



Appeal Decisions

Hearing held on 29 November 2022

Site visit made on 29 November 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2023

Appeal A Ref: APP/Y3615/W/21/3287182

The Pines, Green Lane East, Normandy GU3 2JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr John Searle against the decision of Guildford Borough Council.
 - The application Ref 21/P/00454, dated 4 March 2021, was refused by notice dated 17 May 2021.
 - The application sought planning permission for variation of condition 3 of planning consent 10/P/00507 (approved on appeal on 14/06/2011) for the use of land for stationing of caravans for residential purposes for 1 gypsy pitch, with ancillary utility/day room, to allow permanent occupation of the pitch on the site without complying with conditions attached to planning permission Ref 15/P/02363, dated 5 March 2018.
 - The conditions in dispute are Nos 1 and 2 which state that:
(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.
 - The reasons given for the conditions are:
(1) 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. The personal circumstances are pivotal in justifying a grant of a temporary planning permission.
(2) A restoration scheme would need to be agreed with the LPA.
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Appeal B Ref: APP/Y3615/W/21/3287186

The Pines, Mobile Home 1, Green Lane East, Normandy GU3 2JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr John Searle against the decision of Guildford Borough Council.
- The application Ref 21/P/00456, dated 4 March 2021, was refused by notice dated 17 May 2021.

- 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 without complying with conditions attached to planning permission Ref 15/P/02364, dated 5 March 2018.
 - The conditions in dispute are Nos 1 and 2 which state that:
 - (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.*
 - The reasons given for the conditions are:
 - (1) 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. The personal circumstances are pivotal in justifying a grant of a temporary planning permission.*
 - (2) A restoration scheme would need to be agreed with the LPA.*
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Decision

1. Appeal A is allowed and temporary planning permission is granted for the use of land for stationing of caravans for residential purposes for 1 gypsy pitch, with ancillary utility/day room at The Pines, Green Lane East, Normandy GU3 2JL in accordance with the application Ref 21/P/00454, dated 4 March 2021 without compliance with condition numbered 1) previously imposed on planning permission Ref 15/P/02363, dated 5 March 2018 and subject to the conditions set out in the schedule below.
2. Appeal B is allowed and temporary 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 The Pines, Mobile Home 1, Green Lane East, Normandy GU3 2JL, and subject to the conditions set out in the schedule below.

Preliminary Matters

3. The Council's decision notice in respect of appeal B is dated 17 May 2021. The appellant has disputed this date as notification of the decision was received on 7 June 2021, which is also cited on the Council's website. Whilst this discrepancy is noted, I have referred to the date taken from the decision notice in the banner heading above.
4. In my formal decision, I have amended the description of development in respect of Appeal A to remove reference to permanent occupation of the site as this conflicts with the temporary permission granted.
5. Temporary planning permission was granted on appeal for the use of both appeal site A¹ and appeal site B² on 5 March 2018 (the 2018 appeals). At the Hearing, it was explained that the plans referred to in those appeal decisions did not show the caravans on the site. Following the Hearing, the appellant

¹ APP/Y3615/W/16/3165526

² APP/Y3615/W/16/3165528

provided copies of the original layout plans from the original grants of planning permission identified as post-hearing documents ref PHD3. In the case of Appeal A, this was drawing numbered 09_319_003 and in the case of Appeal B, drawing number 09_319A_003. I have dealt with the appeals on the basis of these drawings.

6. During the course of the appeal, the appellant has submitted two unilateral undertakings (UUs) under section 106 of the Town and Country Planning Act 1990 (as amended), one relating to Appeal A, the other Appeal B. These are signed and dated 29 November 2022. These make provision for mitigation against adverse impacts on the Thames Basin Heaths Special Protection Area (the SPA). The Council has confirmed that this addresses their reason for refusal in respect of harm to the SPA in both appeals. I return to this matter later.

