



Department for
Communities and
Local Government

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Our Ref: APP/W3005/C/12/2170983
APP/W3005/A/12/2170829
Your Ref: 12/103

22 November 2012

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 & 174
APPEALS BY MR MICHAEL CASH
LAND AT TRAVELLER'S REST, FELLEYS MILL LANE (SOUTH), UNDERWOOD,
NOTTINGHAMSHIRE (ASHFIELD DC)
APPLICATION REFs: V/2011/0582 and 2011/0582

1. I am directed by the Secretary of State for Communities and Local Government ("the Secretary of State") to say that consideration has been given to the report of the Inspector, NP Freeman BA (Hons) Dip TP MRTPI, who held a hearing and associated site visit on 25 July 2012 into your client's appeals against decisions of Ashfield District Council ("the Council"):

Appeal A: APP/W3005/2170983: an appeal against an enforcement notice issued on 17 January 2012, requiring removal of 4 caravans for residential purposes, hard standings etc associated with the unauthorised use of the site as a gypsy and traveller caravan site and reinstatement of the site;

Appeal B: APP/W3005/A/12/2170829: planning application for the change of use of the land to residential caravan site for use by 3 gypsy families, each of 2 caravans and amenity block, including construction of hardstanding and new access.

2. On 1 May 2012 the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because they involve proposals for significant development in the Green Belt.

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Inspector's recommendation and summary of the decision

3. The Inspector recommended that:

Appeal A: the appeal be dismissed and planning permission refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended; and that the enforcement notice be upheld with variation at Section 6 by the deletion of the word "five" and the substitution of the word "twelve" and by the deletion of the word "six" and the substitution of the word "thirteen" as the periods for compliance.

Appeal B: the appeal be dismissed.

4. The Secretary of State agrees with the Inspector's recommendations and for the reasons given below he has decided to uphold the enforcement notice in modified form and to refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Policy considerations

5. In deciding the Section 78 appeal and the deemed planning 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. In this case, the development plan comprises the East Midlands Regional Plan (EMRP) - the Regional Spatial Strategy (RSS); and the Ashfield Local Plan review 2002 (LP). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR9-10.

6. The Localism Act 2011 provides for the abolition of RSSs by Order. However, the Secretary of State has attributed limited weight to the proposal to revoke the EMRP. Any decision to revoke the EMRP will be subject to the environmental assessment which is in train.

7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (The Framework) and its technical guidance; the Planning Policy for Traveller Sites (PPTS); Circular 11/95: *Use of Conditions in Planning Permission*; and the Gypsy and Traveller Accommodation (GTAA) Review for Ashfield DC published in April 2012 to update the Nottinghamshire GTAA of 2007 which was used to inform the EMRP.

8. The Secretary of State has also taken account of the fact that the Council intends to adopt a new Local Plan (IR11) but, as this is in the early stages of formulation and has not yet been published for consultation, he gives it little weight.

Appeal A ground (a) and Appeal B

Harm to the Green Belt

9. For the reasons given at IR55, the Secretary of State agrees with the Inspector that the physical impact of the development, the loss of openness and the

encroachment beyond a defensible limit as defined in the LP have caused significant harm. He also agrees that, for the reasons given at IR56-57, the development has caused some harm to the visual amenity beyond the edge of the settlement, some of which would remain even with mitigation.

Impact on Mature Landscape Area

10. For the reasons given at IR59-61, the Secretary of State agrees with the Inspector that, although the appeal development has led to the fragmentation of a field and the incursion of development onto formerly undeveloped farmland, with some adverse effect on the landscape, this is not substantial. He also agrees that it has to be seen in the context of the moderate quality of the landscape, but is nevertheless a negative factor to be weighed in the balancing exercise.

Nature conservation

11. For the reasons given at IR62-64, the Secretary of State agrees with the Inspector's conclusion at IR65 that the appeal development is unlikely to have caused any material harm to nature conservation interests and that, subject to certain conditions, its continuation would not do so.

Living conditions (for nearby residents)

12. The Secretary of State agrees with the Inspector (IR66) that, should control over the use of generators still be required, this could be secured by the imposition of an appropriate condition. He also agrees that, for the reasons given at IR67, the noise from the residential use of the appeal site is unlikely to cause harm to the living conditions of nearby residents and that the visual impact is limited.

General need for gypsy and traveller sites

13. The Secretary of State agrees with the Inspector (IR58) that the extent of the Green Belt places considerable constraints on the Council finding new sites and that, in accordance with the thrust of the PPTS, the assessment of need and site allocation should come through a measured and systematic approach. Notwithstanding that, the Secretary of State agrees with the Inspector's conclusion at IR72 that, for the reasons given at IR68-71, the general need and supply situation is a material consideration.

Personal accommodation needs and circumstances

14. The Secretary of State agrees with the Inspector that, for the reason given at IR73, the Moorbridge traveller site does not offer a realistic alternative permanent base for those currently occupying the appeal site but that, for the reasons given at IR74-75, there is some possibility of another site being found. The Secretary of State has had regard to the need to ensure that the best interests of the children has been a primary consideration in the determination of these appeals. Having noted that the one school-age child has just started her education, with no other children of school age occupying the site, and that there are no pressing health needs to provide a basis for remaining on the appeal site, the Secretary of State agrees with the Inspector (IR76) that the health and education needs of the occupants of the appeal site are general rather than special and could be met from alternative bases.

Human Rights

15. The Secretary of State agrees with the Inspector (IR77) that the dismissal of both appeals and the upholding of the enforcement notice would lead to the occupants being required to vacate the appeal site and, in the absence of any suitable alternative site to move to, this would be likely to result in an interference with their homes and their private and family lives under Article 8 of, and Article 1 of the First Protocol to, the European Convention on Human Rights. He also agrees that this is a matter to be weighed in the overall balance.

Overall balance: Appeal A – ground A and Appeal B

16. For the reasons given at IR78-81, the Secretary of State agrees with the Inspector that the harm identified, particularly to the Green Belt, is considerable and outweighs any of the other considerations in favour of granting permanent planning permission, whether taken individually or cumulatively. He therefore agrees with the Inspector that no very special circumstances prevail to warrant the granting of permanent planning permission and also agrees with the Inspector (IR83) that the imposition of conditions could not render the development acceptable for a temporary period. Like the Inspector, he recognises (IR84-85) that dismissing the appeal and upholding the enforcement notice would lead to interference with the human rights of the site occupants, but he also agrees with the Inspector that the legitimate aim of protecting the environment cannot be safeguarded by any lesser means than dismissing these appeals so that to do so is a proportionate and necessary measure.

Appeal A, ground G

17. The Secretary of State agrees with the Inspector (IR86) that the site occupants should be given a reasonable amount of time to meet the requirements of the enforcement notice and that the Council's approach of including the period of occupation up to the date of the decision on the appeals is misguided. He also agrees (IR87) that 5 months to cease the use and move the caravans and chattels from the site is unlikely to be sufficient but that, given the harm which he has found, an extension to 18 months is not appropriate. The Secretary of State therefore agrees with the Inspector that a period of 12 months would be reasonable, with an extra month to clear the site (giving 13 months in total).

Conditions

18. The Secretary of State has considered the proposed conditions for both appeals (IR88–91 and the Schedule annexed to the Inspector's Report). He is satisfied that the conditions would be reasonable and necessary and meet the tests of Circular 11/95. However he does not consider that they would overcome the reasons for refusing planning permission.

