Tandridge District Council

Our Local Plan 2033

Examination – Note for Inspector

Gypsy and Traveller Draft Policy Revisions

October 2019
1. **Introduction**

As a result of the consideration of this issue in the Matter 2 Hearings the Inspector has asked the Council to reconsider its approach to Gypsy and Traveller policies within Our Local Plan 2033 (LP).

The Inspector raised concerns that the previous iteration of the LP did not adhere to the requirements of the Equalities Act 2010 with regards to this issue. This has implications for the Council’s identified need for Gypsy and Traveller pitches within the District, particularly in the first five years of the plan and the Council’s approach to meeting this need.

Additional concerns were raised regarding consistencies in the plan between issues of contamination and flooding in relation to Traveller sites, as well as concerns regarding the reliance in Policy TLP16 on the withdrawn Good Practice Guide from 2008 in relation to the design of sites, pitches and plots.

The recent appeal decision for ‘Land adjacent caravan site, Beech Farm Road, Warlingham’ dated 22nd October 2019 is also noted and included in the Appendix to this note.

2. **Suggested changes to LP**

The Council has re-looked at its draft policy TLP15 for Gypsies and Travellers to include those who identify as travellers in line with the stipulations in the Equality Act 2010 as well as those who meet the requirements of the Planning Policy for Traveller Sites (2015) definition.

In light of this broader definition, a calculation has been undertaken to ascertain the revised need for Gypsy and Traveller pitches in the District, and a revised approach to meet this need has been drafted. This involves assessing existing Gypsy and Traveller sites within the District to ascertain where there may be scope to allocate additional pitches. A review of sites in currently being undertaken with a view to providing a list of sites which can meet the need identified for at least the first five years of the plan.

Suggested modifications have been made to the wording of Policy TLP16 and TLP47 to ensure consistency regarding contamination and flooding in this matter.

Policy TLP16 has also been modified to remove the references to the withdrawn Good Practice Guide (2008), however the criteria listed in this policy is still considered to be relevant and as such remains relatively unchanged.
Providing for Gypsies, Travellers and Showpeople

18.32 It is important that Our Local Plan makes provision for the housing needs of all sections of our community, including Gypsies, Travellers and Travelling Showpeople. The Government’s Planning Policy for Traveller Sites (PPTS) (2015) emphasises the importance of assessing the accommodation needs of these specific groups and taking a strategic approach to meeting identified need.

18.33 The Council carried out a Gypsy and Traveller Accommodation Assessment (GTAA) (2017) which examines the current and future need for Gypsy, Traveller and Travelling Showpeople accommodation in the District. The study found a need for five additional pitches for Gypsies and Travellers and 21 plots (also termed sites, comprising both living space and working space) for Travelling Showpeople between 2016 and 2033. For those who met the definition of Traveller as set out in the Planning Policy for Traveller Sites 2015.

18.34 The Council also recognises the need to provide culturally suitable housing for Gypsies and Travellers who do not meet the PPTS definition but identify as Travellers in line with the stipulations of the Equalities Act 2010. A total need of 43 pitches for Gypsies and Travellers, including those who do not meet the PPTS definition and those whose status is unknown, was identified in the GTAA 2017 for the plan period to 2033; and 32 of these are needed in the first five years (2016-21).

18.35 Appendix C of the GTAA provides a ‘Household Interview Summary for Respondents in Tandridge’ and identified that only two thirds of respondents in Tandridge identify as either Romany Gypsies or Irish Travellers. Therefore, the following calculation has been undertaken to establish the overall need for Gypsy and Travellers, who either meet the definition as set out in national policy and/or identify as travellers in line with the stipulations in the Equality Act 2010. The table indicates a total need of 23 pitches in the first five years of the plan, but this can be reduced to 14 pitches when taking into account the 9 pitches that have been granted permission since 2016.

<table>
<thead>
<tr>
<th>Table: Gypsies and Travellers</th>
<th>0-5 2016-21</th>
<th>6-10 2021-26</th>
<th>11-15 2026-31</th>
<th>16-17 2031-33</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meet PPTS definition</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Total ‘Unknown’</td>
<td>10</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>Cultural Travellers ‘Unknown’</td>
<td>2/3 x 10 = 7</td>
<td>2/3 x 2 = 1</td>
<td>2/3 x 3 = 2</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>Total ‘do not meet PPTS definition’</td>
<td>17</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>23</td>
</tr>
<tr>
<td>Cultural Travellers that ‘do not meet the PPTS definition’</td>
<td>2/3 x 17 = 11</td>
<td>2/3 x 2 = 1</td>
<td>2/3 x3 = 2</td>
<td>2/3 x1 = 1</td>
<td>15</td>
</tr>
<tr>
<td>Total need for those meeting PPTS definition and cultural Travellers</td>
<td>23</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>30</td>
</tr>
</tbody>
</table>

Document Reference TED18:
Tandridge District Council – Gypsy and Traveller Draft Policy Revisions – October 2019
18.36 18.34 Local planning authorities are required to assess travellers' accommodation needs and seek to address under-provision and to maintain an appropriate supply of sites for travellers. This includes maintaining a five year supply of available pitches (for gypsies and travellers) and plots (for travelling showpeople) and identifying a supply of specific, developable sites, or broad locations for growth, for years 6 to 10. National policy also requires that where possible broad locations for growth for years 11-15 should also be identified.

