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Our Ref: APP/B1550/A/11/2151221
Your Ref:

6 December 2011

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MESSRS SMITH AND EASTWOOD
CHERRY HILL FARM, CHELMSFORD ROAD, RAWRETH, ESSEX, SS11 8SJ
APPLICATION: 10/00582/COU**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, David Smith BA(Hons) DMS MRTPI, who held a hearing on 16 August 2011 into your clients' appeal against a decision of Rochford District Council (the Council) to refuse planning permission for use of land as 12 residential pitches for gypsies and travellers at Cherry Hill Farm, Chelmsford Road, Rawreth, Essex, SS11 8SJ in accordance with application reference 10/00582/COU, dated 25 August 2010.
2. On 5 May 2011 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 on the grounds that it involves proposals for a significant development in the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed and planning permission be refused. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation, dismisses the appeal and refuses planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. The Secretary of State notes that it was agreed that the description of the proposed development set out in the heading on page 1 of the IR, that is 'use of land as 12 residential pitches for gypsies and travellers', fairly and accurately describes the proposal (IR3).

Policy considerations

5. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
6. In this case, the development plan comprises the East of England Plan (EEP), saved policies of the Essex and Southend-on-Sea Structure Plan (SP - 2001), and saved policies of the Rochford District Local Plan (LP - 2006). The Secretary of State considers that EEP Policy H3 is relevant to the appeal. Like the Inspector, the Secretary of State considers that no SP policies are relevant to this appeal and that LP Policies CS1, CS2 and CS3 are of a general nature and closely reflect Government policy (IR12).
7. The Secretary of State considers that the revocation of Regional Strategies has come a step closer following the enactment of the Localism Act on 15 November 2011. However, until such time as the East of England Plan is revoked by Order, he has attributed limited weight to the proposed revocation in determining this appeal.
8. Other material considerations which the Secretary of State has taken into account include the national policy documents listed by the Inspector at IR14, Circular 11/95: *Use of Conditions in Planning Permission*, and the Essex Gypsy and Traveller Accommodation Assessment of 2009. The Secretary of State notes that the Core Strategy is at examination and that work has commenced on an Allocations Development Plan Document, but this is at a very early stage (IR13).
9. In taking account of Circular 1/2006: *Planning for Gypsy and Traveller Caravan Sites* as a material consideration in his determination of this case, the Secretary of State has also taken account of his announcement on 29 August 2010 of his intention to revoke it as he considers it to be flawed and he has given less weight to the Circular.
10. In having regard to the draft Planning Policy Statement on Planning for Traveller Sites, along with the draft of the National Planning Policy Framework, as material considerations, he has given them little weight as they have been published for consultation and are therefore subject to change.

Main issues

Green Belt

11. In common with the parties and the Inspector (IR49), the Secretary of State considers that the proposal would constitute inappropriate development in the Green Belt. Like the Inspector he attaches substantial weight to the harm caused to the Green Belt by reason of inappropriateness (IR50), and agrees that there would be conflict with one of the purposes of including land in Green Belts set out in paragraph 1.5 of PPG2 (IR51).

Openness and character and appearance

12. The Secretary of State agrees with the Inspector's reasoning and conclusions on openness, and character and appearance at IR52-54. Like the Inspector he considers that the caravans would significantly reduce openness, and that it can reasonably be assumed that the use would be accompanied by other ancillary development such as fencing, hard standings, outbuildings and vehicles that would lead to further loss (IR52). In common with the Inspector, the Secretary of State also considers that the potential for further 'greening' of the site does not overcome the visual harm that would be caused to the character and appearance of the area including the visual amenities of the Green Belt (IR54).

Highway safety

13. The Secretary of State agrees with the Inspector's reasoning and conclusions on highway safety set out at IR55-59. He notes that there is a persistent concern, reflected in the 2003 and 2006 appeal decisions, that vehicles slowing in order to turn left into the appeal site are potentially hazardous given the speed and volume of the traffic along the A1245 and the unexpectedness of such manoeuvres (IR55). Like the Inspector, the Secretary of State considers that the lack of objection from the Highway Authority is a material consideration, but he has also had regard to the Inspector's comments about its observations at IR57 and other representations on the issue (IR58). Overall, he shares the Inspector's view that the proposed use of the access would be far from ideal, and considers that the Inspector's conclusion that the proposal would prejudice highway safety along the A1245 is a reasonable one (IR59).

Accessibility

14. For the reasons given by the Inspector at IR60-62 the Secretary of State shares his conclusions (IR63) that whilst the proposal would not promote a reduction in car dependence, this is balanced by the wider benefits that would accompany it, and that the overall implications of the proposal in terms of sustainability would be neutral. In reaching this conclusion, the Secretary of State observes that the 2006 appeal decision referred to by the Inspector at IR61 was made following the publication of, and having regard to, Circular 01/2006.

Other considerations

General need for and provision of gypsy sites

15. The Secretary of State notes that there is no dispute that the appellants and other occupants are gypsies as defined in paragraph 15 of Circular 01/2006 (IR18). The Secretary of State has carefully considered the Inspector's comments on the general need for and provision of gypsy sites in the District at IR64-66. He agrees with the Inspector that the unmet need in the District is significant and that progress in addressing this matter has been faltering (IR67). In reaching this view, he notes that it is predicted that the site allocations DPD will be submitted in 2012 (IR65). However, the Secretary of State also notes the Inspector's statement that his confidence that it will progress as intended is not high (IR65), and sees no reason to disagree with him. In common with the Inspector, the

Secretary of State also considers that the proposal would go a long way towards addressing current needs and would provide a ready-made solution (IR67). In conclusion he agrees that these factors attract significant weight in favour of the proposal (IR67).

Alternatives for the appellants and other intended occupiers

16. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR68-69, and like him, considers that the absence of suitable, available and affordable pitches weighs heavily in support of the proposal (IR69).

Personal circumstances

17. The Secretary of State has carefully considered the Inspector's comments regarding the health needs of those already living on the site (IR70), and has taken account of the submitted evidence in this respect. He has had regard to Mrs Smith's desire to retain her links with Basildon Hospital, and also to the ongoing health issues of William and Bonnie Eastwood (IR70). The Secretary of State has also taken into account that the two youngest Eastwood boys are attending school at present, and the Inspector's view that in time those below school age may join them and others moving onto the site may also do the same (IR71). Like the Inspector, he considers that there is no evidence of strong inter-dependence between the various families (IR72). In conclusion, the Secretary of State agrees with the Inspector that when looked at in the round, the personal circumstances attract limited weight towards the appellants' case although this is slightly greater for William and Bonnie Eastwood (IR72).

Other matters

18. The Secretary of State sees no reason to disagree with the Inspector that the various other matters raised have little effect on, either for or against, the overall consideration of the appeal (IR73).

