



# Appeal Decision

Hearing held on 21 November 2023

Site visit made on 22 November 2023

**by Nick Davies BSc(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 January 2024**

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## **Appeal Ref: APP/D3640/W/23/3326420**

### **Oaks Farm, Philpot Lane, Chobham, Woking, Surrey GU24 8HE**

- 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 Charles Smailes against the decision of Surrey Heath Borough Council.
  - The application Ref 22/1031/FFU, dated 9 November 2022, was refused by notice dated 7 February 2023.
  - The development proposed is the change of use of land from agricultural land to Gypsy/Traveller site comprising the siting of one static caravan.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the change of use of land from agricultural land to Gypsy/Traveller site comprising the siting of one static caravan at Oaks Farm, Philpot Lane, Chobham, Woking, Surrey GU24 8HE in accordance with the terms of the application, Ref 22/1031/FFU, dated 9 November 2022, and the plans submitted with it, subject to the conditions in the attached schedule.

### **Preliminary Matters**

2. I have used the description of the development from the appeal form, as this is the one that is used in the Statement of Common Ground (the SoCG). It more fully and accurately describes the development than that given on the planning application form.
3. During the appeal, on 19 and 20 December 2023, the Government published its revised National Planning Policy Framework (the Framework) and Planning policy for traveller sites (the PPTS). The revisions to the national advice do not have a material bearing on the matters at dispute between the parties in this case. Consequently, I have not found it necessary, in the interests of natural justice, to reopen the Hearing, or to seek further written comments, and neither party would be prejudiced by my consideration of the revised advice in my determination of the appeal.
4. Revised plans were submitted with the appeal, showing a different location for the caravan than was indicated on the application documents. However, the precise siting of the caravan within the appeal site is a matter that could be controlled by a planning condition, so I see no prejudice to any parties in my consideration of the amended scheme. In response to the second reason for refusal, a Flood Risk Assessment (the FRA) was submitted with the appeal. As part of the appeal process, all parties have had the opportunity to make written

comments on the FRA, and to make further submissions at the Hearing. Consequently, my consideration of it would not be prejudicial to the interests of any parties.

5. The application form identifies that the development commenced in August 2022. I saw that the land is already in use for residential purposes, and a static caravan is sited approximately halfway along the southern boundary of the site. It is intended to relocate the caravan to the western part of the site, close to the road frontage, and I have considered the appeal on this basis.
6. It is agreed in the SoCG that the keeping of one horse on the site for personal use would be acceptable, so the part of the first reason for refusal, relating to the keeping of horses, is no longer applicable. I have no reason to take a different view. Accordingly, I have not considered this matter any further.
7. The Council's third reason for refusal related to a lack of mitigation measures to ensure that there would be no harm to the integrity of the Thames Basin Heaths Special Protection Area (the SPA). During the appeal, the appellant submitted a Unilateral Undertaking (the UU) as a deed pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended), which secures financial contributions towards measures to mitigate the harm. On the evidence before me, the obligations in the UU are necessary to protect the integrity of the SPA, are directly related to the development, and are fairly and reasonably related in scale and kind to it. Consequently, they meet the tests set out in paragraph 57 of the Framework. The Council has confirmed that the UU overcomes the reason for refusal.

### **Main Issues**

8. In view of the above, the main issues are:
  - a) whether the development is inappropriate development in the Green Belt;
  - b) the effect of the development on openness and the purposes of including land in the Green Belt;
  - c) the effect of the development on the character and appearance of the area;
  - d) whether the site is a suitable location for the development having regard to development plan policy and the accessibility to services and facilities;
  - e) whether the site is a suitable location for the development having regard to flood risk; and,
  - f) if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to very special circumstances necessary to justify the development.

### **Reasons**

#### *Whether inappropriate development*

9. The site lies within the Green Belt. Paragraph 152 of the Framework says that inappropriate development is, by definition, harmful to the Green Belt, and

should not be approved except in very special circumstances. The PPTS states at paragraph 16 (Policy E) that Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. It is not disputed that the proposal is for a Traveller site, so, in terms of the PPTS advice it would be inappropriate development.

10. The appellant contends, however, that the PPTS is guidance, rather than statute, and that there is some tension with the advice in the Framework, which sets out exceptions to inappropriate development. In particular, the appellant refers to paragraph 154 g) of the Framework.
11. A statutory declaration from the previous owner of the site attests to the use of the buildings on the site for non-agricultural storage since 2010. The Council considers that the evidence provided is insufficiently precise and unambiguous to demonstrate a lawful use. However, even if I were to conclude that the land does comprise previously developed land (PDL), the proposal would still be inappropriate development if it had a greater impact on the openness of the Green Belt than the existing development. Consequently, my conclusion on whether the development is inappropriate must include consideration of the effect it has on openness.

