



Department for
Communities and
Local Government

Phillip Brown Associates Ltd
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Our Ref: APP/T0355/A/13/2205599

Your Ref: 13/126

30 October 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL
BY MR MAURICE MCCANN
LAND WEST OF FOREST GREEN ROAD, HOLYPORT, WINDSOR, BERKSHIRE
COUNCIL REF: 13/00702**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mark Dakeyne BA (Hons) MRTPI, who held an Inquiry on 1, 2 and 3 April 2014 into your clients' appeal under s78 of the Town and Country Planning Act 1990 (the 1990 Act) by Mr Maurice McCann against a decision of the Council to refuse planning permission for the change of use of land to use as a residential caravan site for 8 gypsy families each with two caravans, including one static caravan, including the laying of hardstanding and formation of new accesses and the erection of 4 no amenity buildings (application reference 13/00702 dated 4 February 2013) at land West of Forest Green Road, Holyport, Windsor, Berkshire.
2. On 9 October 2013 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning 1990 Act, because they involve proposals 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 that planning permission be refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and with his recommendation.

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4. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. It is noted that the application was amended prior to its determination by the Council to include the erection of amenity buildings.
6. The Secretary of State wrote to parties on 14 August 2014 to offer them the opportunity to submit representations on the implications, if any, of the High Court decision on Redhill Aerodrome Ltd v SSCLG and others. The Council replied on 3 September, Jonathon Rainey of the Pegasus Group submitted representations on behalf of the Residents Group on 29 August. You submitted representations on behalf of your clients dated 27 August 2014. Copies of the representations are not attached to this letter but will be provided on application to the address at the bottom of the first page of this letter or to PCC@communities.gsi.gov.uk.
7. On 9th October 2014, the Court of Appeal set aside the Judgment and Order of Patterson J dated 18 July 2014. As such, and given the parties responses on this matter, the Secretary of State does not consider it necessary to revert to the parties prior to reaching this decision.

Policy considerations

8. In deciding this 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. In this case, the development plan comprises the Royal Borough of Windsor and Maidenhead Local Plan (incorporating Alterations adopted June 2003) (the Local Plan). The relevant 'saved' policies are Policy GB1, GB2, DG1, T5 and T8, R14, N6 and N7.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (The Framework); Planning Policy for Traveller Sites (PPTS); Planning Practice Guidance issued 6 March 2014; and the Written Ministerial Statements on Planning and Travellers of 1 July 2013 and 17 January 2014. The Secretary of State has also had regard to the fact that on 14 September 2014 the Government published a consultation document: "Proposed changes to national planning policy and Planning Policy for Traveller Sites" However, given that the proposals are subject to consultation, he has given little weight to it in the determination of this appeal.

Main issues

10. The Secretary of State considers that the main issues in this case are those set out at IR147.

Green Belt Openness and Purposes

11. For the reasons given by the Inspector (IR149-IR151) the Secretary of State agrees with the Inspector's conclusion that the proposed development would lead to a significant loss of openness and be in conflict with the purpose of safeguarding the countryside from encroachment as well as conflicting with

Policy GB2 of the Local Plan in having a greater impact on the openness of the Green Belt and a purpose of including land in the Green Belt (IR152).

Character and Appearance

12. The Secretary of State has had regard to the consideration of the Inspector on this matter (IR153-IR157). He agrees that the development would have an unacceptable impact on the character and appearance of the area and detract from the visual amenities of the Green Belt and conflict with Policies DG1, R14, N6 and N7 of the Local Plan for the reasons he gives (IR158).

Sustainability

13. Having regard to the Inspectors consideration at IR159-IR161, the Secretary of State accepts the Inspectors conclusion that the site is not contrary to the requirement to be sustainable economically, socially and environmentally and that the matter of sustainability is to be a neutral factor in the planning balance (IR162).

Highway Safety

14. The Secretary of State has had regard to the Inspector's analysis on this matter and agrees with the Inspector's conclusions for the reasons he gives (IR163-167).

Public Footpath

15. Like the Inspector the Secretary of State considers the impact of increased vehicle use on the public footpath would be acceptable (IR171).

Settled Community

16. The Secretary of State further agrees with the Inspector that in terms of the increase in the number of households and population, the development would dominate the nearest settled community but any harm would be limited for the reasons he gives (IR174).

Other Considerations

Provision and Need for gypsy and traveller sites Availability of Alternative Sites

17. The Secretary of State has had regard to the evidence at (IR175-IR176). He agrees with the Inspector's analysis and conclusion that there is a significant unmet need for traveller sites in the Borough (IR177).

Availability of Alternative Sites

18. In the light of the evidence on this matter (IR178-IR180) the Secretary of State agrees with the Inspectors assessment. He notes that there is no evidence of alternatives sites being available in the Borough or wider area (IR179). He also notes that the Council accept that new traveller sites are likely to be in the Green Belt (IR180). He therefore agrees with the Inspector's conclusion that the lack of alternative sites and the fact that any alternatives are highly likely to be in the Green Belt are considerations in favour of the appeal (IR181).

Failure of Policy

19. Having regard to the Inspectors findings (IR182-IR183) the Secretary of State agrees that there is no 5 year supply of traveller sites which is a consideration in favour of the appeal.

Personal Circumstances

20. The Secretary of State has given careful consideration to the personal circumstances of the proposed occupiers of the site (IR184-IR185). He has had regard to the fact that none of the families appear to have a settled base and agrees with the Inspector there would be advantages for the general well-being of the families in being settled and having continual access to basic amenities and a secure living environment, particularly with regard to the best interests of the children (IR184) Having regard to the evidence, the Secretary of State agrees with the Inspector (IR185) that it is difficult to judge how the best interests of the children would be served by this proposed site.

Other Matters

21. The Secretary of State has had regard to the matters set out by the Inspector at IR186-IR189 and agrees with his analysis and conclusions.

Overall balancing exercise

22. The Framework provides that substantial weight should be given to any harm to the Green Belt and inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 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. Therefore the Secretary of State agrees with the Inspector that substantial weight should be given to this matter. He further agrees that the significant loss of GB openness and the conflict with one of the purposes of the GB also attracts substantial weight (IR196).
23. The Secretary of State also agrees with the Inspector's conclusion that significant weight should be given to the harm to the character and appearance of the area and that there is limited weight given to the harm in terms of the impact of the proposal on the settled community (IR197). He notes that the Inspector finds no other harm (IR197).
24. In favour of the proposals, the Secretary of State agrees with the Inspector that significant weight be attached to the unmet need for traveller sites, the lack of alternative sites and the absence of a 5 year supply sites (IR199).
25. With regards to personal circumstances the Secretary of State agrees with the Inspector's analysis and conclusion that the families have a need for a settled base which favours the appeal but that this is only afforded moderate weight as the evidence on the benefits of the appeal site in relation to education and health care is not comprehensive. He accepts that the best interests of the children would be met by the provision of a settled base and that access to a settled base would meet the Article 8 Human Rights requirements of the families' right to a home and a private and family life (IR200).

26. The Secretary of State agrees with the overall conclusions of the Inspector that the substantial weight to be given to Green Belt harm by reason of inappropriate development, loss of openness and encroachment, together with the significant harm to the character and appearance of the area and limited harm to the settled community are not clearly outweighed by other considerations sufficient to constitute very special circumstances necessary to justify a permanent permission (IR201).
27. The Secretary of State has gone on to consider whether a temporary planning permission would be appropriate and has considered the Inspector's analysis at IR202-IR203 in this regard. The Secretary of State accepts that the absence of a 5 year supply of sites and longstanding failure of policy are significant material considerations in this appeal and notes that the Council has recognised the need to provide sites as part of its emerging local plan process or through the duty to cooperate. He agrees with the Inspectors assessment that it is likely that circumstances will change in the next 4 years (IR202) and agrees with his conclusion that the harm, even for a temporary period, would still not be clearly outweighed by other considerations sufficient to constitute the very special circumstances necessary to justify inappropriate development in the Green Belt (IR203).
28. The Secretary of State agrees with the Inspector that the needs of the occupants carry moderate weight. In particular, the best interests of the children are a primary consideration. He agrees with the Inspector that dismissal of the appeal would continue to leave the families without a settled base and they would need to continue to follow an itinerant lifestyle site (IR205). In terms of the Appellants' rights under Article 8 of the European Convention on Human Rights, the Secretary of State considers that these rights are qualified and that it is his role as planning decision-taker to ensure that any interference with these rights is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality. In this case, he takes the view that the harm to the Green Belt is such that dismissal of this appeal is a necessary and proportionate response.
29. In making his decision, like the Inspector (IR204) the Secretary of State has had due regard to the requirements of the Public Sector Equality Duty, in particular the need to eliminate discrimination, advance equality of opportunity and foster good relations between those with protected characteristics and others. In this regard and in coming to his decision he has considered the following impacts on the protected group: the need for sites, the failure of policy and human rights considerations. The Secretary of State is of the view that his decision to dismiss the appeal is proportionate and justified in the circumstances.

Obligations

30. The Secretary of State agrees that the proposed obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. It meets the tests within CIL Regulation 122 and should be taken into account in the decision (IR191). However, he does not consider this would overcome his reasons for dismissing the appeal.

Conditions

31. The Secretary of State has considered the proposed conditions (IR192-IR194) and as set out by the Inspector at Appendix C of his report. He is satisfied that these conditions are necessary and relevant to the proposed development and meet the policy tests of the planning guidance – Use of Conditions and paragraph 206 of the Framework. However, he does not consider that they would overcome his reasons for dismissing the appeal.

Overall Conclusion

32. The Secretary of State concludes that the appeal proposal is inappropriate development in the GB and he attributes substantial weight to this harm. This harm together with the loss of openness and encroachment, together with the significant harm to the character and appearance of the area and limited harm to the settled community are not clearly outweighed by other considerations sufficient to constitute very special circumstances necessary to justify the granting of planning permission do not exist.

