



Appeal Decision

Inquiry opened on 14 January 2020

Accompanied site visit made on 14 January 2020

by Philip Major BA(Hons) DipTP MRTPI

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

Decision date: 3rd February 2020

Appeal Ref: APP/C3620/W/18/3205739

Land at River Lane, Leatherhead, Surrey KT22 0AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr R Amer and Others against Mole Valley District Council.
- The application Ref: MO/2017/1932 is dated 27 October 2017.
- The application sought planning permission for the use of land as a gypsy and traveller site with 4 pitches, without complying with conditions attached to planning permission Ref: MO/2016/0587/CC, dated 16 December 2016.
- The conditions in dispute are Nos 1 and 2 which state that:
 1. *The use hereby permitted shall be carried on only by the following: Mr Roy and Mrs Margaret Amer; Mrs Rose Doherty; Mr Charlie and Mrs Melissa Doherty; Mr and Mrs Simon and Sarah Doherty, and Mr Simon Doherty and Ms Susan King, and their resident dependants, and shall be for a limited period being the period of 3.5 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.*

Reason: A strictly personal permission is granted in this case having regard to the special circumstances appertaining to this case, in accordance with Policy CS1 of the Mole Valley Core Strategy and the advice contained in the National Planning Policy Framework.
 2. *When the site ceases to be occupied by those named in condition 1 above, or at the end of 3.5 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place.*

Reason: Permission is given in this case, having regard to the circumstances appertaining to the site in question, but only on a strictly limited basis so that the position may be reviewed in the light of circumstances prevailing at the expiry of permission in accordance with Policy CS1 of the Mole Valley Core Strategy and advice contained in the National Planning Policy Framework.

Preliminary Matters

1. I have given a short description of development above which reflects the situation on the ground, albeit that one of the pitches has been described as containing 2 plots. All parties are well aware of the actuality of the development. The current time limited permission was granted in 2016 following an application to remove conditions attached to appeals decisions issued in 2013 (APP/C3620/C/12/2172090 being cited in the Council's decision notice).

2. The Council has not taken issue with the gypsy status of the site occupants. Although some doubt was expressed in relation to whether one person was resident at the site I do not find that the evidence is sufficient for me to decide, on the balance of probabilities, that the person concerned has ceased to be a site occupant. I accept gypsy status of all the current occupants.
3. The proposal was originally running alongside a separate application for the use of a smaller area of land for the stationing of 4 gypsy and traveller pitches. This was withdrawn during the course of the inquiry in light of the Council's nascent proposals for future accommodation provision, which I explain in more detail below.
4. Occupation of this site has been carried on for some 17 years and the land has a complex planning history since that time. A time limited permission was first granted on the land the subject of this appeal in 2007 for a period of 4 years, by which time it was expected that the Council would have progressed its development plan and provided for gypsy and traveller accommodation. That did not happen and a series of time limited planning permissions has followed, the current one being the fourth, granted by the Council in 2016.
5. It is agreed that the Council cannot demonstrate a 5 year supply of sites for gypsies and travellers. It is also agreed that the need for sites within the district is high¹. I held a round table session to discuss need in the district at the start of the inquiry, and through that discussion the differences between the parties narrowed. It is clear that there is disagreement about the methodology each party has used to assess need, but the result is that both accept a level of need which is quite closely aligned.
6. The assessment of need is not, nor could it be, an exact science. The authors of the Gypsy and Traveller Accommodation Assessment (GTAA) of 2018 have clearly used best endeavours to establish the need for sites now and in the future. That the assessment results in a need lower than that assessed by the Appellants advisers is to be expected simply because each side has access to different information. The GTAA assessment is inevitably likely to find it more difficult to engage over a relatively short time with the traveller community compared with those working directly with that community over a number of years.
7. As a result, and as I have found elsewhere, the true picture is not certain, but is likely to be at a figure close to that assessed by the Appellants' advisers. In any event that is not a figure which differs so significantly from the GTAA that it would result in greater weight in the planning balance. In short, I am satisfied that there is an immediate unmet need for gypsy and traveller pitches which carries significant weight in this case.
8. The appeal site is located in the Green Belt, and it is common ground that the development is inappropriate development in the Green Belt. The National Planning Policy Framework (NPPF) points out that such harm should carry substantial weight in the planning balance. That is a matter which is not disputed.

