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Our Ref: APP/N2739/C/11/2158784 & APP/N2739/A/11/2158757
Your Ref: 11/112

07 August 2012

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 & 174
APPEALS BY MR JOHN TAYLOR (JUNIOR)
LAND ADJACENT TO HILLCREST CAFÉ, GREAT NORTH ROAD, PECKFIELD, SOUTH MILFORD, LEEDS LS25 5LQ
COUNCIL REFERENCES: 2011/0876/EAP & 2010/0324/COU

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Claire Sherratt DipURP, MRTPI, who held a public local inquiry on 17 and 18 January and 17 February 2012 into the following:

   Appeal A: made by your clients against an enforcement notice issued by Selby District Council ('the Council') on 8 August 2011, Ref 2011/0876/EAP, which alleges that without planning permission the use of the land has been changed to a gypsy caravan site without planning permission. The requirements of the notice are to Step 1: Cease the use of the Land as a residential caravan site; Step 2: Permanently remove all caravans, amenity blocks, and other structures, buildings, enclosures and vehicles associated with the use of the Land as a residential caravan site; Step 3: Remove all items associated with the residential caravan site; Step 4: Return the Land to its previous condition. The period for compliance with the requirements is: Steps 1 & 2: Twelve months. Steps 3 & 4: Fifteen months. The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the 1990 Act. An application for planning permission is deemed to have been made under S177(5) of the Act as amended.

   Appeal B: made by your clients against the refusal by the Council to grant planning permission for change of use of land from a truckstop to use as a residential caravan site for gypsies and travellers, including installation of cess tank drainage and stationing of 3 containers to provide communal toilet and

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washing facilities in accordance with application number 2010/0324/COU, dated 25 March 2010.

2. On 1 September 2011 the appeals were 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 because they involve proposals for significant development in the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that Appeal A be dismissed and the enforcement notice upheld with corrections, and that Appeal B be allowed and planning permission granted, subject to conditions, and for a temporary period until 31 December 2014. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with her recommendation. 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 application for costs (IR1) made by your clients at the Inquiry will be the subject of a separate decision letter.

Matters arising following the close of the Inquiry

5. The National Planning Policy Framework ('the Framework') and the Planning Policy for Traveller Sites 2012 ('the PPTS') were published after the close of the Inquiry. The Secretary of State notes that the parties were invited to comment on whether the publication of either of these documents (or the consequent withdrawal of a PPG, PPS or Circular) would have any relevance to their respective cases (IR3).

6. Following the close of the Inquiry, the Secretary of State received representations from Monk Fryston Parish Council objecting to the proposed development of the appeal site. The Secretary of State has taken this representation into account in his consideration of the appeals, but is satisfied that it does not raise matters which would require him to refer back to parties prior to reaching his decision. Copies of the representation may be obtained on written request to the address at the foot of the first page of this letter.

The Enforcement Notice

7. The Secretary of State has taken account of the corrections to the notice recommended by the Inspector (IR4-10 and IR205-206). He has determined the enforcement appeal (on grounds a and g) on the basis of these corrections.

Policy considerations

8. In determining these appeals, 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.

9. In this case the development plan comprises the Regional Spatial Strategy (RSS) for Yorkshire and the Humber (May 2008), and the Selby District Local Plan (February 2005). 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 Regional Spatial Strategy for Yorkshire and the Humber is formally revoked by Order, he has attributed limited weight to the proposed revocation in determining this appeal.

10. The Secretary of State considers that the development plan policies most relevant to the appeals are those set out by the Inspector at IR20-21 and 23. He agrees with the Inspector that the relevant Local Plan policies broadly accord with and are consistent with the National Planning Policy Framework and can therefore be afforded significant weight (IR22). For the reasons set out in IR28, he also agrees with the Inspector that Policy CS7 of the Selby District Submission Draft Core Strategy can be afforded significant weight.

11. In addition to the Framework and the PPTS, other material considerations which the Secretary of State has taken into account include the North Yorkshire Sub-Region Gypsy and Traveller Accommodation Assessment (GTTA), published in May 2008; Core Strategy Background Paper No.13 "The Travelling Community"; and Circular 11/95 The Use of Conditions in Planning Permission.

Main issues

12. The Secretary of State agrees with the Inspector that the main issues are those set out at IR157. He considers these further below.

The Lawful Use of the Site

13. For the reasons set out in IR158-162, the Secretary of State agrees with the Inspector's conclusion at IR162 that planning permission exists for the use of the appeal site for vehicle parking independently of the café, that the permission has not been abandoned, and that this is the lawful fall back position on the site. However, for the reason set out in IR165-167, like the Inspector, he is not persuaded that the use of the site for the parking of vehicles would generate significant numbers of vehicles.

Impact on the openness and purposes of Green Belt

14. Inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. Policy E of the PPTS states that traveller sites in the Green Belt are inappropriate development. The Secretary of State notes that the main parties agree that the proposal is inappropriate development in the Green Belt (IR157) and has attached substantial weight to the harm from this inappropriateness in accordance with national policy in both the Framework and the PPTS. For the reasons set out

at IR170 the Secretary of State agrees with the Inspector that the proposed development in both Appeals would have a greater impact on openness than the likely fall back position, particularly in the absence of evidence to demonstrate the amount of vehicles likely to be parked regularly. For the reasons set out at IR170, he agrees with the Inspector's conclusion that in the case of Appeal A the actual harm to openness would be significant, and that Appeal B would result in a modest level of harm to openness.

Visual amenities, character and appearance

15. The Secretary of State agrees with the Inspector's reasoning on the impact that the development would have on the visual amenities, character and appearance of the area at IR171-174. For the reasons set out in those paragraphs, he agrees with the Inspector's conclusion that Appeal A would detract from the character and appearance of the surrounding area, contrary to Local Plan Policies H16, ENV1 and ENV15 (IR175).

16. In relation to Appeal B, the Secretary of State agrees with the Inspector's conclusion at IR176 that, in this particular location, the reduction in the amount of hardstanding on the site and the creation of a well landscaped gypsy and traveller site accommodating no more than 5 pitches would enhance the appearance of the previously developed site in accordance with Local Plan Policies ENV1 and ENV15.

Sustainable location

17. For the reasons set out in IR177 and 178, the Secretary of State agrees with the Inspector that the site is reasonably well located and would not conflict with Local Plan Policy H16 and draft Core Strategy Policy CS7 in this regard (IR179).

Living conditions

18. The Secretary of State agrees with the Inspector's conclusions in IR180 and 181 regarding the living conditions of the occupiers of the appeal site and of the bungalows on the adjacent site.

Need for gypsy sites

19. The Secretary of State agrees with the Inspector that all the site occupants satisfy the definition of a gypsy and traveller in the PPTS (IR39). He also agrees that the GTAA remains the most up-to-date assessment of need and that, for the reasons set out in IR183, there is a clear and identified immediate need for pitches in the District (IR184). He notes that the Council considers that only 7 pitches are required to address the actual need. He also notes that the Council is intending to identify sufficient land to accommodate 10 pitches (IR183), and that this is referred to in the supporting text to Core Strategy Policy CS7. He agrees with the Inspector that this is a material consideration (IR185).

20. For the reasons set out in IR186, the Secretary of State agrees that a figure of 7 or even 10 pitches would not appear to be a robust assessment of the need arising in the district. On the basis of the evidence put to the inquiry, he also agrees with the Inspector that 10 pitches will fall some way short of meeting the probable actual level of current and future local need (IR187). Whilst the Council is making a concerted effort to identify gypsy and traveller sites, the Secretary of State does not agree that the Council has yet produced sound reasons for setting aside the evidence on need identified in the GTAA, and the level of provision proposed may result in the Council still failing to address the actual shortfall of pitches (IR190). Overall, the Secretary of State agrees with the Inspector that the immediate shortfall of pitches in the area is a consideration that carries significant weight (IR190).

21. The Secretary of State notes that the Council has in excess of a 5 year supply of housing land but that none is specifically identified as gypsy and traveller sites (IR191). For the reasons in IR191, the Secretary of State agrees with the Inspector that the absence of a 5 year supply of land at this stage affords no weight in favour of the proposals.

Personal circumstances of the occupiers

22. The Secretary of State has carefully considered the personal circumstances of the occupiers. He agrees with the Inspector that no alternative sites that would be suitable and available to the site occupants were put to the inquiry (IR192). He recognises the benefits of provision of a settled base for travellers and the need for access to healthcare, education, welfare and employment infrastructure for the current occupiers but agrees with the Inspector that these are benefits that any settled base would provide. Nevertheless, he agrees with the Inspector that, in the absence of suitable alternative sites, the personal accommodation needs of the site occupiers for a settled base is a consideration that can be afforded significant weight. (IR193).

23. For the reasons in IR194, the Secretary of State agrees with the Inspector that the personal circumstances of some of the occupiers, as identified in that paragraph, can be afforded modest weight.

Whether the harm is clearly outweighed by other considerations

24. The Secretary of State has given very careful consideration to the Inspector's balancing of considerations at IR195-198.

25. As set out in paragraph **14** above, the Secretary of State has concluded that the appeal proposals are inappropriate development in the Green Belt and, in line with the Framework and the PPTS, he attributes substantial weight to this harm. The Secretary of State has also concluded that in the case of Appeal A the actual harm to openness would be significant, and that Appeal B would result in a modest level of harm to openness. Additionally, and in relation to Appeal A only, he considers that the proposal would detract from the character and appearance of the surrounding area, contrary to Local Plan Policies H16, ENV1 and ENV15 (paragraph **15** above).

26. The Framework has recently reiterated the importance that the Secretary of State attaches to the importance and protection of Green Belts. He observes that the most important attribute of the Green Belt is their openness. Whilst the existing development within and near the site have already changed the character of the countryside in this vicinity, the Framework makes clear that the quality of the landscape is not relevant to the continued protection of Green Belt land. The Secretary of State considers that the harm that either of the appeals would cause weighs very heavily against them.

27. Turning to matters put forward in support of the appeal, the Secretary of State has concluded that there is an unmet need for sites in the Local Authority area and he has attributed significant weight to this matter (paragraph **20** above). He also considers that the need to give the site occupants a settled base is one that should be given significant weight; and that the personal circumstances of some of the occupiers can be afforded modest weight (paragraphs **22** and **23** above). A further factor in favour of Appeal B only is that the development no more than 5 pitches would marginally enhance the appearance of the previously developed site (paragraph **16** above).

28. The Secretary of State has given very careful consideration to these matters. He has concluded that the appeals would cause harm to the Green Belt in a number of respects and this weighs heavily against them. He also agrees that the balance is slightly different in respect of each appeal, with the harm arising in Appeal B being less. Whilst he considers that there are a number of considerations weighing in support of the appeals, he does not consider that these considerations clearly outweigh the harm he has identified and he concludes that very special circumstances to justify these developments in the Green Belt do not exist.

29. The Secretary of State has gone on to consider whether permission would be justified on a temporary basis. He has had regard to the Inspector's remarks at IR200-203. In relation to the appropriate period to consider for a temporary permission, for the reason given at IR201, he considers that it is reasonable to take the period to 31 December 2014 and he is satisfied, given the considerable efforts being made by the Council, that he can have a reasonable expectation that additional sites are likely to become available in the area by that time.

30. In considering the justification for a temporary permission, the Secretary of State agrees with the Inspector that, in the case of Appeal A, the degree of harm to the Green Belt and the character and appearance of the surrounding area would remain unacceptable and would not be outweighed by other considerations. In relation to Appeal B, the Secretary also agrees with the Inspector that the harm arising from only 5 pitches for a temporary period would be justified.

31. The Secretary of State has considered the Inspector's view (IR199) that the refusal of permanent permission for both appeals would represent an interference with the home and family life of those affected. He agrees with the Inspector that the harm which has been, and would continue to be caused by the proposals is substantial and refusal of permanent planning permission

is a proportionate response (IR199). With regard to a temporary permission for Appeal A, and for the reasons set out at IR203, the Secretary of State agrees that refusal of a temporary permission is a proportionate response.

Conditions

32. Having considered the Inspector's comments at IR151-156, the Secretary of State is satisfied that the conditions proposed by the Inspector are reasonable and necessary and comply with the provisions of Circular 11/95. However he does not consider that they overcome his reasons for dismissing Appeal A.

Overall conclusions

33. The Secretary of State has concluded that, regarding Appeal A, that the scheme conflicts with Local Plan policies H16, ENV1, and ENV15. He has also found that, in relation to both Appeal A and B, the harm that would be caused to the Green Belt would not be clearly outweighed by other considerations and that very special circumstances to justify the developments on a permanent basis do not exist. He concludes that the appeals conflict with the development plan and with the relevant Framework policies and has found no material consideration of sufficient weight for him to determine the appeals other than in accordance with the development plan.

34. The Secretary of State also considered whether temporary planning permissions are warranted. Circular 11/95 indicates that a temporary permission may be justified where planning circumstances will change at the end of that period. He has concluded that in the case of Appeal A, even for a temporary period, the degree of harm to the Green Belt and the character and appearance of the surrounding area would remain unacceptable and would not be outweighed by other considerations. In the case of Appeal B, the Secretary of State concludes that the considerations weighing in support of a time limited scheme for 5 pitches clearly outweighs the harm and that very special circumstances exist to justify a temporary permission. As set out in the conditions annexed to this letter, after 31 December 2014, the site is to be restored to its condition before the development took place.

Appeal A – Ground (g)

35. For the reasons set out in IR204, the Secretary of State considers that 12 months is an appropriate period of time within which to require the residential use of the site to cease.

Formal Decision

36. Accordingly, for the reasons given above, and in relation to Appeal A, the Secretary of State hereby dismisses your client's appeal, and upholds the enforcement notice with the following corrections:

- That the alleged breach of planning control is corrected to read 'The breach of planning control as alleged in the notice is without planning permission the

change of use of the land to a residential gypsy caravan site and the storage of pallets'.

- That Step 4 of the requirements of the Notice is deleted;

- That the plan attached as Annex B to the Inspector's report is substituted for the plan attached to the Notice

and refuses planning permission on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990, as amended, for the change of use of land to a gypsy caravan site (Council reference 2011/0876/EAP).

