

Philip Brown
Philip Brown Associates
74 Park Road
Rugby
Warwickshire
CV21 2QX

Our Ref: APP/A0665/A/11/2165224
Your Ref: 11/119

10 July 2012

Dear Mr Brown,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR ANDREW LOVERAGE
AT LAND AT OS FIELD NO. 5845, THE STREET, HOOLE BANK, MICKLE
TRAFFORD, CHESTER CH2 4ES
APPLICATION REFERENCE: 11/02760/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Elizabeth Fieldhouse Dip TP, Dip UD, MRTPI, who held a hearing on 3 April 2012 into your client's appeal against a decision of Cheshire West and Chester Council to refuse planning permission for a retrospective application for the change of use of land to use as a residential caravan site for 5 gypsy families, each with 2 caravans and an amenity building, including the laying of hardstanding and access improvements at Land at OS Field no. 5845, The Street, Hoole Bank, Mickle Trafford, Chester CH2 4ES in accordance with application reference 11/02760/FUL, dated 4 June 2011.
2. On 9 December 2011 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because the appeal involves a proposal for significant development in the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed and planning permission be refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, with the exception of the significance she accords to the deficiency in 5 year land supply in balancing for a temporary permission, 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.

Policy considerations

4. In determining the appeal, 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.
5. In this case the development plan comprises the saved policies of the Cheshire 2016: Structure Plan Alteration 2005 (SP) and the Chester District Local Plan 2006 (LP). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR7- IR9.
6. Other material considerations which the Secretary of State has taken into account include the *Cheshire Partnership Area Gypsy and Traveller Accommodation and Related Services Assessment 2007 (GTTA)* (IR49 and IR99), *Circular 11/95 The Use of Conditions in Planning Permission* (IR71), the *National Planning Policy Framework 2012 (the Framework)* and *Planning Policy for Traveller Sites 2012 (PPTS)*. The Secretary of State notes that the application was considered by the Council under PPG2 and PPS23 but that the hearing took place after the publication of the Framework, which replaced PPG2 and PPS23, and PPTS, which replaced ODPM Circular 01/2006, and that the parties were able to respond on matters addressed by the new documents at the hearing (IR10).

Main issues

The openness and purposes of Green Belt

7. 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 parties agree that the proposal is inappropriate development in the Green Belt (IR19) and has attached substantial weight to the harm from this inappropriateness in accordance with national policy in the Framework. For the reasons set out at IR83-87 the Secretary of State agrees with the Inspector that there has been a serious loss of openness, which would only be exacerbated if other elements of the proposal were undertaken. He agrees that the development would encroach in to the countryside, impacting on one of the purposes of including land in the Green Belt. As indicated in the Framework, he agrees that substantial weight is given to any harm to the Green Belt (IR87).

Character and appearance of the area

8. The Secretary of State agrees with the Inspector's reasoning and conclusions on the impact that the development would have on the character and appearance of the area at IR88-93. He shares the Inspector's view that as a result of the layout, use of incongruous materials and intensity of use, the development is and would be intrusive, urbanising, and cause significant harm to the character and appearance of the area.

Assessment of the possible harm from the acid tar lagoon

9. The Secretary of State notes that the Appellant owns the adjoining field that extends to a ditch that is fed from the ditch adjoining the acid tar lagoon, a site registered as a contaminated site under Part 2A of the Environmental Protection Act 1990 (IR 5, IR94-96). He notes that there is no evidence of long term risk to the health of occupiers from pollution on the appeal site, but he further notes the Inspector's concern that it has not been demonstrated that contaminants in the ditch have not, or could not be spread away into the field, and that there is inadequate information to demonstrate that families with small children who might occupy the site would not be at significant risk to their own health and safety (IR97-98). He agrees that the harm from possible health and safety risks carries significant weight (IR98). He does not consider that this site fulfils the criteria for a sustainable site for travellers as set out Policy B of the PPTS.

The general need for, and provision of travellers' sites in the area

10. The Secretary of State notes that there is no dispute between the parties that the Appellant and the proposed occupiers fall within the definition of gypsies and travellers in Annex 1 to PPTS. He notes that the Council accepts that there is a general need and a substantial level of unmet need in the District, against the requirement identified in the GTTA (IR99-100). The Secretary of State accepts that there is not a 5 year supply of deliverable sites, but agrees with the Inspector that in view of the steps that the Council is taking to release sites to meet at least the minimum identified need by 2016, the outstanding need is only accorded some weight in favour of the appeal (IR 101-102). In reaching this conclusion he has taken into account the Government's aims for traveller sites set out in paragraph 4 of the PPTS, including the aim of increasing the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply; and the need to consider the existing level of local provisions and need for sites in Policy H of the PPTS.

Personal circumstances of the occupiers

11. The Secretary of State has carefully considered the personal circumstances of the occupiers and agrees with the Inspector's conclusions at IR103-110, with the exception of the last sentence of IR105, as he does not agree that the lack of alternative sites is a consideration of significant weight in favour of granting a temporary planning permission (see paragraph 17 below). The Secretary of State agrees that limited weight should be accorded to the absence of an identified alternative site, as it had not been demonstrated that all the families have been living on the site and no details had been provided of any serious efforts to find a more suitable site since the enforcement notice was upheld in June 2010. He recognises the benefits of provision of a settled base for travellers and the need for access to health and education, but agrees with the Inspector that it does not necessarily have to be the appeal site. He notes that no specific needs are raised that could not be met at a suitable alternative site. He therefore agrees that limited weight should be given to the collective and specific educational, medical and personal needs of the occupiers.

Compliance of the appeal proposal with traveller site policies

12. The Secretary of State agrees with the Inspector that all the provisions of the gypsy site location policies SP HOU6 and LP HO21 would not be met, as the site is within the Green Belt and the development would cause material harm to the character and appearance of the area (IR113).

Conditions

13. Having considered the Inspector's comments at IR114, 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 the appeal.

Overall balancing and conclusions

14. In coming to a decision on this appeal the Secretary of State has had regard to the presumption in favour of sustainable development in the Framework. However, the proposal does not accord with all the provisions of the gypsy site location policies (SP HOU6 and LP HO21). The Secretary of State considers other material considerations below and whether the adverse impacts of granting a permission would significantly and demonstrably outweigh the benefits, taking into consideration that Green Belt policies indicate that development should be restricted and that traveller sites are an inappropriate form of development in the Green Belt.
15. The Secretary of State agrees with the Inspector's balancing of considerations at IR115-118 in respect of a permanent permission. Like the Inspector he concludes that the development would cause substantial harm by reason of inappropriateness, loss of openness and conflict with one of the purposes that Green Belt serves. It would cause significant harm to the character and visual amenities of the area and possible health and safety risks from potential contamination. In terms of factors in favour of the appeal, the need for sites should be given some weight but limited in view of the progress towards meeting the need by 2015. Some weight is also afforded to the absence of an identified alternative site but limited for the reasons given by the Inspector (IR 116). Similarly, the Secretary of State agrees that limited weight should be given to the collective educational, medical and personal needs of the occupiers. He has balanced the substantial harm to the Green Belt against the factors in favour but concludes that the harm is not clearly outweighed by the considerations in favour such that very special circumstances exist to justify development in the Green Belt on a permanent basis.
16. The Secretary of State has carefully considered the issue of interference with Human Rights and agrees with the Inspector that it is likely that a refusal of planning permission would be likely to lead to the appellants having to vacate the site and that this would represent an interference with the rights to a home and family life under Article 8 of the ECHR (IR 111-112). He does not agree with the Inspector in IR 112 that such rights only apply to an existing home but considers that dismissal of the appeal may lead to an interference with the rights of those

currently living on the site and potentially also with the rights of other prospective occupants. The Secretary of State has considered whether dismissal of the appeal would be proportionate and necessary in the circumstances of this case having regard to Human Rights provisions but the harm which would continue to be caused by the development is considerable. Taking account of all the material considerations, the Secretary of State is satisfied that the legitimate aim to safeguard the countryside from encroachment can only be safeguarded by dismissal of the appeal.