¹ The description used by the Council's witness in relation to need.

Decision

9. The appeal is allowed and planning permission is granted for the use of land as a gypsy and traveller site with 4 pitches at land at River Lane, Leatherhead, Surrey in accordance with the application Ref: MO/2017/1932 dated 27 October 2017, without compliance with condition numbers 1 and 2 previously imposed on planning permission Ref: MO/2016/0587/CC dated 16 December 2016 and subject to the conditions set out in the schedule at the end of this decision.

Main Issues

10. The main issues in the appeal are:
 - (a) The impact of the proposed development on the character and appearance of the area;
 - (b) Whether there are any considerations which clearly outweigh the harm to the Green Belt, and any other harm, such that very special circumstances exist sufficient to justify the grant of planning permission without the need for the disputed conditions.

Policy Background

11. The development plan includes the Mole Valley Core Strategy, which was adopted in 2009. A number of policies have been agreed to be relevant to this appeal. Policies CS1 and CS2 are spatial policies which seek to direct development to particular locations. In relation to housing it is clear that they aim to provide development on previously developed land where possible, and within defined built up areas. The policies do not strictly follow the more balanced approach of the NPPF but can still be afforded significant weight to the extent that they are relevant in this case.
12. Policies CS13 and CS14 deal with landscape and townscape. They are more prescriptive in tone than the NPPF but nonetheless allow for a balanced assessment to be made. These policies can attract significant weight where relevant.
13. Policies ENV22 and ENV23 set out criteria which it is expected development proposals will respond to. These criteria are closely aligned with the aspirations of the NPPF, necessitate judgement being exercised, and can be afforded full weight even though their phraseology is slightly different to the NPPF.
14. Policy CS5 deals specifically with gypsies, travellers and travelling showpeople. Its main aspiration is to make provision in a later development plan document for these groups. The Council has failed to implement this policy in that regard. However the policy also includes criteria to be considered when planning applications are being considered. The Appellant accepts that the policy is broadly consistent with the NPPF and with a single exception, with Planning Policy For Traveller Sites (PPTS) published in 2015. This, together with Policies CS13 and ENV22, are the most important policies for determining this case.
15. It is notable that the Council is preparing to publish its proposed Local Plan (LP) for consultation very soon. It was approved for publication by the Council's Cabinet during the inquiry. Of particular note in the draft LP is Policy H9, which

seeks to address the need for gypsy and traveller pitches by allocating some sites alongside a criteria based approach. One of the sites proposed for allocation is the appeal site. The draft allocation has been made following a review of the Green Belt. The draft LP is at a very early stage and cannot be afforded any weight as yet. Nonetheless it is material in that it provides information on the evidence the Council has used to date to seek to address the need for gypsy and traveller pitches in the district.