Formal Decision

33. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal under section 78 and refuses planning permission for the change of use of land to use as a residential caravan site for 8 gypsy families each with two caravans, including one static caravan, including the laying of hardstanding and formation of new accesses and the erection of 4 no amenity buildings.

Right to challenge the decision

34. 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.
35. A copy of this letter has been sent to Royal Borough of Windsor and Maidenhead. 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



Report to the Secretary of State for Communities and Local Government

by Mark Dakeyne BA (Hons) MRTPI

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

Date: 8 July 2014

Town and Country Planning Act 1990

Council of the Royal Borough of Windsor and Maidenhead

Appeal by

Mr Maurice McCann

Land west of Forest Green Road, Holyport, Windsor, Berkshire

Inquiry held on 1, 2 and 3 April 2014

Land west of Forest Green Road, Holyport, Windsor, Berkshire

File Ref: APP/T0355/A/13/2205599

File Ref: APP/T0355/A/13/2205599

Land west of Forest Green Road, Holyport, Windsor, Berkshire

- 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 Maurice McCann against the decision of Council of the Royal Borough of Windsor and Maidenhead.
- The application Ref 13/00702, dated 4 February 2013, was refused by notice dated 11 June 2013.
- The development proposed is material change of use of land to use as a residential caravan site for 8 gypsy families each with two caravans, including one static caravan, including the laying of hardstanding and formation of new accesses and the erection of 4 no amenity buildings.

Summary of Recommendation: That the appeal be dismissed.

Procedural Matters

1. The inquiry sat for three days – 1, 2 and 3 April 2014 - and was closed on 3 April 2014. I made an accompanied visit to the site and the surrounding area on the afternoon of 2 April 2014.
2. The application was amended prior to its determination by the Council to include the erection of amenity buildings. As the change has been subject to publicity at both application and appeal stages no party would be prejudiced by the revision. The description in the banner heading reflects this amendment.
3. The application form refers to the applicant as “Mr Maurice McCann and others”. The appeal form refers to the appellant as Mr Maurice McCann. I have adopted the latter in the banner heading on the basis that it clearly identifies the appellant.
4. The appeal was recovered for decision by the Secretary of State (SoS) for Communities and Local Government on 9 October 2013. The reason for recovery is that the appeal involves proposals for significant development in the Green Belt.
5. The Council refused planning permission for eight reasons set out in its decision notice dated 11 June 2013. These relate to harm to the Green Belt; adverse impact on the character and appearance of the countryside; highway safety issues in relation to the junction of the access track with the B3024 and the access track itself; lack of provision for off-site infrastructure; effect on the amenity value of the public footpath; impact on the trees and hedges on the site boundaries; an unsustainable form of development; and domination of the nearest settled community.
6. The Landowners and Forest Green Road Residents Group were given Rule 6(6) Status. I will refer to them as the Residents Group in this report.
7. A Statement of Common Ground (SOCG) was submitted on the opening day of the inquiry¹. This records that the appellant and Council (but not the Residents Group) agreed that a contribution of £40,000 would meet necessary off-site infrastructure improvements. This contribution would be facilitated by a

¹ SOCG1

unilateral undertaking made by the appellant under Section 106 of the Planning Act² (S106). On the basis of this obligation the Council did not pursue the fifth reason for refusal³.

8. This report contains a description of the site and surroundings, an explanation of the proposal, identification of the relevant planning policies, the cases of the parties and my conclusions and recommendation. Lists of appearances, inquiry documents and recommended conditions are appended.

The Site and Surroundings

9. The 0.37 hectare site is a narrow neck of fairly level scrubby land, with dimensions of about 200m long by 20m wide, sited in open countryside designated as Green Belt. The western boundary of the appeal site is marked by a hedgerow containing some trees as well as sections of timber fencing. A single vehicle width access track, which also comprises a public footpath (No 24 Bray), runs along the eastern boundary of the site linking Forest Green Road, the B3024, with Mount Skippets Farm. The site's boundary with the track is open although an oak tree is sited about halfway along its length. A trench has recently been dug close to this same boundary. Beyond the track is an intermittent hedgerow forming the boundary to the large field to the east. The northern boundary of the site abuts the large rear garden of Orchard Glen and is formed by a close boarded fence.
10. The area is a gently undulating landscape characterised by large arable fields and the occasional copse. The land to the south rises up towards Mount Skippets Farm which is the most noticeable gradient in the area. Some of the nearby field boundaries, like the western boundary of the appeal site, are delineated by hedgerows and trees. This includes the far boundary of the field to the west of the appeal site beyond which lies a bridleway.
11. The access track passes through two gates before it joins Forest Green Road to the north. Beyond the second gate, which is some 14m back from the classified road, the track widens out such that two vehicles can pass each other.
12. Forest Green Road has a ribbon of some 15 properties on its southern side, sited both to the west and east of the access track. The Sun and Stars Restaurant and Pub (formerly the Rising Sun Public House) lies immediately to the east of the junction of the access track with the B3024. The nearest villages are Holyport and Fifield with the former providing a greater range of facilities such as a primary school, doctors' surgery, local shops, a village hall and further public houses. The centre of Holyport near the primary school is about 2.35 km by road and 2 km across country by public footpath⁴. There are limited footways and no street lighting on Forest Green Road which has a 50mph speed limit.

² MM6

³ WM1

⁴ R6.2 Appendix 1 – Concept Plan

The Proposal

13. The site would be divided into eight plots, each accommodating a static caravan and space for a touring caravan⁵. The amenity blocks would straddle two plots providing a utility room and shower/toilet for each gypsy family.
14. The site layout plan indicates that the plots would be divided by post and rail fencing and surfaced with pea shingle. Double width vehicular access points would be provided off the track each serving two plots. It was confirmed at the inquiry that the accesses would be enclosed by five-bar gates⁶. New hedgerows would be provided between each access with additional planting at the southern extremity of the site. The plan shows the existing hedgerow to the western boundary being retained. However, the existing trees, including the oak tree, are not shown on the plan.
15. Access to the site would be via the existing track. No improvements are proposed to the track which lies outside the appeal site and is not in the ownership of the appellants.

Planning Policies and Guidance

16. The development plan relevant to this appeal is the *Royal Borough of Windsor and Maidenhead Local Plan* (incorporating Alterations adopted June 2003) (the Local Plan). The following 'saved' policies of the Local Plan are referred to in the reasons for refusal.
17. Policy GB1 sets out those forms of development which are not inappropriate in the Green Belt. Policy GB2 indicates that permission will not be granted for development in the Green Belt where it has a greater impact on openness than existing development on the site or harms the character of the countryside.
18. Policy DG1 refers to design guidelines which will be used to assess development. Policies T5 and T8 refer to the need for development to comply with the Council's adopted highway design standards and make appropriate provision for pedestrian access respectively. Policy IMP1 requires that development makes provision for infrastructure and refers to the use of planning obligations whilst Policy R3 refers specifically to public open space provision in new housing developments.
19. Policy R14 indicates that public rights of way will be safeguarded and enhanced. Policies N6 and N7 require that tree surveys, protection and planting are incorporated into development proposals where appropriate and that hedgerows are retained.
20. There are no policies relating specifically to gypsies and travellers in the Local Plan.
21. The Council is currently working on a new Borough Local Plan having recently consulted on a Preferred Options document (January to March 2014). Preferred Option Policy HOU 6 relates to gypsies, travellers and travelling showpeople. The policy indicates that provision will be made for 20 additional pitches for gypsies and travellers between 2012 and 2027 in three five year phases, including 7

⁵ Plan2

⁶ Mr Brown in response to Inspector's question

pitches in each of the periods 2012-2017 and 2017-2022. The policy includes criteria to be used in allocating sites and considering development proposals. No specific allocations are put forward in the policy. The Council is targeting adoption of the Plan by April 2015⁷.

22. The Council indicates that gypsy site allocations are likely to be dealt with in a separate Development Plan Document (DPD). There is no formal timetable for progressing such a DPD. However, it is expected that a preferred sites consultation would be undertaken by the end of 2014.
23. There are four Council guidance documents relevant to the appeal. A *Landscape Character Assessment* (LCA) was adopted as supplementary planning guidance in September 2004. In the LCA the site lies within 'Open Clay Farmland' which is characterised by large fields defined by native hedgerows. There is the *Planning Obligations and Developer Contributions Supplementary Planning Document* (SPD), adopted in October 2012, which assists the Council in securing appropriate contributions towards certain infrastructure, services and facilities. In addition the *Interpretation of Policies R2 to R56 – Public Open Space Provision Supplementary Planning Guidance* (SPG) published in February 2003 (updated in February 2005) sets out the particular requirements for public open space. The Council's *Highway Design Standards* (HDS), adopted in 2011, are relevant as they are referenced in Local Plan Policy T5.
24. The *National Planning Policy Framework* (the Framework) was published in March 2012 and sets out the Government's policies to achieve sustainable development. Section 9 is particularly relevant to the appeal as it deals with protecting Green Belt land. The Government's *Planning policy for traveller sites* (PPTS) came into force at the same time as the Framework and is to be read in conjunction with it.
25. Other national documents of relevance are Manual for Streets 1 and 2 (MfS) and the Design Manual for Roads and Bridges (DMRB). Reference will also be made to the Government's *Planning Practice Guidance* published in March 2014.

Agreed Facts⁸

26. I have covered a number of the undisputed facts in the previous paragraphs where I describe the site and surroundings and the policy context.
27. The parties accept that the proposal constitutes inappropriate development in the Green Belt to which substantial harm should be attributed.
28. The available visibility from the access track looking along Forest Green Road in both directions is agreed between the appellant and the Council.

The Case for the appellant

The material points are⁹:

29. As background there is no dispute that the intended site occupants fall within the definition of travellers in Annex 1 of PPTS. They sought to engage with the Council prior to the purchase of the site and before making a planning application

⁷ WM5

⁸ SOCG1 and SOCG2

⁹ Summarised from the appellant's closing submissions MM10 and evidence

but different views were given by Officers of the Council. Notwithstanding these difficulties, the proposed occupants have continued to go about things in the right way. They have not gone onto the site. These factors are encouraging for future cohesion and integration.