17. The Secretary of State has considered whether a temporary planning permission is warranted in this case. The Secretary of State agrees that there is unmet need for sites in the District and that there is not an up to date 5 year supply of deliverable sites, but he does not agree with the Inspector that the lack of a 5 year supply is a significant material consideration given the implementation arrangements in the PPTS. Circular 11/95 indicates that a temporary permission may be justified where planning circumstances will change at the end of that period and the Secretary of State agrees that there is a reasonable prospect that additional pitches would be available by 2015. However, he agrees with the Inspector at IR 120-122 that although a time limited permission would reduce the weight attached to the harm through inappropriateness, loss of openness, conflict with one of the Green Belt purposes and impact on character and visual amenities, it would not diminish the weight attached to the potential risks to health and safety of the occupiers. He does not consider that the considerations weighing in support of a time limited scheme outweighs the harm and that very special circumstances do not exist to justify a temporary permission. Refusal of temporary planning permission would be proportionate and necessary in the circumstances of this case and would not violate the Appellant's and other occupiers' human rights.

Formal Decision

18. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the change of use of land to a residential caravan site for 5 gypsy families, each with 2 caravans and an amenity building, including the laying of hardstanding and access improvements at Land at OS Field no. 5845, The Street, Hoole Bank, Mickle Trafford, Chester CH2 4ES in accordance with application reference 11/02760/FUL, dated 4 June 2011.

Right to challenge the decision

19. 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.
20. A copy of this letter has been sent to Cheshire West and Chester Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours sincerely,

Pamela Roberts

Authorised by Secretary of State to sign in that behalf



Report to the Secretary of State for Communities and Local Government

by Elizabeth Fieldhouse DipTP DipUD MRTPI

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

Date: 4 May 2012

Town and Country Planning Act 1990

Appeal by

Mr Andrew Loverage

Cheshire West and Chester Council

Hearing held on 3 April 2012

Land at OS Field no. 5845, The Street, Hoole Bank, Mickle Trafford, Chester, CH2 4ES

File Ref: APP/A0665/A/11/2165224

File Ref: APP/A0665/A/11/2165224**Land at OS Field no. 5845, The Street, Hoole Bank, Mickle Trafford, Chester, CH2 4ES**

- 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 Andrew Loverage against the decision of Cheshire West & Chester Council.
- The application Ref 11/02760/FUL, dated 4 June 2011, was refused by notice dated 7 October 2011.
- The development proposed is the 'change of use of land to use as a residential caravan site for 5 gypsy families, each with 2 caravans and an amenity building, including the laying of hard standing and access improvements.'

Summary of Recommendation: The appeal be dismissed

Abbreviations	
The Appellant	Mr Andrew Loverage
The Council	Cheshire West and Chester Council
SP	Cheshire 2016: Structure Plan Alteration 2005
LP	Chester District Local Plan 2006
The Framework	National Planning Policy Framework
Circular 11/95	The use of conditions in planning permissions
PPG2	Planning Policy Guidance 2 <i>Green Belts</i>
GTAA	Cheshire Partnership Area Gypsy and Traveller Accommodation and Related Services Assessment
GP	General Practitioner
ECHR	European Convention on Human Rights
CPRE	Campaign to Protect Rural England
Atkins Report	Inspection of a Potential Special Site providing a Detailed Quantitative Human Health Risk Assessment 2004

CONTENTS

	Page
Procedural matters	3
The site and surroundings	3
Policy context	3
Planning History	4
The Proposal	5
Other agreed facts	5
The case for the Council	6
The case for the Appellant	9
The case for Opponents who were at the Hearing	13
Written representations	14
Planning conditions	15
Inspector's conclusions	17
<i>Agreed matters and considerations</i>	17
<i>Openness and purposes of the Green Belt</i>	18
<i>Character and appearance of the area</i>	18
<i>Assessment of the possible harm from the acid tar lagoon</i>	19
<i>The general need for, and provision of travellers' sites in the District</i>	20
<i>Personal circumstances of the occupiers</i>	21
<i>Human Rights</i>	22
<i>Compliance of the proposal with traveller sites policy</i>	22
<i>Planning conditions</i>	23
<i>Overall balance</i>	23
<i>Recommendation</i>	24
Appearances, Documents, Plans, Photographs	25
Annex A – Conditions as discussed at the Hearing	26

Procedural Matters

1. The hearing sat for one day (3 April 2012). An accompanied site visit was carried out on the same day (3 April 2012).

The Site and Surroundings

2. The appeal site is part of a generally flat agricultural field located on the southeast side of The Street, Hoole Bank, Mickle Trafford in the North Cheshire Green Belt. The site area is 0.74ha with the remainder of the 3.2ha field, within the Appellant's ownership, lying to the southeast and northeast of the appeal site. The land holding has a frontage of about 200m to The Street, of which the appeal site has about 110m. The appeal site is bounded on two sides by approximately 1m high post and rail fencing with a variety of fencing along the boundary with the field to the southwest. There are approximately 2m high close-boarded fences and gates defining the access from The Street. The site is about 400m from the nearest residential properties in Hoole Bank and less than 1km from Mickle Trafford. It is about 3.3km (2 miles) from the edge of the urban area of Chester. The surrounding area is relatively flat and is characterised by mature pastureland with sporadic residential and agricultural development.
3. The appeal site has a strip of grass about 16m wide behind the roadside hedge but the majority of the land has been hard-surfaced. The authorised stable building lies within the 16m strip of land by the hedge, near the site access. The access is about 27m from the western corner of the holding, with a separate access into the field further along The Street towards Mickle Trafford. The access to the appeal site is wide enough to accommodate two-way traffic but would be modified as part of the proposal to give a level platform from The Street in front of the gates. The Street is an unclassified road along which there are no footways or street-lighting.
4. There is only one static mobile home on the site with the number of additional caravans varying depending on who is travelling. At the time of the hearing there were more caravans on site than normal due to a family bereavement. There is no permanent water supply or foul water disposal on the site at present with toilet facilities provided in 'portaloos'.
5. The appeal site is about 80m to the north of the Hoole Bank Acid Tar Lagoon which is registered as a contaminated site under Part 2A of the Environmental Protection Act 1990. The acid tar lagoon occupies a former brickworks site where the clay pit was in-filled in the 1960s with oil refinery waste. To the southwest of the acid tar lagoon, domestic and normal commercial waste was also deposited. The lagoon is uncovered and unlined and has been found to contain mainly sulphuric acid and tar-like hydrocarbons.

Policy context

6. The relevant policies are the saved policies in Cheshire 2016: Structure Plan Alteration 2005 (SP) and the Chester District Local Plan 2006 (LP). No relevant policies in the Regional Spatial Strategy were put forward.
7. SP policy HOU6 sets out criteria that a caravan site for gypsies should satisfy. These require there to be a proven need; the site not to be in the Green Belt

unless there is no alternative; the site to be outside existing settlements but within 1.6km of existing facilities; the site to be suitable for gypsies to carry out their regular activities; and the site to have easy and safe access to primary and other main roads.

8. LP policy ENV 63 defines the Green Belt boundary by reference to the proposals map. The policy refers to the relevant criteria in Planning Policy Guidance 2 *Green Belt* (PPG2). This has been replaced by the National Planning Policy Framework 2012 (the Framework) which has similar provisions to PPG2 in section 9. LP policy HO 21 sets out criteria that a gypsy caravan site should satisfy. These are similar to those in SP policy HOU6 but, in addition, the long term planning of the area should not be prejudiced. There should not be detriment to highway safety or the character and appearance of the area.
9. In relation to contaminated land, LP policy GE 1 provides that development proposals which conform to the relevant policies will be permitted unless there is an unacceptable risk of significant adverse environmental impact. LP policy ENV 59 sets out criteria to be satisfied for any development proposal that could be affected by pollution. These include a requirement for adequate safeguards to ensure a suitable environment for the intended use. The nature and degree of contamination should be assessed and specific remedial measures identified to allow the development to proceed in a manner which protects future occupiers of the site.
10. The development was proposed and considered by the Council under PPG2 and Planning Policy Statement 23 *Planning and Pollution Control* that have been replaced by the Framework. In addition, Circular 01/2006 has been replaced by the *Planning policy for travellers* March 2012. The parties were able to respond on the matters addressed by the Framework and the *Planning policy for travellers* at the Hearing.