Reasons

Character and Appearance

16. The Mole Valley Landscape Supplementary Planning Document (SPD) was produced in 2013. The appeal site lies within the Lower Mole Landscape Character Area (LCA). Key characteristics of this area include the broad meandering valley with a moderately open landscape, small woodland pockets, a strong hedgerow pattern and pockets of unkempt land around urban fringes. It is identified as an important landscape corridor between Leatherhead and Fetcham.
17. Within this overall context the appeal site is affected by a number of factors, and these factors have in part changed over recent years. First, there is nearby development which imparts a strong urban influence. Most notable is the Leatherhead Youth Football Club on the opposite side of River Lane. This includes hard surfaces, buildings and tall floodlighting, bringing a distinct perception of built development. The development of the football club is a significant change to the situation previously considered, certainly at the time of the appeal in 2006/7. The club is used during daylight and dark hours, and when the new floodlights are on (as seen by me during the inquiry period) the club site has no characteristics associated with a rural location. Secondly the nearby business park has a similar though slightly less pronounced urbanising impact. Thirdly the site is bounded to the south-east by a row of poplar trees underplanted by a tall coniferous hedge which form the common boundary with an extensive crematorium. This is not a typical characteristic of the LCA but is more attuned to an urban edge location.
18. Taking these matters together I agree with the Appellant that the site exhibits characteristics which can be generically described as being typical of an urban fringe location. Whatever the situation at the time the land was first developed (and I accept that it was different) there has been a marked change in the intervening period. The land is now less sensitive to development. Given that it is sandwiched between the football club and the crematorium its sensitivity to development is low.
19. The impact of the development on character is mitigated to some extent by the planting which has taken place, albeit that it includes a coniferous hedge to River Lane and internally to the site. But the key characteristics of the LCA identified in the SPD are not apparent around the appeal land. It does not form part of a moderately open landscape, nor does it include pockets of woodland. The only native hedgerow of note flanks River Lane, but some of this has been lost to football club development, and most of the rest has become degraded and outgrown. The land is relatively well self-contained and its role in separating Leatherhead and Fetcham has been diluted by the stronger influence of the football club. All of these matters mean that the impact of the proposal on the Lower Mole LCA are minor.

20. The site is visible through the native planting alongside Randalls Road, but this is likely to be perceived only in fleeting glimpses by passing motorists or other road users. If pedestrians use the road they are likely to be using it to gain access to other locations, and not as a leisure route. That said, the lower part of River Lane, where it approaches the river itself, is likely to be used for leisure purposes. In this location River Lane has a very different feel to the area between the football club and the appeal site. It is rural in ambience and has pleasant surroundings for a walk close to the river. In this locality the site is barely visible, being limited to minor glimpses of features on site. This means that recreational walkers, who have the highest sensitivity to development change, would be minimally affected by the development. When approaching the appeal site the development becomes more readily perceived, but the football club has a significantly greater visual impact.
21. Taking these matters together it is my judgement that the appeal development has a minor impact, bordering on negligible, on the character of the Lower Mole LCA, and a similarly minor impact on the visual amenities of the locality. The Council accept that criteria 1 a. to d. of Policy CS5 are met, and I agree with the Appellant that criterion e. is also met. Parts 2 and 3 of that policy are not applicable here and as a result I find that this proposal accords with the policy as a whole. The development would respect the surrounding landscape and the character and appearance of the area, which could be further ensured by condition. Hence there is also no conflict with Policies CS13 and ENV22.

Green Belt Balance

22. As noted, it is accepted that substantial weight attaches to the harm by inappropriateness. The development also impacts on the openness of the Green Belt. In this case I regard the loss of openness to be moderate in spatial terms, though the perception of loss of openness is greater. It is inevitable that 4 gypsy and traveller pitches with their attendant caravans and ancillary structures will impart that perception, notwithstanding any perimeter planting undertaken. Put simply the land has ceased to be open and is now occupied and clearly seen as such with its structures and hard surfaces.
23. The site also encroaches into the Green Belt, in conflict with one of the purposes of Green Belts set out in the NPPF. I do not have any evidence of the circumstances pertaining to the development of the adjacent football club, but it seems to me that that development has a far greater impact on encroachment than the appeal site. It is more extensive and visible, consequently leading to a greater impression of urban development.
24. It may be that the football club has been deemed to be a 'not inappropriate' development in the Green Belt, and I am not engaging in a comparative exercise. However, the mere presence of the extensive football club development reduces the perceived impact of the appeal development both in terms of loss of openness and encroachment. For these reasons, and contrary to findings in previous decisions, I find that the loss of openness and encroachment should attract no more than moderate weight.
25. I turn now to other considerations advanced in support of the development. It is accepted by the Council that the Appellants and other occupants of the site have nowhere else to go. It was acknowledged that if this appeal were to be dismissed then the Council would need to decide whether to seek to take enforcement action at the end of the current time limited permission (in June

