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## Appeal Decisions

Inquiry opened on 2 July 2018

Site visit made on 3 July 2018

**by Paul Dignan MSc PhD**

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

**Decision date: 9 May 2019**

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### **Appeal A: APP/Q3630/C/17/3181382**

#### **Land at Ada's Farm, Hardwick Lane, Lyne, Chertsey, Surrey, KT16 0BH.**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Nino Lee against an enforcement notice issued by Runnymede Borough Council.
  - The enforcement notice, numbered RU.17/1917, was issued on 30 June 2017.
  - The breach of planning control as alleged in the notice is the unauthorised change of use of the land from woodland to a residential gypsy caravan site and the operational development of the laying out a residential gypsy caravan site comprising: The formation of hardstanding, internal access roads/tracks on the Land; The installation of septic tanks and associated pipes, laying and running of service media including but not limited to drains, pipes, wires on the Land; The erection of buildings and structures and associated concrete bases on the Land; and The erection of fencing to demarcate the residential plots and gates at the entrance to the site fronting Hardwick Lane, (for the avoidance of doubt this does not include the fencing along the perimeter of the site).
  - The requirements of the notice are: 5.1 Cease the use of the Land edged red on the attached Plan for use as a residential gypsy caravan site; 5.2 Break up and remove from the Land the internal access roads/tracks, hardstanding and resultant debris; 5.3 Remove from the Land any service media including but not limited to all drains, pipes, wires, and septic tanks, fencing demarcating the residential plots, entrance gates fronting Hardwick Lane and demolish and remove all buildings, structures, associated concrete and wooden bases and remove all vehicles and caravans; 5.4 Remove from the Land edged red on the attached Plan all unused material including but not limited to gravel, road scalplings, timber sheeting, and mixed hardcore; 5.5 Restore the land back to exposed soil to a level which matches that of the surrounding Land.
  - The period for compliance with the requirements is 14 days for requirement 5.1 and 3 months for requirements 5.2 to 5.5.
  - The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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### **Appeal B: APP/Q3630/W/18/3200398**

#### **Land at Ada's Farm, Hardwick Lane, Lyne, Chertsey, Surrey, KT16 0BH.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Nino Lee against the decision of Runnymede Borough Council.
  - The application Ref. RU.17/1104, dated 1 May 2017 and amended 10 July 2017, was refused by notice dated 28 March 2018.
  - The development proposed is Material change of use of land to use as a residential caravan site, comprising 13 plots accommodating a total of no more than 23 gypsy households, together with construction of access driveway and laying of hardstanding.
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## **Decisions**

### Appeal A

1. I direct that the enforcement notice be corrected by the replacement of the plan attached to the notice with the plan attached to this decision, and varied by the substitution of 6 months as the period for compliance. Subject to this correction and variation the appeal is dismissed and the enforcement notice is upheld.

### Appeal B

2. The appeal is dismissed.

## **Background and preliminary matters**

3. Both appeals concern the same piece of land, an area of about 1.5 ha<sup>1</sup> on the south-western side of Hardwick Lane a short distance from the M25. The land is within the Metropolitan Green Belt. Aerial imagery from 2015 shows the land as predominantly wooded, with a grassed clearing in the northern part. The site was almost entirely cleared and developed and occupied as a 13 pitch gypsy/traveller caravan site over a few days in April/May 2017, the pitches laid out either side of a central spine access road off Hardwick Lane. Most of the site area was laid to hardstanding of one form or other, and a number of timber framed buildings on concrete bases were erected or commenced. The development of the site and its use were brought to an end by court order and the site was vacated on 23<sup>rd</sup> June 2017.
4. The planning application was first made shortly after the development commenced. It differs from the development enforced against in that land is set aside as a buffer along the boundaries of existing residential properties to the north-west (Almners Road properties), north-east (Field Cottage) and south-east (The Caduceus), and no buildings are proposed. This buffer land is indicated on the application plans as being laid to grass, but it is available for landscaping generally. Each pitch would have a mobile home and between 1 and 5 touring caravans.
5. Among the reasons for issuing the notice and for refusing planning permission was the risk to highway safety due to inadequate visibility at the site access to Hardwick Lane. The Highway Authority withdrew its objection following the provision by the appellant of a report on this matter which satisfied it that satisfactory highway visibility was available. A statement of common ground setting out the matters agreed between the appellant and the Highway authority was provided to the Inquiry.
6. Another reason for issuing the notice and refusing planning permission was the failure to agree that satisfactorily provision could be made to avoid adverse effect on the Thames Basin Heaths Special Protection Area (TBHSPA), a European Site whose integrity is at risk from disturbance linked to recreational use. When the application was being considered there was a general mechanism to mitigate such harm, but the current interpretation of legislation covering the impact of development on European Sites requires the decision maker to carry out an Appropriate Assessment of the effect of the specific development before planning permission can be granted. I am satisfied that

