



# Appeal Decision

Inquiry held on 16, 17 & 18 January  
and 11 March 2008

Site visit made on 10 March 2008

by **C J Anstey** BA(Hons) DipTP DipLA  
MRTPI

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

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Decision date:  
2 April 2008

**Appeal Ref: APP/D3640/A/06/2029048**

**Field 8594, Chertsey Road, Chobham, Surrey, GU24 8JB.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Rosemary Rooney against Surrey Heath Borough Council.
- The application, Ref 2006/0655, is dated 29 June 2006.
- The development proposed is the change of use of land to a gypsy caravan site for three caravans and ancillary buildings for a temporary period of 5 years.

## Decision

1. I dismiss the appeal.

## Preliminary Matters

2. The proposed site would accommodate Rosemary Rooney (the appellant), her partner Freddie Loveridge and their four children and the elderly parents of the appellant, Eileen and Martin Rooney. The Rooney family are Irish travellers whilst Freddie Loveridge is an English Romani. I am satisfied on the basis of the information before me that the appellant and her family accord with the definition of "gypsies and travellers" as set out in *ODPM Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites*. The Council accepts the gypsy status of the family. At the Inquiry it was confirmed for the appellant that she was prepared to accept a personal permission limiting occupation of the site to herself and her family.
3. It is proposed to accommodate four caravans on the site on two pitches. It is likely that there would be two statics and two tourers. Apart from the existing shed on the site, which would be used to house a toilet and washing facilities, there would be no other ancillary buildings. Mr Loveridge would park two vehicles on the site, a people carrier and a van that he uses in connection with his work as a landscape gardener.
4. In the light of the above, and the description on the application forms, I have determined the appeal on the basis that the development involves the change of use of land to a gypsy caravan site for four caravans and an ancillary building for a temporary period of 5 years personal to the appellant and her resident dependants, her partner and her parents

### **Council's Refusal Reasons**

5. The appeal is against the failure of the Council to determine the application within the prescribed period. The Council has confirmed that if the appeal application had been determined it would have been refused for the following reasons:
  - (i) The Local Planning Authority is unable to satisfy itself that the proposal in conjunction with other projects would not have an adverse effect on the integrity of the Special Protection Area and the relevant Site of Special Scientific Interest.
  - (ii) Inappropriate development in the Green Belt, harmful to the open character of the Green Belt in visual amenity terms and the associated level of activity.
  - (iii) Distance from local facilities with no public transport or access by public footpath.
  - (iv) Would lead to an increase in vehicular movements from the existing inadequate vehicle access to Chertsey Road which would interfere with the free flow of traffic and cause danger and inconvenience to other highway users, prejudicial to highway safety.

### **Main Issues**

6. The appeal site, which extends to about 0.2 hectare, is located in the countryside between Chobham and Ottershaw and in the Metropolitan Green Belt. It is located on the south side of the A319, Chertsey Road and is about 1.25km from the nearest part of the Thames Basin Heaths Special Protection Area (SPA).
7. In the light of this and the other information before me I consider that the main issues in this case are:
  - (i) whether the change of use constitutes inappropriate development in the Green Belt and if so, whether there would be other Green Belt harm in addition to the harm to the Green Belt caused by reason of inappropriateness;
  - (ii) the effect on highway safety
  - (iii) whether the site is reasonably located with regard to services and facilities.
  - (iv) whether there are other material considerations that weigh in favour of the development;
  - (v) whether the other material considerations weighing in favour of the development clearly outweigh the harm to the Green Belt, and any other harm, thereby justifying the proposal on the basis of very special circumstances.
  - (vi) whether the development (either on its own or in combination with other development) is likely to have a significant effect on the Thames Basin Heaths Special Protection Area (SPA).

