

## 7 FEBRUARY 2023 PLANNING COMMITTEE

6a PLAN/2022/0978

WARD: BWB

LOCATION: The Oaks, Murrays Lane, Byfleet, West Byfleet, Surrey, KT14 7NE

PROPOSAL: Retrospective application for machinery store.

APPLICANT: Mr T Valler

OFFICER: Benjamin  
Bailey

---

### **REASON FOR REFERRAL TO COMMITTEE**

The recommendation includes enforcement action and the decision on whether to issue an Enforcement Notice falls outside the Scheme of Delegations.

### **SUMMARY OF PROPOSED DEVELOPMENT**

Retrospective application for machinery store.

#### Key dimensions:

- Main section - 2.9m high, 4.8m deep, 5.85m wide.
- Smaller section - 2.9m high, 2.4m deep, 2.4m wide.

*(Officer Note: Key dimensions taken from Planning Statement, para 4.4)*

### **PLANNING STATUS**

- Green Belt
- Adjacent to Bridleway 132 (PROW)

### **RECOMMENDATION**

**Refuse** planning permission and authorise enforcement action.

### **SITE DESCRIPTION**

The application site forms a triangular shaped parcel of land situated to the west of the settlement of Byfleet and within the Green Belt. The site provides x4 Gypsy/Traveller pitches, it was formerly agricultural land. To the west of the site lies the M25 Motorway. To the north is the public right of way (PROW) of Murray's Lane which provides access to the River Wey Navigation via a bridge over the M25 Motorway. To the north of Murray's Lane is a Gypsy/Traveller site providing x2 pitches (Boyd's Farm), a scout hut and the residential properties of Glebe Gardens are to the north-east. To the east is a private vehicular track which leads to the single dwellinghouse known as Piper's Hill which is located to the south-east.

### **RELEVANT PLANNING HISTORY**

COND/2020/0046 - Approval of details pursuant to condition 22 of planning permission ref: PLAN/2018/1072.  
Details approved (21.05.2020)

COND/2019/0197 - Approval of details pursuant to conditions 09 and 21 of planning permission ref: PLAN/2018/1072.  
Details approved (24.01.2020)

## 7 FEBRUARY 2023 PLANNING COMMITTEE

PLAN/2018/1072 - Section 73 application for the removal of condition 01 and variation of condition 02 to make permanent planning permission PLAN/2016/0164 dated 12.05.2016 (3-year temporary change of use of land to four pitches for an extended Romany Gypsy family with associated works including 4 day rooms, 4 mobile homes, 4 touring caravans, hardstanding, and cesspit).

Granted subject to S106 Legal Agreement and conditions (10.05.2019)

COND/2016/0078 - Approval of details pursuant to condition 12 of planning permission ref: PLAN/2016/0164.

Details approved (28.09.2016)

COND/2016/0070 - Approval of details pursuant to conditions 04, 05, 06, 07, 08, 09, 10, 11, 13, 14, 18 and 19 of planning permission ref: PLAN/2016/0164.

Details approved (28.09.2016)

PLAN/2016/0164 - 3-year temporary change of use of land to four pitches for an extended Romany Gypsy family with associated works including 4 day rooms, 4 mobile homes, 4 touring caravans, hardstanding, and cesspit.

Granted subject to conditions (12.05.2016)

### **CONSULTATIONS**

None undertaken

### **REPRESENTATIONS**

None received

### **RELEVANT PLANNING POLICIES**

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

Section 2 - Achieving sustainable development

Section 4 - Decision-making

Section 12 - Achieving well-designed places

Section 13 - Protecting Green Belt land

Section 14 - Meeting the challenge of climate change, flooding and coastal change

Section 15 - Conserving and enhancing the natural environment

#### Woking Core Strategy (2012)

CS6 - Green Belt

CS9 - Flooding and water management

CS14 - Gypsies, Travellers and Travelling Showpeople

CS18 - Transport and accessibility

CS21 - Design

#### Development Management Policies Development Plan Document (DM Policies DPD) (2016)

DM2 - Trees and landscaping

DM13 - Buildings in and adjacent to the Green Belt

#### Supplementary Planning Documents (SPDs)

Design (2015)

Outlook, Amenity, Privacy and Daylight (2022)

## 7 FEBRUARY 2023 PLANNING COMMITTEE

Parking Standards (2018)