*Effect on openness and purposes of including land in the Green Belt*

12. Paragraph 142 of the Framework says that the Government attaches great importance to Green Belts, and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open.
13. The appeal site accommodates a range of buildings, one of which (Building A) would be removed to facilitate the relocation of the caravan. The appellant also proposes the demolition of a former chicken shed (Building B), which lies close to the northern boundary. The combined volume of these two buildings is 233 m<sup>3</sup>. The caravan shown on the submitted drawings would have a volume of 153 m<sup>3</sup>. The Council does not dispute these figures, and accepted at the Hearing that, on this basis, there would not be a loss of spatial openness of the Green Belt.
14. However, the caravan shown on the submitted drawings is considerably smaller than the maximum size allowed by the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968. The intended occupants of the site are the appellant, his wife, and their four children aged 10, 8, 6 and 3 months. As the existing caravan has only two bedrooms, it may not suit the family's needs. Whilst the suggested planning condition agreed by the parties would limit the development to one static caravan, this would not prevent the replacement of the existing caravan with a larger one, that would be more suitable for the family's needs. In these circumstances, even with the demolition of Buildings A and B, there would be a loss of spatial openness of the Green Belt.
15. In terms of visual impact, the use of the land would involve the stationing of a static caravan that would be positioned closer to the road frontage than any of the existing buildings. Even limiting my consideration to the caravan shown on the submitted drawings, it would be considerably longer than Building A, and, furthermore, to ensure that occupants would be safe from flooding, it would be raised above the floor level of the present structure. As a consequence, it would be significantly higher than the existing building, so would be more

readily visible above the roadside boundary planting, giving it greater prominence in the rural street scene than the existing structures on the site. It would, therefore, have a harmful impact on the visual openness of the Green Belt when passing the site along Philpot Lane.

16. As well as the static caravan, the proposed use would, in all likelihood, include a touring caravan. It would also result in other residential paraphernalia, such as children's play equipment, washing lines, and parked vehicles, which would not normally be associated with the former agricultural use. As a result, the overall development would appear as an urban encroachment into the countryside, which would be contrary to one of the stated purposes of the Green Belt identified at Paragraph 143 of the Framework.
17. I am mindful that there are already buildings on the site, two of which would be removed as part of the proposal. However, the presence of the static caravan, due to its location and height, would make it a more prominent feature in its rural surroundings than these existing structures. Furthermore, the domestication of the site through the residential paraphernalia associated with the use would draw attention to, and consolidate, the development on the site, increasing the perception that it is an encroachment in the countryside.
18. I therefore conclude that the proposal would conflict with one of the fundamental aims of the Green Belt by harming openness, and it would constitute encroachment into the countryside in conflict with one of its purposes. Therefore, whether based on PPTS Policy E, or paragraph 154 g) of the Framework, I find it would be inappropriate development.
19. The degree of harm, both to openness and through encroachment, would be reduced by the removal of two of the existing buildings on the site. Furthermore, the site itself is enclosed on all sides by mature trees, hedges, and fences, so that the development would not be readily seen from any public viewpoints, other than a short stretch of Philpot Lane. As a result, regardless of whether the development was temporary or permanent, the harm would be limited. Nevertheless, paragraph 153 of the Framework says that substantial weight should be given to any harm to the Green Belt.

#### *Character and appearance of the area*

20. The appeal site lies outside the built-up areas of Chobham to the west, and Woking to the south. There is a loose cluster of dwellings to the southwest, at Mimbridge, but for most of its length, Philpot Lane only has sporadic buildings to either side, with expanses of undeveloped agricultural land and woodland in between. The road is tree-lined on both sides, and most of the buildings are set back behind this vegetation. Consequently, the area around the appeal site has a rural character.
21. In keeping with this prevailing character, the road frontage of the site comprises a grass verge with trees and a hedge beyond. However, views of the interior of the site are possible through the access gate and gaps in the vegetation. It accommodates a range of unattractive, utilitarian buildings, some of which are in a poor state of repair. Much of the site is hard surfaced, and, apart from the boundary hedges and trees, there is little vegetation. Consequently, it does not currently make a particularly positive contribution to the countryside character of the area. The low-level domestic paraphernalia

resulting from the proposed use would, therefore, not result in significant harm to the appearance of the site or its surroundings.