Green Belt

30. Substantial weight should be given to the harm to the Green Belt by reason of inappropriate development. There is encroachment into the countryside and a significant loss of Green Belt openness¹⁰. These are two sides of the same coin of inappropriateness. But the site is relatively small and discrete and would not set a precedent. There is no conflict with any of the other purposes of the Green Belt.
31. The confirmation in PPTS that traveller sites constitute inappropriate development has not changed the balancing exercise. PPTS does not suggest that gypsy sites cannot be granted in the Green Belt. Paragraphs 13 and 15 are relevant in this regard.

Character and Appearance

32. PPTS acknowledges that sites may be acceptable in rural settings. This has a number of inevitable consequences in that sites have characteristic features such as caravans, hardstandings, utility buildings, residential paraphernalia and lighting. Some degree of visual harm must be accepted if an adequate supply of gypsy sites is to be provided.
33. The impact on the character and appearance of the area will be influenced by the use of existing landscape features and new landscaping. The planting will need time to become established but once it is Paragraph 24 of PPTS makes it clear that soft landscaping can positively enhance the environment. Sites should not be enclosed with so much hard landscaping to give the impression that they are isolated from the rest of the community.
34. The site is not unspoilt as it has been subject to fly-tipping which was cleaned up. The site can be described as a backland site being tucked in behind existing houses. Although in the countryside, it is not an area devoid of development where the proposal would be seen in isolation.
35. The main visual receptor is the adjacent footpath but this harm will be localised and limited and should not be a determinative matter. Sites need to be near roads or tracks. The vantage point from the public footpath to the south would be filtered by existing trees and hedgerows from where the site would be seen in the context of existing development. The kennels to the north provide a buffer from the nearest houses. The development would be well screened from Forest Green Road by existing buildings and vegetation and seen against a backdrop of rising land.
36. The buildings and caravans could be moved further away from the western boundary and the area of hardstanding reduced. The impact on existing trees and hedges can be safeguarded by conditions, a matter accepted in the Officer's Committee Report. There was no request from the Council to undertake a tree

¹⁰ APP3 para 5.7

survey. The oak tree has already been compromised by the digging of the trench.

Sustainability

37. PPTS makes no mention of distances to services or modes of travel when assessing the sustainability of gypsy sites. It expects local planning authorities to ensure that gypsy sites are sustainable economically, socially and environmentally. This includes having a settled base to allow access to health services and schools which would be achieved by the appeal proposal. The need to consider sustainability in its wider sense is reflected in a recent appeal decision, including the travelling lifestyle¹¹.
38. Holyport is only about 2 km away. Forest Green Road is a designated cycle route with a level terrain. Although there are limited bus services near the appeal site there are opportunities to replace some car journeys by cycling or public transport. That said PPTS recognises that traveller sites can be located in rural and semi-rural areas. The development would not generate significant traffic movements. Although residents would primarily rely on private vehicles, journeys would be relatively short.
39. With regard to the other sustainability benefits identified by Paragraph 11 of PPTS, the prospective residents have already cooperated with local people in relation to alternative sites. The footpath offers potential for social integration. There is no reason why the objective of promoting peaceful and integrated coexistence between the site and the local community could not be achieved. Use of the site would reduce the need for travelling and possible environmental damage caused by unauthorised encampments. There are no issues with local environmental quality. The site is sufficient distance away from nearby dwellings to not significantly impact on the living conditions of existing residents. The local public house is closer to Skippets Lodge.
40. Services are available adjacent to the site access. Any pressure on local infrastructure and services would be offset by the contribution facilitated by the S106 obligation. The appeal site is not located in an area at high risk of flooding, unlike large parts of the Borough which were inundated by the February 2014 flood waters.

Highway Safety

41. The Council applied Local Plan Policy T5 which expects compliance with DMRB visibility standards and makes no reference to MfS2. However, Forest Green Road is not a trunk road. Surveys revealed that the road is lightly trafficked. Use of the access track, an access road not a minor road, would be modest at between 30 and 60 vehicle movements per day. The recorded accidents on this stretch are few and relate to vehicles losing control or collisions between vehicles using the B3024 rather than being caused by vehicles using the accesses.
42. Mr Hurlstone has taken a risk and evidence based approach in line with MfS2 correctly factoring in the local context and relevant considerations such as surveyed speeds, existing accesses, accident records, reaction times and stopping distances, including the slower deceleration of heavy goods vehicles.

¹¹ PBA 1 (Appeal decision ref: APP/J0405/C/13/2193582 dated 6 September 2013)

This is the approach to be commended rather than dismissing the appeal because trunk road visibility splays are not available. This would reflect the need to consider the degree of consistency between development plan policy and subsequent national guidance such as MfS2. This is a familiar point which has been taken on board in other appeal decisions¹².

43. Approaching traffic would be able to see an emerging or stalled vehicle in sufficient time to halt safely. Although recommended visibility distances to the west are not achievable to the nearside edge of the carriageway, it would be possible to see vehicles approaching taking into account the 85th percentile speed derived from the speed survey which was undertaken when the national speed limit applied. The Council can control vegetation on highway land as shown by the recently served Highways Notice¹³ on the public house which improves visibility to the east. Safe stopping distances (SSD) are available. It is not necessary to maintain a constant speed of traffic along the B3024 to achieve an adequate level of safety.

Public Footpath

44. The track is wide enough to take traffic without additional passing places. The number of vehicular movements would be barely noticeable and would not generate significant noise and dust. Vehicles would travel at slow speeds and there is good forward visibility. A driver seeing a pedestrian would slow down further. Likewise users of the footpath would be able to see approaching vehicles. Pedestrians have been observed standing at the side of the track to allow a vehicle to pass. The track would accommodate lower traffic volumes and speeds than Quiet Lanes¹⁴ where shared use between vehicles and other road users is acceptable.

Settled Community

45. With reference to paragraphs 12 and 23 of PPTS, a settled community must comprise an identifiable settlement, not a small collection of houses. In the case of the appeal site the nearest settlements are Fifield and Holyport. The site cannot be said to dominate these settlements in any physical sense and would not place undue pressure on local infrastructure in Holyport. The Officer's Committee Report accepted that the small site occupied by 8 families could not be said to dominate the nearest settled community which was considered to be Fifield. There are numerous examples of sites being away from a settlement but near a small group of houses.

Other Considerations

46. Policy H of PPTS sets out the issues, amongst other relevant matters, that should be taken into account in considering proposals for traveller sites.

¹² JPH-F (Appeal decision ref: APP/X11118/A/11/2162447 dated 20 March 2012)

¹³ RG3

¹⁴ JPH-J– Department of Transport Circular 02/2006 – The Quiet Lanes and Home Zones (England) Regulations 2006

Provision and Need for sites

47. Existing provision in the Borough comprises two public sites (25 pitches) and two private sites (26 pitches). In addition there is a temporary site for 2 pitches granted on appeal until 2015¹⁵.
48. The Gypsy and Traveller Accommodation Assessment (GTAA) published in April 2013 found a short-term need for an additional 18 pitches (2012-2017) with a further 10 pitches needed in the longer term (2017-27). However, taking into account the need from unauthorised encampments; sites with temporary planning permission; unauthorised sites seeking planning permission; and overcrowding, doubling up and waiting lists on public sites; the short-term unmet need is likely to be considerably higher than 18 pitches. One of the prospective residents has been on the waiting list for the public site at Mill Place, Datchet for several years. There is also the need from the other seven families wishing to occupy the appeal site. There is no logical basis for reducing the short-term need from 18 to 10 pitches.

Alternative Sites

49. All the existing gypsy sites in the Borough are full or over-crowded. The current development plan does not allocate any sites or even include a criteria-based policy to guide site selection.
50. The Borough is predominantly rural. The built-up nature of existing settlements means that there is little open land within them and land that is available attracts high land values. In these circumstances it is unlikely that gypsy sites will be found in existing settlements. All land outside settlements is Green Belt (83% of the Borough). There is no indication that other Councils will meet the Borough's needs even if they have less constrained land.
51. The Council adopted a draft policy framework for traveller sites in the Borough in May 2012. Following on the Council agreed to consult upon the technical feasibility of developing three sites but then in September 2012 decided not to progress the three proposals but instead promote a new 10 pitch site on private land off Mill Place, Datchet. The sites considered so far have been in the Green Belt and in areas at high risk of flooding so are less suitable than the appeal site.
52. The Council resolved to grant planning permission for the Datchet site and fund its construction. The Environment Agency objected to the planning application and it has been called in by the SoS for his determination.
53. Therefore, the Council has only been able to identify one alternative site in the Borough and that is in the Green Belt and at risk of flooding. Moreover, the preferred site would not meet all the need identified in the GTAA. Preference is likely to be given to those who are doubling up on the existing site. Family connections and differences also need to be respected. The Council has accepted the principle that future provision will take place in the Green Belt which will

¹⁵ PBA 3 (Appeal decision Ref: APP/T0355/A/10/2129018 dated 1 February 2011)

mean Green Belt harm¹⁶. This is a matter which must carry weight in favour of the proposal as accepted by the SoS in a recent appeal in Central Bedfordshire¹⁷.

Failure of the Development Plan

54. Development plan policies did not address the need for traveller accommodation during the lifetime of Circular 01/2006. The existing policies seek protection of the countryside but do not deal with travellers. The PPTS makes it clear that pitch targets should be based on a robust evidence base. The Council's interim policy envisages providing 10 pitches so is an inadequate response to meeting the need in the GTAA. The draft Local Plan has already slipped and is unlikely to be adopted before the Summer of 2015. Site allocations are unlikely to come forward before 2016. As a result the Council is unable to identify a five year supply of deliverable sites and has no clear timetable for remedying this situation despite indicating at previous appeals that provision would be met by now. There has been a longstanding failure of policy. These are matters which carry weight in favour of the proposal.
55. The SoS has made it clear that need and the failure of policy to meet it are different material considerations and would not constitute double counting¹⁸.

