

2018/0875

Reg Date 14/12/2018

Bisley & West  
End

**LOCATION:** LAND TO THE SIDE AND REAR OF 154 GUILDFORD ROAD, WEST END, WOKING, GU24 9LT  
**PROPOSAL:** Change of use to provide two pitch gypsy site (retrospective).  
**TYPE:** Full Planning Application  
**APPLICANT:** M Black  
**OFFICER:** Duncan Carty

**This application would normally be determined under the Council's Scheme of Delegation, however, it has been called-in by Cllr Mansfield on the basis of concerns raised by local residents.**

**RECOMMENDATION: REFUSE**

**1.0 SUMMARY**

- 1.1 This application relates to the change of use of land (retrospective) to provide two gypsy site pitches. The land forms a part of the side/rear garden of Scarlet Manor, 154 Guildford Road located close to the edge of the settlement of West End, falling within the Green Belt.
- 1.2 The current proposal is considered to be acceptable in terms of its impact on local streetscene, residential amenity and highway safety. The proposal is inappropriate development in the Green Belt due to the impact of the mobile homes on openness and resulting urbanisation on rural character and very special circumstances do not exist which outweigh the harm to the Green Belt. In addition, contributions to mitigate harm to the Thames Basin Heaths Special Protection Area (SPA) have not been secured to date. The application is therefore recommended for refusal.

**2.0 SITE DESCRIPTION**

- 2.1 The application site falls to the west of the settlement of West End, within the Green Belt. The site lies on the west side of A322 Guildford Road, forming a part of the wider residential/commercial plot of 154 Guildford Road. Residential properties 152 Guildford Road and 164 Guildford Road (a locally listed building) are to the north and south flanks, respectively. The commercial land to the rear is in the ownership of the applicant with open land beyond. Residential properties in the settlement of West End (149-159 Guildford Road) lie opposite the site on the east side of Guildford Road. The existing access to the site is from Guildford Road.
- 2.2 The wider site of 154 Guildford Road relates to a 0.38 hectare site. The site is roughly wedge shaped, narrowing towards the rear. It includes the existing dwelling and garage located closer to the front of the site along with the gypsy pitches to the rear of the dwelling and a commercial site at the rear of the plot. The gypsy pitches are partly fenced to the access road with post and rail fencing (to a height of about 1.2 metres) with brick piers (to a height of about 1.8 metres).

Parking is provided in front of the mobile homes, between the mobile homes and access drive. A further fence/piers is provided to a similar height and with a similar appearance, and 1 metre high pedestrian gate, between the mobile homes and parking area. A small shed is provided between the mobile homes and close to the south flank site boundary.

- 2.3 There is a building in the rear compound which has had a quasi-residential (rest room accommodation) use but, at the time of the site visit, was not being used. In addition, the garage to the front of the property has been converted into living accommodation which was also vacant at the time of the site visit. These elements fall outside of the application site and are not part of the current proposal.
- 2.4 The site is a minimum distance of about 0.6 kilometres from the Thames Basin Heaths Special Protection Area (SPA). There is an Article 4 direction for the stationing of caravans for this part of the Borough.

### **3.0 RELEVANT PLANNING HISTORY**

The relevant planning history for the wider site is listed below.

- 3.1 SU/04/0238 Erection of a two storey house with detached double garage following the demolition of existing house and garage.  
*Approved in May 2004 and implemented.*  
*Condition 4 of this permission removes permitted development rights for the erection of extensions, garages or other buildings.*
- 3.2 SU/16/0397 Certificate of existing lawful use for the stationing of 2 no residential caravans.  
*Considered to be unlawful in December 2017.*
- 3.3 SU/16/0582 Erection of entrance gates and walls (retrospective).  
*Approved in May 2017.*
- 3.4 SU/18/0223 Certificate of existing lawful use for a mixed use comprising a permanent residential dwelling and a gypsy and traveller site with two pitches.  
*Withdrawn in May 2018.*
- 3.5 SU/19/0006 Erection of 3 no two bedroom bungalows following the demolition of existing building with the retention of the existing dwelling on the site.  
*Currently under consideration and report provided elsewhere on this Agenda.*

### **4.0 THE PROPOSAL**

- 4.1 The proposal relates to the retrospective change of use of part of the residential curtilage of 154 Guildford Road to provide 2 gypsy pitches each including one mobile home and tourer along with associated accommodation. Each of the mobile homes measure 6 by 12 metres, with a general height of about 2.8 metres, and provide two bedroom accommodation.