Overall Conclusions

19. The Secretary of State considers that the continuing use of the appeal site as a traveller site constitutes inappropriate development in the Green Belt which is, by definition, harmful and which would cause significant harm to the openness of the Green Belt, with some encroachment into the countryside beyond a well established settlement edge. Against that, the Secretary of State acknowledges

that the personal accommodation needs of the site occupants would remain unmet, leading to interference with their human rights. However, he does not consider this disproportionate to the harm caused, and considers that the imposition of conditions limiting the use of the site to a temporary period would not render the development acceptable. Nevertheless, despite dismissing the appeals, he considers that it would be reasonable to allow a period of 12 months for the occupants to find an alternative site, plus one extra month to clear the site (13 months in total).

Formal Decision

20. Accordingly, for the reasons given above the Secretary of State agrees with the Inspector's recommendation and hereby makes the following decisions:

Appeal A: that the enforcement notice be upheld as varied at Section 6 by the deletion of the word "five" and the substitution of the word "twelve"; and the deletion of the word "six", and the substitution of the word "thirteen" as the periods for compliance;

Appeal B: that the appeal be dismissed

Right to challenge the decision

21. 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.

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

Yours faithfully

Jean Nowak

Authorised by the Secretary of State to sign in that behalf



Report to the Secretary of State for Communities and Local Government

by N P Freeman BA(Hons) Dip TP MRTPI DMS

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

Date: 31 August 2012

TOWN AND COUNTRY PLANNING ACT 1990

ASHFIELD DISTRICT COUNCIL

APPEALS BY

MR MICHAEL CASH

Hearing and associated site visit held on 25 July 2012

Travellers Rest, Felley Mill Lane (South), Underwood, Nottinghamshire, NG16 5FQ

File Ref(s): APP/W3005/C/12/2170983 (s174) & APP/W3005/A/12/2170829 (s78)

Appeal A: APP/W3005/C/12/2170983

Travellers Rest, Felley Mill Lane (South), Underwood, Nottinghamshire, NG16 5FQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr Michael Cash against an enforcement notice issued by Ashfield District Council.
- The Council's reference is V/2011/0582 and the notice was issued on 17 January 2012.
- The breach of planning control as alleged in the notice is without planning permission:
 - i. the making of a material change of use of the land from agriculture to a use for the stationing of four caravans used for residential and auxiliary storage purposes;
 - ii. the formation of a hard standing on the land; and
 - iii. the construction of a metal gate in excess of 1 metre in height on the land adjacent to the highway and located in the approximate position shown by a blue line on the attached plan.
- The requirements of the notice are:
 - i. Cease the use of the land for the stationing of caravans used for residential purposes and permanently remove from the land any caravan used for such purposes;
 - ii. Cease the use of the land for the stationing of caravans used for storage purposes and permanently remove from the land any caravan used for such purposes;
 - iii. Remove from the land all vehicles, equipment, plant and machinery brought onto the land for use in connection with the stationing and use of caravans for residential and auxiliary storage purposes;
 - iv. Remove the hard standing from the land;
 - v. Remove completely or reduce in height the metal gate so that no part of it exceeds 1 metre in height from ground level;
 - vi. Remove from the land all materials and rubble arising from compliance with requirements (i), (ii), (iii), (iv) and (v) above; and
 - vii. Reinstate the land to its previous level and condition by re-seeding it to grass with an agricultural mix seed species.
- The period for compliance with the requirements (i)-(vi) is five months and for requirement (vii) six months after the notice takes effect.
- The appeal is made on the grounds set out in section 174(2)(a) and (g) of the 1990 Act.

Summary of Recommendation: That the appeal be dismissed, with the exception of partial success on ground (g), and the enforcement notice be upheld with a variation.

Appeal B: APP/W3005/A/12/2170829

Travellers Rest, Felley Mill Lane (South), Underwood, Nottinghamshire, NG16 5FQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission by Mr Michael Cash against the decision of Ashfield District Council.
- The application Ref. No. 2011/0582, dated 23 October 2011, was refused by notice dated 13 January 2012.
- The development proposed is the change of use of the land to use as a residential caravan site by three gypsy families, each of two caravans and an amenity block, including laying of a hardstanding, erection of boundary fencing and the construction of a new access.

Summary of Recommendation: That the appeal be dismissed.

Procedural Matters

1. These appeals have been recovered for determination by the Secretary of State in exercise of his powers under s79 and paragraph 3 of Schedule 6 of the 1990 Act as they involve proposals for significant development in the Green Belt.

2. In terms of Appeal A, I was told by the appellant's agent that there was no intention to use the caravans for storage purposes but only for residential use. The Council's enforcement officer said that one of the caravans on the site was being used for storage purposes when the enforcement notice was issued. This was not disputed and there is no ground (b) appeal. I therefore consider that no change should be made to the wording of the alleged breach.

The Site, Surroundings and Background

3. The appeal site is located at the junction of the Alfreton Road (A608) and Felley Mill Lane and has an area of about 0.17 hectares and was part of a field currently down to grass. It is located within the designated Green Belt (GB) and a Mature Landscape Area (MLA), a local landscape designation, outside the defined settlement of Underwood, which is primarily located on the opposite (western) side of Alfreton Road. Access is derived via an entrance and a pair of solid metal gates at the eastern end from Felley Mill Lane. The site has been covered with hardsurfacing and timber fencing of about 2m in height has been erected around the perimeter.
4. At the time of my visit I noted a total of 4 caravans on the site (3 tourers and one mobile home). The site lacks drainage, a water supply and mains electricity although a connection for electricity is expected to be provided on 9 August 2012 and a foul sewer is located in Alfreton Road with a potential connection point. These services are presently provided by 3 chemical toilets, water canisters and a generator.
5. The occupiers of the site are the appellant and his wife (Kelly), his brother Andrew and aunt Kathleen Connors, her husband (Johnny) and children (Kathleen and Jim). Mrs Connors is also expecting another child. The occupiers have ties with the Nottinghamshire area and formerly occupied the authorised gypsy site at Moorbridge, Bulwell where other members of their extended family reside.

Planning Policy

6. The national policy of significance to this case is found in the National Planning Policy Framework (the Framework) and the Planning Policy for Traveller Sites (PPTS). Section 9 (Protecting Green Belt land) of the Framework provides guidance on development in the GB and much of this is carried forward from the now withdrawn Planning Policy Guidance (PPG): 2. The fundamental aim of the Green Belt policy is to prevent urban sprawl by keeping land permanently open (para. 79) and the five purposes of the GB (para. 80) remain the same as in PPG 2. Section 11 of the Framework (Conserving and enhancing the natural environment) includes guidance on local landscape designations.
7. The PPTS indicates that the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life while respecting the interests of the settled community (para. 3). Paragraph 4 sets out a series of bullet points which are intended to help to achieve this aim. The thrust of the advice is that local planning authorities should assess need and make timely provision for it. This is intended, amongst other things, to increase the provision of lawful sites, reduce the number of unauthorised encampments making enforcement action more effective, reduce tensions between the settled and traveller communities and provide travellers

with better access to education, health, welfare and employment infrastructure. Other bullet points refer to the need to protect the Green Belt from inappropriate development and the local environment.