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<sup>1</sup> The Council's estimate is 1.79 ha and the appellant's 1.3 ha.

sufficient information has been provided to enable me to carry out that assessment should I decide that planning permission should be granted. The Council's position on this matter, and indeed the advice of Natural England, is that if the measures considered as mitigation considered at the application stage, namely a contribution to SAMM (strategic access management and monitoring) through a s106 undertaking and an appropriate means of securing a contribution to the provision of SANG (suitable alternative natural green space), were secured, and I considered that that would avoid harm to European Sites, then their objections on this basis would be overcome. An appropriate s106 undertaking has been provided and I have taken this into account.

### **Appeal A**

7. This appeal against the issuing of the enforcement notice is made solely on ground (g), that the time for compliance is too short. The basis of the appeal on this ground is that a period of 6 months would be reasonable given the amount of materials that would need to be removed from the site, that it may take some time to organise the proper disposal of these materials, and that extending the period would enable work to be done in reasonably clement weather, thereby avoiding the possibility of long-term damage to the underlying soil.
8. That seems entirely reasonable to me, and I shall allow the appeal to that limited extent. I do need to address one matter however, and that is the extent of the land affected by the notice. It is now agreed that the plan attached to the notice as issued covered land that had not been sold to the prospective occupiers and over which there was no allegation of a change of use. In my decision I have replaced that plan. The notice is otherwise upheld.

### **Appeal B**

#### *Main issues*

9. The site is in the Metropolitan Green Belt. It is common ground that the development is inappropriate development in the Green Belt. Based on the reasons for the refusal of planning permission and for the issuing of the enforcement notice, the main issues in the planning application appeal are:
  - the impact on the openness of the Green Belt and the purposes of including land within the Green Belt;
  - whether the development is likely to harm the living conditions of neighbours, particularly in terms of noise and disturbance; 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 either a permanent or temporary basis.

#### *Development Plan Policy*

10. The development plan for the borough includes the saved policies of the Runnymede Borough Local Plan Second Alteration 2001 (LP), which includes Policy GB1, relating to development in the Green Belt, and Policy HO9 which sets general planning expectations for new housing development. The LP is

dated but the relevant policies are broadly consistent with current national planning policy. There are no specific Local Plan policies for gypsy and traveller sites, but the Council's approach to such provision will be the subject of a specific planning policy in its next Local Plan. The emerging Local Plan was submitted to the Secretary of State in July 2018 and is undergoing examination in public. Policy SL22 quantifies the number of pitches to be provided for gypsies, travellers and travelling showpeople to 2030, drawing on a relatively recent Gypsy and Traveller Accommodation. It also identifies the criteria to inform the location of sites for allocation through the Local Plan and criteria against which to assess application that come forward otherwise. There are subsidiary policies allocating specific sites. The emerging Local Plan has yet to complete the public examination process and therefore its policies cannot be accorded the weight of a development plan policy. However, it is the most up to date Council statement available on gypsy site provision and therefore a significant material consideration.

11. National planning policy as set out in the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS) are important material considerations.