## Reasons

### ***Relevant History***

8. Freddie Loveridge remembers staying on the appeal site with his parents in the 1980's.
9. In 1987 the site was occupied by a group of 8-10 gypsy families under licence from the County Council prior to the creation of the site at Kalima, 2km to the west on the edge of Chobham in 1989. For some time after this the appeal site appears to have been used for unauthorised storage of rubble and waste and was the subject of persistent fly-tipping.
10. The appellant purchased the site and moved on to it in January 2002. In June 2002 a planning application (ref 2002/0625) was made for the change of use of the land to a gypsy caravan site for 3 caravans plus a tourer. This application was refused in January 2003. An appeal relating to this application was dismissed in February 2004.
11. In November 2004 the Council's application for a permanent injunction requiring the cessation of the unauthorised use of the appeal site was granted. The Judge suspended the injunction for a period of 3 months (to vacate) and 5 months (to demolish buildings)
12. In April 2005 the Council returned to court to seek an order for committal to prison for failing to comply with the injunction. The Court agreed but suspended the committal for a period of 3 months to give the occupiers the opportunity to vacate the land. In June 2005 the family left the land and have not returned.
13. In October 2006 the appellant's legal representatives applied to vary the injunction to enable the appellant and her family to live on the land whilst the planning application was being considered. The Judge was unable to consider this without more information on the possible impact on the SPA and adjourned the hearing.
14. Although I have had regard to the 2004 appeal decision there have been a number of notable changes of circumstances since then, including the release of *Circular 01/2006*, the quantification of the need for additional gypsy sites in the area and the designation of the SPA. Furthermore there have been important changes with regard to the appellant and her family as regards gypsy status and educational and health needs. Consequently I have determined the current appeal on the basis of the circumstances prevailing today.

### ***Green Belt***

15. Within the Green Belt there are very strict controls over new development in order to prevent urban sprawl and keep land permanently open. *Planning Policy Guidance Note 2: Green Belts [PPG2]* makes it clear that there is a presumption against inappropriate development in the Green Belt and such development should not be approved except in very special circumstances. *Saved Policy RE2 (Development within the Green Belt)* of the *Surrey Heath Local Plan (2000)* endorses the presumption against inappropriate development in the Green Belt.

16. *Paragraph 3.12 of PPG2* indicates that the making of any material change in the use of land is inappropriate development unless openness is maintained and there is no conflict with the purposes of including land in the Green Belt.
17. The stationing of caravans on the appeal site, together with the associated likely domestic activity and vehicular parking, would reduce the openness of the appeal site to a significant extent. Consequently openness, the fundamental characteristic of Green Belt land, would not be maintained. As the site would encroach into the countryside between Chobham and Ottershaw and constitute unrestricted sprawl the appeal scheme would also be contrary to two of the purposes of including land within the Green Belt. In view of these findings the proposal constitutes inappropriate development in the Green Belt. It is accepted for the appellant that the development constitutes inappropriate development. *PPG2* makes it clear substantial weight should be attached to the harm caused by reason of inappropriateness.
18. In the light of the above it is apparent that there would be other Green Belt harm in addition to the harm by reason of inappropriateness. There would be a significant reduction in openness across the appeal site and conflict with two of the purposes of including land within the Green Belt. Consequently this constitutes additional harm to the Green Belt and weighs against the scheme.
19. I also consider that the proposal would be detrimental to the visual amenities of the Green Belt. For the most part the land around the appeal site consists of fields and wooded areas whilst any development in the area is limited and scattered. As a result this area of countryside has an attractive rural character. Although there is a wooded area just to the west and front boundary fencing and gates the site is clearly visible from Chertsey Road, particularly when approaching from the east. I believe that the proposed caravans would be visible from Chertsey Road throughout the year. From the road the caravans would appear incongruous and seriously intrude into this substantially undeveloped, well-wooded area of the Green Belt.
20. I acknowledge that additional planting of appropriate indigenous species would help to lessen the site's impact, but this would take time to mature and would be unlikely to screen all views throughout the year. I also believe that a condition requiring a comprehensive and substantial landscaping scheme attached to a time-limited temporary permission of 5 years may not meet the test of reasonableness as set out in *Circular 11/95: The Use of Conditions in Planning Permissions*. Screening of the site with additional fencing, even if stained, or bunding, would not be acceptable as such elements would appear out of place and not in keeping with the surroundings. The existing fences in the area serve to reinforce my view as to the unacceptability of such means of enclosure in this rural setting. Consequently the proposed stationing of caravans on the site would cause significant harm to the visual amenities of the Green Belt. This adds further to the Green Belt harm and needs to be accorded weight. As the scheme would be detrimental to the rural character of this area of countryside and could not be mitigated to an acceptable extent by landscaping or screening it is in conflict with *Criterion (b) of saved Policy 25 (Gypsy Sites) of the Surrey Heath Local Plan 2004*.
21. In summary the proposal would cause significant harm to the Green Belt, by reason of inappropriateness, by reducing openness, by conflicting with the

purposes of including land within the Green Belt and by harming its visual amenities. As such it would be in conflict with national and local policies to protect the Green Belt. The significant harm to the Green Belt that has been identified, and would exist for a period of 5 years, must be accorded considerable weight in the determination of this appeal.