Personal Accommodation Needs and Personal Circumstances

56. The group of eight families are related to each other. They want to live together as they all live by the same rules. The Council has accepted that the families have long-standing family, social and economic connections to the Borough and have a need for lawful accommodation in the area. The families are currently living in overcrowded conditions doubling up on existing sites in Berkshire with no security of tenure, on unauthorised sites or are living on the roadside. They have jointly searched for a site in the area for the last 6 years. The appeal site is the most suitable site that has been identified.
57. Research has consistently confirmed the link between the lack of good quality traveller sites and poor education and health. There are 15 children of school age amongst the families and 2 of pre-school age. In every case they have been suffering a disrupted education or are receiving no education at all. Several of the adults suffer from health conditions and, in some cases need regular monitoring, hospital treatment or operations. All would benefit from registration with a GP rather than having to rely on walk in surgeries.
58. There are strong personal education and health needs for a settled base. The needs of the children are a primary consideration as confirmed in recent case law¹⁹. That the families have not gone onto the site does not diminish their personal circumstances. The information about the families is nothing new and was delivered first hand.
59. The consequences of a refusal would be more unauthorised sites and encampments, including in the Green Belt, and harm from roadside camping.

¹⁶ VG10

¹⁷ PBA 8 (Appeal decision Ref: APP/P0240/A/12/2179237 dated 27 August 2013)

¹⁸ MM11

¹⁹ AZ v SoS and South Gloucestershire District Council [2012] EWHC 3660 (Admin)

Conclusions

60. There is harm by reason of inappropriate development in the Green Belt, loss of openness and encroachment. There would be only limited harm to the character and appearance of the countryside.
61. Any potential harm on trees and hedgerows could be mitigated by conditions. There is no harm in relation highway safety or over-dominance of the settled community. The site would provide a reasonable living environment. The advice within the Good Practice Guide (GPG)²⁰ is aimed primarily at public sites (see paragraph 1.13).
62. On the other side of the balance there is an immediate need for gypsy sites in the Borough and an absence of alternative sites. There has also been a failure of policy through the development plan and the lack of an up-to-date 5 year supply of sites. As a result the Council has not complied with its duties under the Housing Act 2004 and is in breach of the Equality Act 2010. The prospective occupiers have a personal need for a lawful site. A settled base would provide access to schooling and health care. Sites are likely to be in the Green Belt. The appeal site is the most suitable site available. It is considered to be sustainable, a positive factor. The fact that all of the site and the access track are not owned by the appellant is a frequent situation with planning applications and should not be a matter for the SoS. There have been rights of access to the land for a long period. In this regard the fly tipped rubble was removed unhindered. The site is available and achievable and will contribute to the 5 year land supply.
63. Substantial weight should be attributed to the best interests of the children. No other consideration can be treated as inherently more significant²¹. This matches the substantial weight to be attributed to Green Belt harm. Interference with the Human Rights of each adult is also a significant material consideration given the plight of the families and the strong personal need for a site. Article 8 rights go wider than the home and include rights to a Gypsy way of life and to a private and family life²². The fact that the families have not already become established on the site should not make a difference in considering the degree of interference with Article 8 rights. Special consideration also needs to be given by public authorities to the protected characteristic of Romani Gypsies under the Equality Act 2010.
64. Individually the factors in favour, such as unmet need, are unlikely to outweigh the harm to the Green Belt and any other harm. Despite the recent Ministerial Statements²³ this is nothing new. However, the factors in favour which do not have to be special themselves when added together, including Humans Rights considerations and the needs of the children, are compelling and sufficient to clearly outweigh the harm and constitute the very special circumstances necessary to justify permanent permission. This is the case even if unacceptable harm is found to the character and appearance of the area. This case can be distinguished from the SoS decision in the Old Windsor case where limited weight

²⁰ Designing Gypsy and Traveller Sites Good Practice Guide – DCLG May 2008

²¹ MM12

²² Chapman v UK

²³ VG8

was given to personal circumstances in the absence of evidence²⁴. In fact that decision is subject to a legal challenge.

65. If it is decided that a permanent permission should not be granted there is a strong case for a 4 year temporary permission due the absence of a 5 year supply of sites during which period the Council might be expected to have allocated sites. There would be a consequent reduction in harm to the Green Belt.

The Case for the Council

*The material points are:*²⁵

Green Belt

66. It is common ground that the appeal proposals are inappropriate development in the Green Belt. This serious harm weighs very strongly against the grant of planning permission. In addition there would be a significant loss of openness and clear conflict with the Green Belt purpose of safeguarding the countryside from encroachment as a result of the introduction of mobile homes, amenity buildings and hardstandings with parking and associated activity on a long finger of land. There would be sprawl of development for a length of almost 200m with few meaningful gaps. Very substantial harm to the Green Belt results.

Character and Appearance

67. The site is an exposed greenfield site which is visually uncontained. A well used rural public footpath passes the full length of the site and there is a further bridleway to the west. It is a highly unsuitable site for caravans. The indicative layout, whilst inadequate, illustrates the intensity of development resulting from 16 caravans, 4 amenity blocks and hardstandings. The proposal would result in a spear of intrusive development which would be a scar on the countryside, entirely uncharacteristic of the area. From the footpath clear and direct views would be obtained through the four access points. The structures would be readily visible through and above any landscaping. The harm to the experience of footpath users on a country walk would be considerable.
68. The issues are compounded by the lack of thought given to the siting of development to allow vegetation to be retained or established. The presence of trees and hedges on the site was not acknowledged on the planning application form. No tree survey has been produced by the appellant as referred to in BS 5837:2012. Ms Leonard has had to make assumptions. There was no challenge to the evidence on the effect of developing within the Root Protection Areas (RPA) of the trees. Even with no-dig construction methods there would be excessive incursion of hard surfacing into the RPA (more than the 20% limit recommended) and a high probability that features would be affected. The digging of the recent trench is not relevant. Vegetation would be close enough to caravans and amenity buildings to result in branches touching the structures and loss of outlook.

²⁴ VG12 (Appeal decision Ref: APP/T0335/A/12/2181639 dated 19 December 2013)

²⁵ Summarised from the Council's closing submissions WM7 and evidence

69. Conditions controlling the siting of the development and preventing cutting back of vegetation would not address the concerns about development within the RPA or overcome the identified harm. An alternative siting would also raise issues about landscaping, appearance and amenity. Preventing cutting back to improve light or outlook through a window would be unreasonable. No landscaping proposals or timetable for implementation have been submitted. The size of any new hedges would be constrained by the development such that they would not have the intended softening effects.
70. These are problems of the appellant's own making due to the failure to address the issue or produce evidence. The impact on landscaping is a material consideration, would be stark and must attract significant weight.
71. Overall there would be a serious adverse impact on character and appearance. The impact would be compounded by the loss of landscape features.

Sustainability

72. The site is very poorly served by public transport such that occupiers would be heavily reliant on the private car. Holyport would be unlikely to be accessed by foot as realistically it is too far to walk and along a footpath without surfacing or lighting. The distance from the village would hinder integration
73. It is recognised that sustainability is a broader concept than accessibility but PPTS reiterates that traveller sites in open countryside away from existing settlements should be strictly limited. In this case the site is in the Green Belt, remote from a settlement, does not promote social integration due to its scale and is not accessible by sustainable modes of transport. The development would cause substantial environmental harm. Although there are benefits in providing lawful settled accommodation, in the round and by reference to social, economic and environmental considerations, the appeal development would not be sustainable.

Highway Safety

74. There are constraints at the junction of the access track with Forest Green Road. Visibility is affected by vegetation and the crest of the hill to the east. The effect of the former is to result in 'y' measurements to the nearside edge of the carriageway, with an 'x' distance of 2.4m, of between 18m to 21.5m to the east and between 28m and 74.5m to the west reflecting the vegetation growth on the dates that the measurements were taken. The agreed measurements with the vegetation cut back are 111m to the east and 72m to the west²⁶.
75. Policy T5 of the Local Plan requires that proposals comply with the Council's HDS. The Framework advises that decisions should take account of whether safe and suitable access to a site can be achieved for all people. Relying on the phrase in the Framework that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe should not be used to lend support to the use of an unsafe access.
76. Judged against the development plan it is agreed that the access does not provide the SSD required by Table 7.1 of DMRB and therefore the development

²⁶ SOCG2

plan is breached. Although DMRB documents were conceived as guidance for trunk roads, both the HDS and MfS advise application of DMRB in other situations, including on rural roads with design speeds over 40mph. With a 'x' distance of 2.4m, which should be used in this situation, the 'y' distance for a design speed of 85 km per hour would be 160m. Taking into account adjustments for measured speeds the 'y' distances should be between 132 and 135m. These distances cannot be achieved with a shortfall of over 20m. The shortcomings will be greater as the vegetation grows between maintenance. The visibility to the east cannot be improved beyond 123m due to the brow. DMRB indicates that there should be no relaxation in the mandatory standards.

77. MfS refers to the use of DMRB parameters where actual traffic speeds are above 40mph for significant periods of the day. This reinforces the advice that DMRB parameters are recommended. DMRB can be subject to local context but this does not mean that DMRB should not be applied at all. The use of a computer programme to reduce the SSD is not applying local context and would produce the same result anywhere in the country. TD 41/95 and 42/95 of DMRB are not just concerned with maintaining a constant speed on the main carriageway. There is also the objective of drivers being able to slow down and stop safely if necessary.
78. The application of DMRB parameters, as advised by all the guidance including MfS2, indicates that forward visibility and the required 'y' distance cannot be achieved so the proposal is contrary to the guidance and the development plan. The appeal decisions referred to by the appellant do not change this as they are a product of the evidence before the Inspector and local circumstances. In each case the proposals appear to have been for smaller sites and with fallback scenarios relating to the existing use of the accesses.