### Other Material Considerations

Planning Practice Guidance (PPG) (online resource)

Woking Borough Council Strategic Flood Risk Assessment (SFRA) (November 2015)

### **PLANNING ISSUES**

01. The main planning issues to consider in determining this application are:
- Green Belt;
  - Character and appearance;
  - Neighbouring amenity;
  - Parking and the amenities of occupiers;
  - Flooding and water management;
  - Whether any harm by reason of Green Belt inappropriateness, and any other harm resulting from the proposal, would be clearly outweighed by other considerations, so as to amount to the very special circumstances (VSC) required to justify the proposal; and
  - Local finance considerations
- having regard to the relevant policies of the Development Plan, other relevant material planning considerations and national planning policy and guidance.

### Green Belt

*Whether the proposal would be inappropriate development in the Green Belt having regard to the NPPF and any relevant Development Plan policies*

02. The application site falls within the Green Belt, as defined by the Council's Proposals Map. The national policy advice within the National Planning Policy Framework (2021) (NPPF) has to be read together with the Development Plan, which includes the Woking Core Strategy (2012) and the Development Management Policies Development Plan Document (DM Policies DPD) (2016). Policy CS6 of the Woking Core Strategy (2012) states that *"To ensure the Green Belt continues to serve its fundamental aim and purpose, and maintains its essential characteristics, it will be protected from harmful development. Within its boundaries strict control will continue to apply over inappropriate development, as defined by Government policy currently outlined in the NPPF."*

03. Paragraph 149 of the NPPF states that:

*"A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:*

- a) *buildings for agriculture and forestry;*
- b) *the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;*
- c) *the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;*

## 7 FEBRUARY 2023 PLANNING COMMITTEE

- d) *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;*
  - e) *limited infilling in villages;*
  - f) *limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and*
  - g) *limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:*
    - *not have a greater impact on the openness of the Green Belt than the existing development; or*
    - *not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.”*
04. The (further) exceptions to inappropriate development listed within paragraph 150 of the NPPF relate to forms of development other than the construction of new buildings (i.e., engineering operations etc.) and thus are not considered relevant to this application.
05. The general position, established by case law, is that development in the Green Belt is inappropriate and so needs to be justified by very special circumstances unless it falls within one of the specific exceptions set out in paragraphs 149-150 of the NPPF. If a development would fall within any of those exceptions, then there is no need to consider it against any of the others even if they might be applicable.
06. Policy DM13 of the DM Policies DPD (2016) states that:
- “Unless very special circumstances can be clearly demonstrated, the Council will regard the construction of new buildings and forms of development other than those specifically identified on allocated sites in the Site Allocations DPD as inappropriate in the Green Belt. However, subject to other Development Plan policies, exceptions to this are detailed in Section 9 of the NPPF [Section 13 of the revised NPPF], in Policy CS6 of the Core Strategy, and as follows:*
- *New buildings and facilities within Major Developed Sites*
  - *Extension and alteration*
  - *Replacement*
  - *Re-use*
  - *Development adjacent to the Green Belt [irrelevant in this case]”*
07. The applicant, within their Planning Statement, states that the building has been “...built to repair equipment used on the nearby paddock land” (para 4.1) and that “The building has been erected to provide cover for machinery, tractors, and grass cutters. These are to be used in connection with the maintenance of nearby field” (para 4.2). Whilst it is not explicitly made clear to which land the references to the nearby paddock land/field relate, it is nonetheless understood from the planning history of the application site that the referenced paddock land /field is that which adjoins the application site to the east and south and is shown (in part) edged in a blue line on the submitted

## 7 FEBRUARY 2023 PLANNING COMMITTEE

location plan. Whilst the submitted location plan does not show the full extent of this blue edged land it is shown on the location plans submitted for previous applications (as are listed in the relevant planning history section). Although the blue edging on the location plan indicates that this adjoining land is within the ownership of the applicant the lawful use of that adjoining land is agricultural, whereas the lawful use of the land within the red-lined application site is residential (as a consequence of planning permission ref: PLAN/2018/1072). It is very highly material that the 'machinery store' to which this application relates is not sited on the agricultural land (instead it is sited on the residential land) and, therefore the building is considered to be precluded from falling within the exception to inappropriate development - in respect of buildings for agriculture (and forestry) - at paragraph 149(a) of the NPPF. Furthermore, whilst the applicant may presently own the adjoining agricultural land, there is nothing to prevent the applicant selling or renting/leasing that adjoining land to another party either now or in the future. In such a scenario were the 'machinery store' building to be granted planning permission, on the basis of its stated association with that adjoining agricultural land, the justification advanced by the applicant would fall away in its entirety.

