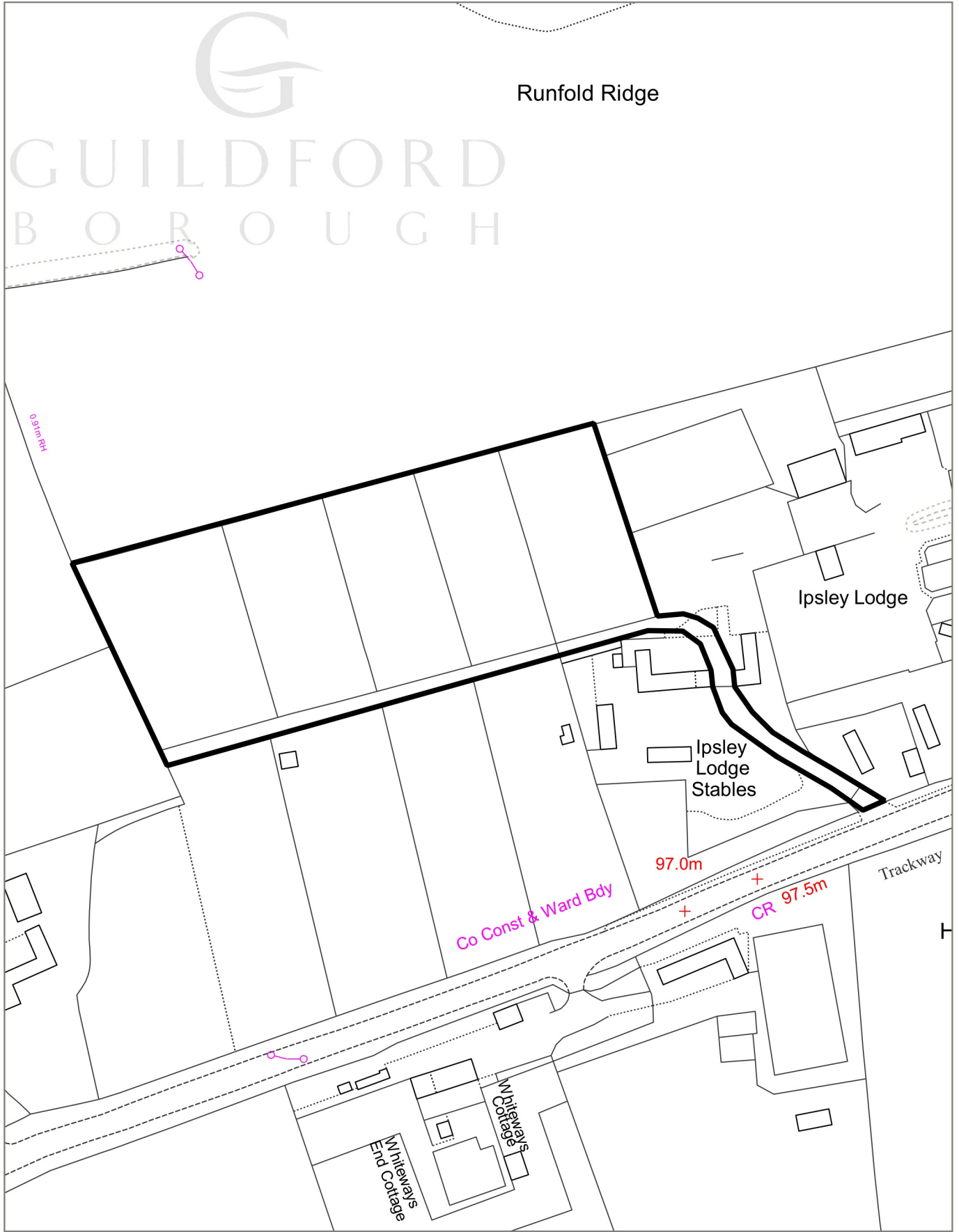


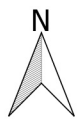
# 22/P/00738 - Ipsley Lodge Stables, Hogs Back, Seale, Guildford, Surrey



© Crown Copyright 2023. Guildford Borough Council.  
Licence No. 100019625.

This map is for identification purposes only and should not be relied upon for accuracy.

Print Date: 24/01/2023



Not to Scale



GUILDFORD  
BOROUGH

22/P/00738 - Ipsley Lodge Stables, Hogs Back, Seale



Not to scale



**App No:** 22/P/00738  
**Appn Type:** Full Application  
**Case Officer:** Lisa Botha

**8 Wk Deadline:** 26/07/2022

**Parish:** Tongham  
**Agent :** Mr Brownjohn  
WS Planning & Architecture  
5 Pool House  
Bancroft Road  
Reigate  
RH2 7RP

**Ward:** Ash South & Tongham  
**Applicant:** Mr Owen  
C/O WS Planning & Architecture  
5 Pool House  
Bancroft Road  
Reigate  
RH2 7RP

**Location:** Ipsley Lodge Stables, Hogs Back, Seale, Guildford, Surrey, GU10 1LA  
**Proposal:** Change of use of land for the proposed creation of 4 Gypsy/Traveller pitches, comprising the siting of 4 Mobile Homes, 4 Touring Caravans, and the erection of 4 Dayrooms

## **Executive Summary**

### **Reason for referral**

This application has been referred to the Planning Committee because more than 10 letters of objection have been received, contrary to the Officer's recommendation.

### **Key information**

The application site relates to an area of land formerly comprised of five paddocks associated with the equestrian use of the land. The surrounding area is predominantly residential in nature.

The site lies within the countryside beyond the Green Belt and is located on the border with the Green Belt, Surrey Hills Area of Outstanding Natural Beauty (AONB) and AGLV (Area of Great Landscape Value). The site is also in the Blackwater Valley strategic open gap and is located within the 400m-5km buffer zone of the Thames Basin Heaths Special Protection Area (TBHSPA). The site is accessed via the existing vehicle access into Ipsley Lodge Stables to the south-east. At the time of the Officer's site visit the application site comprised four roughly equally sized pitches with landscaped areas to the southern end of the site and hardsurfacing to the northern end with caravans located towards the northern end of the site on each of the pitches.

Application 21/P/01640 for a change of use of land for the proposed creation of 4 Gypsy/Traveller pitches, comprising the siting of 4 Mobile Homes, 4 Touring Caravans, and the erection of 4 Dayrooms, and the formation of a new access was refused for a number of reasons: the lack of justification for the location of the proposal within the countryside, the sustainability of the location of the site, the impact on the AONB, highway concerns, the sustainability of the development and the impact of the proposal on the integrity of the Thames Basin Heaths Special Protection Area.

This application differs from the refused 21/P/01640 scheme in that:

- " The site no longer seeks to provide a new vehicular access from the Hogs Back to the site
- " Greater landscaping is proposed on site
- " The personal circumstances of the occupants of the site have now been provided
- " A Climate Change, Sustainable Design, Construction and Energy Questionnaire has been submitted

### **Summary of considerations and constraints**

There is no justification for the site to be located within its countryside location. The proposed development would result in some harm to the character of the site itself but would not result in any harm to the AONB. It would not result in any closing of the strategic gap between Ash and Tongham urban area or Aldershot and Ash Green Village.