22. The static caravan would, however, be located closer to the boundary hedge, and at a higher level than the existing building it would replace. It would, therefore, be more readily visible above and through the vegetation. It would be an incongruous and intrusive addition to the street scene that would be harmful to its rural character. The caravan would be so close to the road frontage that there would be little scope for additional soft landscaping to positively enhance the environment and increase its openness, as advocated by paragraph 26b) of the PPTS.
23. However, the harmful impact would only be apparent from a relatively short stretch of Philpot Lane, to either side of the site. The substantial tree and hedge cover on the other boundaries would ensure that the development would not be readily seen from any longer distance vantage points. I am also mindful of the advice at paragraph 26d) of the PPTS, that sites should not be enclosed to such an extent that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.
24. Furthermore, the demolition of Buildings A and B would go some way towards mitigating the overall visual impact of the proposal. The appellant also suggested that a planning condition could be imposed to secure a suitable form of external cladding of the caravan. Had I been minded to grant a permanent permission, such a condition would have further reduced its visual impact, although it would not entirely have overcome the harm.
25. Overall, therefore, the degree of harm to the character and appearance of the area would be limited. Nevertheless, this limited harm places the proposal in conflict with Policy DM9 of the Surrey Heath Core Strategy and Development Management Policies 2011-2028 (the Core Strategy) which, amongst other things, requires development to respect and enhance the local, natural, or historic character of the environment.

*Development plan policy and accessibility to services and facilities*

26. Policy DM6 of the Core Strategy says that, in assessing applications for Gypsy and Traveller pitches, regard should be had to whether sites are accessible to public transport, cycling or pedestrian networks and facilities capable of meeting day to day needs such as education, healthcare and shopping. The site lies approximately 2km in a direct line from the centre of Chobham, and 1.5km from the edge of the built-up area of Woking. In combination, these settlements provide a wide range of facilities, including education and healthcare. There is a convenience store on the edge of Chobham, approximately 1.9km by road from the site. There is also a bus stop 1.1km away, at the southern end of Philpot Lane, with the No 73 route providing an hourly bus service between Chobham and Woking train station. There is a farm shop selling a limited range of goods opposite this bus stop. All of the facilities for day-to-day life are therefore within a reasonable distance.
27. However, access to all of these facilities, including the bus stop, involves travelling for some distance along Philpot Lane, which has no lighting or footways. The terrain in the locality is nonetheless relatively level. Although the lane does not carry a large volume of traffic, it has a 40-mph limit, and I saw some vehicles passing the site at considerable speed. Pedestrians and cyclists

would have to share the road with this traffic, and, when two vehicles are passing, there is little room for them within the carriageway. The verges to either side are overgrown and often serve as drainage gullies, so they do not provide a safe or convenient refuge. Consequently, Philpot Lane is not a safe or attractive option for walking or cycling to the bus stop, or as part of a longer journey to Chobham or Woking. It would be particularly unsuitable for young children. Furthermore, the distances involved means that cycling is only an option for those with a reasonable level of physical fitness, and it is unlikely to be a favoured option when transporting goods, such as a weekly shop. Although there is scope for some journeys to be made on foot or by bicycle, it is unlikely that these transport modes would account for a significant proportion of trips to and from the site for day-to-day services.

28. The appellant does have access to a pony and trap. However, he acknowledged that this would only be an option in the summer months. Furthermore, the logistical drawbacks of accessing shops and services by this form of transport, and parking outside, means that it is unlikely that journeys by this mode would account for a significant proportion overall.
29. In view of all these considerations, it is reasonable to conclude that the occupants of the site would be highly reliant on the private car to access day to day services and facilities. This would place the proposal in conflict with Policy DM6 of the Core Strategy. The degree of harm resulting from this policy conflict is reduced by the relatively short distances involved, and the scope for some journeys to be made by alternative means. Furthermore, the Council does not dispute that, if the appeal is dismissed, the appellants are likely to be faced with a roadside existence. The provision of a settled base would, in accordance with paragraph 13 of the PPTS, reduce the need for the long-distance travelling that is associated with unauthorised encampment. This would offset much of the harm that would arise from the suboptimal accessibility of the appeal site to services. Overall, therefore, although there is conflict with Policy DM6, the harm resulting from the lack of sustainable transport options is limited.

#### *Flood risk*

30. Paragraph 165 of the Framework advises that inappropriate development in areas at risk of flooding should be avoided, by directing development away from areas at highest risk.
31. The FRA identifies that the predominant risk at the site is from flooding from the rivers Bourne and Mill Bourne, which run to the southeast and north of the site, respectively. The FRA also contains details of the Environment Agency's Risk of Flooding from Surface Water (RoFSW) mapping, which indicates that Philpot Lane, adjacent to the site, is at risk from pluvial flooding. In view of these known risks, a sequential test in accordance with Framework paragraphs 167 and 168 is required. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.
32. The Environment Agency's Flood Map for Planning Purposes shows that most of the site, including the current location of the caravan, is in Flood Zone 3, but that a triangle of land near the road frontage is in Flood Zone 2. Paragraph 173 of the Framework advises that FRAs should demonstrate that within the site, the most vulnerable development is located in areas of lowest flood risk. The

proposal to site the caravan in this part of the site would accord with this approach. However, the sequential test should also demonstrate that there are no other reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, so, in this case Flood Zone 1.