37. Accordingly for the reasons given above, and in relation to Appeal B, the Secretary of State hereby allows the appeal and grants planning permission for the change of use of land from truckstop to use as residential caravan site for gypsies and travellers, including installation of cess tank drainage and stationing of 3 containers to provide communal toilet and washing facilities on land adjacent to Hazeldene and Hillcrest Café, Great North Road, Peckfield, South Milford, Leeds, LS25 5LQ in accordance with application Ref. 2010/0324COU, dated 25 March 2010, subject to the conditions set out in Annex A which specify, among other matters, that the use permitted shall be for a temporary period only until 31 December 2014.

Right to challenge the decision

38. 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.

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

Yours faithfully,

Richard Watson
Authorised by Secretary of State to sign in that behalf

Annex A - Conditions

1) The use hereby permitted shall be for a **limited period only until 31 December 2014**. 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.

2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for traveller sites.

3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

4) No commercial activities shall take place on the land, including the storage of materials except in association with the adjacent site as a pallet storage use.

5) No generators shall be permitted to operate on the land.

6) There shall be no more than 5 pitches on the site and on each of the 5 pitches hereby approved no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended), shall be stationed at any time, of which only 1 caravan shall be a static caravan.

7) 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) within 3 months of the date of this decision a scheme for: the means of foul and surface water drainage of the site to include oil interceptors; proposed and existing external lighting on the boundary of and within the site; the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking, refuse storage and amenity areas; the restoration of the site to its condition before the development took place, at the end of the period for which planning permission is granted for the use, 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.

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Claire Sherratt DipURP MRTPI

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

Date: 25 May 2012

TOWN & COUNTRY PLANNING ACT 1990

SELBY DISTRICT COUNCIL

APPEALS BY

MR JOHN TAYLOR (JUNIOR)

Inquiry held on 17 & 18 January and 17 February 2012

Land adjacent to Hillcrest Cafe, Great North Road, Peckfield, South Milford, Leeds LS25 5LQ

File Refs: APP/N2739/C/11/2158784 & APP/N2739/A/11/2158757

Land adjacent to Hazeldene and Hillcrest Cafe, Great North Road, Peckfield, South Milford, Leeds LS25 5LQ

Appeal A: APP/N2739/C/11/2158784

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr John Taylor against an enforcement notice issued by Selby District Council.
- The Council's reference is 2011/0876/EAP.
- The notice was issued on 8 August 2011.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the land to a gypsy caravan site.
- The requirements of the notice are to:
  Step 1: Cease the use of the Land as a residential caravan site.
  Step 2: Permanently remove all caravans, amenity blocks, and other structures, buildings, enclosures and vehicles associated with the use of the Land as a residential caravan site.
  Step 3: Remove all items associated with the residential caravan site.
  Step 4: Return the Land to its previous condition.
- The period for compliance with the requirements is:
  Steps 1 & 2: Twelve months.
  Steps 3 & 4: Fifteen months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the 1990 Act.
- An application for planning permission is deemed to have been made under S177(5) of the Act as amended.

Summary of Recommendation: The appeal be dismissed, and the enforcement notice upheld with corrections.

Appeal B: APP/N2739/A/11/2158757

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr John Taylor against the decision of Selby District Council.
- The application Ref 2010/0324/COU, dated 25 March 2010, was refused by notice dated 8 July 2011.
- The development proposed is change of use of land from truckstop to use as residential caravan site for gypsies and travellers, including installation of cess tank drainage and stationing of 3 containers to provide communal toilet and washing facilities.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Procedural Matters

1. The Secretary of State, in exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, directed that he shall determine the appeal. The reason for this direction is that the appeal involves proposals for significant development in the Green Belt. At the Inquiry an application for costs was made by Mr John Taylor against Selby District Council. This application is the subject of a separate Report.

2. I made an accompanied visit to the site on 17 February 2012. I also made an unaccompanied visit to view the site prior to the inquiry opening on 16 January and again, on the evening of 18 January 2012.

3. The National Planning Policy Framework ('the Framework') and the Planning Policy for Traveller Sites ('the Traveller Policy') were published after the close of the Inquiry. The parties were invited to comment on whether the publication of either of these documents (or the consequent withdrawal of a PPG, PPS or Circular) would have any relevance to their respective cases. Responses were received from Selby District Council (Document 30), Councillor John Mackman and Councillor Mrs Carol Mackman (Document 31) and LDP Planning for the Rule 6 Party (Document 32). No comments were received on behalf of the appellant.

The Notice

4. The description of the alleged breach of planning control simply refers to a gypsy caravan site. Whilst it was clear to all those involved in the appeal process that the caravans were occupied for residential purposes, for clarification, the description of the alleged breach in the Notice should specify the change of use of the land to a 'residential' gypsy caravan site. This would be consistent with Step 1 of the requirements of the Notice that requires the residential use of the site to cease.

5. I saw that the Notice incorporates the garden area of the bungalow known as Hazeldene. The plan should be altered to accurately reflect the extent of the boundaries of the site to which the allegation relates. No prejudice would be caused as a result of this amendment to the plan.

6. Part of the site identified on the plan attached to the Notice is used for the storage of pallets. This use is not referred to in the allegation. There was some discussion at the inquiry about the wording of the Notice and its failure to refer to the pallet storage use. I raised the prospect of correcting the allegation in the Notice or omitting the area from the plan. Annex 2 paragraph 2.10 of Circular 10/97 states that in mixed use cases the allegation should refer to all the components of the mixed use, even it is considered expedient that only one should cease.

7. There is no dispute between the parties that the pallet storage use is longstanding and lawful. The Council are not seeking the use to cease and so the implications of S173 (11) are of little consequence in this case as the use is established and even if it were referred to in the allegation, there would be no requirement to require the pallet storage use to cease. It should however be noted that the occupier of the pallet storage site was not served with a copy of the Notice. However, he would not be prejudiced if the allegation were corrected as it is not referred to in the requirements of the Notice and could therefore continue even if it were upheld.

8. Although the pallet storage is confined to an easily identifiable area, the access to the storage area is across the site where the caravans are stationed and the access is shared. The appellant considered it should not therefore be omitted from the plan attached to the Notice. I agree that this poses difficulties. The planning unit includes both areas. Furthermore, given the shared vehicular access and communal parking area, it could be that any permission granted for a residential gypsy caravan site could then only be exercised on the basis of a continued unauthorised development (the mixed use) on these communal areas.

9. The preferred suggestion of the appellant and the Council is to leave the allegation and plan unchanged. Instead, it was suggested that Step 4 could simply be deleted from the Notice thus only requiring the removal of the caravans and all associated residential paraphernalia. No uncertainty or ambiguity could then arise in relation to the restoration of the site and what this may or may not mean for the existing pallet storage business. It could be argued that a notice which does not include a particular activity in the allegations, in this case the pallet storage use, is not a notice which "could have" required the activity to cease for the purposes of S173 (11). However, if the deemed application were to succeed and the Secretary of State did not consider a condition requiring the pallet storage business to cease (as offered by the appellant) was necessary, the mixed use would remain unauthorised potentially raising difficulties for enforcing any conditions.

10. It is necessary to consider whether the Notice is correctable or not. Notwithstanding the appellant's expressed preference, I consider the correct approach is to correct the allegation to refer to a mixed use but also deleting Step 4 in the requirements of the Notice to ensure no uncertainty or inconsistency would arise. If the use were included in the allegation, the nature of the deemed application would of course change as it would include the pallet storage. Nevertheless, I do not consider any prejudice would be caused to the parties as the use is not attacked in the Notice and there was a general acceptance that the pallet storage has operated for a lengthy period of time.

11. If the Secretary of State is of the opinion that the notice can not be corrected, then the Notice should be quashed as inaccurate and incapable of correction.

The Site and Surroundings

12. The site is located in the Green Belt and an area designated in the Selby District Local Plan as a locally important landscape area (LILA). It comprises approximately 0.5 ha of land bounded to the south by the A63, the Great North Road (the former A1). The A1 has now been realigned and runs to the north of the appeal site. The site comprises an area of hard standing once associated with a transport café known as Hillcrest Café, situated on the adjacent site.

13. The appeal site is enclosed by hedgerows along its south-western, south-eastern and eastern boundaries. It is bounded to the north-west by three bungalows, known as Summerfield, Hillcrest and Hazeldene, beyond which is the former café building. All of this development is land within the appellant's ownership and control and is identified in blue on the application plans. I shall refer to this area as the 'café site'. As previously stated, a pallet storage business operates in the south-east corner of the site included in the Notice. It is identified as land in the ownership or control of the appellant on the application plans.

14. Within the vicinity of the site, along the A63, is a derelict garage, a disused petrol filling station kiosk, beyond which is the Milford Lodge Hotel. The site is about 1.5 km from the village settlements of Micklefield and Ledsham and approximately 3 km from South Milford and the larger settlement of Sherburn-in-Elmet, a designated local service centre in the Selby District Local Plan.

Planning Policy

15. The development plan includes the Regional Spatial Strategy (RSS) for Yorkshire and the Humber, adopted in May 2008 and the Selby District Local Plan (LP) adopted in February 2005.

16. At the heart of the Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. The Government attaches great importance to Green Belts. The Framework confirms that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land open; the essential characteristics of Green Belts are their openness and their permanence. As with previous Green Belt policy, inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Policy E of the Traveller Policy confirms that traveller sites (temporary or permanent) in the Green Belt are inappropriate development.

17. Paragraph 214 of the Framework states that for a period of 12 months from its publication, decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with the Framework. Footnote 39 relates to the reference 'since 2004' clarifying this refers to development plan documents adopted in accordance with the Planning and Compulsory Purchase Act 2004 or published in the London Plan.

18. The Rule 6 party takes the view that the LP no longer forms part of the development plan, in accordance with paragraph 214 of the Framework, as it was produced under the Town and Country Planning Act 1990[1]. This is because, in Schedule 8 to the Planning and Compulsory Purchase Act 2004 (Transitional Provisions), paragraph 9 applies to those Local Plans where before the commencement of Part 2 of the 2004 Act a person is appointed to hold an inquiry or other hearing (9-1(b)). In those cases the provisions of Chapter 2 of Part 2 of the Principal Act continue to have effect in relation to the proposals (9-(2)). The Inquiry for the Selby District Local Plan was held in 2003 and so, under paragraph 9-(2) of Schedule 8, the provisions of the 1990 Act continued to have effect.

19. In cases where paragraph 214 is not applicable, as is suggested to be the case here, paragraph 215 is relevant. However, this does not suggest that the policies no longer form part of the development plan. The Framework does not change the statutory status of the development plan as the starting point for decision making. It specifies that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. Selby District Council do not comment on which paragraph of the Framework applies but consider that the policies in the LP should be accorded substantial weight as they are not in conflict with the policies set out within it[2].

[1] Document 32.
[2] Document 30.

20. LP Policy GB4 stipulates that development in the Green Belt will only be permitted where the scale, location, materials and design of any building or structure, or the laying out and use of land, would not detract from the open character and visual amenity of the Green Belt. Policy ENV1 requires development to be good quality. A number of considerations will be taken into account including the effect upon the character of the area or the amenity of adjoining occupiers; and the standard of layout, design and materials in relation to the site and its surroundings and associated landscaping. Policy ENV15 specifies that within the LILAs, priority will be given to the conservation and enhancement of the character and quality of the landscape. Particular attention should be paid to the design, layout, landscaping of development and the use of materials in order to minimise its impact and to enhance the traditional character of buildings and landscape in the area.

21. LP Policy H16 is specific to gypsy site provision and permits small-scale proposals for the accommodation of gypsies as an exception to Policy H9[3], provided there is an established traditional need and (1) the site is not situated within certain areas including land designated as Green Belt or within a LILA; (2) the site has reasonable access to schools, shops and other facilities; (3) the proposal would provide a reasonable standard of residential amenity and on-site services and facilities; (4) the site is well screened, or capable of being screened, and would not have a significant adverse effect on the character and appearance of the surrounding countryside; (5) the proposal would not have a significant adverse effect on agricultural interests or on the amenities of adjoining occupiers; and (6) the site has good access to the strategic road network and would not create conditions prejudicial to highway safety. On-site business activities will only be permitted where they will not result in undue disturbance to nearby uses, risk of pollution, or significantly detract from the character of their surroundings.

22. The relevant LP polices broadly accord with and are consistent with the Framework and can still be afforded significant weight.

23. RSS Policy H6 sets out a requirement for at least 255 additional pitches to meet the needs of gypsies and travellers across the region, of which at least 57 pitches are to be provided in the sub-region of North Yorkshire by 2010. It required local authorities to carry out assessments of needs by July 2008.

24. The North Yorkshire Sub-region Gypsy and Traveller Accommodation Assessment (GTAA)[4], published in May 2008, estimates that there is an unmet need for 55 net additional residential pitches in North Yorkshire, 2008-2015, of which 20 are required to be provided in Selby District. Table ES1 'Pitch requirements to 2015 across the North Yorkshire Sub-region' is reproduced for Selby below:

[3] Policy H9 restricts residential development outside the defined Development Limits except for certain types of development.
[4] Document 2.

Current Shortfall	Projected Need (to 2015)	Pitch Supply	Total
26	9	15	20[5]

25. The Council is currently preparing its Core Strategy (CS) and a Site Allocations Development Plan Document (SADPD) as part of the Local Development Framework. Examination of the CS commenced in September 2011. It was suspended to allow the Council to address three specific topics relating to housing, none of which relate to CS Policy CP7 'The Travelling Community'. At the time of the inquiry, the examination was programmed to resume on the 18 April. I understand that it has now concluded. There has been some slippage in the timetable for adoption and I heard that adoption of the CS is now anticipated this summer.

26. Policy CS7 of the Selby District Submission Draft Core Strategy (May 2011)[6] states that the Council will identify land to accommodate additional gypsy and traveller pitches / sites required through a SADPD, in line with the findings of future up to date Surveys or other robust evidence. It requires new pitches / sites to be located in or close to a settlement containing a primary school, shops and other local services, or constitute an extension to an existing permitted site. A number of criteria should be met. These include, amongst others, that the pitch / site is not situated within the Green Belt or a LILA; is well screened, or is capable of being screened, and would not have a significant adverse effect on local amenity and the character and appearance of the surrounding area; and no pitches will be permitted in areas of High Flood Risk (Flood Zone 3).

27. Paragraph 216 of the Framework confirms that from the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to the stage of preparation, the extent to which there are unresolved objections; and the degree of consistency of the polices in the plan to those in the Framework.