8. At present the Regional Spatial Strategy (RSS) – in this case the East Midlands Regional Plan (EMRP) - remains in force. Whilst the Government intends to revoke RSS and has now introduced the power to do so under s109 of the Localism Act 2011, the orders to revoke it have not yet been laid before Parliament but are pending the outcome of environmental assessments which are considering the implications of doing so. Consequently, the EMRP remains part of the development plan.
9. Policy 16 of the EMRP sets out the regional priorities for gypsy, traveller and travelling showpeople requiring local authorities to identify land for additional pitch provision based on clearly evidenced need. Appendix 2 sets down the minimum additional pitch requirements for the period 2007-2012 which is shown as 8 pitches for Ashfield.
10. At the local level, Policy ST1¹ of the Ashfield Local Plan (LP) Review 2002 sets down criteria to be applied to all development including those relating to the environment. Policy EV1 addresses development in the GB and the tests are generally consistent with those applying in national policy. Policy EV4 identifies MLA which are shown on the Proposals Map of the LP. The appeal site falls within the Underwood (Rc) MLA. The policy requires development to not adversely affect the character and quality of the MLA. Policies EV5 and EV6 concern Sites of Special Scientific Interest (SSSI) and Sites of Importance for Nature Conservation (SINC) respectively which seek the protection of their nature conservation value. These are shown on the Proposals Map and the Friezeland Grassland SSSI/SINC is located about 150m north-east of the appeal site. Policy HG9 concerns gypsy and traveller sites but only those outside the GB. It was, therefore accepted that this policy is not applicable in this instance.
11. The Council explained that they were pursuing a Core Strategy to replace the 2002 LP but that this has now been abandoned with the intention to adopt a new Local Plan instead. This is in the early stages of formulation and has not yet been published for consultation. It was suggested by the Council that it could be adopted by April 2014. This plan will consider the need for gypsy and traveller sites and any specific allocations to meet that need. A Gypsy and Traveller Accommodation (GTAA) Review for Ashfield DC was published in April 2012. This updates the Nottinghamshire GTAA of 2007 which was used to inform the EMRP.

The Proposals

12. The proposals that flow from the two appeals are essentially the same; that is for the use of the land as a gypsy site for 3 pitches (6 caravans) for the named occupiers, with the retention of the associated hardstanding and fencing. The only material difference is that the s78 appeal includes the proposed erection of 3 separate amenity buildings containing bathroom and laundry facilities for each pitch. The details and the overall layout with the position of these buildings, the caravans and parking spaces is shown on a block plan that was submitted with the planning application.

¹ All policies referred to from the LP are 'saved'

Common Ground

13. The appellant and the other site occupants claim to be gypsies by definition². This is not disputed by the Council. On the basis of the evidence before me of cultural background and nomadic lifestyle I am satisfied that they come within the definition and the policy regime that applies to gypsies and travellers is therefore engaged.
14. It was accepted by the parties that Policy E of the PPTS makes it clear that traveller sites (temporary or permanent) are inappropriate development in the GB which is by definition harmful to the GB and should not be approved, except in very special circumstances.

The Case for the Appellant

The material points are:

Appeal A - Ground (a) and Appeal B

15. The essential thrust of the case is that although the proposals are inappropriate development in the GB and would cause some loss of openness and encroachment into the countryside, there are very special circumstances which justify the granting of planning permission. The other considerations which are claimed to outweigh the harm are the general need for gypsy sites in the area, the personal needs and circumstances of the appellant and the co-occupiers and their human rights.

Green Belt

16. Inappropriate development in the GB can be outweighed by other considerations which can be a number of ordinary factors which taken together are very special. The development has reduced the openness of the GB and led to some encroachment into the countryside but it is not in conflict with any of the other purposes of the GB set down in paragraph 80 of the Framework. The Government still expects traveller sites to be located in rural and semi-rural locations where they are small scale (paragraph 12 of PPTS). This is an urban fringe location next to the settlement of Underwood, which itself is of some size, and a busy main road. The presence of mature hedgerows on the road frontages means that it is not unduly prominent or obtrusive. The physical and visual impact is limited and this could be further mitigated by planting hedges on the field side of the site and by the imposition of conditions controlling the use, layout and the height and design of the entrance gates.
17. The likelihood is that any traveller site will need to be located in the GB as this covers about 60% of the District and most of the land outside settlements, particularly around the villages in the area. The Government's intention is that such sites should be integrated into the local community promoting social cohesion and this site offers the opportunity to achieve this aim being on the edge of the village close to schools and services. The LP will be looking to make allocations for housing development on the edge of rural settlements like Underwood and could include exception policies allowing for traveller sites in suitable locations within the GB (paragraph 15 of the PPTS).

² Paragraph 1 of Annex 1: Glossary to the PPTS

Mature Landscape Area (MLA)

18. Policy EV4 allows development in MLA provided there is no adverse effect on the character and quality of the landscape. This test is satisfied. Nevertheless, this policy is also out-of-date (pre 2004) as it was not informed by an assessment identifying the essential features and characteristics of the landscape. It pre-dates the Framework; paragraph 113 of this requires criteria-based policies to be used but these are absent in EV4. There is no distinction between the value and quality of the MLAs listed and this is also at odds with the guidance in paragraph 113.
19. The Greater Nottinghamshire Landscape Character Assessment 2009 only identifies the Selston and Eastwood urban fringe farmland (NC03) as being of moderate condition and strength and does not state that this landscape character area is worthy of special protection. One of the characteristics is the strong urban influence and this development would be in keeping with this being close to the built-up area. The overall emphasis is to enhance the landscape and the retention of hedgerows and the planting of additional ones would be consistent with this and the actions identified.

SSSI & SINC

20. The site is some distance to the south of the SSSI/SINC and there is no evidence to show that the Friezeland Grassland or its flora and fauna have been harmed in anyway. Natural England, the statutory consultee on issues of nature conservation, raised no objection subject to conditions and a similar view was reached by the Nottinghamshire Wildlife Trust. The anecdotal evidence of a great created newt being found on Mansfield Road carries no weight as it is 500m from the appeal site, beyond the recognised travel distance for the foraging of this species. There is no pond on the appeal site or any which provide a habitat for this species within the vicinity and therefore the site is not in the foraging range. The claims about the loss of nesting birds (lapwing and plover) or their roosts is not borne out by clear evidence and the proximity to a noisy road and street lighting weigh against the site being a likely or suitable habitat, prior to the development taking place.

General need for gypsy and traveller sites

21. The minimum pitch requirement set down in the EMRP³ is 8 pitches for the period from 2007 to 2012. This had not been met at the time the appeals were lodged. It is accepted that planning permission has now been granted on appeal for 8 'plots' in Kirkby-in-Ashfield⁴. However, this is the minimum required and is based on an old GTAA which does not provide an up-to-date assessment of need. Moreover the need identified only goes up to 2012 and does not provide a 5 year supply of deliverable sites against locally set targets, as required by Policy B – paragraph 9 – of the PPTS. The LP, based on the Council's most optimistic estimate, will not be adopted until April 2014 and this leaves a gap which amounts to a failure of policy.

³ Appendix 2 to Policy 16 of the EMRP

⁴ APP/W3005/A/11/2159674 – Appeal Decision dated 20 March 2012

22. The 2012 GTAA seeks to identify the minimum requirement for additional pitches for the period 2011-2016. The methodology used is not robust and the reduction of the calculated pitch requirement of 17 by 7 to 10 on the basis of assumed vacancies arising during that period is flawed. Pitches on private sites rarely became vacant and even if this were the case those vacating would still need to find an alternative pitch, either in Ashfield DC or within another local authority area. If a figure for out migration is included then one for in migration is needed as well. The reduction by 7 should be discounted and this would give a need for 17 pitches for the period which would reduce to 9 should the 8 pitches permitted in Kirkby come forward. This amounts to a demonstrable need which is unlikely to be met for some time given the GB constraints that apply in the District and the fact that the LP and specific site allocation, which may be included, will not emerge until the middle of 2014.
23. Additionally, the GTAA figure only goes up to 2016 which is 4 years away and does not cover the requisite 5 year period. This will be a matter which will be a significant material planning consideration by March 2013⁵. Impending changes to Government policy can be taken into account and the weight to attribute to them is significant. The recognised compound growth figure of 3% per annum should be applied not just to the calculated 17 pitches required to 2016 but to the existing 12 pitches as well – that is 29 pitches in total. The identification of 7 unauthorised sites in the GTAA – including the appellant's – is evidence of existing need in the District which has not been met and is unlikely to be met until site allocations come forward through the LP.