Planning History

11. Planning permission was granted in April 2009 for the erection of a new hay and implement store (ref. 09/10325/FUL). This has been erected to the northwest of the entrance into the appeal site.
12. A retrospective application for the change of use of the appeal site to a residential caravan site for 5 gypsy families, each with 2 caravans and amenity building, hard surfaced areas and alterations to access, was refused planning permission in August 2009 (ref. 09/10717/FUL). That application was appealed together with an appeal under section 174 of the Town and Country Planning Act 1990 (refs. APP/A0665/C/09/2112518 and APP/A0665/A/09/2112353) (Appendix PBA1). The section 78 appeal was dismissed and the section 174 appeal did not succeed but the enforcement notice was varied in respect of the periods for compliance. The use of the land for the stationing of residential caravans was to cease within 12 months of the decision. The caravans and all chattels and paraphernalia were to be removed within 18 months.
13. In respect of the section 78 appeal, the Inspector found that there was inadequate evidence to demonstrate with sufficient certainty that the appeal site was not contaminated by pollutants from the acid tar lagoon. Such contaminants could render the Appellant's land wholly unsuited for occupation by family housing. Therefore, he found that no additional very special circumstances could

be found that could demonstrate how harm to Green Belt from inappropriate development and any other harm could be set aside.

14. In relation to a human health risk assessment, that Inspector considered a risk assessment of the rigour of the detailed Quantitative Human Health Risk Assessment carried out by WS Atkins Consultants for the Environment Agency in 2004 (Atkins Report), would need to be carried out. This would take into account long uninterrupted periods of residential occupation and other changed circumstances that have arisen at the acid tar lagoon since 2004. Most notably, he advised that the apparent functional failure of the limestone-packed outfall increased the possibility of the pollution of watercourses adjoining the appeal site. He advised that a desk study to update the Atkins Report would be the very least required. This would enable 'a reasonable degree of certainty, that small children could live on the appeal site on a fairly continuous basis close to the acid tar lagoon, without subjecting themselves to a significant risk to their own health and safety'.
15. The appeal against the refusal of planning permission for the fencing and gates that define the access from The Street was dismissed (APP/A0665/A/11/2148364).

The Proposal

16. The proposal is a retrospective application for a change of use of the land to a residential caravan site for 5 gypsy families each with 2 caravans, a sectional amenity building (4m by 6m, and 2.6m to eaves, 3.9m to ridge), areas of hard surfacing and alterations to the existing access. The pitches would be across the southeast side of the site with post and rail fencing between the pitches and the field. Hedging is proposed along the southwest and northeast boundaries and in front of each pitch. Additional tree planting would be to the southwest of the access. The first 16m from the road frontage would be grassed with the remainder of the appeal site hard surfaced.
17. The land is owned by the gypsy family who brought caravans onto the land on 13 April 2009 following the laying of hard surfacing over the Bank Holiday weekend, 3 to 6 April 2009 (Document 7). The application is for permanent permission.

Other Agreed Facts

18. The father/father in law of the occupiers, William Loverage, was brought up on a public site run by his father in Widnes and then travelled the M56 corridor in the area between Widnes and Wrexham. Most of his children were born in Wrexham but he indicated that he had family all over the country. The site in Wrexham was tolerated but not authorised. His children now have their own families with the Appellant being one of his sons. They all travel to horse fairs and Christian conventions and, other than horse trading, seek work mainly as roofers. The extended family group often travel and work together and would like to live together. In the past, the lack of a permanent pitch has resulted in them staying on the roadside. There is no dispute between the parties that the Appellant and the proposed occupiers fall within the definition of 'gypsies and travellers' and thereby 'travellers' in Annex 1 to the Planning policy for traveller sites.

19. There are a number of other matters that are agreed between the parties, although there was not agreement on the degree of any harm that may result. The points that are not in dispute are:
- The appeal site lies within the Green Belt outside any settlement boundary and the proposed use would be inappropriate development in the Green Belt¹.
 - The proposal reduces openness and encroaches into the countryside.
 - The lawful use of the land is for agriculture.
 - There are no existing available pitches on authorised public sites.
 - There are no technical highway reasons why a satisfactory means of access could not be provided to serve the appeal site from The Street.

The Case for the Council

20. The appeal site is located in open countryside in Green Belt between Hoole Village and Mickle Trafford. The site is adjacent to an acid tar lagoon. The site was the subject of a previous planning application and Enforcement Notice in 2009, appeals against both of which were dismissed in June 2010.
21. The Council considers the main issues are:
- The principle of development, with reference to the location of the site in the open countryside and Green Belt;
 - The impact of the adjacent acid tar lagoon on the health and safety of the occupiers of the appeal site (environmental considerations); and
 - Broader issues relating to - need in general
- personal need

Green Belt and open countryside

22. The appeal site is within the Green Belt and is inappropriate development which is by definition harmful to the Green Belt and should not be approved except in very special circumstances (paragraph 87 of the Framework). The Council point out that SP policy HOU6 and LP policy HO 21 state that a caravan site for gypsies should not be located in the Green Belt unless no alternative location is available. A gypsy caravan site on this land would conflict with the fundamental aim of Green Belt policy originally in paragraph 1.4 of PPG2 but encapsulated in paragraph 79 of the Framework, that the land should be kept permanently open. The proposal would cause significant harm to openness and fail to assist in safeguarding the countryside from encroachment, one of the purposes served by the Green Belt in paragraph 80 of the Framework. The encroachment would not only arise as a result of the amenity blocks and caravans proposed but also the subsequent domestic paraphernalia that would be introduced as a result of the

¹ Whilst there is no reference in the National Planning Policy Framework to use of land in the Green Belt being inappropriate, paragraph 14 of Planning policy for traveller sites explains that traveller sites (temporary or permanent) in the Green Belt are inappropriate development.

site being used by residents. Additional planting to screen the site would not ameliorate the harm.

23. The development would be far more conspicuous than the agricultural use, irrespective of any landscaping and the backdrop of other nearby development. Its configuration, use of incongruous materials and level of intensity would increase the intrusiveness in the local area to an unacceptable degree. It would result in a development far more appropriate to an urban rather than rural context. Thereby harm would be caused to the character and appearance of the area contrary to LP policy HO 21.

Environmental considerations

24. The appeal site is close to Hoole Bank Acid Tar Lagoon. LP policy GE 1 permits development except where there is an unacceptable risk of significant adverse environmental impact. Where contamination is known or suspected, LP policy ENV 59 requires an assessment of the nature and degree of contamination and specific remedial measures which will prevent an unacceptable environmental impact. The previous Inspector was not satisfied that sufficient work had been undertaken to demonstrate that the acid tar lagoon would not present an unacceptable threat to human health.
25. The Council found the Phase I & II Environmental Audit dated February 2011 provided by the Appellant had started to deal with some of the issues relating to the safe occupation of the land. Nevertheless, it relied on a very basic approach using minimal sampling and poor interpretation of results, both from this monitoring and that in 2002. The 2002 survey was carried out for the purpose of determining the acid tar lagoon as a Special Contaminated Land site. The Appellant's Phase I & II Environmental Audit did not address the main risk: the level of contaminants in the ditch and whether they have been, or could be spread away from that source. There was no assessment of whether the keeping of horses provides potential pathways for significant contamination which could harm sensitive child receptors who will undoubtedly occupy the site.
26. Further information was submitted on 27 September 2011, but that did not overcome the concerns of the Council. The samples, on which the Appellant's assessment was based, were all taken on the appeal site and did not include any samples from the Appellant's field in which horses are grazed or the ditch that drains from the ditches adjoining the acid tar lagoon. The Council pointed out that since rainfall is not increasing the level of the lagoon, seepage must be occurring. There is access to the ditch from the Appellant's field and from this contaminants could be transported into the field. Taking samples on the appeal site did not address this issue. If there were contaminants in the soil in the field, fencing along the field side of the ditch would not mitigate any existing contaminants. The Council considers that insufficient information was provided to demonstrate that the appeal site could be occupied for residential purposes without unacceptable risk to the health of the occupants from the nearby source of contamination.