28. The Framework is clear that the planning system should aim to conserve and enhance the natural and local environment by protecting valued landscapes. It suggests that local planning authorities should set criteria based policies against which proposals for any development on or affecting protected landscape areas will be judged. Distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks. The Traveller Policy at paragraph 23 confirms that local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Weight is to be given, amongst other considerations set out in paragraph 24, to the effective use of previously developed, untidy or derelict land; and sites that are well planned or soft landscaped so as to positively enhance the environment and increase openness. Policy CS7

[5] (26+9)-15 = 20.
[6] Document 4.

broadly accords with the Framework and Traveller Policy and has reached a relatively advanced stage of preparation. It can thus be afforded significant weight.

29. At the Policy and Resources Committee meeting held on 27 July 2010 the Committee agreed to receive the GTAA as an indicative starting point in assessing local need. This is reflected in Core Strategy Background Paper – No.13 'The Travelling Community'[7]. It was noted that there is a distinction between a *need* and a *desire* for new pitches and so that removing the desire element, the Council considers that the demonstrated need in Selby district is for 7 pitches, as follows:

Source	**Number**	**Total**
Household growth prediction	3+9	= 12
Minus households moving in to houses	- 15	= -3
Plus unauthorised encampments needing pitches	8	= 5
Plus unauthorised developments needing pitches	2	= 7

30. On this basis, the Council accepts there is currently a shortfall of 7 pitches in the district rather than the 20 identified in the GTAA. It intends to identify a site for 10 pitches in the SADPD 'to provide some flexibility'. Some progress has been made towards publication of the SADPD. It is anticipated that the SADPD will be adopted towards the end of 2013. It is worth highlighting at this juncture that the figure of need being put forward by the Council is not accepted by the appellant.

31. Current authorised provision to accommodate gypsies and travellers in the District consists of two County Council owned sites (Common Lane, Burn and Racecourse Lane, Carlton) providing a combined total of 24 pitches, and one private site at Flaxley Road, Selby although this is not restricted to occupation by gypsies and travellers. All the sites are occupied to capacity.

32. When determining planning applications for traveller sites, Policy H of the Traveller Policy confirms that local planning authorities should consider the following issues (amongst other relevant matters):

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

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

(c) other personal circumstances of the applicant;

[7] Document 3.

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

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

Planning History

33. The planning history of the site is important to the consideration of any fall back position that may be material to the determination of these appeals. Planning permission was granted on 8 March 1982 (reference 8/59/15) for the '*Construction of a vehicle parking area on land to the south east of Hillcrest Café, Newthorpe*', subject to a number of conditions. A copy of the decision is at Document 17. The main parties disagree on whether the appellant could lawfully revert to the use of the site as a vehicle parking area (a lorry park) if it is no longer for use in connection with the former Hillcrest Café on the adjacent site. The application forms, plans, Officer's report and consultation responses in respect of the application are at Documents 18 and 19.

34. An application for the 'change of use of transport café to sale of caravans' was refused on 24 June 2010 (Application number 2010/0212/COU). A subsequent appeal was dismissed on 4 May 2011[8]. An enforcement notice was issued on 23 August 2010 in respect of 'the change of use of the land to the operation of a caravan sales business and the storage of caravans'. A subsequent appeal was dismissed and the notice upheld on 29 March 2011[9].

The Development

35. The deemed application relates to the change of use of land. There were approximately 20 caravans on the site when the notice was issued. At the time of my visit there were 21 caravans stationed on the appeal site, including a static. There is an existing pallet storage business occupying a triangular area of land in the south east tip of the site.

36. In relation to Appeal B, the application was amended during the application process to reduce the number of pitches proposed to 5. These would be occupied by:

- John (Senior) and Violet Taylor, together with adult child Violet;
- David and Clara Smith (Clara is Violet Taylor's daughter);
- John and Emma Knight together with their three children;
- Blue Eyes and Chantelle Price together with their three children, Blue Eyes' mother (Geraldine) and sister Tilly; and

[8] A copy of the appeal decision is attached to Mr Hickling's Proof (Document 13) at Appendix 1b.
[9] A copy of the appeal decision is attached to Mr Hickling's Proof (Document 13) at Appendix 1a.

- Josephine (appellant's sister) and Thomas (her husband)[10].

In addition to those listed above, the additional 3 pitches included in the deemed application (Appeal A) are currently occupied by:

- Richard Taylor;
- Margaret Winters and Margaret and Caleb Howard; and
- Stewart Miller and his wife.

37. There is an existing cess pool on the site. However, in response to concerns raised by the Environment Agency at application stage, the applicant proposed that foul water would be treated via a package treatment plant that would discharge to land that is currently occupied by the pallet storage business, adjacent to the application site.

Agreed Matters

38. No Statement of Common Ground was provided either before or during the Inquiry. However, it is common ground between the parties that the development would constitute inappropriate development in the Green Belt and that the site is previously developed land.

39. The gypsy status of the site occupants is not disputed by any of the parties. I heard that all travel to earn a living; dealing in horses, scrap or landscape gardening and tree felling. I am content that all satisfy the definition of a gypsy and traveller set out in the Traveller Policy.

The Case for Mr Taylor

The material points are:

The ground (a) appeal & the deemed application & Appeal B

The Policy Framework

40. The Policy Framework within which the appeals are to be considered includes:

- Town and Country Planning Acts;
- The Planning and Compulsory Purchase Act 2004;
- Housing Act 2004;
- The Human Rights Act 1998;
- The European Convention on Human Rights Articles 6, 8 and Article 1 of Protocol 1;
- The Regional Spatial Strategy and Local Plan.

[10] Some names of these occupiers differ to those set out in Mr Brown's proof (Document 12)

41. At the time of the inquiry the appellant also relied upon various government guidance documents including PPG2, PPS3, PPG13 and Circular 01/2006 which have since been replaced by the Framework and the Traveller Policy.

42. The Housing Act and Planning and Compulsory Purchase Act must be applied equally to gypsies as to the settled population and attempts not to do so would be discriminatory and would offend against the Race Relations Act and the Equality Code. The inequality of approach between the allocation of housing for the settled population and the travelling population was conceded by the Council's witness. No reference to paragraph 71 of PPS3 (then still in force), requiring authorities to demonstrate a 5 year supply of housing land, was made by the Council.

Human Rights enjoyed by the appellant

43. Article 6 guarantees the right of due process and restricts unlawful intervention by the Executive in judicial procedures. Article 14 requires the policy maker not to discriminate between the settled population and the travelling population in terms of equality of treatment in planning matters. Under Article 8 of the European Convention on Human Rights there is a positive obligation imposed on contracting states to facilitate the gypsy way of life[11]. Under Article 14 there is a duty not to discriminate. Article 1 of protocol 1 guarantees the right of enjoyment of ownership of land.

44. In cases involving gypsy planning considerations, the European Court has found that the general situation in the UK was deplorable, and set out inter alia, several matters that ought to be taken into consideration, such as:-

i) Need;

ii) Availability of alternative accommodation;

iii) The financial matters concerning the availability of that alternative accommodation, which are relevant to the issues of the likelihood of alternative sites being found and where they may be found.

All these matters are clearly material considerations that should be given significant weight in favour of this appeal.

45. There is an overwhelming case for a permanent, let alone temporary, permission in this case. There are a number of considerations in support of the appeal:

- The appeal site is previously developed land;
- The former use of the site as a busy parking area associated with the A1 dual carriageway truck road;
- The site is part of a ribbon of residential and commercial uses. It is not open countryside and does not reflect any of the characteristics of the wider landscape designation;
- The hardstanding and built development is lawful and would remain;

[11] See *Chapman v The United Kingdom 33 EHRR 18*, paragraph 96.

- Part of the enforcement site has an existing lawful use as a pallet business;
- Parking has continued throughout, with unchallenged evidence of quite a significant number of vehicle movements to and from the site on a daily basis;
- The site is wholly sustainable with excellent bus services to shopping and other essential services;
- It has excellent highway access;
- It is a small, completely self contained site, not capable of expansion;
- The owners of the site own and occupy the bungalows and lawful caravans situated on the next door café site which has planning permission to convert the café to residential use (this permission has been implemented);
- The Council does not raise any residential amenity concerns; and
- The Council's Officer recommended that the Planning Committee grant temporary planning permission on the basis that very special circumstances exist to justify a temporary permission.

Harm to Green Belt

46. In assessing the harm to the Green Belt regard must be had to the existing lawful use of the site as a truck stop for the overnight parking of heavy goods vehicles (HGVs) i.e. the fall back position.

47. The use of the site as a lorry / vehicle parking area was established with planning permission granted in 1982. The commentary to Section 75(1) of the Town and Country Planning Act contained in the Encyclopaedia of Planning Law and Practice makes clear that one consequence of the provisions of sub section (1), that planning permission endures for the benefit of the land, is that there can be no doctrine of abandonment of a planning permission.

48. The use of the site for parking was not 'ordinarily incidental' to the use of Hillcrest Café as a transport café, or limited by planning permission to a use ancillary to the adjacent café, but was part of a mixed use that includes to this day the storage of pallets. Hillcrest Café has since closed. No further planning permission has been granted for use of the appeal site. Section 57(4) of the Town and Country Planning Act 1990 allows reversion back to the previous lawful use of the land which is, in this case, the parking of HGVs.

49. In an appeal decision referred to on behalf of the appellant[12], the Secretary of State had regard to the existing lawful use of the appeal site in considering the harm to the openness of the Green Belt, finding the proposed use would cause no greater harm in relation to either openness or encroachment and consequently concluded that the weight to be given to these harms was limited. In this case, the proposed development is no more or less inappropriate than the lawful use of the site. In fact, the removal of hardstanding, the lorry parking and pallet storage uses and the introduction of landscaping and amenity open space would be likely to increase openness. It would not cause any further encroachment into the countryside.

[12] Document 12 PBA1.

50. Both the Council's Officer in the report to Committee and the Council's planning witness initially argued that the fall back use as a lorry / vehicle parking area had been abandoned once the use of the café had ceased. Both failed to appreciate the relevance of the independent planning permission which remains extant and can not be abandoned. Moreover, the parking area had been in continuous use for the parking of vehicles associated with the pallet storage business. The issue of the enforcement notice does not affect the ability of the appellant to resume the parking use.

51. The Council's planning witness conceded that the area of the 1982 planning permission does not include the café site and nor were there any words of limitation or conditions linking the consent to the continued operation of the café site. The Council's witness conceded that he had failed to inform himself of the terms of the planning permission. The Planning witness for the Rule 6 party relied on a similar argument in relation to a planning application to develop the hotel. She accepted the contradiction of her position. The credibility of this witness fell away at this stage.

52. If the appellant can not use the site as a gypsy site he will use it as a parking site. The appellant gave evidence that he purchased the site because it had the existing lawful use and represents a considerable investment to the appellant. There can therefore be no doubt that, should the appeal be unsuccessful, he will reconvene the lawful use of the site for vehicle parking. The appellant told the inquiry that he had been approached with a view to doing so. The appellant's planning witness had observed 10 HGVs parked in the nearby lay-bys when passing by the site one evening.

53. The removal of the lorry park (and the pallet business) and its replacement by a well landscaped gypsy residential site would be a planning gain to the immediate area. The appellant told the inquiry that the pallet business generates 20 / 30 deliveries per week. This would also enhance the residential uses of the Hotel and café site.

Visual impact

54. The appeal site is only visible over a short length of the Great North Road, mainly through a substantial road side hedge, situated between residential development (3 bungalows) and a pallet storage facility. Caravans are low level structures and would be spaced out to comply with caravan site licensing arrangements. They are shorter in length and lower in height that articulated lorries. It is not proposed that the site would accommodate as many caravans as it could HGVs. The proposed development would be less conspicuous in the landscape and result in a visual enhancement of the site, when compared with the lawful use.

55. The existence of the LILA designation should be given little weight. The witnesses did not consider paragraph 53 of Circular 01/2006 or more up to date advice contained in paragraph 24 or 25 of PPS7 at all (both still valid at the time of the application and Inquiry). The Green Belt visual amenity argument is misconceived when considering the fall back uses of the site and the fact that gypsy sites in the countryside are acceptable in principle.

Precedent

56. This is an objection raised by the Council in its reasons for refusal that has no merit. Firstly, development permitted on the basis of very special circumstances cannot set a precedent for the approval of inappropriate development elsewhere in the Green Belt. Secondly, paragraph 45 of Circular 01/2006 made clear that granting a temporary planning permission should not be regarded as setting a precedent for the determination of any future applications for full planning permission. This reason for refusal was misconceived.

Sustainability

57. The appeal site is located about 3 km from the closest designated local centre of Sherburn-in-Elmet, and is the same distance or less from the villages of South Milford and Micklefield. It is served by a regular service along public transport routes 402 and 403 along Great North Road, with bus stops outside the Milford Lodge Hotel and opposite the site. The Committee report refers to the bus services which provide access to services and community facilities in Selby via Sherburn-in-Elmet; and to Leeds via Micklefield. The appeal site benefits from reasonable access, by both private and public transport, to schools, shops and other facilities. The appeal site is closer to facilities than was the case in relation to an appeal decision referred to by the appellant's planning witness[13]. In this case, the Inspector opined that the site residents were likely to be reliant on the private car and that, in all likelihood, they would travel into Banbury to access the full range of facilities and services some 6.5km away.

58. When considering issues of sustainability, decision makers should not only consider modes of transport and distances from services but the wider benefits of easier access to a GP and other health services, children attending school on a regular basis; and the provision of a settled base that reduces the need for long distance (or frequent) travelling and possible environmental damage caused by unauthorised encampment; and not locating sites in areas at high risk of flooding.

59. The appellant's extended family have integrated peacefully with the wider community. Children are enrolled into local nursery and primary schools in South Milford and Sherburn-in-Elmet. There are several older people with chronic health problems, together with other vulnerable adults living on the site. John and Violet Taylor suffer from heart problems. John and Violet's daughter, Violet is disabled, and Clara Smith is pregnant. As a result of having a settled base, all are able to access healthcare by registering with local GPs in Sherburn-in-Elmet. A settled base facilitates a more settled lifestyle, involving less travelling and, by virtue of the lack of alternative lawful sites, a reduction in unauthorised roadside camping.