- 4.2 The use is accessed by the existing site access onto Guildford Road, which is also used by the host dwelling and commercial use at the rear of the site. A parking area is provided to the front of the mobile homes. Whilst the mobile homes have wooden skirts, brick lined concrete slab steps and are connected to services, which give a degree of permanence, they are defined as caravans under the Caravans Act 1968 and could still be capable of moving on and off the site and as a factor of scale and degree are not considered to represent buildings in their own right.
- 4.3 The application site for this proposal has been defined as incorporating a proportion of the wider site and not included the host dwelling nor the commercial use to the rear of the site. There is no boundary between the two pitches. The boundary with the host dwelling is a low post and rail fence and, whilst the occupation across the wider site is by family members, it is concluded that this use provides a separate planning unit.
- 4.4 The applicant resides with his wife in the host dwelling with his father and mother-in-law in one of the mobile homes and his son and family, including two children, in the second mobile home.

## 5.0 CONSULTATION RESPONSES

- 5.1 County Highway Authority No comments received.
- 5.2 Scientific Officer No objections.
- 5.3 West End Parish Council No comments received

## 6.0 REPRESENTATIONS

- 6.1 At the time of preparation of this report, no representations have been received in support and four representations have been received raising an objection for which the following issues are raised:
- Impact on the Green Belt [See *paragraph 7.3*]
  - Impact on the visual appearance of the property, including the amount of tarmac [See *paragraph 7.3*]
  - Restrictions on existing property i.e. removal of permitted development rights [See *paragraphs 7.3, 7.4 and 7.6*]
  - Planning law has not been followed and retrospective nature of the proposal [Officer comment: *This would not be a reason to refuse this application*]
  - Inappropriate change of use [See *paragraphs 7.3 and 7.4*]
  - Overdevelopment of the site and loss of garden land (“garden-grabbing”) [see *paragraph 7.3*]
  - Impact on the environment [See *paragraph 7.3*]
  - Light pollution from additional lights [See *paragraph 7.3*]
  - Impact on locally listed building [See *paragraph 7.4*]

## **7.0 PLANNING CONSIDERATIONS**

- 7.1 The proposal is to be assessed against the National Planning Policy Framework (NPPF) and its associated Planning Practice Guidance (PPG); as well as Policies CP1, CP2, CP11, CP14, DM6, DM9, DM11 and DM17 of the Surrey Heath Core Strategy and Development Management Policies 2012 (CSDMP); and Policy NRM6 of the South East Plan 2009 (as saved) (SEP), Circular 1/94 Gypsy Sites and Planning Circular 01/2006 Planning for Gypsy and Traveller Caravan Sites; PPS on Green Belt Protection and Intentional Unauthorised development 2015 (GPDIUD); Planning Policy for Traveller Sites 2015 (PPTS); and the Surrey Heath Gypsy and Traveller Accommodation Assessment 2018 (GTAA). In addition, advice in the Residential Design Guide SPD 2017 (RDG); and the Thames Basin Heaths Special Protection Area Avoidance Strategy SPD 2019 (TBHSPD).
- 7.2 The main issues in the consideration of this application are:
- Impact on the Green Belt;
  - Very special circumstances to support the proposal;
  - The suitability of the site for Gypsy and Traveller accommodation;
  - Impact on local character;
  - Impact on residential amenity;
  - Impact on highway safety;
  - Impact on the Thames Basin Heaths Special Protection Area; and
  - Other matters.

It is accepted that the occupants of the mobile homes are gypsies and travellers under the definition of Annex 1 of the PPTS which states that they are persons of nomadic habit of life whatever their race origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily.