08. In addition, the adjoining agricultural land measures around 9,415 sq.m (i.e., 0.9415 hectares) in area and is therefore not so large such that its maintenance, which would appear to take the form of grass cutting at appropriate intervals, has been justified to necessitate the storage of associated machinery, particularly within a building of the size which has been constructed. The applicant has not provided any details of the machinery which they require to be stored within the constructed building. At the time of the site visit (22 December 2022) there was what appears to be a grass cutter, a (empty) trailer and some other equipment (i.e., temporary outdoor lights etc.) within the roofed section of the building, and what appears to be an oil/gas tank and a small tarmac roller in the un-roofed section of the building. These machinery/equipment do not have a clear association with the agricultural land. It is also notable that on the photograph included on the submitted existing plans (ref: 22 021 100 Rev B) there is a car (albeit which appears to be in the process of repair/restoration) parked in the roofed section of the building. These factors are considered to indicate that the main function of the constructed building is instead for the storage of items associated with the residential use of the application site.
09. Turning to the other NPPF exceptions to inappropriate development within the Green Belt those at paragraph 149(b) (*facilities for outdoor sport etc.*), (e) (*limited infilling in villages*), (f) (*affordable housing*) and (g) (*limited infilling or the partial or complete redevelopment of previously developed land*) are not considered to be applicable in this instance.
10. In respect of the exception at paragraph 149(c) (*extension or alteration of a building provided not disproportionate over and above the size of the original building*) the applicant states that "*the building is not disproportionate over the existing buildings/caravans which were consented on the site*" (Planning Statement, para 5.7). However, the constructed building is a detached building and does not constitute an extension of a pre-existing building. As such, it does not benefit from this exception to inappropriate development in the Green Belt.
11. In respect of the exception at paragraph 149(d) (*replacement of a building, provided the new building is in the same use and not materially larger than the*

## 7 FEBRUARY 2023 PLANNING COMMITTEE

*one it replaces*) the constructed building is a new detached building which did not replace any pre-existing building, the applicant has not provided any evidence of the stated pre-existing building and, irrespective of this, the grant of planning permission ref: PLAN/2018/1072 commenced a new 'chapter' in the planning history of the site. As such, it does not benefit from this exception to inappropriate development in the Green Belt.

12. As such, the proposal would not fall within any of these exceptions and would therefore be inappropriate development in the Green Belt, which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

### *The effect of the proposal on the openness of the Green Belt*

13. Paragraph 137 of the NPPF states that "*the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence*".
14. The Court of Appeal in *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect. This means that the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result. But equally this does not mean that the openness of the Green Belt has no visual dimension.
15. The High Court in *Europa Oil and Gas Limited v SSCLG* [2013] EWHC 2643 (Admin) has recognised that the impact of a development on openness is not necessarily related to its size but also its purpose. For example, a large building would be 'not inappropriate' if it was an agricultural building but might be 'inappropriate' if it was a sports pavilion whose scale was such that it did not preserve openness.
16. The location of the constructed building away from the most exposed area of the application site is acknowledged, as is the degree of enclosure alongside the M25 Motorway. However, and although partly open-sided, the constructed building nonetheless leads to a reduction in Green Belt openness, and on a permanent basis. Paragraph 148 of the NPPF states that "*When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.*"
17. It must now be considered whether there would there be any other harm (i.e., non-Green Belt factors that weigh against the development).

### Character and appearance

18. Policy CS21 of the Woking Core Strategy (2012) requires proposals for new development to "*Create buildings and places that are attractive with their own distinct identity; they should respect and make a positive contribution to the street scene and the character of the area in which they are situated, paying due regard to the scale, height, proportions, building lines, layout, materials and other characteristics of adjoining buildings and land... Incorporate landscaping to enhance the setting of the development, including the retention of any trees*

## 7 FEBRUARY 2023 PLANNING COMMITTEE

*of amenity value, and other significant landscape features of merit, and provide for suitable boundary treatment/s” (emphasis added).*