No adverse impact on neighbouring amenity has been identified as a result of the proposed development and no adverse impact on highway considerations would occur.

Whilst some harm may have occurred to protected species and habitats on the site during the course of the developing the site, biodiversity enhancements and mitigation would be secured by condition. The site is considered to be located in a relatively sustainable location and sustainability measure would also be secured by condition.

It is noted that the development of the site is currently unauthorised and this adds weight against granting planning permission to a limited degree.

However, whilst the Council can demonstrate a 5 year supply of traveller sites, none are currently available and only 4 are available within the next 5 years. Should permission be refused, the applicants would be likely to have to revert to roadside living; this weighs heavily in favour of the proposal.

There are also a number of children on site who are currently attending local educational establishments; the best interests of the children have been taken into consideration and this also weighs heavily in favour of the proposal; as does the need for an occupant on the site to access medical care.

As such it is considered that, on balance, , subject to securing mitigation against the impact of the proposal on the Thames Basin Heaths Special Protection Area, the application be recommended for a temporary and personal permission for the existing occupants of the site to allow time for allocated sites to come forward.

**RECOMMENDATION:**

**Subject to a Section 106 Agreement securing SANG and SANG the decision is to:**

**Approve - subject to the following condition(s) and reason(s) :-**

1. The site shall only be occupied by the following persons:

- Mr Billy Connors and Bridie Connors and their resident dependents
- Mr Darren Patrick Owen and Ann Brien and their resident dependents
- Mr Darren Trevor Owen and Barbara Owen and their resident dependents
- Kathleen Connors and her resident dependents

and shall be for a limited period of time expiring five years from the decision date. On or before the expiry date the use of the site hereby approved shall discontinue. Upon the cessation of the use of each plot, either by virtue of this temporary permission, or by the persons named in this permission ceasing the occupation of their respective plots, all caravans, buildings and materials shall be removed from the respective plot/s and the land restored in accordance with a scheme previously submitted and approved in writing by the local planning authority in pursuance of condition 4.

Reason: In granting this permission the local planning authority has had regard to the personal circumstances of the occupants and the lack of availability of pitches within the Borough.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

J003700-DD01 – Site Location Plan  
J003700-DD02 – As Existing Site Plan  
J003700-DD04 – As Proposed Dayroom  
2012038-01-B – Visibility Splays plans  
2012038-TK01 – Tracking Plan

all received 25/04/22 and J003700-DD03 revision B – As Proposed Site Plan received 08/12/22

Reason: To ensure that the development is carried out in accordance with the approved plans and in the interests of proper planning.

3. No more than 8 caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 4 shall be static caravans) shall be stationed on the site at any time.

Reason: To prevent intensification of the usage on this site, in the interests of the visual amenities of the area.

4. The use hereby permitted shall cease and all caravans, structures,

equipment, hardstanding and materials brought onto the land for the purposes of that use shall be removed within 28 days of failure to meet any of the requirements set out in (i) to (iv) below:

i) within 3 months of the date of this decision, or such other period as the local planning authority may agree in writing, a scheme shall be submitted in writing to the local planning authority.

The scheme shall include details of

- a) a planting scheme for the site, including a schedule of maintenance for a period of 5 years for the existing boundary treatments and planting, including the replacement of any tree, hedge or shrub that is removed, uprooted, destroyed or dies or becomes seriously damaged or defective.
- b) the provision of any external lighting.
- c) provision for foul and surface water drainage for the site.
- d) details of the restoration of the site in accordance with Condition 1 above.
- e) a timetable for the implementation of each of the elements of the submitted scheme.

ii) within 11 months of the date of this decision, the scheme referred to above shall have been approved in writing by the local planning authority or, if the local planning authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal or appeals shall have been made to, and accepted as valid by the Secretary of State.

iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable and the approved scheme shall thereafter apply.

Reason: To ensure that the development is carried out to minimise the impact on the character of the area.

5. Visibility zones shall be provided in accordance with the approved plans, 2012038-01-B, and thereafter the visibility zones shall be kept permanently clear of any obstruction over 0.6m high.

Reason: In order that the development does not prejudice highway safety nor cause inconvenience to other highway users.

6. Space shall be laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.

Reason: In order that the development does not prejudice highway safety nor cause inconvenience to other highway users.

7. Within 3 months of the date of the decision, details of facilities for the secure, covered parking of bicycles and the provision of a charging point for e-bikes by said facilities within the site shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be provided within 6 months of the date of the development and retained and maintained to the satisfaction of the Local Planning Authority.

Reason: In order to encourage the use of more sustainable modes of transport.

8. Within 3 months of the date of this decision, details of a fast-charge Electric Vehicle charging point (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) shall be submitted and approved in writing by the Local Planning Authority for approval in writing. Within 6 months of the date of the development hereby approved, the approved scheme shall be provided and thereafter retained and maintained to the satisfaction of the Local Planning Authority.

Reason: In order to encourage the use of more sustainable modes of transport.

9. No caravans shall be sited outside of the hardsurfaced area located at the northern end of each pitch identified on drawing number J003700-DD03 revision B.

Reason: To protect the character of the area, and the setting of the Area of Outstanding Natural Beauty.

10. Within 3 months of the date of the decision, details of the sustainability measures to be included in the development have been submitted to and approved in writing by the Local Planning Authority. These details shall demonstrate how the development would be efficient in the use of energy, water and materials in accordance with Sustainable Design and Construction Supplementary Planning Document (March 2011). The development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure that measures to make the development sustainable and efficient in the use of energy, water and materials are included in the development.

11. Within 3 months of the date of the decision, a baseline for the site prior to the existing development taking place on the land, and a scheme to mitigate against the impact of the development of the land and to enhance the nature conservation interest of the site together with a timetable for the proposed works, shall be submitted to and agreed in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details.

Reason: To increase the biodiversity of the site and mitigate any impact from the development.

**Informatives:**

1. This statement is provided in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Guildford Borough Council seek to take a positive and proactive approach to development proposals. We work with applicants in a positive and proactive manner by:
  - Offering a pre application advice service
  - Where pre-application advice has been sought and that advice has been followed we will advise applicants/agents of any further issues arising during the course of the application
  - Where possible officers will seek minor amendments to overcome issues identified at an early stage in the application process

However, Guildford Borough Council will generally not engage in unnecessary negotiation for fundamentally unacceptable proposals or where significant changes to an application is required.

In this instance pre-application advice was not sought prior to submission, minor alterations were required to overcome concerns, these were sought and (either) the applicant agreed to the changes.