### **Highway Safety**

22. The A319 is a County Primary Road linking Chobham in the west to Ottershaw in the east with a 60mph speed limit and a carriageway wide of 6.4m. Access to the appeal site is from a simple priority junction onto the A319. The site has a gateway recessed 10m back from the road. There are no streetlights and no pavements. The A319 carries in the order of 6700 vehicles over 24 hours with peak hour flows of between 550 and 635 vehicles per hour (2003 assessment). The 85 percentile traffic speeds recorded in 2003 were 52/53 mph.
23. It is agreed by the highway authority and the appellant's highway consultant that the proposed use would give rise to an increase in the amount of traffic movements through the access compared to an agricultural related use. The increase would be from about 2-4 movements per day to about 8-10. Although I am aware that there is only likely to be one person on the site who is likely to drive I consider 8-10 movements per day to be a reasonable estimate taking account of the distance to local centres, the likelihood of school runs and trips to shops, services and facilities and visits by delivery vehicles, including postal deliveries. In my view, therefore, there is need to assess the highway safety implications of this sizeable increase in the amount of vehicles that would pass through the access
24. It is agreed between the highway authority and the appellant's highway consultant that the appropriate visibility distance is 160m both for forward visibility and vehicular visibility based on a design speed of 85kph (52mph). Furthermore it is agreed that visibility to the right of the access (westbound) exceeds this distance and is therefore acceptable in highway safety terms. The dispute between the parties revolves around the visibility that can be achieved to the left of the access (eastbound) and its implications for traffic safety.
25. With regard to visibility from the site access towards the west I consider that careful account needs to be taken of the vertical and horizontal alignment of Chertsey Road. For this reason it would not be appropriate to rely on the 179m distance that is available from the site access to the nearside kerb of the road. I consider that the meaningful distance is that which is available to the centre of the practical eastbound running lane. This is where eastbound vehicles, including motor-cycles, are likely to be positioned as they travel up the slight incline and around the bend. It is agreed by the parties that measurements to the centre of the practical eastbound running lane from the access provides visibility of 2m by 142m. With regard to forward visibility towards the access from the west for eastbound drivers it is agreed that this is between 105m and 130m.
26. From these measurements it is evident that the forward visibility and vehicular visibility that would be available to the west of the access falls significantly short of the required 160m. In my view the visibility available to the west for emerging drivers, coupled with the forward visibility for eastbound drivers,

means that the site access is clearly sub-standard and potentially hazardous. As a result I consider that there is a real risk of accidents occurring between vehicles using the access and those travelling along Chertsey Road. Of particular concern would be those occasions when vehicles are slowing down or stationary in the eastbound carriageway prior to entering the appeal site and waiting for westbound traffic to pass. Given the likely speed of following eastbound traffic and the limited forward visibility I consider that the chance of a serious rear-end collision taking place is high. The slow moving nature of a vehicle towing a caravan on or off the site adds to my disquiet about the increased use of this access. Although widening the access would allow two vehicles to pass this would not address the highway safety problems identified.

27. I am aware that recent accidents on Chertsey Road are not generally related to junctions and the appellant and her family were not involved in any accidents whilst living on the site. However this does not alter my view that the proposal would be likely to cause dangerous traffic conditions throughout the 5 year temporary period applied for. I have taken account of the stopping distances as set out in *The Highway Code*. However such distances are not meant to be used for the purposes of highway design and assessing visibility requirements. Rather for this I have been guided by the technical advice referred to me, including *TD 41/95* and *TD 9/93*. I have taken into account the view that standards need to be applied flexibly and cannot always be achieved. However given the serious problems identified I do not believe that a relaxation of visibility standards below 160m would be appropriate in this case.
28. Although not a point raised by the highway authority I am also concerned that any residents or visitors entering or leaving the site on foot would be in danger from fast-moving traffic given the absence of footways in the immediate vicinity of the site.
29. In summary the development would be likely to be cause serious highway safety problems. As such the proposed change of use is in conflict with the objectives of *Criterion (d) of saved Policy H25 (Gypsy Sites)* and *saved Policy M8 (Highway Design Standards)* of the *Surrey Heath Local Plan*. The serious highway safety problems that would be likely to occur must be accorded considerable weight.