19. Section 12 of the NPPF relates to design, stating, inter alia, that “*The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities*” (para 126). Paragraph 130 of the NPPF states that “*Planning...decisions should ensure that developments...b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping*”.
20. The red-lined application site is a residential Gypsy/Traveller site of 4 pitches. It is located on the western edge of Byfleet and on the southern side of Murray’s Lane, previously it formed part of a larger, open field, part of which remains to the south and east of the site. Murray’s Lane has the semi-rural character of a village edge - there is a scout hut on the opposite (northern) side of Murray’s Lane, together with a livestock barn and a further residential Gypsy/Traveller site of x2 pitches at Boyd’s Farm on the opposite (northern) side of Murray’s Lane. Beyond the site’s western boundary is the M25 Motorway. Residential properties are some distance to the east and south-east of the site. Access to the site is from Murray’s Lane, which is a gated public highway and a public right of way. An overhead power line extends across the wider parcel of land. As such, the site has a semi-rural character due to the nearby development and infrastructure.
21. The applicant states that “*The building is constructed in corrugated powder coated aluminium*” (Planning Statement, para 4.4). The constructed building has a utilitarian form and appearance. The rear (north) elevation of the building has been positioned against the site’s boundary with Murray’s Lane. The side (east) elevation of the building is readily visible when travelling along Murray’s Lane from Byfleet (i.e., travelling westwards towards the bridge over the M25) and, in these, more distant, views, is viewed in combination with the mobile homes and day rooms which are present on the application site. When travelling past the site itself the constructed building is viewed more in isolation from the mobile homes and day rooms, due to it being located further west. As Murray’s Lane rises (towards the bridge) so as to cross the M25 the building becomes more readily visible from Murray’s Lane. It is equally visible when travelling back (eastwards) across the bridge towards Byfleet, given the elevated position of Murray’s Lane at this point.
22. Whilst the constructed building is not readily dissimilar in form, scale and general appearance to buildings/structures which are often seen within semi-rural locations such as this, such buildings/structures are generally seen in association with an ongoing agricultural use. This would not be the case in this instance, the building would form part of the residential use of the application site. The building does not have a high quality design and appearance, nor does it appear to have been constructed to a particularly high standard. For example, when the site visit was undertaken (on 22 December 2022) the rear elevation of the building (i.e., that facing directly towards Murray’s Lane) appeared to be finished in a black plastic sheeting.
23. It is also highly material that there is a further building/structure (seemingly constructed of timber/MDF), positioned between the building which is the

## 7 FEBRUARY 2023 PLANNING COMMITTEE

subject of the present application and the M25 Motorway. This further building/structure seemingly forms part of a small 'yard' which is enclosed by a metal gate to its east. This further building/structure appears to have been substantially complete for a period of in excess of four years such it is immune from potential planning enforcement action. No information has been provided by the applicant in respect of the use of this building/structure/'yard' area although, given its existence together with the metal clad building, there is clearly something of a 'proliferation' of rather 'ad-hoc' buildings/structures in this part of the site, the cumulative effect of which is spatially and visually harmful to the semi-rural character of the area.

24. As such, by combined reason of its siting, form and appearance (including the application of external finishes) the building appears visually incongruous and visually harmful to the appearance of this semi-rural area, including in views from the well-used adjoining public right of way of Murray's Lane, and therefore fails to respect and make a positive contribution to the character of the area within which it is situated contrary to Policy CS21 of the Woking Core Strategy (2012) and the provisions of the National Planning Policy Framework 2021 (NPPF) (most notably paragraph 130).

### Neighbouring amenity

25. Policy CS21 of the Woking Core Strategy (2012) states that "*Proposals for new development should...Achieve a satisfactory relationship to adjoining properties, avoiding significant harmful impact in terms of loss of privacy, daylight or sunlight, or an overbearing effect due to bulk, proximity or outlook*" and "*Be designed to avoid significant harm to the environment and general amenity, resulting from noise, dust, vibrations, light or other releases*". More detailed guidance is provided within SPDs Outlook, Amenity, Privacy and Daylight (2022) and Design (2015).
26. The application site boundary is located approximately 54 metres away from the nearest property in Glebe Gardens (No.4, to the north-east), in excess of 130 metres away from the dwelling of Piper's Hill (to the south-east) and a notable distance away from the x2 pitches at Boyd's Farm (to the north). Given the distances of the constructed building away from the nearby dwellings/pitches, combined with its scale and form, it avoids significant harmful loss of privacy, daylight and sunlight, and also avoids significant harmful overbearing effect.
27. Had the recommendation been to grant planning permission a condition would have been recommended to restrict the use of the constructed building to use(s) only in connection with the residential use of the application site and/or the agricultural land to the south and east in order to avoid significant harm to the environment and general amenity, resulting from noise, dust, vibrations, light or other releases. The conclusions on neighbouring amenity represent only an absence of harm in this respect (i.e., is neutral) and does not outweigh the other harms identified or weigh positively in favour of the proposal.