#### *Green belt issues*

12. The appeal proposal, as noted above, is different to what has taken place. I have taken the submitted layout plans as indicative, but the underlying principle of the development layout, as expressed at the Inquiry, is that residential areas would be set in about 5-6m from the site boundaries, the intervening land to be restored by removing the unauthorised buildings and hardstanding, fenced off and planted with trees and shrubs. Nonetheless, the number of caravans required would be the same and it is difficult to see how they would be accommodated on the site without the provision of considerable areas of hardstanding. Although no utility buildings are proposed at present, the needs of some of the prospective occupants would require, and justify, some provision of this kind in the future. However, even if no permanent buildings were erected to support the proposed use, the extent of development on the site, including the stationing of the caravans and the inevitable presence of domestic paraphernalia and vehicle parking, would be considerable and amount to a substantial loss of openness in what is already a fragmented part of the Green Belt.
13. Because the site is largely surrounded by housing, public views of the site would be restricted, limiting visual impact. It was argued that the harm to openness was thus less, but while openness can have a visual dimension it does not follow that loss of openness should be afforded less weight if a development has no visual impact because it is screened from public view. In this case, in addition to the loss of Green Belt openness it is relevant that the appeal development also conflicts with one of the purposes the Green Belt serves, which is to safeguard the countryside from encroachment. That involves preservation of the quality of openness of aspect rather than the more clearly visual dimensions of some of the other purposes.
14. It is also the case that other gypsy site provision, such as that proposed by allocation through the Local Plan process, would almost certainly also be in the Green Belt at the point of identification, given the extent of Green Belt in the borough. However, the development plan process for releasing Green Belt land

has an initial strategic focus that must have regard to the intended permanence of Green Belt boundaries, and exceptional circumstances must exist whereby the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. That process has safeguards that are not easily applied to the piecemeal development of available land, but in any case the Council's approach to Green Belt land release of smaller parcels is focussed on sites that can form a logical extension to the borough's existing urban areas, which would exclude the appeal site. This is not a matter that I consider adds significant weight in favour of the appeal.

#### *Impact on the living conditions of neighbours*

15. Unsurprisingly, the circumstances in which the site was first developed clearly caused significant concern and apprehension among the occupiers of the neighbouring residential properties. Along with the loss of woodland which contributed to the amenity and character of the area, buildings were erected close to property boundaries, land levels were raised in places and there was noise and disturbance due to site development activities and items such as generators and high level lighting associated with the residential use. The scheme as now proposed seeks to avoid any harm to the living conditions of neighbours by increasing separation of the residential areas, providing intervening tree planting and reducing the likelihood of inter-visibility through the control of land levels. Mains electricity is readily available, but the use of generators can be precluded by condition and site lighting can be controlled to avoid spread outside of the site itself. There remains some concern that the density of development will result in day-to-day noise generation through ordinary residential use that might be perceived to be uncharacteristic and discordant in a low density semi-rural area. However, given the reasonable separation of the residential areas now proposed, intervening close boarded fencing, what appears to me to be significant boundary planting in the neighbouring properties, and the proposed establishment of substantial planting between the site and its neighbours, I consider that the proposed development is very unlikely to cause material harm to the living conditions of neighbours in terms of noise and disturbance.

#### *Other considerations*

##### The need for, and provision of, gypsy/traveller sites

16. PPTS requires local planning authorities to make their own assessment of need for the purposes of planning, to set pitch targets for travellers which address the likely needs, and to identify a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.
17. The most up-to-date assessment of current need was carried out for the Council by Opinion Research Services (ONS). The Final Report of the *Gypsy and Traveller Accommodation Assessment* (GTAA) was published in January 2018, using a baseline date of November 2017. The assessment included interviews with 12 households that had been residing on the appeal site.
18. The GTAA estimated a total Gypsy/Traveller pitch need for the period 2017 to 2035 of 205 additional pitches, 123 pitches arising from households who have been determined to meet the PPTS definition of travellers and the remainder being for pitches for members of the travelling community who have been