Personal accommodation needs

24. The occupiers of the appeal site have lived in the Nottinghamshire area all their lives and have never lived in traditional housing. They have from time to time resorted to the Moorbridge traveller site in Bulwell, where a number of their extended family reside. However, this site of about 12-14 pitches is overcrowded and fully occupied. They have only been able to stay there when other occupants have been travelling away. This has been for short periods only. It did not and cannot provide a permanent base. Until acquiring the appeal site the only alternative has been roadside occupation which is illegal and unacceptable, especially for young children. The desire has been to find a permanent settled base which would provide residential security and enable Kathleen Connors (aged 5) and other children coming up to school age to attend school.
25. A search for sites was carried out by approaching local estate agents over a period of about 2 years, prior to buying the appeal site. The land available, apart from the appeal site, was in remote locations some distance from services and outside the price range of the occupiers. The appeal site was bought in mid-2011 for £18,000 split equally between the appellant, his brother and the Connors family. They moved onto the land in October 2011. No suitable, affordable and available alternative has been found and none has been suggested by the Council. Having regard to *South Cambs DC v SSCLG & Julie Brown [2008] EWCA Civ 1010* there is no requirement in the law to prove that there are no other sites available. The absence of an alternative is an important material consideration which weighs in favour of permitting the development.

⁵ Paragraphs 25 and 28 of PPTS cited

Other personal circumstances

26. Since coming to the appeal site the appellant and co-occupiers have registered with a doctors' surgery in Underwood, which is beneficial to their health and in line with criterion b) of paragraph 11 of the PPTS. Kathleen is attending Selston Primary School and other younger children will be able to attend school which is beneficial to their education and consistent with the objectives of Government policy for travellers. Without a fixed address it would not be possible to register children at school and this would be detrimental to their education and contrary to the wishes of the parents that their children enjoy the same educational opportunities as the rest of the population.

Sustainability

27. The policy guidance in paragraph 11 of the PPTS is that traveller sites should be sustainable economically, socially and environmentally. The criteria listed in this paragraph to achieve this aim are all satisfied or not applicable. The appeal site enables the occupiers to have easy access to a range of services (shops, pubs, etc) in Underwood and to make use of the frequent bus services which run along the Alfreton Road and have bus stops close by. Integration with the local community is also facilitated by a location on the edge of the village.

Human Rights

28. The dismissal of the appeals and the upholding of the enforcement notice are likely to lead to the site occupants being required to vacate the site. In the absence of any suitable alternative site to move to, this would result in an interference with the residents' homes and their private and family lives under Article 8 of the European Convention on Human Rights (ECHR). The harm caused to these rights would be far greater than any alleged harm to the GB countryside and a disproportionate measure. Eviction would be likely to lead to enforced roadside encampment which would cause greater environmental damage, highway danger and increased community annoyance. The judgment in *Wychavon D C v SSCLG & Others [2008] EWCA Civ 692* is that the loss of a home with nowhere else to live may be regarded as very special circumstances for the purposes of national guidance. This has to be weighed in the balance when considering the value attached to the protection of gypsy homes against the public value of protecting the GB.

Conclusions

29. The other considerations have a greater aggregate weight than the harm that has been identified. They clearly outweigh the harm by reason of inappropriateness and any other harm. Very special circumstances exist justifying the grant of planning permission consistent with the policy guidance in paragraphs 87 and 88 of the Framework. This is certainly the case in terms of granting a temporary planning permission given the lack of a 5 year supply of deliverable gypsy sites to meet the manifest need and the likelihood that this need will not be met by March 2013.

Ground (g)

30. Should the s174 appeal be dismissed and the notice upheld the compliance period should be extended to 18 months to give sufficient time to comply with the requirements and find a suitable and available alternative site to reside on.

The Case for Ashfield DC

The material points are:

Appeal A - Ground (a) and Appeal B

Green Belt

31. The site is in a prominent location at the junction of two roads. The caravans on the land are visible from a number of public vantage points. Alfreton Road forms a clear boundary between the built-up edge of the village of Underwood on the western side and the GB countryside on the eastern side. The development has led to an encroachment into the rural area harming the openness and visual amenity of the GB. This conflicts with Policy EV1 of the LP and paragraph 79 of the Framework.
32. The development, including the fencing and hardsurfacing is clearly visible through the access point on Felley Mill Lane and the introduction of 3 amenity buildings with a height to ridge of about 3.9m would add to the intrusion of built development in the countryside. Although there is hedge screening on the road frontages the caravans can be glimpsed through and above the hedgeline. On the field side boundaries the timber fencing has a stark appearance out of keeping with the rural setting. In totality the development has had an urbanising influence extending into open countryside where no other development is found.
33. Prior to the unauthorised development taking place the land formed part of a larger field and was in an appropriate agricultural use. It is not previously-developed land and the enclosure on four sides with solid screen fencing is contrary to sub-paragraph d) of paragraph 24 of the PPTS which seeks to avoid such enclosure so as to prevent isolation from the rest of the community.

Mature Landscape Area (MLA)

34. The appeal site comes within a designated MLA as defined in Policy EV4 of the LP (Rc Underwood). The development has affected the character and quality of the MLA and conflicts with the terms of this policy. The Greater Nottinghamshire Landscape Character Assessment 2009 provides a County-wide analysis of landscape character. It updates earlier advice and was adopted by Ashfield DC in 2009 as a basis for assessing the impact of development and to inform the Council when preparing the local policy framework – which will be the new LP. The appeal site comes within the ‘Selston and Eastwood urban fringe farmland’ area which has a moderate landscape condition and strength and where enhancement is advocated. The development that has taken place has not enhanced but harmed the landscape character and any new hedge planting would not overcome this harm. It works against one of the defined landscape actions in the Assessment which is to restrict further urban edge expansion.
35. In terms of the Framework, paragraph 109 indicates that the planning system should seek to protect and enhance valued landscapes. It is recognised that paragraph 113 requires local planning authorities to set criteria-based policies against which proposals will be judged and that Policy EV4 is somewhat out-of-date in this respect. The new LP will address this having regard to the 2009 Assessment in line with paragraph 114 of the Framework. It is accepted that distinctions between landscapes of international, national and local importance should be made and that, having regard to paragraph 115 of the Framework,

greater weight should be afforded to conserving the landscape of National Parks, the Broads and Areas of Outstanding Natural Beauty. However, this does not mean that it is wrong to seek to protect and enhance landscapes of local importance such as this.

SSSI & SINC

36. The Friezeland Grassland comes within these designations and is protected by Policies EV5 and EV6 of the LP and is also subject to the advice contained within paragraph 118 of the Framework. It is accepted on the basis of the response from Natural England that permitting the development would not cause significant harm to the nature conservation value of this SSSI/SINC, subject to the imposition of conditions. On this basis, no conflict with the relevant local or national policies is envisaged.