### Parking and the amenities of occupiers

28. Gypsies and Travellers generally live on residential pitches, each of which is typically occupied by one household with a static and a touring caravan. Whilst 'Designing Gypsy and Traveller Sites: Good Practice Guide (2008)' was

## 7 FEBRUARY 2023 PLANNING COMMITTEE

withdrawn on 1 September 2015 (now Planning Policy for Traveller Sites) it nonetheless provides useful guidance and context. At paragraph 4.4 the Guide states that “*Gypsy and Traveller sites are designed to provide land per household which is suitable for a mobile home, touring caravan and a utility building, together with space for parking*”.

29. The Detailed Landscape Proposals plan (ref: TDA.2188.02 Rev C) approved under planning permission ref: PLAN/2018/1072 (permanent residential use for x4 pitches) shows that area within which the building has been constructed as accommodating the parking of up to x4 touring caravans (i.e., x1 touring caravan for each of the x4 pitches). Condition 15 of that planning permission states that:

*“The mobile homes and touring caravans shall be sited/positioned on the land at all times in accordance with the approved plan numbered/titled TDA.2188.02 Rev C (Detailed Landscape Proposals) dated 08.09.16.”*

30. As such, the positioning of the constructed building precludes the parking of touring caravans within this, more discreet, part of the application site. In the event planning permission was to be granted for the constructed building the parking of touring caravans associated with the residential use of the site would thus instead take place in a more ‘ad-hoc’ manner across the application site, including in positions which may prejudice the amenity (in daylight/outlook terms) of the mobile homes and/or day rooms, located on car parking areas (thus displacing car parking elsewhere) or within the soft landscaped areas of the site (thus harming the visual amenity of the site and the appearance of the area). The parking of touring caravans elsewhere on the site would also result in the touring caravans being more visually prominent, which would have adverse impacts in respect of both visual amenity and Green Belt openness.

### Flooding and water management

31. Policy CS9 of the Woking Core Strategy (2012) states, inter alia, that “*The Council will determine planning applications in accordance with the guidance contained within the NPPF...The Council expects development to be in Flood Zone 1 as defined in the SFRA*”. Paragraphs 159-169 (incl.) of the NPPF relate to planning and flood risk.
32. The application site falls wholly within the lowest probability (Flood Zone 1) of fluvial (i.e., river and sea) flooding, as identified on the Gov.uk Flood map for planning, and therefore no fluvial flood issues arise. The Council’s Strategic Flood Risk Assessment (November 2015) (SFRA) does not identify any surface water flood risk within the application site. The preceding represents only an absence of harm in this respect (i.e., is neutral) and does not outweigh the other harms identified or weigh positively in favour of the proposal.

Whether any harm by reason of Green Belt inappropriateness, and any other harm resulting from the proposal, would be clearly outweighed by other considerations, so as to amount to the very special circumstances (VSC) required to justify the proposal

33. As previously set out within this report the proposal is not considered to fall within any of the exceptions to inappropriate development in the Green Belt within paragraph 149 of the NPPF (nor paragraph 150), nor within Policy DM13

## 7 FEBRUARY 2023 PLANNING COMMITTEE

of the DM Policies DPD (2016). The proposal is therefore inappropriate development in the Green Belt.