### **7.3 Impact on the Green Belt and character**

- 7.3.1 Paragraph 146(g) of the NPPF indicates that certain other forms of development including material changes of use of land are not inappropriate where they preserve the openness of the Green Belt and do not conflict with the purposes of Green Belt. In this case, a separate planning unit has been created and therefore the development is a material change of use. Even if it were to be considered that the mobile homes represented buildings under Paragraph 145(g) of the NPPF such development would be inappropriate unless the development has no greater impact on the Green Belt than the existing development. Whilst the tests are different, the assessment and outcome would be similar. Paragraph 16 of the PPTS also indicates that traveller sites (temporary or permanent) in the Green Belt are inappropriate development.
- 7.3.2 Case law has established that the concept of openness is open textured and has a spatial and visual aspect. In spatial terms, the proposal has provided an increase in development, particularly in terms of the volume and floorspace of the mobile homes, which are key indicators of an increase in the impact on the openness of the Green Belt. In addition, visually the stationing of the mobile homes has an urbanising impact which is harmful to rural character.

7.3.3 The land to each flank are larger residential curtilages (for 152 and 164 Guildford Road) with the land beyond the rear of the wider site more open (a former horticultural site). It is, however, noted that the limited height of the mobile homes and the boundary treatments would limit views from outside the site and therefore the visual harm is more limited from outside of the site. Notwithstanding this, the provision of the mobile homes would have an urbanising impact and would not preserve openness.

7.3.4 As such, the proposed development is considered to be inappropriate development within the Green Belt. This position is accepted by the applicant. In addition, the urbanisation of the site would have an adverse impact on rural character failing to comply with Policy DM9 of the CSDMP.

#### **7.4 Very special circumstances to support the proposal**

7.4.1 Paragraphs 143 and 144 of the NPPF indicate that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, local planning authorities, should ensure that substantial weight is given to any harm to the Green Belt. "Very special circumstances" will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

7.4.2 Paragraph 24 of the PPTS indicates that local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:

(a) the existing level of provision and need for sites;

(b) the availability (or lack) of alternative accommodation for the applicants;

(c) other personal circumstances of the applicant;

(d) that the locally specified criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites; and

(e) that they should determine application from sites from any travellers and not just those with a local connections.

7.4.3 Paragraph 26 of the PPTS indicates that when considering applications, local planning authorities should attach weight to the effective use of previously developed land (or untidy or derelict land), sites being well planned or soft landscaped in such a way to positively enhance the environment and increase its openness; promoting healthy lifestyles, such as ensuring adequate landscaping and play areas for children; and not enclosing a site that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

7.4.4 The applicant has put forward very special circumstances to support this proposal which relate to:

- Lack of provision and availability of gypsy sites against the demonstrated need and the development plan requirements;
- Personal circumstances of the applicant and his family;
- Human Rights and the Public Sector Equality Duty; and

- Use of previously developed land.

Lack of provision and availability of gypsy sites against the demonstrated need and the development plan requirements

