

## 16 OCTOBER 2018 PLANNING COMMITTEE

6g	18/0804	Reg'd:	17.08.18	Expires:	12.10.18	Ward:	HE
Nei. Con. Exp:	04.10.18	BVPI Target	17 (Gypsy & Traveller Pitches)	Number of Weeks on Cttee' Day:	9/8	On Target?	No

**LOCATION:** The Stable Yard, Guildford Road, Mayford, Woking, GU22 0SD

**PROPOSAL:** Retention of residential use of the land for the stationing of two mobile homes occupied as self-contained residential units.

**TYPE:** Full Application

**APPLICANT:** Mr K Dunphy

**OFFICER:** Benjamin  
Bailey

---

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

The proposal falls outside of the Management Arrangements and Scheme of Delegations. The proposal is a Departure from the Development Plan.

### **SUMMARY OF PROPOSED DEVELOPMENT**

Retention of residential use of the land for the stationing of two mobile homes occupied as self-contained residential units.

Site Area:	0.0452 ha (452sq.m)
Existing mobile homes:	2
Proposed mobile homes:	2
Existing density:	44 dph (dwellings per hectare)
Proposed density:	44 dph

### **PLANNING STATUS**

- Green Belt
- Thames Basin Heaths Special Protection Area (SPA) (Zone B 400m-5km)

### **RECOMMENDATION**

**Grant** temporary planning permission of three years duration subject to recommended conditions.

### **SITE DESCRIPTION**

The site is part of a larger parcel of land in the same ownership which includes The Stable Yard to the north and Green Lane Cottage to the south. It occupies a rural location on Guildford Road and falls within the Green Belt.

### **RELEVANT PLANNING HISTORY**

PLAN/2013/0828 – Stationing of 2No mobile homes on land south of Stable Yard for one Gypsy family.

## 16 OCTOBER 2018 PLANNING COMMITTEE

Appeal allowed (06.08.2015) as a temporary, personal planning permission limited to three years duration (Appeal Ref: APP/A3655/A/14/2218561)

Refused (24.01.2014) for the reasons below:

- 01. Insufficient information has been provided to demonstrate that the harm to the Green Belt by reason of inappropriateness and harm to the openness of the Green Belt is clearly outweighed by other considerations which constitute the very special circumstances required to justify the development. The proposed development is therefore contrary to Section 9 of the National Planning Policy Framework 2012, Planning Policy for Traveller Sites 2012 and Policies CS6 and CS14 of the Woking Core Strategy 2012.*
- 02. The proposed development, by virtue of the site coverage, size of the mobile homes and associated development would have an adverse impact on the openness, character and appearance of the area; and diminish the amenity area of "Stable Yard" contrary to Policies CS14, CS21, CS24 of the Woking Core Strategy 2012, the Outlook, Amenity, Privacy and Daylight SPD the National Planning Policy Framework and the Planning Policy for Traveller Sites.*
- 03. The proposed development would not provide the level of accommodation provisions for an appropriate gypsy pitch. As such the development would not ensure the longevity of the use to contribute to maintaining a supply of traveller sites within Woking Borough. The development is contrary to Policy CS14 of the Woking Core Strategy 2012, the National Planning Policy Framework, the Planning Policy for Traveller Sites and the guidance contained within Designing Gypsy and Traveller Sites - Good Practice Guide (2008).*
- 04. In the absence of an appropriate legal agreement to secure a contribution towards the Thames Basin Heaths Special Protection Area Avoidance Strategy 2010-2015 the proposed development is contrary to Policy CS8 of the Woking Core Strategy 2012.*

### **CONSULTATIONS**

#### **Planning Policy:**

This may be a circumstance in which a second temporary permission is justifiable. It is also likely that a personal occupancy condition would need to be applied.

#### **Environmental Health:**

No complaints have been received by Environmental Health regarding the use of mobile homes on this site. For the reasons set out by the Planning Inspector under Appeal B, the mobile homes are considered to be unsuitable for general residential use on a permanent basis. There is, however, no objection on Environmental Health grounds for the current use to be extended subject to the same conditions.

#### **County Highway Authority (CHA) (SCC):**

The proposed development has been considered by the County Highway Authority

## 16 OCTOBER 2018 PLANNING COMMITTEE

who, having assessed the application on safety, capacity and policy grounds, recommends condition 08 be attached to any permission granted.

### **REPRESENTATIONS**

**x9** local properties were sent neighbour notification letters of the application, in addition to the application being advertised on the Council's website and by statutory press and site notices. The application has been advertised as a Departure from the Development Plan (due to constituting inappropriate Green Belt development).

**x0** representations have been received.

Any representations received will be updated at Planning Committee.

### **RELEVANT PLANNING POLICIES**

#### National Planning Policy Framework (NPPF) (2018)

Section 2 - Achieving sustainable development

Section 5 - Delivering a sufficient supply of homes

Section 9 - Promoting sustainable transport

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

CS7 - Biodiversity and nature conservation

CS8 - Thames Basin Heaths Special Protection Areas

CS9 - Flooding and water management

CS14 - Gypsies, Travellers and Travelling Showpeople

CS18 - Transport and accessibility

CS21 - Design

CS24 - Woking's landscape and townscape

#### Development Management Policies Development Plan Document (DMP DPD) (2015)

DM13 - Buildings Within and Adjoining the Green Belt

#### Supplementary Planning Documents (SPD's)

Design (2015)

Parking Standards (2018)

Outlook, Amenity, Privacy and Daylight (2008)

#### Other material considerations

Planning Policy for traveller sites (August 2015)

Planning Practice Guidance (PPG)

Draft Site Allocations DPD (2015)

Thames Basin Heaths Special Protection Area (TBH SPA) Avoidance Strategy

**PLANNING ISSUES**

1. The revised National Planning Policy Framework (NPPF) was published on 24 July 2018 and is a material consideration in the determination of this application. However, the starting point for decision making remains the Development Plan, and the revised NPPF (2018) is clear at Paragraph 213 that existing Development Plan policies should not be considered out-of-date simply because they were adopted or made prior to 24 July 2018. The degree to which relevant Development Plan policies are consistent with the revised NPPF (2018) has been considered in this instance, and it is concluded that they should be afforded significant weight.
2. Before listing the planning issues, two considerations will be addressed which have implications for what the planning issues are in this case.