Very special circumstances - need

27. The Council accepts that there is an unmet need for sites for gypsies and travellers and there are no alternative available authorised sites for the families or space on a tolerated site at Ellesmere Port. In addition, there are gypsies and

travellers on unauthorised or temporary encampments as well as house travellers expressing interest in pitches. The Cheshire Partnership Gypsy and Traveller Accommodation and Related Services Assessment (GTAA) undertaken in 2007 concluded that Cheshire West and Chester District required a further 31-45 residential pitches between 2006 and 2016. A study to identify potential sites in non-Green Belt locations was commissioned by the Council with the results considered by the Council's Executive in September 2011. That study recommended a shortlist of 5 sites, one of which would be for travelling showpeople with the other 4 for permanent residential sites for gypsies and travellers. The sites are within Council ownership.

28. Of the identified sites, two were recently granted outline permission for traveller sites. The land off Barlow Drive, Winsford would accommodate 20 pitches and the Rossfield Road, Ellesmere Port site 12 pitches. The reserved matters applications for these sites are expected to go to Committee in September 2012. These sites alone would meet the minimum provision by 2016 in the GTAA and the Council expects to make further applications in the near future. In terms of implementation, the sites are in Council ownership with funding secured for new pitches in Cheshire and Warrington from the Homes and Communities Agency. There is a partnership agreement with two local housing associations who will undertake the development. Realistically the developments have to be completed by 2015 but the Council hope that the Barlow Road site would be ready a year earlier.
29. Other sites identified include Bumpers Lane, Chester, planned for 14 pitches that may be progressed in autumn 2012. None of the identified sites is in the Green Belt which only covers about 42% of the District. The Council advised that there is a realistic possibility that suitable sites will come forward to meet the current unmet need for additional traveller pitches in the near future.

Need - personal

30. The identified site residents are registered with a General Practitioner (GP) in Elton and the children are enrolled in local schools. Since the June 2010 appeal decision, the Council visited the appeal site 12 times prior to determining the application and have since visited a further 4 times. Human and animal activity was noted only on two visits, in April and October 2011. At other times, the site was locked and no response was received to notes left in the letterbox. The Council therefore considers that the site is infrequently occupied with the majority of caravans and associated vehicles absent most of the time. A static caravan, a small touring caravan and the stable block were all that were regularly on the site but the caravans appeared to be unoccupied for a significant proportion of the time.
31. The Council's housing team have no records of the families staying on any unauthorised encampment in the Cheshire sub-region or the accepted encampment managed by the Council during this period. Meanwhile the children had attended local schools around 85% of the time.
32. The Council accepts that the families would not be occupying the site on a full-time basis. Nevertheless, there is a lack of evidence of occupation, other than on a very small number of occasions. In the Council's opinion, the Appellant has provided insufficient justification to backup the assertion that the site is essential to meet the accommodation needs of the identified families. The personal need

is not justified and therefore even a temporary permission should not be considered acceptable.

Human Rights

33. The Council had given full consideration to the rights of the Appellant and associated occupiers under Article 8 of the European Convention on Human Rights (ECHR), but very special circumstances for development in the Green Belt have not been demonstrated. In addition, the fundamental issue of the safety of the appeal site under pollution legislation had not been demonstrated. Overall therefore, the consideration to refuse planning permission had been proportionate.

Other matters

34. In terms of ecology, the proposal is considered to broadly accord with the Conservation (Natural Habitats, &c) Regulations 1999. Nevertheless, it is recommended that an Ecological Enhancement Plan should be required by condition to mitigate the ecological impacts of the development.

35. The Highway Officer did not consider that the proposal would lead to local highways suffering significant detriment or impact on safety. He was satisfied that necessary access improvements could be achieved through conditions.

The Case for the Appellant

36. The Appellant acknowledges that the proposal would be inappropriate development and by definition such development is harmful to the Green Belt and should not be approved except in very special circumstances.

37. The Appellant considers the main issues are:

- Whether the development would harm the openness of the Green Belt, or its purposes;
- Whether the development would harm the character and appearance of the countryside;
- Whether the appeal site is at risk from contamination; and
- Whether the harm to the Green Belt and any other harm would be clearly outweighed by the factors which weigh in favour of the Appellant's case, and amount to very special circumstances.

Green Belt

38. SP policy HOU 6 is a criteria-based policy for the location of gypsy sites. But, having regard to the explanatory text, it appears to have been formulated to guide district planning authorities when identifying suitable locations for gypsy sites in local plans. Such an interpretation is consistent with the role of Structure Plans in providing a strategic framework. Nevertheless, the Appellant acknowledges that the policy requires sites not to be located in the Green Belt unless no alternative location is available. Sites should also be located outside existing settlements.

39. The Appellant points out that the main movement of gypsies in the District is along an east-west corridor. Outside existing settlements, this particular corridor

passes through Green Belt. Therefore, all the existing gypsy sites in the District which are situated along the east-west travelling route, including at least 3 unauthorised sites, are located within the Green Belt. The appeal development has reduced openness and encroached into the countryside but would not harm the other four purposes the Green Belt serves (paragraph 1.5 of PPG2 taken through into paragraph 80 of The Framework).

40. In terms of the criteria in SP policy HOU6, the appeal site has good access to the principal road network. It is within a reasonable distance of community services and facilities. It is within easy reach of public transport. It does not affect the amenities of nearby residential properties and is in an area where gypsies and travellers want to live.

Character and appearance of the countryside

41. In relation to any harm to the visual amenities of the rural area, the Appellant refers to the Secretary of State accepting an Inspector's view on an appeal in Bridge Trafford, Chester (ref. APP/X0605/A/05/1180235) (Appendix PBA 3). That Inspector had found that although the change of use of land to a private gypsy site is an alien form of development in the countryside, gypsy sites are likely to be located in rural areas. He goes on to indicate that, bearing in mind that any gypsy site in the countryside is likely to have some adverse visual impact, there would be no conflict with the last criterion of LP policy HO 21 (then emerging). The Secretary of State agreed with this view in paragraph 19 of the decision. Reference is made to another appeal (ref. APP/U2235/A/08/2063378) (Appendix PBA 4) in which the Inspector found that gypsy families need to be visually part of the community and not hidden away.
42. The development does not occupy a prominent or elevated position in the landscape. There are hedgerows and trees along both sides of The Street effectively screening the site other than at short range. The short range views are no more obtrusive or harmful than can be expected from any gypsy site in the countryside. There would also be additional planting. The Appellant finds that there would be no material harm to the character and appearance of the area with planting filtering rather than preventing views.
43. The Appellant considers that *Planning policy for traveller sites* does not change the point made in Circular 01/2006, that sites are likely to be in rural areas. The test is not whether you can see the site, it is whether it results in unacceptable harm that cannot be overcome by conditions.

Ground contamination

44. The caravan site is approximately 80m southeast of Hoole Bank Acid Tar Lagoon that occupies an area of 1.1ha. It was a former clay pit filled with approximately 62,000 tonnes of liquid acid tar. Bore holes to a depth of 10 and 15 metres in the field between the appeal site and the tar lagoon sunk in 1997 found no evidence of contamination. However, there was concern that run-off water was causing pollution of ditches.
45. Following more extensive testing in 1999, the site was enclosed in steel palisade fencing to prevent trespass and the drainage overflow was passed through an engineered treatment system before the ditch. A more comprehensive study was

carried out as reported in the Atkins Report. It was considered at the previous appeal.

46. For the Appellants, a Phase I Desk Study Assessment was carried out in October 2010 that identified environmental risks and recommended a site investigation. The Phase II investigation involved soil sampling and a detailed risk assessment. Four soil samples were taken on the appeal site but none was taken in the Appellant's field or ditch and no ditch water was assessed. The consultant advised that he was not aware of the ownership of the field during his survey.
47. The Appellant accepts that the ditch along the southern boundary of the field used to graze horses is likely to be contaminated but such contamination has not spread to the appeal site. Previous studies have shown that contamination diminishes rapidly with distance from the ditch. A stock-proof fence is proposed along the field side of the hedge that adjoins the ditch, to prevent a potential pathway for contamination from the ditch into the field.
48. The only other risk from contamination was considered to be from the borehole on the appeal site which penetrates the clay overlying the aquifer. The recommendation is to seal the borehole and thereby break that pathway for potential pollutants. The Appellant considers that the appeal site is suitable for the proposed use and would not present an environment harmful to health.