18.37 The PPTS requires plans to identify specific sites, and where this is not possible to consider broad locations. As stated in The Road Ahead: Final Report of the Independent Task Group on Site Provision and Enforcement for Gypsies and Travellers (21) published by the Department of Communities and Local Government in December 2007 integrating the provision of accommodation for Gypsies, Travellers and the settled community as part of a new development from conception, can be planned in an integrated and coordinated manner and can help erode misconceptions and distrust between these communities.

18.38 18.35 That said, sustainably-located, suitable and edge-of- settlement sites will rarely be 'available' for use as Traveller sites irrespective of the stigma associated with the use, primarily because land is more profitable for bricks and mortar accommodation. As such, some pragmatism must be applied when considering where Traveller sites will be located.

18.39 18.36 The Council has carried out an assessment of potential sites for allocation through its Housing and Economic Land Availability Assessment (HELAA) and found some to be suitable in HELAA terms. However, all of them are within the Green Belt and a couple of the sites are also located within the Surrey Hills Area of Outstanding Natural Beauty. As clearly stated by national policy, Traveller sites are considered inappropriate development within the Green Belt and, despite being assessed through the Green Belt Assessment (Part 3): Exceptional Circumstances and Insetting (2018) report, the exceptional circumstances needed to justify their release from the Green Belt are not judged to exist. As such, no Gypsy and Traveller sites have been allocated.

18.40 The Council’s approach to meeting need is therefore to identify preferred locations for additional permanent pitches on the following basis:

- Identify existing temporary/unauthorised pitches on suitable sites that can be made permanent;
- Identify additional permanent pitches on suitable sites with existing pitches within the current site boundary to achieve a higher density;
- Identify additional permanent pitches on suitable sites with existing pitches with small scale minor boundary amendments

All these sites are allocated for Gypsy and Traveller accommodation only and remain within the Green Belt (washed over). This is because the sites need to be retained for this purpose only and are not to be regarded as locations available for general residential development. General residential development is more permanent and potentially has a greater impact on Green Belt openness and purposes.

**Document Reference TED18:**
*Tandridge District Council – Gypsy and Traveller Draft Policy Revisions – October 2019*
The identified sites are:

<table>
<thead>
<tr>
<th>Site address</th>
<th>Existing pitches permitted</th>
<th>Additional pitches</th>
<th>Total capacity</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Example site</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total allocated pitches</strong></td>
<td><strong>Minimum 14 pitches</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*The Council has a list of sites which are currently being assessed and reviewed to determined, on the basis of evidence, which are most suitable to be included for the allocation of pitches in the above table. Sites currently being considered all have some form of existing development and do not include those with designated landscape/flooding/contaminated land issues.

A public site with permission for 15 pitches also exists at Pendell Camp, but only had 6 pitches on site at the last count. Therefore, there is potential for the occupation of 9 additional pitches in this location. However, 11 pitches on this site have previously been recorded as mothballed and the Council is aware that the site is in very poor condition and would need a lot of work to make it suitable to accommodate its full capacity. However, it is important that the unoccupied pitches on this site are not forgotten in the considerations for allocations within the plan, particularly in terms of the medium to long term need.

18.37 However, In order to meet needs for the longer term and satisfy the specialist requirements for Travelling Showpeople sites, the Council recognises that the South Godstone Garden Community could provide an opportunity to deliver traveller accommodation in a sustainable location close to services and facilities. This could would be planned for from the outset and through the Area Action Plan.

18.38 In addition, Our Local Plan must still seek to allow for pitches/sites to come forward where they meet essential criteria and assist in meeting identified needs for those who, in accordance with Government Guidance, meet the definition of Traveller and/or identify as Travellers in line with the stipulations of the Equalities Act 2010.

18.39 To ensure appropriate and necessary consideration of traveller sites can take place, the criteria-based policy set out below will be used to determine whether the very special circumstances exist for development within the Green Belt. This can be considered on a case-by-case basis and on reflection of national policy and the identified need set out within the GTAA (2017). This approach allows public consultation to take place on individual sites through the planning application process and each site will be considered on its own merits.

18.40 It should also be noted that proposals for traveller sites are predominantly for residential uses. They will likely be acceptable within settlement boundaries where policies in Our Local Plan are met - in particular in terms of the scale and design of development being appropriate to the settlement. Development outside settlement areas however is tightly controlled, and proposals seeking planning permission will by default of national and local policy, have to meet a more stringent set of requirements, including demonstrating their impact on the Green Belt. In addition, issues of sustainability apply to Traveller sites and

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national planning guidance requires that local planning authorities very strictly limit new Traveller site development in open countryside away from existing settlements.

18.41 Travelling Showpeople sites differ slightly in that they need to provide secure, permanent bases for the storage of equipment when not in use. Most Showpeople need to live alongside their equipment, so sites must be suitable for both residential and business use, and be capable of accommodating equipment which is sometimes large. Care needs to be taken that such sites are appropriately designed and located to avoid nuisance to neighbouring uses.

**TLP15: Gypsy, Traveller and Showpeople Provision**

Planning permission for Gypsy, Traveller and Showpeople sites and or plots/pitches will be granted where:

I. The occupant(s) meet the definition set out in national policy and/or identify as travellers in line with the stipulations in the Equality Act 2010, and

II. The applicant has clearly demonstrated a need for the number, size, type and tenure of the proposed pitches/sites, and

III. The site is within or adjacent to the settlement boundary of an Urban or Semi-Rural Service Settlements as set out at policy TLP06 and TLP07, or

IV. The site has been considered as part of the comprehensive master planning of the South Godstone Garden Community, or

IV.V. The site is within an area within Green Belt designated for culturally appropriate gypsy and traveller accommodation uses only.