- considered, on the basis of interviews, not to meet the PPTS definition (50 pitches) or gypsy/travellers whose PPTS status has not been determined because they were not interviewed, for whatever reason (32). The estimated need for the 5-year period 2017/18 to 2021/22 was for 96 pitches, an immediate need arising from unauthorised pitches (32), concealed or doubled up households or adults (23) and from households currently living in houses (4), the remainder being that expected to arise over the period from current teenagers, new household formation, in-migration and from households living on sites with temporary planning permission.
19. The need for dedicated gypsy/traveller pitches for those ethnic gypsy/travellers households whose PPTS definition status was not determined was estimated using a national average of 10% (10% of the approximately 2500 gypsy/traveller households interviewed by ORS were considered to meet the PPTS definition). That would result in an immediate need for 2 (rounded up) pitches and 3<sup>2</sup> pitches over the 5 year period 2017-2022. Since the publication of the GTAA ORS has revised its national average of interviewed households who meet the PPTS definition to approximately 25%, which would equate to an immediate need for 5 (rounded up) pitches and 8 to 2022. However, if the locally derived proportion of interviewed households that meet the PPTS definition (44%) was applied, the immediate need would be for 8 additional pitches and 12 to 2022. The GTAA advised that the PPTS need from non-interviewed households would need to be addressed through the Local Plan alongside the need from households that meet the definition.
  20. The GTAA estimation of need was criticised on a number of points, the central argument being that it significantly underestimated need. A frequent criticism of the methodology is that the determination of who does or does not fall within the PPTS definition lacks transparency, but I have not seen evidence of any inherent bias around that component that may have resulted in an underestimation of need. Nonetheless, restricting the base population for household formation purposes to those assessed as meeting the PPTS definition runs the risk of failing to account for the needs of any children of those who have ceased travelling if they themselves wish to lead a nomadic way of life upon reaching adulthood. This is a legitimate criticism in my view, but I understand it would make little difference in this borough since, according to Mr Jarman, most of those who had ceased travelling had done so because of old age, the inference being that there were few if any minors among their dependants.
  21. There is also a possibility of those considered to have settled and therefore lost their PPTS status returning to a nomadic way of life to ensure that they can continue to reside on a conditioned gypsy/traveller site. This has happened in the past, and it is a matter that the Council will have to take into account if they seek to rely on compliance to meet need, to which I return below. At present however it is too early to say that such an effect should be factored into the GTAA need estimation.
  22. The matter with the greatest potential to affect both the accuracy of the estimate of need and the supply position concerns two sites adjacent to each other on the northern side of Almnors Road, not far from the appeal site. Little Almnors Caravan Site (LA) has planning permission for the stationing of 20

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<sup>2</sup> ORS applies a 1.75% household formation rate for gypsy/traveller households known to meet the PPTS definition and 1.5% otherwise.

- caravans, while Walnut Tree Farm (WTF) has planning permission for 28 gypsy/traveller pitches, each pitch accommodating 2 caravans, only one of which could be a mobile home, and a utility building. Both planning permissions were granted on appeal, LA in 2000 and WTF in 2013. The sites were visited by ORS who concluded that the caravans present on the sites were not being occupied by gypsies or travellers. ORS interviewees on another site corroborated that view, but Mr Brown subsequently visited the sites and spoke to the owner who claimed that 37 ethnic Romany Gypsies or Irish Traveller households were living there. The site owner is an Irish Traveller, as is his daughter who is site manager, and both apparently live there as do a number of other members of the extended family and at least one Romany Gypsy who was identified as a resident by ORS. Hence there is some evidence that ORS's characterisation of the site as having no gypsies or travellers was incorrect.
23. The occupancy situation at LA/WTF is therefore unclear, but for practical purposes it is unlikely to add to immediate unmet need, though there remains a possible contribution to future need from new household formation arising from existing households resident on the site. In the circumstances however I am satisfied that the GTAA assessed need provides a reasonable practical basis for planning purposes, albeit with a recognition that significantly greater need than estimated is likely to arise from households that were not interviewed and whose PPTS status was not therefore determined. These form a significant proportion of the gypsies and travellers residing in the borough.
24. At the conclusion of this Inquiry the need arising from those considered by ORS to meet the PPTS definition had fallen by 5 due to the granting of certificates of lawfulness for the use of 2 of the unauthorised sites occupied at the time the report was prepared. That left a GTAA identified need over the plan period of 118 in the unlikely event that none of those not interviewed turned out to meet the PPTS definition, or 150 if all did. The equivalent immediate or unmet need is for 53 or 85 pitches respectively. No doubt the true figure falls somewhere in between, but that nonetheless represents a consider level of need.
25. The Council has formulated an approach to meet need, set out in Policy SL22 of the emerging plan, though the need addressed is somewhat less than that identified in the GTAA. It has taken the view that the former occupiers of the appeal site do not form part of the borough's need. The explanation given for this is that it is not satisfied that any can demonstrate that they have a local connection to Runnymede or that they have previously resided in the borough, but this seems to ignore much of the evidence given at this Inquiry.
26. There are nonetheless other problems with the proposed approach. Discounting the former site occupants<sup>3</sup>, the Council has told the Inspector examining the emerging Local Plan that it considers the true remaining level of need up to 2023/24 to be 71 pitches and 83 to 2030. No allowance has been made whatsoever for need arising from those who ORS was unable to, or did not, interview. As noted above, this is a significant proportion of the Borough's gypsy/traveller population, and the Council has not explained why it appears to be ignored<sup>4</sup>.

