
Appeal Decision

Hearing held on 13 September 2016

Site visit made on 13 September 2016

by Sarah Colebourne MA, MRTPI

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

Decision date: 9 November 2016

Appeal Ref: APP/A3655/W/16/3144784

Land south of Gabriel Cottage, Blanchards Hill, Sutton Green, Woking, Surrey, GU4 7QP

- 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 Ms Caroline Hilden against the decision of Woking Borough Council.
 - The application Ref PLAN/2015/0821, dated 17 July 2015, was refused by notice dated 27 October 2015.
 - The development proposed is described as a 3 year temporary change of use of land to one pitch for a Romani Gypsy family with associated works including hardstanding.
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Decision

1. The appeal is allowed and planning permission is granted for a temporary change of use of land for 3 years to one pitch for residential accommodation including the siting of one mobile home, one touring caravan, a parking area and a hardstanding at land south of Gabriel Cottage, Blanchards Hill, Sutton Green, Woking, Surrey, GU4 7QP in accordance with the terms of the application, Ref PLAN/2015/0821, dated 17 July 2015 subject to the conditions attached to the schedule at the end of this decision.

Procedural matters

2. I have amended the description of the proposed development slightly in the formal decision above to reflect the appellant's description in the appeal form and for clarity.
3. Since the Council's decision, the Woking Development Management Policies DPD has been adopted and the parties have agreed that policy DM2 (trees and landscaping) is relevant.

Main Issues

4. Both parties agree that the proposed development would constitute inappropriate development in the Green Belt and on the basis of what I have seen and heard, I would agree. National guidance in the National Planning Policy Framework ("the Framework") advises that inappropriate development in the Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The resultant harm should be given substantial weight in determining the appeal.

5. The main issues in this case are therefore a) the effect of the proposed development on the openness of the Green Belt and its purposes; b) whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Impact on Green Belt openness and purposes

6. The Framework confirms that the Government attaches great importance to Green Belts. The essential characteristics of Green Belts are their openness and permanence. Openness is a matter of its physical presence rather than its visual qualities. Policies CS6 and CS14 in the Woking Borough Core Strategy 2012 which seek to protect the Green Belt from harmful development accord with the Framework in this respect.
7. The appeal site lies in a rural location on the edge of a small settlement of houses at Sutton Green, to the south of Woking and a short distance from Jacobs Well, which forms part of Guildford. It has a long history of unsuccessful planning applications for a single dwelling and gypsy site. In a previously dismissed appeal against four enforcement notices relating to a similar use to that currently proposed and development of the land as a gypsy site in 2005, the Inspector found that, despite the small size of the site, the development had resulted in a substantial loss of openness and undermining of the purposes of retaining the gap between the towns of Woking and Guildford and safeguarding the countryside from further development including the land in the Green Belt. She concluded that this harm would remain even for a temporary period. Although the family was removed from the site following those appeals, the site has been unoccupied now for some years.
8. In terms of the amount of development proposed, the current proposal appears similar to that in the previous appeal and I see no reason to reach a different conclusion in this respect from my colleague in 2005, notwithstanding that the Council's Green Belt Review which has not yet been tested in the local plan process has recommended the release of Green Belt land elsewhere in the Borough. The appellant accepted at the hearing that the fall-back position referred to in her appeal statement relating to the potential for a caravan on the adjacent garden land was not relevant and in any case I have no compelling evidence to indicate that this is likely. I conclude then that the harm to the openness of the Green Belt and to two of its purposes add to the substantial harm by reason of inappropriateness and the proposal would conflict with policies CS6, CS14 and the Framework in this respect.