***Location in relation to services & facilities***

30. The appeal site is located 2.5 km west of the school and doctors surgery in Ottershaw which are currently used by the appellant and her family and 3km to the east of Chobham where a range of services and facilities are available (ie shops, schools, doctors etc.)
31. In my view the appeal site is not conveniently situated for the facilities and services that are likely to be needed on an everyday basis. Both the main settlements in the area are over 2km away. It is unlikely that those living on the site would choose to walk or cycle via the main road to these settlements given the nature of the A319, particularly its alignment, the unsatisfactory provision for pedestrians, the amount and speed of traffic, and the distances involved. None of the public rights of way in the area give direct access to these settlements. There is also an absence of bus services. Consequently it is

my belief that the occupiers of the site would be reliant on their own transport to access necessary services and facilities.

32. I am aware that *Circular 01/2006* recognises that rural settings may be appropriate for gypsy sites and that issues of sustainability should not just be considered in terms of transport mode and distance from services. However in my view residential use of the site, and the comings and goings likely to be involved, would generate a significant amount of vehicular usage. I have also had regard to the possibility that the appeal proposal may reduce long distance travelling and the environmental damage caused by roadside camping. However I consider that there remains a need, given the strong emphasis in both national and local planning policy on the location of development and its influence on vehicular usage, to examine carefully the location of any proposed gypsy site in relation to facilities, including shops and health facilities. Certainly *Circular 01/2006* makes it clear that in identifying and traveller sites in development plan documents access to local facilities is an integral part of the site selection process.
33. I conclude, therefore, on this issue that the site is not reasonably related to services and facilities and would be likely to encourage additional private vehicular usage. As a result the proposal would not accord with the sustainability objectives of *Criterion (g) of saved Policy 25 (Gypsy Sites) of the Surrey Heath Local Plan 2004 and saved Policy LO1 (The Location of Development) of the Surrey Structure Plan 2004*. This finding must be accorded some weight in the determination of the appeal.

***Considerations weighing in favour of the development***

General Need

34. It is accepted for the Council that there is a need for further gypsy site provision nationally, regionally and within Surrey. The accommodation needs of gypsies in West Surrey have recently been assessed as part of the *West Surrey Gypsies and Traveller Accommodation Assessment 2006* (GTAA). This joint study prepared for Surrey Heath, Guildford and Waverley identifies a need for 96 extra pitches in the study area by 2011 of which a need for 19 additional pitches is identified in Surrey Heath. The study also identifies 12 households on unauthorised sites in Surrey Heath out of a total of 21 for the study area as a whole. As no account has been taken of those gypsy families who have left the study area because of enforcement action and lack of local site provision or those living in bricks and mortar housing the additional requirement in West Surrey may well indeed be higher. The GTAA figures have now been submitted to the South East England Regional Assembly. In due course final figures for additional gypsy site provision will then be distributed across the region.
35. In the light of the above information it is likely that additional sites for gypsies will have to be found within West Surrey, including within Surrey Heath. In 2006 the Council commenced preparation of its Development Sites Allocation Plan, which would have included consideration of gypsy site provision. This plan is not now being brought forward as part of the revised Local Development Scheme 2007-2010 (LDS) dated December 2007 as a result of the impact of the SPA at a local and regional level. Consequently there is uncertainty about when additional sites for gypsies will be identified within Surrey Heath.

36. The final figures for additional gypsy pitch requirements within West Surrey and Surrey Heath have yet to be established. However on the basis of the information available in the local GTAA it is fair to say that there is a clearly identified shortfall of sites for gypsies in both West Surrey and Surrey Heath. As there is no plan for identifying additional gypsy sites in the revised LDS it is likely to be some time before new additional pitches are brought forward. The shortfall of sites for gypsies nationally, regionally and in both West Surrey and Surrey Heath, must be accorded significant weight in the determination of the appeal.

Alternative Accommodation

37. The Council acknowledges that there are no lawful sites currently available for the appellant and her family in Surrey Heath. Furthermore it is accepted by the Council that there is little prospect of a lawful site being made available in the short term within Surrey Heath.