Background and Main Issues

7. In respect of Appeal A, planning permission was refused³ by the Council for the stationing of caravans for residential purposes for one gypsy pitch, with ancillary utility / day room. This was subsequently granted temporary planning permission on appeal⁴ for a period of 5 years on 14 June 2011. In 2015, a further application was submitted which effectively sought the permanent use of the site. This was also refused⁵ by the Council and subsequently allowed on appeal on 5 March 2018 (the 2018 appeals) for a temporary period of three years.
8. In 2013, in respect of Appeal B, an application was submitted for the use of land for the stationing of caravans for residential purposes for one gypsy and traveller pitch together with utility / dayroom ancillary to that use. This was approved⁶ by the Council on 22 October 2013 on a temporary basis for a period of three years. A further application was submitted for the permanent use of the site and refused⁷. This was then allowed on appeal as part of the 2018 appeals for a temporary three year period.
9. The 2018 appeals restricted the occupancy of both sites, in the case of appeal site A, to John Searle (Senior) and John Searle (junior) and their dependents; and in appeal site B, Jade Searle and her dependents. At the end of the temporary period, a condition on each permission required the land to be restored to its condition before the development took place.
10. Two applications were made on 4 March 2021 in respect of both sites, seeking the permanent occupation of both sites. These were both refused and are the subject of these appeals.
11. There is no dispute that the occupants of both pitches are Romany Gypsies and that they follow a travelling lifestyle, although in the case of Appeal B, the occupant has temporarily ceased to travel due to family circumstances.
12. Both appeal sites are located in the Green Belt. It is common ground that the proposal would be inappropriate development in the Green Belt. However, the parties dispute the extent to which the proposal would be harmful to openness

³ Council Ref: 10/P/00507

⁴ APP/Y3615/A/10/21140630

⁵ Council Ref: 15/P/002363

⁶ Council Ref: 13/P/00825

⁷ Council Ref: 15/P/06/02364

and the purposes of the Green Belt. Thus, the main issues for both appeals are whether the conditions are necessary and reasonable having regard to:

- the effect of the proposal on the openness of the Green Belt and the purposes of including land in the Green Belt;
- the effect of the proposed development on the Thames Basin Heaths SPA: and
- whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal on a permanent or temporary basis.

Reasons

Openness and purpose of Green Belt

13. Paragraph 137 of the National Planning Policy Framework (the Framework) states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It identifies openness as an essential characteristic of the Green Belt. There is no definition of 'openness' in the Framework although it is commonly taken to mean the absence of built or otherwise urbanising development. Caselaw⁸ has confirmed that there can be a visual dimension to openness but that is a matter of planning judgment. In this case, an assessment of openness requires a consideration of the scale of the development, its locational context and both its spatial and visual implications.
14. The appeal sites lie at the end of a narrow private access road off Green Lane East. Each of the sites comprise rectangular plots, positioned adjacent to each other. Each site accommodates a static caravan. There is a brick day room on appeal site A and a timber shed and, at the time of my site visit, a mobile caravan on appeal site B. Both sites are substantially hard surfaced.
15. The static caravans occupy a large footprint within their respective sites and are substantial structures, although no higher than a single-storey building. The caravans and structures on both sites physically exist and their presence cause some loss of openness. The static caravans, whilst theoretically moveable, are unlikely to be moved due to their function in providing a permanent place of residents for the occupants of the site. For this reason, they therefore affect the spatial openness of the site.
16. A substantial coniferous hedge encloses the appeal sites and an adjacent paddock and lawned area, both indicated to be within the appellant's ownership. This hedging effectively screens the appeal sites from the surrounding fields and countryside.
17. Green Lane East, which is also identified as a public right of way, is characterised by linear development. The sites access road and development to the east fronting the road are included within the settlement boundary which has been inset from the Green Belt. Views of the appeal sites from the road and the public domain, are limited to views down the access road which is shared with two other dwellings, also set back from Green Lane East. Neither

⁸ R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council (Appellant) [2020] UKSC 3

the caravans nor other structures on the sites are visible. In terms of visual effects on openness, I find that these are very limited.

18. Whilst the appeal sites are close to the defined settlement boundary and land inset from the Green Belt, they lie some distance back from the established residential development along Green Lane East. Within this context, the development of both sites with substantial areas of hardstanding and other structures together with the siting of caravans and the domestic paraphernalia associated with a residential use, does encroach into the countryside. This conflicts with one of the purposes of including land in the Green Belt which is to assist in safeguarding the countryside from encroachment.
19. The Council has submitted photographic evidence showing the sites prior to 2009. Appeal site A was covered by hardstanding whilst site B was grassed. In the intervening period, the introduction of structures, the extension of hardstanding, siting of caravans and the use of the sites for residential purposes, albeit of a small scale, all contribute to the harm to the openness and permanence of the Green Belt.
20. Consequently, the openness of the Green Belt has been reduced and would continue to be through the ongoing use of the sites and the development and caravans associated with this. In the context of the rural edge but in close proximity to existing development, I conclude that the development would result in moderate harm to the openness and the purpose of including land within the Green Belt.
21. I recognise that I have come to a different conclusion in terms of the degree of harm that would arise to that of the 2018 appeals Inspector who considered the level of harm to be significant. I do not have the benefit of having viewed the sites 5 years ago, however, in my judgement, given the relatively small scale of the development, the modest size and height of the structures on the sites in combination with a high degree of enclosure, I find the harm to be moderate.
22. The loss of openness and harm to the purpose of including land within the Green Belt is nonetheless in conflict with Policy P2 of Guildford Local Plan: Strategy and Sites 2019 (the LPSS) and the objectives of the Framework which together protect the openness and purposes of including land within the Green Belt.