33. The sequential test was not undertaken as part of the FRA, and the Council contends that the lack of evidence in this regard means it has not been passed, as the Planning Practice Guidance (the PPG) places the onus on applicants to identify reasonably available sites<sup>1</sup>. At the Hearing, the appellant explained that he had searched an area exceeding ten miles in radius. He had enquired of all known contacts in the Gypsy and Traveller community, local Councils, and local land agents without any success. The Council was unable to identify any sites itself, or to advise what more the appellant could do to find a suitable site.
34. It is common ground that there is a need for Gypsy and Traveller sites in the district and that the Council cannot demonstrate a 5-year supply of deliverable sites to meet its locally identified target. Four sites have been identified as part of the consultation process for the draft Surrey Heath Local Plan (2019-2038). Two of these are in Flood Zones 2 and 3. I acknowledge that the Council was only seeking to allocate sites that could accommodate at least two pitches, but, the fact that a focused 'Call for Sites' did not identify sufficient sites to meet the need in areas at lower risk of flooding, demonstrates the difficulty the appellant would have in finding a suitable alternative site. On the evidence before me, I must conclude that there are no other reasonably available sites appropriate for the proposed development, so the sequential test has been passed.
35. Table 2 in the PPG advises that, even where the sequential test has been passed, highly vulnerable development, including caravans, should not be permitted in Flood Zone 3. In this respect, the accuracy of the Environment Agency's Flood Map has been questioned, as it is based on 2007 data. However, the Environment Agency accepted at the Hearing that the Flood Map for Planning was the best available data in published form, and that it was not reasonable, on a development of this scale, to expect full catchment area modelling to be undertaken by an applicant. The Environment Agency also accepted that the submitted plans accurately portrayed the published Flood Zones 2 and 3, and that based on the Flood Map, the proposed relocation of the caravan would place it in Flood Zone 2. Paragraph 169 of the Framework says that if it is not possible for development to be located in areas with a lower risk of flooding, the exception test should be applied for highly vulnerable development in Flood Zone 2.
36. Paragraph 170 of the Framework says that, to pass the exception test, it should be demonstrated that:
  - a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
  - b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

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<sup>1</sup> Paragraph: 029 Reference ID: 7-029-20220825

37. The FRA identifies that the 1 in 100 year plus 24% climate change allowance event would result in a flood level at the site of 21.75m AOD. This was not disputed by the Environment Agency at the appeal. The appellant has accepted the evidence in a Technical Review of the FRA, produced by a third party<sup>2</sup>, that a freeboard allowance of 600mm should be incorporated to allow for any inaccuracies in the Environment Agency's flood modelling. It is therefore proposed that the floor level of the caravan should be raised to 22.35m AOD. On this basis, the Council and the Environment Agency agreed at the Hearing, that residents within the caravan would be safe from flooding.
38. The FRA identifies the closest dry evacuation area to be along Philpot Lane, which is in Flood Zone 1, in a south westerly direction. However, it also includes the Environment Agency's RoFSW mapping, which shows that Philpot Lane is at risk of pluvial flooding to a depth of 300 – 900mm across the site frontage in extreme events. Even if this water were standing, or had a very low velocity, this would represent a "Danger for some" or "Danger for most" classification<sup>3</sup>. It is argued, however, that the RoFSW model does not take account of the network of drainage ditches and culverts adjacent to the highway, and that actual flood depths are likely to be lower. I also saw that the road was not contained by features that would retain water to the deepest levels suggested in the model, and the Environment Agency accepted at the Hearing that such depths were unlikely. Nevertheless, there is photographic evidence to demonstrate that flooding does occur at this point in the road.
39. Figure 2 of the appellant's rebuttal statement<sup>4</sup> shows a convoluted pedestrian route along Philpot Lane through flood depths of 0.15 – 0.3 metres, and avoiding deeper waters. However, in the event of an evacuation, it is unlikely that occupants would be able to perceive where the shallower waters were, especially in hours of darkness. Figure 3 shows the route running through water with a velocity varying between 0.25m/s and 0.5m/s. However, it runs very close to areas with a velocity of 0.5 – 1 m/s. Even if I were to accept that an escape route through waters at a depth of 0.3 metres and a velocity of 0.5 m/s could be charted, this would still place the development in the "Danger for most" category. Consequently, I cannot safely conclude, on the evidence before me, that the occupants of the caravan would have a safe evacuation route. Therefore, taking account of the vulnerability of its users (four of whom would be children), the development would not be safe for its lifetime, and the proposal fails part b) of the exception test.
40. The raising of the caravan above flood levels would ensure that it would not increase flooding elsewhere through the displacement of flood water. Furthermore, the Environment Agency acknowledged at the Hearing that the removal of Buildings A and B, and their associated hardstandings, would make a modest contribution to reducing flood risk overall.
41. In relation to part a) of the exception test, it is common ground that there is a lack of provision to meet the need for Gypsy and Traveller sites in the district. It is also not disputed that there is a likelihood of the appellant and his family resorting to a roadside existence if the appeal is dismissed. In these