And/or:

A sites/pitches/plot will only be supported when:

V. VI. It is located within a reasonable distance of local services and facilities including shops, GP’s and schools, even if the site is not directly adjacent to the settlement boundary, and

VI. VII. It has safe highway access, adequate space for parking and emergency and service vehicles; and

VII.VIII. It can be sympathetically assimilated into the surroundings; and

VIII. IX. It is appropriate to the scale of the nearest settlement and its local services and infrastructure; and

IX. X. It will not cause unacceptable nuisance to existing neighbours by virtue of noise and other disturbance caused by the movement of vehicles to and from the site/pitch/plot; and
X.II. The impact of the development in combination with existing or other planned development, would not have an unacceptable adverse impact on the amenity of surrounding land uses, the character of the settlement, countryside and/or landscape, heritage assets, biodiversity, or from traffic generated.

Sites/pitches/plots which do not provide a safe environment for the occupants, including in terms of their general health and wellbeing, will not be supported. Therefore, planning permission will not be granted where:

- By virtue of their location in the vicinity of the dangerous roads, railway lines, water bodies or power lines, present unacceptable adverse impacts on the health, safety and living conditions of the residents of the site/pitch/plot, unless those impacts can be suitably mitigated.
- Make use of unstable or contaminated land, or hazardous areas, unless appropriate mitigation can be achieved.
- Are in areas which have a high probability of flood risk, are on the functional floodplain, or where their development would increase the risk of flooding elsewhere.

Key Supporting Documents and Evidence
- Gypsy and Traveller Accommodation Assessment (2017)
- Housing and Economic Land Availability Assessment (all iterations)
- Green Belt Assessment (Part 3): Exceptional Circumstances and Insetting (2018)

Relevant Spatial Objective(s)
- SO5 - Housing;
- SO7 - Health and Wellbeing.

Relevant Monitoring Indicator(s)
- The number of new traveller pitches
- The number of new plots for travelling showpeople
- Number of temporary permissions for traveller pitches and plots for travelling showpeople.

Gypsy, Traveller and Travelling Showpeople Design Matters

18.42 The Government has provided very little guidance in terms of design standards for Gypsy and Traveller pitches and sites, but it is important that design requirements for accommodation are clear and consistent. As such, while it was withdrawn as formal guidance in 2015, the Council is continuing to use the Designing Gypsy and Traveller Sites: Good Practice Guide (2008) as it remains the most thorough design guide for Gypsy and Traveller accommodation. However there is no comparable guidance for Design for Gypsy and Traveller and Travelling Showpeople accommodation and this would need to be considered on a case-by-case basis against other relevant policies of the development Plan and national policy.

18.43 For all sites, whether or not they include non-residential uses, the site design and layout should ensure the safety and security of residents and the public where relevant. If external lighting will help achieve this, it should be designed into the proposal at the outset to ensure it is the minimum required and appropriate for the location. Safe access to, and movement within, the site for pedestrians, cyclists and vehicles is essential, as well as
ensuring access is retained at all times for emergency vehicles and servicing requirements, including refuse collection.

18.44 Sites must also be capable of being serviced by all necessary utilities to provide an appropriate residential environment. Foul drainage to a public sewer should be provided wherever possible. Where foul drainage to a public sewer is not feasible, sites will only be permitted if proposed alternative facilities are considered adequate and would not pose an unacceptable risk to the quality or quantity of ground or surface water, pollution of local ditches, watercourses or sites of biodiversity importance. Sites must incorporate appropriate measures for surface water drainage, using sustainable drainage systems where practicable.

18.45 Each site/pitch/plot should be designed to provide appropriate accommodation for a household, and should normally allow for the siting of at least one trailer/mobile home, a touring caravan and space for car parking. Transit site pitches, providing short-term accommodation, are likely to be smaller and each site/pitch should be capable of accommodating touring caravans, rather than space for a static caravan.

18.46 Proposals for family sites, such as to accommodate an extended family within a number of caravans, will be required to establish the number of pitches the site is capable of providing if it were occupied by separate family units, the impacts of a site are fully considered.

18.47 The number of parking spaces will be considered against car parking standards contained in the wider development plan, based on the anticipated number of residents. If appropriate, planning conditions will be applied to any planning permission, restricting the parking of larger vehicles or the number of commercial vehicles.

18.48 Built development in the Green Belt will be kept to the minimum required to minimise harm to Green Belt and the surrounding area. Amenity blocks, which typically include kitchen and bathroom facilities, will be considered on their merits and must be compatible with the scale of development and the pitch on which it is to be accommodated. The energy and water efficiency of built development should also be considered, reflecting policies contained elsewhere in the development plan. All private and communal buildings will need to comply with mobility standards as required by building regulations.