Human Rights

19. The Secretary of State sees no reason to disagree with the Inspector that if the appeal is dismissed then it is likely that the appellants and their families and other occupiers would be forced to leave the site (IR74), or that the likelihood is that they would have to resort to life on the road or to living on other land where a gypsy site is unauthorised (IR75). He shares the Inspector's view that this would result in some hardship, particularly for William and Bonnie Eastwood, and that their being compelled to leave the site would represent an interference with home and family life under Article 8 of the European Convention on Human Rights (ECHR) (IR75). However, he sees no reason to agree that the strength of that interference is lessened in the case of the Eastwood families on Pitches 4/4A (IR75). Furthermore, as the site owners' rights to use the property for its present lawful use would not be affected, the Secretary of State does not agree that a requirement to move out would result in the site owners being deprived of their right to peaceful enjoyment of their possessions as protected by Article 1 of the First Protocol of the Convention (IR75). He has gone on to consider below

whether the interference with the occupiers' rights under Article 8 would be proportionate in the circumstances of this case.

Final balancing

Permanent permission

20. The Secretary of State has had regard to the Inspector's balancing in respect of a permanent permission at IR76-78. In respect of factors weighing against the appeal, like the Inspector (IR76) he attaches substantial weight to the intrinsic harm by reason of inappropriateness. He also agrees that there is conflict with one of the purposes of including land in Green Belts, that openness would be significantly reduced, that the character and appearance of the area, including the visual amenities of the Green Belt would be harmed and that the proposal would prejudice highway safety along the A1245 (IR76). The Secretary of State agrees that the total level of harm would be considerable (IR76).
21. Turning to considerations weighing in favour of the appeal, like the Inspector the Secretary of State considers that there is an on-going general need for gypsy sites in the District, and he attaches significant weight to the major contribution that the appeal site would make in meeting it in the absence of planned provision (IR77). He agrees that the lack of suitable, available and affordable pitches also weighs heavily in support of the proposal (IR77). As set out at paragraph 17, he attaches limited weight to the personal circumstances in the round, although slightly greater weight for William and Bonnie Eastwood. The Secretary of State has also had regard to the implication for human rights if the families were prevented from staying at or moving onto the site (IR77).
22. The Secretary of State agrees with the Inspector's overall balancing at IR78 and concludes that other considerations do not clearly outweigh the harm by reason of inappropriateness and the other harm to the Green Belt, and that very special circumstances do not exist and permanent permission should not be granted.

Temporary permission

23. The Secretary of State agrees with the Inspector's conclusions in respect of a temporary permission at IR79-83. He agrees that paragraphs 45 and 46 of Circular 01/2006 apply in this case (IR79) and has considered the case for a temporary planning permission. Notwithstanding his concerns on progress with a site allocations DPD referred at paragraph 15 above, the Secretary of State agrees with the Inspector that 3 years would be a suitable period to allow for the completion of the planning process and the delivery of suitable sites (IR81). He also shares the Inspector's view that it would be unreasonable to expect the appellant to bear the capital outlay associated with any access improvements and further landscaping (IR81).
24. In his balancing for a temporary permission, like the Inspector (IR82), the Secretary of State has attached substantial weight to unmet need, and has taken into account that the consequences for openness and the character and appearance of the area would be short-lived. The Secretary of State agrees with the Inspector that whilst the scales tip more towards the appellants, there

remains an objection on highway grounds, and that the potential danger to road users arising from the proposal is the telling factor (IR82).

25. The Secretary of State has concluded (at paragraph 19 above) that dismissal of the appeal may result in an interference with the occupiers' rights under Article 8 of the ECHR. He has weighed that interference against the harm to the Green Belt which he has identified above and he is satisfied that the interference which would be caused by a refusal of planning permission is a necessary and proportionate response when balanced against the wider public interest. He concludes that the protection of the public interest cannot be achieved by means which are less interfering.

26. The Secretary of State shares the Inspector's conclusion that, even on a temporary basis, the other considerations do not clearly outweigh the totality of the harm and that very special circumstances do not exist (IR82).

Personal permission

27. The Secretary of State has had regard to the Inspector's comments at IR88 and paragraph 93 of Circular 11/95, and has considered the possibility of stipulating that occupation of the site be limited to the appellants and the other intended occupiers. Like the Inspector he considers that the personal circumstances in this case are not strong, and has also had regard to the practical problem that the occupiers of some of the pitches are unknown or uncertain (IR88). Overall the Secretary of State concludes that the circumstances of the case do not justify the granting of a personal permission.

Conditions

28. The Secretary of State has considered the proposed conditions on pages 17 and 18 of the IR, the Inspector's comments at IR84-89, and national policy as set out in Circular 11/95. He is satisfied that the proposed conditions set out in Annex A would meet the tests in Circular 11/95. However the Secretary of State does not consider that they overcome his reasons for dismissing the appeal.

Overall Conclusions

29. It is accepted that the proposals are inappropriate development in the Green Belt and, having carefully weighed up all material considerations, the Secretary of State does not consider that the factors which weigh in favour of the proposal, either individually or cumulatively, clearly outweigh the harm that would arise from a permanent permission. He has considered whether a temporary permission can be justified, however he has found that the potential danger to road users arising from the proposal is the telling factor, and concludes that other considerations do not clearly outweigh the totality of the harm even on a temporary basis. The Secretary of State concludes that very special circumstances do not exist to justify him allowing the appeal proposals on either a permanent or temporary basis.

Formal Decision

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your clients' appeal refuses planning permission for 'use of land as 12 residential pitches for gypsies and travellers' at Cherry Hill Farm, Chelmsford Road, Rawreth, Essex, SS11 8SJ, in accordance with application reference 10/00582/COU dated 25 August 2010.

Right to challenge the decision

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

32. A copy of this letter has been sent to Rochford District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Pamela Roberts

Authorised by Secretary of State to sign in that behalf

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



Report to the Secretary of State for Communities and Local Government

by David Smith BA(Hons) DMS MRTPI

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

Date: 19 September 2011

TOWN AND COUNTRY PLANNING ACT 1990

ROCHFORD DISTRICT COUNCIL

APPEAL BY MESSRS SMITH AND EASTWOOD

Hearing held on 16 August 2011

Cherry Hill Farm, Chelmsford Road, Rawreth, Essex, SS11 8SJ

File Ref: APP/B1550/A/11/2151221

File Ref: APP/B1550/A/11/2151221

Cherry Hill Farm, Chelmsford Road, Rawreth, Essex, SS11 8SJ

- 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 Messrs Smith and Eastwood against the decision of Rochford District Council.
- The application Ref 10/00582/COU, dated 25 August 2010, was refused by notice dated 1 November 2010.
- The development proposed is use of land as 12 residential pitches for gypsies and travellers.