- 7.4.5 Policy DM6 of the CSDMP indicates that in assessing applications for gypsies and travellers, sites should promote the effective use of land within the settlement area, in particular previously developed land, and should be accessible to public transport, cycling or pedestrian networks and facilities of meeting day to day needs (education, healthcare and shopping). The Council will also consider proposals in more accessible rural locations outside of the Green Belt giving priority to the urban fringe locations that comprise previously developed land and proposals in the Green Belt will have to demonstrate very special circumstances. The site lies in a relatively sustainable location, close to local services, and is in an urban fringe location, and on previously developed land, albeit within the Green Belt.
- 7.4.6 Paragraph 16 of the PPTS indicates that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to outweigh harm to the Green Belt and any other harm to establish very special circumstances. In addition, the GPDIUD indicates that intentional unauthorised development is a material consideration in the assessment of developments.
- 7.4.7 The GTAA sets out the unmet need for gypsy and traveller provision within the Borough. It confirms the need for 12 additional pitches within the borough over the GTAA period (up to 2032); with a need for the provision of 9 pitches required by 2022. There have been no gypsy pitches approved or due to be provided to meet this need. The fact that this need is not being met would mean that the current proposal would provide a benefit in reducing this unmet need within the Borough. It is also known that there are no vacant pitches in the Borough and the existing sites are overcrowded and there has recently been little additional provision provided in the Borough and a identified unmet need for more pitches is established.
- 7.4.9 No other sites have been considered by the applicant on the basis that the need has been for the family to live close together and therefore close to the applicant who resides at the host dwelling. With the applicant residing in the dwelling at the site (and the need to live in close proximity as a family group), it is understood why other accommodation elsewhere may not have been considered as a viable option in this case.
- 7.4.10 The applicant has confirmed that there is insufficient alternative accommodation on the site (including the existing dwelling, rest room outbuilding and converted garage). Whilst it is acknowledged that the applicant resides at the host dwelling, the family occupants of the mobile homes do not wish to live in bricks and mortar accommodation. Gypsies are used to travelling and a nomadic way of life and there is a cultural aversion to such accommodation. However, if this application were to be refused permission, then alternative options have to be considered for the occupants of this accommodation. In this case, the first option would be to address the existing accommodation within the site. For example, potential for an extension to the dwelling. Other bricks and mortar accommodation within the site may not be desirable but it could be put to this use, and cannot therefore be wholly discounted.
- 7.4.11 A gypsy pitch proposal relating to Stonehill Piggery was dismissed on appeal [APP/D3640/A/10/2129293] in August 2017. In this case, the Council did not object to that proposal on Green Belt grounds (that proposal provided net residential accommodation within 400 metres of the SPA), and this identified lack of available sites and the fact that the occupants of this accommodation would have been evicted (as a result of the dismissal of the appeal) with no other available accommodation was given substantial

weight. It is not considered that this would also apply to this case.

#### Personal circumstances of the applicant and his family

- 7.4.12 The applicant has indicated the need for his family members to reside in mobile home accommodation and for the family to remain together and that there is no available accommodation within the site which could provide the same (or similar) accommodation for six adults and two children and that there is no other place elsewhere that they could reside. The applicant has indicated that if this application were to be refused, the occupants of the mobile homes would lose their homes. A welfare statement was provided in August 2018 which indicated health and special needs for the family occupants of the mobile homes and the applicant has recently confirmed that there have been no changes to that statement.
- 7.4.13 The children residing in one of the mobile homes attend local schools, including a son who is educated at a local special needs school and it is clearly in the best interests of the children to remain at the site. There are health and special needs for occupants of the caravans, including an element of care which also reinforces the need for the whole family to remain together in this location.
- 7.4.14 As indicated in the PPTS, subject to the best interests of the child, personal circumstances are unlikely to outweigh the harm to the Green Belt. The applicant resides in the host dwelling but his parents-in-law reside in one of the mobile homes and his son (and his family) reside in the second mobile home. No arguments have been advanced as to why it is essential for the child's best interests that he lives in a mobile home rather than bricks and mortar accommodation. There are other alternatives on the site, as explained at paragraph 7.4.10, and whilst mobile home accommodation is desirable for the applicant given their way of life, in the officer's opinion it is not essential. Consequently, these personal circumstances carry less weight and consistent with the PPTS do not outweigh the harm to the Green Belt.

#### Human Rights and the Public Sector Equality Duty

- 7.4.15 The applicant has cited the Public Duty Equality Duty and advises that failure to make proper provision for fostering good relationships with different communities. The applicant considers that the refusal of this application would lead to eviction from the site and that would result in a breach of the occupants Human Rights under Article 8 which protects the right to a private family life and home. Any approach to actions which interfere with this right have to be proportionate and no more than necessary to address the issue concerned and in accordance with the law. It is accepted that a refusal of this application would result in conditions that would interfere with their human rights and that this needs to be weighed against the wider public interest; which in this case relates to the harm of the development to the Green Belt. It is considered that the refusal of this application due to the identified harm to the Green Belt would be a proportionate approach to the rights under Article 8 of the Human Rights Act 1998.
- 7.4.16 The Council is also aware of the Public Sector Equality Duty and gives due consideration to treating the applicants in an equitable way. In addition, the housing policies seek to address the housing needs for all sectors of the community.