38. By the time of the resumed inquiry on 11 March 2008 the appellant and her family were living in two touring caravans stationed on a car park, next to a park, in Chobham. During the adjournment they had left the Willow Farm site which is located to the east of the appeal site, nearer to Ottershaw, and within Runnymede Borough. This unauthorised site is occupied by relations of the Rooney family. The appellant and her family have been allowed to stay there at various times in recent years. However there is an injunction on this site that, amongst other things, limits the occupation of the site to certain named individuals. The prospective occupiers of the appeal site are not amongst these named persons. In view of this I do not consider that the Willow Farm site is a realistic alternative site for the appellant and her family.

39. There are two public gypsy sites in Surrey Heath at Swift Lane, Bagshot and Kalima, Chertsey Road, Chobham. These are managed by the Borough Council on behalf of the County Council. Waiting lists exist for both these sites and turnover levels are very low. Recent evidence indicates that there is doubling up on a substantial number of plots at the Kalima site. Both sites are occupied by English gypsies, including members of the Loveridge family. Even though the appellant is the partner of an English gypsy, who has relations on both sites, the Rooney family would not be welcome on these sites as they are Irish travellers. Consequently these two sites are neither available nor suitable for the appellant and her family.

40. The appellant has sought to find an alternative site but without success. I believe that the documented search that has been undertaken by Mr Loveridge, coupled with the searches that have been undertaken by others in the area, demonstrate that it is likely to be extremely difficult to find alternative land to occupy. The family's accommodation options are also likely to be severely constrained by a lack of financial resources. In view of the appeal family's cultural tradition and lifestyle living in a house would not be an appropriate solution for them.

41. In summary there are no readily available alternative sites in the area for the appellant and her family. As a result there is a strong possibility that they would have to continue with unauthorised camping if the appeal were to be dismissed. The lack of alternative accommodation in the area and the likelihood

that the appellant and her family would have to resort to stopping by the roadside must be given significant weight.

Personal Circumstances

42. There are a number of personal considerations that weigh in favour of the appeal scheme.

*Education*

43. The two older children on the site, Eileen (7) and Freddie (10), attend Christchurch Junior School in Ottershaw. Freddie has a place in a local secondary school for September 2008. Both Eileen and Freddie have significant educational needs. As a result they each have Statements of Special Educational Needs that require a high level of support for them in school.
44. The dismissal of this appeal is likely to mean that the appellant and her family would have to continue to resort to unauthorised camping. I believe that it would be extremely difficult for Eileen and Freddie to continue to attend school on a regular basis if the family are constantly travelling and have no permanent base. The specific programmes designed to address their special educational needs would be difficult to implement and may be lost or interrupted. In my view a settled base for this family would make it much more likely that these two children would continue with schooling and that their special educational needs would be met than in comparison with an uncertain future existence. Consequently the dismissal of the appeals is likely to cause serious disruption to the education of Eileen and Freddie.

*Health*

45. A number of members of the family suffer from particular health problems. The family's GP at Ottershaw confirms that Eileen Rooney (70) had a difficult year in 2007. In addition to Type 2 diabetes and high blood pressure Eileen suffers from moderate chronic obstructive pulmonary disease. Her chest problems, which have included lobar pneumonia, have meant that she has had to be admitted to hospital for treatment on two recent occasions. Martin Rooney ((74), Eileen's husband, suffers from high blood pressure, controlled by medication. He is due to undergo knee replacement surgery at Ashford & St Peter's Hospital on 17 March 2008, after which he will require an extensive period of recuperation. As regards the children Eileen (7) was born with a hole in her heart and has problems with her eyes. She is currently awaiting an operation to correct a squint. Martin (1) has recently been hospitalised with pneumonia.
46. Unauthorised camping would be unlikely to benefit a number of the conditions suffered by family members and may well make them worse. Certainly the regular care that comes with being registered with a local GP would be lost not only for these particular individuals but for all those residing on the site. I am also aware that without a permanent address it is often difficult to register with a GP or arrange and attend hospital appointments.

*Family Group*

47. An important component of the gypsy tradition is mutual support and help amongst family members. If the family were to be allowed to occupy the appeal site the appellant and her partner would be able to care for Mr & Mrs Rooney Senior in a stable and safe environment. In turn the grandparents would be able to assist in the upbringing of the children. Mutual help and support could also be given to, and received from, other family members who reside in the local area, including Mr Loveridge's parents in Ottershaw, and various relatives on the Kalima site.
48. In summary there are various educational, health and cultural factors that weigh in favour of allowing the family to occupy the appeal site. These matters need to be accorded significant weight.