Summary of Recommendation: That the appeal be dismissed.

Procedural Matters

1. By letter dated 5 May 2011 the Secretary of State recovered this appeal for his determination on the grounds that it involves proposals for significant development in the Green Belt. The hearing, including a site visit, took place on 16 August 2011.

2. The planning application was refused for the following reasons:

- 1 The Rochford District Replacement Local Plan (2006) shows the site to be within the Metropolitan Green Belt. Within the Green Belt, planning permission will not be given, except in very special circumstances, for the construction of new buildings or for the change of use or extension of existing buildings (other than reasonable extensions to existing buildings). Any development that is permitted shall be of a scale, design and siting such that the appearance of the countryside is not impaired.

The applicant has failed to provide satisfactory evidence to show why the proposal should exceptionally be permitted against the strong presumption against inappropriate development in the Green Belt. If allowed, the proposal would urbanise the appearance of this part of the Green Belt to the detriment of the open nature of the Green Belt and the purpose of including the land within it.

- 2 The proposal would intensify the use of a sub-standard access onto a classified highway where the main function is that of carrying traffic freely and safely between centres of population. The existence of a field access in this location is a matter of fact and therefore some degree of conflict and interference to the passage of through vehicles already occurs but the intensification of that conflict and interference which this proposal would engender would lead to a deterioration in the efficiency of the through road as a traffic carrier and be detrimental to highway safety.
- 3 The site is on the busy A1245 and very close to its junction with Rawreth Lane. Facilities within walking distance are minimal and the nearest bus service is on Rawreth Lane. The lack of facilities and public transport will mean that virtually all journeys to and from the site will be car borne. As there is no alternative to the car, it is likely that the number of car journeys will be higher than average and therefore the movements to and from the site will be significantly higher than the authorised use of that as an agricultural

field. The proposal is therefore contrary to the aims of promoting accessibility and contrary to the intentions of Government policy.

3. The application form and decision notice describe the proposed development in different ways. However, the reference to caravans by the Council is potentially confusing since each of the 12 pitches is shown to have both a mobile home and a touring caravan on it. Furthermore, the Council accepted at the hearing that the physical works to form the vehicular access are lawful. In any event, these works were not included in the original application which also makes no reference to any operational development. It was therefore agreed that the description set out in the heading above fairly and accurately describes the proposal.

The Site and Surroundings

4. The appeal site is triangular in shape and located on the eastern side of Chelmsford Road (A1245) to the south of the junction with Rawreth Lane and Church Road. The land rises from the south to the north and is enclosed for the most part by trees and hedgerows. It was originally agricultural but has been sub-divided into 6 pitches containing mobile homes, caravans and outbuildings. A rough track runs within the site parallel to the A1245 and most of the pitches have hardstandings. Pitches 5 and 6 are the least developed.
5. There is built development to the north around the junction at Bedloes Corner and further to the west along Church Road. Opposite the site is an extensive garden centre complex. Although there is some sporadic development nearby the locality is otherwise characterised by open farmland. The A1245 is a busy two-lane dual carriageway.

Planning History

6. The present use of the site commenced in September/October 2002 and Enforcement Notices were issued at that time¹. Subsequent appeals were dismissed in 2003 (Refs: APP/B1550/C/02/1102164 & 1102165)². Contrary to what I was told at the hearing, paragraph 8 of the Inspector's decision refers to the site being divided into 4 main plots. In paragraph 21 he also mentions the "opening of the new A130" as having taken place.
7. A further appeal was heard in 2005 in relation to the continued use of the site for stationing 8 touring caravans and 5 mobile homes on 6 residential plots for a temporary period of 2 years. This was dismissed by the Secretary of State in 2006 (Ref: APP/B1550/A/04/1156699)³. Paragraphs 23-28 of the Inspector's Report contains details of the six families living on the appeal site at that time.

The Proposal

8. The appeal site is split into 6 separate pitches with boundaries usually marked by fencing. Each of them is owned separately and it is proposed to double the number of pitches by dividing them all into two. The current and intended occupiers and other biographical details of those concerned are as follows⁴:

¹ Appendices RDC 16 and 17 of Council's statement (Document 1)

² Appendix RDC 15 of Council's statement (Document 1)

³ Appendix RDC 18 of Council's statement (Document 1)

⁴ Document 4

Pitch 1 – Occupied by John Smith and his wife Linda. Mr Smith works as a painter and decorator mainly in the local area but travels when he can although there is no fixed pattern. Mrs Smith has had cancer and now has twice yearly check ups at Basildon Hospital. Pitch 1A would be occupied by their daughter, also Linda, and her 4 children. They are travelling at the moment but she would like her daughters to get an education.

Pitch 2 – John and Dolly Eastwood live here at the moment with their 4 sons aged 17, 14, 10 and 9. The two younger boys attend Pitsea School. The eldest is considering a blacksmith's course. Mr Eastwood is a landscape gardener and works on his own in the local area. He attends the gypsy fairs on a regular basis. Pitch 2A would be for one of his sons.

Pitch 3 – Is owned by Ben Smith who is married to Ada. They have a 4 year old son. He is away from the site at the moment and those present at the hearing were unaware of his intentions generally and also of the proposed occupation of Pitch 3A. When I inspected it was being occupied temporarily by another family who were staying over.

Pitch 4 – This pitch has already been sub-divided. Pitch 4A at the rear is occupied by William Eastwood, his wife Sarah and two adult children, Sarah and Bonnie. Their son, William Eastwood has the front part (Pitch 4) and stays there with his wife, Ann-Marie and 2 year old daughter. Father and son work together as self employed builders both locally and away from the site. William Eastwood (jnr) and Bonnie Eastwood have cystic fibrosis.

Pitch 5 – Joe Eastwood has this pitch. He is the father of Linda Smith (Pitch 1) and the uncle of John Eastwood (Pitch 2). Mr Eastwood is over 70 years old and has retired from travelling other than occasional trips to fairs. He used to work as a gardener and considers himself a true gypsy. He first owned the site over 20 years ago. It is intended that his brother Jim would eventually move onto Pitch 5A. He currently has no permanent base and is travelling at present.

Pitch 6 – This is unoccupied although used for parking but has been owned by many years by Aaron Smith. He and his wife Lena have 3 children. Both he and Ben Smith are cousins of John Smith (Pitch 1). There is no information about the intended occupiers of Pitch 6A.

9. The appellants are John Smith (Pitch 1) and John Eastwood (Pitch 2).

Planning Policy

10. The development plan includes the Regional Spatial Strategy (RS) for the East of England, the Essex and Southend-on-Sea Structure Plan (SP) and the Rochford District Local Plan (LP) of 2006.
11. Following a single issue review of the RS Policy H3 was adopted in 2009 and sets out details of provision for accommodation for gypsies and travellers. It stipulates that the minimum additional site provision for Rochford to 2011 should be 15 pitches. The commitment to abolishing RS was first highlighted on 27 May 2010 in a letter from the Secretary of State. That intention remains and will be brought about by the Localism Bill. Although I have had regard to this the RS remains, for the time being, part of the development plan.