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<sup>3</sup> The Council reduced the GTAA identified need arising from those interviewed and considered to meet the PPTS definition by 24 pitches, but the GTAA need arising from the former site occupants was for 12 pitches with an additional 5 pitches for teenagers who will need a pitch of their own in the next 5 years.

<sup>4</sup> The Council's emerging Local Plan submissions set out how it intends to meet the need of those considered to meet the PPTS definition and of those who do not, but there does not appear to be a strategy for meeting the needs of those whose PPTS status has not been determined.

27. Another potentially significant problem is that the Council has relied on the provision of 48 pitches at LA/WTF as a major component of supply in the period to 2023/24. It plans first to seek compliance with the terms of the planning permissions through enforcement action, and if that does not work the Council intends to compulsorily purchase the 2 sites, which it says might actually deliver 63 pitches. A very simple and obvious problem with this strategy is that LA does not have 20 pitches, it has planning permission for the stationing of 20 caravans, which it was accepted as common ground early on in this Inquiry should equate to 10 pitches at most. It is surprising then to see, many months after this was clarified, that it is still being claimed as a 20 pitch site for the purposes of future supply. As for the proposition that the Council has identified breaches of planning control at the site, in reality this statement is based on the conclusion of the GTAA and anecdotal evidence. By the close of this Inquiry, with the Local Plan examination well advanced, no concrete steps had been taken to affirmatively establish the situation on either site, and no enforcement case had been opened.
28. If indeed it does turn out that all of the pitches on both sites are being occupied in breach of the occupancy condition, and can be enforced against, the private site owner will not have to bring them back into their authorised use, though it can reasonably be inferred that he would. But of course it is more likely than not in my view that there are travellers living there, if only the owner's extended family, some of whom may meet the PPTS definition in any case. The compulsory purchase route is also fraught with difficulties. Overall, while it may turn out that LA/WTF makes some contribution to supply eventually, in view of the very limited engagement that the Council has actually had with the sites I cannot be confident that they will make the crucial contribution that the Council has relied upon, certainly within the relatively short time-frame envisaged.
29. The Council also proposes to allocate sites through the Local Plan process which, on the most recent projection, would provide 32-42 permanent pitches by 2023/24. However, at this stage of the process it would not be prudent to consider the pitches as deliverable for the purposes of footnote 4 of PPTS. I note the Council's assertion that it expects, through its allocations and action at LA/WTF, to exceed the level of identified need by 2023/24. That seems unlikely, but I consider in any case, on the evidence before me, that the Council cannot at present identify a supply of specific deliverable sites sufficient to provide 5 years worth of sites against their locally set targets.
30. Although some of the former occupants have lawful sites elsewhere, at present no suitable available gypsy/traveller site in the borough has been identified for the group as a whole, or pitches for any of the individual households who seek to occupy the site.
31. Along with the undisputed national and regional need for gypsy/traveller pitches, the significant level of current unmet need for gypsy/traveller pitches in the borough, the lack of alternative sites for those who have no lawful site, the absence of a 5 years supply of sites and the uncertainty about the Council's strategy to address need all weigh in favour of the appeal. Further, the Council's poor record of bringing forward sites through the development plan process, only 1 permanent planning permission having been granted by them since the current Local Plan was adopted in 2001 despite the high level of

identified need, indicates a failure of policy, which also weighs in favour of the appeal.