Green Belt Considerations

60. The proposed development is no more or less inappropriate than the lawful uses of the site. The proposed reduction in the extent of hardstanding, the

[13] Appeal decision reference APP/C3105/A/08/2088864 – Document 12 / PBA4

removal of lorry parking and pallet storage and the introduction of landscaping and amenity open space would increase openness.

61. There can be no doubt that other than its location in the Green Belt it would be an ideal site. Balanced against the harm by reason of inappropriateness is the harm to openness caused by the lawful uses of the site and the positive effect that a well landscaped gypsy site would have.

Other considerations

62. There are a number of 'other material considerations' in support of the appeal which weigh against the harm by reason of inappropriateness. These are the need for gypsy accommodation in North Yorkshire, the lack of suitable alternative sites, and the lack of effective development plan policies capable of addressing the accommodation needs of gypsies and travellers, and the personal accommodation need and personal circumstances of the appellant's extended family. The gypsy status of the site occupiers is not in dispute.

Need

63. The GTAA estimates that there is an unmet need for 55 net additional residential pitches in North Yorkshire (between 2008-2015) of which 20 are required to be provided in Selby district[14]. According to the Annual Monitoring Reports for 1 April 2008 – 31 March 2009 and 1 April 2009 – 31 March 2010, planning permission has been granted for only 2 additional permanent residential pitches, leaving an unmet need for at least 18 net additional residential pitches.

64. There are currently 3 temporary gypsy sites at Towton, Hillam and North Duffield containing a total of 6 pitches. The sites at Towton and Hillam were granted on appeal[15]. There are 3 unauthorised sites on gypsy owned land at Byram (2 pitches), Drax (1 pitch) and the current appeal site (5 pitches). This equates to an immediate need, on the ground, for 14 pitches.

65. The Council's witness conceded that the general unmet need for additional pitches in both the region and district is substantial. The need identified has not been addressed within the timescales of Circular 01/2006 (3-5 years), PPS3 or the duty under the Housing Act. The GTAA, carried out in 2008, found a need for 20 pitches – the Council did nothing to address that need. It is not accepted by the appellant that the immediate identified need only amounts to 7 (10[16]) pitches. The Council incorrectly excludes the figure of 13 relating to 'site requirements from concealed (households) based on preferences'[17]. The GTAA deduces, from the responses received that there is a strong probability that many gypsies and travellers are living in houses because they have either limited or no alternatives available to them. The Council's methodology is contrary to the government's guidance on carrying out need assessments. To ignore the preferences of those in housing who wish to live on a pitch, fails to facilitate the gypsy way of life. Furthermore, the Council is double counting by

[14] Document 2.
[15] Appeal decisions attached at Document 10 and 11 respectively.
[16] The Council is seeking to identify 10 pitches to allow some flexibility.
[17] See Document 3 and as explained by Councillor Mackman in evidence.

doing so as it is also deducting those expressing a preference to move from sites to housing even though the Council is not in a position to facilitate this; there is a long waiting list for housing in Selby and very little information about turnover on existing sites.

66. The site occupiers have a personal need for accommodation – this was not disputed. There are no available alternative sites for the families to go to if the appeal fails; they would be homeless on the road. In assessing possible alternatives, the decision maker should assess not just availability but also affordability, acceptability and suitability as established in the case of *Doncaster Metropolitan Borough Council v First Secretary of State & Angela Smith* [2007] EWHC 1034 (Admin).

67. The appeal site is already occupied and therefore available now to meet part of the identified need for sites in the district and wider area without public expense; an important consideration in light of the current economic circumstances. It would go someway to meeting the need that will otherwise be unmet for the next 3-5 years.

68. The Council carried out a 'call for sites' exercise in July 2010 as a preliminary part of a SADPD. No Gypsy and Traveller sites were forthcoming despite a request for such sites. When consulting on the Issues and Options version of the SADPD the Council asked whether 60 of the sites that had been put forward in the general 'call for sites' may be suitable as residential gypsy and traveller sites (having first discounted those sites in Flood Zone 3, within existing settlement boundaries, further than 2kms from a principal Town / Local Service Centre / Designated Service Village, or which were beyond 400m of a main road). None of the landowners were supportive of the use of the land as gypsy and traveller sites.

69. The Council subsequently extended its criteria for identifying sites for inclusion in the Preferred Options[18] version of the SADPD to include sites specifically promoted for such purposes and sites within 5 km of a suitable service centre. Of the four sites identified, all were situated within or at least partly within, the Green Belt and one was located in Flood Zone 3. Only the appeal site comprises previously developed land. The Council's 'preferred option' was a site for 10 pitches at Poplar Farm, Whitley. This site was subsequently withdrawn by the landowner.

70. The appellant has searched for sites to accommodate his family group. The appellant explained in evidence that he purchased the land including the appeal site in the belief that the site would be acceptable in light of the existing commercial uses. The elderly and infirm of the group have now settled in the residential accommodation associated with the adjacent café site, supported by the rest of the family group. The remainder of the family have no settled accommodation. If evicted, there would be a consequent impact on the housing, educational and health needs of the group on the appeal site particularly when no alternative sites are available.

[18] Document 12 - PBA6

Failure of Policy

71. There has been a failure of policy by this Council to address the needs of the traveller community and facilitate the gypsy way of life. In doing so there have been:

- Breaches of the Race Relations Act and Equality Act demonstrated by the inequality of approach between the allocation of sites for the settled population and failure to do so for the travelling community. A supply of land exists for the settled population but none for the travelling population. The Council are in breach of Section 71 (1) (b) of the Race Relations Act and of the Equality Code of Practice SI 2002. No. 1435. The picture is of a local authority overwhelmed with the national policy requirements, who are dragging their feet unreasonably and who are in denial of their responsibilities to find sites within the timetable required under the Housing Act, Circular 01/2006, the RSS and PPS3. Until a site allocations DPD is in place the equality will continue. Even then, the Council's calculation of the level of need existing is flawed. In summary:

- No quantitative assessment of need was carried out in accordance with Circular 01/94;

- Failure to comply with Circular 01/2006. No SADPD was brought forward ahead of the CS or within the 3-5 years advocated in the Circular, despite the fact that the Council were aware of the significant unmet need;

- Failure to consider the requirements of PPS3, the Housing Act or the RSS and interim statement in the context of bringing forward SADPD;

- The Council's planning witness accepted that the transitional arrangements set out in Circular 01/2006 were applicable to this case and that there was no evidence that the Committee had given substantial weight to the unmet need when considering the Officer's recommendation to Committee. It was not addressed in the Council's Proof of Evidence.

Human Rights

72. If the appeals are dismissed and the Notice upheld the Council are likely to seek the vacation of the appeal site. In the absence of any suitable alternative accommodation, this would result in an interference with the site residents' home and private and family lives under Article 8 of the European Convention on Human Rights. The harm caused to their human rights would be far greater than any alleged harm to the Green Belt and disproportionate to any claimed benefit of removing the site residents from their land. In *Wychavon District Council v Secretary of State for Communities and Local Government & others [2008] EWCA 692*, the Court of Appeal considered that the loss of their family home by a Gypsy family with nowhere else to live was capable in law of being regarded as very special circumstances and was to be weighed in the balance as between the value society attached to the protection of gypsy homes against the public value of protecting the Green Belt.

The balancing exercise

73. The matters that weigh against the development or remain neutral are:

- The harm by inappropriateness which carries substantial weight;
- Loss of openness which would be at most limited;
- No other purposes of including land in the Green Belts would be prejudiced;
- No harm to the character or visual appearance of the area.

74. The matters which weigh in favour of the appeal are:

- The identified unmet and immediate need for sites which should attract considerable weight;
- The long standing, personal accommodation needs of the residents for a site in the general locality which should carry significant weight;
- The absence of any alternative sites which should attract significant weight;
- The failure of the development plan to meet the identified need should carry significant weight;
- The personal health needs of 5 of the site residents should carry some weight;
- The educational needs of 4 children of primary school age should carry significant weight;
- The human rights implications of dismissal should be afforded significant weight.

75. It is clear that there is a greater aggregate weight in favour of the proposal than against it. The considerations in favour clearly outweigh the harm by reason of inappropriateness and any other harm. Very special circumstances therefore exist to justify the grant of planning permission.

76. To conclude, there are considerable factors in favour of these appeals. Any taken alone may be sufficient but taken together they present an overwhelming balance in favour of granting a permanent permission.

Ground (g)

77. A period of two years is required to allow alternative sites to come forward through the LDF process.

The Case for Selby District Council

The material points are:

The ground (a) appeal, the deemed application & Appeal B

78. The unauthorised / proposed development(s) on the appeal site do not comprise sustainable development, and are not in accord with the development plan. Substantial weight should be given to existing development plan policies as they are not in conflict with the policies set out in the Framework (paragraphs 214-216).

79. The first issue to be considered is whether the development constitutes inappropriate development in the Green Belt. The stationing of caravans on a site is generally regarded as a change of use rather than operational development. The Framework maintains the well-established approach to development in the Green Belt previously set out in PPG2. It is noted that the Framework refers to the re-use of buildings only. There is no mention of other changes of use of land and so, a change of use of land in the Green Belt constitutes 'inappropriate development'. Paragraph 14 of the Traveller Policy also confirms that traveller sites constitute inappropriate development in the Green Belt. It is common ground that the development involved in both the section 78 appeal and the ground (a) appeal in the enforcement proceedings is inappropriate development.

80. Policy E of the Traveller Policy stipulates that local planning authorities should only seek to accommodate traveller sites in the Green Belt by means of an alteration to the Green Belt boundary through the Local Plan process and not by means of a planning application or enforcement decision.

81. The proposals do not comply with Policy F of the Traveller Policy which states that mixed uses should not be allowed on rural exception traveller sites. The site contains a pallet storage business along side the proposed residential use. This is not attacked by the enforcement notice.

The fall back position

82. In relation to any fall back position, the parties' positions are polarised. The submission made on behalf of the Council is that the 1982 planning permission cannot be relied on and, if it could, the evidence is insufficient to demonstrate that the appeal site would be likely to generate significant levels of lorry parking activity.

83. Before dealing with the substance of the Council's points some preliminary matters are dealt with first. The first relates to those Green Belt issues in respect of which the fall back position would apply. In this respect it is submitted that the fall back position does not impinge on the question of whether the appeal development is inappropriate or not or on the substantial weight attributable to the definitional harm which is inherent in inappropriateness. This is the way in which the Secretary of State approached this issue in the Malthouse Lane decision[19]. In paragraph 11 of the decision letter the Secretary of State attached limited weight to the scheme's harm to openness and its harm to the Green Belt purpose of safeguarding the countryside from encroachment given the site's potential lawful use for storage but nevertheless attached substantial weight to the harm which arose because the appeal development was inappropriate development in the Green Belt. There is no reason for the Secretary of State to take any different approach here. Whatever the position on the fall back, the harm by reason of inappropriateness should be given substantial weight. The appellant's planning witness appears to take this approach in any event (Document 12 - paragraph 6.2).

[19] Document 12 - PBA1

84. The second matter relates to background legal principles which do not appear to be in dispute. On behalf of the Council, it is accepted that a grant of planning permission cannot be abandoned. It is also accepted that section 57(4) of the Town and Country Planning Act 1990 provides that, where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purposes for which it could lawfully have been used if that development had not been carried out. It is understood that it is accepted on behalf of the appellant that a use which has not had the benefit of planning permission may be abandoned and that the former café use at Hillcrest is capable of abandonment.

85. It is submitted on behalf of the Council that if, as a matter of construction the 1982 permission authorised parking which was to be carried on only in connection with the café and associated use on land to the north at Hillcrest, then in order to carry on that parking use the café use would have to be carried on as well. If the café use has therefore been abandoned it would not be able to be resumed and the 1982 parking use could thus not itself be carried on.

86. On behalf of the appellant it is submitted that the parking use authorised by the 1982 permission could only be tied to the use of Hillcrest if it was so conditioned and it was conditioned that it should cease upon cessation of the Hillcrest café use. It is accepted that a condition of the sort postulated would undoubtedly tie the parking use authorised by the 1982 permission to the use of Hillcrest. However, it is not accepted that the absence of such a condition is determinative of the issue.

87. The permission must be read as a whole and, as the permission was one for operational development, plans accompanying it are necessarily part of the grant. Reading the 1982 permission as a whole it is necessary to have regard to its conditions. Condition 4(i) provided that egress from the parking area should be at the north western end of the extended parking area. It is plain from the plan B/27/3 that the parking area which was being extended was the existing vehicle park at Hillcrest. It also appears from this plan that it provided for egress only from the parking area authorised by the permission and that ingress was to be via the existing Hillcrest parking area. It is nothing to the point that access into the parking area via what was shown on the plan as the egress was not in terms conditioned out given that the plan showed but one opening between the authorised parking area and the highway and that condition 4(i) provided for this to be used as an egress. These matters establish the link between the 1982 permission and the existing use at Hillcrest. At the very least, they raise an issue of ambiguity which would make it permissible to refer to the application. The application describes the development as additional vehicle parking for use in connection with Hillcrest café. That makes matters clear. Thus the parking authorised by the 1982 permission could only be carried on in connection with the café use at Hillcrest. It was in that sense ancillary thereto.

88. It is submitted that the café use has been abandoned[20]. The café use has not operated for several years (exactly how long being the subject of differing opinion at the inquiry), permission has been obtained to convert the building to a dwelling and the stated position of Mr John Taylor (Senior), in respect of the 2011 enforcement appeal and as recorded in the decision letter, was that there was no prospect of the site re-opening as a transport café.

89. If, contrary to the above, the 1982 permission remains available as a fall back position, it is nevertheless submitted that the evidence is insufficient to demonstrate that the fall back would in fact be likely to generate significant levels of lorry parking activity.