- 2020). Furthermore it is accepted by the Council that there are no identified alternative sites which are suitable, available, affordable and acceptable. This is a significant material consideration in favour of the appeal.
26. It is abundantly clear to me that the Council has been afforded many years in which to seek to resolve the issue of gypsy and traveller site provision. It has signally failed to do so notwithstanding that planning permission has been granted on occasion. It has in particular failed to implement its own policy (CS5) by bringing forward a land allocations development plan document. The assurances given in previous public inquiries have not been acted upon in a manner which has provided the necessary site provision. Whilst I accept that the emerging LP is in the process of bringing forward proposals for consultation, the past performance of the Council amounts to a demonstrable failure of policy. This in itself is a significant consideration in favour of the proposal.
27. There are a number of children resident on the site, many of whom have been born and grown up there. It is patently their settled home. I heard evidence relating to the attendance of children at school and to the serious health difficulties which require specialised treatment for at least 2 children. The best interests of any child are of course a primary consideration in the appeal. It cannot be the case that removing a settled base from which the children concerned can access both education and healthcare can in any sense be in their best interests. This matter is of substantial weight.
28. Furthermore there are a number of adults on the site who benefit from a settled base from which to access medical facilities. This adds further weight to the balance in favour of the proposal.
29. PPTS points out that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt so as to establish very special circumstances. But there is nothing to suggest that such a situation could not arise. And in this case the best interests of children are highly material, along with other matters.
30. Refusal of the proposal would interfere with the Article 8 rights of the site occupants. In this case, because of its particular circumstances, interference would not be proportionate, with particular reference to the best interests of the children. Dismissal of the appeal would result in the site occupiers having no home after a period of many years residing in this location following a serious failure of policy by the Council. I agree with the Appellant that such a course would be wholly disproportionate in this case.
31. The balance here is abundantly clear. The harm to the Green Belt carries substantial weight, but the substantial weight to be given to the best interests of the children on site, together with the failure in policy over many years, and the lack of any alternative sites available to the Appellants, carry yet more weight. Other considerations clearly outweigh the harm by inappropriateness and the minor impact on the character and appearance of the area, and very special circumstances have been established. It follows that I have decided that planning permission should be granted.
32. I turn then, to whether the conditions in dispute should be removed, or whether a further time limited permission would be required.

33. Successive time limited planning permissions have been granted on this site. It is clear that that is not good practice. Planning Practice Guidance makes it clear that granting more than a single temporary permission is to be avoided unless there is a specific reason justifying such a course. At some point temporary planning permissions must come to an end and given the weight attached to the considerations which result in very special circumstances here I see no justification for imposing yet another time limit on site occupation. To do so would be unreasonable. Albeit that the planning balance would be different it is my judgement that circumstances here are clearly sufficient to justify a permanent planning permission.
34. I observe here as a non-determinative matter that it is clear that Council's officers and Cabinet, in resolving to recommend consultation on a draft LP which would take this site out of the Green Belt and allocate it for its present use (with a higher number of pitches) have taken a similar, parallel judgement.
35. For all the above reasons I am satisfied that the case has been satisfactorily made for the removal of the disputed conditions.

Other Matters

36. The Written Ministerial Statement of December 2015 relating to intentional unauthorised development was raised at the inquiry. That statement clearly indicates that the new policy to which it relates applies to planning applications and appeals received since 31 August 2015. Although this appeal falls after that time it is part of an ongoing series of cases and the original development took place about 17 years ago. It would seem unreasonable to seek to apply the policy on intentional unauthorised development in such a retrospective manner. In any event this is a matter which would not have changed my judgement on the outcome of the appeal.
37. Residents of River Lane have expressed concern about a number of matters. Whilst I understand their concerns they are largely related to non planning issues. In particular the matter of escaped horses from the adjacent paddocks is not something I can give weight to. The fact that there have been instances of incorrect addressing of mail, or even the use of addresses in a manner which might be thought to be fraudulent, are also not matters to which I can give weight in the planning balance. River Lane beyond the site and football club is lightly used by vehicles (it is a dead end) but I understand the concerns relating to the traffic at the Randalls Road junction. However this is not a matter of concern for the Council and from the information available to me it is clear that traffic is at its heaviest during the times of use of the football club. This is not a matter which weighs against the proposal.
38. I am also aware that there is a good deal of support from the local community for the residents on the site, as indeed was the case as far back as 2006/7. Site residents have made contacts and integrated with the community.

