. The policy makes intentional unauthorised development a material consideration to be weighed in the determination of planning applications and appeals. It applies to all new planning applications and appeals received from 31 August 2015. It was confirmed that this is still a material planning consideration. The question was asked in Parliament on 19th October with the answer on 29th October 2018 (Written question 181533).
25. The applicant and his family began to move onto the application site on 01 February 2016. They did this in the full knowledge that the stationing of a mobile home and the subsequent use thereof for residential purposes constituted development requiring planning permission, they were not in possession of such. It is readily apparent that the applicant was fully aware of the requirement to obtain planning permission, the reasons for concluding this are twofold. Firstly, the applicant was present during the assessment of his earlier application Ref 15/10076, by the Neighbourhood Committee, at which the committee advised that such action would require planning permission; and secondly, the applicant submitted a planning application for the unauthorised development on the day following the breach, with the declaration on the application form signed 28 January 2016, thereby demonstrating that the application was drawn up prior to the breach. It is therefore difficult to see how the development could be described as other than intentional authorised development.
26. The policy states that the government is concerned about the harm caused where development of land is undertaken in advance of obtaining planning permission. It notes that in such cases there is no opportunity for appropriate mitigation of the harm that has already taken place. It also notes that such development can lead to the local planning authority having to take expensive and time consuming enforcement action. The government is particularly concerned about harm that is caused by intentional unauthorised development in the Green Belt.
27. In this case harm has been caused as a result of the development, not only to the Green Belt but also to the open character of the application site along with the rural character of the immediate area. To the extent that the harm might have been susceptible to mitigation, there has been none. Some damage has already taken place. In addition, the Council has had to take enforcement action which has been time-consuming and expensive. Those are the very matters which the government is seeking to address in adopting the policy.
28. Officers conclude that the development is "intentional unauthorised development" within the meaning of the 31 August 2015 planning policy statement. This is a material consideration which weighs against granting

planning permission.

### **The need for, and provision of, gypsy sites in the area**

29. The Royal Borough of Kingston upon Thames' Annual Monitoring Report March 2018 identifies a cumulative need of 44 additional pitches. As such, there is clearly an immediate and unmet need for gypsy and traveller sites in the area, this is a significant material consideration when considering applications for the grant of planning permission. However, as paragraph 16 of the PPTS 2015 makes clear, 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.

### **Alternative accommodation**

30. No information has been provided by the applicant that they have a cultural aversion to bricks and mortar, no such evidence has been submitted to demonstrate the rest of the family has a similar aversion. As such, Officers consider that evidence has not been submitted which would demonstrate that alternative accommodation, in the form of bricks and mortar, would not be available to the family in the event planning permission is not granted. However, it is accepted that in the event planning permission was refused, and the applicant did not take up accommodation in bricks and mortar, he may be forced into taking a roadside existence.

### **Personal Circumstances**

31. The PPTS 2015 defines a gypsy as

*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.*

32. The applicant Mrs Williams has not confirmed in this application her status as a gypsy traveller.

33. Evidence has not been submitted by the applicant to demonstrate that she or her family have any educational or health connections with the immediate area i.e. registered at a local school or medical facility. The Design and Access Statement has referred to the child being at school, though no details of the location school have been provided.

34. The applicant has indicated that the unauthorised change of use is to accommodate the residential needs of a family and from the reference to a school it is considered that the family is likely to include a child/children.

35. As such, the best interests of the children are a primary consideration in this application. Their best interests would require them to have a settled base with their parents, from where they could access education, health and other public services available to the settled community. It would also benefit the adult occupiers of the appeal site to have a settled base.

### **Location**

36. The application site is located off the Leatherhead Road in an isolated position that is to say isolated from the wider community and from the facilities required to support healthy and balanced communities. Officers consider that the site would not be a sustainable location to support residential development. Occupants would be divorced from the settled community and would be heavily reliant on the private motor vehicle for access to day-to-day facilities. The Inspector in the appeal considered that the location was well connected local amenities and the footpath was good and well lit.

### **Landscape/Visual Impact**

37. The site is currently an open and rural landscape, which makes a positive contribution to the visual amenities of the area.

38. The caravan is white with a pitched tiled roof and upvc windows. The caravan is not bulky and not of a high quality design, which is considered to be inappropriate within a rural setting and would detract from the natural and green environment.

39. The mobile home has been placed on the site for residential use and would result in the introduction of residential paraphernalia to the site, necessary for the use of the mobile home as permanent residence. This and the mobile home would create a more urban and residential landscape which would be out of keeping with current open and rural landscape of the site.