12. No SP policies are relevant to this appeal. The LP confirms that the appeal site is within the Green Belt⁵ but Policy HP20 that was concerned with gypsy sites has not been saved⁶. However, no other LP policies are cited in the reasons for refusal and the Council confirmed at the hearing that none of them are relevant to the matters in dispute. The appellants refer to Policies CS1, CS2 and CS3 of the LP⁷ but these are of a general nature and closely reflect Government policy.
13. The Council's Core Strategy Submission Document was submitted in September 2009. For various reasons the examination has been protracted but it is anticipated that the Inspector's Report will be received by the end of 2011 with adoption soon after. Policy H7 (as amended) is concerned with gypsy and traveller accommodation⁸. The Council produced an Allocations Development Plan Document (DPD) Discussion and Consultation Document in February 2010⁹ but the responses to this have not been published.
14. At national level regard should be had to Planning Policy Statement (PPS) 1: *Delivering Sustainable Development*; Planning Policy Guidance Note (PPG) 2: *Green Belts*; PPS3: *Housing* and PPG13 *Transport* (revised January 2011) and ODPM Circular 01/2006: *Planning for Gypsy and Traveller Caravan Sites*.
15. Following an earlier announcement that he intends to revoke Circular 01/2006, the Secretary of State published a consultation document including a draft Planning Policy Statement in April 2011. The period for comments has now passed. In the Ministerial foreword he explains that the current planning policy for traveller sites does not work and that a new approach is needed. Whilst taking all of these matters into account the Circular remains in place and regard should still be had to it.
16. The substance of the new document gives an indication of the Government's intentions. The parties nevertheless expressed their own reservations about the draft Planning Policy Statement and agreed that it would be pre-judging the matter if too much weight was given to it. Indeed, the consultation may prompt changes to the draft Statement so that I consider only limited weight can be attached to its provisions.
17. The draft National Planning Policy Framework does not mention gypsy and traveller sites and because of its status neither party thought that much importance should be attached to it in relation to the appeal. I concur with this view although noting that the draft Framework carries forward the principles regarding inappropriate development in the Green Belt from PPG2.

Agreed Matters

18. It is agreed between the parties that the appellants and other occupants of the site are gypsies as defined in paragraph 15 of Circular 01/2006. The parties also agree that the proposal constitutes inappropriate development in the Green Belt and that it is for the appellant to demonstrate whether very special circumstances exist to justify the development.

⁵ Proposals Map at Appendix RDC 10 of Council's statement (Document 1)

⁶ Appendix RDC 12 of Council's statement (Document 1)

⁷ Paragraphs 4.13.1 – 3 of the appellants' statement (Document 2)

⁸ Appendix RDC 14 of Council's statement (Document 1)

⁹ Appendix RDC 13 of Council's statement (Document 1)

The Case for the Appellants

(Taken from the submitted statement as amended¹⁰ and supplemented by verbal evidence)

Green Belt, openness and character and appearance

19. Notwithstanding that the proposal would be inappropriate development in the Green Belt permission could be given where no alternative is available or is to be allocated via a Development Plan Document. The apparent absence of such a strategy in the Local Development Framework should weigh in favour of the appellants' case. The Council also acknowledges that future site provision will most likely be met from land taken from the Green Belt. None of the Green Belt purposes would be affected in any way.
20. The appeal site is appropriately located on the outskirts of a built-up area in a semi-rural setting where the proposed development would not dominate the nearest settled community or place undue pressure on local infrastructure. A well-planned and soft landscaped gypsy and traveller site would positively enhance the appearance of previously intensively farmed land as well as delivering a safe, healthy and attractive place to live.
21. The site represents a relatively small area of the Green Belt so that its loss would not be significant especially as it has not been an open field for a long time. The enclosure with mature landscaping minimises the impact of the low-rise development on the open character and appearance of the wider Green Belt area. The proposal also relates well to the built form established at the major road junction. It would not be the only development within the Green Belt and the impact from the south should be assessed in the context of the substantial commercial use opposite. As a result the development would cause, at most, only modest harm to the local landscape which is not sensitive or of national importance.

Highway safety

22. Chelmsford Road has adequate capacity to accommodate access to the appeal site with generous width so that vehicles can pass without impeding other road users or the free flow of traffic. The existing well established access has operated without serious incident and there is no evidence that continuation of its use would undermine highway safety. Road users heading south from the controlled junction would only infrequently reach maximum speeds especially those held up at the lights.
23. The Highway Authority raises no objections to the proposal¹¹ and the Council has no local expertise to disregard this view. Visibility to the north is clear and to acceptable standards. Moreover, the opening of the A130 has improved conditions. The access could be improved in line with the Essex Design Guide¹² and signage put up but this is not necessary given the acceptability of the current arrangements. Such improvements are therefore not part of the appellants'

¹⁰ Documents 2, 3 and 5

¹¹ Recommendation dated 15 October 2010 attached to Document 3

¹² Document F of appellants' statement (Document 2)

case. Some “hair raising” manoeuvres may take place around the junction but this is a general concern and are not undertaken by those from the appeal site.

24. Compared to the last appeal the completion of the A130 by-pass had only just become effective as an alternative route and would not have had time to have any significant impact on traffic flows. Consequently the information at the 2005 hearing was outdated. Moreover, that appeal decision refers to plots rather than pitches so that there may have been some confusion and the outcome influenced by a whole gambit of site users.

Accessibility and sustainability

25. The location of the site accords with Policy H7 of the impending Core Strategy in that it is in the west of the District. It is eminently suitable in that it would promote peaceful and integrated co-existence between the site and the local community; easy access to GPs and other health services; enable attendance at local schools and the provision of a settled base.
26. It also has benefits over other sites put forward in the Allocations DPD consultation as it is in a sustainable location. Rawreth is a short distance to the north with its shops, playing fields, open space and community facilities and it is also within good proximity of the principal highway network. There are adequate alternative modes of transport to the use of the private car. Bus services run from Bedloes Corner regularly and frequently and to destinations such as Chelmsford and Southend-on-Sea¹³. Asda is about 2.5km away and is therefore useful and convenient.

