

## Appeal Decision

Hearing held on 14 March 2017

Site visit made on 14 March 2017

**by S J Papworth DipArch(Glos) RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 19<sup>th</sup> May 2017**

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**Appeal Ref: APP/Z5630/W/16/3156799**

**Rushett Stables, Leatherhead Road, Chessington, London KT9 2NG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr John Williams against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
  - The application Ref 16/10035/FUL, dated 28 January 2016, was refused by notice dated 21 July 2016.
  - The development proposed is change of use of land to mixed use for the keeping of horses and for the stationing of a mobile home for residential purposes, for occupation by one gypsy family.
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### Decision

1. I dismiss the appeal.

### Main Issues

2. It is agreed that the proposal is inappropriate development in the Green Belt. Having regard to the other matters agreed in the Statement of Common Ground, but also the concerns of local residents, the main issues are;
    - The impact of the site on the openness of the Green Belt, the purposes of including land in the Green Belt, and the character and appearance of the area.
    - The effect of the proposal on the aims of policy on access to services and facilities, and the use of private vehicles.
    - The weight to be attached to the planning policy statement of 31 August 2015 on Green Belt protection and intentional unauthorised development.
    - The weight to be attached to the other considerations put forward of the level of unmet need, whether the Council will be able to meet the need for sites and when, compliance with policy, the availability of alternative sites, and the personal circumstances of the family including the interests of children.
    - Whether the harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to provide the very special circumstances necessary to justify the development.
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## Reasons

### *Preliminary Matters and Findings*

3. The Council granted permission on 30 July 2015 for the erection of stables, tack room, entrance gates and hardstanding (Ref; 15/10076) having found the proposal to be not inappropriate development in the Green Belt, apparently as agricultural buildings under the first bullet point of paragraph 89 of the National Planning Policy Framework, and found the proposal acceptable in its effects. There was however, from the recording played at this Hearing, much discussion regarding the then applicant, who is the appellant in the current case. Since the application for the stables was not for a personal permission, and since the permission runs with the land and not with any particular person, such discussion should have been seen as irrelevant. There was clearly concern as to future intentions, but it was made clear that conditions attached to that permission prevented further change, and that any proposal for change would require another full planning application.
4. For those reasons, the comments made in support of the then applicant as to his intentions should be regarded as being of limited relevance, and then only to that application and it would have been incorrect for the Council to have granted permission based on these personal comments, if the proposal was considered acceptable in any event. The position now is that a further full application has been made, has been refused, and is the subject of this appeal.
5. The matter of the appellant's gypsy status was not contested by the Council, but was queried by local residents, partly based on Mr Williams' previous occupation of a 'bricks and mortar' house at Claygate, and the children still attending schools local to that area of Surrey. The appellant pointed out that the definition in Planning Policy for Traveller Sites does not stipulate that gypsy status is lost if living in a house, and it is the case that the issues listed in paragraph 2 of Annex 1 of that document do not refer to that either. Further evidence was given and examined at the Hearing.
6. Turning to those issues for consideration, the appellant has led a nomadic lifestyle, initially accompanying adult members of the family and then on his own behalf, seeking work as a roofer. He comes from a Romany Gypsy background. There has been an element of a more settled lifestyle with work being carried out as day-trips, due to the education of the children as provided for in paragraph 1 of the Annex, but there is still evidence of trading in horses and attendance at traditional horse fairs as a family during the school holidays. It is concluded that for planning purposes, and for the determination of this appeal, the appellant should be regarded as a gypsy.