2. The permission hereby granted shall not be construed as authority to carry out any works on the highway. The applicant is advised that prior approval must be obtained from the Highway Authority before any works are carried out on any footway, footpath, carriageway, or verge to form a vehicle crossover or to install dropped kerbs. Please see [www.surreycc.gov.uk/roads-and-transport/road-permits-and-licences/vehicle-crossovers-or-dropped-kerbs](http://www.surreycc.gov.uk/roads-and-transport/road-permits-and-licences/vehicle-crossovers-or-dropped-kerbs).
3. In the event that the access works require the felling of a highway tree not being subject to a Tree Preservation Order, and its removal has been permitted through planning permission, or as permitted development, the developer will pay to the Council as part of its licence application fee compensation for its loss based upon 20% of the tree's CAVAT valuation to compensate for the loss of highway amenity.
4. The permission hereby granted shall not be construed as authority to carry out any works (including Stats connections/diversions required by the development itself or the associated highway works) on the highway or any works that may affect a drainage channel/culvert or water course. The applicant is advised that a permit and, potentially, a Section 278 agreement must be obtained from the Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway.



All works (including Stats connections/diversions required by the development itself or the associated highway works) on the highway will require a permit and an application will need to be submitted to the County Council's Street Works Team up to 3 months in advance of the intended start date, depending on the scale of the works proposed and the classification of the road. Please see <http://www.surreycc.gov.uk/roads-and-transport/road-permits-and-licences/the-traffic-management-permit-scheme>. The applicant is also advised that Consent may be required under Section 23 of the Land Drainage Act 1991. Please see [www.surreycc.gov.uk/people-and-community/emergency-planning-and-community-safety/floodingadvice](http://www.surreycc.gov.uk/people-and-community/emergency-planning-and-community-safety/floodingadvice).

5. The applicant is expected to ensure the safe operation of all construction traffic in order to prevent unnecessary disturbance, obstruction and inconvenience to other highway users. Care should be taken to ensure that the waiting, parking, loading and unloading of construction vehicles does not hinder the free flow of any carriageway, footway, bridleway, footpath, cycle route, right of way or private driveway or entrance. Where repeated problems occur the Highway Authority may use available powers under the terms of the Highways Act 1980 to ensure the safe operation of the highway.
6. It is the responsibility of the developer to ensure that the electricity supply is sufficient to meet future demands and that any power balancing technology is in place if required. Electric Vehicle Charging Points shall be provided in accordance with the Surrey County Council Vehicular, Cycle and Electric Vehicle Parking Guidance for New Development 2022. Where undercover parking areas (multi-storey car parks, basement or undercroft parking) are proposed, the developer and LPA should liaise with Building Control Teams and the Local Fire Service to understand any additional requirements. If an active connection costs on average more than £3600 to install, the developer must provide cabling (defined as a 'cabled route' within the 2022 Building Regulations) and two formal quotes from the distribution network operator showing this.

## **Officer's Report**

### **Site description.**

The application site relates to an area of land formerly comprised of five paddocks associated with the equestrian use of the wider site. The surrounding area is predominantly residential in nature, predominantly detached and two-storey in height, with the density of development reducing as you move westwards along the Hogs Back.

The site lies within the countryside beyond the Green Belt and is located on the border with the Green Belt, Surrey Hills Area of Outstanding Natural Beauty (AONB) and AGLV (Area of Great Landscape Value). The site is also in the Blackwater Valley strategic open gap and is located within the 400m-5km buffer zone of the Thames Basin Heaths Special Protection Area (TBHSPA).

The site is accessed via the existing vehicle access into Ipsley Lodge Stables to the south-east. At the time of the Officer's site visit the application site comprised four roughly equally sized pitches with landscaped areas to the southern end of the site and hardsurfacing to the northern end with caravans located towards the northern end of the site on each of the pitches.

### **Proposal.**

Change of use of land for the proposed creation of 4 Gypsy/Traveller pitches, comprising the siting of 4 Mobile Homes, 4 Touring Caravans, and the erection of 4 Dayrooms (retrospective)

### **Relevant planning history.**

<b>Reference:</b>	<b>Description:</b>	<b>Decision Summary:</b>	<b>Appeal:</b>
21/P/01640	Change of use of land for the proposed creation of 4 Gypsy/Traveller pitches, comprising the siting of 4 Mobile Homes, 4 Touring Caravans, and the erection of 4 Dayrooms, and the formation of a new access.	Refused	N/A
21/P/00505	Erection of two 3 bedroom houses and two mobile home pitches.	Refused	N/A
20/P/01710	Change of use of land for the proposed creation of 4 Gypsy/Traveller pitches, comprising the siting of 4 Mobile Homes, 4 Touring Caravans, and the erection of 4 Dayrooms – withdrawn.	Withdrawn	N/A

### **Consultations.**

County Highway Authority: No objection on safety, capacity and policy grounds subject to conditions relating to visibility zones, the layout of parking so that vehicles may enter and leave in forward gear, the provision of a charging point for e-bikes and the covered parking of bicycles and the provision of a fast-charge electric vehicle charging point

Head of Environmental Health and Licensing: No objection

Seale and Sands Parish Council: Object for the following reasons:

- the site was considered not appropriate for use as a site for gypsy / traveller accommodation
- the land is designated for equestrian use therefore any development on this site is inappropriate and not in accordance with the Guildford Local Plan and any mitigations offered by the applicant are not relevant (Officer note: the site has not been allocated for equestrian use)
- the families identified in the application left their previous site to move to this unapproved location so have in effect created their own need for such a site

Tongham Parish Council: Object for the following reasons:

- the present turning onto the old A31 is very tight and traffic is fast (Officer note: the highway authority has assessed the access which serves an adjacent site and has raised no objection)
- the site is not sufficiently large enough
- the area as a whole has been inundated with new developments
- the Local Plan policies should not be overruled
- the land is equestrian, is opposite the AONB and is adjacent to Suitable Alternative Natural Greenspace
- references made in the supporting statement are not comparable to this application
- sufficient pitches area provided within this area

Area of Outstanding Natural Beauty Officer: No objection as the site could not be seen from the AONB to the south.

Natural England: Natural England: In accordance with an agreed position with Natural England, Natural England (NE) will not object to an Appropriate Assessment (AA) undertaken which concludes no adverse effects on the integrity of the TBHSPA due to measures being secured and required to be put in place through a legal agreement and accord with the provisions of the Development Plan and the adopted Guildford Thames Basin Heaths Special Protection Area Avoidance Strategy SPD 2017. An individual consultation with NE will therefore not be required in these cases.