**TLP16: Traveller Pitch/Site/Plot Design**

Proposals for Gypsy and Traveller and Travelling Showpeople sites/pitches/plots, including the enlargement of existing sites will be granted planning permission where they are of a good design, have regard to government good practice guidance, and where:

I. The proposal clearly demarcates the site and pitch boundaries using appropriate boundary treatment and landscaping sympathetic to, and in keeping with, the surrounding area. There should also be clear delineation of public communal areas and private space;

II. Site design takes account of the needs of residents, and provides an appropriate pitch/plot layout that ensures security and safety of residents, and allows ease of movement, whether walking, cycling or driving;
III. There is safe access for pedestrians, cyclists and vehicles, including for turning and parking, vehicles, towing caravans, emergency vehicles and servicing requirements, including waste collection;

IV. All necessary utilities can be provided on the site including mains water, electricity supply, drainage, sanitation and there is provision for the screened storage and collection of refuse, including recyclable materials;

V. The site is not located on contaminated land, unless appropriate mitigation can be achieved; the land is capable of adequate amelioration prior to occupation;

VI. The proposal would avoid any unacceptable adverse or detrimental impact on the health and living conditions of the residents of the site or on neighbouring uses, including as a result of excessive noise, dust, fumes, lighting, traffic generation or activity;

VII. Built development, including amenity buildings, is of an appropriate scale which relates reasonably to the size of the pitch, and is of an appropriate design for the location;

VIII. Pitches/plots should be an appropriate scale for the size and number of caravans and trailers to be accommodated, without over-crowding or unnecessary sprawl and at an appropriate density. Pitch sizes should be a minimum of 450m² and should not exceed 500m²;

IX. Either adequate play space or gardens should be provided.

Key Supporting Documents and Evidence

- Gypsy and Traveller Accommodation Assessment (2017)
- Housing and Economic Land Availability Assessment (all iterations)
- Green Belt Assessment (Part 3): Exceptional Circumstances and Insetting (2018)

Relevant Spatial Objective(s)

- SO5 - Housing;
- SO7 - Health and Wellbeing;
- SO8 - Design;
- SO9 - Design.

Relevant Monitoring Indicator(s)

- The number of new traveller pitches allocated
- The number of new plots for travelling showpeople
- Number of temporary permissions for traveller pitches and plots for travelling showpeople.
TLP47 suggested wording for flooding

In areas at risk of flooding, development should be safe for the lifetime of development including an allowance for climate change and should incorporate flood resilience and resistant measures into the design, layout and form of buildings to reduce the level of flood risk both on site and elsewhere.

Applications for Gypsy and Traveller sites/pitches/plots will not be permitted in areas which have a high probability of flood risk, are on the functional floodplain, or where their development would increase the risk of flooding elsewhere.

Sustainable drainage systems … (policy continues)
Appendix – Appeal decision October 2019
Appeal Decision

Inquiry Held on 25 and 26 September 2019
Site visit made on 26 September 2019

by Mark Dakeyne BA (Hons) MRTPI
an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 22nd October 2019

Appeal Ref: APP/M3645/W/19/3228261

Land adjacent to caravan site, Beech Farm Road, Warlingham CR6 9QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr J Brien against the decision of Tandridge District Council.
- The application Ref TA/2017/2377, dated 21 November 2017, was refused by notice dated 28 March 2019.
- The development proposed is material change of use of land for stationing of four static caravans for residential occupation by gypsy-travellers with new access, access track, hard standing, utility block, cess pool, storage area for up to four touring caravans and fencing.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site has been in use as a gypsy and traveller caravan site without planning permission since 2016. At the time of my site visit there were two mobile homes on the site.

3. A Statement of Common Ground (SOCG) dated 21 August 2019 between the appellant and the Council sets out the matters that are agreed and those that are disputed. The site lies in the Metropolitan Green Belt. The main parties agree that the proposal is inappropriate development in the Green Belt as set out in paragraph 16 of ‘Planning policy for traveller sites’ (PPTS) and fails to maintain Green Belt openness.

4. The SOCG also indicates that the Council has withdrawn the reason for refusal relating to the sustainability of the location (4th reason). Before the inquiry opened it was also confirmed that the Council did not wish to pursue the reason for refusal relating to the effects on the quiet enjoyment of the leisure plot to the north of the appeal site (6th reason).

5. A separate SOCG submitted before the inquiry records that the highway matter not agreed is whether a safe access can be provided without a legally binding agreement with adjoining landowners for the creation and maintenance of the necessary visibility splays.

6. Taking into account the written evidence, the SOCG, what I heard at the
inquiry and my site visits to the site and surroundings, the main issues are:
(1) the traveller status of the existing and proposed site occupants;
(2) the effect on Green Belt openness and purposes;
(3) the effect on the character and appearance of the area;
(4) the effect on biodiversity;
(5) whether a safe and suitable vehicular access can be achieved; and,
(6) whether the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Traveller Status

7. The intention is that the site would be occupied by an extended family of Irish Travellers. These would comprise the appellant (hereafter referred to as John Brien Snr), his wife and their younger daughter, and three of his older children together with their own families. Two of the families, those of John Brien Snr and John Brien Jnr, are currently using the site as a base.

8. A short statement about the intended site occupants was submitted in advance of the hearing. Further information was provided during the round table discussion and in the oral evidence of John Brien Jnr and Michael Casey. No documentary evidence was produced to support the written and verbal evidence.

9. However, the evidence taken together provides a picture of families who have travelled for an economic purpose for many years. Although John Brien Snr appears to have used the sites at Beech Farm Road as a base for his family for a long time, stating that he has been there most of his life, it would appear that he has always travelled to find work, both home and abroad. He normally takes his wife and younger daughter with him. He and his immediate family were away at the time of the inquiry.

10. The men of the other families have also been on the road since reaching adulthood, now taking their families with them for some of the time. The men often travel together, obtaining construction and landscaping work by knocking on doors and leafleting. The families attend traditional traveller events such as the horse fairs at Appleby and Stow.

11. The appeal site would provide a base for the extended family. The intention would be for the younger children to attend the local primary school when they reach school age and are not travelling. One of the children already has her name down.