#### Use of previously developed land

- 7.4.17 In assessing against Policy DM6, the site lies in a relatively sustainable location, close to local services, and is in an urban fringe location, and on previously developed land, albeit within the Green Belt.

Whilst the site does include some landscaping, particularly around the caravans and access, soft landscaping is retained to part of the rear garden for the host dwelling and the post and rail fencing around this garden would maintain a connection between this accommodation and the dwelling on this site.

7.4.18 The applicant has not put forward any permitted development fallback. However, it is considered that with the Article 4 direction in place for this part of the Borough for the stationing of caravans; the fact that a new planning unit has been formed; and, there is removal of permitted development rights on the host dwelling for outbuildings within its curtilage (Condition 4 of permission SU/04/0238), it would appear that such remaining rights would be severely limited.

7.4.19 It is considered in weighing up the planning balance, the benefits presented above do not outweigh the harm to the Green Belt to amount to very special circumstances to outweigh the harm and therefore fails to comply, in this respect, with the NPPF.

## **7.5 The suitability of the site for Gypsy and Traveller accommodation**

7.5.1 Policy DM6 of the CSDMP advises that gypsy and traveller sites should be accessible to public transport, cycling and pedestrian networks and facilities for the day to day needs of the occupants including education, healthcare and shopping. This policy also indicates that very special circumstances would be need to applied to such accommodation in the Green Belt. The application site is close to the edge of the settlement of West End, with bus route and local services nearby. Whilst this is acknowledged, the site falls within the Green Belt (for which very special circumstances do not exist to outweigh the harm), as acknowledged above, and therefore fails to comply with Policy DM6 of the CSDMP.

## **7.6 Impact on streetscene and heritage**

7.6.1 Policy DM9 of the CSDMP requires development to respect and enhance the local character paying particular regard to scale, materials, massing, bulk and density.

7.6.2 The proposed development provides two pitches, including 2 no mobile homes, 2 no tourer caravans and associated development which provide additional development in the rear garden of this dwelling. Views into this part of the site are more limited by the existing dwelling. In addition, the east side of Guildford Road falls within the settlement of West End. Coupled with the lower height, mass and setback of development from the highway, this accommodation has a limited impact on this streetscene.

7.6.3 The proposed development is partly visible from adjoining sites, but existing vegetation and buildings limits these views. The locally listed building, 164 Guildford Road, is set about 40 metres from the location of these pitches and therefore the proposal would have a very limited impact on its setting. Notwithstanding the visual harm to the Green Belt and rural character, it is considered overall that the development does not have an adverse visual impact on the Guildford Road streetscene and heritage.

7.6.4 As such, it is considered that the proposed development is acceptable on streetscene and heritage grounds, complying in this regard with Policies DM9 and DM17 of the CSDMP.

## **7.7 Impact on residential amenity**

7.7.1 Policy DM9 of the CSDMP requires development to pay regard to residential amenity of neighbouring property and uses.

Principle 6.4 of the RDG indicates that housing development should seek to achieve the highest density possible without adversely impacting on the amenity of neighbours and residents.

7.7.2 The proposed pitches are located about 18 metres from the flank boundary with 152 Guildford Road and, whilst closer to the boundary with 164 Guildford Road, this dwelling is set some distance from this boundary. As such, no adverse impact on the amenity of the occupiers of these dwellings is envisaged.

7.7.3 As such, no objections are raised on residential amenity grounds, with the development complying, in this respect, with Policy DM9 of CSDMP.

## **7.8 Impact on highway safety**

7.8.1 The existing access is provided onto Guildford Road. The proposed access would be provided with an adequate level of visibility. Parking is available on the site to meet minimum standards.

7.8.2 The County Highway Authority raises no objections to the proposal. As such, the proposed development is considered to be acceptable on highway safety grounds, complying with Policies CP11 and DM11 of CSDMP, and the NPPF.