Third party comments:

22 letters of representation have been received raising the following objections and concerns:

- contrary to policy (Officer note: this will be addressed in the report below)
- adverse impact on character
- the Local Plan policies should not be overruled
- the site is not located in a sustainable location and would rely heavily on the use of private vehicles (Officer note: this will be discussed later in the report)
- adverse impact on the setting of the AONB (Officer report: No objection has been raised by the AONB Officer)
- excessive hardsurfacing has been laid (Officer note: the level of hardsurfacing has been reduced in size whilst enabling the safe movement of caravans onto and off of the site)
- increase in surface water from the site onto neighbouring properties
- the injunction has been breached (Officer note: the injunction has now expired)
- proximity to Suitable Alternative Natural Green space (Officer note: a legal agreement will secure the required mitigation against the impact of the proposed development on the TBHSPA)
- the site is being used for dog breeding and other commercial activities (Officer note: this application is for residential use and must be assessed on its own merits, should a material change in use occur planning permission may be required)
- loss of much needed equestrian facilities (Officer note: there is no policy requirement to retain paddocks)
- council tax is not being paid (Officer note: this is not a material planning consideration)
- the site does not have infrastructure to support the residents (Officer note: the applicants are currently on mains water and electricity)
- highway safety (Officer note: the County Highway Authority has raised no objection)
- waste is left on the side of the road (Officer note: the applicant has discussed waste collection with the Refuse and Recycling team; refuse will be collected at the entrance of the site onto

the Hogs Back)

- the site is located within an Area of Outstanding Natural Beauty (Officer note: the application site is not located within the AONB)
- adverse impact on ecology (Officer note: this is addressed later in the report)
- the site is being used as a dump (Officer note: whilst a sign outside of the site had been erected relating to the dumping of material this did not relate to the application site and has been dealt with by the Council's enforcement officers)
- sufficient traveller sites have been provided within the plan period
- the applicants made themselves homeless when they gave up their previous site
- unauthorized works carried out to the entrance wall to the site (Officer note: this does not form part of the application site)
- light pollution (Officer note: this is discussed later in the report)
- noise and disturbance (Officer note: the application is for a residential site, should a statutory nuisance arise this would be dealt with by separate environmental protection legislation)
- loss of water pressure for neighbouring residents
- no cycle store or electric vehicle points shown (Officer note: a condition is recommended to secure these facilities)
- This is the fourth application for the same thing on the site (Officer note: this is the third application for the siting of caravans on this site following the refusal of 22/P/00738 and the withdrawal of 20/P/01710)
- They do not have permission to be on the site (Officer note: it would not be expedient to take action to remove the caravans from the site until the planning application has been determined)
- Burning is taking place on the site and there is excessive noise (Officer note: this is a matter for Environmental Health)

## **Planning policies.**

### National Planning Policy Framework (NPPF), 2021:

2. Achieving sustainable development.
4. Decision-making.
5. Delivering a sufficient supply of homes.
8. Promoting healthy and safe communities.
9. Promoting sustainable transport.
11. Making effective use of land.
12. Achieving well-designed places.
14. Meeting the challenge of climate change, flooding and coastal change.
15. Conserving and enhancing the natural environment.

### Planning Policy for Traveller Sites (PPTS), 2015:

The Government also published Planning Policy for Traveller Sites (PPTS) in August 2015. The overarching aim of the PPTS is 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.

For decision taking, the PPTS states that Local Planning Authorities should consider the following

issues amongst other relevant matters when considering planning applications for traveller sites:

- a) the existing level of local provision and need for sites;
- b) the availability (or lack) of alternative accommodation for the applicants;
- c) other personal circumstances of the applicant;
- d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated site and
- e) that they should determine applications for sites from any travellers and not just those with local connections.

South East Plan (SEP), 2009:

NRM6: Thames Basin Heaths Special Protection Area.

Guildford Borough Local Plan: Strategy and Sites (LPSS), 2015-2034:

The National Planning Policy Framework provides the following advice at para 48:

Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the Framework, the greater the weight that may be given)

Guildford's Local Plan Development Management Policies (LPDMP) can now be considered to be at an advanced stage in production. The hearing sessions have been completed and the Inspector has reached a conclusion that, subject to main modifications, the plan can be found sound. The main modifications he considers necessary are currently out for consultation. Those policies / parts of policies that are not subject to any proposed main modification should now be afforded considerable weight. Where specific parts of a policy are subject to main modifications, then further reconsideration should be given as to the extent to which those modifications would, if accepted, impact upon the assessment of the proposal. If it would result in a difference conclusion being reached then these specific parts of the policies should be given moderate weight given the level of uncertainty that these will still be recommended by the Inspector in his final report.

The Council is able to demonstrate a five year housing land supply with an appropriate buffer. This supply is assessed as being 6.46 years based on most recent evidence as reflected in the GBC LAA (2002). In addition to this, the Government's recently published Housing Delivery Test indicates that Guildford's 2021 measurement is 144%. For the purposes of NPPF footnote 8, this is therefore greater than the threshold set out in paragraph 222 (75%). Therefore, the Plan and its policies are regarded as up-to-date in terms of paragraph 11 of the NPPF.

S2: Planning for the borough - our spatial development strategy

H1: Homes for all

P1: Surrey Hills Area of Outstanding Natural Beauty and Area of Great Landscape Value

P3: Countryside

P5: Thames Basin Heaths Special Protection Area  
D1: Place shaping  
D2: Climate change, sustainable design, construction and energy.  
ID3: Sustainable transport for new developments  
ID4: Green and blue infrastructure

Guildford Borough Local Plan 2003 (as saved by CLG Direction 24 September 2007):

G1            General Standards of Development  
G5            Design Code

Emerging Local Plan Development Management Policies

P6/P7: Biodiversity in New Developments  
P8/P9: Protecting Important Habitats and Species  
P13: Sustainable Surface Water Management  
D4: Achieving High Quality Design and Respecting Local Distinctiveness  
D5: Protection of Amenity and Provision of Amenity Space  
D12: Sustainable and Low Impact Development  
ID11: Parking Standards

Supplementary Planning Documents

Draft Parking Supplementary Planning Document 2022 - Given the advanced stage of this document, considerable weight can now be attributed to this document  
Climate Change, Sustainable Design, Construction and Energy SPD 2020  
Guildford Landscape Character Assessment 2007  
Vehicle Parking Standards SPD 2006

Planning considerations.

The main planning considerations in this case are:

- background
- changes to the refused 21/P/01640 scheme
- the principle of development
- impact on the countryside
- countryside location
- impact on scale and character of the site and surrounding area and its setting and countryside location
- impact on strategic gaps
- the impact on neighbouring amenity
- highways and parking considerations
- impact on ecology and biodiversity
- the living environment
- sustainability
- Thames Basin Heaths Special Protection Area
- unauthorised development
- the Council's duty under other Acts
- planning balance

## Background to this application

Application 21/P/01640 for a change of use of land for the proposed creation of 4 Gypsy/Traveller pitches, comprising the siting of 4 Mobile Homes, 4 Touring Caravans, and the erection of 4 Dayrooms, and the formation of a new access was refused for the following reasons:

- The development would result in the stationing of mobile homes with associated ancillary buildings and new access route within the countryside where development should be limited. The site is not sustainable in relation to accessibility for future occupants and will result in the heavy reliance on private vehicle. The Council maintains an up-to-date housing land supply and has enough sufficient provision for traveller sites, as such there is no justification for the location of the proposal in the countryside. Therefore, the proposal fails to comply with policy P3 of the Guildford Borough Local Plan: Strategy and Sites, 2015-2034, and the requirements of Chapter 15 of the National Planning Policy Framework, 2021, or the Planning Policy for Traveller Sites August 2015 (PPTS).
- The proposed development would, as a result of the extent of the hardstanding, intensity of development, and the proposed location and design of the new access, have a harmful impact on the character and appearance of the locality and would result in a feature which would be incongruous and detract from the countryside context and the setting of the Surrey Hills AONB and AGLV, contrary to policies P1, P3, H1 and D1 of the LPSS, 2015-2034, G5 of the saved Local Plan, and requirements of the NPPF, 2021.
- The proposal fails to demonstrate that the access shown on plans is capable of serving the development. As such, the proposal is contrary to policy ID3 of the LPSS, 2015-2034 and Chapter 9 of the NPPF, 2021.
- No information regarding sustainability has been provided with the application and as such without precise details the Council cannot be satisfied that the proposal is compliant with policy D2 of the LPSS, 2015-2034.
- The Council cannot be satisfied that either the development on site or the proposed development would not cause harm to protected species or that there is no net loss of biodiversity on site. In the absence of any ecological assessment of the site, the proposal cannot demonstrate that it would not result in harm to legally protected species and habitats contrary to policy ID4 of the Guildford borough Local Plan: Strategy and Sites 2015-2034, policies NE4 and NE6 of the Guildford Borough Local Plan (as saved by CLG Direction 24/09/2007), the NPPF, the PPG and the Wildlife and Countryside Act (1981) (as amended), Conservation of Habitats and Species Regulations (2017) (as amended) and Section 41 of the Natural Environment and Rural Communities (NERC) Act, 2006
- The site lies within the 400m to 5km zone of the Thames Basin Heaths Special Protection Area (TBHSPA). The Local Planning Authority is not satisfied that there will be no likely significant effect on the Special Protection Area and, in the absence of an appropriate assessment, is unable to satisfy itself that this proposal, either alone or in combination with other development, would not have an adverse effect on the integrity of the Special Protection Area and the relevant Site of Special Scientific Interest (SSSI). In this respect, significant concerns remain with regard to the adverse effect on the integrity of the Special Protection Area in that there is likely to be an increase in dog walking, general recreational use, damage to the habitat, disturbance to the protected species within the protected areas and road traffic emissions. As such the development is contrary to the objectives of policy NE4 of the

Guildford Borough Local Plan 2003 (as saved by CLG Direction on 24/09/07), policy P5 of the Guildford Borough Local Plan: Strategy and Sites (LPSS) 2015-2034 and conflicts with saved policy NRM6 of the South East Plan 2009. For the same reasons the development would fail to meet the requirements of Regulation 63 of The Conservation of Habitats and Species Regulations 2017 as amended, and as the development does not meet the requirements of Regulation 64 the Local Planning Authority must refuse to grant planning permission.

#### Changes to the refused 21/P/01640 scheme

- The site no longer seeks to provide a new vehicular access from the Hogs Back to the site
- Greater landscaping is proposed on site
- The personal circumstances of the applicants of the site have now been provided
- A Climate Change, Sustainable Design, Construction and Energy Questionnaire has been submitted

#### The principle of development

Policy S2 of the Local Plan: Strategy and Sites 2015-2034 details that provision has been made for permanent pitches within the borough for Gypsies and Travellers and Travelling Showpeople (a total of 8 between 2017- and 2034) and states that 41 additional permanent pitches have also been allocated for those who do not meet the planning definition of travellers and four permanent plots for Travelling Showpeople who do not meet the planning definition.

Policy H1 of the Local Plan: Strategy and Sites 2015-2034 states that new residential development is required to deliver a wide choice of homes to meet a range of accommodation needs as set out in the latest Strategic Housing Market Assessment. The Land Availability Assessment 2020 confirms that sufficient pitches and plots to meet the needs of the travelling community have been identified and that need for pitches for Gypsies and Travellers who meet the planning definition of travellers in both the short and longer term is currently being met.

The supporting text to Policy H1 also states that small-scale traveller sites are supported as it is believed that such sites will better integrate with the locality.

#### Impact on the countryside

The application site lies within land designated as 'countryside' and as such policy P3 of the LPSS, 2015-2034, is relevant. This policy states that:

(1) Within the area of countryside, as designated on the Policies Map, development will be permitted provided it:

- a) requires a countryside location or where a rural location can be justified, and
- b) is proportionate to the nature and scale of the site, its setting and countryside location, and
- c) does not lead to greater physical or visual coalescence between the (i) Ash and Tongham urban area and (ii) either Aldershot or Ash Green village.

Therefore, these factors will form the basis of the assessment below.

Further, the PPTS, 2015, states at paragraph 25 that:



'Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure'.

### Countryside location

Chapter 15 of the NPPF places importance on recognising the intrinsic character and beauty of the countryside. For this reason the Council's Local Plan seeks to limit any development within the countryside unless it can be demonstrated that it is necessary in that location and contributes positively towards the rural economy.

It is not uncommon for gypsy sites to be located within the countryside; however, it is noted that there is no particular justification for the applicants to be sited on this particular site within the countryside and as such the application would fail to meet this requirement of Policy P3. The benefits of the site's location are however discussed below.

Whilst it is noted that concern was raised with regard to the sustainability of the location on the refused 21/P/01640 scheme, it is important to note that the PPTS states that authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements. Whilst the application site is not located within an existing settlement but in the open countryside, it is not located in open countryside that is away from existing settlements being located just 340m as the crow flies to the urban area of Tongham.

The site is located off the Hogs Back which is served by a pavement which runs all the way into Tongham which is served by a local shopping centre with a local convenience store 15 minutes walk from the site. A petrol station with a retail element selling goods to meet day-to-day needs is also located on the Hogs Back within a 20 minute walk. Tongham is also served by a primary school with Ash Manor Senior school and nurseries also located within Tongham and nearby Ash. Whilst it is noted that the route to these destinations are not lit at night, this is not a unique situation within rural areas where you would not expect illumination at night.

A bus stop is located immediately opposite the application site, however, it is no longer in use; and as such it is likely that the occupants of the site would predominantly rely on private vehicles as the occupants of the existing dwellings which currently run along the Hogs Back are also likely to do. However, as there are facilities within the local area that could easily be accessed by foot or bicycle, occupants of the site would not need to rely on private vehicles and a condition is recommended to secure the provision of covered bicycle stores on site to encourage the use of more sustainable modes of transport.

The application site is also located between, but set back from, a linear form of residential development that lines the Hogs Back with a greater density of dwellings to the east, reducing in density further to the west as the area becomes more rural in character; as such the site would be situated within an area of existing residential development and not in an isolated location within the open countryside that is away from existing settlements.

The proposed development seeks permission for only four pitches, each of a similar size to the

residential plots to the east; and even in combination with the pitches at Ipsley Lodge to the south of the application, the number of pitches is limited and as such would respect the scale of, and not dominate, the nearest settled community and due to their limited number would avoid placing undue pressure on the local infrastructure.

#### Impact on scale and character of the site and surrounding area and its setting and countryside location

Paragraph 26 of the PPTS sets out in a) to d) relevant considerations on the effective use of land, environmental enhancements, promoting healthy lifestyles and preventing isolation.

Paragraph 170(b) of the NPPF advises that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services.

Policy D1(6) of the LPSS advises that all new development will be designed to reflect the distinct local character of the area and will respond and reinforce locally distinct patterns of development, including landscape setting.