#### Personal considerations

32. The 13 pitches on the appeal site would accommodate 23 households, in total 44 adults and 42 children, 26 of whom are of school age. A number of the families are close relatives, and these are all related to the former owner of the land, who still owns the adjoining land where he lives. The prospective occupants all have links to the Light and Life Evangelical Church. I am satisfied on the basis of the evidence submitted and that given under affirmation at the Inquiry that all of the prospective occupiers are gypsies or travellers for the purposes of PPTS and hence their individual circumstances are material considerations.
33. I shall not detail the individual personal circumstances of any of the occupiers, but I have had regard to the substantial personal information submitted in the course of the appeal. The prospective occupiers moved to the site from different situations, some had lawful sites that they considered unsuitable for reasons of overcrowding or fear of crime, and others had insecure accommodation, some doubling up, some on unauthorised sites and some on authorised sites but without what they consider to be reasonable security of tenure. At present those of the proposed site occupants who gave evidence have either returned to the sites they lived at previously or were reluctant to say where they were living, but all have a need for a site that meets their aspirations to live on a safe and secure site within a trusted and supportive environment.
34. A number of the prospective occupants have significant health problems, but while it has not always been the case, many now seem to have reasonable access to medical and support services. Nonetheless there are some families who would benefit considerably from the stability and security that the appeal development would provide. Some of the children require stable long term access to specialist facilities which would only realistically be available from a settled base which their families do not appear to benefit from currently. The high level of care required in some cases means that the trust and family connections between proposed occupants would be particularly valuable. Having a lawful, well planned and reasonably spacious and safe site from which they could access health services and have a stable education would also undoubtedly be in the best interests of all of the children involved.
35. These are all matters that weigh in favour of a grant of planning permission.

#### Intentional unauthorised development

36. It is government planning policy that intentional unauthorised development is a material consideration that should be weighed in the determination of planning applications and appeals. The written ministerial statement announcing this policy expressed concern that where the development of land has been undertaken in advance of obtaining planning permission there is no opportunity to appropriately limit or mitigate the harm that may have been caused. Particular concern was expressed about the harm that is caused by intentional unauthorised development in the Green Belt.

37. Aside from the harm due to inappropriate development in the Green Belt and the loss of openness, the works that have taken place in advance of the planning application have prevented assessment of the proposal against relevant local plan policies aimed at protecting local character and the amenity of established residential areas. For example, the requirement of saved LP Policy HO9 for new development to be sensitively designed and, among other things, to allow for the retention of appropriate trees has been largely pre-empted. The circumstances of the initial development of the site has also undermined one of the aspirations of PPTS to promote peaceful and integrated co-existence between the site and the local community.
38. The prospective occupiers accept that the initial development was unauthorised but justify that approach because they believed that there was little point in seeking planning permission prospectively, having regard to what they saw as the Council's failure to make adequate provision for the accommodation needs of gypsies and travellers historically. I heard little evidence that the group were actively seeking sites in Runnymede beforehand, and it seemed to me that the combination of the availability of the site and the familial connections with the owner led to its selection rather than the wider issues of pitch provision in the borough, but I can appreciate that there is a perception among gypsies and travellers that occupying a site in advance of seeking planning permission improves the chances of eventually gaining permission. However, that is undoubtedly one of the matters that the intentional unauthorised development policy seeks to address. As it happens little in the way of advantage eventuated in this case, but the actions clearly prevented the proper application of planning policies concerned with the quality of development and caused friction with the local community. In the circumstances therefore I consider that the nature and extent of the initial development, including the way it was carried out, justifies significant adverse weight.