Character and appearance

9. Government guidance in Planning Policy for Traveller Sites (PPTS) requires that due regard is had to the protection of the local environment and policies CS14 and CS21 accord with that in this respect. The appeal site, which provides an access to an adjoining field, forms a piece of overgrown land bounded by the road, the gardens of two dwellings and a field which separates the site from the more suburban Sutherland Avenue some 170m to the west. In views from Sutherland Avenue it appears as a continuation of the settlement at Sutton Green rather than as part of the adjacent agricultural land. However, in views from the road, it appears as an enclosed piece of overgrown land at the

entrance to the settlement. The nearby dwellings at Sutton Green are mostly traditional detached dwellings within leafy, spacious plots along a busy country road. Although some of these are very large, the appeal site is of a similar size to the adjacent plot at Gabriel Cottage and in terms of its size is not, therefore, disproportionate.

10. PPTS does not require that sites are completely screened from view but instead seeks to ensure that they have adequate landscaping that rather than isolating them, increases their openness. Since the previous appeal, there have been significant changes in that the site has become overgrown and the planting along its boundaries has matured significantly which I saw at my visit reaches a height of 3 to 4m in most places. Although the planting along the field boundary is deciduous and any additional native planting would take some time to establish, it would provide adequate filtering of views from Sutherland Avenue. Those views would, in any case, be seen against the backdrop of the roofs of the neighbouring dwellings. Although some of the existing planting along the front boundary would have to be cut back to accommodate the visibility splay required by the Highways Authority which is necessary for highway safety and could be sought by condition, this would not be significant and would not cause undue harm in this leafy street scene.
11. The proposed development would therefore only be seen clearly from its access. This is relatively narrow and the majority of views into the site would be fleeting from those in passing vehicles rather than pedestrians on this busy road which has a very narrow footway on one side of the road only at this point. Thus views into the site would be limited and could be filtered further by sensitively designed fencing and gates within the site which could be controlled by means of a condition.
12. Although there would undoubtedly be a change in the character of the site, given its small size and scale together with the existing and proposed boundary planting, its impact on the character and appearance of the area and the visual amenity of the Green Belt would be very limited and the proposal would not cause significant harm in these terms. With regard to this matter, my views differ from those of the Brett Report (Jan 2014) which provides part of the evidence base for the Council's emerging Site Allocations DPD but I have attached limited weight to that document in view of its status. The proposal would accord with policies CS14 and CS21 in this respect.

Other planning matters

13. A number of other matters have been raised in the representations from third parties to which the Council raised no objection.
14. I have taken into account the duty imposed by section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. The boundary of the large, rural Sutton Park Conservation Area lies opposite the site. From what I saw at my visit, the character of the Conservation Area derives mainly from the parkland, woods and former estate dwellings around the listed Sutton Place at its heart. I am satisfied that for the reasons given above under *Character and appearance*, the proposals would preserve the significance of the Conservation Area and would accord with policy CS20 which seeks to protect the heritage assets of the Borough and in this respect accords with the Framework.

15. Neither the Highways Authority nor the Council raised any objection to the proposal in terms of highway safety and from what I saw at my visit and given that I have no compelling evidence to indicate otherwise, I am satisfied that subject to the recommended condition for a visibility splay, the proposal would not cause harm in this respect.
16. The site has a good level of screening in the form of high conifer hedges from the two neighbouring properties at Gabriel Cottage and Sansterre House and I am satisfied that it would not result in harm to the living conditions of those occupiers.
17. The appeal site is of a similar size to that of many detached dwellings and I am satisfied that provides adequate space for the development proposed.