Need for a provision of gypsy sites

49. There are 6 permanent gypsy sites in Cheshire West and Chester District, all privately owned and operated. They each mostly accommodate extended traveller family groups. One site is overcrowded and resident families have applied for new family sites. The GTAA identified a need for 31 to 45 pitches between 2006 and 2016. The Report of the Panel from the Examination in public of the Northwest Plan Partial Review was not issued but published under a Freedom of Information/Environmental Information Regulations request. The Panel found that the higher figure for pitch requirements in the GTAA should be used. This would allow for travellers in bricks and mortar accommodation who wanted pitches, the number of whom the Panel considered had been underestimated (Appendix PBA 8). The Appellant noted that there are 32 pitches with temporary permission or unauthorised and only five permanent residential pitches had been approved since 2006/07. Therefore there is a substantial unmet need.
50. The thrust of Government policy is to promote more private travellers' sites (*Planning policy for traveller sites* paragraph 4). In terms of need, all the temporary or unauthorised pitches would either require replacing by 2016 or planning permission. The southern part of the District is open countryside outside the Green Belt. However, it is not an area where gypsies and travellers like to go. This was accepted in the Report on the Bridge Trafford, Chester appeal (Appendix PBA 3).
51. The Council commissioned a study in 2011 to identify potential traveller sites. Five potential publicly-owned sites were identified, one of which would accommodate Travelling Showpersons. One site adjoins a waste tip and the other three sites are on industrial estates. The Council has submitted planning applications and provision is to be made to cover capital costs within the Council's budget in 2012/13 and 2013/14 for 32 pitches. However, no provision

has been made to cover the costs associated with running, managing and maintaining the resultant sites. The provision is unlikely to come on stream until 2014.

52. The presumption in LP policy HO 21 against the use of sites in the open countryside was contrary to the advice in Circular 01/2006 but that advice is no longer extant. However, a five year supply of deliverable land has not been identified for traveller sites in the development plan, a requirement in plan-making in paragraph 9 of the *Planning policy for traveller sites*. This is a factor that the Appellant considers carries considerable weight in favour of the proposal. The Secretary of State attributed significant weight to the unmet need for gypsy sites and the failure of the development plan to meet that need in an appeal decision in June 2011 (ref. APP/C3430/A/10/2127121) (Appendix PBA 10).

Need for this site by these families

53. The extended family group of Irish Travellers often travel together and are the sons and daughter and their families of William and Dater Loverage. They wish to live on one site but do not have a permanent authorised site of their own. They have not found pitches on authorised sites partly because of the need to accommodate the extended family group but some sites do not accept Irish Travellers. The appeal site lies on their usual travelling route, is large enough to accommodate all the family and has facilities for the residents' horse related activities. There are no public sites where they could all be accommodated together.
54. The Appellant's father advised that there is always someone living on the appeal site and notes/mail are collected. The children have been in Elton School, 3 miles away, with attendance around 80/85% of the time. The families are also registered with the doctor in Elton and Helsby, there being no GP in practice in Mickle Trafford or Hoole Bank
55. William and Dater Loverage advise that they are getting too old to travel and the appeal site would provide them with respite from travelling in an area, and on a site where they can obtain care and support from their extended family. Gypsies and travellers experience the worst health and education status of any disadvantaged group. If such inequality is not to be perpetuated, significant weight must be attributed to the site residents' need for access to health and education.

Human Rights

56. In Article 8 of the ECHR there is a positive obligation imposed to facilitate the gypsy way of life. If the appeal is dismissed, the Council will seek the vacation of the appeal site. Due to the lack of suitable alternative accommodation, this would interfere with the site residents' home, private and family lives. The harm to human rights would be far greater than any alleged harm to the Green Belt and it would be disproportionate to any claimed benefit of removing the site residents from the land. It would be likely to result in enforced roadside camping.

Very special circumstances

57. The material considerations weigh in favour of the Appellant's case and clearly outweigh harm to the Green Belt and any other harm. Collectively they form the very special circumstances necessary to justify the grant of planning permission.
58. However, even if very special circumstances do not exist to justify a permanent planning permission, there is an unmet need and an absence of alternative sites at present. There is a reasonable prospect that alternative sites will become available within a period of five years. Therefore in considering whether to grant temporary planning permission substantial weight must be accorded to the unmet need which, in effect, counter-balances the harm by reason of inappropriateness. Temporary permission does not create a precedent and harm to the openness of the Green Belt and encroachment into the countryside would be short lived. Thereby harm to the Green Belt and any other harm is clearly outweighed by the material considerations that weigh in favour of the appeal proposals for a temporary period. The very special circumstances needed to justify a temporary planning permission would be found.

The Case for Opponents who were at the Hearing

Brian Ancliff for Mickle Trafford & District Parish Council (including reference to the Parish Council's written representation)

59. The Parish Council written objection of 2 August 2011 referred to human health risks, the access and conditions of highway safety, sustainability, and policy considerations, including the location within the Green Belt. There are a number of existing gypsy sites in the Northwest Cheshire Region. The Council are taking steps to resolve the unmet need on identified sites. Temporary permission should not be granted as it would lead to an expectation that full planning permission would later be granted. The Appellant has provided no evidence of a search for alternative sites. The appeal proposal is not justified
60. Since summer 2010, the appeal site has contained one mobile home and only one small caravan. For the majority of the time the gates have been locked and barred by a metal box with the site unoccupied.
61. In relation to the acid tar lagoon, Mr Ancliff pointed out that the filtration system through which the outflow from the lagoon should pass had worked for less than two years. The filter was last replaced in 2004. Photographs A3 and A4 show tar around the filtration system. If there was contamination from hydrocarbons on any of the Appellant's land, it would pose a risk to people even at a low level. One of its pathways into the human system is through the skin. If the ditch were to be fenced off, to be effective against access by children as well as animals, its height would be harmful to the Green Belt and visual amenities.

John Jackson – Local Resident and also representing the Parish Council

62. Mr Jackson lives near the site and advised that works on the site commenced on 3 April 2009 (Good Friday Bank Holiday) and continued until Tuesday 7 April 2009 (Document 7) when a Stop Order was applied. He also supplied photographs A 1-5 taken around the time of the hearing from the fields adjoining the acid tar lagoon. They showed toxic tar seeping from a tree outside the

perimeter fence of the tar lagoon bund, and the filtration system blocked by acid tar (Photographs A).

63. He pointed out that, having lived in the village since 1971, he could confirm that the field adjoining the tar lagoon, and that owned by the Appellant, had flooded in the past.

Ann Jones for Chester District Campaign to Protect Rural England (CPRE)

64. The CPRE supports the Council and objects to the proposed development as it is inappropriate development in the Green Belt (policy E paragraph 14 of *Planning policy for traveller sites*). The proposal would be contrary to LP policy ENV 63. It would be premature pending proposals for new gypsy/traveller sites to be brought forward in the Local Development Plan. There is an absence of the very special circumstances necessary to justify inappropriate development.

John Walsh – a local resident living near the site (these points include his written representation)

65. He supports the objection by Mickle Trafford and District Parish Council. Since 2 August 2011, the site has remained substantially unoccupied save for short periods. There is no substantive evidence that any attendances on the site have been by the Appellant or his nominated extended family. Since September 2010 there has been a metal box across the site entrance and the occasions when more than one caravan was on the site were minimal. In mid December 2011 a long touring caravan and commercial van spent time on the site but there was no evidence of occupation by a family or children.
66. No substantive progress has been made by the Environment Agency or the owners of the acid tar lagoon to address or mitigate the significant safety concerns. It would be irresponsible to sanction permanent family occupation in close proximity to, and down-prevailing wind of a lagoon containing 60,000 tonnes of acid tar. The acid tar lagoon contains a significant proportion of toxic, carcinogenic and mutagenic material that is flammable. The human health safety assessment carried out for the Appellant is inadequate.
67. The Council is committed to bringing forward appropriate non-Green Belt sites on Council-owned land that will exceed the pitch requirement identified in the GTAA by 2016. The declared 'direction of travel' will bring fairness to both travellers and the settled community. The proposal is not justified.