12. Based on the information before me those travellers who currently reside on the site and those who intend to do so are of a nomadic habit. The cessation of travelling would be so that the educational needs of the younger children could be met. The families meet the planning definition of ‘gypsies and travellers’ set out in PPTS. Therefore, PPTS, which sets out the Government’s policy for traveller sites applies, as do development plan policies relevant to travellers.

Green Belt openness and purposes

13. 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.

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14. The site is within a large expanse of the Metropolitan Green Belt. It was previously free from development. The stationing of mobile homes and tourers, the formation of an access and driveway with tall gates, the parking of vehicles on a large area of hardstanding, the erection of a utility block, the enclosing of some of the site boundaries with high fencing and the domestic paraphernalia associated with the use, would lead in spatial terms to loss of openness.

15. Openness has a visual dimension as well as a spatial aspect. The fencing and the upper parts of the mobile homes, touring caravans and building would be visible from Beech Farm Road or down the driveway. The hard-surfaced access and driveway and the gates would also be seen from the road. It is also likely that glimpses of vehicles would be visible from Beech Farm Road and some domestic activity would be noticed when the gates are open. I was not made aware of any other viewpoints from where the development would be readily seen.

16. The development would conflict with the Green Belt purpose of safeguarding the countryside from encroachment because it would lead to structures, hardstandings and activity where there was none before.

17. That said there are factors which affect the level of harm to the Green Belt. The majority of the site forms part of a narrow, contained parcel of land running north-eastwards from a group of buildings and caravans served by a separate access. Moreover, there are already caravans and other structures nearby, many of which are authorised. The development would not be an isolated incursion into a swathe of open Green Belt. There would also be the scope to soften the effects of the development by providing planting around the site boundaries and alongside the southern edge of the driveway.

18. Nevertheless, notwithstanding the mitigating factors, there would be a significant loss of Green Belt openness and a clear conflict with the Green Belt purpose of safeguarding the countryside from encroachment. The Green Belt harm would be significant.

Character and appearance

19. There is no Landscape and Visual Impact Assessment before me and limited evidence about landscape and visual effects. However, information accompanying the appeal indicates that the site lies within the Woldingham to New Addington Open Chalk Farmland Landscape Character Area (LCA) as defined in the Surrey Landscape Character Assessment 2015. The characteristics of the LCA are said to include large scale, open arable fields with some blocks of ancient woodland, hedgerows and tree belts.

20. The site also falls within an Area of Great Landscape Value (AGLV), a local designation that extends across a large tract of countryside which is the width of Surrey. Local landscape designations are not referred to in the National Planning Policy Framework (the Framework). The preferred approach is for planning decisions to be based on relevant criteria in relation to landscape rather than ‘blanket’ local designations. That said a review of the AGLV in 2007 indicated that parts of it, including the area where the appeal site lies, shares identical characteristics to the Surrey Hills Area of Outstanding Natural Beauty (AONB) and should be included in an extended AONB. Whilst that proposal has not been taken forward, in the absence of other significant evidence, I consider that the site lies within a valued landscape as referred to in paragraph 170 of the Framework.
21. In terms of the particular landscape effects of the development, the site lies on a plateau with a steep sided dry valley dropping away to the east. The plateau contains isolated farmsteads and dwellings, small areas of woodland and other groupings of buildings, including that to the south-west of the appeal site. The proposal has replaced part of an open field and a well-treed parcel of land with a hard-surfaced access road, high gates and an area of hard landscaping partly enclosed by urban style fencing. It would result in a relatively narrow finger of development on the plateau intruding out from the nearby group of buildings and caravans. It should be assumed that the intervening land between the appeal site and the authorised development is undeveloped in the absence of any permission. Thus, the proposal does not represent an organic extension of the existing pocket of development. There would be the scope to introduce some planting to soften the impact but there would be some localised adverse landscape effects.

22. That said, the appeal site is not part of a large scale, open arable field. It contained some trees but there is no evidence that it was an ancient woodland or formed part of a tree belt. The area of woodland which lies within the large rectangular plot immediately to the north would not be affected. The site did not appear to display any of the characteristics of the LCA referred to above.

23. Despite the local topography, I was told that the development would not be visible from roads and footpaths to the east. From the west, views would be mainly those obtained by passing motorists described in paragraph 15 above. Some cyclists, horse riders and pedestrians may use Beech Farm Road. But I would anticipate that such users would be focusing on the road and traffic rather than taking in views of the surrounding countryside. Otherwise the development would be well contained by existing development, the woodland to the north and roadside banks and vegetation. In these respects, the development would not appear to be visible to sensitive visual receptors such as walkers using local footpaths. The development would be visible to an extent from the permitted caravan sites and bungalow to the south. However, the site is tidy, there are no objections from those nearby residents, and there is nothing else before me to suggest that they would be sensitive to the changes.

24. Therefore, in conclusion, the landscape effects would be moderately adverse, taking into account the value of the wider landscape within which the development lies. The visual effects would be minor adverse.

25. The extent to which those adverse effects could be mitigated by soft landscaping is not sufficiently clear. The layout plan submitted with the application shows only limited landscaping to the eastern boundary. The laurel hedging recently planted on a small bank on the same boundary is not appropriate in this rural setting. No alternative landscaping proposals are before me. The possibility of requiring a site development scheme by condition was discussed at the inquiry but, taking into account the need to accommodate four pitches, the utility building and the associated areas of hardstanding, there may be limited space left for landscaping. The site has not been well planned and soft landscaped.