Other considerations

27. It is undisputed that there is an unmet need for gypsy sites. The site would make a significant contribution to the identified and accepted need in the District and is immediately available. The length of time taken to resolve an issue of importance is regrettable. The inclusion of the site within the Allocations DPD consultation produced by the Council encouraged the appellants to proceed. It implies that the loss of sites in the Green Belt is acceptable in principle and that sustainability objectives can be achieved. The acceptance of the site within that document is strange if it is now kicked into touch.
28. The site has been in the family for a number of years and it fits in with the wish of Government for gypsies to provide for themselves. The proposal may precede the Local Development Framework allocation but this is not a valid ground for refusal. Council officers supported the application and accepted that the circumstances offer a degree of uniqueness and are very special outweighing any harm to the openness of the Green Belt.
29. Mr Smith's daughter (Pitch 1A) has tried to get on local public sites in Basildon and Chelmsford but this has not been possible as all pitches are spoken for. The existing site occupiers are not on waiting lists for public sites and have not looked elsewhere. They wish to expand in order to create a greater community feel. Mrs Smith (Pitch 1) wishes to stay in the area because she knows and trusts staff at Basildon Hospital.

¹³ Document 5

30. Factors such as old age and ill health should be conclusive and William and Bonnie Eastwood (Pitches 4/4A) have particular health care needs¹⁴. In addition, the schooling of young children should be accepted as a valid reason for allowing the families to remain. Provisions in Article 8 of the European Convention on Human Rights are a material consideration and should be given due weight.

The Case for the Council

(Taken from the submitted statement¹⁵ and supplemented by verbal evidence. The comments made in paragraphs 3.11 and 3.12 regarding Options GT1 and GT2 are officer level views and not those of the Council)

Green Belt, openness and character and appearance

31. The appeal site has been in the Green Belt since 1976. There remains a need to keep this area open in order to keep the settlements of Rayleigh and Wickford apart and to maintain local character and identity. The site is part of an 'island' between the two. The proposal would therefore conflict with the purposes of including land in the Green Belt set out in PPG2 in that it would facilitate the merging of neighbouring towns.
32. The site was open prior to 2002 and other developments existed when the Green Belt was designated. The garden centre is longstanding but has expanded recently with planning permission. In any event, the proposal would further intensify the unauthorised use of the site increasing the scale of activity and amount of built form thereby detracting from its openness. Cherry Hill Farm is particularly exposed to views from the south and west and further development would impair the wider appearance of the countryside. The situation has not changed since the last appeal¹⁶.

Highway safety

33. Again the position has not changed since the 2006 appeal decision¹⁷ when substantial weight was given to the harmful effect on highway safety. In turn, the Inspector noted that the situation then had not changed significantly since 2003¹⁸. The alteration in the view of the Highway Authority was surprising. This was presented to Committee as an addendum. However, it refers to the site as a preferred allocation for future allocation which is not the case.
34. In essence, because the site is screened from the north and given the lack of warning of a site entrance the proposed intensity of use would increase the risk of accidents between faster moving traffic leaving the junction and slower vehicles entering the site in front of those faster flows. A combination of the downward slope of the road, the speed of traffic and the unexpectedness of turning manoeuvres would be hazardous. Furthermore, when traffic on the A1245 is stopped at the junction, traffic from Rawreth Lane may turn left and head south towards the appeal site at fast speeds. The experiences of local residents and the Parish Council are also relevant.

¹⁴ Document H of appellants' statement (Document 2)

¹⁵ Document 1

¹⁶ Paragraphs 10 and 11 of Secretary of State's decision at Appendix RDC 18 of Council's statement (Document 1)

¹⁷ Paragraph 12 of Secretary of State's decision at Appendix RDC 18 of Council's statement (Document 1)

¹⁸ Paragraph 37 of Inspector's report at Appendix RDC 18 of Council's statement (Document 1)

Accessibility and sustainability

35. The appeal site is remote from services and future occupiers would be reliant on private vehicles. It is not served by a footway so that residents would have to walk along the verge to the dual carriageway for some 250m to reach the nearest bus stops. This is an impractical arrangement and does not make it easy to use public transport especially if carrying shopping or bulky goods.
36. Since the last appeal an Asda store has opened to the east at Priory Chase along Rawreth Lane and there is also an adjoining leisure centre and a school. This is about 1.5km away as the crow flies but a longer journey by car. There are local shops along London Road (A129) about 2km to the southeast for day-to-day needs. The main services and customer choices are at Rayleigh. The situation has not changed materially since the last appeal when the Secretary of State found that the site was in a relatively unsustainable location¹⁹.

Other considerations

37. There continues to be a need for gypsy sites in the District. Based on the Essex Gypsy and Traveller Accommodation Assessment of 2009²⁰ the need is for 14 additional pitches to 2021. This figure has been incorporated into Policy H7 of the Core Strategy Submission Document by the later Schedule of Changes²¹. Although permanent planning permission has been given for 3 pitches since 2006²² this has not reduced the balance of need. This correlates with the 14 unauthorised caravans recorded in the count of July 2010²³. Indeed, the appeal site accounts for the majority of unauthorised caravans²⁴.
38. The Allocations DPD consultation was simply a discussion document so the inclusion of the appeal site as Option GT1 does not represent a 'fait accompli' and does not guarantee that it will be allocated. Although some preliminary analysis of the responses has taken place no conclusions have been reached. Due to the slippage of the Core Strategy its submission is now predicted by the end of 2012. Whilst the expectation is that land may have to be released from the Green Belt it is by no means certain if some other option arises.
39. There are no public sites in the District. It was thought that there would have been allocations by now but releases should be planned rather than pursued on an ad hoc basis. Legal action pursuant to the Enforcement Notices has not been pursued due to workload issues, expediency and pending the outcome of the appeal. Insufficient information was put forward as very special circumstances to override the harm caused by inappropriateness and to openness.

Written and Other Representations

40. **Rawreth Parish Council** objects to the application on a number of grounds. Firstly, the site is agricultural land within the Green Belt and should not be built upon. The openness of the Green Belt is completely destroyed by the current illegal site and this would be reinforced if the proposal were successful. The site

¹⁹ Paragraph 13 of Secretary of State's decision at Appendix RDC 18 of Council's statement (Document 1)

²⁰ Table 14.9 of Document E of appellants' statement (Document 2)

²¹ Appendix RDC 14 of Council's statement (Document 1)

²² Appendix RDC 25 of Council's statement (Document 1)

²³ Appendix RDC 20 of Council's statement (Document 1)

²⁴ Appendix RDC 24 of Council's statement (Document 1)

is already the subject of an Enforcement Order and should be vacated and returned to its former use as farmland.