Thames Basin Heaths SPA

23. The appeal sites lie within the 400m and 5km buffer zone of the SPA. This is protected as a European Site of Nature Conservation Importance and is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the European site. I am the competent authority for the purposes of these appeals.
24. The SPA is a network of lowland heathland sites which provide a habitat for the internationally important breeding bird species of woodlark, European nightjar and Dartford warbler. These are ground-nesting species. The sites conservation objectives can be summarised as avoiding a deterioration of habitats and

- minimising bird disturbance, thereby ensuring the integrity of the sites is maintained.
25. The Council has determined that additional residential development including gypsy and traveller accommodation would, in combination with other plans and projects, have a significant adverse effect on these protected sites through increased recreational use of the SPA causing damage to the habitat and disturbance to the protected species within the SPA. In order to avoid any such harms, suitable mitigation would be required for new housing development, which includes gypsy and traveller accommodation, within 5km of the SPA.
 26. The adopted *Thames Basin Heaths Special Protection Area Avoidance Strategy 2017 Supplementary Planning Document July 2017 (Factually updated October 2021)* (the SPD) provides a framework by which applicants can provide or contribute to Suitable Alternative Natural Green Space (SANG) within the borough which along with contributions to Strategic Access Management and Monitoring (SAMM) can mitigate the impact of development.
 27. The appellant has accepted the need to provide a contribution towards both SANG and SAMM. The submitted UUs secure this for both sites and have been agreed between the parties. In the event that a temporary permission were to be granted, the UUs make provision for this.
 28. I am satisfied that the planning obligations are necessary to make the development acceptable and the contribution would be fairly and reasonably related in scale and kind to the development. Moreover, there is no reason to doubt that the Council, as a responsible public body, will spend the money in the way it is intended.
 29. In accordance with Regulation 63(3) of the Habitats Regulations I have consulted the relevant nature conservation body, in this case Natural England (NE). NE has confirmed that, subject to the appellant complying with the requirements of the SPD and securing contributions to SANG and SAMM through a legal agreement, it has no objection. I am satisfied that the two agreements provide those contributions.
 30. As such, I have been able to complete my appropriate assessment and to conclude that the proposal would not adversely affect the integrity of the SPA. In this regard, the scheme therefore accords with Policy P5 of the LPSS, Saved Policy NE4 of the Guildford Borough Local Plan 2003 and Saved Policy NRM6 of the South East Plan 2009 which together seek the protection of the SPA and protected species and their habitats.

Other considerations

31. The appellant has set out a number of other considerations which he considers should be weighed against any harm to the Green Belt. He has also highlighted changes since the previous appeals in relation to the personal circumstances of the appellant, the policy context and caselaw. Where relevant I have considered these changes through my reasoning below. Caselaw referring to the application of paragraph 11 of the Framework has also been cited. In the context of this being a Green Belt case, the application of the presumption in favour of sustainable development is not relevant given Footnote 7 to that paragraph.