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<sup>2</sup> EnvirEn Flood Risk Assessment (FRA) Technical Review - Philpot Lane, Chobham 16/10/23 - Document Ref: 2300205-FRATR

<sup>3</sup> Flood Risk Assessment Guidance for New Development Phase 2 Framework and Guidance for Assessing and Managing Flood Risk for New Development (R&D Technical Report FD2320/TR2)

<sup>4</sup> Report reference 78892R3\_GeoSmart\_Flood\_Drainage\_Rebuttal Report - 2nd November 2023



circumstances, the provision of a site to meet the shortfall in need, together with the reduction in long-distance travel and the risk of environmental damage caused by unauthorised encampments, are significant wider sustainable community benefits. However, paragraph 171 of the Framework makes it clear that both parts of the exception test must be satisfied for the development to be permitted.

42. To conclude on this issue, the occupants would be safe from flooding within the caravan, and the proposal would not increase flood risk elsewhere. However, there is not a safe access and escape route from the site, so the exception test would not be passed. The proposal would, therefore, be in conflict with Policy DM10 of the Core Strategy which says that development in Flood Zone 2 will not be supported unless the sequential and exception tests have been applied and passed. The proposal would also conflict with the sequential risk-based approach to the location of development that is set out in Section 14 of the Framework.

### **Other considerations**

#### *Need for Gypsy and Traveller sites*

43. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) was produced in 2020, and provides the most up to date published indication of the scale of need for Gypsy and Traveller pitches in the Borough. The GTAA sets out that the Council has an identified need for 32 Gypsy and Traveller pitches and 14 Travelling Showpeople plots over the period 2020 – 2040, with the majority of that need falling within the first five years of the plan period. Planning permission has since been granted for two pitches, and a site for four pitches was identified in the Draft Surrey Heath Local Plan: Preferred Options (2019 – 2038). This document acknowledges that, despite this allocation, there would be a shortfall of 26 Gypsy and Traveller pitches and 14 Travelling Showpeople plots across the Plan period.
44. Furthermore, the need for 32 Gypsy and Traveller pitches set out in the draft Local Plan was based on the definition of Gypsies and Travellers set out in the 2015 version of the PPTS. The GTAA also identified a need for one pitch for Gypsies and Travellers of unknown status and 32 Gypsies and Travellers not meeting the PPTS definition. In the light of the Court of Appeal decision in the Smith case<sup>5</sup>, the Council acknowledged at the Hearing that the overall shortfall is 59 pitches.
45. Following publication of the draft Local Plan, the Council has identified three further sites with potential for allocation<sup>6</sup>. These would provide a maximum of 21 Gypsy and Traveller pitches and nine Travelling Showpeople plots, so would not meet the identified need over the plan period. Furthermore, the Council acknowledged at the Hearing that further work was necessary to clarify whether two of these sites would pass the sequential and exception tests required due to their location in Flood Zones 2 and 3. I understand that the draft Local Plan is due to be examined in about 12 months' time, with a view to adoption in mid-2025. At present, however, insufficient sites have been identified to meet the need.

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<sup>5</sup> Smith v SSLUHC & Ors [2022] EWCA Civ 1391

<sup>6</sup> Surrey Heath Local Plan: Preferred Options (2019 – 2038) Additional Site Allocations for Gypsy and Traveller and Travelling Showpeople Regulation 18 Consultation

46. The draft Local Plan does include a requirement for strategic sites (more than 100 dwellings) to include the provision of Gypsy and Traveller accommodation. However, in view of the timescale to adoption, and the subsequent delivery of sites of this scale, these pitches are unlikely to be available in the short term. The only other source of provision would be through suitable windfall sites. There is, therefore, an acknowledged shortfall in deliverable Gypsy and Traveller sites. The extent of the Green Belt, and areas at risk of flooding, means that there is significant difficulty in identifying suitable sites for allocation. There is, therefore, considerable uncertainty regarding future provision, and a likelihood that windfall sites will be required in the short term.
47. The Council does not dispute that it is unable to demonstrate a 5-year supply of specific deliverable Gypsy and Traveller sites at present. Together with the unmet need, and the lack of certainty over future provision, this attracts significant weight in support of the proposal.