34. Paragraph 147 of the NPPF states that *“inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”*. Paragraph 148 of the NPPF states that *“when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”* (emphases added). The Court of Appeal judgment in *SSCLG & Others v Redhill Aerodrome Ltd* [2014] EWCA Civ 1386 confirmed that the interpretation given to *“any other harm”* in paragraph 88 of the original NPPF (revised NPPF paragraph 148) is such that it is not restricted to harm to the Green Belt.
35. Furthermore, as previously set out within this report, the constructed building leads to a reduction in Green Belt openness, and on a permanent basis. Given the specific circumstances of this site the proposal is considered to result in moderate harm to the openness of the Green Belt.
36. As also previously set out within this report, in addition to the harm by reason of inappropriateness, and the harm to Green Belt openness, the proposal is also considered to give rise to other (non-Green Belt) harms. These are:
  - Harm to the character and appearance of the area – this harm should be afforded substantial weight; and
  - Harm due to displacement of touring caravan parking elsewhere within the site, causing harm to the amenity (in daylight/outlook terms) of the mobile homes and/or day rooms and by reason of potential displacement of car parking elsewhere. In other positions within the site parked touring caravans would also be more visually prominent, which would have adverse impacts in respect of both visual amenity and Green Belt openness – this harm should be afforded moderate weight.
37. It must now be considered whether there are ‘other considerations’ which weigh in favour of the proposal and which might amount to ‘very special circumstances’.
38. The applicant states (Planning Statement, para 6.9) that *“If the building is not seen as not being inappropriate, then a number of very special circumstances (VSC) apply. First the building is positioned in the location of a former building and consent has been granted in this location for touring mobile homes. The building is open sided and is used for machinery in connection with the management of the open land. The building is well screened and causes very little, if any visual impact on the character of the area. The building is not inappropriate development in the Green Belt.”*
39. These points have all been addressed previously within this report. In summary, the constructed building is a new detached building which did not replace any pre-existing building, the applicant has not provided any evidence of the stated pre-existing building. The proposal would displace the parking of touring caravans elsewhere within the site, which would have adverse impacts in respect of both visual amenity and Green Belt openness (i.e., the

## 7 FEBRUARY 2023 PLANNING COMMITTEE

requirement for touring caravan parking on the site would not disappear or be 'overridden' in the event the constructed building is granted planning permission). The constructed building is not located on the agricultural land and the applicant has not provided any details of the machinery which they require to be stored within the constructed building in association with the agricultural land.

40. The Court of Appeal in *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466 has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect. Although partly open-sided the constructed building nonetheless leads to a reduction in Green Belt openness, and on a permanent basis. The constructed building is considered by Officers to constitute inappropriate development in the Green Belt for the reasons set out in this report.
41. The applicant further states (Planning Statement, para 6.10) that "*The nature of the residential accommodation also leaves little space for storage of outside equipment and unlike conventional houses the caravans have no permitted development rights which would normally enable the provision of such buildings. It is therefore considered the building would also have VSC to outweigh the limited harm it causes*".
42. In this respect it is highly material that there is a further building/structure (seemingly constructed of timber/MDF), positioned between the building which is the subject of the present application and the M25 Motorway. This further building/structure seemingly forms part of a small 'yard' which is enclosed by a metal gate to its east. This further building/structure appears to have been substantially complete for a period of in excess of four years such it appears to be immune from enforcement action. No information has been provided by the applicant in respect of the use of this building/structure/'yard' area although, its use must clearly be related to the residential use of the application site and/or the maintenance of the adjoining agricultural land.
43. The 'totality' of the harms resulting from the proposal are: (i) the harm by reason of inappropriateness in the Green Belt and (ii) the harm to Green Belt openness, both of which must be afforded substantial weight (in accordance with NPPF para 148). In addition, there are further (other) harms to: (i) the character and appearance of the area (which should be afforded substantial weight) and (ii) due to displacement of touring caravan parking elsewhere within the site (which should be afforded moderate weight). In conclusion, the other considerations in this case do not clearly outweigh the harm that has been identified. Consequently, the very special circumstances necessary to justify the development do not exist.
44. It is therefore recommended that planning permission should be refused, and enforcement proceedings authorised. Paragraph 59 of the NPPF states that:

*"Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of the reasons listed above."*

## 7 FEBRUARY 2023 PLANNING COMMITTEE

### Local finance considerations

45. The proposal would not be Community Infrastructure Levy (CIL) liable.

### Public Sector Equality Duty (PSED)

46. The Council must have regard to its public sector equality duty (PSED) under s.149 of the Equality Act 2010. Given that the site occupiers are Romany Gypsies they have a protected characteristic for the purposes of the PSED. In reaching the recommendation to refuse planning permission and take enforcement action Officers have considered the PSED. However, these are qualified rights and interference may be justified where in the public interest, such as the protection of the Green Belt and the character and appearance of the area. The concept of proportionality is key. Officers do not consider that the recommendation in this report would have a disproportionate impact on the protected characteristic of the site occupiers.