Public Footpath

79. Safe access to sites should be achieved for all, including pedestrians. The Local Plan requires that existing footpaths should be safeguarded and enhanced and that new developments make appropriate provision for pedestrians. No improvements to the track or passing places are proposed. Vehicles would travel 150m to 300m along a single track road which varies in width from 2.75m to 3.5m.
80. The access track is not suitable due to its narrowness and the absence of satisfactory passing places which will cause conflict when a vehicle meets a pedestrian or vehicles meet. The Quiet Lanes or Home Zone guidance does not assist in assessing suitability. Although the access track at its narrowest is the minimum advised width for a single vehicle to pass, the track also serves as a public footpath and its side verges include ditches. The additional 30-60 vehicles per day will cause unacceptable conflict.

Settled Community

81. PPTS advises that sites in rural areas should respect the scale of, and not dominate the nearest settled community. Mrs Gibson and significantly Mr Tarzey and the residents of Forest Green Road consider that the nearest settled community is the 15 dwellings and public house along the road. The additional 8 families would fail to respect the scale of that community and dominate it. If PPTS had intended to limit "community" to "settlements" it would have done so.

The concept of community being distinct from settlement is entirely consistent with the Government's Localism agenda.

Other Considerations

82. The Council accepts that the following duties are engaged in this case – the best interests of children are a primary consideration; the rights of occupiers to family and private life under Article 8 of the Human Rights Act (HRA); and the public equality duty under the Equality Act 2010. However, none of these duties give rise to a consideration that is determinative in the planning balance²⁷.
83. The Council has taken into account the decision of the SoS²⁸ on a gypsy site in the Borough. That decision had regard to the lack of alternative sites; the lack of a 5 year supply of sites or a clear timetable for delivering such a supply; and the need for 28 pitches for the period of the emerging plan. As with the previous decision these considerations should be given significant weight.
84. The called in application for the Mill Place, Datchet site is to be heard at an inquiry scheduled for September. Discussions are ongoing with the Environment Agency in advance of the inquiry. There remains an issue as to a safe emergency route. The 10 pitch site would be run, in effect, by a housing association.
85. The emerging local plan will address the need for traveller sites. There is a joint GTAA being progressed with other Councils which will feed into an allocations DPD. There is an identified process in train which will identify need and plan to meet it in a sound way.
86. Ministerial Statements²⁹ have emphasised that unmet need on its own is unlikely to outweigh harm to the Green Belt and any other harm to constitute the very special circumstances necessary to justify inappropriate development in the Green Belt. The SoS decision referred to above did not consider that the failure of policy, the lack of a 5 year supply, the absence of a clear timetable for meeting the need, together with failures in relation to the Housing Act 2004, the Equality Act 2010 and the duty under Articles 8 and 14 of the HRA amounted to very special circumstances in relation to either a permanent or temporary permission. The same conclusion must follow in the present case as the same material considerations are put forward, with the addition of personal circumstances. The other harm is substantial. Unmet need is no greater, the Local Plan is advancing and there is a prospect of permission at Datchet.
87. As to personal circumstances, the Council accepts that the families have connections to the Berkshire area but not to Holyport specifically. The best interests of the children are a primary consideration and weight needs to be given to the advantages of having a settled base in terms of access to health and educational facilities. However, the evidence does not point to significant weight being attributed to these circumstances, assuming that the appellant seeks a personal permission, or how the needs would be met by this site. This consideration does not tip the balance.

²⁷ RG7 and RG8

²⁸ VG12

²⁹ VG8

88. It has not been explained what is in the best interests of the children. The site is not presently occupied so there would be no direct interruption to schooling. There is little evidence of regular recourse to health facilities in the local area. There does not appear to be any intention to put secondary school aged children into school. Some of the primary school aged children already attend primary school. Although weight should be given to the benefit of regular access to schooling, no consultation appears to have taken place with the Council's liaison officer with a view to securing continuing education. In relation to health, there is little evidence of any benefit to individuals other than a generalised benefit of regular access to facilities.
89. It is not suggested that personal circumstances should only attract significant weight in enforcement cases. It is necessary to consider all the individual circumstances put forward in written and oral evidence. But the personal circumstances do not attract significant weight over and above the weight given to unmet need considerations.

Conclusions

90. Permission should be refused regardless of the highway safety issue. Playing down the substantial harm to the Green Belt by suggesting that it is inevitable is an impermissible approach and fails to apply the Framework and Section 38(6) of the Act³⁰. Harm arises from the unsuitability of the site for the development. There are certain material considerations in favour. However, these do not reduce the weight to be given to the harm caused. The potential harm to the Green Belt by reason of inappropriateness and any other harm is not clearly outweighed by these other considerations. They do not amount to very special circumstances.
91. With regard to a temporary permission, the substantial harm, even for a limited period such as 4 years, would not be clearly outweighed by the considerations in favour.

The Case for the Residents Group

The material points are³¹:

Green Belt

92. The following are the components of harm to the Green Belt – inappropriate development, loss of openness and encroachment into the countryside. The appellant accepts that these all result in significant harm to which substantial weight should be given. Harm to openness is to be judged without reference to visual impact which is an entirely different matter. The proposal does not relate to a rural exception site for the purposes of Policy D of PPTS or paragraph 89 of the Framework.

³⁰ Planning and Compulsory Purchase Act 2004 – determination must be made in accordance with the development plan unless material considerations indicate otherwise

³¹ Summarised from the Residents Group closing submissions RG5 and evidence

Character and Appearance

93. PPTS indicates that sites may be acceptable in rural settings. But in this case the size of the site and the amount of development provides limited opportunity for soft landscaping. Therefore, the development cannot be properly assimilated into its surroundings. The hedgerow and trees which should be protected are not shown on the layout plan and are threatened by the development. The appellant has not presented evidence in this regard. There would be pressure on the trees and hedges due to the cramped nature of the site.
94. The footpath users are sensitive receptors and would see caravans and amenity buildings about 4m high and a concentrated form of discordant structures, vehicles and domestic paraphernalia. There is no evidence of fly tipping so that is not a consideration.
95. The harm to the character and appearance of the area is a matter of judgement but the Residents Group's evidence is credible and should carry significant weight.

Sustainability

96. The site is not sustainably located with poor access to public transport and local services by foot. A twice daily term time bus service is 10 minutes walk away. Site residents would be unlikely to walk to the bus stop in Holyport for a more regular bus service or use the footpath to the village which is not of the best quality. These are legitimate elements to be considered in assessing sustainability alongside the wider sustainability benefits identified in PPTS.

Highway Safety

97. The available 'y' distances have been agreed between the appellant and the Council but the Residents Group is not a signatory to this agreement. Consideration needs to be given to whether the hedge trimming has only gone as far as the highway boundary; whether the distances claimed can be achieved; and whether it is essential that the hedge is trimmed back to the highway boundary at all times. In the case of the latter this would be particularly important in the growing season and would need to be subject to a condition.
98. The 'y' distance to the west is not so critical. The vertical alignment of Forest Green Road prevents any further increase in the 'y' distance to the east. There are competing candidates for the 'y' distance to the east – 160m (DMRB and the Council's policy standard based on the 50mph speed limit); 132m based on the 85th percentile speed; between 123 and 127m based on the DMRB based calculations of the appellant; and 103m based on the MfS based calculations of the appellant. Only the latter is less than the available visibility of 123m to the east taken to the centre of the nearside lane.
99. The local context does not justify such a reduction as the Council's HDS was set after the publication of MfS2 and there is no evidence that the MfS2 was misunderstood or ignored. The local standard should be respected. A reduction in speed limit does not always lead to speeds equating to the 85th percentile as evidenced by Mr Coppinger. The public house access is not normally heavily used during rush hour. The same points are made about the appeal decisions relied upon by the appellant as the Council (paragraph 78 refers).

100. The existing private access track is used by agricultural vehicles and there are no vehicular rights of way along it. There would be a significant amount of traffic arising from the appeal site. The appellant does not have control over the configuration of the access or the type and positioning of gates.
101. The approach put forward by the appellant needs to be clearly justified as the consequences of being over-optimistic or just plain wrong would be horrendous. The appellant has not demonstrated that the reduction from the locally set policy is justified to the extent contended.

Public Footpath

102. Increased vehicle use of the footpath would lead to pedestrian-vehicle and vehicle-vehicle conflict. There is an obvious safety risk despite the claims of good forward visibility. Vehicles reversing from the pitches would increase the risk. Pedestrians moving onto the verges or vehicles onto adjacent land would amount to trespass.
103. The use of the track would give rise to some of the characteristics of "Quiet Lanes" but in this case there is no evidence of community "buy-in", a key element of such schemes³².
104. Walking the footpath would become a less pleasant experience and amount to a loss of public amenity and would not be conducive to good community relations.

Settled Community

105. There is no definition of community in PPTS. It is a matter of fact and degree. The relevant community is the 15 dwellings around the public house and not Fifield or Holyport. This community were notified of the application by the Council and it functions as a community not least in the context of this appeal. The 8 pitches will result in a 50% increase in the number of residential units and potentially a doubling of the population resulting in domination of the nearest settled community.

Other Harm

106. The site is too small and the layout unacceptable. Satisfactory arrangements for the disposal of surface water have not been demonstrated. There is a need to control run-off to pre-development levels to ensure nil detriment to surrounding land which has been subject to pluvial flooding. There is no evidence of the height of the underlying water table. Any solution may have consequences for the health of trees and hedges.
107. The living environment for future residents will be unacceptable and a significant departure from the GPG in the following respects: lack of access to local services, noise and disturbance from the show dogs at Orchard Glen, insufficient space for manoeuvring and visitor parking, lack of space for children to safely play, drainage, access for emergency services and waste collection, lack of space for soft landscaping, limited separation distances, lack of a communal building or space for an education bus, small pitch sizes and lack of garden areas, the

³² JPH-J

accommodation within the amenity buildings and the effect of the hedgerow on lighting and energy use.

108. There would be an unacceptable impact on the living conditions of the immediate neighbours at Orchard Glen who keeps show dogs at the bottom of their garden. Skippets Lodge has habitable room windows looking towards the access track.