Gypsy/traveller status

3. Planning permission is sought on the basis that the mobile homes are to be occupied by gypsies or travellers. In the course of consideration of PLAN/2013/0828 and the subsequent appeal arising from refusal of that application it was established as a matter of common ground between the Local Planning Authority and the applicant that the applicant himself meets the planning policy definition of a gypsy or traveller as set out in the MHCLG publication Planning Policy for traveller sites (August 2015) (the PPTS). However, the applicant resides in the established dwelling at The Stable Yard and is not a present or intended occupier of the mobile homes.
4. Rather, sons (Patrick and Michael) of the applicant and their young families occupy the mobile homes at present and are also the intended continuing occupiers of the mobile homes. Their gypsy/traveller status was explored at some length at the appeal hearing arising from refusal of PLAN/2013/0828. According to the applicant, both sons lived an itinerant travelling lifestyle with their parents before moving into the established dwelling at The Stable Yard during their teens. Both left home at a young age and travelled with their wives before returning to live in the mobile homes at The Stable Yard. Moreover, both wives (Eileen and Paulina respectively) were raised in travelling families with Gypsy heritage.
5. In allowing the appeal against refusal of PLAN/2013/0828 the Inspector was therefore satisfied that all the adult occupiers satisfied the national policy definition of gypsies and travellers. The Local Planning Authority did not contend otherwise. The PPTS makes it clear that establishing gypsy and traveller pitches in the countryside outside the defined confines of built settlements is not unacceptable in principle. Consequently, the countryside location of the application site is not a barrier to planning permission in this case and, accordingly, compliance or otherwise with local settlement policy is not in itself a main issue.

Inappropriate development

6. The application site lies within the Green Belt. Paragraph 133 of the NPPF (2018) 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. Policy E of Planning Policy for Traveller Sites (August 2015) sets out policy for such sites in the Green Belt.

## 16 OCTOBER 2018 PLANNING COMMITTEE

7. Policy CS6 of the Woking Core Strategy (2012) states that within Green Belt boundaries strict control will continue to apply over inappropriate development, as defined by Government policy outlined in the NPPF; that should now be taken to be the revised NPPF (2018). Policy DM13 of the Development Management Policies DPD (2016) sets out that, unless 'Very special circumstances' can be 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 Green Belt, and that exceptions to this, subject to other Development Plan policies, are detailed within the NPPF and in Policy CS6.
8. Policy CS14 of the Woking Core Strategy (2012) is specific to gypsies, travellers and travelling showpeople, stating that provision is to be made for necessary additional pitches in the Borough between 2017 and 2027 over the plan period with sites to meet the need identified within the Site Allocations Development Plan Document (DPD). In addition to setting out the sequential approach to be taken in identifying sites for allocation through the Site Allocations DPD Policy CS14 also sets out the following criteria to be taken into consideration when determining any planning applications for non allocated sites, as in this instance:
  - The site should have safe vehicular access from the highway and have adequate parking provision and turning areas.
  - The site should have adequate amenity for its intended occupiers, including space for related business activities.
  - The site should not have unacceptable adverse impacts on the visual amenity and character of the area.
  - The site should have adequate infrastructure and on-site utilities to service the number of pitches proposed.
  - The site should have safe and reasonable access to schools and other local facilities.
9. Paragraphs 145 and 146 of the NPPF (2018) set out certain categories of development that is inappropriate in the Green Belt, together with exceptions to this. Paragraph 143 of the NPPF (2018) advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved other than in 'Very special circumstances'. Paragraph 144 adds that 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm arising from the proposal, is clearly outweighed by other considerations.
10. In allowing the previous appeal the Inspector gave the status of the application site as Previously Developed Land (PDL) substantial weight. In the *R (oao Lee Valley RPA) v Broxbourne BC v Britannia Nurseries* [2015] EWHC 185 (Admin) judgment the High Court found that PDL status is an 'other consideration' that can sometimes lead to 'Very special circumstances'.
11. However such PDL status does not in itself preclude development from being inappropriate in the first place. This leads to consideration of the revised paragraph 145g) of the NPPF (2018), and specifically the new second limb where the test is not to cause substantial harm to the openness of the Green Belt. However, that complete paragraph concerns the construction of buildings, and the application proposal is for the stationing of mobile homes. The other relevant change is in paragraph 146e) of the NPPF (2018), where a material change of use of land need not be inappropriate development provided it preserves openness and does not conflict with the purposes of the Green Belt. However, there would be a reduction in openness, and that should

## 16 OCTOBER 2018 PLANNING COMMITTEE

be considered therefore as not preserving openness so that the exception in paragraph 146e) does not apply. The proposal is inappropriate development in the Green Belt and as stated in paragraph 144 of the NPPF (2018), substantial weight should be given to any harm to the Green Belt. Therefore the existence of harm arising from inappropriateness is a main issue in determining the application.