### **BACKGROUND PAPERS**

Site visit photographs

PLAN/2018/1072 File

### **RECOMMENDATION**

**Refuse** planning permission for the following reasons:

01. The 'machinery store' building constitutes inappropriate development in the Green Belt which is, by definition, harmful to the Green Belt. Furthermore the 'machinery store' building harms the openness of the Green Belt. No 'very special circumstances' have been advanced which would clearly outweigh the harm to the Green Belt by reason of inappropriateness, loss of openness, and the other harm resulting from the proposal, nor is it considered that such 'very special circumstances' would exist in this instance. The proposal is therefore contrary to Policy CS6 of the Woking Core Strategy (2012), Policy DM13 of the Development Management Policies Development Plan Document (DMP DPD) (2016) and Section 13 of the National Planning Policy Framework 2021 (NPPF) (most notably paragraph 149).
02. By combined reason of its siting, form and appearance (including the application of external finishes) the 'machinery store' building appears visually incongruous and visually harmful to the appearance of this semi-rural area, including in views from the well-used adjoining public right of way of Murray's Lane, and therefore fails to respect and make a positive contribution to the character of the area within which it is situated contrary to Policy CS21 of the Woking Core Strategy (2012) and Section 12 of the National Planning Policy Framework 2021 (NPPF) (most notably paragraph 130).
03. The 'machinery store' building is located within an area which planning permission ref: PLAN/2018/1072 identifies for the parking of up to x4 touring caravans to serve the x4 pitches on the site (condition 15 of that planning permission refers). By reason of causing the displacement of touring caravan parking to elsewhere within the site, it has not been demonstrated that the proposal would not cause harm to the amenity (in daylight/outlook terms) of the occupiers of the mobile homes and/or day rooms, and would not cause the displacement of car parking, within the site. In other locations within the site

## 7 FEBRUARY 2023 PLANNING COMMITTEE

parked touring caravans would also be more visually prominent, resulting in adverse impacts in respect of both visual amenity and Green Belt openness contrary to Policies CS6 and CS21 of the Woking Core Strategy (2012), Policy DM13 of the Development Management Policies Development Plan Document (DMP DPD) (2016) and Sections 12 and 13 of the National Planning Policy Framework 2021 (NPPF) (most notably paragraphs 130 and 149).

It is further recommended that: -

The Director of Legal and Democratic Services be instructed to issue an Enforcement Notice under Section 172 of The Town and Country Planning Act 1990 (as amended) and Officers be authorised in the event of non-compliance with the Notice to prosecute under Section 179 of the Act, or appropriate power, and/or take direct action under Section 178 in the event of non-compliance with the Notice.

Enforcement action be authorised to issue an Enforcement Notice in respect of the above land requiring the following within six (6) months of the Notice taking effect:

- (i) To entirely demolish the building described by the applicant as a 'machinery store' (the approximate location of which is shown hatched on the attached plan); and
- (ii) To remove from the Land all materials, rubble, debris and paraphernalia associated with and arising from compliance with requirement (i) above.

### Informatives

01. The plans and particulars relating to the application hereby refused are numbered/titled (all rec'd by the LPA on 04.11.2022):

22 021 100 Rev B (Existing Plans), dated 03.11.22

22 021 101 Rev B (Existing Elevations), dated 03.11.22

22 021 1000 Rev B (Location Plan), dated 03.11.22

22 021 1001 Rev B (Existing Site Plan), dated 03.11.22

22 021 1002 Rev C (Proposed Site Plan), dated 03.11.22

22 021 1003 (Existing Site Plan), dated Nov 2022

Planning Statement, prepared by Aragon Land & Planning Ltd (Ref: ALP 22/019) (19pp)

02. This statement is provided in accordance with Article 35(2) of The Town and Country Planning (Development Management Procedure) (England) Order 2015. Woking Borough Council seeks to take a positive and proactive approach to development proposals. The Council works with applicants in a positive and proactive manner by:

- Offering a planning pre-application advice service; and
- Where possible officers will seek minor amendments and/or additional information to overcome issues identified during the application process.

## **7 FEBRUARY 2023 PLANNING COMMITTEE**

In this instance the applicant seeks to regularise a breach of planning control and did not seek planning pre-application advice from the Council prior to carrying out the unauthorised development. It was not considered that minor amendments and/or additional information would overcome issues identified during the application process.