Other Considerations

109. There is no contemporaneous record from the Council of pre-application advice that indicated that Officers encouraged an application and would support it. The written evidence from the appellant did not identify the details about such advice. Information was given in oral evidence but this was too late for it to be checked or challenged. There has been no Freedom of Information request of the Council in relation to earlier drafts of the Committee report. The Residents Group has asked the appellant for pre-application correspondence without reply. In any event, planning operates in the public interest and should be 'public'. Pre-application advice is not a material consideration that can be given weight in this case.
110. It is accepted that the general need for traveller sites is capable of being a consideration. In addition locally there is a significant unmet need for sites, no 5 year supply of sites and a failure of policy. However, the appeal site will not be able to contribute to the 5 year supply as it is not available now or deliverable within 5 years as the appellant does not control the access to the site.
111. The Residents Group dispute whether the appellant controls all the land within the appeal site and their right to use the access. The appellant served Certificate B on Mr Emmett therefore accepting that he owned part of the site, the sliver of land immediately to the west of the track. Within the sliver the appellant proposes soft landscaping and access points. In addition there is no evidence that the appellant has private law rights to use the track for vehicular access. Whilst it is suggested that any dispute should be resolved elsewhere, the evidential burden is on the appellant to demonstrate that the development is deliverable.
112. It is accepted that no alternative sites are immediately available.
113. The personal need of the proposed occupants for a lawful pitch and the lack of any alternative are capable of being material considerations as are their other personal circumstances. However, the evidence of need and circumstances provided in advance of the inquiry is not convincing and cannot be given substantial weight because it is not first hand and is not sufficiently specific so could not be checked or tested. Examples of credible evidence would have included periods of doubling up, why children have been unable to go to school, evidence from the Traveller Education Service, evidence of medical conditions and inability to register with GPs and evidence of land swap deals.
114. The proposed occupants did not provide proofs of evidence in advance so a further opportunity to provide specific information was lost. The appellant recognised the need for 'live' evidence to fill the gap indicated in the recent appeal decision in the Borough³³. This was done by asking a representative from

³³ VG12

most families to confirm what Mr Brown had said in his evidence and eliciting some further details. This evidence cannot be properly tested. Nor can that which resulted from the Inspector's questions to the proposed occupants. Personal circumstances should not be given significant weight in this case in the absence of a proper opportunity to test it.

115. The decision maker is entitled to conclude that the best interests of children can be outweighed by the negative aspects of a development so long as they are considered as a matter of substance, not form³⁴. Establishing the best interests of the children in this case is difficult in the absence of evidence from the parents. Moreover, it is not in their best interests to live on a site where there is access and land ownership disputes.
116. It is accepted that Article 8 rights are engaged but the same points apply about the weight that can be given to the evidence of the proposed site occupants.
117. There is no doubt that the Council has a duty to treat the traveller and settled communities equally. The Council has operated a site in Datchet for some time and is bringing forward an extension both of which could be suitable for the families. The case that the site is run by a manager who only allocates pitches to relatives and friends should not be given weight. The Council should operate a lawful system and on that basis some or all of the families could be provided with a pitch.

Conclusions

118. It is submitted that the harm to the Green Belt and the other harm identified is not clearly outweighed by other considerations, including the best interests of the children. Refusal of planning permission would be a legitimate and proportionate interference with the Article 8 rights of the proposed occupants.
119. In considering a temporary permission the weight to be given to the harm identified would be reduced because of its short term duration. However, for the same reasons, it is not appropriate to grant a temporary permission. However, if it is thought appropriate to grant temporary permission then the period would be 4 to 5 years. Planning circumstances are likely to change at the end of such a period as, even if the Council proceeded without allocations for traveller sites, it would be reasonable to conclude that such an approach would be unsound. The Council would prefer to bring forward such allocations rather than have an unsound plan. Even with such a protracted process it is reasonable to conclude that plan-making would be complete by the Spring of 2017 with delivery 12 months later. A 4 year permission would fit with this timescale whereas 5 years would allow further slippage.

³⁴ RG7 and RG8

The Case for Interested Parties

*David Coppinger*³⁵

120. He is a resident of Holyport, a Borough and Parish Councillor and a School Governor. As a Lead Member with responsibilities for, amongst other things, housing he has been Chairman of the Council's Traveller Working Party which has been seeking to implement a site at Datchet.
121. The Borough and Parish Councils have vigorously sought to maintain the openness of the Green Belt and protect the gap between Windsor and Maidenhead which is enshrined in the current Local Plan and will also feature strongly in the new plan. Travelling from the west there are views of rising agricultural grazing land up to Skippets to the south of Forest Green Road with a small number of buildings hidden by trees and a backdrop of the wooded ridge which is the start of Windsor Forest. Land to the north of the road is used primarily for crops. Due to the slope from the ridge this area floods during heavy rain. Housing of any nature would be detrimental to the openness of the Green Belt and contrary to planning policies.
122. The footpath by the site is very popular. Towards the top of the rise there is one of the best views of green countryside in the area. A proposal of this density would destroy the amenity value of the walk.
123. The hamlet would be dwarfed as the population would increase by a factor of two. Local primary schools Braywood and Holyport are full despite recent extensions. These are 1.2 and 1.4 miles from the site by road. Senior schools are in Maidenhead or Windsor. There are no facilities within walking distance apart from the public house which operates more as a restaurant. Forest Green Road has no lighting and limited footways. The footpath across the fields is muddy in winter. The bridleway nearer Holyport was flooded for 2 months last winter. Journeys will be made by car.
124. On road safety, there are 2 peaks in traffic as the B3024 is used as a commuter route. Motorbikes and cars use the parallel routes of the Drift Road and Forest Green Road for racing, these speeds not being picked up by the 85th percentile. The road has a very poor accident record because of excessive speed and poor forward visibility. Local residents successfully campaigned for a reduction in the speed limit to 50mph but are also pursuing a further reduction. A give way section has been introduced at the junction with Moneyrow Green, an accident black spot.
125. A staggering amount of money has been spent in connection with the appeal site even though it is not deliverable. There is no road access to the site.
126. The new Local Plan started by considering 100 sites now down to 23 sites. Other than previously developed land, all are Green Belt sites on the edge of settlements where there will be access to local services and less harm to the openness of the Green Belt.

³⁵ Summarised from LR1

127. The Council has been working to meet the needs of travellers. In May 2012 a strategy for traveller sites was presented to the Cabinet and adopted, including an interim planning policy pending the production of the new Local Plan. At that time it was confirmed that there were 53 lawful traveller pitches within the Borough. Three sites were then put forward but, following consultation, further work was carried out to identify alternatives. In January 2013 new sites in Datchet were presented to the Cabinet. The findings of the GTAA, showing a need for 28 pitches, were noted. In seeking to allocate sites, the Council agreed to give priority to the needs of travellers established in the Borough – 7 pitches in the short term and 13 pitches in the medium to longer term.
128. The Cabinet in October 2013 agreed to progress a site at Mill Place, Datchet by entering into a 99 year lease, investing up to £350,000 to match fund a Government grant and extending the Mill Place agreement to cover adjacent pitches. The site will be public and available to those on the waiting list or those doubling up. It is in response to unmet need.
129. There are significant differences between the Datchet site and the appeal site. The Datchet site is not open Green Belt and does not provide separation but is a scrubby piece of land with a pallet repair operation on one side and houses on the other³⁶. Although within the flood plain there is photographic evidence to show that the site was not affected during recent floods. Issues with the Environment Agency are being resolved.

Christopher Yates

130. Bray Parish Council made very detailed representations in writing³⁷ and notes the large number of objections. The site is Green Belt and not previously developed land. There would be damage to trees, loss of habitat, impact on the enjoyment of the footpath and light pollution. The proposal represents an overdevelopment of the site. There are issues with flooding, pollution and lack of utilities. The site would dominate the local community. There are capacity issues with local schools. There would be conflict with the Local Plan and the Framework.
131. In travelling along Forest Green Road on a daily basis it is noted that pedestrians are not seen. As a B road without pavements or lighting there would be the danger of death or serious injury. The access has limited visibility with the hedge to the east. Substantial alterations are needed to make it safe. Trying to enter and leave the site will demonstrate that it is not commonsense to increase its use.
132. The access track to the site is privately owned, narrow and serves as a public footpath. There does not appear to be a right of access. The site is landlocked.

Written Representations

133. The Council reports that 114 letters were received objecting to the application together with an online petition with 135 signatures. The representations are summarised as follows³⁸:

³⁶ VG10 – Officer report on the Datchet site

³⁷ VG1 - Report to the Maidenhead Development Control Panel 5 June 2013

³⁸ VG1

- The site is Green Belt land and no very special circumstances exist. It would set a precedent.
 - The proposal would harm trees and hedges and give rise to light pollution.
 - The location is unsustainable not being close to schools, shops and public transport. Local schools are oversubscribed and services such as doctors overstretched.
 - The access is dangerous with poor visibility. Walkers on the public footpath will be put in danger.
 - The site residents would be isolated and socially excluded which would result in a clash of communities and cultures.
 - The site is too small for the number of people proposed. No details of the caravans have been submitted. There is no room for children to play. The right of way could be blocked by overspill.
 - The land floods. There are no utilities or provision for waste. The narrowness of the track would give rise to problems for emergency services.
 - The garden of the local pub would be affected by the passing of commercial vehicles. Farms would be affected by dogs from the site harming livestock. Neighbouring residents would be affected by loss of outlook, privacy and noise/disturbance.
 - The Council is looking for suitable sites and should be allowed to continue to do so.
 - There are issues with ownership and the correct certification. The access track is privately owned and permission has not been given to use it. The site is inaccessible and permission could not be implemented.
134. In response to the appeal notification *Tom and Fiona Lambert* raise objections. They are concerned about the visual impact as the land rises from their home. The covering of the site with hardstanding will exacerbate the recent flooding of garages and kennels caused by run-off from the hill. The exit from the lane onto Forest Green Road is dangerous due to the hill to the east. It would be impossible to judge if there is time to pull out with a long vehicle or touring caravan. The road is unlit without pavements and is therefore unsuitable for pedestrians. The bus service is intermittent. The area is not conducive to the safety of young children as all activities beyond the home would require a car journey. Their dogs which are exhibited worldwide require rest between shows which would be affected by proximity to children, other dogs and continuous traffic movements.