***Whether the other considerations weighing in favour of the development clearly outweigh the harm to the Green Belt, and any other harm, thereby justifying the proposal on the basis of very special circumstances.***

49. In view of the strict regulatory regime concerning the SPA I consider that it is appropriate to carry out the balancing exercise on the main planning considerations addressed above before dealing with the SPA issue.
50. I have found that the proposal would cause significant harm to the Green Belt, by reason of inappropriateness, by reducing openness, by conflicting with the purposes of including land within the Green Belt and by harming its visual amenities. I have also concluded that the proposal would be likely to cause serious highway safety problems. Furthermore the site is not reasonably related to services and facilities and would be likely to encourage additional private vehicular usage. When taken together these arguments weigh heavily against the development.
51. I have also identified a number of other material considerations that favour the appeal developments and to which I believe significant weight should be attached. There is a shortfall of sites for gypsies nationally, regionally and in both West Surrey and Surrey Heath. There are no readily available alternative sites in the area for the appellant and her family. Furthermore there are general and specific educational, health and cultural reasons why the appellant and her family should be allowed to return to the appeal site. Dismissal of the appeal is likely to mean that the appellant and her family would have to continue with unauthorised camping with serious implications for their home, family life, health and children's education.
52. Consequently there are arguments both for and against the development. In my judgement, however, the other material considerations weighing in favour of the development do not clearly outweigh the considerable harm caused by the developments in terms of the impact on the Green Belt, on highway safety and on vehicular usage.
53. *Circular 01/2006* indicates that, where there is unmet need but no available alternative gypsy and traveller site provision in an area but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need, decision makers should give consideration to granting temporary permission. *Paragraph 46* makes it clear that in certain circumstances, for instance where a site allocations DPD is

being prepared, local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified.

54. As already stated there is uncertainty about when additional gypsy sites will be identified in the area. However it seems probable to me given the exhortations in *Circular 01/2006* that over the next 5 years substantial progress will have to be made towards identifying additional gypsy sites in the area. Consequently planning circumstances are likely to change within West Surrey and Surrey Heath within the next 5 years as gypsy accommodation needs are finalised and additional gypsy sites are identified. However *Circular 11/95* indicates in *paragraphs 109* and *110* that uses should not be allowed for temporary periods if the damage that would result cannot be met by planning conditions. In my view conditions could not satisfactorily address the harm that the appeal proposal would cause to the Green Belt, to highway safety and by increasing vehicular usage. Consequently a temporary planning permission is not an acceptable way forward.

#### **Thames Basin Heaths SPA**

55. The appeal site is located within 5km of the Thames Basin Heaths Special Protection Area (SPA), a Special Area of Conservation (SAC), a Site of Special Scientific Interest (SSSI) and a National Nature Reserve (NNR). The SPA holds important populations of Dartford warbler, woodlark and nightjar.
56. In view of the proximity of the SPA determination of the appeal needs to be undertaken with regard to the requirements of the *Conservation (Natural Habitats, &c.) Regulations 1994*. In particular *Regulation 48* requires a determination to be made as to whether the development is likely, either alone or in combination with other plans or projects, to have a significant effect on the SPA. A flow chart for the consideration of development proposals affecting internationally designated nature conservation sites is set out in *Fig 1* of *Circular 06/2005*. *Paragraph 13* advises that the decision on whether an appropriate assessment is necessary (the next stage in the process) should be made on a precautionary basis and that an appropriate assessment is required where there is a probability or a risk that the plan or project will have significant effects on a site.
57. Natural England advises that any increase in residential units within 5km of any part of the SPA is likely to impact on, either on its own or in combination with other developments, the integrity of the SPA. The principal significant effect identified would be increased recreational pressure on the heaths. This would in turn lead to disturbance of the protected species by walkers, and their dogs, and damage to or loss of habitats. The only appropriate form of mitigation acceptable to Natural England would be the provision of suitable alternative open space. No such mitigation was proposed as part of the appeal scheme.
58. In my view it is reasonable to find that if the appeal is allowed there would be an increase, albeit very slight, in the resident population living within 5km of the SPA. In essence a new caravan site would be created that would be a permanent home to 4 adults and 4 children for the next 5 years. Although this family may have lived in the area for significant parts of the last 6 years and since before the SPA was designated, they have not had a settled base and

have travelled, particularly during the summer months, in areas well beyond the 5km zone around the SPA. Although this pattern of travelling is largely due to the difficulties of finding a suitable site it means that they have not constantly resided within the 5km zone in recent years.