#### *Planning balance*

39. By definition, inappropriate development is harmful to the Green Belt, and further harm arises through the loss of openness and encroachment on the countryside, the more so given the considerable size of the development. Each of these must be accorded substantial weight, and I have also found that the intentional nature of the unauthorised development should be accorded significant weight.
40. The sum of this harm must be balanced against the factors in favour of the proposal. At present, the borough has a significant level of unmet need for traveller sites, as is the case regionally and nationally, and this carries significant weight. The Council has a poor record of bringing forward sites through the development plan process, there is not a 5-year supply of sites and I am far less confident than the Council that its current approach to future provision is likely to see the shortfall overcome within the next 5 years. These are also matters to which I attribute significant weight.
41. The lack of an alternative site is a matter that would normally also add significant weight in favour of an appeal, but the circumstances of the prospective occupiers are not all the same, so I have had to consider whether less weight should be accorded to this matter in this case. To be a realistic alternative, accommodation has to be suitable, available, affordable and acceptable. In this case many of the households who occupied the site and who

remain prospective occupiers have got alternative lawful sites to live on. They consider them to be unsuitable or unacceptable for reasons of overcrowding, fear of crime or insecurity of tenure, but neither the overcrowding point nor that of fear of crime stood up well to scrutiny, and on the sites where security of tenure was an issue the households concerned had long connections with those sites and appeared able to return to them when required. For those who would not reveal where they were living, I could not conclude with any certainty that they did not have access to alternative accommodation, although I have no reason to doubt their oral evidence that wherever they are currently staying is unauthorised.

42. Notwithstanding, however, that some prospective occupants have access to alternative accommodation, there are qualitative aspects to traveller site provision that are often overlooked in quantitatively oriented accommodation assessments. I have formed the view that the impetus for moving onto the site was a combination, in roughly equal parts, of a genuine need for an affordable pitch by, primarily, close relatives of the then landowner, and the aspiration, on the part of those who already had alternative pitches, to live on a better site with like-minded people. In this context the personal need for a site is clearly more pressing for some of the prospective occupiers than others, but the group as a whole still have what I see as a legitimate aspiration of being able to live in the safe, secure and mutually supportive community that they had planned for the appeal development, and for which no alternative site has been identified. In these circumstances I consider that this matter can be accorded significant weight, particularly as the opportunity for the households to live together for mutual support is characteristic of the traveller way of life. The proposal would therefore be consistent with the Government's aim of facilitating the traditional and nomadic way of life of travellers.
43. Similarly, the personal circumstances of the prospective occupants, so far as they are material planning considerations, vary significantly, but I consider that they are worthy of very significant weight. I heard compelling evidence that the particular environment of the appeal development would be of considerable assistance in the management of the severe conditions affecting some of the children, and having a settled base would ensure that the many children who would live at the site had the stable access to education and health services that was, in most cases, denied their parents. The families of the children with the most pressing needs have been able to access appropriate specialist services in the area despite not living at the appeal site, but these might be at risk if they are unable to find suitable stable accommodation in the wider area at least. It would undoubtedly be in the best interests of those children who do not currently benefit from a stable base to have one from which to access education and health services. This also adds significant weight in favour of the appeal.
44. In balancing these opposing considerations and their respective weight, however, I consider that the Green Belt harm supplemented by the weight arising from the intentional unauthorised nature of the development is not clearly outweighed by the weight of the other considerations. It follows that the very special circumstances necessary to justify a grant of planning permission for the development in the Green Belt do not exist. The development therefore conflicts with LP Policy GB1 and the development plan read as a whole, and with national planning policy.

45. I have also considered whether a temporary permission would be justified, given that the Green Belt harm would be reduced. The principle justification for a temporary permission in a case such as this is that at the end of it there would be a realistic likelihood of the occupants being able to move to suitable alternative accommodation. Taking the group as a whole, and the Council's current position on future provision, I consider it very unlikely that such a site would become available by the end of the four year period suggested by the appellant, and I consider it quite unlikely that all or even most of the 23 individual households would, individually, have suitable accommodation to move to after that period. Further, given the substantial nature of the development, which has now been in place for over 2 years, I consider that reduction in Green Belt harm due to time-limiting would still not reduce the overall harm to a level where it would be clearly outweighed by the considerations in favour of the appeal.
46. It has been submitted that planning permission, or even temporary planning permission, could be granted for some plots only, on the basis of according different weights to the prospective occupiers' circumstances and carrying out the balancing exercise on a per plot basis. I do not believe that that would be an appropriate approach in a case such as this where the application is for the development as a whole, much of the infrastructure would still be required and it concerns land that was previously entirely undeveloped, but I consider in any case that such an approach would not alter the respective weights so much as to indicate a different outcome.
47. That being so, it follows that very special circumstances do not exist to justify planning permission for the development, or any part of it, on either a temporary or permanent basis. I have reached this conclusion having borne in mind my public sector equality duty throughout.