12. In the light of the preceding, the other main issues in determining the application are:
  - the effect of the development on the openness of the Green Belt and the character and appearance of the surrounding area;
  - its effect on the living conditions of the occupiers of the dwellinghouse at The Stable Yard, with particular reference to external amenity space;
  - the adequacy of living conditions on the site for the occupiers of the mobile homes, with particular reference to the availability of facilities required for day-to-day domestic existence and the particular needs of gypsies and travellers;
  - the implications of the development for ecological interests, with particular reference to the proximity of the TBH SPA; and
  - whether the harm by reason of inappropriateness and any other harm arising from the above issues is clearly outweighed by other considerations, including the personal circumstances of the applicant's family, unmet need for gypsy and traveller sites and the site's status as PDL and, if so, whether there exist 'Very special circumstances' which justify the granting of planning permission.
13. In allowing the previous appeal the Inspector concluded that the compound in which the mobile homes are located benefits from lawful use rights for the operation, parking and maintenance of commercial vehicles and although such activity does not currently take place on the relevant part of the wider site, it is nonetheless well-established as part of the mixed use spanning the wider site and may spread to other parts of the site without the need for planning permission. Accordingly, the applicant enjoys a lawful fall-back position that could be implemented on the relevant part of the site should the current application fail. Nothing suggests that this would not be exploited, under the applicant's ownership or that of a successor in title, in the event that a residential planning permission is not forthcoming. The fall-back position is therefore an important material consideration to which substantial weight must be attached in assessing all the main issues.

### Openness, character and appearance

14. The application site occupies an area outside the built confines of any settlement defined by the Development Plan and therefore, for the purposes of planning policy, is located in the countryside. Despite the lawful commercial use referred to above and a substantial, albeit low density, residential presence in the vicinity, the area is resolutely rural in character. For the most part, dwellings along Guildford Road are set well back from the highway behind substantial screening such that their contribution to the prevailing spacious and sylvan sense of place is muted.
15. However, in allowing the previous appeal the Inspector considered that the area where the mobile homes are located is set behind a high, dense screen of well-established hedging which appears to be in good condition and likely to provide an effective visual barrier for some years to come. The Inspector also found that the site is also well-screened from the public right of way to the north and the A320 to the west, such that, at most, the mobile home compound can only be glimpsed obliquely through the site entrance when its gates are fully open. The Inspector was therefore satisfied that the scheme allowed on appeal, which is the same as that now sought

## 16 OCTOBER 2018 PLANNING COMMITTEE

permanently, had minimal adverse implications for the character and appearance of the locality, at least in the short term.

16. The Inspector found that the effect of the mobile homes on the openness of the Green Belt would be more significant. Openness is identified in paragraph 133 of the NPPF (2018) as one of the essential characteristics of Green Belts. Inevitably, it is eroded by any item of substantial size, such as a mobile home, by simple reason of the fact that it occupies three-dimensional space, irrespective of its visual prominence.
17. Whilst that was the case the Inspector found that the regular parking of large vehicles in the existing compound pursuant to the applicant's lawful fall-back position would have a similar effect on openness and would, in all likelihood, occur in due course should that appeal have failed. The Inspector therefore found that the additional harm stemming from the appeal which was allowed, over and above that associated with the fall-back position, would therefore be limited. Accordingly, the Inspector attached limited weight to the issue of character, appearance and openness and found no serious conflict with the objectives of Policies CS6, CS21 or CS24 of the Woking Core Strategy (2012), the PPTS or the NPPF in that regard. This reasoning remains equally applicable at the current time because no material changes have occurred in the application site circumstances or planning policy since the previous appeal decision which would alter this conclusion.

### Living conditions of neighbouring residents

18. In refusing planning permission, which was subsequently allowed on appeal, the Local Planning Authority criticised the existing compound and its proposed use for the stationing of static mobile homes on the basis that it would reduce the extent of the external amenity area available to the occupiers of the established dwelling at The Stable Yard. SPD Outlook, Amenity, Privacy and Daylight (2008) advises that, where appropriate, the area of private garden should approximate with the gross floorspace of the dwelling (subject to the character of the local context) but should always be as large as the building footprint of the dwellinghouse except in the most dense urban locations.
19. The Inspector noted that the SPD sets out guidance on achieving suitable amenity in new residential developments *whilst safeguarding those attributes of adjoining residential areas* [italicised emphasis of Inspector] and therefore accepted that its objectives apply to the garden areas of existing dwellings as well as those of new build development. The Inspector was also mindful that the existing garden/sitting out area associated with the established dwelling is confined to a limited expanse of hard surfacing immediately adjacent to the building which, in terms of coverage alone, falls considerably short of the minimum standard prescribed by the SPD. However, the Inspector set out that any concerns in this regard must be tempered by two factors in particular; firstly, neither of the planning permissions that governed the establishment of the existing dwelling are explicit in specifying the extent of the associated external amenity area. There are no conditions to that effect and on the evidence put before the Inspector, including the approved plans, the extent of the lawful curtilage of the dwelling was considered to be open to interpretation. Secondly, and conclusively, the compound benefits from lawful use for haulage-related commercial purposes by reason of the 2002 appeal decision, such that its potential function as a domestic garden or yard could not be enforced effectively in any event.
20. The Inspector stated that they saw or heard nothing of substance to the effect that the land in question had previously been an amenity area incidental to the dwelling and at

## 16 OCTOBER 2018 PLANNING COMMITTEE

the appeal hearing, the applicant maintained that it had never been used as such during his time at the property. The Inspector therefore found no serious conflict with the Council's SPD in the context of this issue and attached very little weight to the non-availability of the land for amenity purposes.