Unmet need

32. The Council has published a Traveller Accommodation Assessment in 2017 (the TAA). This was undertaken in the context of the Planning Policy for Traveller Sites 2015 (the PPTS). It was submitted as evidence of need for gypsy and traveller accommodation to the examination into the LPSS. The LPSS was found sound and subsequently adopted in April 2019.
33. The TAA identified a requirement for 4 pitches for households that met the planning definition for gypsies and travellers, as set out in Annex 1 of the PPTS 2015, over the LPSS period of 2017 to 2034. The LPSS makes provision for these through site allocations for 4 permanent pitches. This accords with the requirement of the PPTS which sets out under Policy B, paragraph 9, that local planning authorities should set pitch targets for gypsies and travellers meeting the PPTS definition.
34. The TAA explains that for gypsy, traveller and travelling showpeople households who do not fall within the PPTS Annex 1 definition of a traveller, which may include ethnic groups, their accommodation needs are to be considered through the Framework and evidence base documents such as the Strategic Housing Market Assessment or a Caravan and Houseboat needs assessment. The TAA goes on to confirm that their needs have not been addressed by either of those assessments yet. However, since these households have either responded to the questionnaires or interviews used in evidence gathering for the TAA, their needs have been considered.
35. The TAA identifies a need for 41 pitches for those households not meeting the PPTS Annex 1 definition and further 8 pitches for households whose travelling status is unknown. These figures are carried through to the LPSS which sets out under Policy S2(3) that the Council will seek to make provision for 41 permanent pitches for gypsies and travellers who do not meet the PPTS Annex 1 definition as well as 8 permanent pitches to meet potential additional needs of households of unknown planning status.
36. The appellant has argued that since the TAA assessed the needs of those gypsies and travellers who fell within the PPTS Annex 1 definition of traveller set out in the PPTS, this excluded certain groups of ethnic Gypsies including those who have permanently ceased to travel. However, whilst the figures are separated out within the TAA, as I have already set out, it does consider the needs of these other households, identifying an additional 49 households above the number that are known to meet the PPTS Annex 1 definition.
37. The appellant disputes the robustness of the TAA in that it should not split gypsies and travellers up into those that do and those that do not meet the PPTS Annex 1 definition. He explained that he disagrees with the overall level of need identified within the TAA and that it is too low. In this regard, the appellant has called into question the effectiveness of the TAA interviews and data gathering, despite a relatively high response rate, in assessing need arising from households currently residing in bricks and mortar accommodation. He has also disputed the assessed need arising from households occupying pitches with temporary planning permission that has or will soon expire; concealed households, hidden need and doubling up; in addition to the household formation rates and the need to meet future growth in the district.

38. The same TAA was debated, as I understand it, extensively, at the previous appeal Hearing back in 2018. The Inspector in that appeal concluded that for the purposes of that appeal and the particulars of the case, the TAA was the single indicator of current and future need. He did however recognise the possibility that those residing in bricks and mortar housing have not yet been properly identified and interviewed, which is a shortcoming given they make up a large section of the local traveller population. He also considered that there was some considerable doubt as to whether the TAA properly accounts for concealed, doubled-up or hidden households. In conclusion, he considered that some anomalies and inaccuracies with the TAA had been highlighted but that the robustness of the TAA would be subject to examination through the local plan-making process.
39. The Council has advised that at the early stages of the local plan examination, the Inspector raised some questions in connection with gypsy and traveller accommodation and the requirements of Policy H1 but determined that those questions had been satisfactorily dealt with in writing. Policy matters concerning gypsies and travellers were not debated at the local plan examination hearing sessions, with the exception of the costs of public pitch provision for the site allocations.
40. Notwithstanding this, the local plan examination concluded that the Council's approach to meet the need for permanent pitches was satisfactory. This position has also been supported in a recent decision⁹ for appeals at land between Grafton and The Haven.
41. The appellant's agent to the appeal has argued that in respect of the local plan examination, he did not make representations on the grounds that none of his clients had commissioned him to do so. Therefore, he had not engaged in that process. He also indicated that the land between Grafton and The Haven appeals would have been unlikely to have presented detailed evidence to counter the TAA. However, I have no evidence to substantiate that claim.
42. In any event, whilst the agent's position is noted, it is not appropriate for the appeal process to re-open the examination of evidence on which a local plan has been found sound. That would undermine the plan-making process and the plan-led system advocated under paragraph 15 of the Framework and the primacy of the development plan as enshrined under section 38(6) of the Planning and Compulsory Purchase Act 2004. It was open to both the appellant or his agent to engage in the local plan process, which they chose not to. Moreover, it was also open to them to challenge the local plan if they considered that the basis on which it had been found sound was flawed.
43. The Examining Inspector concluded that subject to certain main modifications, none of which impacted on the overall pitch requirement, the plan makes adequate provision to meet the identified housing needs of all of the community. Therefore, I turn now to whether there is any new evidence since then that would indicate that the basis on which that plan was found sound is no longer applicable.
44. The appellant has submitted a Statement of Need dated November 2021. This states that as at the base date of 2017 there was a need for 129 households and a supply of 73 pitches, which meant there was a shortfall in provision at

⁹ APP/Y3615/C/21/3272315 and APP/Y3615/W/20/3259889

base date of 56 pitches. By 2022, this states that there should be a minimum of 142 pitches in the Borough, and by 2031, 165 pitches. Based on the supply figures, by 2022 the outstanding need would be 43 pitches with a further 23 pitches.