90. The appellant's desire to see that the land produced a financial return were the appeals not to be successful is not to be doubted. But overall the evidence adduced is superficial. It is not possible to draw firm conclusions on demand from limited observation of overnight lorry parking on lay-bys, which provide free parking in any event. The fact that the nearby hotel has plans to expand does not help at all. It seeks not to base its plans on passing trade but by becoming a destination in its own right, not a claim one could ever reasonably make about any lorry park. There has been no survey of demand, no analysis of facilities that might compete, no empirical evidence of what facilities a lorry park operator does need to provide to make a business attractive and no evidence of long distance lorry movements which pass the site. Moreover, the evidence does not disclose that anyone has actually sought to use the appeal site as a free-standing lorry park after the café closure. It is impossible in these circumstances to make any safe judgment that, were the appeals to be refused, the appeal site would be likely to generate significant levels of lorry parking activity. It is submitted that the most a decision-maker might reasonably take forward is the possibility of some future lorry parking use. As such that possibility should command no more than limited weight. Hypothetical comparisons between a given number of caravans and a given number of lorries are not helpful.

91. The pallet storage business can appropriately be considered at this point although it features not in the analysis as a fall back position but as a presently existing use and one which is not enforced against. The appellant's figures in relation to the vehicular activity generated by this use do not tally with those of Councillor Mrs Mackman but the Council itself has produced no evidence on this particular matter. If the pallet storage business were removed, the Council's witness accepted that this would generate a planning gain but did not agree that such gain would be significant. That position is commended. The absence of the significance of such gain is of a piece with the fact that the use has not attracted enforcement action.

Other harm

92. It is submitted that the appeal development results in a reduction in openness. It is also submitted that the appeal development causes harm to the Green Belt purpose of safeguarding the countryside from encroachment and to visual amenity.

[20] Document 13 - paragraph 5.12 and Committee Report (paragraph 2.3.26) included in Questionnaire bundle.

93. It is further submitted that some weight should be given to the LILA rather than, as appears to be the approach taken on behalf of the appellant, to give it no weight at all. The LILA is part of the development plan and was given weight in the 2011 appeal decisions in respect of the site to the north. There is no reason to think that the Inspectors deciding those cases were ignorant of paragraphs 24 and 25 of PPS7 which was still in force at that time. The Council does not accept that the LILA cannot command any weight at all in the assessment process. The appeal development is an uncharacteristic feature, and there is therefore another increment of harm to be added to the negative side of the balance. It is not correct to suggest that landscape character issues are absorbed within consideration of Green Belt harm.

94. The Council does not take any point in relation to the sustainability credentials of the site or in relation to the impact of the development on the living conditions of nearby occupiers.

Very special circumstances

95. The burden of proof is on the appellant to demonstrate very special circumstances. It was unnecessary for reason for refusal 2 to say more than it did in this regard in stating that there had been a failure to demonstrate very special circumstances.

96. As to the other material considerations, the Council accepts that there is an unmet need for gypsy and traveller accommodation which it has assessed at 7 pitches and it is seeking to make provision for an allocation of a rounded up figure of 10 pitches through its Sites Allocation DPD, which the inquiry heard is expected to be adopted in 2013. The criticisms at this inquiry of the Council's treatment of the issue of preferences in arriving at its need figure have not been raised in the Core Strategy process and are not a matter which this inquiry need consider as critical given that the appeal development would not lead to overprovision.

97. With the withdrawal of the Council's preferred option site at Poplar Farm, the Council's Policy Review Committee set up a sub-committee chaired by the Policy Review Deputy Chair to reflect on the SADPD process and methodology for finding sites, as well as reviewing all the sites set out in the SADPD. A further call for sites and a reassessment of previously considered sites resulted in a total of 8 sites being recognised by Policy Review Sub Committee, two of which at Hillam and Great Heck, had not been previously considered. The sub-committee recommended that Green Belt continued to be protected, and given the current crop of sites and their various constraints, that the search should be focused on publicly owned sites to assist in deliverability.

98. As a result, the sub-Committee identified land at Burn Airfield, immediately adjoining an existing gypsy and traveller site. Whilst this site had been previously discounted, the review has established that ownership constraints are no longer an issue. Consequently the Council intends to pursue this site as its preferred option through the SADPD.

99. The site occupiers' personal needs have not loomed large in the inquiry nor have their personal circumstances. The only focus on medical conditions of the occupants in the appellant's evidence was in relation to Violet who has epilepsy and cerebral palsy but this was not linked to any particular source of medical

care. Children's educational needs were not highlighted by the appellant when giving his evidence and such a factor was one which the Secretary of State accorded only moderate weight in the Malthouse Lane and Bridge Trafford decisions submitted by the appellant[21].

100. The Council does not put forward an alternative site and accepts that, whilst permission has been granted for a further 5 pitches at the Flaxley Road site, those pitches are not dedicated gypsy and traveller pitches. It is to be noted that in the Bridge Trafford decision the Secretary of State did not consider that, on their own, either the need for sites or lack of alternative sites amounted to very special circumstances sufficient to outweigh the harm to the Green Belt.

101. If it were to be concluded that there has been a failure of local policy to address gypsy and traveller accommodation, it is submitted that any such failure should not prove determinative in the overall balance. The 5 year supply point raised on behalf of the appellant does not materially assist. The requirement to demonstrate a 5 year supply of housing does not sanction development on unsuitable sites. A Green Belt site is, in principle, unsuitable for a gypsy site which is inappropriate development therein.

102. The Council's position that very special circumstances have not been demonstrated is maintained: the harm by reason of inappropriateness and the other harm are not clearly outweighed by other considerations.

Temporary permission

103. The Council's witness did not defend the Council's refusal of a temporary consent on the basis of precedent as referred to in the Council's fourth reason for refusal. Paragraph 46 of Circular 01/2006 provided that the fact that temporary permission has been granted on the basis contemplated in that paragraph should not be regarded as setting a precedent for the determination of any future applications for full permission for use of the land as a caravan site. He did however justify the reason for refusal on the basis of an overwhelming conflict with the development plan and on the basis that the harm was such that temporary permission was justifiably refused.

104. It is not right to say that the advice contained in paragraph 45 of Circular 01/2006 in respect of giving substantial weight to unmet need when considering temporary permission had not featured in the Council's consideration of the matter. Paragraph 2.22.2 of the Committee Report set this out.

105. It is also to be noted that there is nothing in Government policy which indicates that the substantial weight to be attached to inappropriate development in the Green Belt is to be regarded as anything other than substantial in cases where the development is the subject of a temporary rather than a permanent permission.

[21] Document 12 – PBA1 & 2 (paragraphs 24 and 33 of the decision letters respectively).

The ground (g) appeal

106. It is submitted that the time periods allowed for in the enforcement notice are reasonable.

Conclusion

107. It is submitted that the recommendation to the Secretary of State should be that both appeals are dismissed.

The Case for Mr Liam Condon of Lumby Hall, Mr Shaun Sleath of Milford Hotel, Esso Petroleum UK Ltd, South Milford Parish Council and Newthorpe with Huddleston Parish Council ('The Rule 6 Party').

The material points are:

108. The appeal site lies entirely within the statutory Green Belt and is also covered by a landscape protection policy under the provisions of Policy ENV15 of the Selby District Local Plan and which is a saved policy. Only 30% of the District is within the Green Belt. Added to the clinical distinctions of Green Belt functions is the issue of the LILA. The LILA in this case overlies and combines with the Green Belt designation and therefore is a material consideration.

109. However the fundamental issue is the Green Belt and the case of the appellant relies on establishing very special circumstances to outweigh the recognised harm to the Green Belt. Carnwath LJ, in the Court of Appeal in the matter of Wychavon[22] held that the word 'special' in the guidance (PPG2, paragraph 3.2) noted 'not a quantitative test but a qualitative judgement as to the weight to be given to the particular factor for planning purposes'. What then is the proper approach? According to Carnwath LJ the guidance found in PPG2 does not exclude or restrict the consideration of any potential relevant factors, including personal circumstances but limits itself to indicating that the balance of such factors has to be such as to clearly outweigh Green Belt considerations. In this case other additional policy considerations such as ENV15 are relevant. It is thus for the decision maker to make their own judgement as to how to strike that balance in any particular case.

The need for gypsy sites

110. The appellant claims an alleged failure of the Council in respect of its statutory duties in the matter of assessment of need in the area of planning for gypsy and traveller sites within the District. A more common sense approach to the issue of need and the balances and checks which must apply is required, in all reasonableness, to each and every one of the community including travellers and gypsies.

111. It is beyond doubt that each and every one of the community are aware of what development generally comprises of and are aware, both in terms of their own comfort in protection and in terms of their duty when formulating development proposals, that planning permission will normally be required; or

[22] Document 23.

at the very least, dialogue with the planning authority or professional advisors is a minimum before such development takes place. Simply to take the word of a vendor of the land in question and then pay the vendor £300,000[23] and commence to develop the land is beyond belief particularly when it involves a good number of the extended family. Would every one of that group of investors proceed so casually when investing what the appellant claims was their life savings? It therefore offends the sense of reasonableness on the part of every member of the community when such intrusive development, as is the case here, takes place without observation of the most primary elements of planning control.

112. The community could perhaps understand that in particular and perhaps rare cases absolute need has been the overriding factor in such breaches of elementary planning law. What therefore is the need that would generally be recognised as justifying setting aside the proper processes of planning law? The need for a home where that is absolute would surely be accepted but even then members of the local community would look with some care at such claims.

113. The perception in the minds of the Rule 6 party is that the planning system should offer protection against unlawful development. In the minds of the local community the most robust level of protection against unlawful development is that of Green Belt notation particularly where such notation is overlaid with other protective policies such as, in this case, a LILA.

114. If there is such need, as claimed, in terms of personal and family requirements and it is to be satisfied in terms of unlawful development of land, why did the appellant not choose to establish such unlawful development on land outside the Green Belt and which is not covered by further policies of protection? Evidence during the inquiry revealed that the Green Belt within Selby District extends to some 30% of the land within the District leaving 70% of the District not protected by such policies.

115. In cross examination the appellant stated that his purpose was to acquire the whole of the land including the appeal site, the land to the north and what was referred to throughout the inquiry as the pallet land. Mr Taylor stated that it was at the behest of the bank that he telephoned the local planning authority in order to inquire as to the likelihood of the grant of planning permission for business purposes within the land to be purchased; those business purposes being the sale of caravans. The appellant's family were involved in appeals relating to the change of use of the land, in part for the purposes of the sale of caravans, in early 2011. Both appeals were dismissed. Nevertheless they reveal the eagerness of the appellant to establish a business use for the sale of caravans. It would seem therefore, that the primary purpose in identifying the appeal site was that of commercial use and not that of providing the appellant and his extended family with a home. Therefore the weight to be given to the issue of need is very limited.

[23] As established in cross examination.

Previously Developed Land

116. It is accepted that the land that is the subject of this appeal falls within the definition of previously developed land but this is not a material factor of any weight.

The 1982 Permission

117. The details of the 1982 planning permission were gradually made available during the course of the Inquiry. They reveal that the description of the development on the face of the decision notice is "construction of a vehicle parking area on land to the south east of Hillcrest Cafe, Newthorpe". The grant of planning permission was subject to certain conditions. Reference to the planning application at item 2(d) of the planning application form describes the proposed development as 'additional vehicle parking area for use in connection with Hillcrest Café' and clearly relates within the application the proposed development to Hillcrest Cafe in terms of its function and purpose.

118. The drawings contained within the planning file include drawing reference B/27/3 and others which show the inter-reliance of the existing Hillcrest Cafe vehicle park and the proposed vehicle park in terms of entrance and exit arrangements and the parking of vehicles. The 1982 planning permission confirms that the local planning authority in determining the application had taken account of the application. Furthermore drawing number B/27/3 submitted after the initial application is incorporated in the permission by defined reference. Therefore in as much as the application has been incorporated into the planning permission it clearly defines the purpose of the proposed vehicle park.

119. In the appeal reference APP/N2739/A/10/2136669[24] it is clear that Mr Taylor (Senior) gave evidence to the effect that the transport cafe would never be opened again. In such circumstances the vehicle park as approved in 1982 is redundant and does not have a purpose, its purpose being to serve that which the appellant's family described in evidence at a previous appeal as closed and would not be open again.

120. Furthermore, the appellant, in his evidence to this appeal, stated that the planning permission to convert the cafe building into residential use has been implemented; therefore there is further confirmation that the previous use as a cafe is no longer available.

121. It was argued by the appellant that the site could be utilised lawfully as a lorry park serviced by mobile toilet facilities, cafe facilities, showers etc and would rely upon passing trade i.e. heavy goods vehicles and lorries. The appellant's planning witness suggested the commencement of such a use would require no financial input and stated that revenue would be in the order £10 per vehicle per night. However, when cross examined, he confirmed that he did not know the cost of overnight parking, and had not included any of the costs that would inevitably be incurred such as lighting, health and safety provisions, the hire of mobile facilities including cafe, wash rooms and showers, toilets etc. He had not considered the matter of rates or insurance

[24] Document 13 – Appendix 1b (paragraph 18).

and openly admitted he had no idea of the costs likely to be incurred in that context.

122. Evidence was given that the transport café operated on the basis of traffic flow on the A1 prior to the opening of the diverted route A1(M). Traffic flows were in the region of 70,000 vehicles movements a day prior to the realignment of the A1 falling to only around 8,000 now. Leeds City Council conducted a traffic count that recorded 8,355 vehicles over a 12 hour period of which 287 were HGV movements southbound and 305 were HGV movements northbound. The café closed shortly after the A1 re-routeing. It should be noted that the Inspectors considering the caravan sales appeals[25] both dismissed the likelihood that this vehicle park could be brought in to a commercially viable use in the future and gave significant weight to that conclusion in their decisions.

123. In summary, the lawfulness of reinstating a vehicle use for this car park is doubtful and would almost certainly be the subject of legal challenge. Secondly, the commercial viability of reinstatement of such a use, even if that use were found to be lawful, is doubtful and has been found to be so unlikely by two independent Inspectors at appeal that the possibility of viable recommencement was rejected by them.

124. The proposal would therefore create a significant visual intrusion into the Green Belt. The proposals include the stationing of caravans, movement of personal vehicles and caravans. The light colour of caravans and consequent adverse visual effects has been found to be unacceptable at previous appeals.

125. There is no fallback position in this case and the proposals constitute a clear intrusion into the Green Belt and the LILA allocation. As such they offend purposes of including land in the Green Belt. The proposals would significantly impact on openness.