41. The site is detrimental to the street scene and openness of the Green Belt and not in keeping with the immediate locality. It is in a prominent position on the side of a hill with no screening or proposed screening. There are no exceptional circumstances why planning permission should be granted.
42. The access and egress to the site is completely unacceptable and dangerous as traffic turning in and out of the site causes other vehicles to brake suddenly and unexpectedly. The slowing and turning of vehicles leads to conflict and interference with through vehicles and the detriment of highway safety and the principal function of the A1245. If allowed to remain it could set a precedent for similar proposals.
43. It is also common practice for vehicles heading north along the A1245 to perform a U turn at the traffic lights to allow occupants and visitors to travel southwards. In addition, they have been witnessed turning right into Rawreth Lane and then immediately right again in front of westbound traffic. These manoeuvres are highly dangerous and there have been several narrowly missed collisions. The speed limit along the A1245 is, in fact, 70 mph and not 60mph. The Asda along Rawreth Lane has led to extra traffic.
44. The buses run an hourly service and stop early in the evening. Walking on the verge makes it difficult for pedestrians. Crossing Rawreth Lane at the junction involves taking your life in your hands. The mobile homes already situated on the illegal site have been extended with the laying of concrete bases and permanent rooms being built and these should be demolished.
45. **Councillor Black** commented that the land to the east of the A1245 is viewed as a green buffer on the edge of Rayleigh. Rawreth itself is a scattered settlement with a church and village hall to the west along Church Road.
46. The sale of Christmas trees in the past has added to traffic. Other housing in Rawreth has been dismissed as unsustainable so the same should apply to the proposal. The situation in relation to the Core Strategy is in a state of flux and an Extraordinary Council meeting is planned. None of the sites in the Allocations DPD consultation were considered by Members and neither have any of the responses been reported. However, the majority of electronic comments were against the appeal site.
47. **Local residents** have also objected to the proposal in relation to road safety (referring to 'near misses'); Green Belt/agricultural land and lack of facilities reiterating the comments of the Parish Council. In addition, they highlight the continued flouting of the law including the erection and extension of buildings without planning permission; the grazing of horses on the verge; inadequate provision for collection and disposal of refuse, water supply, surface water and sewage; possible use as a transit site and difficulties in selling property. Three written representations opposed to the proposal were received in relation to the appeal and ten objections were submitted at application stage.

CONCLUSIONS

48. The following conclusions are based upon the evidence given at the hearing, the written representations made and my inspection of the site and the surrounding area. In this section the numbers in square brackets [] refer to paragraphs in the preceding sections of this Report.
49. It is agreed that the proposal would constitute inappropriate development in the Green Belt [18]. Having regard to PPG2 I concur with this position. There is also no dispute about gypsy status [18]. Whilst the information provided about the nomadic habit of life of the appellants and others is not detailed there is no reason to doubt the views of the main parties. In any event, the proposal is expressly for pitches for gypsies and travellers so that national, development plan and emerging policies relating to gypsies should be applied. Therefore I consider that the main considerations in this case are as follows:
- 1) The effect of the proposal on the openness of the Green Belt and the character and appearance of the area including the visual amenities of the Green Belt ;
 - 2) The effect of the proposal on highway safety having regard to use of the access onto the A1245;
 - 3) Whether the pitches would be in an accessible location; and
 - 4) Whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development. These other considerations include the general need for and provision of gypsy sites, alternatives for the appellants and other intended occupiers, their personal circumstances and human rights.

Green Belt

50. According to PPG2 there is a general presumption against inappropriate development within Green Belts which is harmful by definition. Furthermore, substantial weight should be attached to the harm caused to the Green Belt by reason of inappropriateness.
51. The proposal would be situated between Rayleigh and Wickford but its scale and position within an extensive open area would not materially contribute to the merging of neighbouring towns [31, 45]. However, the site was open, agricultural land prior to 2002 [19, 32, 40] and the proposal would encroach into the countryside rather than safeguard it. As such, there would be conflict with one of the purposes of including land in Green Belts set out in paragraph 1.5 of PPG2.

Openness and character and appearance

52. The most important attribute of Green Belts is their openness. In assessing the consequences the correct approach is to consider the proposed change compared to the original nature of the site rather than to take account of the unauthorised use and the length of time it has subsisted. On this basis, the caravans would significantly reduce openness and it can reasonably be assumed that the use would be accompanied by other ancillary development such as fencing, hard standings, outbuildings and vehicles that would lead to a further loss. Compared

to the Green Belt as a whole the site is small but repeated incursions into it would seriously undermine the policy intentions in relation to openness [21].

53. Owing to the rising land the proposal would be readily visible from the south along the A1245. No other public vantage points were highlighted. However, the combination of the various elements of the proposed use would have a major adverse impact on the original undeveloped qualities of the appeal site. That harmful effect would nonetheless be tempered slightly by the relationship of the proposal with other built development, especially the garden centre. As a result, it would not be seen in isolation. However, the appeal site is distinctly separated from the built form around the junction to the north.
54. Much of the site is already quite well screened. Further planting could, in theory, be undertaken around the southern end. However, no detailed scheme has been put forward and a gap would need to be retained for the entrance. Any landscaping would also take some while to mature and, in any event, should not be regarded as the panacea for otherwise unacceptable development. Consequently the potential for further 'greening' of the site does not overcome the visual harm that would be caused to the character and appearance of the area including the visual amenities of the Green Belt [20, 21, 32, 41].

Highway safety

55. Visibility to the north for vehicles leaving the site is acceptable and there is no dispute in this regard. However, there is a persistent concern, reflected in the 2003 and 2006 appeal decisions, that vehicles slowing in order to turn into the appeal site are potentially hazardous given the speed and volume of traffic along the A1245 and the unexpectedness of such manoeuvres [33, 34, 42].
56. Since the establishment of the site in 2002 there have been no accidents associated with the entrance although there is local evidence of 'near misses' [47]. However, the absence of collisions does not, of itself, demonstrate that the situation is safe especially as the intention is to increase the number of pitches to 12. More significantly, there is no empirical information regarding the actual speed reached by traffic travelling downhill past the site or the level of flows. There has been no technical appraisal of the risks or any comparison with any relevant standards. Furthermore, no assessment has been undertaken of the possible improvements to the access and how this might address the specific concern. In these circumstances I give this option little weight.
57. The lack of objection from the Highway Authority is a material consideration [23]. However, its observations do not address the issue of vehicles turning into the site. Judging from the comments of the first previous Inspector the A130 had opened by May 2003 [6]. So whilst it may have reduced traffic on the A1245 this event preceded both previous appeal decisions. The one made in 2006 refers to both pitches and plots but it is fanciful to suggest that this influenced the final outcome [24].
58. There is also evidence of dangerous manoeuvres being carried out around the Bedloes Corner junction in order that drivers can head south [43]. It is denied that these are undertaken by those from the appeal site [23] but its expansion might increase the temptation to perform such 'U' turns, especially for visitors. That said, because of the uncertainty about whether it would take place or not this matter cannot be given great importance.