45. Whilst this post-dates the adoption of the LPSS, it essentially provides a critique of the TAA but does not appear to raise any new matters to those already considered by the 2018 appeals Inspector and issues that should have been put to the local plan examination.
46. Since the LPSS was adopted and also since these appeals were lodged, the judgment of the Court of Appeal in *Smith v SSLUCH & Ors*¹⁰ has found that the PPTS 2015 Annex 1 definition of gypsies and travellers to be unlawful on the basis that it discriminates against those gypsies and travellers who have permanently ceased to travel due to age and / or disability.
47. Had the TAA limited its assessment to those gypsies and travellers who met the PPTS 2015 Annex 1 definition, it would have not addressed the needs of all the traveller community. However, the TAA is clear that it has assessed the needs of both those gypsies and travellers who met the PPTS definition as well as those who did not, plus making an allowance for those of unknown status, identifying a total need for 53 pitches over the plan period.
48. I recognise that there are considerable differences between the parties on the level of need within the Borough. However, as there is no materially different evidence put forward subsequent to the adoption of the LPSS, I must base my decision on the LPSS requirement.

5 year supply of deliverable sites

49. The PPTS sets out a requirement at paragraph 10 a) that local planning authorities should identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. Footnote 4 to that requirement, sets out that to be deliverable, sites should be available now, offer a suitable location for development, and be achievable with a realistic prospect that development will be delivered on the site within 5 years.
50. The TAA identified an accommodation need for gypsies and travellers meeting the PPTS Annex 1 definition for 2 pitches between 2017 and 2022, a further 1 pitch between 2022 and 2027 and 1 pitch between 2027 and 2034. It identified a total need of 49 additional pitches for gypsies and travellers not meeting the PPTS Annex 1 definition and those of unknown status over the plan period. The Council's *Traveller and Travelling Showpeople Accommodation 2021* (the TTSA) lists the allocated sites for gypsies and traveller pitches. This comprises some 13 sites which would provide 31 public pitches and 26 private pitches, totalling 57 pitches.
51. The total identified supply of 57 pitches exceeds the identified accommodation need set out in the LPSS by 4 pitches. It would therefore be sufficient to cover the identified need for those gypsies and travellers not meeting the PPTS Annex 1 definition or of unknown status.

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

52. The TTSA sets out that since the TAA base date of January 2017 to 31 March 2021, 24 pitches have been granted planning permission. This is equivalent to around 42% of the overall requirement for the plan period. It would certainly cover the 4 sites identified to meet the needs of those gypsies and travellers who met the PPTS Annex 1 definition and for which, currently, the Council is required to demonstrate a 5 year supply of deliverable sites for.
53. Given the recent Court of Appeal judgment with regards to that definition and, in the absence of any guidance as to how the 5 year supply should be addressed in the light of that judgment, I have considered whether the evidence indicates that the Council can deliver sites to meet the needs of those gypsies and travellers who did not meet the PPTS Annex 1 definition.
54. The TTSA sets out a trajectory for the next 15 years of pitches that could reasonably be expected to be delivered in the borough. This identifies a further 4 pitches to be delivered between 1 April 2021 and 31 March 2026, 19 in years 6-10 and 14 in years 11-15 bringing the overall supply to 62 although noting this figure does not take into any net losses in pitch numbers. Nevertheless, this provides a good indication that the Council has already met a substantial number of its pitch requirements.
55. Thus, whilst the appellant has disputed that the Council has failed in the three years since the 2018 appeals decisions to adequately provide for or make available alternative sites to meet the actual level of need in the district, that appears to be predicated on the appellant's view that the overall requirement is higher than that set out within the LPSS.
56. Given my findings in respect of the overall need and the Council's delivery against that need to date, on the basis of the evidence before me, I conclude that the Council can demonstrate a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against its locally set target. This includes the requirement in relation to the requirement for both PPTS Annex 1 definition compliant and those that would not be. I also have no substantive evidence before me to suggest that the sites as identified are not going to be delivered.