## **7.9 Impact on the Thames Basin Heaths Special Protection Area**

7.9.1 The application site partly lies within 0.6 kilometres of the Thames Basin Heaths Special Protection Area (SPA). The TBHSPD identifies Suitable Alternative Natural Green Space (SANGS) within the Borough and advises that the impact of residential developments on the SPA can be mitigated by providing a contribution towards SANG delivery/maintenance if there is available capacity. The proposal is not CIL liable (i.e. it does not relate to buildings) and this provision would normally be provided through a legal agreement with a contribution of £5,700, required to mitigate the impact on the SPA. However, to date, this contribution has not been provided or secured.

7.9.3 The proposal would also be required to provide a contribution towards the SAMM (Strategic Access Management and Monitoring) project. This project provides management of visitors across the SPA and monitoring of the impact. The project is run through a steering group and aims to provide additional warden support across the SPA together with equipment and materials to support this. Alongside this is a monitoring of visitor numbers and behaviour. A separate contribution is required through an upfront payment or a planning obligation to secure this contribution, which amounts to £1,052 for this development. Subject to the securing of this contribution through a legal agreement, no objections are raised on these grounds. However, to date, this contribution has not been provided or secured.

7.9.4 As such, an objection to the proposal on these grounds is raised with the proposal failing to comply with Policy CP14 of the CSDMP, Policy NRM6 of the SEP, the National Planning Policy Framework and advice in the TBHSPD and the TBHSPADF.

## **7.10 Other matters**

7.10.1 The Council's Scientific Officer has indicated that there may have been historic land contamination on nearby sites but these are not likely to have affected this site. The risk of land contamination is therefore very low and therefore there are no requirements on his basis. The proposal is therefore considered to be acceptable on these grounds.

7.10.2 The proposal would fall within an area of low flood risk (Zone 1 as defined by the Environment Agency). As such, the proposal is considered to be acceptable on flood risk grounds.

7.10.3 As such, no objections are raised on land contamination or flood risk, with the proposal complying with Policy DM10 of the CSDMP and the NPPF.

## **8.0 CONCLUSION**

8.1 The proposed development is considered to be acceptable in relation to its impact on character/heritage; residential amenity; land contamination, drainage and flood risk and highway safety. The proposal would be inappropriate development in the Green Belt for which very special circumstances do not exist sufficient to outweigh the harm of the development to the Green Belt. In addition, without the securing of contributions to mitigate the impact on the SPA, an objection is raised on this ground. As such the application is recommended for refusal.

## **9.0 WORKING IN A POSITIVE MANNER**

In assessing this application, officers have worked with the applicant in a positive, creative and proactive manner consistent with the requirements of Paragraphs 38-41 of the NPPF. This included the following:-

a) Provided or made available pre application advice to seek to resolve problems before the application was submitted and to foster the delivery of sustainable development.

b) Provided feedback through the validation process including information on the website, to correct identified problems to ensure that the application was correct and could be registered.

## **10.0 RECOMMENDATION**

### **REFUSE:-**

REFUSE for the following reason(s):-

1. The change of use, by reason of the use and the size of the mobile homes stationed on the site and the associated visual impact, would: a) fail to preserve the openness of the Green Belt representing inappropriate and harmful development in the Green Belt; and, b) have a detrimental urbanising impact, harmful to the rural character of the area. There are no very special circumstances sufficient to outweigh this harm (and the harm identified in reason 2 below) and the proposal would be contrary to Policies CP1, DM6 and DM9 of the Surrey Heath Core Strategy and Development Management Policies 2012; the Planning Policy for Traveller Sites 2015 and the National Planning Policy Framework.
2. In the absence of a payment or a completed legal agreement under section 106 of the Town and Country Planning Act 1990, the applicant has failed to comply with Policy CP14B (vi) (European Sites) of the Surrey Heath Core Strategy and Development Management Policies Document 2012 and Policy NRM6 (Thames Basin Heath Special Protection Area) of the South East Plan 2009 (as saved) in relation to the provision of contribution towards Strategic Access Management and

Monitoring (SAMM) measures, in accordance with the requirements of the Surrey Heath Borough Council's Thames Basin Heaths Special Protection Area Avoidance Strategy Supplementary Planning Document (Adopted January 2019).