### Living conditions of the mobile home occupiers

21. In refusing PLAN/2013/0828 the Local Planning Authority stated that, in its perception, the siting of x2 mobile homes on the site would not provide facilities which would be suitable for all gypsies and travellers. Having regard to advice set out in the publication Designing Gypsy and Traveller Sites – Good Practice Guide (the GPG), issued by the DCLG (now MHCLG) in May 2008, the Inspector shared these concerns. This prescribes, amongst other things, the need to provide, for each pitch, space for a large trailer and touring caravan, parking for two vehicles, drying space for clothes, a lockable shed and a small garden. The Inspector set out that two pitches would require at least one amenity building subdivided into two semi-detached units to include, as a minimum, hot and cold water and electricity supplies, a separate toilet and hand wash basin, a bath/shower room and a kitchen and dining area, required to meet the expectations of many gypsies that washing and dining facilities should be kept separate from sleeping accommodation.
22. The current application relates specifically to the compound and excludes all other land belonging to the applicant except for the vehicular access. The Inspector set out that the compound alone could not possibly accommodate two static mobile homes plus all the other essential facilities listed above and that whilst the proposal would meet the short term requirements of the existing occupiers, who the applicant advised would be content to keep their touring caravans elsewhere, it would not be suitable for many gypsies and travellers.
23. The two mobile homes contain washing, bath/shower room, toilet and cooking facilities such that their occupiers are not dependent on facilities elsewhere on the applicant's property. However, whilst this is the case, the Inspector clearly stated that the lack of facilities within the confines of the pitches themselves would inevitably temper the contribution that the mobile homes make in helping to address any unmet need for gypsy and traveller accommodation in the Borough and set out that any planning permission would therefore still need to be personal to the existing occupiers, albeit without a tie to the applicant's continued occupation of the dwelling.
24. The Inspector therefore concluded that the pitches fell short of the objectives and expectations of the PPTS, GPG and Policy CS14 of the Woking Core Strategy (2012) in terms of the living conditions available to their occupiers and that it therefore followed that unfettered planning permissions would undermine national and local objectives for the quality of gypsy and traveller pitches and thus cause harm to an interest of acknowledged importance. Moreover, the Inspector found that substantial weight should be attached to these shortcomings such that, at best, any planning permission would need to be subject to a personal occupancy restriction.

### Ecological interests

25. The application site lies in close proximity (400m - 5km) to the Thames Basin Heaths Special Protection Area (TBH SPA). The Inspector recognised the harmful cumulative effects that even small scale residential development such as the stationing of gypsy and traveller mobile homes can have on the ecological interests of the SPA, by simple reason of increased human and predatory animal activity in close proximity to it. The



## 16 OCTOBER 2018 PLANNING COMMITTEE

Inspector concluded that it was therefore a potentially harmful impact that, if significant, must be mitigated one way or another through the planning process.

26. Gypsy and traveller caravans and mobile homes do not constitute 'chargeable development' for the purposes of the CIL Regulations 2010. Consequently, a charge specifically covering SANGS (Suitable Alternative Natural Green Spaces) payments associated with development such as that proposed could not be included within the CIL Charging Schedule.
27. However the SANGS charge in the Schedule for 'chargeable development', such as conventional new-build residential development, has been set at a level which is high enough to mitigate the harm arising from 'non-chargeable development' such as affordable housing and gypsy and traveller caravans and mobile homes.
28. As the stationing of gypsy and traveller caravans and mobile homes is not CIL-chargeable, such development is not subject to the five-obligation limit imposed by Regulation 123(3)(b) of the 2010 Regulations. In any event, SAMM (Strategic Access Management and Monitoring) payments are not captured by Regulation 123(3) as the monitoring they relate to is, in effect, revenue expenditure rather than being a 'project' or type of infrastructure in itself. SAMM requirements relating to gypsy and traveller caravans cannot therefore be subsumed within the CIL Charging Schedule in the same way as SANGS provisions.
29. The applicant has applied for permanent planning permission although no unilateral undertaking (under Section 106) to secure the SAMM component of the SPA Avoidance Strategy tariff has been submitted with the application, nor has reference been made to any willingness or intention to submit such an undertaking.
30. The Inspector concluded that they were in no doubt that, if permanent, the appeal scheme (identical to the current application), in combination with other residential developments, would adversely affect the integrity of the SPA in the event that a SAMM payment was not secured. As the applicant had not provided a valid obligation of any kind the Inspector attached substantial weight to the consequential harm to the ecology of the SPA and found that the appeal scheme (identical to the current application), if permanent, would be contrary to the underlying objectives of Policies CS7 and CS8 of the Woking Core Strategy (2012), the Avoidance Strategy and the relevant provisions of the NPPF.
31. However, it is also pertinent that during the previous appeal proceedings the Local Planning Authority and the applicant shared common ground to the effect that, were a temporary planning permission to be granted, a SAMM payment could not be justified as the consequences of the additional short term, small scale residential presence on the site for the ecology of the SPA would be insignificant. The Inspector found no reason to disagree as long as any planning permission was of no more than three years' duration.

### Other considerations

32. It will now be considered whether there are other considerations which might weigh against the harm arising from inappropriate development in the Green Belt and other main issues.