26. The proposal would result in some adverse impacts on the character and appearance of the area. Whilst Policy CSP 9 of the Tandridge District Core Strategy (CS) and PPTS recognise that traveller sites can be located in rural areas, should not be completely hidden and some mitigation may be possible, the caravans and other elements of the development would not conserve,
enhance or reinforce the special landscape character of the area or ensure that landscaping is an integral element of the layout. Therefore, the proposal would be contrary to Policies CSP 18, CSP 20 and CSP 21 of the CS and Policy DP7 of the Tandridge Local Plan Part 2: Detailed Policies (LP Part 2). The development would not contribute to protecting and enhancing a valued landscape as required by the Framework.

27. The Inspector who determined the recent appeal for a traveller caravan site of four pitches to the south of the site did not find any harm to character and appearance\(^1\). However, in that case the development is tucked behind the existing bungalow and traveller site and has no close public views. Moreover, it would appear from the decision that the issue of whether the locality fell within a valued landscape was not subject to much debate at the inquiry.

Biodiversity

28. Trees and other vegetation were cleared to make way for the development. No surveys were conducted by the appellant in advance of site clearance to ascertain whether the site had value as a habitat for protected species or contained other notable flora or fauna.

29. The Council has not produced any information about the presence of protected species hereabouts. The trees were not protected by a preservation order. The condition imposed on the 1998 appeal decision for a gypsy caravan site on land to the south-west which required a landscaping scheme incorporating the retention of the wooded area on the appeal site was not discharged or enforced against and no longer has effect. The site currently has little value as a habitat as it is hard-surfaced.

30. Overall, balancing the failure of the appellant to assess whether the site had any value before undertaking works against the factors set out in paragraph 29, I conclude that it is likely that there has been some harm to biodiversity and, therefore, conflict with Policy CSP 17 of the CS and Policy DP7 of the LP Part 2. To find no harm would be to condone the clearance of the site in advance of seeking planning permission. Implementation of a landscaping scheme which could include measures to encourage nesting birds and other fauna would be capable of mitigating some of the harm but how much could be achieved is not clear from the information before me.

Vehicular access

31. The vehicular access into the site is on the inside of a gradual bend in the road. Speed surveys conducted on behalf of the appellant indicate that, with a 2.4m set back ('X' distance), splays of about 40m to the north and 46m to the south would provide acceptable visibility in accordance with Manual for Streets (MfS). However, splays of these dimensions would go across third party land.

32. Before and during the inquiry the appellant suggested that a 2m 'X' distance' to the south would be acceptable as approaching vehicles would be on the far side

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\(^1\)Appeal decision ref: APP/M3645/W/18/3205027 dated 8 July 2019
of the carriageway. Such a set-back has not been considered by the Highway Authority. However, having considered the advice within MfS and looked at a 2m set back at the site visit, including the extent that a vehicle’s bonnet would need to protrude onto the highway, it seems to me that visibility to the south would be acceptable without the need to rely on third party land. Given the width of the carriageway and its alignment it is highly unlikely that approaching traffic would seek to overtake. Oncoming traffic would be visible in good time.

33. In terms of the splay to the north, it is clear that it involves land in private ownership, whether the ‘X’ distance is 2.4m or 2m. An e-mail from the adjoining landowner has been provided indicating that the appellant may go onto the land at any time to clear brambles and scrub. The land has recently been cleared such that when I visited the site visibility to the north was acceptable. However, although the e-mail suggests consent to maintain the splay exists at the moment, it is not binding, and the owner could change their mind or land ownership could change. There is insufficient certainty that the splay would be retained for the lifetime of the development. It was agreed at the inquiry that the splay is necessary to make the proposal acceptable in highway safety terms.

34. Planning Practice Guidance (PPG) advises that it may be possible to require works on land not controlled by the applicant by using a condition worded in a negative form (a Grampian condition). Such a condition would prohibit development or another key aspect, such as occupation, until a specified action has occurred. However, in this case the development has already commenced, and the site is partly occupied. A Grampian style condition requiring that the visibility splays be provided and maintained would not appear to meet the tests of reasonableness and enforceability.

35. In any event such a condition would require a binding agreement between the appellant and the landowner to give it effect. No such agreement is in place. The PPG advises that a negatively worded condition which requires the applicant to enter into a planning obligation or other agreement is unlikely to pass the test of enforceability. Such an agreement should be in place before planning permission is granted. The exceptions referred to in the guidance do not apply in this case. It is not a complex development scheme where delivery is at risk, there have not been meaningful discussions between the appellant and the Council about the need for an agreement, and there are no heads of terms.

36. The existing access to the south which serves the two authorised traveller sites and bungalow has poor visibility to the north. Highway safety was not raised as an issue in the recent appeal, although it was a main consideration in the 1998 decision and an improved sight line was required by condition. However, it would not appear that the condition has been enforced. The inadequacy of an existing access is not a good reason to allow another access where safety could be compromised.

37. For the above reasons there is no certainty that a safe and suitable vehicular access can be maintained. The proposal would conflict with Policy DPS of the LP Part 2 and paragraph 108 of the Framework as the access would have the potential to create hazards for vehicle occupants and other road users.

Other considerations

Need for and provision of sites
38. The CS was supported by a Traveller Accommodation Assessment (GTAA) that identified a need for 63 pitches between 2013 and 2028 of which 48 pitches were required in the first five-year period. Only some 9 pitches have been granted permanent permission since the base date of the CS and all of those have been in the last year.