59. Although adding to the resident population within the 5km zone I do not believe that the temporary occupation of the appeal site by this small gypsy family is likely to have a significant effect on the SPA on its own. The disturbance of protected species and the loss of habitats within the SPA by walking and trampling is unlikely to be materially worsened by the residential occupation of the appeal site.
60. In reaching this view I am mindful that the appellant and her partner have stated that they do not go for walks and that their main recreational pursuit, when time allows, is visiting other family members. I believe there is little reason to suspect that these habits will change over the duration of a 5 year temporary permission. I am also aware the appeal site is somewhat divorced from the SPA by both footpath and road and that 6 of the 8 prospective occupiers are either elderly, with serious health problems that affect their mobility, or of a young age. The possibility of keeping a guard-dog in the future cannot be ruled, particularly given the site's relative isolation. I consider, however, that it is likely that any such guard-dog would be chained-up on site rather than taken for walks on the heathland.
61. In view of these findings I share Natural England's view that the harmful effects of the development alone would not be significant. I now turn to whether the appeal proposal in combination with other plans and projects would have a significant effect on the SPA. I do not dispute the fact that in general terms a growing population in the area around the SPA would by increasing recreational pressures have a detrimental and significant effect on the SPA. Consequently the measures and policy initiatives that have been introduced to avoid this are to be welcomed and supported. However this does not obviate the need to examine each development proposal in detail and identify the additional harm that would result when it is combined with other plans and projects. I do not consider that this has been done in this case. If there is concern about precedent suffice to say that each case needs to be carefully examined and any harm identified could then be taken into account in assessing both the individual and cumulative effects.
62. In summary I consider that allowing this particular development is unlikely to have a significant effect, either alone or in combination with other developments, upon the SPA. It is therefore not necessary to undertake an appropriate assessment under the terms of *Regulation 48* of the *1994 Regulations*. I conclude, therefore, that the development would not cause significant harm to the nature conservation value of the Thames Basin Heaths Special Protection Area. As such the scheme is not in conflict with the objectives of saved *Policy SE7 (Nature Conservation)* of the *Surrey Structure Plan 2004*.

### ***Human Rights***

63. As already noted dismissal of the appeal may mean that the appellant and her family may well have to continue with unauthorised camping. This would represent a substantial interference with their right to a home and family life. However the harm caused by the development, in terms of its effect upon the economic well-being of the country, which includes the preservation of the environment, is considerable. Taking into account all material considerations I am satisfied that these legitimate aims can only be adequately safeguarded by the dismissal of the appeal. The protection of the public interest cannot be achieved by means that are less interfering of the appellant's and her family's rights. They are proportionate and necessary in the circumstances and hence would not result in a violation of their rights under *Article 8* of the *European Convention on Human Rights*.

### ***Equality of Opportunity***

64. I am aware of my duty under section 71(1) of the *Race Relations Act 1976* to take into account the need to promote equality of opportunity between this gypsy family and different racial groups. Similarly section 49A of the *Disability Discrimination Act 1995* requires me to promote equality of opportunity between any disabled persons and others. In this regard due account should be taken of the need for this gypsy family to have access to housing that would enable them to receive education and health care and secure the satisfaction of other social needs. Although I have accorded equality of opportunity appropriate weight it does not, even when added to the other considerations in favour of the proposal, outweigh the considerable harm that would result if the development was allowed to proceed.

### **Overall Conclusion**

65. My overall conclusion, therefore, is that the other material considerations weighing in favour of the development do not clearly outweigh the considerable harm caused by the developments in terms of the impact on the Green Belt, on highway safety and on vehicular usage and consequently very special circumstances do not exist.

66. I have taken account of the fact that the appeal application seeks a 5 year temporary permission. However I have concluded that this would be unacceptable as it would not overcome the overriding planning objections identified. Consequently the appeal development is not justified on the basis of very special circumstances. This finding constitutes compelling grounds for dismissing the appeal. I have read and taken into account the various appeal decisions and judgements referred to me. These decisions highlight the importance of balancing any conflict with planning policy against other material considerations. This has been the basis to my approach in this case. None of the other matters raised outweigh the considerations that have led to my decision.