Obligations

135. The contributions in the unilateral undertaking (paragraph 6 refers) are justified by reference to the adopted Obligations SPD³⁹. The Council also points to appeal decisions in the Borough⁴⁰ where certain contributions to community

³⁹ VG5 – Summary of relevant requirements regarding contributions

⁴⁰ VG6 and VG12

infrastructure have been justified in relation to the tests in the Framework and Section 122 of the Community Infrastructure Regulations (CIL Regulations). However, the level of contribution has also reflected that the SPD does not specifically refer to traveller accommodation, there may be viability and affordability issues and gypsy way of life may impact on a smaller range of infrastructure and services than conventional housing. The undertaking would be binding on the freehold owners.

136. Contributions are to be provided for education (£33,000), public open space (£1,500), highways and public transport (£4,500) and waste disposal and recycling (£1,000). These are on the basis that each plot would have a similar impact to a 2 bed flat but adjusted to take into account the particular circumstances, albeit that education contributions should be based on the impact of 8 no 3 bed houses given the number of children who would occupy the site.
137. In the case of education contributions these are based on the likely number of school aged children whilst factoring in the capacity of nearby schools and number of surplus spaces. Public open space contributions are based on costs of provision. Highways and public transport contributions are based on the shortfall between allocated funding and the monies needed to bring essential schemes forward. Waste disposal contributions reflect the cost of additional waste collection facilities per dwelling. However, the normal contributions, other than waste disposal, are considerably reduced due to the viability and other issues highlighted above. Contributions have not been sought for community and youth facilities, library services, indoor sport and leisure, public art and heritage and allotments also for the reasons set out above.
138. The appellant considers that the contributions are reasonable as the development is more akin to social housing. It is a pragmatic approach taking into account the gypsy way of life and the likely take up of secondary education.
139. The *Residents Group*⁴¹ considers that the unilateral undertaking does not meet the requirements of Policy IMP1 of the Local Plan or the SPD. It would be appropriate to discount the public art element having regard to the Old Windsor appeal decision but this would still leave a required sum of £100,000 as set out in the Committee Report⁴². The £40,000 contribution agreed by the Council has not been justified despite reference to viability issues and the gypsy way of life.
140. Specifically the education contribution is likely to be an underestimate based on the known number of children. The reduction in the community and youth facilities contribution is inconsistent with the appellant's case for a settled base and integration. The library contribution should be maintained based on the desire to increase literacy. The significant reduction in the public open space contribution and the lack of an indoor sport and leisure contribution are unsupported given the lack of open space on the site. There is no justification for the reduction in the highways contribution. Overall there is no specific evidence to justify the reduced contributions based on viability, particularly as agricultural land value was paid for the plots.

⁴¹ RG5

⁴² VG1

141. It is submitted that the unilateral undertaking is not development plan, Framework, Planning Practice Guidance or CIL Regulations compliant as the contributions are too low. In addition the obligation does not bind all the owners as all have not signed it.

Conditions

142. The Council submitted a list of conditions which were updated and formed the basis for discussions during the inquiry⁴³. There was a measure of agreement between the main parties on conditions that would be necessary in the event that the appeal is allowed.
143. A condition is suggested that would limit occupation to the adults named in the evidence and their resident dependants and allow the use for a temporary period only, suggested by the Council as 4 years. It was pointed out that a personal condition would be necessary if the particular circumstances of the proposed residents carried weight sufficient to tip the balance in favour of permission. If personal circumstances were not decisive then a condition limiting the occupation of the site to gypsies and travellers would be needed as an alternative.
144. Conditions controlling the number of pitches, caravans, commercial vehicles and commercial activities were agreed to be necessary to limit the harm to the Green Belt. It was also suggested by the Residents Group that a height restriction on the caravans of about 4m should be imposed. The need to carry out a tree and hedge survey, undertake tree protection works during the carrying out of the development and secure longer term retention of the trees and hedges were discussed.
145. It was agreed that a number of details would be best dealt with through the submission of a site development scheme rather than through individual conditions to ensure that a comprehensive approach to the site layout is taken. These include details of the siting of the caravans, amenity buildings, amenity space and hardstandings; a landscaping scheme including fencing and gates; provision of refuse and recycling; and a lighting scheme. Given the existing nature of the site it would also be necessary to require restoration in accordance with a scheme after any temporary period rather than restoring the land to its former condition.
146. A condition seeking to maintain visibility spays to reflect what could be achieved within the public highway was discussed. The Council also put forward a condition requiring details relating to the disposal of surface water in view of the limited information submitted.

⁴³ WM6

Inspector's Conclusions

The numbers in square brackets [] refer back to earlier paragraphs which are relevant to my conclusions.

Main Considerations

147. The planning appeal was made on the basis that the potential occupants come within the definition of gypsies and travellers as set out in Annex 1: Glossary to PPTS. This is not disputed by any party [29]. Based on the evidence before me I see no reason to take a different view. It is also common ground that the proposal is inappropriate development in the Green Belt [27] as set out in paragraph 14 of PPTS. On this basis I have identified the main considerations in this case to be:

- (i) the effect on the openness of the Green Belt and the purposes of including land within it;
- (ii) the effect on the character and appearance of the area, including landscape features;
- (iii) whether the proposal would be sustainable;
- (iv) the effect on highway safety;
- (v) the effect on the use of the adjacent public footpath;
- (vi) the impact of the proposal on the nearest settled community; and,
- (vii) whether the harm to the Green Belt and any other harm is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Procedural Issues

148. The appellant served notice on the owner of part of the site. The fact that part of the site is not owned by the appellant or that access rights along the track, which lies outside the appeal site, are disputed does not invalidate the application or appeal [62]. I discuss the implications for deliverability of the site below.

Green Belt Openness and Purposes

149. The fundamental aim of Green Belt policy, as set out in paragraph 79 of the Framework, is to keep land permanently open. There would be a significant loss of Green Belt openness arising from the development as agreed by all parties [30]. Although the site is relatively small, it would be covered almost entirely by a combination of caravans, amenity blocks, hardstandings, vehicles and domestic paraphernalia with no undeveloped land within the site [66, 94]. There would also be post and rail fencing and gates adding to the hard development [14].
150. There would be conflict with one of the purposes of including land in the Green Belt, namely assisting in safeguarding the countryside from encroachment [30]. In this regard, although the site is narrow, the long finger of developed land would extend a considerable distance beyond the line of properties into open countryside. It would result in a form of encroachment which is not replicated elsewhere in the locality. Despite what the Council imply [66], the proposal

would not represent unrestricted sprawl and affect the related Green Belt purpose in that it would not relate to a large built-up area.

151. The site does not constitute a rural exception site under paragraph 13 of PPTS as it does not meet the requirements of the policy. Nor does it represent a case where an exceptional limited alteration to the Green Belt boundary can be made under paragraph 15 of the PPTS as such a change should be through the plan-making process [31]. It is accepted that traveller sites can be approved in the Green Belt but only in very special circumstances (paragraph 14 of PPTS).
152. In conclusion the proposal would lead to a significant loss of openness and be in conflict with the purpose of safeguarding the countryside from encroachment. There would be conflict with Policy GB2 of the Local Plan in that the development would have a greater impact on the openness of the Green Belt and a purpose of including land in the Green Belt than the existing site.

Character and Appearance

153. The proposal would be unrelated to existing development as it would form a narrow neck of developed land extending over 200m beyond the most southerly rear gardens of the properties to the north. There are no other examples of this extent of encroachment into the open agricultural landscape to the south of Forest Green Road in the vicinity. The development is not characteristic of the landscape type identified in the LCA [23]. This extent of encroachment would be visible from the adjacent public footpath, from the bridleway to the west and from Forest Green Road [121]. From more distant viewpoints the proposal would be filtered by vegetation but would still be seen as a form of development which would be unacceptably out of character with the existing landscape [67].
154. The proposal would appear stark from the footpath where it is adjacent to the site and also from views from the south as the track rises, with the dense line of caravans, amenity blocks, vehicles and paraphernalia representing an incongruous form of development. At 4m high the mobile homes would be particularly prominent. There would be four significant gaps in the footpath frontage due to the accesses. The structures would be clearly visible through and above the access gates and over any new boundary treatment along the 200m frontage with the footpath [67, 94]. The development would significantly detract from the experience enjoyed by recreational walkers on the rural path.
155. Whilst traveller sites should not be enclosed to the extent that they are isolated from the rest of the community, good planning and soft landscaping can help to assimilate sites into the countryside [33]. However, in this case the 8 pitches would represent an intensive form of development with limited open space between structures. Moreover, the proposal has not had sufficient regard to the existing trees and hedges on the site and new landscaping. In particular the existing trees are not shown on the layout plan [93], no tree survey has been submitted and no landscaping proposals provided other than indicative planting. Areas of hardstanding and the caravans and amenity blocks would be very close to the existing oak tree on the eastern boundary or the hedge and trees on the western boundary. The evidence in relation to the impact on the RPA of the trees and the effect on the hedges is convincing and was not seriously challenged [68].
156. Conditions could be imposed to control the detailed layout, protect existing trees and hedges and require landscaping [36]. However, the tight nature of the

development, constrained by the limited width of the site, would ensure that any alternative layout would push hard up against the boundaries. There would be little scope to reduce the extent of hardstanding. Moreover, development would still be within the RPA and exceed the 20% guidance on incursion [68]. In this regard there is no evidence that the trench has significantly compromised the RPA of the oak tree [36, 68]. The extent of hardstanding and the need to site structures near to the boundaries would also constrain the ability to maintain existing and new landscape features in a healthy state and provide space for growth to help to assimilate the development into the landscape [69].