### *Policy*

7. The Core Strategy was adopted in 2012 and Policy CS3 seeks the protection and improvement of Kingston's valued natural and green environment. The Green Belt is the subject of Policy DM5 with reference to the then current Planning Policy Guidance Note 2 '*Green Belts*'. Policy DM16 on gypsy and traveller sites states the protection of existing sites and anticipates a Development Plan to meet the needs of gypsies and travellers. Proposals for new sites should meet four criteria, on access to services and access to the public highway, bus routes and other transport modes which are the subject of

- the second main issue; and should not be located in areas of high flood risk or on contaminated land, which is not the case here.
8. Planning Policy for Traveller Sites of August 2015 is the most recent statement of Government policy with regard to such site provision and the introduction states the Government's overarching aim to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers, while respecting the interests of the settled community. Policy E covers traveller sites in the Green Belt and paragraph 16 states 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. This is repeated in paragraph 24 to Policy H on determining planning applications for traveller sites, which also lists issues which, amongst other relevant matters, should be considered.
  9. Decisions on traveller sites should also have regard to the policies in the Framework so far as relevant, and this document states the presumption in favour of sustainable development and sets out the three dimensions of such development. The core planning principles include conserving and enhancing the natural environment; actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling; and focusing significant development in locations which are or can be made sustainable. Green Belt policy is set out in section 9.

#### *Green Belt Openness, Character and Appearance*

10. Paragraph 79 of the Framework states that the Government attaches great importance to Green Belts; the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
11. The decision to permit the stables pre-dated the case of *Lee Valley Park Authority v Epping Forest District Council* [2015] which was later confirmed in the Court of Appeal, which determined that where development is found to be 'not inappropriate' applying paragraphs 89 or 90 of the Framework, it should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt. However, as a matter of fact, the stables and tack room already have a detrimental effect on openness on the east side of Leatherhead Road.
12. However, the openness of the west side is significantly eroded by the presence of the garden centre opposite, and the hotels and other built form of Chessington World of Adventures a little to the north, the east side is otherwise open land from the last building of Barwell Business Park and presents an open rural character and appearance from Chalky Lane to the crossroads south of the site. The built form of Malden Rushett south of the crossroads is tightly constrained, being 'washed-over' by the Green Belt designation.
13. It is accepted that the designation also 'washes over' both the garden centre opposite, and Chessington World of Adventures, but the establishment of the latter as Chessington Zoo predates Green Belt legislation, and was considered as a Major Developed Site under previous Guidance. As a result, the Green Belt and its open nature on the east side of the road is valuable in its continuity along the road and its depth away to the borough boundary to the east.

14. The addition of the mobile home and domestic paraphernalia, that which was seen being a barbecue shelter and play equipment, albeit the latter on the blue-edged land rather than the appeal site, has reduced openness further as a matter of fact. The appellant's need for privacy as part of the residential use of the site has resulted in high fencing and gates, although it was agreed at the Hearing that these are not part of the appeal development, but should be put forward for approval further to a condition attached to the 2015 permission. Nevertheless, the roof of the mobile homes is clearly visible as a visual incursion into the open land from locations along Leatherhead Road and to a more limited extent from a short section of Rushett Lane to the south.
15. With regard to the mobile home, the appellant draws attention to the Court of Appeal case of *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 and the visual dimension to the Green Belt. That judgment also confirmed that it was not irrational for an Inspector to determine that the impact on openness of moveable development such as caravans and mobile homes is less than the impact of an equivalent permanent structure. Whilst that may reduce the impact, the effect is still significantly detrimental due to the nature of the surrounding land.
16. In addition to the detrimental effect on openness, the introduction of residential use, together with the activity and items associated with it, has diminished the rural character and appearance of this side of the main road, which has no footway on this side and displays the characteristics of a country road, albeit a busy one with street lighting.
17. The conclusion is that harm has occurred to a wider area of land that maintains the openness of the Green Belt and the rural character and appearance of the countryside in close proximity to major built form and land uses, car parks and storage areas, and should be considered important in preventing the unrestricted sprawl of the large built-up area to the north and in safeguarding the countryside from encroachment. In view of the nearby uses, this area of land on the east side of the road appears vulnerable to erosion of the essential characteristic of Green Belt land and two of the purposes of the Green Belt, and even allowing for the limited size of the appeal site within that area of land, residential use has caused significant harm through encroachment. The aims of Policies CS3 and DM5 so far as they seek to protect green spaces and the Green Belt, are not met.