*Christopher Anstey*

Inspector



- Spencer [2005] EHRLR Iss.4  
12. Resolution on the Framework Convention, 2002  
13. Report by Alvaro Gil-Robles, Commissioner for Human Rights 2004  
14. *Hatchertang* appeal decision letter.
- Document 3 Summary of the 2005 Leisure Visits Survey handed in by Mr Willers.
- Document 4 Consent Order relating to Willow farm handed in by Mr Willers.
- Document 5 Letter dated 17 December 2007 from Head Teacher of Christ Church C of E Junior School, Ottershaw handed in by Mr Willers.
- Document 6 Letter dated 17 July 2007 from Consultant Ophthalmologist, Ashford and St Peter's Hospitals, Chertsey, handed in by Mr Willers.
- Document 7 Freddie Loveridge's Statement of Special Educational Needs handed in by Mr Willers.
- Document 8 Statement of Common Ground.
- Document 9 Statement of Mr K R Moss.
- Document 10 Statement of Mrs L Sealy (with photographs).
- Document 11 Statement of Mrs D Beach.
- Document 12 Various letters from local residents handed in via the Council.
- Document 13 Information required by PINS handed in by the Council.
- Document 14 Details of 5 Year Housing Land Supply handed in by the Council.
- Document 15 Mrs Lord's Summary of Proof of Evidence.
- Document 16 Council's letters of notification & list of persons notified.
- Document 17 Extract from TD 41/95 handed in by Mr Willers.
- Document 18 Extract from TD 9/93 handed in by Mr Beard.
- Document 19 Statement of Agreed Highway Matters dated 17/1/08.
- Document 20 Letter dated 3 January 2008 from, Ashford and St Peter's Hospitals' Outpatients Dept, Chertsey, handed in by Mr Willers.
- Document 21 Receipts for advertisements for land handed in by Mr Willers.
- Document 22 E-mail dated 20 October 2006 from Mrs Lord to Carole Mortimer/Nick Radford (Natural England) handed in by Mr Beard.
- Document 23 E-mail dated 10 January 2008 from Mr E Windebank to Tony Wakeford handed in by Mr Beard.
- Document 24 Quantity of Housing blocked by SPA (1/4/07) handed in by Mr Beard.
- Document 25 Letter dated 12 October 2007 from the Environmental Health Division of the Council relating to 'doubling up' at the Kalima site handed in by Mr Beard.
- Document 26 Refusal Notice dated 6/1/05 - Land at 122, 124 & 126 Guildford Road, Lightwater & Appeal decision dated 10/9/07 handed in by Mr Willers.
- Document 27 Council advertisement dated 8/9/06 relating to DPD Site Allocations Plan handed in by Mr Willers.
- Document 28 Appeal Decision dated 18/12/07 – 331 Guildford Road, Bisley handed in by Mr Willers.
- Document 29 Appeal Decision dated 28/9/07 – Riverside Stables, Mill Lane, Sandhurst handed in by Mr Willers.
- Document 30 Appeal Decision dated 29 February 2008 – Field 2100, Bonds Drive, Pennypot Lane, Chobham handed in by Mr Beard.
- Document 31 Agreed list of conditions.

- Document 32 Revised statement of Mrs Diane Beach dated 11 March 2008.  
Document 33 Chobham Parish Council's statements (read out by Mr K Carter).  
Document 34 Statement of The Chobham Society (read out by Mr J Porter).  
Document 35 Bundle of papers relating to the health of Eileen Loveridge and the education of Freddie Loveridge.  
Document 36 Extract from Chobham News & Mail, dated 14/2/08, handed in by Mr Willers.  
Document 37 High Court Judgement – *Baker & Ors v Secretary of State for Communities and Local Government* dated 28/2/08 handed in by Mr Willers.  
Document 38 Notification of resumed hearing and list of persons notified.

## **PLANS**

- Plan A Location plan.  
Plan B Site layout plan.  
Plan C Plans of footpaths in the area handed in by Mr Beard.

## **PHOTOGRAPHS**

- Photo 1 & 2 Photographs of the site dated 7/4/03 handed in by Mr Beard.