Need and provision

18. PPTS seeks to promote more private traveller site provision and to ensure that local planning authorities develop strategies to meet the need for sites in appropriate locations, to address under provision and maintain an appropriate level of supply, including a five year supply of specific deliverable sites. The lack of a five year supply, however, cannot be a significant consideration in the Green Belt. It also says that Green Belt boundaries should be altered only in exceptional circumstances, as a specific allocation in the development plan and not in response to a planning application. Policy CS14 is consistent with that and the Council's Traveller Accommodation Assessment (TAA) 2013 provides a starting point for that objective. Its forthcoming Site Allocations DPD will seek to deliver that objective.
19. The TAA shows a need for 19 pitches over the plan period from 2012-2027, an average of 1.3 per year. The appellant's criticism of the methodology of the TAA can be tested as part of the DPD process. The appellant argues that the need is some 27 pitches, mainly on the basis that since 2013 additional temporary permissions have been granted, in particular at The Stable Yard, Mayford (two pitches) and at Murrays Lane, Byfleet (four pitches). Whilst it is possible that those permissions will increase the level of need, PPTS does not attach different weight according to the level of that need. Instead, any need for pitches should attract the same weight.
20. Whilst the Council accepts that it does not have a five year supply of sites and its *Table 4: Net additional traveller pitches provided in Woking Borough 2006/07 to 2019/20* shows a shortfall of some 7 pitches by 2019/20, it maintains that to date there is no shortfall and that it can meet the TAA need in full across the plan period through the allocation of 22 pitches proposed in its Draft Site Allocations DPD (and for future needs up to 2040). Although I heard that the Council is in the process of acquiring one of those sites, which is also in the Green Belt, it accepts that these draft allocations can only be given very limited weight in this appeal because the DPD has not yet been through public examination. The DPD is not expected to become adopted until December 2017 and a period to facilitate the delivery of sites must then be allowed for. In the meantime, the appellant's family's need remains and the level of overall need may well increase by reason of the existing temporary sites.

21. Whilst this matter carries heavy weight, PPTS makes it clear that, subject to the best interests of the child, unmet need is unlikely to clearly outweigh harm to the Green Belt.

Alternative accommodation

22. The Council accepts that existing, authorised sites in the Borough are either full and/or only have permission for a particular family. Furthermore, the difficulty in obtaining a site across the county has been confirmed by the Traveller Site Manager for Surrey County Council. The family has been engaged in discussion over many months with the Council's Chief Executive to obtain a site that is available now but without success. Like many other gypsy and traveller families, the appellant and her family have an aversion to bricks and mortar accommodation, having experienced this in the past to the detriment of their health. There does not, therefore, appear to be any reasonable alternative accommodation for the appellant and her family and I have given this significant weight.

Personal circumstances and best interests of the children

23. PPTS seeks to enable the 'provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure'. However, the revised PPTS makes it clear that, *subject to the best interests of the child* (my italics), personal needs are unlikely to clearly outweigh harm to the Green Belt.
24. The appellant and her family, which includes her husband and two teenage children, are currently living at another traveller site in the county. The occupation of their pitch is unlawful as they are doubling up with another family on a single plot, sharing one outside toilet. I heard that the boys share a bed in a separate caravan from their parents. The lack of space and security as a result of this arrangement is clearly inadequate for both their health and educational needs.
25. Evidence provided by the appellant shows that since the previous appeal, Mrs Hilden has experienced both mental and physical health conditions and that Mr Hilden has also suffered from a mental health condition. I was told that they continue to suffer from these conditions. Although a site in this location is not essential for their health needs, it seems likely that their conditions are exacerbated by the lack of adequate sanitary conditions and by the frequent moving around that the family has had to endure over the last decade since being evicted by the Council from this site following the previous appeal. There would be some benefit to the family's health needs in having a settled base and I attach moderate weight to this.
26. Both their parents and the boys themselves are very keen that they receive an education. The educational needs of the family have changed significantly since the previous appeal. At that stage the boys were much younger and had most of their education ahead of them. The Inspector considered that they had no special educational needs. Since then and despite a good attendance record in the past, both boys now have poor levels of literacy and have needed additional support in school. I heard that the younger boy, who is currently 13, has not been in school for three years and has had no secondary education. The older boy, aged 17, has missed a significant period of secondary education and despite having been previously involved with a local travellers' education

project, that no longer has funding and he has no GCSE's. I also heard about the impact that the lack of space and privacy has had and continues to have on their educational and social needs. At this point in their lives it is imperative that they re-enter education as soon as possible to mitigate the disadvantage they have experienced and to access appropriate educational and social opportunities. A settled base would be in the best interests of the children and I attach substantial weight to this matter.