#### *Site Accessibility*

18. The site is in an open countryside location, but not significantly away from settlements in the terms of paragraph 25 of Planning Policy for Traveller Sites. That statement of policy allows for sites to be in rural areas provided the scale does not dominate the nearest settled community; that is not the case here. The main road has a footway on the west side and there are nearby bus stops on a half-hourly frequency route which runs into the evening and on Sundays linking Kingston and Leatherhead. A short walk to the north gains access to a more frequent route that terminates at Chessington World of Adventures, and serves Chessington South railway station and Kingston.
19. Whilst also served by these bus routes, the walking or cycling distances to shops, doctors and schools are within the accepted distances of 2km and 5km respectively. There is a food store associated with a petrol filling station to the south.

20. The road is busy, but cyclists were evident, and being a wide road, this would not feel an unduly vulnerable means of transport. Walking would involve the use of a short length of verge to access the central refuge and the footway on the west side. The road is lit and the terrain would not present difficulties to those carrying shopping or pushing a buggy.
21. It is accepted however that there may be a likelihood of private vehicles being used, as part of the working life of the occupiers, but the opportunities exist for alternative means of transport, so that the requirements of the remaining two criteria of Policy DM16 are met.

#### *Intentional Unauthorised Development*

22. On 15 August 2015 the Department for Communities and Local Government published a planning policy statement on Green Belt protection and intentional unauthorised development, making the fact of development a material consideration to be weighed in applications and appeals.
23. The Council assert that the appellant was well aware of the need for planning permission when he moved the family onto the site. That does appear to be the case since the application was made very soon after the move and the form was dated prior to the move. That knowledge would have been clear from the way the Council dealt with the application for the stables.
24. The policy describes this type of action as causing harm, not only because there would be no immediate opportunity for mitigation, which might now be sought, but also because of the time and expense that this causes Councils and other public bodies. This additional harm should be afforded significant weight in this case.

#### *Other Considerations*

25. As a result, in addition to the harm by reason of this being inappropriate development in the Green Belt, there is a significant adverse effect on openness, and on the purposes of preventing encroachment. Paragraph 88 of the Framework states that substantial weight should be given to any harm to the Green Belt. The other harm identified is a moderate adverse effect on the appearance of the area, that being of that level due to the existence of the permitted stables and tack room and development to the west side of the road, and the harm associated with intentional unauthorised development.
26. The Framework states that inappropriate development should not be approved except in very special circumstances which will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The following matters were discussed at the Hearing;
27. *The level of unmet need for gypsy pitches in the Borough.* The latest assessment is the 2008 London Gypsy and Traveller Accommodation Needs Assessment, which identified a need for 11 additional pitches in the borough, whilst the evidence is that no pitches have been granted permanent permission since that time. Furthermore, it appears that a socially-rented site for 18 caravans is occupied by 7 more than that intended number. The appellant gave evidence of having lived on the car park of that site for a while until moved on. A temporary permission at Green Lane has recently expired and there is a long-term tolerated site at Clayton Road. Whilst the Council