General need for gypsy and traveller sites

37. The EMRP requirement to provide 8 new pitches by 2012 has been achieved with the granting of permission on appeal at the Kirkby site. The need for sites beyond that date has been reviewed on an interim basis in the 2012 GTAA and a requirement of 10 pitches for the period 2011-2016 has been identified. With the 8 pitches permitted at Kirkby there is a need for 2 more pitches to be provided during this period and this should be achievable.
38. The criticism of the methodology used in the 2012 GTAA is unfounded as it is based on the methodology used in the 2007 GTAA which was robust. Support for this view is found in the British Social Housing Federation (BSHF) Review of GTAAs in the East Midlands dated September 2008. The 2007 Nottinghamshire assessment was said to incorporate good practice and be basically sound with an overestimate for pitch requirement from unauthorised encampments leading to a recommendation that the estimation of need be reduced by 4%. Overall it was said to be fairly robust. For these reasons the deduction of 7 pitches for vacancies likely to arise from the calculated need figure of 17 in the 2012 GTAA is justified and consistent with the methodology employed previously.
39. The forthcoming LP will consider the assessment of need and seek to make provision for it, so as to ensure that a 5 year supply of deliverable sites for gypsies and travellers is provided as required by the PPTS. The present level of need is small and not an overriding factor when set against the harm identified. Although 7 unauthorised pitches were identified as at December 2011, two of these are on a site with temporary planning permission until May 2013 and an application has been made to make this permission permanent.

Personal accommodation needs and circumstances

40. The personal needs and circumstances of the appellant and those residing with him were not explained in detail at the planning application or appeal submission stages. The subsequent production of additional information in the hearing statement and at the hearing itself has been taken into account. The general health and education needs are noted but they are not special and do not present a reason for having to reside on the appeal site. These needs could be met from another location and the personal needs and circumstances do not outweigh the harm.

Conclusions

41. The development is inappropriate development in the GB and has caused further harm to the GB by reason of loss of openness and encroachment into the countryside. It has also had an adverse effect on the MLA. It therefore conflicts with 'saved' development plan policies and the national guidance in the Framework and the PPTS. The other considerations do not clearly outweigh this combined harm and so very special circumstances do not exist to warrant granting planning permission, even on a temporary basis.

Ground (g)

42. The occupants of the site have already enjoyed the use of the land since October 2011 and a 5 month period for compliance with the enforcement notice would mean that occupation has continued for about 15 months, a sufficiently long period of time for alternatives to have been pursued. The requested increase in the time period for compliance is resisted.

The Case for 'Keep Underwood Green Group' – local residents' group⁶

43. Objections are raised for the same reasons advanced by the Council. Concerns are also expressed about the scope to plant new hedges on the field side of the land given ownership constraints, the views into the site over the top of the entrance gates when closed and the possible visibility restrictions at the site access due to the hedges being outside land within the appellant's control. Emphasis is placed on the development adding to settlement sprawl onto the undeveloped side of Alfreton Road, contrary to the aims of the Landscape Character Assessment 2009.
44. Other concerns are raised regarding the potential impact on the nature conservation value of the nearby SSSI/SINC; noise nuisance emanating from the use of the site, especially the running of the electricity generator at unsocial hours⁷; the intrusive impact on outlook from the upper floors of properties on the opposite side of Alfreton Road whose occupiers can see caravans over the frontage hedge.
45. A number of decisions by local planning authorities and at appeal are cited in the written representations submitted at the application stage which support the Council's stance on resisting the development of the appeal site in this GB location. Reference to one of these supports the view that forthcoming need for traveller sites which may be identified in uncompleted assessments only carries minimal weight and does not provide very special circumstances which outweigh rural and GB policies.

County Councillor Mrs G Turner

46. She spoke in support of the District Council's case. As well as agreeing with their reasons for opposition she stressed the noise nuisance caused to residents living nearby describing the drone from the running of the generator late into the night.

⁶ Represented by Mr M Hubbard of Anthony Aspbury Associates Ltd, Town Planning and Development Consultants, Nottingham

⁷ A Noise Abatement Notice was served on 18 May 2012 in this respect

District Councillor Mr R Sears-Piccavey – Ward Councillor

47. He spoke in support of the District Council's case. As well as agreeing with their reasons for opposition he raised concerns about the height of the hedges along the road frontages which were not properly maintained and out-of-keeping with those to the south. He was also dismayed by the response of Natural England and considered that the development was likely to have harmed the local bird population, especially plovers and lapwings (peewits) that were previously nesting on the land and could be harmful to the statutorily protected great crested newt, one of which has been seen in the area.

Written Representations

48. A large numbers of letters of objection were received at both the planning application and appeal stages from local residents. There were also objections from **Selston Parish Council**, the **D H Lawrence Society** and the '**Keep Underwood Green Group**'⁸. They oppose the development for the same reasons advanced by the Council but also add grounds of harm to nature conservation, highway safety and a landscape with historic association to D H Lawrence. Objectors also refer to the unacceptable noise levels; especially from the generator; the commercial use of the site; crime and antisocial behaviour; the development occurring without planning permission; possible intensification; precedent; lack of need or local connection of site occupants; part of the site being historic landfill; and property values.
49. **Natural England** and the **Nottinghamshire Wildlife Trust** note the proximity of the Friezeland Grassland SSSI/SINC but, given the nature and scale of the development and the distance of separation, no objection is raised subject to the imposition of certain conditions. The **Severn Trent Water Authority** and **Nottinghamshire County Council (Highway Authority)** raise no objection subject to the imposition of recommended conditions regarding drainage and access arrangements.

Planning Conditions

50. The Council have provided a list of recommended conditions which can be found at Section 6 of their hearing statement. There is one correction to be noted and that is the date given in Condition 2 should be "2011" and not "2012". There was discussion about these conditions and others at the hearing.
51. It was agreed that Condition 1 is not needed as the development has already commenced. Conditions controlling the layout, landscaping (to include hedge retention and the planting of a hedge on the field side of the site), boundary treatment and drainage were agreed in principle. Although it is anticipated that a mains electricity connection will soon be provided, a condition to control noise from generators is put forward. A condition requiring details of the facing materials to be used in the amenity blocks is also accepted in terms of Appeal B only⁹. Other conditions recommended concern an occupancy restriction to those

⁸ The Council's Committee Report dated 12 January 2012 refers to 158 objections including those from the 'Keep Underwood Green Group' and the DH Lawrence Society

⁹ The amenity buildings are proposed development and do not figure in the breach alleged in the enforcement notice of Appeal B

of gypsy status only, the preclusion of business or commercial use and a limit on the weight of vehicles parked on the site of 3.5 tonnes. Other conditions to consider are those put forward by the highway authority¹⁰ and there is also advice from Natural England¹¹ and Nottinghamshire Wildlife Trust¹² on nature conservation measures that should be considered if permission is granted.

52. I will return to consider these conditions below. A Schedule is attached at the end of this report setting out the conditions I would recommend if the Secretary of State decides to allow either of the appeals and grant planning permission.

¹⁰ Consultation response of Notts CC dated 2 November 2011

¹¹ Letter dated 3 November 2011

¹² Letter dated 6 November 2011

Inspector's Conclusions

53. 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.
54. It is accepted that the development constitutes inappropriate development in the GB [14]. On this basis I consider that the main issues are as follows:
- 1) The impact of the development on the GB in terms of its openness, visual amenity and the purposes of including land within it;
 - 2) The impact on the character and appearance of the MLA;
 - 3) The impact on the nature conservation interests of the Friezeland Grassland SSSI/SINC and the appeal land itself;
 - 4) The impact on the living conditions of nearby residents;
 - 5) Whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development. The other considerations are:
 - a) The general need for and supply of gypsy sites in the area;
 - b) The accommodation needs of the appellant and those residing on the appeal site and their personal circumstances;
 - c) The human rights of the appellant and those residing on the appeal site.