39. The Council has published another GTAA (2017). It is being used as part of the evidence base for the emerging Local Plan (eLP) which is currently being examined. The 2017 GTAA seeks to distinguish between those existing travellers in the area that meet the PPTS definition and those that do not. I give limited weight to the policies of the eLP and its supporting evidence base insofar as they relate to travellers because there are unresolved objections to these elements; the Examining Inspector has raised questions on the issues; and the policies may be modified. That said the Council agreed that the 2017 GTAA points to the need for a minimum of 20 pitches between 2016 and 2033.

40. It is not for me in connection with an appeal to consider in detail what the need is likely to be. That is a matter for the eLP examination. However, in my judgement and taking a broad-brush approach, the need is likely to be significantly higher than that suggested by the 2017 GTAA. The return of 4 households who definitely meet the PPTS definition out of a total of 47 traveller households seems very low. There are a significant number of outstanding and refused applications on existing traveller sites which suggests a current pressing need. The considerable fall in assessed needs between the two GTAAs is surprising, notwithstanding the changed definition.

41. In addition, those travellers who do not meet the definition are still likely to be in need of a caravan pitch. The Council says that their needs will be considered as part of the Strategic Housing Market Assessment (SHMA). However, there is no evidence before me that the SHMA has assessed such needs or that the eLP will address those needs through planning policies as required by paragraph 61 of the Framework.

42. These sorts of issues were raised in the July 2019 appeal decision. The Council has responded to these issues and the points made in representations to the examining Inspector through a submission to the examination\(^2\). However, whilst the paper clarifies some points, it does not, in my judgement, materially detract from the Inspector’s findings that there is a significant need for pitches in the District.

**Alternative sites**

43. The Council could not point to any suitable alternative sites that are available for the existing and proposed site occupants. The site nearby originally used by the appellant has been taken up by the extended family of his brother, Patrick, the owner of that site.

44. On the face of it the public site at Pendell Camp has some vacant pitches. However, the site was described as an utter mess and subject to anti-social

\(^2\)Evaluation of the GTAA 2017 and TDC's approach to Traveller applications – September 2019
behaviour. No contradictory evidence was provided to suggest that suitable pitches were available for the families intending to occupy the appeal site.

45. The Council has not made any allocations through the CS or LP Part 2 and the eLP does not propose any allocations. The eLP refers to the possibility of the South Godstone Garden Community providing an opportunity to deliver some traveller accommodation. However, if this is to come to fruition, it will require an Area Action Plan. Any pitches that are delivered will be towards the end of the plan period (2033) so are not available for the families now.

Failure of policy

46. The Council does not have a 5-year supply of pitches against the need set out in the tested GTAA which supported the CS. Whilst the recent permissions meet the short-term needs identified within the 2017 GTAA, for the reasons given I attach limited weight to that evidence. There is a considerable shortfall in supply against the real short-term needs.

47. The development plan has not to date made any allocations for traveller pitches. Despite Policy CSP 9 indicating that a Site Allocations Development Plan Document would make provision for sites, it has never happened. Instead the Council has relied on the criteria within Policy CSP 9. This approach does not accord with Policy B of PPTS. The eLP seeks to largely repeat these failings.

48. Some 94% of the District is in the Green Belt, including all areas of countryside. The Council acknowledges that most new traveller sites will be in the Green Belt. However, in relying on criteria which include the need to demonstrate very special circumstances, the Council could be seen as setting the bar higher for applications than for allocations in the Green Belt which require exceptional circumstances to be fully evidenced and justified as part of a Plan-led approach. This is reflected in the limited number of permissions since the adoption of the CS and failure to determine other longstanding applications.

49. There has been a persistent and woeful failure of policy.

Personal circumstances

50. The extended family of John Brien Snr have a longstanding connection to the area. The families are in need of a settled base. Two of the families are still stopping on the side of the road, doubling up on pitches or staying on illegal encampments or other unauthorised sites. The two other families would have had to do the same if they had not remained on the appeal site.

51. There is one child of secondary school age, but she is home-tutored. One child has recently reached school age and hopes to start at a local primary school soon. There are three other children of pre-school age and a further two unborn who it is said would also go to a local school if the families were able to remain on the appeal site. Being able to stay on the site would allow these children to commence and then continue with their education.

52. One of the adults who is occupying the site has a longstanding health condition which is treated at a local hospital. I was not made aware of any other particular health needs but those on the site are registered with the medical centre in Warlingham and the other families would do so.
53. The benefits of a settled base are well-documented in terms of education and access to health care. There would also be advantages for the general well-being of the families in being settled and having continual access to basic amenities and a secure living environment. In particular a settled base would be in the best interests of the children and their education, health, safety and welfare.

Sustainability

54. The Inspector who made the July 2019 decision found that the nearby four pitch traveller site was within a reasonable distance of local services and facilities. The same circumstances are applicable in this appeal.

55. A settled base would achieve the sustainability benefits set out in paragraph 13 of PPTS, in particular access to health services and school, reducing the need for long-term travelling and environmental damage caused by unauthorised encampment, and a reflection of the traditional lifestyles of living and working from the same location. The site would provide a suitable living environment, is not at risk from flooding and would not result in undue pressure on local infrastructure and services. There is nothing to suggest that a peaceful and integrated co-existence between those who would be on the site and the local community could not be achieved.

Planning Balance and Conclusions

56. The Framework requires 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, is clearly outweighed by other considerations.

57. The proposal would represent inappropriate development which attracts substantial weight. In terms of other harm, substantial weight should also be attached to the harm caused to Green Belt openness and the Green Belt purpose of safeguarding the countryside from encroachment.