## 16 OCTOBER 2018 PLANNING COMMITTEE

### Need for gypsy and traveller sites

33. At the time of the previous appeal hearing the Local Planning Authority anticipated that the examination of the Site Allocations DPD would take place in March 2016 with adoption following in July 2016. The Inspector expressed that these dates, whilst possibly achievable, were somewhat optimistic and additionally, a period to facilitate the actual delivery of allocated sites must then be allowed for.
34. With regard to unmet need, the Council's Annual Monitoring Report (AMR) for 2014/15, which would have been the most up-to-date document at the time of the appeal decision, recorded a cumulative delivery of 0 pitches; which is to say that there was neither unmet need nor a surplus of pitch provision at that point. In the most recently published AMR (2016/17), there is a projected cumulative delivery of -4 pitches by 2017/18. This is based on the assumption of zero gypsy and traveller pitch planning permissions being granted in the year 2017/18, which has indeed been the case. Therefore there is at present an unmet need for 4 pitches within the Borough, and it should be recognised that unmet need has intensified to a certain degree since temporary planning permission was granted at the site in August 2015.
35. Nonetheless, there are important countervailing considerations. There is currently a planning application pending consideration for x6 additional pitches in the Borough on a site being promoted within the Regulation 19 Site Allocations DPD for Travellers' accommodation. Should the Local Planning Authority be minded to approve this pending application, there would be a surplus of 0.7 pitches by the end of 2018/19. Moreover, Policy E of the PPTS states that "*subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.*" On this basis, unmet need in and of itself is not sufficient grounds to constitute 'Very special circumstances'.
36. Indeed, in any case, Policy CS14 of the Woking Core Strategy (2012) outlines a planned mechanism for meeting the need for gypsy, travellers and travelling showpeople pitches. It specifies that "*the Council will make provision for necessary additional pitches for Gypsies and Travellers and Travelling Showpeople in the Borough between 2017 and 2027 over the plan period. Sites to meet the need will be identified in the Site Allocations DPD.*" Although the Site Allocations DPD has yet to be adopted, and can therefore only be afforded very limited weight at the current time, its preparation is sufficiently advanced to identify sites to meet the Borough's identified need over the plan period. A draft of the DPD has already been published for Regulation 18 consultation, and it is clear that sufficient land has been identified to meet the identified need over the plan period.
37. When addressing the need for traveller pitches in the Borough, in allowing the previous appeal, the Inspector identified that the Council "*does not have a supply of specific deliverable sites gypsies and travellers sufficient to provide five years' worth of sites against locally set targets, so as to accord with Policy B of the PPTS.*"
38. The PPTS policy to which the Inspector was referring is as below:

*"Local planning authorities should, in producing their Local Plan:*  
*a) Identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets."*

## 16 OCTOBER 2018 PLANNING COMMITTEE

39. At present, it remains the case that the Local Planning Authority cannot demonstrate a five year supply of deliverable gypsy and traveller pitches. However, while this circumstance remains unchanged, it does not, in isolation, carry particular weight in this instance. Paragraph 27 of the PPTS provides that:

*“If a local planning authority cannot demonstrate an up-to-date 5-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. The exception is where the proposal is on land designated as Green Belt.”*

40. In this instance, the application is for a permanent permission on Green Belt land. Therefore lack of a demonstrable five year supply of deliverable gypsy and traveller pitches does not, in isolation, form an overriding ‘Very special circumstances’ consideration in this case although it is capable of contributing towards a potentially cumulative ‘Very special circumstances’ case.

### Alternative accommodation

41. With regard to lack of alternative accommodation, the Inspector found at the time of the previous appeal that:

*“On the balance of probabilities...no alternative accommodation appropriate to [the prospective occupants’] gypsy status is available to the families at the present time. Upholding the enforcement notice would therefore be likely to force them back to the road. I attach substantial weight to this.”*

42. No evidence has been submitted by the applicant to the effect that suitable alternative accommodation beyond the temporary planning permission (which has now expired) remains unavailable. Therefore the lack of alternative accommodation cannot be afforded significant weight in determining the current application.

### Personal circumstances

43. During the previous appeal the applicant advised that the desire of both families to continue living on the site for the time being stemmed for the most part from aspirations for their children. At the time of the previous appeal the oldest child was 5, each couple had a toddler aged 2, and there was a baby aged 7 months. The Inspector was mindful that in the case of *Jane Stevens v SSCLG & Guildford BC* [2013] EWHC 792 (Admin) it was found that, where gypsy families include children, rights under Article 8 of the European Convention on Human Rights as incorporated by the Human Rights Act 1998 have to be interpreted in the light of international law. In the Supreme Court Ruling *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, Lord Kerr found that *“where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them.”* The ‘best interests’ of children are therefore a primary consideration in such cases, reflecting Article 3(1) of the United Nations Convention on the Rights of the Child.
44. At the time of the appeal decision the Inspector found that *“remaining on the appeal site for even a limited period of time would allow the families to maintain their independence and enhance their quality of life”* and that *“taking to the road at the present time would, undoubtedly, be to the detriment of the children’s needs”*. When this consideration was made, *“the oldest child [was] already of school age, whilst the*

## 16 OCTOBER 2018 PLANNING COMMITTEE

*two toddlers [were] due to start pre-school."* Circumstances have now changed such that four of the six children are currently enrolled at a local primary school, continued attendance at which is clearly in their best interests. That the best interests of the children in this case clearly favour a certain course is indisputable; their educational needs would be best served by remaining in their current place of residence, within easy access of their existing primary school. This weighs heavily in favour of granting planning permission.

45. The Inspector was satisfied that the need for gypsy and traveller pitches generally and the individual characteristics of these particular families were quite distinct and that these matters therefore carried substantial weight in the balancing process.

### Previously developed land

46. In the context of discussing the concept of inappropriate development in the Green Belt, the Inspector placed emphasis on the fact that the site forms PDL, referencing that in the *Lee Valley* judgment it was found that PDL status is an 'other consideration' for the purposes of the NPPF that can sometimes lead to 'Very special circumstances'. The Inspector afforded that status substantial weight. This PDL status remains unchanged from the time of the appeal decision and therefore weighs in favour of granting planning permission.