Written Representations

J Simpson – interested person

68. Objected to the proposal as the site is in the Green Belt. There is no need for the development as the authority is making provision for larger fixed sites. He states that the site was currently unoccupied (representation received 15 January 2012) and the 3 caravans on the site appeared to be unoccupied. The site was not occupied until autumn 2011.
69. He objects to the dangerous dog running loose, the increase in traffic, the environmental damage including the filling of a pond and the removal of oak trees to allow fencing and gates to be erected. The site was illegally occupied in 2009 over a Bank Holiday weekend.

Planning Conditions

70. If it is considered by the Secretary of State that planning permission should be granted, the conditions set out in Annex A to this report are recommended.
71. The conditions are closely based on those discussed at the hearing and were not subject to objection by any other party. Some minor amendments have been made to align them more closely with national policy. All are necessary and reasonable and meet the other tests in Circular 11/95 *The use of conditions in planning permissions*.
72. Condition 1, specifying the plans which would be approved, is included in the interests of clarity and good planning.
73. In the interests of the visual amenity of the area, condition 2 would be necessary to limit the number of pitches and caravans. For similar reasons, conditions 3 and 4 are necessary to control commercial activity and the size of vehicles.
74. The gypsy status of the occupiers of the site is uncontested and, if permission were granted, a major element in such a decision would be the special circumstances and policy applying to the gypsy community. Condition 5 restricting occupation to gypsies and travellers would therefore be necessary. If it were considered that the personal circumstances of the occupiers were one of the elements leading to the grant of permission, Condition 6 would be necessary.
75. In the interests of highway safety, condition 7 would be necessary to ensure safe access to and egress from the appeal site.
76. To ensure appropriate health and safety/sanitation provision on the site and to preserve the amenity of the site and the area, the amenity blocks should be erected, condition 8. There should also be an appropriate foul drainage system, condition 9.
77. To preserve, in so far as is possible, the ecology and amenity of the site and the surrounding area, there should be an ecological enhancement plan and the site should be landscaped. The Appellant considers that the details should be required within 3 months rather than one month, and in view of the amount of details required, it would appear to be a reasonable request. Conditions 10, 11, 12 and 13 are necessary.
78. To ensure that the development can be carried out safely without unacceptable risks to health, control should be exercised in case unexpected contamination is found. This should include necessary remediation. (Condition 14)
79. If the personal circumstances justify a limited period planning permission, condition 15 would be necessary. The time period would need to be inserted. In view of the likely availability of sites in 2013, the Council consider that 18 months would be reasonable although they would not argue with 2 years. The Appellant considers that it is more realistic that the local plan would bring forward the sites and therefore at least 4 years would be reasonable. If a limited period permission were granted, in view of the progress towards the development of new sites, it is considered that a 2 year period to enable the available sites to be on the ground would be reasonable.

80. If the permission is time limited, it would also be necessary for the land to be restored, in accordance with a scheme that had been previously agreed, in the interests of the visual amenities of the countryside location (condition 16).

Inspector's Conclusions

[Numbers in square brackets denote source paragraphs]

Agreed matters and considerations

81. The application is for 5 pitches to be occupied by the Appellant, his brothers and sister and their families and his parents. Matters about which there is no dispute [19]:

- The Appellant and those who occupy the appeal site fall within the definition of 'gypsies and travellers' and thereby 'travellers' in Annex 1 to the *Planning policy for traveller sites*. [18]
- The appeal site lies within the Green Belt outside any settlement boundary and the proposed use would be inappropriate development in the Green Belt.
- The proposal reduces openness and encroaches into the countryside.
- The lawful use of the land is for agriculture.
- There are no existing available pitches on authorised public sites.
- The parties have provided no technical highway reasons why a satisfactory means of access could not be provided from The Street. (This is a matter that would be addressed by condition)

82. The Framework provides that inappropriate development should not be approved except in very special circumstances, and that substantial weight should be given to any harm to the Green Belt. 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. Having regard to the matters about which there is no dispute and the advice in the Framework, the main considerations are:

- The effect of the proposed development on the openness of the area and the purposes served by the Green Belt;
- The effect on the character and appearance of the area;
- Whether it has been adequately demonstrated that the appeal site can be occupied for residential purposes without an unacceptable risk to the health of the occupants from the nearby acid tar lagoon;
- Other material considerations:
 - The need for, and provision of traveller sites in the area;
 - The need for this particular site by its occupiers;
 - Human Rights under Article 8 of the ECHR; and
- Whether the harm to 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 this particular development.

The openness and purposes of the Green Belt

83. LP policy ENV 63 identifies the Green Belt which covers around 42% of the District. [29] There is no dispute that the appeal site is within the Green Belt. The fundamental aim of Green Belt policy, as set out in the Framework, is to prevent urban sprawl by keeping land permanently open. In this context the essential characteristic of Green Belts is identified as their openness. The effect on openness is primarily a matter of the nature, scale and site coverage of the development.
84. The appeal site is outside the settlement in open farmland, where development and structures are sporadic but generally related to the use of the land for rural activities. The permitted building on the appeal site relates to the use of the land for the keeping of horses. [3]
85. The development which has been undertaken, along with elements yet to be carried out, involves the formation of five pitches each with a mobile home, a touring caravan and an amenity block. Apart from a strip of land about 16m wide adjoining the roadside hedge, part of which would include tree planting, the site is or would be hard surfaced with each pitch enclosed and gated off the access track. Added to which, the entrance from The Street would be defined by fencing and gates although the existing fencing and gates do not have the benefit of planning permission [15]. As a result of the development already carried out, there has been a serious loss of openness in the Green Belt. This would be exacerbated if other elements of the proposal, for example the amenity blocks, were undertaken. [16]
86. One of the five purposes served by the Green Belt is to assist in safeguarding the countryside from encroachment. By reason of the development proposed, the appeal scheme would encroach into the countryside. [22, 38]
87. As with inappropriateness, openness and a purpose served by the Green Belt are important material considerations accepted by the Appellant and therefore covered fairly briefly in this report. This does not imply that it is of limited weight. As indicated in the Framework, substantial weight is given to any harm to the Green Belt. [22, 38]

Character and appearance of the area

[23, 41, 42, 43, 55]

88. There are no specific landscape designations affecting the area. However the appeal site is in an attractive rural environment. LP policy HO 21 requires that gypsy caravan site development should not to cause material harm to the character and appearance of the area.
89. The appeal site is accessed off a narrow winding lane (The Street) with high roadside hedges and grass verges for most of its length. Despite its relative proximity to settlements, the area has a fairly remote character. As found by the Inspector who determined the appeal relating to the erection of the fence and access gates (APP/A0665/A/11/2148364), the rural character of the road complements the attractive countryside through which it passes. [15]
90. The site and the development which has taken place to date are publicly visible from The Street through gaps in the hedge or filtered through hedges. Due to its

visibility, development on the land has had and would have some impact over the wider area and a significant impact on the immediate area.

91. The elements which make up gypsy sites have a generally stark appearance that is alien to a rural landscape. Even if the appeal scheme could be largely screened from The Street, the physical presence of the mobile homes, day rooms, touring caravans, vehicles and domestic paraphernalia would urbanise the area. In any event, such screening would be undesirable for reasons of social isolation.
92. The Appellant accepts that there would be some impact on the character and appearance of the area but argues that the impact would be no more obtrusive or harmful than can be expected from any gypsy site in the countryside [42]. *Planning policy for traveller sites* indicates that new traveller site development in open countryside should be strictly controlled but sites should not so enclosed that it gives the impression of deliberate isolation. The proposed landscaping could enhance the environment but would not increase the perception of openness rather appear to deliberately isolate the development from the rest of the community. In this particular case the visual sensitivity of the site and the extent of the harm outweigh any accepted principle that some change must be expected if gypsy sites are accepted in the countryside.
93. Overall as a result of its layout, use of incongruous materials and the intensity of use, the development is and would be intrusive, urbanising and cause significant harm to the character and appearance of the area. There would be conflict with the 7th bullet point of LP policy HO 21.