#### *Human rights*

48. Dismissal of the appeal would not make any of the prospective occupiers immediately homeless, but it would deprive the prospective occupants of the possibility of establishing a home on the appeal site, and of living in the family or community environment that they aspire to. Bearing in mind also that it is likely that many of the prospective occupiers do not have a lawful home at present, I accept that dismissal would represent an interference with their rights under Article 8 of the First Protocol of the European Convention on Human Rights.
49. However, the protection of Green Belts is an important aim of local and national planning policies. The protection of the Green Belt is therefore a legitimate objective in the public interest, and has a clear basis in the relevant planning legislation. In these circumstances, some interference with Article 8 rights is permissible, and I consider that the protection of the public interest cannot be achieved by means which are less interfering with the prospective occupiers' rights. They are proportionate and necessary and hence would not result in a violation of rights under Article 8.

#### **Overall conclusion**

50. For the reasons set out above, I conclude that the appeal development, which was intentional unauthorised development, would cause unacceptable harm to the Green Belt. That harm is not outweighed by any of the other



## **DOCUMENTS SUBMITTED AT INQUIRY**

- 1 Council's letter of notification
- 2 Proposed conditions
- 3 Opening submissions - RBC
- 4 John Boyd addendum
- 5 SEN communication from Surrey CC
- 6 Opening submissions - Rule 6 party
- 7 Lee – additional documents
- 8 Exceptional Circumstances addendum - RBC
- 10 ORS data from prospective occupiers' interviews
- 11 Appeal site photos dated January 2017 – appellant
- 12 Saved Policy NE11, Landscape Problem Area map, and Aircraft Noise Location Map - Hui
- 13 Appeal site photo from Document 4
- 14 Appeal site photos - RBC
- 15 Planning application for Slough BC caravan site - RBC
- 16 Aerial imagery of Slough BC caravan site - RBC
- 17 Copy of Slough BC caravan site plot lease - RBC
- 18 Court Order dated 31 August 2017 (requiring disclosure) - RBC
- 19 Web page – LMS roofing UK - RBC
- 20 Land Registry Entry – Plot 4 - RBC
- 21 Land Registry Entry – Clayton Road Chessington - RBC
- 22 Aerial Imagery of Clayton Road Chessington dated 7 May 2018 - RBC
- 23 Minutes of meeting with RBC CEO (24 July 2017) - RBC
- 24 Web page – Reviews of Southern Roofing - RBC
- 25 Web page – Stoke Poges crime reports - RBC
- 26 Updated B Coyle statement
- 27 Court case transcripts for appellant's closing submissions
- 28 Enforcement record sheet for Green Lane Chertsey - RBC
- 29 Application plans Green Lane Chertsey - RBC
- 30 Connect Roofing dormant accounts statement - RBC
- 31 Crime reports – Enderby and Lyne area - RBC
- 32 Neighbourhood Committee Report re Clayton Road November 2011 - RBC
- 33 EHC needs assessment - appellant
- 34 Extract from The Law of Mobile Homes and Caravans (Clayden) - appellant
- 35 Aerial imagery – Bedmond Road caravan site - RBC
- 36 RBC response to LP Inspector questions plus emails - RBC
- 37 Court of Appeal transcript [2016] EWCA Civ 466 - RBC
- 38 Decision APP/Q3630/W/18/3195463 - RBC
- 39 List of Gypsy/Traveller applications since 2000 - RBC
- 40 Decision APP/K0235/W/18/3195889 - RBC
- 41 Decision APP/X0360/C/16/3153193 - appellant
- 42 Closing submissions - RBC
- 43 Closing submissions - Rule 6 party
- 44 Closing submissions - appellant
- 45 Unilateral Undertaking – appellant



## Plan

This is the plan referred to in my decision dated: 9 May 2019

**by Paul Dignan MSc PhD**

**Land at Ada's Farm, Hardwick Lane, Lyne, Chertsey, Surrey, KT16 0BH.**

**Reference: APP/Q3630/C/17/3181382**