The site is not located within the AONB or AGLV, however, it is noted that these designated areas are located further to the south of the application site. The Surrey Hills AONB Management Plan 2020-2025 has planning management policies to ensure that new development enhances local character and the environmental quality of its nationally important setting.

Policy P1 seeks to conserve and enhance and to maximise the special landscape qualities and scenic beauty of the AONB and development proposals within the AGLV will be required to demonstrate that they would not harm the setting of the AONB or the distinctive character of the AGLV itself.

The site falls within the Hog's Back Chalk Ridge landscape character area (character area B1) as defined by the Landscape Character Assessment (LCA) and Guidance.

The key characteristics of this landscape character area are:

- Steeply rising slopes of the North Downs forming a dramatic chalk ridge.
- There are large fields of arable and pasture on the slopes with woodland blocks particularly to the east and small areas of chalk grassland along the ridge top.
- Sparse settlement pattern of hamlets, scattered farmsteads and substantial houses.
- A historical line of communication and defence with numerous vantage points
- A peaceful rural landscape providing panoramic views from the rising slopes and ridge top and forming a backdrop to the surrounding lower land and to Guildford.

The application site is relatively typical of this landscape due to the sparse pattern of development and wide-ranging views across the landscape.

The most relevant landscape guidelines for the Hogs Back Chalk Ridge Character Area include:

- Conserve the sense of a rural, sparsely settled area with limited visible development.
- Maintain the existing dispersed pattern of settlement and the character of the small hamlets and farmsteads at the foot of the slopes avoiding the spread of villages up the slopes of the ridge.

- Oppose the erection of further tall vertical structures such as telecom masts on the ridge top where they will be visually dominant and potentially impact on important views from Guildford and where they would adversely affect views from the wider landscape. Aim to utilise existing masts in preference to the erection of new ones.
- Consider the impact of development in adjacent areas (such as Puttenham) in views from the ridgeline. Maintain the rural setting and containment of villages at the foot of the ridge.
- Protect landscape character and quality from further negative impact of transport networks including the introduction of signs, gantries and lighting columns that impact on local distinctiveness, and work to foster local distinctiveness where standard design criteria creates a lack of variation and 'urbanisation' of rural roads.
- Ensure that the development of the A31 and associated signage, lighting, services and recreational opportunities is sensitive to the visual dominance of the ridgeline in views from below so that development does not detract from the rural character of the area.
- Promote landscape benefits in road design, construction and mitigation and resist fragmentation of habitats and promote nature conservation schemes and maintenance, which enhance the contribution of verges and road boundaries to biodiversity and screening.
- Conserve the rural roads minimising small-scale incremental change such as signage, fencing or improvements, which would change their character.
- Ensure that road lighting schemes are assessed for visual impact and encourage conservation of the existing 'dark skies' on the ridge slopes and skyline.
- Promote the use of traditional signage features with particular regard to local style and materials.
- Promote appropriate management of car parks and rest areas by land owners and support sense of ownership through the encouragement of stakeholder or local community adoption of areas.

The proposal introduces development into a previously open undeveloped area of countryside. Significant areas of hardstanding within the pitches have already been laid on the site which are harmful to the immediate landscape character and detract from the open and green nature of the site. However, during the course of consideration of the application an amended plan has been received reducing the level of hardstanding and increasing the level of landscaping which would still enable the safe movement of mobile homes onto and off the site as necessary whilst maintaining a largely soft landscaped site. The number of pitches proposed is limited and as such would not introduce a level or density of development that would alter the rural character of the area, which would be maintained.

The site, whilst benefiting from trees along the northern and western boundaries of the site, is relatively open to the wider landscape. However, due to the proposed location of the mobile homes and day rooms (which are relatively modest in scale) towards the northern end of the site where existing boundary trees are present and where additional planting is proposed, the mobile homes would not be apparent from views from the north. Similarly, as the mobile homes would be set back within the site, they would not be visible from longer distance from the Area of Outstanding Natural Beauty (AONB) to the South. The AONB Officer who was not consulted on the earlier 21/P/01640 application also raises no objection to the proposed development as the site is not visible from the south.

Furthermore, due to the ground levels which rise from the Hogs Back to the application site and

the intervening paddocks and the trees / hedges located along the Hogs Back, at there would be no appreciable public visual impact from the proposed development. As the proposal seeks to utilise the existing access which serves Ipsley Lodge, off the Hogs Back, there would again be no additional road required to access the site limiting the impact of the proposal on the countryside further.

Due to its rural location and position on a ridge, the impact of external lighting has the potential to result in light pollution, predominantly sky glow, and whilst the mobile homes would be set back within the site, reducing the impact when viewed from more sensitive views from the south, a condition is recommended to control external lighting to ensure it is directed downwards to limit this impact.

The proposed development is therefore considered to be of an appropriate scale for this countryside location, and whilst it would result in changes within the site itself which would result in some harm, the level of soft landscaping and low density of the development proposed would ensure that the rural character of the site is maintained. Furthermore, the proposal would have a very limited visual impact on the wider countryside or on views into or out of the AONB and would not conflict with any of the landscape character guidelines for the area. As such it is considered that whilst some harm would occur as a result of the hardsurfacing and presence of mobile homes and day rooms, this harm would be limited.

#### Impact on strategic gaps

The development is contained within the immediate vicinity not extending further than the established line of trees and vegetation to the north, beyond this there is an absence of development. Therefore, and notwithstanding other assessment upon scale and character, the proposal in itself would not result in any greater physical or visual coalescence between either the Ash and Tongham urban area or Aldershot or Ash Green village

#### The living environment

The site is located in a residential area away from a busy road or commercial premises and is therefore considered suitable for its intended use. Each pitch would have sufficient room to accommodate a static mobile home and tourer and would also benefit from a landscaped amenity area for children to play as well as a parking area. As such it is considered that the living environment would be acceptable.

#### The impact on neighbouring amenity

The proposed mobile home pitches would be approximately 65 metres from the closest neighbouring residential property which is a new dwelling located to the east of the application site. The proposal would be located over 100 metres from Ipsley Lodge, comprised of 9 flats. Therefore, the separation distance between these residential units is sufficient to prevent any loss of amenity. The proposal is not considered to have any adverse impact in terms of loss of light, loss of privacy, noise or overbearing impact and would therefore comply with saved policy G1 (3) of the Guildford Borough Local Plan 2003 and the NPPF, 2021.

#### Highways and parking considerations

The application seeks to share the existing vehicle access which is used to serve Ipsley Lodge Stables, a site just to the south-east of the application site. The County Highway Authority is satisfied that the access off the Hogs Back would be sufficient to meet the needs of the applicants and do not consider that the proposal would result in a significant increase in vehicular trips on the surrounding network; and as such do not consider that the proposal would have a material impact on highway safety. The proposal is therefore acceptable in this regard subject to conditions.

#### Impact on ecology and biodiversity

The applicant has not submitted an ecological impact assessment with this application, and as such it has not possible to assess the impact of the proposed development on legally protected species and the biodiversity value of the site. It is noted however from aerial images, that the site was used for grazing prior to the current occupiers developing the site and as such it is unlikely that this site in equestrian use would have been particularly rich in biodiversity. However, any habitats that may have been in existence would have already been adversely impacted when the site was cleared and hard surfacing laid and continued as the unauthorised occupation of the site intensified, preventing any re-wilding to take place.