Appeal A - Ground (a) and Appeal B

1) Green Belt

55. The development that has taken place has reduced the openness of the GB and led to encroachment into the countryside [16, 31]. This conflicts with the requirements of Policy EV1 of the LP and the tests set down in paragraphs 79 and 80 of the Framework [6, 10]. It represents an incursion of development onto agricultural land on the eastern side of Alfreton Road, beyond the clearly defined edge of the settlement of Underwood. Alfreton Road provides a marked boundary between urban development on one side and agricultural land, with a strong rural character, on the other [31, 43]. The site is modest in size and is close to the urban edge of the village and not in a detached or remote location [16]. Traveller sites may be permissible in rural and semi-rural locations [16]. Nevertheless, I consider that the physical impact of the development, the loss of openness and the encroachment beyond a well-defined and defensible development limit, as so defined in the LP, has caused significant harm.
56. The visual impact of the development is ameliorated by the presence of mature hedging when viewed from public vantage points and additional planting on the field side would also mitigate the impact [16]. The caravans can be glimpsed through the hedging and I would expect them and the proposed amenity buildings to be more noticeable in winter/spring time when the predominantly

deciduous hedge species have shed their leaves. They are also seen from the upper floors of the houses on the western side of Alfreton Road [44].

57. The development is clearly visible through the access entrance on Felley Mill Lane in passing. The solid gates when closed reduce this impact but the gates themselves are intrusive features in a rural setting [31, 43]. Gates of an alternative design could be provided [16]. Overall, the development has caused some harm to the visual amenity beyond the edge of the settlement. Whilst this is mitigated by the presence of existing hedges, which could be supplemented by new hedge planting, I conclude that some harm in terms of visual impact would remain.
58. The site, being close to the edge of the village, could assist in promoting social inclusion and integration and could be the type of GB site that the Council will consider releasing in order to make provision for gypsies and travellers in the District [17]. However, this is a matter to be considered through the emerging LP process. I accept there are considerable constraints on the Council finding new sites that are likely to be needed due to the extent of the GB [17] but the thrust of the PPTS is that the assessment of need and site allocation to meet any perceived need should come about through a measured and systematic approach. I will come back to this when considering need and supply.

2) Mature Landscape Area (MLA)

59. Both local and national policies seek to protect, conserve and enhance landscapes of importance [6, 10]. The Framework attaches greater weight to conserving landscape and scenic beauty of nationally designated landscapes [18] but those of local importance should still be safeguarded by protection that is commensurate with their status [35].
60. Policy EV4 does not differentiate between the quality or value of the 15 MLAs listed and there are no criteria set down against which development affecting landscape areas will be judged other than an overall test to not adversely affect the character or quality of an MLA. This I find to be at odds with advice in paragraph 113 of the Framework [18]. In the light of the advice in paragraph 215 (Annex 1) of the same, given that this LP policy was adopted in 2002, I consider that limited weight should be given to it.
61. The Greater Nottinghamshire Landscape Character Assessment 2009 is consistent with national guidance in that it identifies the characteristic features of the landscape, its condition and strength and the actions recommended. The landscape in this instance (Selston and Eastwood urban fringe farmland – NC03) is of moderate condition and strength [34]. It falls within the middle of the matrix used and is therefore not of special quality or worth, even at the local level [19]. Nevertheless, the overall landscape strategy is one of enhancement. The development has led to the fragmentation of a field and expansion beyond the urban edge which the defined landscape actions seek to restrict [34, 43]. Consequently, I find that it has not led to enhancement and the incursion of development onto formerly undeveloped farmland has had some adverse effect on the character and quality of the landscape. This is not substantial and has to be seen in the context of the moderate quality of the landscape. However, it is a negative factor to weigh when coming to the balancing exercise.

3) Nature conservation

62. There is no objective evidence before me to suggest that the Friezeland Grassland SSSI/SINC has been or would be harmed should the development be permitted [20]. It is some distance away and the bodies responsible for nature conservation at the local and national level raise no objection to the use continuing subject to conditions [20, 36, 49]. I conclude that there would be no conflict with Policies EV5 and EV6 of the LP or paragraph 118 of the Framework [6, 10].
63. I have taken account of the concerns raised regarding great crested newts [47] but there is no evidence that their habitat has been damaged by the development. I consider that it is highly unlikely that they would have been nesting or foraging on the appeal site given my understanding of the absence of any ponds or lakes on the site itself or within the vicinity. The claim that a newt of this species was found about 500m from the appeal site [20] does not alter my view given the separation distance and the lack of any water body on the appeal site which could have provided a suitable habitat.
64. In terms of nesting and roosting birds [47] I have no objective evidence of the numbers or species that were on the site before the development took place. I accept that there may well have been some birds which resorted to this land and the hedgerows around it. However, the land is not identified as an important habitat for bird species and I accept that the proximity to a main road and street lighting would be unlikely to make this a particularly suitable habitat [20]. Moreover, there is no intention to remove the hedges on the road frontages and new hedges could be added which would add to potential habitats. The area of land lost is relatively small compared to the size of the field that would remain.
65. Concluding on this issue, I am satisfied that the development is unlikely to have caused any material harm to nature conservation interests and that, subject to certain conditions, its continuation would not do so.

4) Living conditions

66. The chief area of concern from local residents on this issue appears to be noise emanating from the running of electricity generators [44, 46, 48]. I have no noise readings or other objective evidence of the levels reached. However as a Noise Abatement Notice has already been served [44], I take this as good evidence that generator operation has caused a nuisance. There was a single generator on the site when I visited. The anticipated connection of mains electricity would overcome the need to use a generator [4] but this is not guaranteed. However, I am satisfied that a condition could be imposed to provide the controls over the use of generators should they still be required.
67. General objections are raised about disturbance caused by the use of the site itself [48]. The appellant has agreed that no commercial or business activities would be carried out on the site and a condition to this effect could be imposed. Given the presence of a main road separating the appeal site from residents opposite, which I observed was carrying substantial volumes of traffic in mid-afternoon, I do not consider that noise from the residential use is likely to cause harm to the living conditions of nearby residents. The outlook from first floor windows of those living directly opposite has been affected to a degree.

However, with the retention of the hedge along the Alfreton Road frontage and the separation distance involved, I consider that the impact is limited.