### Additional matters

47. The Inspector found that there was no cogent evidence that the subject residential use would have an adverse impact on the living conditions of residents beyond the confines of the applicants' land or would be likely to do so in the future, particularly in the context of the ongoing commercial use. The Inspector also found nothing to substantiate the view that mobile homes would have adverse implications for highway safety and that conflict within the wider site itself between residential and commercial activity was not an issue at the time of the appeal decision and the Inspector found no reason why it need become so in the future. These findings remain unchanged.

### Planning Balance

48. The proposal constitutes inappropriate development in the Green Belt which, as specified within the NPPF (2018), carries substantial weight against granting planning permission. However, because the key site and planning policy circumstances remain unchanged since the appeal decision, the findings of the Inspector that the proposal has no harmful implications for the character and appearance of the surrounding area and only a limited effect on the openness of the Green Belt over and above the likely impact of the lawful fall-back position, carry significant weight in determination of the current application. The Inspector also found that the consequences of the proposal for the external amenity of the occupiers of the existing dwelling were insignificant; again this finding carries significant weight in determination of the current application.
49. The Inspector found that matters including an unmet need for gypsy and traveller pitches, an absence of alternative accommodation, the personal circumstances of the applicant's family and the PDL status of the land, all weighed substantially in favour of granting planning permission but that the two exceptions to this were the shortcomings of the pitches in terms of size and facilities and the potential for harm to SPA interests in the absence of a legal obligation that is fit for purpose, both of which weighed heavily against the establishment of the proposal on a permanent basis. Consequently, the Inspector found that the attributes of the proposal could not

## 16 OCTOBER 2018 PLANNING COMMITTEE

outweigh the harm arising unless the planning permission was personal to the Dunphy family and of limited duration.

50. However, the Inspector found that, at the time of the appeal decision, the unmet need for sites was such that, despite the shortcomings of the proposal and the Green Belt location, the harm thus caused would be clearly outweighed if permission were limited to a three year period. The implications of two pitches for the SPA over such a short period were concluded to be insignificant, whilst impermanence would preclude the categorisation as a 'release of Green Belt land' contrary to Policy E of the PPTS.
51. The Inspector therefore considered three years to be a suitable lifespan for the planning permission in this case, as by the end of that period, more suitable gypsy and traveller sites sufficient to cater for the long term needs of the Borough should have been identified through the Site Allocations DPD process, with a sufficient proportion of them deliverable so as to amount to the required five year supply.
52. Considering the need for gypsy and traveller sites, the personal circumstances and the PDL status of the site in combination, the weight of countervailing factors demonstrating that harm to the Green Belt would be outweighed by other considerations remains essentially unchanged from the appeal decision. While the lack of alternative sites cannot at present be afforded significant consideration, the applicants' personal circumstances now weigh more heavily in favour of planning permission being granted. So too does the unmet need for gypsy and traveller sites; the unmet need having increased since the appeal decision.
53. However, it must be noted that these factors were only considered of sufficient weight to justify a temporary planning permission by the Inspector. In large part, this was because of the Inspector's concerns regarding the *"shortcomings of the pitches in terms of size and facilities and the potential for harm to SPA interests in the absence of a legal obligation that is fit for purpose."* These were found to *"both weigh heavily against the establishment of either appeal scheme on a permanent basis."*
54. The concern regarding harm to the SPA can be relatively easily addressed. As the Inspector noted, *"were [he] minded to grant a permanent permission pursuant to either of the current appeals, [he] would expect to see a completed section 106 obligation providing for such a payment."* The same would apply in the case of the current application; were the Local Planning Authority minded to permit the application on a permanent basis, it should be permitted subject to a S106 legal agreement securing a SAMM (Strategic Access Management and Monitoring) payment.
55. More difficult to address is the size of the pitches and their lack of capacity for essential infrastructure. In this regard, there are two provisions of Policy CS14 of the Woking Core Strategy (2012) which are not satisfactorily addressed by the current application:
  - *"The site should have adequate amenity for its intended occupiers...[and]*
  - *The site should have adequate infrastructure and on-site utilities to service the number of pitches proposed."*
56. The reasoned justification text to Policy CS14 provides that *"the layout of proposed sites/pitches should comply with the design principles set out by Government practice guidance which is currently in the form of 'Designing Gypsy and Traveller Sites.'"* Although this document has been withdrawn, no replacement has been issued, and it

## 16 OCTOBER 2018 PLANNING COMMITTEE

therefore remains useful in identifying the ways in which the application fails to address the above provisions of CS14.

57. Two provisions within this document are particularly salient:

- *“It is possible to specify that an average family pitch must be capable of accommodating an amenity building, a large trailer and touring caravan, (or two trailers, drying space for clothes, a lockable shed (for bicycles, wheelchair storage etc.), parking space for two vehicles and a small garden area...Smaller pitches must be able to accommodate at least an amenity building, a large trailer, drying space for clothes and parking for at least one vehicle.”*
- *“It is essential for an amenity building to be provided on each pitch, although this can be provided across two pitches as two separate and entirely self contained semi-detached units”*

58. The current application does not include any of the above features and in this sense cannot be considered to provide adequate amenity, infrastructure or on-site utilities for the occupants. Furthermore, there is concern that the site lacks the spatial capacity to accommodate any of these. This consideration is lent credence by the Inspector’s contention that:

*“The compound alone could not possibly accommodate two static mobile homes plus all the other essential facilities listed above [in the Appeal Decisions document]. Again, the proposal would meet the short term requirements of the existing occupiers of the caravans, who the Appellant advises would be content to keep their tourers elsewhere. However, it would not be suitable for many gypsies and travellers.”*

59. Given that ‘the compound’ referred to above constitutes the majority of the site to which the current application pertains, it is considered that the proposal site is not large enough, and is therefore unsuitable, to accommodate the proposed use in the long term.