*Personal circumstances*

48. Article 8 of the Human Rights Act 1998 states that everyone has a right to respect for their private and family life, their home and correspondence. Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
49. Furthermore, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (the PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation and to advance equality of opportunity. The Equality Act 2010 recognises that race constitutes a relevant protected characteristic for the purposes of the PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.
50. The site is occupied by the appellant, his wife, and their four children aged 10, 8, 6 and 3 months. It is common ground that the appellant and his wife meet the PPTS definition of Gypsies and Travellers, and that the appellant has lived within three miles of the appeal site all his life. If I were to dismiss the appeal the household would be liable to lose its settled base. The Council also acknowledges that it is unable to identify an alternative site, and that the family is likely to have to resort to living on the roadside.
51. The three older children are settled in school. Whilst their schools are some distance from the appeal site, the appellant indicated at the Hearing that, if allowed to remain on the site, the children may move to a school closer by. In any event, a settled base would allow them to attend school regularly. A roadside existence would, however, be very likely to result in disruption to the children's educational provision. It may be difficult to enrol children in school or to maintain their attendance if they have no fixed address, or are constantly moving from place to place at short notice.

52. Whilst there is no evidence that any of the occupants have particular medical needs, I am mindful that one of them is only 3 months old. A roadside existence would make it very difficult, if not impossible, to access post-natal care for the mother and baby. Furthermore, the availability of a permanent base would be of benefit to the family in maintaining access to healthcare facilities.
53. The benefits of a settled base for the educational needs of the children, and the medical welfare of the family are considerations that carry significant weight in favour of the proposal.

### **Other Matters**

54. Despite the agreed position of the main parties, I am required by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings, or their settings, or any features of special architectural or historic interest which they possess. Cedar House, a Grade II listed building, is around 60 metres to the southwest of the site on the opposite side of the lane. Its significance lies principally in its architectural quality, the pre-eminence of its architect, Sir Edwin Lutyens, and its rural surroundings.
55. I saw that the building at Cedar House is set back from Philpot Lane behind substantial roadside planting. The foliage continues along the roadside on both sides of the lane as far as the appeal site. Combined with the curvature of the road, this means there is little intervisibility between the two sites. The proposed use would include a static caravan that would be higher than the building it replaces, but the distance between the properties, and the substantial intervening vegetation, means that there would be no impact on the setting of the listed building, so its significance would not be diminished in any way.
56. Although it is common ground between the main parties that there would be no adverse impact on the highway network, the issue of a potential increase in traffic is raised in representations. I saw that Philpot Lane has a carriageway that is wide enough for two cars to pass, and carries a modest amount of traffic. The additional vehicles associated with a static caravan, occupied by a single household, could be accommodated without inconvenience to other highway users, and would have a negligible impact on the overall level of traffic using the road.

### **Green Belt Balance**

57. I have found that the proposal would be inappropriate development in the Green Belt, albeit the harm to openness and through encroachment of development would be limited. Nevertheless, in accordance with paragraph 153 of the Framework, substantial weight should be given to the Green Belt harm.
58. There is limited harm to the character and appearance of the area, resulting in conflict with Policy DM9 of the Core Strategy.
59. Occupants of the site are reliant on the private car to access day to day services and facilities, placing the proposal in conflict with Policy DM6 of the Core Strategy. However, the degree of harm resulting from this policy conflict is limited, due to the relatively short distances involved, the scope for some