Failure of Policy

57. There is a recently adopted local plan which makes provision for gypsies and travellers, both who those meet the PPTS Annex 1 definition and those who do not. The Council has granted planning permission for the numbers it is required to do and has a 5 year supply of deliverable sites as I have found above.
58. I appreciate that at the time of the 2018 appeals, that the local plan examination had not been undertaken, there had been some slippage in the programme and there was no 5 year supply of deliverable sites. However, the position has changed, with a plan now adopted and sites being delivered as evidenced in the TTSA. Thus, whilst this may have been a matter of some weight during previous appeals on the sites, there is no convincing evidence before me to substantiate the appellant's claim that there has been a policy failure in this regard. I note this is the conclusion reached by the Inspector in the appeals on Land between Grafton and Haven.
59. The appellant has referred me to a number of other appeal decisions and findings on local plan examinations, notably within the London Borough of Havering. However, these are in different authorities to the appeal before me

and the circumstances and considerations cannot simply be transferred across to the appeal before me which is in a different Borough with its own circumstances. I can therefore give these limited weight.

Alternative sites

60. Whether or not there are alternative sites available is a relevant matter. Alternative accommodation would need to be suitable, affordable, available and acceptable. Whilst the Council is seeking to deliver a number of public pitches during the plan period, it has confirmed that it cannot currently provide an alternative public pitch that the sites' occupants could move to in the short-term.
61. Caselaw¹¹ has been established that there is no burden on the appellant to prove that there are no alternative pitches or sites available. Furthermore, whilst it is noted that neither the appellant nor his family are on the Council's waiting list for a site, even if they were to be there is nothing to indicate that they would be accommodated in the short term given there are 17 people already on the waiting list. I recognise that a waiting list may include a wide range of individuals who live both within or outside the local area and may also include those currently residing on private sites but looking to move to a public site. As such, it cannot be relied upon to provide an accurate assessment of need.
62. I shall come onto the personal circumstances of the appellant and his family, however, the absence of alternative sites in the short term could lead to the current occupants having to resort to an unauthorised roadside encampment or doubling up on pitches occupied by extended family, neither of which would be satisfactory. Given there is a waiting list and no currently available sites, suggests that the supply of sites may need to come forward more quickly. Thus, the lack of alternative sites generally is a factor which carries modest weight in favour of the proposal.

Policy Context

63. The appellant has argued that Policy S2(3) of the LPSS is inconsistent with national policy on the basis that it only meets the needs of the gypsies and travellers who meet the PPTS Annex 1 definition and is based on the TAA which is not robust. As I have already set out, the TAA formed the evidence base to the local plan examination and was found to be robust by the Inspector. I appreciate that the recent Court of Appeal judgment in *Smith v SSLUCH & Ors* may change the approach going forward, the PPTS itself and the requirements set out therein remain extant. The LPSS makes provision for the housing needs of gypsies and travellers and thus is not inconsistent with national policy nor therefore deemed to be out of date.

Location of sites

64. The appeal sites are located within the Green Belt. The appellant has argued that the likely location of further sites would be in the Green Belt due to the high proportion of the Borough covered by the designation. This has been recognised by previous Inspectors, including the Inspector in the 2018 appeals as well as in a 2011 appeal¹² for Land to the rear of Palm House Nurseries,

¹¹ South Cambridgeshire DC v SSCLG & Brown [2008] EWCA Civ 1010

¹² APP/Y3615/A/10/2131590

Glaziers Lane, Normandy. However, this position has changed following the adoption of the LPSS which insets some sites and villages from the Green Belt in order to meet the land use needs identified. Consequently, now 83.5% of the Borough is in the Green Belt rather than 89% as was the case at the time of the 2018 appeals.

65. On this basis, given that the LPSS makes provision to meet the accommodation needs for gypsies and travellers and has allocated sites to do so, there is considerably less likelihood that sites will need to be within the Green Belt as asserted by the appellant. This factor therefore carries very limited weight.