Educational and Health Needs

126. The educational and health needs of the appellant and his extended family will be just the same as families in the community. Those needs could be satisfied in the locality. There are primary educational facilities in South Milford together with a medical practice of some significant size and facility. The site's ability to satisfy those needs is not in question. What must be questioned is the need to develop in the Green Belt in order to take advantage of those facilities particularly when the priority to locate in the Green Belt was commercially driven, and there are huge areas of non Green Belt land within Selby which could provide the facility accommodation needed by the appellant and his family and which with appropriate effort could provide an even more sustainable site. In any event it is public knowledge that Selby Council intends to provide such accommodation in land use terms in the near future.

127. The educational and health needs of the appellant and his family were not a primary consideration in the acquisition of the appeal site and could be equally or better served from a non Green Belt site but which might not have the

[25] Document 13 – Appendices 1a & 1b.

commercial advantage of the appeal site. This consideration is not therefore a very special circumstance and little weight should be applied to it.

Conclusion

128. In this matter it is for the decision maker to strike the balance between the very special circumstances claimed by the appellant and the harm that this inappropriate development would cause to the Green Belt.

129. The Appeal site is a prominent site on this main route into Selby District from the major conurbations to the west. It is a site which overlooks the Vale of York and is exposed to significant public overview and is within the Green Belt and LILA. The acquisition of this site was driven purely by an opportunistic commercial consideration. There is no fallback position in law and even if there were, two independent Inspectors in two previous appeals relating to this site found that there was no viable commercial prospect of recommencement of any form of HGV parking on this land. In quantitative terms, the alleged very special circumstances can not be seen, if they exist at all, to outweigh the very clear harm that the appeal proposals create in the Green Belt.

The case for Councillor John Mackman[26] (District Councillor & Ward Councillor for Monk Fryston, Hillam, South Milford and Newthorpe with Huddleston)

130. The development plan comprises the Selby District Local Plan (adopted February 2005) and the RSS (January 2005). In accordance with paragraph 214 of the Framework, full weight should be given to the relevant saved policies of the LP which includes Policy H16 'Gypsy Site Provision'. The proposed development conflicts with this policy in that it is not small-scale; it is situated in the Green Belt and a LILA; the amenities of adjoining occupiers including those in the adjacent bungalows would be adversely affected by noise and disturbance.

131. The examination in public (EIP) of the CS took place in September 2011. The examination has been suspended to allow the Council to address three specific topics as set out in the Inspector's ruling, none of which relate to Policy CP7 'The Travelling Community' which specifically addresses policy requirements for gypsy sites. It is reasonable to conclude that the forward position on meeting gypsy and traveller needs will be as set out in Policy CP7 of the Core Strategy Submission Draft[27]. Given the stage that the CS has reached it should be given 'significant weight'.

132. The Council accepts there is a need for an additional 7 pitches and proposes to identify 10 pitches in order to provide some flexibility. This figure has not been challenged at the EIP. With the addition of 10 there would be 100 pitches[28] in Selby district accepting that some of these at Green Acres may not

[26] Written statements submitted to inquiry are reproduced at Document 15 together with comments on the Framework and Traveller Policy at 31.
[27] Document 4.
[28] This figure includes 60 pitches at Flaxley which are not restricted to occupation by gypsies and travellers only (XX).

be occupied by travellers. Recent additions have been 2 pitches at Burn and 5 pitches at Greenacres and 3 temporary pitches at Hillam and Towton. The LDF Annual Monitoring Report for December 2011 indicates that the authority currently has a 6.2 year land supply.

133. A SADPD is currently in preparation. CS Policy CP7 requires that 'the pitch / site is not located within the Green Belt or a LILA or Flood Zone 3'. The adjourned CS EIP is due to reconvene on 18 April 2012 with adoption likely in the summer of 2012[29]. Responses to the 'Preferred Options' SADPD consultation are currently being analysed including responses for a further 'call for sites'. A revised timetable will be published this summer (2012) but it would be reasonable to expect that the SADPD would be adopted by the end of 2013. The SADPD should be given 'moderate weight' at this stage.

134. The fact that the Secretary of State intends to revoke the RSS is a material planning consideration to be weighed in the balance. Following the enactment of the Localism Bill, it seems logical that the RSS should be afforded significantly less weight than hitherto.

135. Both the Framework and Traveller Policy continue to provide the maximum possible protection for the Green Belt and if anything, this is reinforced and strengthened. Full weight should be given to these documents as material planning considerations. Taken in the round the case for the refusal of planning permission is strengthened by the introduction of the Framework.

The case for Councillor Carol Mackman[30] (District Councillor & Ward Councillor for Monk Fryston, Hillam, South Milford and Newthorpe with Huddleston)

136. There is no prospect of the resumption of the former use of the site as a lorry park. In order to determine whether the proposed development would preserve the openness of the Green Belt, the correct comparison is that of a redundant unused open piece of land against the impact of the proposal. The development can be compared to appeals relating to caravan sales on the same appeal site made by the appellant references APP/N2739/C/10/2136722 and APP/N2739/C/10/2136669[31].

137. The Inspector, in determining the first of these, commented that '*I have seen no clear evidence to demonstrate the scale of the previous use to enable me to compare it with the caravan sales operation. From the various representations, the site appears to have been unused for some time following the realignment of the A1, and in my view there is no reasonable likelihood that the former use would resume; indeed the appellant states that 'there is no prospect of the site re-opening as a transport café' in these circumstances the fall back position carries little weight in favour of the development*'[32].

[29] The CS EIP has now concluded.
[30] A written statement was submitted at the inquiry – Document 16 and comments on the Framework and Traveller Policy are at Document 31.
[31] Document 13 – Appendix 1a & 1b.
[32] Paragraph 18 of the decision – Document 13 – Appendix 1b.

138. Similarly, in the second appeal, the Inspector concluded that '*It seems to me that minimal weight ought to be accorded to the appellant's comparison between the effects of the previous and present uses; he is making a comparison with something that is highly unlikely to arise. His fall-back position reflects little of practical substance*.'[33]

139. Taking account of these previous Inspector's opinions, in addition to being inappropriate development, the proposal would have a significant impact on the openness of the Green Belt, contrary to LP Policy GB2.

140. The Inspector, dealing with the first of these appeals, concluded that the caravans not only contributed to a significant loss of openness but detracted from the visual amenity of the Green Belt due to the size of caravans, the visibility of the site, and the light colours and reflective materials of the caravans which combine to harm the visual amenity of the Green Belt. In addition to this, the number of cars and HGVs were anticipated to increase activity on the site and create an intensification of the access. Consequently he considered there would have been further resultant harm upon the visual amenity of the Green Belt, contrary to LP policies GB2 and GB4.

141. Furthermore, the site is within a LILA and saved LP Policy ENV15 says that within such areas priority will be given to the conservation and enhancement of landscape character and quality.

142. Contrary to LP Policy ENV1 the residential amenity of the occupiers of the 3 bungalows adjacent to the site would be significantly impaired by the close proximity of the proposed gypsy caravans causing harm to the visual outlook from the bungalows and harm by way of noise and nuisance from adjacent vehicle and people movements.

143. The development fails to meet the criteria of Policy H16 as the site is located in the Green Belt and a LILA; there are questions around waste disposal and the lack of individual private toilets and the impact on the residential amenity of the bungalows. Whilst the site benefits from some authorised screening in the form of trees and hedgerows, the appellant has also erected an unauthorised boundary wall and fencing. The wall is clearly and readily visible from the Great North Road and constitutes a significant encroachment into what had effectively become open countryside.

144. The appellant has not demonstrated that very special circumstances exist that would clearly outweigh the harm. The education and health needs are no different to the general needs of the settled population. The family own 3 bungalows on the adjacent site, there are 5 new pitches in Selby at Green Acres (Flaxley Road), and the SADPD is being prepared to meet the identified need to 2015. There is no history of any significant roadside camping in Selby District.

Written Representations

145. Three letters of objection were received in response to the appeal notification, two of which are from Councillors John and Carol Mackman and one on behalf of Samuel Smith Old Brewery. The key points are:

[33] Document 13 – Appendix 1a.

- The proposals are contrary to Green Belt Policy;
- The proposal represents inappropriate development in the Green Belt;
- No very special circumstances have been advanced capable of outweighing the harm;
- The appellant's concept of 'temporary harm' is not supported by planning policy; and
- A temporary permission is not appropriate for this site and nor is there any justification for it.

146. The correct comparison for the purposes of considering the impact of these proposals on the open countryside and Green Belt is that of a vacant site (without the unlawful works) against the proposed use as a gypsy caravan site; and not, as the appellant has suggested, a comparison against the truck stop and the recent use, in part, for the storage of pallets. The use as a gypsy site has a significantly greater impact on the openness of the Green Belt.

147. The indicative landscaping and associated open space in no way mitigates the harmful effects of the development on the LILA or the surrounding open countryside, contrary to the requirements of Policy ENV15, nor does it overcome the harm to the Green Belt arising from inappropriateness, contrary to Policy GB2.

148. Visual harm arises from the caravans, amenity blocks, urbanising features of infrastructure, (including the sewage treatment plant) and other associated paraphernalia which would be seen as a cluttered intrusion.

149. Re-using previously developed land is not capable of constituting a 'very special circumstance' in its own right. The loss of the pallet storage area would amount to the loss of an unlawful use of the site and does not therefore constitute very special circumstances. The need for gypsy accommodation in the district as a whole is not capable of outweighing the harm arising.

150. To conclude, the appeal proposals relate to inappropriate development in the Green Belt. Harm results from its impact upon openness, upon visual amenity, character and quality of the surrounding countryside, with its LILA notation. No very special circumstances have been demonstrated that are capable of outweighing the harm. The development would be contrary to a raft of development plan policies, regional planning policies and objectives of Government Policy and guidance[34].

Conditions

151. A number of conditions were discussed at the inquiry based on Document 25, prepared by the Council. I have appended a Schedule of Conditions that I consider should be imposed should the appeal under ground (a) on Appeal A and Appeal B succeed. The conditions comply with Circular 11/95 and are worded to reflect the fact that the development is already in place.

[34] At that time - PPG2 and Circular 01/2006.

152. In respect of both appeals, it would be necessary to limit the occupation of the site to persons meeting the definition of a gypsy or traveller in the Traveller Policy to ensure the site meets the needs of the travelling community as intended. The appellant's case does not rely on the personal circumstances of the site occupiers but rather circumstances that are specific to the gypsy and travelling community as a whole. However, if the Secretary of State were to find that the personal circumstances of those living on the site were material to the Green Belt balancing exercise then it would be necessary to restrict the occupation of the site to named individuals.

153. In order to safeguard the character and appearance of the area and visual amenities of the Green Belt, I consider that it would not only be necessary to restrict the number of caravans on the site but also the number of pitches. Appeal A would relate to 8 pitches and 20 caravans whereas Appeal B concerns 5 pitches and 10 caravans. The appellant considered a limitation on the size of any static caravan would be unreasonable. However, it would be necessary and reasonable to restrict the number of caravans on each pitch with no more than one being a static caravan.

154. For the same reason and in the interests of protecting the living conditions of those occupying the site, the pallet storage business on the site should cease to operate, as offered by the appellant during the application process. A layout scheme should be agreed to include details of the stationing of caravans, areas of hardstanding, parking, refuse areas and amenity areas, the means of foul and surface water drainage to include provision of a water treatment plant and oil interceptors, details of on site w.c. and washroom facilities, all boundary treatments, external lighting, a scheme of landscaping and a scheme for the restoration of the site in the event that a temporary planning permission is required. No commercial activities should be permitted on the site to safeguard the living conditions of the site occupiers and those of neighbouring properties, including a limitation on the size of commercial vehicles related to the residential use.

155. In the event that only a temporary consent is considered appropriate, the Council suggests it should be no longer than 3 years, although at the inquiry it was suggested that pitches were likely to be available, on the ground, by the end of 2014. The appellant suggested a period of 5 years would be appropriate to allow for any further slippage. Even if temporary, it would still be necessary to limit the occupation of the site and the number of pitches and caravans accordingly. It would still be necessary to prevent commercial uses and the size of vehicles to protect living conditions. However, I do not consider it would be reasonable given the limited duration of a temporary permission, to require the pallet storage business use to cease. The agreement of a layout scheme would still be appropriate. However, I consider it should not be necessary for any drainage scheme to necessarily include a sewage package treatment plant or landscaping to be required.

156. In addition to those conditions contained in Document 25, it was suggested by the Rule 6 party that there should be no generators on the site to protect residential amenity. The appellant raised no objection to this as there is mains electricity available on the site. I agree that it would be appropriate to safeguard the living conditions of those occupying the pitches and those on the adjacent site.

Inspector's Conclusions

The numbers in square brackets [] refer to earlier paragraphs in the report on which my conclusions are based.

Appeal A, ground (a) & the deemed planning application and Appeal B

157. The main parties agree that the development constitutes inappropriate development in the Green Belt and I concur [38]. The main considerations in this case are therefore as follows:

(a) The lawful use of the site;

(b) The impact of the development on the openness of the Green Belt and on the purposes of including land within it;

(c) the impact of the development on the visual amenities of the Green Belt, the character and appearance of the surrounding area;

(d) whether the appeal site is situated within a sustainable location;

(e) the effect of the development on the living conditions of the occupiers of nearby properties;

(f) 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 lawful use of the site [33, 34, 46-53, 82-91, 117-125, 137-139]

158. When interpreting a planning permission, the basic rule is that a permission should stand by itself, and the meaning be clear within the four corners of the document. However, if it clearly incorporates the application and plan, and there is something which is not clear, then that application and plan may be used as aids to interpretation, to define the scope of what is permitted.

159. The 1982 permission reads '*Construction of a vehicle parking area on land to the south east of Hillcrest Café, Newthorpe*'. No reference is made to vehicle parking 'in association with' Hillcrest Cafe. The red edged land does not include the café site. No conditions restrict the use of the site for the parking of vehicles in association with the transport café.

160. Condition 4(i) states '*egress from the parking area shall be at the north western end of the extended parking area and shall be 24ft wide at the boundary with A1'*. The reason for the condition is '*To enable vehicles leaving the site to make maximum use of the existing acceleration lane*'. No reference is made to the application plan. There is an existing access at this point. It is currently used as an access and egress to and from the site. The appellant makes the point that the condition does not prevent this access point being used as both an entrance and egress. That is the position now, and although not relevant to the interpretation of the planning permission, no concerns about highway safety were raised by the Council in relation to the use of the site for residential purposes.