- accepted that they were, pending the new assessment, unsure of the need, there is certainly an unmet need against the most recent assessment and indications of unacceptable doubling-up on existing sites. This attracts considerable weight, tempered by the provisions of paragraph 27 of Planning Policy for Traveller Sites which will be considered in the planning balance.
28. *Whether the Council will be able to meet the need for gypsy pitches in the Borough.* The answer to this depends on the level of that need, and the Council has not publicly embarked on the process towards a new Assessment. There was discussion over whether the 2015 change to the definition in the Glossary to Planning Policy for Traveller Sites would reduce need, but on the evidence it would be premature to assume this. The indications are that at least in the short term, the Council will be unable to meet the need. It was agreed that much of the land within the borough outside the built-up area is either Green Belt or Metropolitan Open Land which has similar constraints, although the call for sites may bring forward sites, which although in such designated land, would be more suitable than the appeal site. Significant weight attaches to this consideration, again subject to paragraph 27.
29. *Policy progress and timetable.* The Officers anticipate taking a report to the Committee in May 2017 further to Regulation 18 to start the issues and options process and the call for sites. At present adoption is not anticipated until 2019. Having mind to the lack of progress in providing the identified site requirement from 2008, and the likely timetable for adoption and allowing a time for sites to become available and useable, this should be seen as a failure of local policy to facilitate the gypsy way of life, an aim stated as part of the balance in paragraph 3 of Planning Policy for Traveller Sites, along with respecting the interest of the settled community. This failure is afforded significant weight.
30. *The lack of available, suitable, acceptable and affordable alternative sites.* Having regard to the case of *Doncaster MBC v FSS & Angela Smith* [2007] referred to by the appellant on what would constitute such a site, it is agreed between the Council and the appellant that no such sites can be identified.
31. *Compliance with Policy.* The appellant put compliance with all four criteria of Policy DM16 forward as a consideration, and it is certainly the case that had there been a lack of compliance the adverse effects identified would have been placed in the balance as further harm. However, in that balance, Policy DM16 compliance can only be classed as a neutral matter.
32. *The personal circumstances of the appellant.* The family had previously lived in a house in Claygate, but this was given up on moving onto the appeal site, and the appellant stated that it was not available to move back into. The alternative is stated to be roadside living. The appellant asserts that he has a cultural aversion to living in 'bricks and mortar' housing. That aversion was clearly said to the doctor when being treated for depression, a statement that appears to have been accepted. Further evidence is that the appellant resorted to sleeping in relatives' caravans at times while the rest of the family lived in the house. It is not disputed that the appellant comes from a Romany Gypsy background, and such an aversion, and clear preference for living in a caravan, is not unusual. Whilst a local resident characterised the situation as the family having made themselves intentionally homeless, the traditional way of life of travellers is recognised in the policies of the Planning Policy for Traveller Sites.

In the balance, moderate weight should be afforded this matter as the circumstances of this appellant would be shared with many traveller families.

33. *The security of the stables site.* The stables and tack room along with the keeping of horses on the land had been expressly permitted in 2015, but there is evidence of vandalism on at least two occasions when the land was not occupied as a residence. Since the vandalism reported by the local paper included racist graffiti, it is entirely possible that the unnecessary and irrelevant references to the status of the applicant, rather than the land use planning merits of the application, at the time of the original application alerted wrongdoers and heightened tensions. Be that as it may, horses are commonly kept unguarded and buildings can be made secure. Electronic surveillance could have been used, and indeed is in place, and the evidence does not indicate a need for residential use of the site for reasons of security. Very little weight can be attached to this consideration.
34. *The best interest of children.* The appellant and his spouse have four children, three of whom are at school. It is the case that they were at school while living in the house at Claygate and that the schools are local to there within the Surrey County Council local education authority area. It is clear that the children have had a good attendance record and appear to be settled and doing well. It was however reported that one of the children has had to be taken out of the school in which he was apparently previously settled, due to bullying over his background, and now attends another school with extended family members. It is not possible to state a definite cause and effect here, but it is noted that no such bullying was referred to as occurring when he lived in the house at Claygate. The appellant's assertion is that he alone was suffering from living in the house and spent time living apart from the family for that reason, and weight does attach to the effect on the children that such separation would have caused. But, there is no evidence that any medical problems stemming from an aversion to 'bricks and mortar' affected the children. It does appear to be the case that the interest of the children was being provided for in the house, and that there has been a deterioration in at least one of their number's school situation subsequent to the move onto the site. Therefore, whilst the appeal site provides a settled base for the family group to live together and the appellant considers the alternative to be roadside living, the evidence that occupation of the site is in the best interest of the children is not compelling.