Personal circumstances

66. Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act (1998) establishes a right to respect for private and family life. The Public Sector Equality Duty under the Equality Act, 2010 requires that a public authority must foster good relations between persons who share a relevant protected characteristic and those who do not. The protected characteristic of the family as Romany Gypsies is not disputed.
67. Article 3 of the United Nations Convention on the Rights of the Child requires a child's best interests to be a primary consideration, and no other consideration must be regarded as more important or given greater weight than the best interests of any child.
68. The Inspector in the 2018 appeals, in granting temporary permission, recognised that the personal circumstances of the appellant as being pivotal in justifying a grant of temporary planning permission. Since then, the personal circumstances of the site occupants have changed, in that the appellant no longer resides at the site. However, the appellant's daughter, who occupied appeal site B remains living at the site with her dependents, and now, his son occupies appeal site A with his wife and child and a new baby due.
69. I have been provided with a personal statement from both the appellant and his son, setting out the personal circumstances of their family, explaining their aversion to bricks and mortar living as well as the importance for them to live as an extended family unit. The Council has not disputed this information.
70. Currently there is one resident child who attends a local school, and two younger children who would expect to enrol in school within the next few years. Both families are registered with local health care providers, and one family member requires regular monitoring for a medical condition through the local GP surgery. It would certainly be in the best interests of the children to continue to have access to education and health care from a settled base. That said, it is also not uncommon for children to move schools or change GPs when their families move home.
71. In the absence of suitable, acceptable and affordable alternative locations to which the occupants could move, should these appeals be rejected, then the families would be either forced into a roadside existence or into doubling up with other family members, with likely issues around overcrowding arising. The Council has agreed that there is no prospect in the short term of sites coming forward. This would have a negative impact upon the child attending school. In addition, having no settled base would not give the pre-school aged children currently residing on the sites an optimal start in life. It would also cause some

inconvenience in terms of medical care. This would not be in the best interests of the children.

72. In addition, the occupants have resided at the sites for over 10 years although never on a permanent basis. The written statements set out that the prolonged uncertainty for many years around the occupation of the sites has given rise to stress and anxiety for the family.
73. Dismissal of the appeals would see the families having to leave the sites which is their current home. This would interfere with their rights under Article 8. It would also not be in the best interests of the child, which is a factor which must carry no less weight than other factors.

Other Matters

74. Policy B of the PPTS seeks to ensure that traveller sites are sustainable economically, socially and environmentally. It sets out a number of criteria against which to assess this. The Council has confirmed that the continued use of the sites as traveller sites would be sustainable in this context. Furthermore, I find that despite the sites being located outside the defined settlement boundary, they are not detached from the settlement given their proximity to development both within and adjacent to the boundary. Whilst concerns have been raised that this may set a precedent for similar forms of development, any such proposal would have to be assessed on its own individual planning merits.
75. I also note that concerns have been raised about the sites being used for business purposes, however, the permission being sought is for the residential use of the sites only. Any other material changes of use would require planning permission. It has also been suggested that loss of habitat has occurred through the use of the site. However, I have no substantive evidence of this. These matters have a neutral effect in the planning balance.

The Planning and Green Belt Balance

76. The Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstance 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.
77. The proposal is inappropriate development and is therefore, by definition, harmful to the Green Belt. I have also found that it causes moderate harm to the openness of the Green Belt and the purposes of including land within it. These are matters to which I give substantial weight as required by paragraph 148 of the Framework.
78. I have found that there is no unmet need or failure of policy since the adoption of the LPSS in 2019. The Council can also demonstrate a 5 year supply of deliverable sites and has sites allocated to meet the LPSS requirement. There is no substantive evidence to suggest that any future sites would need to come forward on Green Belt land given the LPSS has addressed this. These are therefore neutral factors in the balance. The effect on the protected habitats sites would be mitigated through the submitted UUs and therefore is also a neutral factor in the balance.

79. The lack of suitable alternative sites generally carries moderate weight in favour of the proposals. In terms of seeking the unrestricted occupation of the site, the personal circumstances of the current occupants of the site would not be a factor to weigh against the harm to the Green Belt. Therefore, I find that the other considerations put forward in favour of the proposals, do not outweigh the harm to the Green Belt sufficiently to amount to the very special circumstances to allow the permanent occupation of the sites on an unrestricted basis.
80. I am required to take into account the Public Sector Equality Duty and the best interests of the children residing on the site, which is a primary consideration. I must also consider the right to respect for private and family life, as enshrined under Article 8. Therefore, I turn now to whether a personal permission would be appropriate and able to amount to the very special circumstances to justify the proposal.
81. Policy E of the PPTS indicates that subject to the best interests of children, 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.
82. The personal circumstances of the occupants, including their mental wellbeing associated with uncertainty and other health concerns, in combination with the lack of alternative sites to meet their personal needs carry significant weight in favour of the scheme. The best interests of the children, which is a primary consideration, and the families' right to a home, carry substantial weight in favour of the schemes.
83. The Planning Practice Guidance¹³ provides for exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission.
84. It would clearly not be in the best interests of the children should the families have to vacate the sites without having an alternative site to move to. I recognise that the Council is making progress in terms of delivering gypsy and traveller sites, with policies and site allocations to address this. However, the lack of alternative sites is indicative that the speed of delivery may not be adequate.
85. Nevertheless, there is a plan in place and evidence of sites coming forward. Should a personal permission be granted, it is likely that the sites would remain occupied in the long-term. The harm to the Green Belt arising from this would be similarly long-term and, in my view, not dissimilar to the permanent occupation of the site. The personal circumstances of the sites' occupants do not outweigh the harm to the Green Belt that would arise.
86. A temporary permission has been granted previously to enable the LPSS examination to run its course and to provide the appellant with the opportunity to find a suitable alternative site. There is little evidence that the appellant has done this, although the occupation of the site has changed in the intervening period with the appellant vacating the site and his son now occupying appeal site A.