5) Other considerations

a) General need for gypsy and traveller sites

68. Figures on need within Ashfield DC area are to be found in the EMRP – which is still extant – and the Council's 2012 GTAA, which is a review of the 2007 GTAA which informed the EMRP. The EMRP set down a minimum pitch requirement of 8 pitches from 2007-2012. Planning permission was granted on appeal on 20 March 2012 for 8 'plots' for gypsies and travellers at Park Lane, Kirkby-in-Ashfield which would meet that requirement [21, 37].
69. This only demonstrates that minimum need has been met up to the present year. The PPTS requires local planning authorities to identify and update annually a supply of deliverable sites to provide five years' worth of sites against their locally set targets [21]. The 2012 GTAA includes a table which applies a number of parameters to predict the estimated need for the period 2011-2016. The estimated need is for 17 additional permanent pitches but this is then reduced to 10 on the basis that 7 pitches are predicted as becoming available during the period. If the figure of 10 is taken there remains a requirement for 2 pitches if the 8 pitches at Kirkby come forward during the 2011-2016 period [37].
70. I have considered the appellant's criticisms of the methodology used in the GTAA [22]. This will be a matter for consideration as part of the LP process which will include the examination of whether the assessment of need is sound. I do not have sufficient information before me to reach a definitive view on this. However, I do have some concerns about the deduction of 7 pitches arising from a vacancy rate of 8% over 5 years plus additional vacancies arising from those moving into permanent housing and voids. I tend to share the doubts of the appellant's agent about whether this number of pitches will actually become vacant during the period and there is the point about where the occupiers will move to. I therefore have reservations about whether the reduction from 17 to 10 pitches is warranted.
71. Other matters to consider are that the 2012 GTAA is only an interim assessment going up to 2016 (only 4 years away) [23] and that a full review will not take place for some time. The LP will not be adopted until 2014 at the earliest [21] which will leave a gap until that time. The need figure put forward by the Council of 2 pitches to 2016 [37] is low but with the above reservations in mind I do not consider that this can necessarily be relied on. More work will need to be done on assessing need to inform the emerging LP and any site allocations to meet that need. There are at present 7 unauthorised pitches (including two with temporary permission) [23, 39]. If the appellant's agent's approach of not discounting 7 pitches for vacancies is preferred the outstanding need to 2016 rises to 9 pitches which is closer to the number presently 'unauthorised'.
72. Bringing these points together, there is an outstanding need to provide for 5 years' worth of sites and pitches against the locally set targets – the 2012 GTAA being the most recent available assessment of need. The number of pitches calculated as needed up to 2016 by the Council is low but there may be a need to increase this if the predicted vacancies do not arise during the period. The

general need situation and the lack of a 5 year supply is a material consideration, having regard to the policy guidance in the PPTS.

b) Personal accommodation needs and circumstances

73. I have no reason to dispute the information regarding the background of the occupiers of the appeal site [24]. Their longstanding connection with the area is recognised as is their intermittent occupation of the Moorbridge traveller site at Bulwell. I have no corroboratory evidence that this site is overcrowded but equally neither the Council nor any other party have provided evidence to show that a permanent pitch or pitches are available there. I am therefore inclined to accept that although other family members reside there it does not offer a realistic alternative permanent base for those currently occupying the appeal site.
74. There is only one pitch recorded in the 2012 GTAA as being vacant at Hodgkinson Road. Given the limited size of that site (shown in an aerial photograph – Council's statement) it is highly unlikely that it would be able to accommodate the Cash and Connors families, who need 3 pitches, even if it were available to them. There is no other existing identified alternative site and as the majority of the District is designated GB this makes finding a suitable and acceptable site difficult [17]. However, there may be some scope to find an alternative in that part of the District which is not GB (about 40%). There is also the possibility of obtaining a pitch on the Park Lane, Kirby site when developed although I appreciate that the 8 pitches may already be required for other traveller families.
75. The level of search conducted by the appellant is noted [25] and affordability of land would be likely to preclude most land which already has potential for other forms of development from consideration. I accept that having regard to the authority of *South Cambs DC v SSCLG and Julie Brown [2008] EWCA Civ 1010* there is no requirement to prove that no other potential sites are available but I consider that there remains the prospect that another more suitable location may be found with more extensive investigation.
76. The personal circumstances of the appellant and the co-occupants are noted and the appeal site does offer the opportunity for a settled base in what I agree is a reasonably sustainable location close to services and public transport [27]. It has also enabled the occupants to register with a doctor and facilitates the Connors' children attending a local school which is beneficial to their health and education, consistent with the aims of the PPTS. However, these are general rather than special education and health needs which could be met from alternative bases. Kathleen has only just started her education and there are no other children of school age occupying the site at present. There are no pressing health needs which provide a basis for remaining on the appeal site.

c) Human rights

77. The human rights of the occupants of the appeal site under Article 8 and Article 1 of the 1st Protocol of the ECHR need to be considered [28]. These are respectively the right to respect for private and family life, which includes the home, and the protection of property. Unless they can find a suitable, alternative site the likelihood is that they would have to resort to living on the road or land where gypsy use is unauthorised. This was their lifestyle for periods before they moved onto the site [24]. This would lead to some hardship and be likely to

undermine the opportunities for regular education for children and access to health care. This would amount to interference with the rights under Article 8 and Article 1 of the 1st Protocol. These considerations form part of the overall balancing exercise I shall conduct below.

Conclusions on Appeal A - Ground (a) and Appeal B

78. The use as a traveller site for 3 pitches and 6 caravans constitutes inappropriate development in the GB which by definition is harmful. The development has also caused significant harm to the openness of the GB and led to the encroachment into the countryside beyond a well established settlement edge, contrary to one of the defined purposes of the GB. Additionally it has led to some harm to the visual amenities of the GB, which would not be fully ameliorated by new planting and the imposition of conditions. Paragraph 88 of the Framework requires substantial weight to be afforded to any harm to the GB and there is conflict with Policy EV1 and criteria a) and b) of Policy ST1 [10] of the LP. Furthermore, the site is located in a MLA; whilst I have concluded that this is only of moderate landscape importance at a local level, the limited harm to the landscape is another factor which weighs against the grant of planning permission.
79. The development is unlikely to have caused any harm to the nature conservation interests of the area including those of the nearby Friezeland Grassland SSSI/SINC. I am also satisfied that the continued use would be unlikely to cause material harm to the living conditions of nearby residents, subject to the imposition of appropriate conditions.
80. Set against this cumulative harm there is a general need to provide additional pitches in the District up to 2016 and beyond. From what is before me, the level of need is not great and some provision has recently been made by the granting of planning permission for 8 pitches in Kirkby. Nevertheless, there is no clear assessment of need up to 2017 (5 years) and a likelihood that additional sites will need to be allocated to cover that period. The forthcoming LP will seek to address this situation but it will not be adopted until 2014 at the earliest.
81. The personal accommodation needs of the Cash and Connors families remain unmet and finding a suitable, available and affordable alternative is a difficult task in advance of the new LP and given the GB constraints applying to the District. The benefit of continuity in one child's education is also a point in favour although none of the site occupants have any special educational or health needs.
82. Weighing these findings, I conclude that the harm identified, particularly to the GB, is considerable for a number of reasons and that this outweighs any of the other considerations in favour of granting permanent planning permission, whether taken individually or cumulatively. I therefore conclude that no very special circumstances prevail to warrant the granting of permanent planning permission.
83. As far as whether a temporary planning permission should be granted instead, I am mindful of the advice in paragraphs 25 and 28 of the PPTS. The lack of an up-to-date supply of deliverable sites is to be regarded as a significant material consideration when addressing whether to grant a temporary planning permission. However, this policy test is only to be applied from March 2013 and so at the present time it is not overriding. Moreover the level of need appears to

be limited. I have considered whether the imposition of conditions could render the development acceptable for a temporary period but find that this is not the case.

84. I recognise that dismissing this appeal and upholding the enforcement notice would lead to interference with the human rights of the site occupants. However, the harm caused to the environment is substantial and I find that the legitimate aim of its protection can only be safeguarded by the dismissal of these appeals and not by any lesser means. I conclude that to do so is a proportionate and necessary measure which would not amount to a violation of the human rights of the Cash and Connors families.
85. Bringing these conclusions together, I consider that the substantial harm that would result is not clearly outweighed by other considerations and that very special circumstances do not exist to justify this inappropriate development in the GB on a permanent or temporary basis. For these reasons I conclude that the ground (a) appeal on Appeal A and Appeal B should not succeed. If, however, the Secretary of State comes to a different conclusion and decides to allow these appeals and grant planning permission, I attach a list of recommended conditions in the Schedule at the end of this Report, with the rationale for their imposition set out below.