It is noted that the applicants have already carried out some planting on site and seek to introduce further measures to improve the biodiversity of the site including the introduction of bat boxes, bird boxes, reptile refugia and the planting of native hedges. However, Policy ID4 of the Local Plan requires all development to improve the biodiversity on site; as such a condition is recommended to ensure a baseline for the ecological value of the site prior to being occupied is established, in order that appropriate mitigation, along with biodiversity enhancements are secured for the site.

A condition is also recommended to secure to secure the details of any external lighting so that the impact of any bats in the area on this ridge is minimised.

#### Sustainability

A Climate Change, Energy and Sustainable Development Questionnaire was submitted during the course of the application. Whilst the questionnaire was not designed for applications for a change of use for the siting of caravans and as such is difficult to apply to caravans, it has been completed where possible. It is noteworthy that caravans are a low waste form of dwelling given that they are built under factory conditions and that their transient nature would enable them to be sited such that best use would be made of solar gain.

The completed questionnaire states that the hardstanding works were undertaken in 2020 but that the material used was recycled construction waste which had been screened prior to importation and any further material required will be sustainably sourced where possible. Water harvesting could be incorporated into the scheme and soft landscaping and permeable surfaces on the site have been maximised. Renewable energies could be utilised to reduce the carbon requirement of the development.

The Council is therefore satisfied that the proposal is compliant with policy D2 of the LPSS, 2015-2034 and policy D12 of the Draft Guildford Borough Local Plan: Development Management Policies 2022.

## Thames Basin Heaths Special Protection Area

The application site is located within the 400m – 5km buffer zone of the TBHSPA. Natural England advise that new residential development in this proximity of the protected site has the potential to significantly adversely impact on the integrity of the site through increased dog walking and an increase in general recreational use. The application proposes four static caravan pitches and as such has the potential, in combination with other development, to have a significant adverse impact on the protected sites. The Council adopted the Thames Basin Heaths Special Protection Area Avoidance Strategy SPD in July 2017 which provides a framework by which applicants can provide or contribute to the delivery, maintenance and management of Suitable Alternative Natural Green Space (SANGS) within the borough and to Strategic Access Management and Monitoring (SAMM) which can mitigate the impact of development. In this instance the development requires a SANG and a SAMM contribution which should be secured by a Legal Agreement.

It is therefore concluded that subject to the completion of a legal agreement the development would not impact on the TBHSPA and would meet the objectives of the TBHSPA Avoidance Strategy and Policy NRM6 of the South East Plan 2009. For the same reasons the development meets the requirements of Regulation 61 of the Conservation of Habitats and Species Regulations 2010.

As part of the application process the Council has undertaken an Appropriate Assessment (AA), which concluded that the development would not affect the integrity of the European site either alone or in combination with other plans and projects in relation to additional impact pathways subject to the application meeting the mitigation measures set out in the TBHSPA Avoidance Strategy. In line with standing advice from Natural England, no objection is raised to an Appropriate Assessment undertaken which concludes that there would be no adverse impact on the integrity of the SPA due to measures being secured and required to be put in place through a legal agreement and accord with the provisions of the Development Plan and the adopted SPD 2017.

It is therefore concluded that subject to the completion of a legal agreement the development would not impact on the TBHSPA and would meet the objectives of the TBHSPA Avoidance Strategy and Policy NRM6 of the South East Plan 2009. For the same reasons the development meets the requirements of Regulation 61 of the Conservation of Habitats and Species Regulations 2010.

## Unauthorised development

A ministerial planning policy statement on 31 August 2015 notes that the government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission. In such cases, there is no opportunity to appropriately limit or mitigate the harm that has already taken place. Such cases can involve local planning authorities having to take expensive and time consuming enforcement action. The ministerial statement therefore includes a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. This policy applies to all new planning applications and appeals received from 31 August 2015.

In considering this current application, which seeks to regularise part unauthorised development,

the local planning authority has given some weight to the fact that the application is retrospective. However, in the absence of any evidence to demonstrate that the applicant intentionally sought to breach planning legislation, or any detailed guidance from central government on the level of weight that should be applied in such circumstances, the fact that this application is retrospective is only considered to weigh against granting planning permission to a limited degree.

### The Council's duty under other Acts

#### Human Right Act

It is recognised that the occupiers of the site have a right to a home and family life under Article 8 of the European Convention on Human Rights. Article 8 is a qualified right and may be interfered with in accordance with the law and if it necessary in a democratic society. Any interference with the right must be proportionate to the legitimate public end.

#### Rights of the child

Article 3.1 of the United Nations Convention on the Rights of the Child is also relevant and states 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. These are therefore an important material consideration in any planning decision to which significant weight should be given..

#### The Council's duties under the Equality Act 2010

Section 149(1) of the Equality Act 2010 provides:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The Public Sector Equality Duty the Council has a positive obligation to act so as to facilitate the gypsy way of life, but there is no duty to guarantee it in any particular case.

#### Planning balance

Policy H, paragraph 24 of the PPTS requires five criteria to be considered with planning applications for traveller sites:

a) the existing level of local provision and need for sites

The Council currently has a 5-year supply of sites that has met the required target for travellers that meet The Annex 1 PPTS definition which states that:

'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 dependant's 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'.

It should be noted that in a recent judgment in *Smith v Secretary of State for Levelling Up, Housing & Communities & Anor* [2022] EWCA, the Judges found the above definition to be discriminatory against those Gypsies and Travellers who had permanently ceased to travel due to old age or illness, but who lived or wanted to live in a caravan and that this discrimination was inextricably linked to their ethnic identity.

Whilst the definition of travellers in the PPTS has not been amended to take account of this judgement, this is a material consideration. However, the Council's Land Availability Assessment goes beyond the requirements of the PPTS and identifies sufficient sites to meet the need for all traveller accommodation (including travellers who do not meet the PPTS definition and those travellers of unknown planning status) over the plan period (2015 - 2034).

b) the availability (or lack) of alternative accommodation for the applicants –

The Council's need for Traveller accommodation is set out in Policy S2 and states that there is a need for a total of 53 pitches to meet the needs of travellers up until 2034. Since January 2017 a total of 32 pitches have either been granted planning permission, built out or can be built out with the benefit of an extant permission. A further 21 pitches therefore need to be provided to meet the identified need. Whilst there are three public sites within the borough with a total of 41 pitches there are currently no pitches available and there is a waiting list of 20 people to occupy one of these pitches. The Land Availability Assessment also identifies that only 11 pitches are likely to be available over the next five-year period.

Whilst it is noted that there is an extant permission for 2 pitches at a private site in Ash (following permission being granted for 4 pitches and only 2 of them being built out) this would be insufficient to meet the pitch numbers required by this application and, as this site is a private site, there is no expectation that these would be available for the applicants of this application.