¹³ Paragraph: 015 Reference ID: 21a-015-20140306

87. The PPG¹⁴ sets out that it will rarely be justifiable to grant a second temporary permission (except in cases where changing circumstances provide a clear rationale).
88. While the actual harm to the openness of the Green Belt would remain, a temporary permission would reduce the period in which it would occur. Given that the sites' occupants have changed in the case of appeal site A and that there are children residing on both sites whose best interests would not be served should the appeal be dismissed, I find that this would be sufficient to amount to the very special circumstances to outweigh the Green Belt harm. Thus, I conclude that a further temporary permission should be granted in respect of both sites. This would enable the occupants of the sites to find suitable alternative accommodation whilst also allowing for more delivery through the LPSS. I consider a period of three years would be sufficient for this.
89. In conclusion, I find that the disputed conditions are both reasonable and necessary insofar as they relate to the occupation by named individuals and for the sites to be returned to their former state when those occupants vacate it after the temporary permission expires.

Conditions

90. In view of the personal circumstances of the occupants of the sites and the need to find an alternative site, a personal and temporary permission is reasonable and necessary for both appeals. A period of three years would be sufficient given that the LPSS is now in place and delivering. Conditions 1 and 2 from the 2018 appeals should be retained, although amended in respect of Appeal A, to reflect the current occupant of the site.
91. A condition to secure the restoration of the sites in accordance with details agreed by the local planning authority once they are no longer occupied is also reasonable in the interests of the character and appearance of the area and protecting the openness of the Green Belt. For the same reasons, conditions limiting the number of caravans on site, securing their siting in accordance with approved drawings, restricting both the size of vehicles and preventing commercial activities from taking place are both necessary and reasonable.
92. As I have imposed a personal permission for the benefit of the sites' occupants who it is agreed have gypsy status, both through their ethnicity and nomadic lifestyle, a condition limiting occupancy to those of gypsy status is not necessary.

Conclusion

93. For the reasons set out above, I conclude that both Appeals A and B should be allowed for a limited period of three years.

Rachael Pipkin

INSPECTOR

¹⁴ Paragraph: 014 Reference ID: 21a-014-20140306

Schedule of Conditions – Appeal A Ref: APP/Y3615/W/21/3287182

- 1) The use hereby permitted shall be carried on only by the following individuals: John James Searle (junior) and his 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) 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.
- 4) The caravans shall be sited in accordance with plan no. 09_319_003.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 6) No commercial activities shall take place on the land, including the storage of materials.

End of schedule

Schedule of Conditions – Appeal B Ref: APP/Y3615/W/21/3287186

- 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) 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.
- 4) The caravans shall be sited in accordance with plan no. 09_319A_003.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 6) No commercial activities shall take place on the land, including the storage of materials.

End of schedule

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Green Planning Studios
John Searle	Appellant
John James Searle	Son of the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Esther Drabkin-Reiter	Of Counsel
Kelly Jethwa	Principal Planning Officer
Kate Lines	Senior Planning Policy Officer

HEARING DOCUMENTS

HD1	Plan showing Green Belt boundary
HD2	Witness Statement of John James Searle
HD3	Witness Statement of John Searle
HD4	Copy of emerging Policy D10a: Light Impacts and Dark Skies

POST-HEARING DOCUMENTS

PHD1	Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 in relation to Appeal A signed and dated 29 November 2022
PHD2	Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 in relation to Appeal B signed and dated 29 November 2022
PHD3	Email dated 29/11/22 and copies of plans 09_319_003 Proposed Site, 09_319A_003 Proposed Site relating to 2018 appeals
PHD4	Copies of previous site plans: 09_319B_001 and 09_319C_001
PHD5	Email response from Natural England