Conditions

39. A new planning permission is created on the granting of planning permission. A number of conditions were suggested in the event of the appeal being permitted on a permanent basis.
40. Although I have decided that this site is acceptable partly on the basis of the needs of the current site occupants it is apparent that the need in the district is

wider. In addition the Council officers, supported by Cabinet, have identified the site as being capable of accommodating a development of this type (albeit that there is no guarantee that it would be in the final version of the Local Plan). As a result, subject to restricting the site to gypsies and travellers, I see no necessity to limit occupation to named residents.

41. At the present time I agree that it would be necessary to specify the limit on the number of caravans on site. Any future permission granted as a result of changing circumstances could vary this number. As agreed at the inquiry it would be reasonable to change the balance of mobile homes to touring caravans, but not the overall number. This would protect the amenities of the locality.
42. In order to ensure that the appearance of the area is protected to the greatest degree a condition restricting development beyond that shown on the submitted drawing is necessary, as is a condition requiring the approval and implementation of a landscaping scheme, and a further condition restricting use of the paddock areas on site. For the same reason it is necessary to impose conditions restricting the use of the site for commercial purposes, and the stationing of commercial vehicles over a specified limit.
43. Finally a condition requiring mobile homes to be set at a minimum floor height is necessary to avoid any possibility of harm to living conditions of site occupants.
44. I do not find that it would be necessary to impose a condition relating to the erection of buildings on the site as these can be controlled by other regulations and there are no relevant permitted development rights applicable to traveller sites.

Overall Conclusion

45. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions but restating and substituting others.

Philip Major

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
 - 2) No more than 11 caravan(s), as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 6 shall be static caravans) shall be stationed on the site at any time.
 - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no fences, gates, walls or other means of enclosure shall be constructed and no areas of hard surfacing installed, other than as hereby permitted and shown on drawing No 12_485B_002 (Existing Site).
 - 4) Within 6 months of the date of this decision there shall be submitted to, for approval in writing by the local planning authority, a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the implementation of the scheme.
 - 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the approval of the landscaping scheme, and any trees or plants which within a period of 5 years from the completion of the scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
 - 6) No commercial activities shall take place on the land, including the external storage of materials.
 - 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
 - 8) The paddock areas shown on the approved plan shall only be used for the purposes of grazing.
 - 9) The internal floor levels of each mobile home on the site shall be set at least 300mm above local ground level and shall thereafter be retained as such.
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APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms E Lambert	Of Counsel
She called	
Mr S Jarman	Opinion Research Services Ltd, took part in the round table session on need
Ms E Temple	Director, ET Planning Ltd

FOR THE APPELLANT:

Mr A Masters	Of Counsel
He called	
Sarah Doherty	Site resident
Rose Doherty	Site resident
Roy Amer	Appellant and site resident
Susan King	Site resident
Mr M Green	Green Planning Studios Ltd gave evidence and took part in the round table session on need

INTERESTED PERSONS:

Mrs S Wood	Local resident
Mr R Wood	Local resident
Mrs J Moor	Local supporter
Fr J Chadwick	Margaret Clitherow Trust

DOCUMENTS HANDED IN DURING THE INQUIRY

- 1 Opening submissions on behalf of the Council
- 2 Extract of the Strategic Housing and Economic Land Availability Assessment for Mole Valley (January 2020)
- 3 Extract of the Green Belt Review for Mole Valley (January 2020)
- 4 Extract of the proposed Consultation Draft Local Plan for Mole Valley (Future Mole Valley 2018 – 2033)
- 5 Extract of the Mole Valley Local Plan Landscape Supplementary Planning Document (July 2013)
- 6 Copy of Planning permission reference MO/2019/0369/PLA
- 7 Suggested planning conditions
- 8 Signed and dated statement of common ground
- 9 Bundle of witness statements from site occupants
- 10 Table of site occupants
- 11 Letter of support from the Margaret Clitherow Trust
- 12 Closing submissions on behalf of the Council
- 13 Notes of closing submissions on behalf of the Appellants