Assessment of the possible harm from the acid tar lagoon

[24-26, 44-48, 61, 62, 66]

94. The previous Inspector, when considering the retrospective application for the change of use of the appeal site to a residential caravan site [12-14], found inadequate evidence to demonstrate that the appeal site was not contaminated and therefore a potential human health risk. The Phase I & II Environmental Audit started to deal with the issues but the only soil samples were from the appeal site.
95. The Appellant owns the adjoining field that extends to the ditch that is fed from the ditch adjoining the acid tar lagoon. I saw that there were several points where the hedge adjoining the ditch was non-existent with the ditch easily accessible to horses and people. At the time of the site visit, the ditch was not flowing but there was standing water in places and all appeared to have an oily film on the surface.
96. The Atkins Report in 2004 [14, 45] analysed samples from bore holes and the soil. A bore hole was in the Appellant's field near the ditch, another in the field on the other side of the ditch and a soil sample was also taken from that field. The field on the opposite side of the ditch did not have visible evidence of animals accessing the ditch. Therefore I do not consider that samples taken in 2004 on the other land or the findings from bore holes justify a conclusion that there would be no significant pollution on the Appellant's land.
97. It is acknowledged that there is no evidence of long term risk to the health of the occupiers from pollution on the actual appeal site. Nevertheless, the occupants

of the site breed horse that are kept in the field. The horses in the field adjoining the appeal site would provide a potential pathway from the ditch for significant contamination. Such contamination could impact on the sensitive child receptors. It has not been demonstrated that contaminants in the ditch have not, or could not be spread away into the field.

98. The Appellants have suggested that harm could be avoided by fencing along the field-side of the hedge by the ditch. However, if there are already contaminants in the soil in the field, fencing along the ditch would not provide mitigation. The Appellant has not fully assessed the nature and degree of any contamination in the field so it is not possible to identify specific remedial measures that would be necessary. The Phase I & II Environmental Audit is inadequate to demonstrate that long uninterrupted periods of residential occupation of the appeal site by families with small children can be carried on without significant risk to their own health and safety. LP policy ENV 59 would not be met in this respect. The harm from possible health and safety risks carries significant weight.

The general need for, and provision of travellers' sites in the area

[27-29, 49, 50, 59, 67]

99. The GTAA concluded that Cheshire West and Chester District required 31-45 additional residential pitches between 2006 and 2016 [26]. This was part of the evidence base for the Northwest Plan Partial Review. The Report of the Panel from the Examination in Public was not issued but published under the Freedom of Information/ Environmental Information Regulations request. The Report found that the higher figure for pitch requirements in the GTAA should be used for the requirement by 2016. This would take account of the movement to sites of gypsies and travellers in bricks and mortar accommodation [49]. Although weight to be given to the Panel report is diminished as it was not formally issued, the background information (including the GTAA) which led to the projected level of need can be given substantial weight. The Council advised that work on updating the GTAA is to be undertaken later in 2012 but no revised figures are available.
100. The Appellant advised that five permanent pitches have been approved since 2006 [49]. The Council accepts that there is a substantial unmet need for traveller sites. There are no available alternative sites for travellers in the area [26]. The parties agree that the current outstanding need is a material consideration in favour of the appeal.
101. In order to meet the pitch requirement in the GTAA 2007, the Council commissioned a study to identify potential permanent traveller sites in sustainable, non-Green Belt locations in the District [27, 51]. The study recommended a shortlist of 5 sites for travellers, one specifically to accommodate travelling showpeople and 4 sites for gypsies and travellers which would provide approximately 62 pitches. The sites are within Council ownership.
102. Outline planning permission has been granted for two sites that would accommodate a total of 32 pitches. The reserved matters applications for both sites are expected to go to Committee in September 2012 with further applications for the other sites expected in the near future. Funding has been secured for new pitches in Cheshire and Warrington from the Homes and Communities Agency and there is a partnership agreement with two local housing

associations who will undertake the development. The development will be completed by 2015 but the Council hope that the site for 20 pitches would be available one year earlier [28]. Although a five-year supply of deliverable traveller sites has not specifically been identified, realistically, pitches to meet at least the minimum need by 2016 identified in the GTAA, will be available for travellers in the near future. If developed, the other identified sites would more than meet the higher requirement in the GTAA 2007. The outstanding need is therefore only accorded some weight as a factor in favour of the appeal.

Personal circumstances of the occupiers

Occupiers need for a site

[32, 53, 60, 65, 68]

103. There is no evidence to counter the Appellant's statement that the five families, who would live on the site, have resided in the area for a number of years or that they often travel together. Their normal travelling route is between Wrexham and Widnes. The extended family wish to live on a site together but do not have a settled base. The Council's proposed site at Barlow Drive, Winsford would be outside their normal travelling route. However, the other site with outline planning permission is closer to the M56 corridor.
104. No base on an authorised site has been found for all the families together and some sites on the M56 corridor will not accept Irish gypsies. However, although there are some specific needs for family support, it has not been clearly demonstrated that all the families have been living on the site. The Council and residents point out that the site has been locked with the single mobile home and small touring caravan appearing to be unoccupied for much of the time, particularly since 2010.
105. The father of the Appellant indicated that the families travel to horse fairs and Christian conventions and often work and travel together. He stated that he had been looking for a site for many years but none has become available. In the past they have stayed on the roadside. No details of specific sites where pitches have been sought were provided. The Council could not point to any alternative site and the lack of available and suitable alternative sites would generally be a consideration of significant weight in favour of the grant of temporary permission.
106. However, there were no details of any serious efforts to find a more suitable site since the enforcement notice was upheld, with variations, in June 2010. Therefore, the weight to be accorded to the agreed lack of a known alternative site is diminished.

General educational, medical and personal needs

[30, 53-55]

107. There are widely accepted benefits stemming from the provision of a settled base for the traveller community. Most particularly there is easier access to GPs and other health services and the benefit of children attending school regularly. The site residents are registered with a GP in Elton and Helsby and the children are enrolled at school in Elton, a settlement 3 miles away. The children generally attend the school around 80-85% of the time, although there is a variation

between families. Nevertheless, school attendance does appear to relate to the amount of site occupancy that has been observed.

108. An address has allowed the families to register with a doctor but no specific medical needs were raised. The access to medical facilities and education as well as other facilities, like electricity and sanitation, available on an authorised site weigh in favour of a settled base. However, a settled site does not necessarily have to be the appeal site.
109. The Appellant's parents wish to find a permanent site as they consider that they are getting too old to travel. The appeal site would provide them with a site suitable for respite from travelling in an area and on a site where they could obtain care and support from their extended family [55]. The appeal site is of a scale to accommodate these needs, but the needs are not so specific that they could not be met on an alternative suitable site. Therefore the specific needs of the parents carry limited weight.

Conclusion on personal circumstances

110. In conclusion, only limited weight should be accorded to the absence of an identified alternative site, for the reason given above. Similarly some weight should be given to the collective and specific educational, medical and personal needs of the occupiers, although this again is limited for the reasons given above.

Human Rights

[33, 56]

111. There is an extant enforcement notice requiring the site to be vacated. The refusal of planning permission would be likely to lead to the occupiers having to vacate the site without any certainty of suitable alternative accommodation. This would represent an interference with the home and family life of the occupiers.
112. However, it appears that not all the named occupiers of the site use it as their permanent base and Article 8 only applies to an existing home, not an intended one. In addition, the home was not established lawfully and is the subject to an upheld enforcement notice that would require the vacation of the land.