- journeys to be made by alternative means, and the avoidance of the long-distance travelling that would be likely to arise from a roadside existence.
60. Whilst occupants would be safe from flooding within the caravan, and the proposal would not increase flood risk elsewhere, there is not a safe access and escape route from the site in an extreme event. The proposal therefore conflicts with Policy DM10 of the Core Strategy and the advice in the Framework, which requires development in Flood Zone 2 to pass the exception test. This weighs heavily against the proposal.
61. However, there are other considerations which support the appeal. I attach significant weight to the need for, and lack of supply, of Gypsy and Traveller sites in the Borough, including the lack of any available, suitable alternative site, and the uncertainty about future planned provision.
62. Furthermore, the Council confirmed at the Hearing that around 76% of the land in the Borough, outside settlement boundaries, lies within the Green Belt. It therefore seems likely to me that there will need to be a reliance to some degree on land in the Green Belt to meet the existing and future need for pitches. Indeed, three of the four sites identified as potential allocations for the draft Local Plan are in the Green Belt. The Council contended that these sites had a different character. However, in the particular circumstances of this case, I have found limited harm to openness or the purposes of including the land in the Green Belt. There is, therefore, no evidence to persuade me that Green Belt harm arising from this site would be greater than from any other site that may be allocated. These considerations weigh positively in favour of the proposal.
63. I also attach significant weight to the personal circumstances of the appellant and his family, who have no other site to turn to, so would be likely to face a roadside existence. The loss of a settled base would be harmful to the educational needs of the children, and the medical welfare of the family, and would not be in the best interests of the children who occupy the site. Paragraph 16 of the PPTS says that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt. However, there would be considerable harm to the best interests of the four children that occupy the site.
64. Nonetheless, the permanent occupation of a site that is liable to flooding, and where the exception test has not been passed, would also not be in the best interests of the children. In this regard, the conflict with development plan policy and Framework advice concerning flood risk weighs heavily against the proposal. In balancing the harm to the Green Belt, and any other harm, I do not consider that the other considerations clearly outweigh the harm that I have identified. Hence, the very special circumstances necessary to justify the development on a permanent basis do not exist.
65. I acknowledge that withholding a permanent permission would interfere with the appellant's rights under Article 8 of the Human Rights Act 1998, as it would deny him and his family the opportunity to establish a home on this site. However, such rights are qualified, and interference may be permissible when the rights of the individual are balanced against those of the community. In this instance such interference would be proportionate, given the public aim of safeguarding the Green Belt and avoiding flood risk.

### *Temporary permission*

66. In the case of the grant of temporary permission, the limited harm to the Green Belt and to the character and appearance of the area would be further reduced by it being for a limited period, albeit the Green Belt harm is still to be given substantial weight. Similarly, the reliance of occupants on private transport would be for a limited period, and the long-distance travel associated with a roadside existence would be avoided.
67. A temporary permission would also reduce the potential harm arising from the flood risk issue, as it would be less likely that an extreme event would occur during the period of occupation. I acknowledge that there is no guarantee that this would be the case, but the reduction in the likelihood of occupants being trapped in the caravan means that the benefits to the best interests of the children through a settled base during this period, would, in this scenario, outweigh the residual flood risk.
68. A temporary permission would also allow for suitable alternative sites to be identified, allocated, and delivered through the draft Local Plan, or for pitches to become available through the delivery of allocated strategic sites. The likely timescales for alternative sites to be allocated and delivered was discussed at the Hearing, and the parties agreed that five years was reasonable, and realistic. On this basis I consider that a personal planning permission, limited to a temporary five-year period would be appropriate. The grant of temporary permission can only be justified by the personal circumstances of the appellant and his family, which includes the best interests of the children.
69. I conclude that, on a temporary and personal basis, the harm to the Green Belt, and other harms, are clearly outweighed by other considerations. The very special circumstances necessary to justify the development have, therefore, been demonstrated. Consequently, the proposal accords with the strategy for the protection of Green Belt land as set out in the Framework. The same balancing exercise also leads me to the conclusion that the unmet need for Gypsy and Traveller sites, the personal circumstances of the appellant, and the best interests of the children, are material considerations that indicate that a temporary permission should be granted, despite the residual conflict with Policies DM6, DM9 and DM10 of the Core Strategy. Furthermore, a temporary personal permission would represent a fair and proportionate balance between the interference with the human rights of the family on the one hand, and the control of development in the public interest on the other.

### **Conditions**

70. The parties submitted a list of conditions that they agreed would be necessary in the event that I granted a temporary permission, and these were discussed at the Hearing. I have considered all the suggested conditions against the advice in the PPG. Where I have agreed that the conditions are necessary, I have altered some of them, in the interests of clarity and precision, to better reflect the guidance.
71. I have included a condition specifying the relevant plans, as this provides certainty. Conditions confirming that planning permission is granted for a temporary period of five years only; that occupation is restricted to the appellant, his wife, and resident dependants; and requiring remediation of the site following the expiry of the temporary permission or prior to the cessation

of the use, are necessary in the interests of Green Belt protection and reducing flood risk.