Ground (g)

86. The purpose of the compliance period is to give a reasonable amount of time to meet the requirements. This period runs from the date that the notice takes effect which will be the date of the Secretary of State's decision should the appeal be dismissed and the notice quashed. The Council's approach of including the period of occupation up to the date of this decision as time that counts is misguided [42]. Whilst the appellant and family have occupied the site since October 2011 [25] they still should be given a reasonable period of time to comply with the requirements of the notice and seek alternative accommodation.
87. In my view the period of 5 months to cease the use and move the caravans and chattels from the site is unlikely to be sufficient to obtain another site, having regard to the likelihood of a need to obtain planning permission as well as securing a suitable, affordable and available alternative. On the other hand, given the harm I have found, I do not consider that an extension to 18 months is appropriate [30]. As a compromise, and in order to provide additional time to search for and secure an alternative site, I find that a period of 12 months would be reasonable and an extra month (13 months in total) for the seventh requirement.

Conditions

88. Should the Secretary of State disagree with my recommendations, I would suggest that conditions be imposed, as set out in the Schedule. Conditions restricting the occupation of the site to those of gypsy status only and the number and type of caravans are necessary to ensure that the use is confined to travellers and in order to prevent an intensification of use which would harm the environment. Conditions preventing commercial use and limiting the size of vehicles to 3.5 tonnes are also necessary in the interests of the living conditions of nearby residents and to protect the environment. A combined condition is needed in the interests of visual and general amenity requiring the submission of

details for approval in respect of landscaping, boundary treatment, foul and surface water drainage and electricity supply/generation, worded with backstop clauses in the event that details cannot be agreed.

89. Highway conditions are recommended based on the comments of the highway authority at the application stage [51]. These cover visibility splays, the width of the access and the bonding of the surface for the first 5m. I consider that those concerning the position of any soakaway and surface water drainage are not necessary as these would be addressed by the requirement to submit details.
90. I have considered the consultation responses of Natural England (NE) and the Nottinghamshire Wildlife Trust (NWT) [51]. Whilst I note the recommendation of NE to require the submission of a survey to assess the possible presence of protected or Biodiversity Action Plan (BAP) species, in the light of my findings above [62-65], I do not consider this is warranted. However, the suggestion that opportunities to introduce features on the site which would be beneficial to wildlife (e.g. bat/bird boxes) is reasonable and this can be incorporated into the combined condition requiring details. I have considered the NWT request for a condition controlling the depositing of building materials and liquids on the Friezeland Grassland SSSI/SINC but as this is about 150m away I do not see this as being necessary.
91. In terms of Appeal B only, the plans submitted with the planning application should be conditioned as the approved layout. It is also necessary and agreed that a condition be added requiring the submission and approval of details of the facing materials to be used in the construction of the amenity buildings; this is to ensure that their external appearance is satisfactory.

Recommendations

Appeal A: APP/W3005/C/12/2170983

92. I recommend that, apart from the partial success on ground (g), the appeal be dismissed and the enforcement notice upheld with variation at Section 6 by the deletion of the word "five" and the substitution of the word "twelve" and by the deletion of the word "six" and the substitution of the word "thirteen" as the periods for compliance. I also recommend that planning permission be refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended.

Appeal B: APP/W3005/A/12/2170829

93. I recommend that the appeal be dismissed.

N P Freeman

INSPECTOR

Schedule of Conditions

Recommended conditions in respect of both Appeals A & B

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 1 of Annex 1: Glossary of the CLG document "Planning policy for traveller sites" (March 2012).
- 2) No more than 6 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended) (of which no more than 3 shall be a static caravan) shall be stationed on the site at any time.
- 3) No commercial activities shall take place on the land, including the storage of materials.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 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 the requirements set out in (i) to (iv) below:
 - i) notwithstanding what exists on the site or what is shown on plans previously submitted, within 3 months of the date of this decision a scheme for the means of foul and surface water drainage of the site; tree, hedge and shrub planting (including planting to be retained and details of new planting with species, plant sizes and proposed numbers and densities); boundary treatment; electricity supply/generation (either by means of connection to the mains supply or by use of a generator with suitable noise attenuation to a level agreed with the local planning authority); and measures to promote wildlife (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.
- 6) Within 2 months of the date of this decision the following shall have been provided and shall be retained thereafter:
 - i. Visibility sightline splays measuring 2.4m x 43m and pedestrian visibility splays of 1m x 1m on either side of the site access. The area within the splays shall be kept free of all obstructions, structures or erections exceeding 0.6m in height;

- ii. An access drive of not less than 4.25m in width for 5m back from the nearside edge of the carriageway which shall be surfaced in a bound material.

Additional recommended conditions in respect of Appeal B only

- 7) The development hereby permitted shall be carried out in accordance with the application plans received on 26 October 2011 ('Block Plan', 'Proposed Amenity Building – Drg. No. PBA1' and 'Details of Proposed Fence') and the layout shall accord with these details unless the local planning authority give permission for an alternative layout.
- 8) No development of the amenity buildings shall take place until samples of the materials to be used in the construction of their external surfaces have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

APPEARANCES AT THE HEARING

FOR THE APPELLANT:

| | |
|---------------------------|---------------------------|
| Mr P Brown BA(Hons) MRTPI | Planning Consultant |
| Mr M Cash | The appellant |
| Ms K Smith | Appellant's mother-in-law |

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|-------------------------------------|------------------------------|
| Mr D Ottewell BA(Hons) BTP MRTPI | Planning Officer |
| Mr P Thompson | Planning Enforcement Officer |
| Mrs Sarah Wilson BA(Hons) BTP MRTPI | Development Team Manager |
| Mrs L Furness DipURP MRTPI | Planning Policy Officer |

INTERESTED PERSONS:

| | |
|--------------------------|---|
| Cllr R Sears-Piccavey | District Ward Councillor |
| Cllr Mrs G Turner | County Councillor |
| Mr M Hubbard DipTp MRTPI | Planning Consultant with Anthony Aspbury Associates Ltd representing 'Keep Underwood Green Group' |

DOCUMENTS SUBMITTED AT THE HEARING

- Doc 1 Council's letter of notification of the hearing dated 12 June 2012.
- Doc 2 Policy 16 of the East Midlands Regional Plan (RSS) with supporting text and Appendix 2.
- Doc 3 Extracts from Ashfield Local Plan (LP) Review – 2002 – Policies EV5, EV6 & HG9.
- Doc 4 Extracts from of the Core Strategy Preferred Option - March 2010 – now withdrawn.
- Doc 5 Extract from The Greater Nottinghamshire Landscape Character Assessment 2009 – 'Selston and Eastwood urban fringe farmland'.

- Doc 6 Extract from LP Proposals Map – showing the Friezeland Grasslands SSSI/SINC.
- Doc 7 Appeal Decision (APP/W3005/A/11/2159674) – dated 20 March 2012 – Change of use to traveller site for 8 plots with associated development – land at Park Lane, Bentinck Town, Kirkby-in-Ashfield.
- Doc 8 Gypsy and Traveller Accommodation Assessment (GTAA) Review for Ashfield District – April 2012.
- Doc 9 Extract from British Social Housing Federation (BSHF) Review of GTAA's in the East Midlands dated September 2008.



Department for Communities and Local Government

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.