Whether the harm is clearly outweighed by other considerations

27. The Framework advises that inappropriate development should not be approved except in very special circumstances. These will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The substantial harm caused by reason of inappropriateness and the significant impact on its openness and purposes carries substantial weight against the proposal. The very limited harm in terms of character and appearance carries a further small amount of weight against the development.
28. In favour of the appeal is the unmet need for sites within the district. This carries significant weight in favour of the development as does the failure of the Council to meet that need. The lack of alternative available sites for the appellant and her family also provides significant weight in favour of the appeal and the proposed development would enable the family to access health services justified by their personal circumstances. Although national policy provides that, even taken together, these matters are unlikely to outweigh harm to the Green Belt and any other harm so as to establish very special circumstances, the wording permits exceptions.
29. Although a temporary permission is not a substitute for a permanent site, it would give the family an opportunity to pursue a site through the DPD site allocations process given that the Council expects the Site Allocations DPD to be adopted in December 2017. Due to its temporary nature it would not necessitate a Green Belt boundary alteration for the site at this stage. There is an overriding and substantial need for the family to have its own site in the short term while no suitable alternative is available, having regard to the educational needs of the children. A condition for the restoration of the site at the end of the period would mitigate the Green Belt harm I have identified because the small scale of the operational development means that it could easily be removed at the end of the period.
30. Weighing all these matters in the balance, I conclude that in this case the important and urgent need for the children to access education (the best interests of the children) clearly outweighs the identified harm and development plan conflict so as to amount to the very special circumstances necessary to justify inappropriate development in the Green Belt.
31. I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty under the Equality Act 2010. Article 8 of the European Convention on Human Rights (as incorporated by the HRA) requires that decisions ensure respect for private and family life and the home. The Article 8 rights of the children must also be seen in the context of Article 3 of the United Nations Convention on the Rights of the Child which requires that the best interests of the children shall be a primary consideration. No other consideration can be regarded as inherently more important. I have kept these

interests at the forefront of my mind in reaching my decision. Dismissing the appeal would mean that the appellant and her family would be likely to resume an itinerant lifestyle because their occupation of their current site is unlawful, overcrowded and inadequate. This would represent an interference with the best interests of the two children referred to earlier and with the family's home and their family life, and this adds further weight in favour of the appeal.

32. However, these are qualified rights and interference may be justified where in the public interest, such as the protection of the Green Belt. The concept of proportionality is crucial. Whilst the harm that would be caused by the development in terms of the Green Belt would be substantial and could be argued to outweigh the rights of Mr and Mrs Hilden, in the context of this case it does not outweigh the best interests of the children.
33. Having regard to the balance of considerations outlined above and the effect of the proposal upon the public interest, I conclude that dismissal of the appeal would have a disproportionate effect upon the rights of the children under Article 3 of the United Nations Convention on the Rights of the Child. For the reasons given earlier, I find that the appropriate balance would be struck between the rights of the individuals and the protection of matters of acknowledged public interest by the grant of a three year permission such that the action would not be disproportionate and would not result in a violation of the rights of the children.