72. Also in the interest of reducing flood risk, conditions are necessary to ensure that there is only one static caravan and one touring caravan on the site; that the static caravan is positioned on the part of the site with the lowest risk of flooding; that Buildings A and B are demolished; and that details of flood mitigation measures are incorporated in the development, including agreement of a flood evacuation plan. I am mindful that, in his written submissions, the appellant contended that a condition requiring the removal of Buildings A and B would be unreasonable on a temporary consent. However, at the Hearing, he acknowledged that the removal of Building A would be necessary to facilitate the relocation of the caravan, and it was open to me to impose a condition requiring the removal of Building B if I found it to be necessary to overcome concerns about flood risk and/or Green Belt harm.
73. A condition confirming the loss of the permission unless foul and surface water drainage details are submitted for approval (including a timetable for implementation) is required in the interests of flood risk and environmental protection. The strict timetable for compliance is necessary because temporary permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the drainage arrangements before the development takes place.
74. A condition limiting external lighting is reasonably necessary to limit harm to the character and appearance of the area.
75. The Council agreed at the Hearing that conditions prohibiting commercial uses, the burying of waste, or the use of generators, were not necessary or reasonable for a temporary permission. Furthermore, whilst a condition requiring external cladding of the caravan would reduce the harm to the character and appearance of the area, it would be an unreasonable imposition for a temporary permission.

### **Conclusion**

76. For the reasons given above, I conclude that the appeal should be allowed, and temporary planning permission is granted.

*Nick Davies*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Land Registry Title Plan Extract; 227PD-01 - Proposed Elevations/Proposed Floor Plans/Section A-A; GP/02/23 - Existing Block Plan; GP/03/23 - Proposed Block Plan; and GP/04/23 - Proposed Block Plan with Flood Zones.

- 2) The use hereby permitted shall be carried on only by Mr Charles Smailes and Mrs Lennie Smailes and their resident dependants, and shall be for a limited period, being the period of 5 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 3) Within 2 months of the date of this decision, a scheme to restore the land to its condition before the development took place (or such other restoration as agreed in writing by the local planning authority), at the end of the period for which planning permission is granted, or the site is occupied by those permitted to do so, shall be submitted to and approved in writing by the local planning authority. These details shall include an implementation programme. The restoration works shall be carried out in accordance with the approved details.
- 4) Within 3 months of the date of this decision, Buildings A and B shall be demolished and the static caravan shall be relocated to the position shown on approved drawing no. GP/03/23. Thereafter, no more than 1 static caravan and 1 touring caravan, as defined in the Caravan Sites and Control of Development Act 1960 (as amended) and the Caravan Sites Act 1968 (as amended), shall be stationed at the site at any time.
- 5) Unless, within 3 months of the date of this decision, a scheme for the disposal of foul and surface water drainage from the site, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 6 months of the local planning authority's approval, the use of the site shall cease and the static caravan shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the use of the site shall cease, and the static caravan shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained.

In the event of a legal challenge to this decision, or an appeal against a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge or appeal has been finally determined.

- 6) Within 3 months of the date of this decision, the following flood mitigation measures shall be carried out, and thereafter permanently retained:
  - a) the floor level of the static caravan shall be set at 22.35m AOD;
  - b) the static caravan shall be secured to the ground in accordance with details that have first been agreed in writing by the local planning authority;
  - c) the hardstandings for the existing caravan and Building B shall be removed, and the areas returned to grass and wildflower meadow, in accordance with the details shown on approved drawing no. GP/03/23;

- d) a flood evacuation plan shall be submitted to and approved in writing by the local planning authority.
- 7) No external lighting shall be installed at the site without the prior written approval of the local planning authority.

END OF SCHEDULE

## **APPEARANCES**

FOR THE APPELLANT:

Stephen Cottle – Counsel  
Charles Smailes – Appellant  
Lennie Smailes  
Tony White (White Planning & Enforcement) – Agent  
Michael Piotrowski (GeoSmart)

FOR THE LOCAL PLANNING AUTHORITY:

Navil Rahman – Principal Planning Officer, Surrey Heath Borough Council  
Ian Williams – Team Leader, Surrey Heath Borough Council  
Brian Roberts – Environment Agency  
Judith Johnson – Environment Agency

INTERESTED PARTIES:

Peter Kear – Local Resident  
Tim Robinson – Local Resident  
Zak Simmonds (EnvirEn)  
Carole Mancini - Local Resident  
Brian Springall - Local Resident  
Jane Robinson - Local Resident  
Noel Doran - Local Resident

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Extracts from revised FRA dated 14 June 2023 – Reference 78892R2 submitted by appellant.
2. Photographs showing recent flooding, distances to nearby facilities, and goods on offer at nearest shop submitted by appellant.
3. Note on Wider Sustainability Benefits, Human Rights, Sustainability and Material Considerations submitted by appellant.