60. To return to the “*three overarching objectives* [of the planning system]” set out in the NPPF, it is likely that issuing a permanent permission would run contrary to objective B, principally the intention “*to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of the present and future generations.*” In light of the above concerns regarding the size of the site and its capacity to accommodate adequate infrastructure, facilities and amenities, it is unlikely that the proposal would facilitate homes that would meet the needs of future generations. This is corroborated by the Inspector’s contention regarding the site that “*unfettered planning permissions would undermine national and local objectives for the quality of gypsy and traveller pitches and thus cause harm to an interest of acknowledged importance.*”

61. By this analysis, a permanent planning permission is likely to be unsuitable unless the above conditions are met. The harm to the Green Belt by reason of inappropriateness, in combination with the essential unsuitability of the site, outweighs the countervailing factors (unmet need for pitches, the lack of a demonstrable five year supply of pitches, personal circumstances and PDL) such that a permanent permission is unlikely to be justifiable.

## 16 OCTOBER 2018 PLANNING COMMITTEE

62. In conducting this balancing exercise, regard has been given to a number of legal considerations. The Public Sector Equality Duty provides that:

*“(1) a public authority must, in the exercise of its functions, have due regard to the need to –*

- (a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”*

63. The relevant protected characteristic in this instance is the proposed occupants' Gypsy and Traveller status. Particular consideration has been given to provision 3b of the Duty which clarifies clause 1(b):

*“having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular to the need to...take steps to meet the needs of persons who share relevant protected characteristic that are different from the needs of persons who do not share it.”*

64. The need in question is for gypsy and traveller pitches which, at present, is partially unmet within the Borough. However, while this is currently the case, the Local Planning Authority is confident that the plan-led process is sufficiently advanced to identify sites to meet the Borough's identified need over the plan period. In this regard, the Local Planning Authority is taking steps to provide for the need for gypsy and traveller pitches in the Borough.

65. A further consideration is that Article 8 of the European Convention on Human Rights is also engaged by the current application:

- 1. “Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”*

66. It should be recognised that the Green Belt has a particular purpose - to maintain its openness - and inappropriate development can only be justified by 'Very special circumstances'. This aim has been balanced with Article 8 cited above, and it is considered that this purpose, taken in combination with the concerns regarding the adequacy of amenity, infrastructure and facilities provision, is sufficient to justify interference in this instance.

67. On balance, without a 'Very special circumstances' case to justify why the (now expired) temporary planning permission should become permanent, and without the necessary measures to meet the amenity and infrastructure requirements of Policy CS14 of the Woking Core Strategy (2012), there is insufficient evidence to support the permanent use of the site for the proposed development.

## 16 OCTOBER 2018 PLANNING COMMITTEE

68. However, whilst a permanent planning permission is considered to be unacceptable, a further temporary planning permission is considered to be appropriate because, with the possible exception of the unavailability of alternative accommodation, the same circumstances that justified a temporary planning permission for the site in 2015 still apply. It is noted that the Planning Practice Guidance (PPG) states that *“it will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so.”*
69. However, when the appeal was allowed and temporary permission granted for PLAN/2013/0828, the Inspector reasoned that three years was:

*“a suitable lifespan for permissions in this case as, by the end of that period, more suitable gypsy and traveller sites sufficient to cater for the long term needs of the Borough should have been identified through the development plan process, with a sufficient proportion of them deliverable so as to amount to the required five year supply.”*

70. The Inspector also found that:

*“both the refusal to grant permanent planning permissions and the granting of time limited permissions would interfere with the family’s Article 8 rights. However, I am satisfied that, as suitable and reasonably local alternative sites would in all probability be available for them to relocate to in three years’ time, they would not be made homeless at that point. The refusal of permanent permissions and the granting of temporary ones are both therefore proportionate in the terms of the 1998 Act”.*

71. It is noted that the Planning Practice Guidance (PPG) states that *“it will rarely be justifiable”*, as opposed to imposing a blanket prohibition on the granting of a second temporary planning permission. On these grounds, this is considered to be a circumstance in which a second temporary planning permission is justifiable, because suitable and reasonably local alternative sites are not available for the applicant’s family to relocate to as the Inspector envisaged three years’ ago, and the refusal of planning permission would likely result in the current mobile home occupants being made homeless at that point.
72. The temporary grant of planning permission is however recommended subject to a personal occupancy condition because, in allowing the previous appeal, the Inspector found that:

*“the proposal would meet the short term requirements of the existing occupiers of the caravans, who the Appellant advises would be content to keep their tourers elsewhere. However, it would not be suitable for many gypsies and travellers.”*

73. The same reasoning applies in the case of the current application. Overall it is envisaged that by the end of a further three year period (ie. October 2021), more suitable gypsy and traveller sites sufficient to cater for the long term needs of the Borough should have been identified through the Site Allocations DPD process, with a sufficient proportion of them deliverable so as to amount to the required five year supply. Suitable and reasonably local alternative sites would in all probability be available for the mobile home occupiers to relocate to in three years’ time, such that they would not be made homeless at that point.