161. The reason for the condition only relates to the safety of vehicles leaving the site. Its position affords the maximum possible acceleration before joining the traffic. It seems to me that taking the permission, on its face; it does not prevent vehicles entering the site at this point. If the site were to be used for the parking of vehicles, in isolation of the now closed café, there would be no breach of condition 4(i). The only reference to the application plans is in condition 2 that requires the landscaping to be implemented in accordance with drawing number B/27/3 'prior to any part of the parking area being brought into use'.

162. I would suggest that no uncertainty or ambiguity exists and the 1982 planning permission stands by itself and its meaning is clear within the four corners of the document. It should not therefore be necessary to go behind the permission as there is no uncertainty to resolve as to its meaning. Planning permission exists for the use of the appeal site for vehicle parking independently of the café and the permission has not been abandoned [84]. It has not been supplanted by any other permission. This is the lawful fall back position on the site.

163. If the Secretary of State disagrees with me on this point, then it will be necessary to go behind the permission and consider the plans and if necessary the application forms. Drawing number B/27/3 indicates an 'existing entrance' and 'existing egress' on the café site (edged in blue) and only a 'proposed egress' on the area edged red. The Council and Rule 6 party suggest that this indicates that the permission can not be regarded as operating independently to the café site. It is accepted by the parties that a material commencement has been made to implement the permission that exists to convert the café into residential use. In any event, the appellant's father has expressly said that the café would not re-open at past appeals [88, 119, 120]. To my mind, there can be no doubt that the use of the building as a café has been abandoned. The application forms describe the proposed development as 'Additional Vehicle Parking Area for use in connection with Hillcrest Café'.

164. If the Secretary of State accepts the proposition put to the inquiry that the parking of vehicles can only occur in association with the cafe, then the use of the site for the parking of HGVs is not a fall back position against which the harm to the openness of the Green Belt can be judged.

165. If it is accepted that the appellant can resume the use of the site in accordance with the 1982 permission, then it is necessary to consider the likelihood of that occurring. Faced with the appeals being unsuccessful, I have no doubt that the appellant would prefer to use the site rather than leaving it vacant. The site is of sufficient size to accommodate about 35 HGVs as indicated on the 1982 permission application plans. That said, the site no longer benefits from the levels of traffic passing by as it did before the re-alignment of the A1; far from it in fact [122]. I heard that some drivers of vehicles, associated with the pallet storage business sometimes stay over night. I saw 7 HGVs parked in the lay-bys in the immediate vicinity of the site when I passed by early one evening which accords with the observations of the appellant's planning witness [52].

166. However, this is not, in my view, a direct indication of any significant demand for parking on a lorry park, particularly as parking in the lay-bys is

free. I do not doubt that the appellant has been approached occasionally. Common sense would suggest that if drivers are going to pay, some basic facilities would need to be provided. I heard that a mobile café already calls at the site and toilet and washing facilities could be provided in the containers. Some cost would inevitably be involved although there was no evidence available to the inquiry of what those costs may be. Figures suggested by the appellant's planning witness, for the potential charges for overnight parking were not based on any comparative assessments of other facilities in the area or what may be involved [121].

167. However, in light of the re-alignment of the A1, and the considerable reduction in traffic now passing the site, I consider it is unlikely to attract this amount of vehicles. Overall, no substantial evidence was produced to the inquiry to persuade me that the use of the site for the parking of vehicles would potentially generate significant numbers of vehicles.

Impact on Green Belt openness and the purposes of including land in the Green Belt [46-53, 92, 140, 147]

168. The deemed application associated with Appeal A relates to the stationing of some 20 caravans across 8 pitches whereas Appeal B, if successful, would provide 5 pitches accommodating 10 caravans. One of the purposes of including land in the Green Belt is to safeguard the countryside from encroachment. The area to which the appeals relate is no greater than the area which could accommodate vehicle parking and so, the proposed development could not be said to encroach any further into the countryside. The parties agree that the development would not affect any one of the remaining four purposes of including land in the Green Belt; a view with which I concur.

169. The actual harm to openness should be assessed against the lawful use of the site for vehicle parking. In the absence of any evidence that the amount of parking likely to occur would be significant, I do not consider the comparisons between the proposed development and a site 'chock-a-block' with HGVs', put to the witnesses by the appellant's advocate for the purposes of cross examination, were realistic. I accept that caravans are lower in height than HGVs. However, as the site is intended to provide a settled base, at least some of the caravans will, in all likelihood, always be stationed on the site. I recognise that there would be scope to reduce the extent of hardstanding on the site although this does not have a great impact in terms of openness. The pallet storage use could be removed. Even 10 caravans, together with the domestic paraphernalia and vehicles associated with a permanent residential use, would have an urbanising impact and cause a reduction in openness. Clearly the amount of pitches and caravans associated with the deemed application would have a greater impact than the lesser number of pitches proposed in Appeal B.

170. To conclude on this issue, I consider that the proposed development in both Appeals would have a greater impact on openness than the likely fall back position, particularly in the absence of evidence to demonstrate the amount of vehicles likely to be parked regularly. In the case of Appeal A, I consider the actual harm to openness would be significant. In relation to Appeal B, I consider 5 pitches would result in a modest level of harm to openness.

Visual amenities, character and appearance [54, 55, 93, 124, 141, 144,147, 148]

171. The site is situated in a LILA, one of the designated areas where gypsy sites would be in conflict with criterion (1) of Policy H16. The framework is clear that the planning system should aim to conserve and enhance the natural and local environment by protecting valued landscapes. The Traveller Policy, at paragraph 23, confirms that local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Weight is to be given, amongst other considerations set out in paragraph 24, to the effective use of previously developed, untidy or derelict land; and sites that are well planned or soft landscaped so as to positively enhance the environment and increase openness.

172. Although in the LILA, the site and the surrounding area in the vicinity of the site is not reflective of and does not contribute positively to the landscape quality of the wider surrounding area; it remains relatively commercial in appearance and there are a number of disused buildings and the like together with considerable areas of hardstanding.

173. The existing hedge, along the site frontage, offers some screening of the caravans. The site is not visible over any great distance along the Great North Road. Certainly a reduction in the amount of hardstanding on the site together with additional landscaping would help to soften the appearance of the site itself. Caravans though are relatively stark and bright in appearance and thus difficult to assimilate satisfactorily into a landscaped setting. That said the site is of sufficient size that 5 pitches (10 caravans) associated with Appeal B could be accommodated in a spacious layout that would enable the pitches to be integrated amongst internal planting. This would, I suggest, have a positive rather than negative impact on the immediate area.

174. It was apparent from my site visit that twenty or so caravans could not be accommodated on the site without continuing to have an adverse impact. There would be very little scope for any additional planting of any merit within the site. Whilst the hedges offer some screening, the development would have an unacceptable urbanising impact that could not be satisfactorily mitigated by an appropriate layout or landscaping.

175. To conclude, I find that Appeal A would detract from the character and appearance of the surrounding area, contrary to LP Policy H16 and policies ENV1 and ENV15.

176. In relation to Appeal B, there would be conflict with LP Policy H16 and CS7 in terms of the principle of locating a gypsy and traveller site in the LILA. However, in this particular location, the reduction in the amount of hardstanding on the site and the creation of a well landscaped gypsy and traveller site accommodating no more than 5 pitches would enhance the appearance of the previously developed site in accordance with LP Policies ENV1 and ENV15.

Sustainable location [14, 57-59, 94, 126]

177. There are three dimensions to sustainable development as set out in the Framework: economic, social and environmental. There is a presumption in

favour of sustainable development. The development would assist in providing a supply of pitches for gypsies and travellers. The provision of a settled base reduces the need for long distance travelling and possible environmental damage caused by unauthorised encampment as well as social benefits associated with a settled base such as access to health care and education.

178. LP Policy H16 requires sites to have reasonable access to schools shops and other facilities. Children living on the site go to schools in South Milford and Sherburn-in-Elmet. All the residents are registered with a GP in Sherburn-in-Elmet. In terms of its distances from services the site is about 3 km from Sherburn-in-Elmet, a local service centre and there are bus stops in close proximity to the site. The site is 'closer' to a local service centre than the (revised) 5 km distance considered suitable in the SADPD site selection process. [69]

179. To conclude, the site is reasonably well located and would not conflict with LP Policy H16 or CS CS7 in this regard.

Living conditions

180. There are three bungalows on the adjacent site which are now owned and occupied by the appellant and other members of his family. Even if they were not in the ownership and control of the appellant, I find no support for the contention that the living conditions of the occupiers would be harmed. A site layout could be agreed to ensure washroom and toilet facilities are appropriately sited, together with the caravans, to ensure the living conditions of those living in the nearby bungalows are not prejudiced.

181. A condition preventing any commercial uses could also be imposed to protect the living conditions of adjacent occupiers and those on the site. In this regard, the cessation of the pallet storage business and the associated vehicle movements across the site would ensure that the living conditions of those living on the site would be reasonably protected. Adequate foul and surface water drainage facilities could be provided. I find no conflict with relevant development policies in this regard.

Other Considerations

182. The appellant puts forward a number of other considerations in support of the proposals which I consider below.

Need for gypsy sites [24, 29, 63-70, 96-98, 133]

183. The GTAA remains the most up-to-date assessment of need at this time. It was used as the starting point for considering the number of pitches to be identified in the SADPD. The GTAA identified a need for 20 pitches during the period 2008 to 2015. Two permanent pitches have since been provided, leaving a GTAA requirement for 18 pitches. Of this requirement, the Council considers only 7 pitches are required to address the actual need for pitches. In reaching this conclusion the Council is distinguishing between 'need' and 'preference'. No provision is to be made for those expressing a preference to live on a pitch (13 households) and a figure of 15 is also deducted which represents those wishing to move from a pitch into housing. To allow for some

flexibility, the Council is intending to identify sufficient land to accommodate 10 pitches.

184. There is a clear and identified immediate need for pitches in Selby. The identification of pitches through the SADPD process has not proved to be an easy task so far with a number of 'calls for sites' proving to be unsuccessful and amendments being made to relax the criteria against which sites should be assessed. Land adjacent to an existing site at Burn Airfield is to be put forward as the Council's preferred option. There is therefore some likelihood of pitches being identified outside the Green Belt. [97,98]

185. Whilst the level of need is a matter for the development plan process and is to be assessed locally, the Traveller Policy is clear that in assembling the evidence base necessary to support their planning approach, local planning authorities should, amongst other criteria, use a robust evidence base to establish accommodation needs to inform the preparation of local plans and make planning decisions (paragraph 6(c)). The Council's intention to identify 10 pitches is referred to in the supporting text to CS Policy CS7. It is a material consideration.

186. However, the Council has not only deducted those households wishing to leave sites and move into housing (the supply) but also not taken account of those concealed households indicating a preference to move from housing to sites. Given the immediate needs arising from unauthorised pitches alone, together with the needs that will arise when temporary permissions expire, a figure of 7, or even 10, would not appear to be a robust assessment of need arising in the district. Furthermore, the failure to address those concealed households expressing a preference to live on a site fails to facilitate the gypsy way of life. [65]

187. Even if 10 pitches are identified, on the basis of the evidence put to this inquiry, this will still fall some way short of meeting the probable actual level of current and future local need.

188. The Traveller Policy not only requires local planning authorities to identify a supply of specific deliverable sites sufficient to provide five years worth of sites against their locally set targets (paragraph 9(a)), but also to identify a supply of sites or broad locations for growth, for years six to ten and, where possible, for years 11-15 (paragraph 9(b)).

189. To conclude, I consider the immediate shortfall of pitches in the area is a consideration that carries considerable weight.

Failure of Policy

190. There has been a clear failure of the Council to identify sites for gypsies and travellers in the past based on any quantitative assessment of need, which has led to under provision of sites in the district. The Council failed to identify sites within the timescales advocated in Circular 01/2006 or the RSS. The SADPD is unlikely to be adopted until towards the end of 2013. A further period of time will lapse while planning permission is secured and implemented and pitches are subsequently available for occupation. As such provision is unlikely to be made until late 2014. Whilst the Council is clearly making a concerted effort to identify gypsy and traveller sites, the level of provision

proposed may result in the Council still failing to address the actual shortfall of pitches. Some weight can be attached to these failures of policy to address need.

191. The Council has in excess of a 5 year supply of housing land but none are specifically identified as gypsy and traveller sites [133]. The Traveller Policy allows a 12 month period before it is necessary to demonstrate that a 5 year supply of land is available to accommodate gypsies and travellers. As such, I consider the absence of a 5 year supply of land at this stage affords no weight in favour of the proposals.

Personal accommodation needs of the occupiers and availability of alternative accommodation [66, 70, 99, 100, 115, 126, 127]

192. There are two publicly owned gypsy sites in Selby district owned by the County Council and managed by a Housing Association; Burn with 12 pitches and Carlton with 14 pitches. A privately run caravan site in Flaxley Road Selby is licensed for 62 caravans (not pitches) but is not restricted to occupation by gypsies and travellers, although a number do reside there. All are full to capacity. No alternative sites that would be suitable and available to the site occupiers have been put to the inquiry.

193. There was no dispute at the inquiry that all of the site occupiers are in need of a settled base. A settled base would ensure access to healthcare, education, welfare and employment infrastructure for the current occupiers. I recognise that these are benefits that any settled base would provide. Nevertheless, in the absence of suitable alternative sites, the personal accommodation needs of the site occupiers for a settled base is a consideration that can be afforded significant weight.

Personal circumstances

194. Added to the personal accommodation needs of the site occupiers referred to above, are the personal circumstances of some. The appeal site is home to several older people with chronic health problems, together with other vulnerable adults. All are registered with a GP in Sherburn-in-Elmet. Four children are of school age and attend schools in South Milford and Sherburn-in-Elmet. The appeal site provides a settled base that enables children to attend school regularly. Similarly, those with particular health care issues who may be more vulnerable are able to benefit from accessible and consistent health care. The personal circumstances of some of the occupiers can therefore be afforded modest weight.

Whether the harm is clearly outweighed by other considerations

195. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

196. On the one hand, weighing against the development is the harm caused to the Green Belt by reason of inappropriateness that must carry substantial weight. Added to this is the actual harm caused to openness; significant in respect of Appeal A and modest in relation to Appeal B. Additional harm would be caused to the character and appearance of the area, contrary to

development plan policies in respect of appeal B, which attracts significant weight.