58. I have also found harm in relation to the character and appearance of the area and biodiversity to which I attach moderate and limited weights respectively. The harm to highway safety should be afforded substantial weight because of the dangers that could be caused.

59. In terms of factors in favour, significant weight should be afforded to each of the following - the unmet need for traveller sites in the District, the lack of alternative sites and the failure of policy in providing sites and a five-year supply. In relation to failure of policy the Council has not complied with its duties under the Housing Act 1985 (as amended) and is in breach of the Equality Act 2010 as, in contrast to traveller sites, a five-year supply of sites for the settled community has been provided. The fact that new traveller sites are likely to be in the Green Belt should also be given significant weight in favour of the appeal. Meeting the sustainability considerations set out in PPTS is also a factor in favour to which moderate weight should be attached. Putting to one side the particular circumstances of the existing and proposed traveller occupants of the site, there are positive implications for the human rights of travellers and best interests of traveller children in general from increasing the supply of traveller pitches.
60. The personal circumstances of the families and in particular their need for a settled base is a consideration in favour. This factor should be afforded moderate weight in the planning balance as the needs are not out of the ordinary. That said, overall the best interests of the children, which is a primary consideration and which attracts substantial weight, would be met by the provision of a settled base. In addition, a settled base would meet the Article 8 Human Rights Act requirements of the families’ right to a home and a private and family life and allow the group to live together as part of their traditional way of life.

61. Overall, my conclusions are that the Green Belt harm by reason of inappropriate development, loss of openness and effect on a Green Belt purpose, together with the harm to character and appearance, biodiversity and highway safety, are not clearly outweighed by other considerations - the unmet need for traveller sites in the District, the lack of alternative sites, the failure of policy in providing sites and a 5 year supply, the fact that new traveller sites are likely to be in the Green Belt, the personal circumstances of the site occupants and the sustainability benefits. These considerations, taken together with the equality, human rights and best interests of the children benefits which flow from additional provision, are not sufficient to constitute the very special circumstances necessary to justify permission. My conclusions have taken into account 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.3

62. The proposal would conflict with Policy CSP 9 of the CS and Policies DP10 and DP13 of the LP Part 2 as very special circumstances have not been demonstrated. I have also found conflict with Policies CSP 17, CSP 18, CSP 20 and CSP 21 of the CS and Policies DP5 and DP7 of the LP Part 2. The proposal would conflict with the development plan overall. Material considerations do not indicate that the proposal should be determined other than in accordance with the development plan.

63. In reaching the above conclusions, I have considered whether conditions could make the development acceptable. However, for the reasons given in paragraphs 25, 30, 34 and 35 I have insufficient information before me to convince me that conditions could mitigate some of the harm and meet the tests set out in paragraph 55 of the Framework and the PPG.

64. I have also considered whether a temporary permission would be appropriate as an alternative to dismissing the appeal on the basis that planning circumstances may change at the end of such a period. A temporary permission would time-limit the Green Belt harm and that caused to the character and appearance of the area and highway safety. Allowing the families to occupy the site for a period would be in the best interests of the children, prevent hardship and ensure that their Human Rights would not be interfered with.

65. However, the eLP does not propose to allocate sites and the South Godstone Garden Community is a longer-term aspiration. Although the examination of the eLP may result in a change in approach (e.g. the introduction of site allocations), the outcome, both in terms of what policies will eventually be adopted and when, is far from certain. I was not made aware of any changes

3 PPTS para 16
in provision that are likely to take place in the wider area. Moreover, I am mindful of paragraph 27 of the PPTS in relation to temporary planning permissions in the Green Belt. Furthermore, a further period of occupation of the site would perpetuate the substantial harm to the Green Belt and other harm which would not be outweighed by other material considerations. In particular, there is too much doubt about whether a safe access can be maintained even for a temporary period.

66. Dismissal of the appeal could result in the Council pursuing enforcement action such that the families could not live on the site. If they have nowhere else to stay this would lead to a return to a roadside existence. I have carefully considered whether such a result would be proportionate in the circumstances have regard to Human Rights provisions, including the right to a home and family life and the positive obligation to facilitate a gypsy way of life. I have also had particular regard to the best interests of the children as a primary consideration. However, the environmental harm and safety concerns which would continue to be caused by the development would be considerable. Taking into account all material considerations I am satisfied that these legitimate objectives can only be adequately safeguarded by dismissal of the appeal.

67. I have also had due regard to the public sector equality duty at Section 149 of the Equality Act 2010. However, the Green Belt and other objections are strong countervailing arguments. The requirements of the Equality Act do not give gypsies and travellers or others the right to establish sites in contravention of planning control.

68. I have carefully considered all matters raised. However, based on the evidence before me, I conclude that the appeal should be dismissed.

Mark Dakeyne

INSPECTOR
APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jack Parker of Counsel  
Instructed by James Hitchcock, the Council’s Solicitor

He called

Clifford Thurlow  
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FOR THE APPELLANT:

Alan Masters of Counsel  
Instructed by WS Planning and Architecture

He called John

Brien Jnr  
Appellant’s son

Michael Casey  
Appellant’s son in law

Brian Woods  
Managing Director of WS Planning and Architecture
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PLANS AND DOCUMENTS SUBMITTED AT THE INQUIRY

ID1  Local Plan Policies Map 2019 – Green Belt and Landscape Designations submitted by the Council

ID2  Suggested condition relating to visibility splays submitted by the Council

ID3  Closing submissions by the Council

ID4  Closing submissions by the appellant