Conditions

34. The Council has suggested a number of conditions should the appeal be allowed. I have amended or combined some of those conditions in the interests of brevity and to meet the requirements of the Planning Practice Guidance.
35. For the avoidance of doubt and in the interests of proper planning a condition specifying the approved plans is necessary. Although the family's gypsy status is not disputed (and from what I have seen and heard I have no reason to disagree), a condition to tie the occupation of the land to gypsies and travellers is necessary as this could change in the future. To protect the character and appearance of the area, the following conditions are necessary: the removal of operational development and the restoration of the land at the end of the three year period; the limiting of the pitch to one mobile home and one touring caravan; a site development scheme including the means of foul and surface water drainage of the site, the provision and siting of refuse bins, any proposed external lighting, landscaping (including soft planting) and boundary treatments; the protection of trees and hedges during construction (because the parking area extends as far as the south western hedge and in accordance with policy DM2 in the Woking Development Management Policies DPD). A condition for the protection of birds during the breeding season is necessary in the interests of biodiversity given the extent of the existing hedges. A condition requiring the provision of a visibility splay is necessary in the interests of highway safety. The suggested condition for the extension of an existing footway into the site in the Council's statement was omitted in the Statement of Common Ground but in any case the scale of the proposed development would not justify such a condition.

36. I have added a condition for the restriction of larger commercial vehicles on the site in the interests of character and appearance and to protect the living conditions of neighbouring occupiers.

37. The appellant has also suggested a personal condition limiting occupancy to the appellant and her family and I have added to this the proposed time limit of three years for the avoidance of doubt. This condition is necessary because the particular circumstances of the family weigh heavily in my decision.

Conclusion

38. For the reasons given above, material considerations indicate that planning permission should be granted for development that is not in accordance with the development plan as a whole. I conclude that the best interests of the children clearly outweigh the harm to the Green Belt, thereby justifying the proposal on the basis of very special circumstances. For the reasons given above, and having taken into account all other matters raised, the appeal should be allowed.

Sarah Colebourne

Inspector

APPEARANCES

FOR THE APPELLANT:

Simon Ruston	Planning Consultant
Caroline Hilden	Appellant
Jesse Hilden	Appellant's partner
Jesse James Hilden	Appellant's son
John Henry Hilden	Appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Caroline O'Kane	Planning Officer
Wai-Po Poon	Planning Officer
Terry De Sousa	Planning Officer

INTERESTED PERSONS

David Vanstone	Local resident
Teresa Ball	Local resident

DOCUMENTS

1. Statement of Common Ground.
2. Report on the examination into the Woking Development Management Policies DPD 1/8/16.
3. Table 4: Net additional traveller pitches provided in Woking Borough 2006/07 to 2019/20.
4. Decision notice – PLAN/2016/0164, Murrays Lane, Byfleet.
5. Letter from Surrey County Council Traveller Site Manager 2/9/16.
6. Email from Ray Morgan, Woking BC 10/9/16.
7. Letter from GP 24/7/13.

Schedule of conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: 1365/02.
- 2) The occupation of the site hereby permitted shall be carried on only by Caroline Hilden, Jesse Hilden and their resident dependants and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.
- 3) When the land ceases to be occupied by those named in condition 1 above, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, 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.
- 4) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of DCLG '*Planning policy for traveller sites*', dated August 2015.
- 5) No more than two caravans (of which no more than one shall be a static caravan and single storey only), as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time.
- 6) Prior to the commencement of the development, a scheme for the development of the site shall have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved in accordance with the agreed timetable. The scheme shall include: the means of landscaping of the site; boundary or fencing treatments including any access gates; the means of foul and surface water drainage of the site; the provision and siting of refuse bins; details of any proposed external lighting; a timetable for its implementation.
- 7) No development related works shall take place on the site (including demolition and clearance) until tree protection details, to include the protection of hedges and shrubs, have been submitted to and approved in writing by the local planning authority. These details shall accord with BS 5837: 2012 and shall indicate exactly how and when the retained trees will be protected during the site works. The development shall be carried out in accordance with the agreed details.
- 8) Any scrub, hedgerow and tree clearance must be undertaken outside the bird breeding season (March to August inclusive) unless the clearance works are conducted with a suitably qualified ecologist on site in accordance with details first submitted to and approved in writing by the local planning authority.
- 9) Prior to the occupation of the development hereby approved, visibility splays shall be provided of 2.4m x 70m distance along the frontage of the site in both directions. These shall be kept permanently clear of any obstruction above 1m in height.
- 10) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.