#### *Planning Balance and Human Rights*

35. As set out in the policy section above, paragraph 24 of Planning Policy for Traveller Sites states 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. As pointed out by the appellant, 'unlikely' should not be read to mean that these considerations will never clearly outweigh the harm, and any decision must take account of the weight afforded both the harm and the other considerations. The best interest of the children has been subject to consideration and on the evidence presented only limited weight can be attached to that.
36. There is clearly a continuing delay in the finalising of policy before sites can be allocated and become available, and delay has been occurring from at least the

- 2008 assessment of need. It is the case that there are no identified alternatives sites for the appellant in Kingston borough, but no evidence has been brought forward from the local authority in Surrey, from where the family moved to the appeal site. The personal circumstances of the appellant and his family are not particularly unusual for a gypsy family and compliance with Policy DM16 is a neutral consideration.
37. This is a case where the Green Belt is particularly vulnerable to erosion and particularly valuable in keeping land permanently open, preventing sprawl and encroachment, due to the presence of major development to the west. In the balance required by paragraph 88 of the Framework, it is concluded that the harm by reason of inappropriateness and the other harm identified is not clearly outweighed by other considerations and hence very special circumstances have not been shown to exist in favour of even a personal permanent permission.
  38. There was discussion in the conditions session at the Hearing as to the possibility of a temporary personal permission, although there was evidence of another temporary permission in the area having been continually renewed. However, paragraph 27 of the Planning Policy for Traveller Sites states that whilst a lack of a five-year supply of deliverable sites should be a significant material consideration when considering applications for temporary planning permission, it is made clear that this does not apply in the Green Belt. As a result, very special circumstances do not exist in favour of a temporary permission, and the harm that has already occurred for over a year would persist during that temporary period.
  39. The above reasoning and weighing of considerations has had regard to the family's rights under article 8 of the Human Rights Act 1998 to enjoyment of family life and a home, and to the best interests of the appellant's children, and has also had regard to the public and community interests that stems from the land's Green Belt designation. Article 8 is a qualified right and interference may be justified where in the public interest; the concept of proportionality is crucial.
  40. Dismissing the appeal would interfere with the appellants' rights under Article 8, since the consequence could be that the family or members of it no longer having their home at the appeal site. However, the interference would be in accordance with the law and in pursuance of a well-established and legitimate aim; the protection of the Green Belt. In the application of national and local policy the balance has been shown to be firmly against the grant of either a permanent or temporary permission, and the protection of the public interest cannot be achieved by means that are less interfering of their rights.
  41. Due regard has also been had to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeal is made for the use of the land as a gypsy site and the occupiers are Romany Gypsies, they are persons who share a protected characteristic for the purposes of the Duty.
  42. Nevertheless, it does not follow from the Duty that the appeal should succeed. As stated above, the balance has been determined to rest against the granting of either a permanent or a temporary permission on the merits of the case.



## Conclusions

43. The proposal is inappropriate development in the Green Belt and the other considerations do not clearly outweigh the harm so that the very special circumstances required in order to allow permission to be granted, on either a permanent or temporary basis, have not been shown to exist. The Human Rights of the appellant and his family, the best interest of the children and the Public Sector Equality Duty have been considered and weighed in the balance, but do not alter the conclusion that the appeal should be dismissed.

*S J Papworth*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

H Elliot Smith	Planning Officer Development Management Royal Borough of Kingston upon Thames
T Kleiman	Senior Planning Officer Policy Royal Borough of Kingston upon Thames

### FOR THE APPELLANT:

P Brown	Managing Director Philip Brown Associates
J Williams	Appellant
L Williams	Spouse of Appellant

## INTERESTED PERSONS

B Gibson	Malden Rushett Residents Association
A Watson	Malden Rushett Residents Association
Cllr S Mirza	Ward Councillor Royal Borough of Kingston upon Thames
Cllr A Day	Councillor Royal Borough of Kingston upon Thames
R Robb	Resident
C Punch	Resident
C Suckling	Resident

## DOCUMENTS

Document	1 Metropolitan Police letter and Victim Care Card submitted by appellant.
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