197. On the other side of the balance, weighing in favour of the development is the immediate need for additional pitches in the District that is unlikely to be met until late 2014, a matter to be afforded considerable weight. The personal accommodation needs of the occupiers of the site are material and should be afforded significant weight in the absence of any alternative sites that are available to them. There has been a failure, on the part of the Council, to make provision for sites in the past which carries some additional weight. In respect of Appeal B only, the development would marginally enhance the character and appearance of the area.

198. If necessary, added to these considerations, are the personal circumstances relating to some of the occupiers; which again, in the absence of alternative sites, is a matter to be afforded modest weight.

Overall Conclusions

199. The balance is slightly different in respect of each appeal, with the harm arising in relation to Appeal B being less. Overall, I do not consider the totality of harm that would arise in either Appeal, is clearly outweighed by the 'other considerations' advanced by the appellant. If the appeals are dismissed, the Council would, in all likelihood, require the site residents to vacate the site (which has to be regarded as their home) without any certainty of suitable alternative accommodation being readily available. This would represent an interference with their home and family life. However, the harm which has been and would continue to be caused by the proposals, in terms of the protection of the Green Belt, is substantial and the refusal of permanent planning permission would be a proportionate response.

200. Submissions were made on the suitability of a temporary permission if the Secretary of State found a permanent permission unacceptable. The Traveller Policy does not include the same transitional arrangements that were included in Circular 01/2006. However, paragraph 110 of Circular 11/95 'The use of conditions in planning permissions' confirms that where a proposal relates to a building or use which the applicant is expected to retain or continue for only a limited period, whether because they have specifically volunteered that intention, or because it is expected that the planning circumstances will change in a particular way at the end of that period, then a temporary permission may be justified.

201. In this case, not only has the appellant volunteered that intention but it is also likely that the planning circumstances will have changed at the end of the temporary period. Notwithstanding my concerns about the Councils assessment of need, it is clear that the Council are making considerable efforts to make provision for additional gypsy and traveller pitches and some pitches are likely to come forward through the SADPD process that meet the site selection criteria and would be available for occupation by the end of 2014. The harm would therefore be limited to that temporary period only. However, in the case of a temporary permission, I take the view that it would not be reasonable to require the pallet storage use to cease or landscaping to be carried out so the impact would increase somewhat.

202. In the case of Appeal B, I consider that the harm arising from only 5 pitches, if only for a temporary period until 31 December 2014, would be justified. The existing shortfall of pitches, which will not be met for sometime, together with the occupiers need for a site, would clearly outweigh the harm identified.

203. In the case of Appeal A, I consider that even for a temporary period, the degree of harm to the Green Belt and the character and appearance of the surrounding area would remain unacceptable and would not be outweighed by other considerations. Again, I recognise this would represent an interference with the home and family life of those affected. However, the harm that would continue to arise to the Green Belt and character and appearance of the area would be significant even if only for a temporary period and I consider this would be a proportionate response.

Appeal A - Ground (g)

204. The requirements of the notice require the residential use of the site to cease within 12 months. The appellant suggests this is too short and two years would enable sites to come forward through the SADPD process when alternative sites would be available to the site occupiers. I would suggest two years is akin to a temporary permission and not an appropriate timescale for compliance with an enforcement notice; 12 months is sufficient.

Recommendations

Appeal A

205. I recommend that the enforcement notice be corrected as follows:

- That the alleged breach of planning control is corrected to read '*The breach of planning control as alleged in the notice is without planning permission the change of use of the land to a residential gypsy caravan site and the storage of pallets'.*
- That Step 4 of the requirements of the Notice is deleted;
- That the plan attached as Annex B to this report is substituted for the plan attached to the Notice.

206. I recommend that the appeal be dismissed, that the enforcement notice be upheld as corrected, and 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.

207. Or, in the event that the Secretary of State considers the notice is not correctable in this way, the notice should be quashed.

Appeal B

208. I recommend that the appeal be allowed, and planning permission granted subject to the conditions listed in Annex A.

Claire Sherratt

INSPECTOR

Annex A - Recommended conditions.

The following conditions are recommended should the Secretary of State agree with my recommendation and grant a temporary planning permission on Appeal B:

1) The use hereby permitted shall be for a limited period only until 31 December 2014. 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.

2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for traveller sites.

3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

4) No commercial activities shall take place on the land, including the storage of materials except in association with the adjacent site as a pallet storage use.

5) No generators shall be permitted to operate on the land.

6) There shall be no more than 5 pitches on the site and on each of the 5 pitches hereby approved no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended), shall be stationed at any time, of which only 1 caravan shall be a static caravan.

7) 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) within 3 months of the date of this decision a scheme for: the means of foul and surface water drainage of the site to include oil interceptors; proposed and existing external lighting on the boundary of and within the site; the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking, refuse storage and amenity areas; the restoration of the site to its condition before the development took place, at the end of the period for which planning permission is granted for the use, 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.

In the event that a personal permission is considered necessary, the following conditions are also suggested:

8) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants:

John (senior) and Violet Taylor and their adult daughter Violet; John and Emma Knight; David and Clara Smith; Blue Eyes and Chantelle Price together with Geraldine and Tilly Price; Josephine Taylor (appellant's sister) and Thomas (her husband).

9) When the land ceases to be occupied by those named in condition 8 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.

Permanent permission (Appeal B)

In the event that a permanent permission is granted on Appeal B, the reference in condition 4 to '*except in association with the adjacent site as a pallet storage use'* should be deleted. Condition 7(i) should be amended to include 'the means of foul and surface water drainage of the site to include provision of oil interceptors and a package treatment plant'.

The following conditions are suggested in addition to those set out above:

10) 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) within 3 months of the date of this decision:

a scheme for tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation; (hereafter referred to as the landscaping scheme);

the pallet storage business occupying the site immediately to the south east of the appeal site shall cease and the land shall be restored in accordance with a restoration scheme that shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation; (hereafter referred to as the restoration scheme);

ii) within 11 months of the date of this decision the landscaping and restoration schemes shall have been approved by the local planning authority or, if the local planning authority refuse to approve the schemes, 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(s) shall have been approved by the Secretary of State.

iv) The approved landscaping and restoration schemes shall have been carried out and completed in accordance with the approved timetable.

11) At the same time as the landscaping scheme required by condition 10 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of five years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

Permanent permission (Appeal A)

In the event that a permanent permission is granted on Appeal A, the above conditions are suggested with the following exceptions:

Condition 5 should be replaced with:

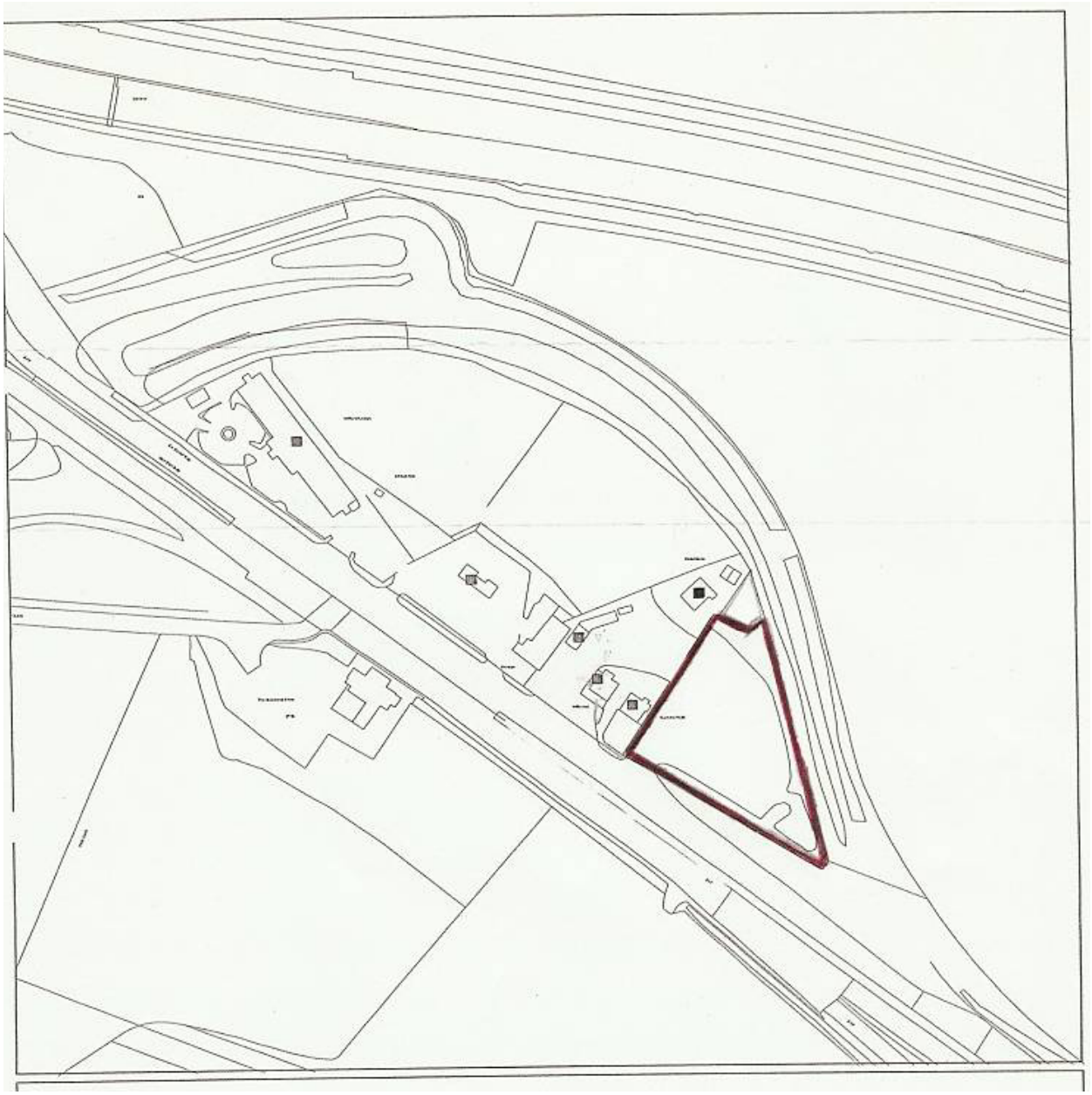
There shall be no more than 8 pitches on the site and no more than a total of 20 caravans in total, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, of which no more than 1 static caravan shall be stationed on a pitch at any time.

Condition 8, if considered necessary, should be replaced with:

The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants:

John (senior) and Violet Taylor and their adult daughter Violet; John and Emma Knight; David and Clara Smith; Blue Eyes and Chantelle Price together with Geraldine and Tilly Price; Josephine Taylor (appellant's sister) and Thomas (her husband); Richard Taylor; Margaret Winters and Margaret and Caleb Howard; and Stewart Miller and his wife.

Annex B – Plan to be substituted for enforcement notice plan



Not to Scale.

APPEARANCES

FOR THE APPELLANT:

Mr Alan Masters of Counsel	Instructed by Philip Brown Associates.
He called	
Mr John Taylor	The appellant.
Mr Philip Brown	Philip Brown Associates Limited.

FOR THE LOCAL PLANNING AUTHORITY:

Mr Alan Evans of Counsel	Instructed by the Head of Legal Services for Selby District Council.
He called:	
Mr David Hickling	Hickling-Gray Associates.

FOR THE RULE 6 PARTY

Mr Torrible	Instructed by LDP Planning.
He called:	
Melissa Madge	LDP Planning.

INTERESTED PERSONS:

Councillor John Mackman	District and Ward Councillor.
Councillor Carol Mackman	District and Ward Councillor.

DOCUMENTS SUBMITTED BEFORE THE INQUIRY

1 Correspondence from Selby District Council dated 14 September 2011.
2 ARC 4 Report – Gypsy and traveller Accommodation Assessment North Yorkshire Sub-region – 2007/8.
3 Core Strategy background paper – No.13 The Travelling Community (January 2011).
4 Selby District Submission Draft Core Strategy May 2011.
5 Site Allocations Development Plan Document – Issues and Options.
6 Executive Agenda 1 September (item 4 Draft SADPD Issues and Options).
7 Table 1- Count of Gypsy and Traveller caravans on 8 July 2010 / Last 5 Counts.
8 Table 2 – Gypsy sites provided by Local Authorities and Registered Providers in England (8 July 2010).
9 Appeal decision reference APP/N2739/C/09/2119072 & 2119073.
10 Appeal decision reference APP/N2739/C/09/2119366.
11 Appeal decision reference APP/N2739/C/09/2103054.
12 Proof of Evidence and attached appendices of Philip Brown on behalf of the appellant.
13 Proof of Evidence and attached appendices of David Hickling on behalf of Selby District Council.
14 Proof of Evidence and attached appendices of Melissa Madge on behalf of the Rule 6 Party.

DOCUMENTS SUBMITTED DURING THE INQUIRY

15 Statement of Councillor John Mackman.
16 Statement of Councillor Carol Mackman.
17 Copy of planning permission reference 8/59/15/PA dated 25 August 1982.
18 Copy of application form and plans relating to the 1982 application / permission.
19 Copy of Planning Officer's Report and consultation responses in relation to 1982 application.
20 Letter dated 9 May 2009 to Selby DC from Digwa Cousins Solicitors on behalf of Mr John Taylor requesting pre-application advice in relation to the use of the site for caravan storage and sales.
21 Response from Selby DC dated 9 June 2009.
22 *South Cambridgeshire DC v SSCLG, Archie Brown and Julie Brown* [2008] EWCA Civ 1010.
23 *Wychavon DC v SSCLG, Kathleen Butler & Leonard Butler* [2008] EWCA Civ 692.
24 Details of A63 de-trunking proposals.
25 Suggested conditions by Selby District Council.
26 Closing submissions for the Rule 6 Party.
27 Closing submissions for the Council.

28 Closing submissions for the Appellant.
29 Costs Application by the Appellant.

DOCUMENTS SUBITTED AFTER THE CLOSE OF THE INQUIRY IN RESPONSE TO THE NATIONAL PLANNING POLICY FRAMEWORK & PLANNING POLICY FOR TRAVELLER SITES

30 Response on behalf of Selby District Council.
31 Response of Councillor John Mackman & Councillor Carol Mackman.
32 Response on behalf of Rule 6 Party.

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.