Compliance of the appeal proposal with traveller site policies

[7, 8, 22, 23, 38, 40, 41, 64]

113. Both SP policy HOU6 and LP policy HO 21 have similar requirements to be met for any proposal for a gypsy caravan site. The appeal site would meet all but the second bullet point in the SP policy which refers to locations outside the Green Belt. The Council's recently identified sites demonstrate that alternative locations outside the Green Belt are possible in the District. In relation to LP policy HO 21, the second bullet point again relates to traveller sites not being within the Green Belt. In addition, as found above, the use would cause material harm to the character and appearance of the area. Therefore all the provisions in SP HOU6 and LP HO 21 would not be met.

Planning conditions

[70-80]

114. If it is considered by the Secretary of State that permanent planning permission should be granted, the conditions set out in Annex A to this report are recommended. The reasons for the imposition of the conditions are set out in paragraphs 70-80 to this report.

Overall balance

Conclusion on permanent permission

115. In conclusion, the development would cause substantial harm by reason of inappropriateness, loss of openness and conflict with one of the purposes the Green Belt serves. In addition, significant harm has been found to the character and visual amenities of the area and possible health and safety risks from potential contamination.
116. Set against those matters, the outstanding general need for travellers accommodation should be accorded some weight but limited in view of the progress towards meeting the need by 2015. In addition, some weight should be accorded to the absence of an identified alternative site, although this should be limited by the factors set out in this report. Similarly limited weight should be given to the collective educational, medical and personal needs of the occupiers.
117. The legitimate and well-established planning policy aims to prevent urban sprawl by keeping land permanently open. In addition, it aims to ensure that there is not significant risk to the health and safety of long term residents. Therefore, the refusal of permanent planning permission would be proportionate and necessary. It would not unacceptably violate the Appellant's and other occupiers' rights under Article 8 of the ECHR and protection of the public interest could not be achieved by means which would interfere less with those rights.
118. The harm by reason of inappropriateness, loss of openness and conflict with one of the purposes the Green Belt serves and other issues identified are clearly not outweighed by the other considerations outlined above. The very special circumstances necessary to justify the development on a permanent basis do not exist.

Conclusion on temporary permission

119. *Planning policy for traveller sites* advises that the lack of a demonstrable up-to-date five-year supply of deliverable sites is a significant material consideration when considering applications for the grant of temporary permission. Circular 11/95 *The Use of Conditions in Planning Permissions* states that there is no presumption that a temporary planning permission should become permanent.
120. A time limited permission would affect the weight which should be given to the identified harm. The weight to be given to the harmful factors including inappropriateness, openness and conflict with one of the Green Belt purposes as well as the character and visual amenities would all be reduced as the development would be time limited. However, even a limited period permission could put the health and safety of residents at risk and the weight attached to this risk would not be diminished.

121. There is a reasonable prospect that pitches would be available by 2015. However, there is inadequate evidence to demonstrate that the long term health and safety of residents would not be at risk. Therefore refusal of temporary planning permission would be proportionate and necessary in the circumstances and would not violate the Appellant's and other occupiers' human rights.
122. The harm by reason of inappropriateness and the additional Green Belt factors and other issues are clearly not outweighed by the totality of the other considerations outlined above. The very special circumstances necessary to justify the grant of temporary planning permission for development do not therefore exist.

Recommendation

123. I recommend that the appeal be dismissed.

Elizabeth Fieldhouse

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philip Brown BA(Hons) MRTPI T Booth	Philip Brown Associates – Agents T J Booth Associates, Consulting Civil & Geotechnical Engineers
William Loverage	Appellant's father

FOR THE LOCAL PLANNING AUTHORITY:

Nial Casselden	Planning Officer, Cheshire West and Chester Council
Graham Aveyard MCIEH	Environmental Protection Unit Team Leader, Cheshire West and Chester Council
Martin Wright	Environmental Protection Unit, Cheshire West and Chester Council
Dawn Taylor	Cheshire Partnership Gypsy and Traveller Coordinator

INTERESTED PERSONS:

Brian Ancliff	On behalf of Mickle Trafford & District Parish Council
John Jackson	Parish Council and local resident
Ann Jones	On behalf of Chester District CPRE
John Walsh	Local Resident

DOCUMENTS

- 1 Notification letter with hearing venue and date
- 2 Site Notice
- 3 Chester District Local Plan 2006 policy ENV 59
- 4 Chester District Local Plan policy GE 1
- 5 Report on Harrison v (1) Secretary of State for Communities and Local
Government, (2) Cheshire West and Chester Council [2009]EWHC 3382
- 6 Statement from Ann Jones on behalf of Chester District CPRE
- 7 Dates on which gravel arrived on the appeal site

PLANS

- A Additional Application Plans – Proposed Caravan Site at 1:500 and Details of
Sectional Amenity Building at 1:50
- B Site Investigation Plan from T J Booth and Associates
- C Extracts from Chester District Local Plan showing Green Belt boundary in the
area of the appeal site

PHOTOGRAPHS

- A 5 photographs of toxic tar seepage taken from edge of fields adjoining the
acid tar lagoon

Annex A

Conditions as discussed at the Hearing

Site layout and amenity

- 1) The development hereby permitted shall be carried out in accordance with the Proposed Caravan Site plan and the Sectional Amenity Building plan dated 10 June 2011.
- 2) No more than 10 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 5 shall be a static caravans) shall be stationed on the site at any time.
- 3) No commercial activities shall take place on the land, including the storage of materials.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

Site occupancy

- 5) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1.1 to Planning policy for traveller sites March 2012.
- 6) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Andrew and Jolene Loverage, Patrick and Kathleen Hanrahan, Dean and Sarah Loverage, Marie Loverage, and William and Dater Loverage.

Site access

- 7) Within 1 month of the date of this decision, full details of the proposed access including visibility splays and a made-up vehicular crossing over the highway verge to include a timetable for its implementation (the Access Works Plan) must be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Access Works Plan.

Drainage and amenity

- 8) Within 3 months of the date of this decision, the sectional amenity buildings shall be erected and thereafter kept in accordance with the Sectional Amenity Plan.
- 9) Within 1 month of the date of this decision, full details of the proposed drainage system, including its capacity, installation details and a timetable for its provisions (the Drainage Plan) shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Drainage Plan.

Ecology

- 10) Within 3 months of the date of this decision, an ecological enhancement plan, including details of habitat creation, species, management proposal, and implementation timetable (the Ecological Enhancement Plan), shall be submitted to the local planning authority for approval in writing. Any ecological mitigation measures shall be implemented and managed in accord with the approved Ecological Enhancement Plan.

Landscaping

- 11) Within 3 months of the date of this decision full details of the proposed hard and soft landscaping (the Landscaping Plan), including:
 - a. trees and hedgerow survey
 - b. measures for retaining/protecting existing trees and hedgerows
 - c. new tree planting
 - d. any new means of boundary treatment
 - e. new hard surface areas and surfacing materials
 - f. planting plans
 - g. planting specification (species, plant sizes, proposed number/density)
 - h. staining (colour) finish of boundary fencing
 - i. lighting scheme
 - j. play equipmentshall be submitted to and approved in writing by the local planning authority.
- 12) The Landscaping Plan shall be implemented wholly in accordance with the approved details in the first available planting season or as may be otherwise agreed in writing with the local planning authority.
- 13) Any trees or shrubs planted in accordance with the Landscaping Plan that fail, die, are removed or become seriously damaged or diseased within a period of 5 years of initial planting shall be replaced with others of similar species in the next available planting season.

Contaminated land

- 14) No further use shall take place until a site investigation of the nature and extent of contamination in the Appellant's field has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any further use begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the use hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before further use begins.

If, during the course of the use, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

Temporary permission

- 15) The use hereby permitted shall be carried on only by the following: Andrew and Jolene Loverage, Patrick and Kathleen Hanrahan, Dean and Sarah Loverage, Marie Loverage and William and Dater Loverage and their

resident dependants, and shall be for a limited period being the period of [2/3/4] years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

- 16) When the land ceases to be occupied by those named in condition 15 above or at the end of [2/3/4] years, which ever shall first occur, 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 in accordance with a scheme and implementation timetable that has been submitted to and approved in writing by the local planning authority. The scheme and timetable shall be submitted to the local planning authority 3 months prior to the cessation of the use. Restoration of the land shall be carried out in accordance with the approved schedule and timetable.

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.