## **CONCLUSION**

74. Having regard to the above, it is considered that 'Very special circumstances' exist which justify the granting of a second temporary planning permission subject to a three year time limit. In doing so, it is considered that the relevant objectives of Policies CS6, CS7, CS8, CS14, CS21 and CS24 of the Woking Core Strategy (2012), the Council's SPD and Avoidance Strategy, the GPG and the relevant provisions of the NPPF and PPTS would either be complied with or that other material considerations justify a departure therefrom without setting an unacceptable precedent. In such circumstances a planning obligation relating to the protection of the SPA is unnecessary.
75. Residential occupancy of the mobile homes on the site must be limited to Patrick and Michael Dunphy and their dependants to reflect the fact that planning permission is justified in this case primarily by an unmet need for gypsy/traveller pitches and the fact the existing pitches, whilst acceptable to those individuals, are not of sufficient quality to cater for all gypsies and travellers. In view of the personal occupancy restriction, there is no need for conditions limiting occupancy to gypsies and travellers.

## **BACKGROUND PAPERS**

Site visit photographs

Consultation responses from County Highway Authority (CHA) (SCC)

Consultation response from Environmental Health

Consultation response from Planning Policy

## **RECOMMENDATION**

**Grant** temporary planning permission of three years duration subject to recommended conditions:

01. The development hereby permitted shall be carried out in accordance with the following approved plan numbered/titled:

J001404 PL01A (Block Plan / OS Extract), dated 25.10.13 and received by the Local Planning Authority on 26.07.2018.

Reason: For the avoidance of doubt and to ensure that the development is completed in accordance with the approved plans.

02. The planning permission hereby granted shall be for a limited period expiring three years from the date of this decision. At the end of this period the use hereby permitted shall cease and all mobile homes, caravans, buildings, structures, materials and equipment brought on to, or erected on the land or works undertaken to it in connection with the use shall be removed. The land shall then be restored to its former condition with immediate effect in accordance with a scheme of work which shall previously have been submitted to and approved in writing by the Local Planning Authority.

Reason: Planning permission has been granted on a temporary basis in view of the personal circumstances of the applicant and extended family and other circumstances at the time of this decision. The condition is required to review the development hereby permitted in light of the Site Allocations DPD process in accordance with Policies CS6, CS14 and CS21 of the Woking Core Strategy (2012).

## 16 OCTOBER 2018 PLANNING COMMITTEE

03. The site shall contain no more than two pitches at any one time. These shall be restricted to the area edged red on drawing no J001404 PL01A. Each pitch shall contain no more than one static mobile home or caravan at any one time, all of which shall be caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended.

Reason: To prevent an inappropriate intensification of use of the site in the interests of amenity and preserving the character and appearance of the area in accordance with Policies CS6, CS14, CS21 and CS24 of the Woking Core Strategy (2012).

04. Any mobile home or caravan stationed on the site pursuant to this permission shall contain within it cooking, washing, bath/shower room and toilet facilities.

Reason: To ensure that adequate facilities are available for occupiers of the mobile homes without dependency upon the dwelling house of Stable Yard in accordance with Policy CS14 of the Woking Core Strategy (2012) and the provisions of the NPPF (2018).

05. The mobile homes/caravans on the site shall be occupied only by Patrick and Michael Dunphy and their dependants. In addition to compliance with the time limit set out in condition 02, if the mobile homes/caravans cease to be occupied by Patrick and Michael Dunphy and their dependants, the use hereby permitted shall cease and all mobile homes, caravans, buildings, structures, materials and equipment brought on to, or erected on the land or works undertaken to it in connection with the use shall be removed. The land shall then be restored to its former condition with immediate effect in accordance with a scheme of work which shall previously have been submitted to and approved in writing by the Local Planning Authority.

Reason: Planning permission has been granted on a temporary basis in view of the personal circumstances of the applicant and extended family and other circumstances at the time of this decision. The condition is required to review the development hereby permitted in light of the Site Allocations DPD process in accordance with Policies CS6, CS14 and CS21 of the Woking Core Strategy (2012).

06. No more than one commercial vehicle per pitch, which shall be solely for the user of the residential occupiers of the site and shall be less than 3.5 tonnes in weight, shall be stationed, parked or stored on this site. Other than vehicle parking as described, no commercial use shall take place on the site at any time.

Reason: To preserve the character, appearance and general amenities of the area and the residential amenities of neighbouring and nearby properties from undue noise and disturbance in accordance with Policy CS21 of the Woking Core Strategy (2012), Policy DM7 of the Development Management Policies DPD (2018) and the provisions of the NPPF (2018).

07. No external lighting in addition to or replacing that already in place shall be installed on the site unless details have first been submitted to and approved in writing by the Local Planning Authority, including hours of use and intensity and direction of illumination. The installation shall take place as approved.

Reason: To protect the general amenities of the area and the residential amenities of neighbouring and nearby properties from potential nuisance arising from light spill in accordance with Policy CS21 of the Woking Core Strategy (2012) and the provisions of the NPPF (2018).

## 16 OCTOBER 2018 PLANNING COMMITTEE

08. The existing vehicle parking and turning areas at the premises shall be permanently retained and maintained for their designated purposes.

Reason: In order that the development should not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policy CS18 of the Woking Core Strategy (2012) and the provisions of the NPPF (2018).

### **Informatives**

01. The Council confirms that in assessing this planning application it has worked with the applicant in a positive and proactive way, in line with the requirements of the National Planning Policy Framework (NPPF) (2018).
02. The applicant is advised that Council officers may undertake inspections without prior warning to check compliance with approved plans and to establish that all planning conditions are being complied with in full. Inspections may be undertaken both during and after construction.
03. All caravan/mobile home sites are required to be licensed by the Caravan Sites and Control of Development Act 1960. The site licence will be issued subject to conditions having regard to amenity and fire safety. For further information and to submit a licence application, for which a fee is payable, please go online [http://www.woking.gov.uk/planning/envhealthservice/housing/caravan\\_site](http://www.woking.gov.uk/planning/envhealthservice/housing/caravan_site) or contact the Council's Environmental Health Service on 01483 743840.