As such if permission were to be refused, this is likely to result in the applicants having to lead a roadside existence. Indeed, the applicants have submitted details of their personal circumstances and confirm that should permission not be granted, this would likely result in a roadside existence for them and their families.

c) other personal circumstances of the applicant –

The personal circumstances of the individuals on site have been provided. There are currently a total of nine adults and 8 children on site, with another child expected soon. All of the pitches currently have children residing on them with three of the four pitches with young children, some of whom are nursery or school age and attend age-appropriate educational settings in nearby Tongham and Ash. One of the residents is currently under medical supervision.

The occupants of three of the pitches travel for work, with the occupants of the fourth pitch



supported by their family members. The occupants of one of the pitches have stated that they attend and trade at fairs such as the Appleby fair and has referred to their aversion for living in brick and mortar housing. There is a general desire amongst the occupants of the site to live a more settled lifestyle and provide / continue to provide education for their children and those of appropriate age and it has been confirmed that these children are attending local settings.

The occupants confirm that they have been living a roadside existence or have been doubling up on family plots for a number of years prior to occupying this site with one occupant confirming that they were on a waiting list for a Council owned pitch but was informed that it would likely around 10 years before a pitch became available in Chertsey.

d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites – the site would meet the criteria set out in policy B paragraph 13 of the PPTS in that the site:

- being small in scale would promote a peaceful and integrated co-existence between the site and the local community
- would allow access to appropriate health services with local GP offices and a hospital within a short distance at Frimley
- ensure that children can attend school on a regular basis due to its close proximity to Tongham and Ash schools and nurseries where children are already enrolled
- provide a settled base that reduces the need for long-distance travelling which would be in line with one occupant who seeks to limit his travel due to having a young family
- reduces possible environmental damage caused by unauthorised encampment by providing a settled base
- provides for proper consideration for the effect of local environmental quality on the health and well-being of the travellers that may locate there or on others as a result of new development as is located away from busy roads and commercial premises and due to the nature of the proposed residential use and the limited pitch numbers would ensure the impact on others is limited
- would avoid placing undue pressure on local infrastructure and services as the proposal is for a small number of pitches and no objections have been received in this regard
- is not located in an area at risk of flooding as it is located on a ridge in an elevation position within the landscape

No commercial use is sought on the site under this application and whilst living and working from the same location thereby omitting many travel to work journeys would contribute to sustainability, any material change of use on the site would need to be assessed against the relevant planning policies. Excluding this last point, which is not relevant to this application, the site would meet the criteria set out in policy B paragraph 13 of the PPTS.

e) that they should determine applications for sites from any travellers and not just those with local connections –

One occupant has made reference to having local connections, however, this application will assess the needs from all of the occupants on the site and not just the occupant with local connections.

The aspects that weigh against the proposal are examined below:

- Countryside

The development would result in the stationing of mobile homes with associated ancillary buildings and hardsurfacing within the countryside where development should be limited and as such would result in some visual harm. The site, due to its location away from public transport, would also result in occupants relying to some degree on the use of private vehicles. There is no justification for the requirement for the proposal to be on this particular site. The Council maintains an up-to-date housing land supply and has enough sufficient provision for traveller sites within the plan period, as such there is no justification for the location of the proposal in the countryside. This harm is afforded substantial weight.

Matters which weigh in favour of the application:

- Alternative site

This is a retrospective application and as such the family groups would need to leave their current site if this application is refused. Whilst the Local Plan makes provision for sites to come forward over the plan period, not is not expected that any public sites will become available in the short term and as such the families may end up homeless. Therefore, this matter carries significant weight in the balance.

- Personal circumstances

The applicants and their families have a right to a home and family life under Article 8 of the European Convention on Human Rights and the access to education, health and other services. Furthermore, the best interests of the child would be affected in the event that planning permission was refused if forced to live on a roadside encampment. However, this does not outweigh the harm to the planning policies especially the protection of the countryside.

Taking all the above into account, it is concluded that the substantial harm to the countryside would not be outweighed by the lack of any other sites, the human rights issues and the best interests of the child to justify the grant of full planning permission.

In addition to the above the Council must consider whether it would be appropriate to grant either a personal permission or a temporary permission.

#### Personal permission

If permission were granted with a personal restriction this would affect the balancing exercise. However, it would not reduce the weight afforded to the harm identified.

#### Temporary permission

As noted above the lack of sites in the shorter term carries significant weight and given that any harm to the countryside would be temporary with the reinstatement of the land to paddocks readily achieved, then the level of harm in this respect can be reduced slightly. The personal circumstances of the occupants, in particular those pertaining to the children and their continuing need to attend educational settings, as well as the needs of the occupant currently under medical supervision, would weigh in favour of granting temporary permission.

### Balancing exercise

It is therefore considered that the combination of the lack of available sites in the short term, the education and medical needs of the existing occupants of the site and the likelihood of the occupants having to lead a roadside existence which would not be in the best interests of the children, together the ability to reinstate the land to paddocks with relative ease following the cessation of a temporary permission, would justify tipping the balance in favour of granting a temporary and personal permission to the occupants of the site for a limited time period after which it is expected that authorised sites will be available.

### Conclusion

The Council has conducted a full balancing exercise and concluded that full planning permission should not be granted. In reaching this conclusion the Council has had regard to interference in their human rights and the Public Sector Equality Duty on the family's ability to live their traditional way of life, as well as to their opportunities to access education, health and other services. In this case, the interference is necessary to control the use of the site in the general public interest, the objectives of countryside planning policy and highway safety. It would not be disproportionate.

However, taking into account the personal circumstances of the occupants on site and taking into consideration the best interests of the children, it is considered that a temporary and personal permission is granted in order for sufficient time to pass for the provision of authorised sites, subject to the imposition of conditions and a legal agreement to secure the necessary mitigation against the impact of the proposed development on the integrity of the Thames Basin Heaths Special Protection Area.



## 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.*
- 

### **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.*
- 

## 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 A<sup>1</sup> and appeal site B<sup>2</sup> 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

---

<sup>1</sup> APP/Y3615/W/16/3165526

<sup>2</sup> 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 refused<sup>3</sup> 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 appeal<sup>4</sup> 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 refused<sup>5</sup> 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 approved<sup>6</sup> 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 refused<sup>7</sup>. 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

---

<sup>3</sup> Council Ref: 10/P/00507

<sup>4</sup> APP/Y3615/A/10/21140630

<sup>5</sup> Council Ref: 15/P/002363

<sup>6</sup> Council Ref: 13/P/00825

<sup>7</sup> 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. Caselaw<sup>8</sup> 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

---

<sup>8</sup> 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 decision<sup>9</sup> 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

---

<sup>9</sup> 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*<sup>10</sup> 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.

---

<sup>10</sup> 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. Caselaw<sup>11</sup> 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 appeal<sup>12</sup> for Land to the rear of Palm House Nurseries,

---

<sup>11</sup> South Cambridgeshire DC v SSCLG & Brown [2008] EWCA Civ 1010

<sup>12</sup> 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 Guidance<sup>13</sup> 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.

---

<sup>13</sup> Paragraph: 015 Reference ID: 21a-015-20140306

87. The PPG<sup>14</sup> 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

---

<sup>14</sup> 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