59. However, the proposed number of pitches and vehicle movements associated with them would be significant. Notwithstanding that the existing access has not led to accidents there is insufficient evidence to put aside the objections raised at the previous appeals. Indeed, my own view is that the proposed use of the access would be far from ideal and that the situation outlined at paragraph 66 of Circular 01/2006 does not apply. Paragraph 29 of PPG13 confirms that great emphasis is placed on people being able to travel safely. In the light of this and other relevant factors I consider that the proposal would prejudice highway safety along the A1245.

Accessibility

60. Contrary to the appellants' contention Rawreth is a scattered settlement with a limited range of facilities [26, 45]. There are bus stops about 250m away and the service is quite good. However, in order to reach them anyone from the appeal site would be likely to walk on the grass verge which narrows markedly near to Rawreth Lane. Crossing this road here would also be awkward. In essence, there are no proper facilities for pedestrians to reach the buses on foot. The link is so impractical that it would be unlikely to be done on anything other than a very infrequent basis. Indeed, there is no evidence from the current occupiers that, in practice, they use public transport.
61. Consequently it is likely that the vast majority of daily trips would be by private car. However, the Asda store and the London Road shops are not far away and the site is also quite close to the wider facilities at Rayleigh. Therefore many journeys could be short and the site is not in a remote location. Nevertheless, it performs poorly in terms of its accessibility and encouraging the use of transport modes other than the private car. At the 2006 appeal the Secretary of State found that the site is in a relatively unsustainable location [26, 35, 36, 44].
62. However, since then Circular 01/2006 has been issued and it indicates that sustainability should consider other, broader issues beyond transport mode and distance from services. PPS1 also confirms that sustainability is multi-faceted. In general terms the establishment of a gypsy site here would give rise to easier access to GPs and other health services; enable children to attend school regularly and reduce the need for long-distance travelling [25]. There is no evidence that current occupiers have integrated into the local community but the location of the site offers that possibility.
63. So whilst the proposal would not promote a reduction in car dependence this is balanced by the wider benefits that would accompany it. Consequently the overall implications of the proposal in terms of sustainability would be neutral.

Other considerations

General need for and provision of gypsy sites

64. It is agreed that there is an on-going need for gypsy sites in the District. The Council's position is that 14 pitches are required by 2021. However, the expectations of Policy H3 of the RS of an additional 15 pitches by 2011 have not been met [11]. Bearing in mind that permission has been given for only 3 pitches in the 5 years since 2006 the level of outstanding need is significant in the context of Rochford District [37].

65. It is predicted that the site allocations DPD will be submitted in 2012. However, there is no absolute certainty about this as the Core Strategy has been held up and is said to be in a "state of flux" [46]. The matter has already taken some time to resolve and as work on identifying sites is only at the very early stages my confidence that it will progress as intended is not high. On the other hand, the appeal site is available now and would more or less meet the needs of the District at one fell swoop. As no possible alternative has been identified it is more than likely that sites will be required within the Green Belt [13, 27, 37].
66. Although the site was included in the Allocations DPD consultation this was a device to 'get the ball rolling' and does not imply that the Council will ultimately support the appeal site [13, 27, 38]. Hence this is of limited significance.
67. In summary the unmet need in the District is significant and progress in addressing this matter has been faltering. Despite the Council's intentions there is no guarantee about when or where this would be met. The proposal would go a long way towards addressing current needs and would provide a ready-made solution. These factors provide significant weight in favour of the proposal.

Alternatives for the appellants and other intended occupiers

68. There are no public sites in the District and the Council had no suggestions to make about alternatives [39]. The existing site occupiers are not on waiting lists for public sites and have not looked elsewhere. Of the intended occupiers the only information is that Mr Smith's daughter (Pitch 1A) has tried but been unable to get onto public sites in this part of Essex [29].
69. Whilst there is very little evidence that existing or intended occupiers have searched for other sites it is not incumbent on them to prove that alternatives are non-existent. On the contrary, the absence of suitable, available and affordable pitches weighs heavily in support of the proposal.

Personal circumstances

70. For those already living on the site these boil down to Mrs Smith's (Pitch 1) desire to retain her links with Basildon Hospital and also the on-going health issues of William and Bonnie Eastwood (Pitch 4/4A) [8, 29, 30]. Because of their condition they need to perform physiotherapy twice daily and may need assistance with this on occasions. They should also eat regular nutritious meals and snacks and attend clinic regularly. Whilst there is no specific evidence to this effect it is reasonable to assume that a stable base assists greatly in these respects.
71. Only the two youngest Eastwood boys (Pitch 2) are attending school at present. In time, those below school age may join them and others moving onto the site may also do the same. This is an express intention of Linda Smith who hopes to move onto Pitch 1A with her daughters [8]. Ensuring an education is clearly important but there is no evidence of any special needs.
72. Although there may be a desire to develop a greater community feel [29] and the various families are inter-related there is no evidence of a strong inter-dependence between them. When looked at in the round the personal circumstances attract only limited weight towards the appellants' case although this is slightly greater for William and Bonnie Eastwood (Pitch 4/4A).

Other matters

73. Various other matters were raised including the support offered by Council officers in their recommendation [28, 47]. However, these have little affect on, either for or against, the overall consideration of the appeal.

Human Rights

74. If the appeal is dismissed then it is likely that the appellants and their families and other occupiers would be forced to leave the site. Others who own pitches would also be prevented from occupying them. There are Enforcement Notices in place and whilst they have not been pursued to date it is reasonable to expect that this outcome of the appeal would lead the Council to act [6, 39].
75. There is no suitable and available alternative accommodation. The likelihood is therefore that they would have to resort to life on the road or to living on other land where a gypsy site is unauthorised. This would result in some hardship particularly for William and Bonnie Eastwood (Pitch 4/4A) because of the seriousness of their condition. The opportunities for regular education and easy access to health care for others would also be lost. Being compelled to leave the site would represent an interference with home and family life under Article 8 of the European Convention on Human Rights. The strength of that interference is nevertheless lessened in the case of the Eastwood families on Pitches 4 and 4A. They appear to have moved on since 2005 with an Enforcement Notice in place and after the issue of at least one and possibly two negative appeal decisions [7]. A requirement to move out would also result in the site owners being deprived of their right to peaceful enjoyment of their possessions as protected by Article 1 of the First Protocol although with the same caveat.

Final Balancing

76. The proposal would be inappropriate development in the Green Belt. Substantial weight has to be attached to this intrinsic harm by reason of inappropriateness. It would also conflict with one of the purposes of including land in Green Belts. In addition, openness would be significantly reduced and the character and appearance of the area including the visual amenities of the Green Belt would be harmed. Finally, the proposal would prejudice highway safety along the A1245. Although the overall implications of the proposal in terms of sustainability would be neutral the total level of harm that would arise would be considerable.
77. On the other hand, there is an on-going general need for gypsy sites in the District. The major contribution that the appeal site would make in meeting it in the absence of planned provision is of significant weight in favour of the proposal. The lack of suitable, available and affordable pitches also weighs heavily in support of the proposal. Added to this is the limited weight that the personal circumstances attract. Finally, there are the implications for human rights if the families were prevented from staying at or moving on to the site.
78. When balanced against one another, I consider that the other considerations do not clearly outweigh the harm by reason of inappropriateness and the other harm in relation to openness, character and appearance and highway safety. In that event, very special circumstances do not exist and permanent permission should not be granted.