40. The material change of use of placing a mobile home on the site for residential purposes would result in the urbanisation of the landscape, materially harming the open and rural character/landscape of the area. This part of the brought plays an important role in providing a soft and rural entrance to the dense and urban landscape of the central part of the borough. This proposal would harm this.

### **Amenity**

41. Policy DM10 of the LDF Core Strategy seeks to safeguard residential amenities in terms of privacy, outlook, sunlight, avoidance of visual intrusion and noise and disturbance.

42. Given the size and location of the caravan it would not result in a detrimental loss of sunlight or daylight or an increased sense of enclosure for occupiers of neighbouring properties.

43. As the site would only be used by one family it is considered that the proposal would not result in a material increase in noise and disturbance for occupiers of neighbouring properties.

### **Highways**

44. Policies DM9 and DM10 of the LDF Core Strategy seek to ensure that new development has regard to local traffic conditions and does not contribute to congestion or compromise highway safety.

45. The Council's Neighbourhood Traffic Engineer considers that the



proposed mobile home would not result in a significant increase in vehicle movements to and from the site.

46. In light of the above, it is considered that the proposal would not have a detrimental impact on the highway.

**The applicant's 'very special circumstances':**

47. The applicant has not provided any 'very special circumstances' to support their application in this case.

48. In light of the above, it is considered that there are no very special circumstances to allow the use of the site for the retention of a mobile caravan for residential purposes.

**Balancing on Green Belt grounds**

49. The main considerations of the impact of the change of use of the land to a mixed use comprising of the stationing of a mobile home on the site for residential purposes have been considered in detail above.

50. Significant weight has been given to the need for additional pitches within the Borough and significant weight has been given to the best interest of the child. However, it is considered that substantial weight should be given to the harm that the change of use has on the Green Belt and its openness, intentional unauthorised development and significant weight has been given to the impact of the change of use on the landscape.

51. Paragraph 16 of the PPT (2015) states: "Inappropriate development is harmful to the Green Belt and should not be approved except in 'very special circumstances'. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Subject to the best interest of the child, personal circumstances and unmet need are unlikely to outweigh harm to the Green Belt and any other harm so as to establish special circumstances.

52. In light of paragraph 16 of the PPT and the issues highlighted in this report, the need for additional sites and the best interest of the child in this case do not outweigh the harm that the change of use of the land to a mixed use comprising the stationing of a mobile home has on the Green Belt.

**Public Sector Equality Duty**

53. The public sector equality duty contained in the Equality Act 2010 applies to this decision because the occupiers of the site are Travellers, and thus have a "protected characteristic". Officers have to have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

54. Officers have noted above that the particular housing needs of the applicant are not being met at the moment; even though the development plan has made provision for new housing, no provision has yet been made for travellers' sites. That in turn has adverse effects on the occupiers' ability to access public services and facilities, and on their health and life chances.

55. However there are serious planning objections to them living on the application site, and the substantial harm caused by the development at present would continue and be exacerbated if even a temporary permission was granted. Furthermore, granting either a permanent or a temporary permission here in the light of these planning objections would be unlikely to foster good relations between the various communities. For these reasons, any equality implications of dismissing the appeal do not outweigh the harm the development would cause.

Human Rights

56. The occupiers of the site would lose their home and suffer disruption to their family lives if planning permission is not granted for the development. But the protection of the Green Belt and the character and appearance of the landscape are all legitimate planning policy considerations.

57. The interference with the occupiers' human rights of refusing the application would be no more than is necessary to control the use of the site in the general public interest. It would not be disproportionate, and would not result in a violation of the occupiers' rights under the Convention.

RECOMMENDATION

Refuse for the following reason(s):

1	The proposed development is inappropriate within the Green Belt which is, by definition, harmful. Furthermore the development would be detrimental to the character and appearance of the landscape, and would conflict with one of the purposes of including land within the Green Belt, namely to restrict urban sprawl. The application has not put forward any considerations which would clearly outweigh the harm to the Green Belt and other harm so as to amount to very special circumstances. Therefore, the proposal is contrary to Policies CS3, DM5 and DM16 of the Council's LDF Core Strategy (April 2012) and Policies contained in the National Planning Policy Framework and the Government's Planning Policy for Traveller Sites (2015).
---	---

INFORMATIVE(S)

1	In dealing with the application the Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies in the Core Strategy, Supplementary Planning Documents, Planning Briefs and other informal written guidance, as well as offering a full pre-application advice service. We have however been unable to seek solutions to problems arising from the application as the principal of the proposal is clearly contrary to our statutory policies and negotiation could not overcome the reasons for refusal.
---	--

--	--

Signature of Case Officer: HES Date : 30/7/2019  Signature of Lead Officer: Toby Feltham Date : 30/7/19
---