79. As an alternative the possibility of a temporary permission was discussed and the advice at paragraphs 45 and 46 of Circular 01/2006 applies. In particular, substantial weight is to be given to the unmet need.
80. The appellants indicated that nothing less than 10 years would be appropriate because of the potential disruption to the education of young children. However, by that stage site allocations should have been made and alternatives become available. There is no evidence that this length of time would enable any of the children intending to occupy the site to complete a particular stage of their schooling. Moreover, this would be tantamount to a permanent permission.
81. Consequently I favour the Council's view that 3 years would be a suitable period to allow for the completion of the planning process and the delivery of suitable sites. However, in that scenario it would be unreasonable to expect the appellants to bear the capital outlay associated with any access improvements and further landscaping. Therefore the balancing to be undertaken should address the impact of the proposal on the basis of the current situation.
82. In assessing a temporary permission the weight to be given to the various factors is not quite the same as the exercise I undertook in relation to a permanent permission. As well as the substantial weight to be given to unmet need the consequences for openness and the character and appearance of the area would be short-lived. So whilst the scales tip more towards the appellants there remains an objection on highway safety grounds. In my view, the potential danger to road users arising from the proposal is the telling factor. So even on a temporary basis I find that the other considerations do not clearly outweigh the totality of harm and very special circumstances do not exist.
83. The proposal would cause substantial harm to the environment including the Green Belt and highway safety. Having addressed the possibility of a temporary permission I consider that this legitimate aim can only be adequately safeguarded by refusing permission. The protection of the public interest cannot be achieved by means which are less interfering of the appellants' rights. They are proportionate and necessary in the circumstances and strike a fair balance in compliance with the requirements of Article 1 of the First Protocol. Hence there would be no violation of human rights under either this Article or Article 8.

Conditions

84. Both the Council and the appellants suggested conditions should the appeal be allowed²⁵. If the Secretary of State disagrees with my recommendation and wishes to grant permanent permission I advise that the following conditions should be imposed as set out below in Scenario A.
85. A condition should be attached limiting occupation of the site to gypsies. To minimise visual impact the pitches and caravans should be restricted to those applied for, the size of vehicles limited and commercial activities precluded. Details of further landscaping and of improvements to the entrance should also be sought in order to mitigate the visual impact of the proposal and in the interests of highway safety.

²⁵ RDC26 of Council's statement (Document 1) and paragraph 6.1 of appellants' statement (Document 2).

86. The conditions suggested that sought to impose a standard time limit, further restrict activities and prohibit storage, remove permitted development rights and require details of drainage and of refuse and cycle storage would be either unnecessary or unreasonable having regard to Circular 11/95 *The Use of Conditions in Planning Permissions*.
87. The option of a temporary permission is discussed above. In the event that the Secretary of State wishes to grant such a permission then I suggest that a period of 3 years would be apt and a condition to this effect is below at Scenario B.
88. There is also the possibility of stipulating that occupation of the site be limited to the appellants and the other intended occupiers. This is not a course of action that I endorse given that the personal circumstances in this case are not strong and taking account of the advice in this respect at paragraph 93 of the Annex to Circular 11/95. Furthermore, there is a practical problem in that the occupiers of some of the pitches are unknown or uncertain (Pitches 2A, 3/3A and 6/6A) so that occupation might be prevented without recourse to a further planning application. Despite these comments a condition to be used in this eventuality is set out below at Scenario C in the event that the Secretary of State takes a different view.
89. If either a temporary or personal permission is imposed then it would be necessary to require the submission and approval of site restoration instead of the site development scheme at Condition 5) and an alternative to this effect is also included at Scenario D.

Recommendation

90. I recommend that the appeal be dismissed and planning permission refused. Although there would be no conflict with the development plan the proposal would be contrary to national guidance in PPG2 and PPG13. Should the Secretary of State disagree with my recommendation, and be minded to grant planning permission, on either a permanent or temporary basis, I further recommend that the planning conditions set out in the schedule below be attached as necessary.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

A. Conditions to be imposed if the appeal is allowed and permanent permission granted

- 1) The site shall not be occupied by any persons other than gypsies and travellers, as defined in paragraph 15 of ODPM Circular 01/2006.
- 2) There shall be no more than 12 pitches on the site, as shown on drawing no 2243/8/31 (sheet 2 of 7), with no more than two caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) stationed on each pitch at any time of which only one shall be a residential mobile home.
- 3) No commercial or industrial activities or retail sales shall take place on or from the site, including the storage or burning of related materials.
- 4) No more than one commercial vehicle per pitch shall be kept on the site for the use of the occupiers of the caravans hereby permitted and no vehicle shall exceed 3.5 tonnes.
- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for improvements to the site entrance including the display of signage; tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

B. Condition to be imposed if the appeal is allowed and a temporary permission is necessary

- 6) The use hereby permitted shall be for a limited period of 3 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place in accordance with a scheme and timetable previously submitted to and approved by the local planning authority.

C. Conditions to be imposed if the appeal is allowed and a personal permission is necessary

- 7) The occupation of the site hereby permitted shall be carried on only by John and Linda Smith, Linda Smith, John and Dolly Eastwood, Ben and Ada Smith, William and Sarah Eastwood, Sarah Eastwood, Bonnie Eastwood, William and Ann-Marie Eastwood, Joe Eastwood, Jim Eastwood, Aaron and Lena Smith and their resident dependants.
- 8) When the land ceases to be occupied by those named above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use shall be removed and the land shall be restored to its condition before the development took place in accordance with a scheme and timetable previously submitted to and approved by the local planning authority.

D. Conditions to be imposed if the appeal is allowed and a temporary and personal permission is necessary

- 9) The occupation of the site hereby permitted shall be carried on only by John and Linda Smith, Linda Smith, John and Dolly Eastwood, Ben and Ada Smith, William and Sarah Eastwood, Sarah Eastwood, Bonnie Eastwood, William and Ann-Marie Eastwood, Joe Eastwood, Jim Eastwood, Aaron and Lena Smith and their resident dependants, and shall be for a limited period of 3 years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.
- 10) When the land ceases to be occupied by those named above, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place in accordance with a scheme and timetable previously submitted to and approved by the local planning authority.

In scenarios B, C and D amend Condition 5) to:

- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for the restoration of the site shall have been submitted for the written approval of the local planning authority including a timetable for its implementation.
 - ii) within 11 months of the date of this decision the scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