157. Given that sites may be acceptable in rural settings, some degree of harm is inevitable from many such sites [32]. It is a question as to whether the degree of harm would fall within acceptable bounds. In this case the intensive nature of the development; the failure to have regard to trees, hedges and landscaping; and the proximity of a sensitive receptor, the footpath; would make the harm to the appearance of the area unacceptable. This harm could not be made acceptable by the use of conditions. The small amount of fly tipping which previously existed on the site does not weigh in favour in relation to this issue as it was unauthorised and is no longer evident [34, 94].
158. I conclude that the development would have an unacceptable impact on the character and appearance of the area and detract from the visual amenities of the Green Belt. There would be conflict with Policies DG1, R14, N6 and N7 of the Local Plan as there would be harm to the character of the countryside; landscaping is not an integral part of the proposal; the development would appear cramped; the proposal would detract from the users' enjoyment of the footpath; no tree survey has been provided; and the hedgerow would be threatened.

Sustainability

159. The proposal would provide a settled base to allow easier access to health services and schools which would be in the best interests of the families' children. There are no issues with the local environmental quality of the area. The presence of a small number of dogs on the adjacent land would not result in noise sufficient to affect the health and well-being of the site occupants [107]. Reference is made to capacity issues at local schools [123] but no firm evidence was put before me and the Council has not raised this as an issue. In addition education contributions are payable under the S106 obligation which I will return to later. Although land nearby was subject to flooding during the heavy rain of early 2014 [134], this would appear to be the result of exceptional conditions in February rather than any inherent flood risk as the site is not in an area shown to be at high risk of flooding.
160. By not entering the site and by undertaking liaison with local residents the families have taken the first steps to promoting peaceful and integrated co-existence between the site and local community on Forest Green Road [29, 39]. Nothing that I saw or heard at the inquiry would lead me to have concerns in this regard. The site would be some distance from the nearest dwellings such that it would not unacceptably impact on living conditions. There is no reason why the well-being of the show dogs should be significantly affected [134]. Traffic movements from 8 families would not lead to undue noise and disturbance for Skippets Lodge and the public house which lie adjacent to the track.

161. Proximity to services or availability of different modes of travel are not factors referred to in paragraph 11 of PPTS. Nevertheless they need to be taken into account in considering sustainability in the round. Paragraph 23 of PPTS indicates that sites in open countryside away from existing settlements should be strictly limited [73]. There is no convenient bus service and it is unlikely that many journeys would be made by foot or cycle to Holyport or beyond given the nature of roads and footpaths and the distances involved [72, 96]. The vast majority of journeys would be made by private car. However, although other potential sites could be closer to settlements, the site is not remote from Holyport and other locations providing services and employment. Journeys would be relatively short [38]. The site would allow members of the families in employment to live and work from the same location.
162. I have balanced the considerations in paragraph 11 of PPTS [37, 39] with those in paragraph 23 of the same document together with reliance on private vehicles for most journeys. I conclude that the site would, on balance, not run counter to the requirement to be sustainable economically, socially and environmentally. I regard sustainability to be a neutral factor in the planning balance.

Highway Safety

163. The visibility at the junction of the access track with Forest Green Road is affected by vegetation along frontages to both the west and east and the brow of the hill to the east. With the vegetation cut back to the highway boundary as it was on the day of the site visit, 'y' distances to the nearside edge of the carriageway were 72m to the west and 111m to the east [74]. However, in terms of ensuring that approaching vehicles are visible for those emerging from the access and that vehicles on the B3024, including those overtaking, can see vehicles entering or leaving the access track and can safely slow down or stop, the critical distance to the east is the centre of the nearside lane. This 'y' distance measures 123m. I agree with the Residents Group that the 'y' distance to the west is less critical [98] as in practice most of the width of the carriageway can be seen unimpeded from the access for a significant distance and certainly in excess of 160m. These 'y' distances are based on a 2.4m 'x' distance which is the appropriate set back in this case as indicated by DMRB and MfS.
164. Whether the visibility to east is acceptable depends on which guidance is applied and whether any shortfall would lead to an unsafe access. The rigid application of DMRB (and HDS) standards is not appropriate given the character of the road. It is not a trunk road or another road where it is necessary to maintain a constant speed of traffic.
165. Taking this into account, MfS should be the starting point and it is reasonable to apply local factors such as recorded traffic speeds, the nature of existing accesses and accident records [41, 42]. The access track appears to have better visibility than other accesses nearby, including the public house. In relation to the track itself it would function as an access and not a minor road and would still have relatively few vehicle movements [41]. It is also relevant to consider that traveller sites tend to be in rural areas where the nature of accesses and road geometry is historic and often does not accord with modern design standards. These factors, most of which relate to local context, should be taken into account when applying DMRB parameters for SSD where vehicle speeds are above 40mph as is the case here. Having regard to the evidence and the application of

relevant guidelines, I consider that the available visibility to the east would be acceptable. To ensure that the visibility is retained it would be necessary to condition that the vegetation is kept clear of the highway, a matter that can be enforced under the Highways Act [43].

166. I exited from the access during the peak period. I found that there was sufficient visibility in both directions to see oncoming traffic and make a safe entry onto the classified road. In addition the splay of the access allows two vehicles to sit side by side between the highway and the first gate [11].
167. I conclude that the proposal would not detract from highway safety. Policy T5 is out of date in that it relies on highway standards that do not appear to take into account more recently published guidance in MfS2, notwithstanding the publication dates. In these circumstances paragraph 14 of the Framework applies [42]. As a safe and suitable access can be achieved for all people there would be no adverse impacts in relation to highway safety. This is the relevant test rather than that of severe residual cumulative impacts which I read as relating to the transport network as a whole. In reaching this conclusion I have regard to the other appeal decisions referred to [42] only insofar as they refer to the application of DMRB and MfS, given that each decision would have been based on local circumstances [78].

Public Footpath

168. The public footpath is already used as a vehicular access to a few properties and farmland. The development would lead to a significant increase in vehicle movements. However, the overall numbers would still be low such that there would be no material conflict between vehicles using the route even though there are few places to pass and no scope within the proposal to provide additional passing places [44].
169. Whilst the track is not surfaced and does not qualify as a Quiet Lane, it would have some of the other characteristics of such a road but would carry significantly less than the 1000 motor vehicles per day referred to in the Circular [44]. The surfacing and width of the access track ensure that vehicle speeds are low. Forward visibility is reasonable. As a result drivers would have plenty of time to slow down or come to a halt and pedestrians would be able to step aside. Vehicles reversing out of the appeal site would be clearly visible to other users as they manoeuvred slowly [102]. No material conflict would be likely to occur between pedestrians and vehicles. Little noise and dust would be generated by the low number of vehicles using the track. It has not been shown how use of the track to access the site would affect community relations [104].
170. No improvements are proposed to the track as it lies beyond the control of the appellant [78]. However, despite its single vehicle width there are opportunities for pedestrians to stand on the verges or for vehicles to wait to the side, despite the presence of ditches [80]. Such actions would be short lived and a commonplace occurrence on shared use tracks. The fact that they may technically constitute trespass is not a factor that I give much weight [102].
171. In conclusion the impact of increased vehicle use on the public footpath would be acceptable in relation to the safety of all users and their enjoyment of the right of way. Therefore, there would be compliance with Policies T8 and R14 of the Local

Plan insofar as appropriate provision for pedestrians would be made and vehicular movement would not detract from users' enjoyment of the footpath.

Settled Community

172. PPTS (paragraphs 12 and 23) require that traveller sites in rural areas respect the scale of, and do not dominate the nearest settled community. In this respect the parties have different interpretations of what constitutes the nearest settled community [45, 81, 105]. The closest villages are Fifield and Holyport, both of which are about 2km from the site. Eight families would not dominate these settlements in terms of the family numbers as a proportion of the settlements' populations, in any physical sense or by putting undue pressure on the local infrastructure.
173. The properties on Forest Green Road either side of the access track are the nearest group of houses and are centred on the public house. In the absence of any definition in PPTS, I take this ribbon of properties to be nearest 'settled community'. In relation to this community, the proposal would double the number of households and significantly increase the population [105].
174. Therefore, I conclude that in terms of the increase in the number of households and population, the development would dominate the nearest settled community. However, the harm that would result from this factor would be limited as there is no evidence that the households could not live peacefully alongside each other [160] or that local infrastructure cannot cope. In addition, as there are only a few viewpoints where the development would be seen in the context of the existing ribbon of development, its physical domination of the community would be limited.

Other Considerations

Provision and Need for gypsy and traveller sites

175. There are over 50 authorised pitches in the Borough on public and private sites [47, 127]. The GTAA identified a need for 28 pitches in the Borough for the period of the emerging plan with a short term need for 18 pitches between 2012-2017 [48, 83]. Although the Council refer to a joint GTAA being progressed [85] no findings have been published so there are no alternative objective assessment available. Although this appeal is not the forum for analysing the GTAA methodology in depth, I consider that, if anything, the GTAA is likely to underestimate the need for the reasons given by Mr Brown [48]. I certainly see no justification for the reduction in proposed provision to 20 pitches, including the short term need to 10 pitches as set out in the emerging Preferred Options Policy HOU6 [48], or the smaller short term need considered by the Council's Cabinet [127]. Indeed the emerging plan is at an early stage of preparation and Policy HOU6 has not been tested. Therefore, little weight can be attached to its contents.
176. The only proposal to increase provision is through the Mill Place, Datchet site but there is no certainty that it will be brought forward as issues raised by the Environment Agency have not been resolved and the application has been called in [52, 84, 129]. In any event Mill Place would only provide 10 pitches which would not meet the full identified need, including that required in the period 2012-2017.

177. I conclude that there is a significant unmet need for traveller sites in the Borough. Although there has been recent progress on the Mill Place, Datchet site which did not appear to feature in the Old Windsor appeal [83], for the reasons given above the need for further provision is still considerable.

Availability of Alternative Sites

178. There is no space on the existing sites in the Borough and the public sites have waiting lists [48, 49]. Should the Mill Place site come forward the evidence would indicate that those who are on the waiting list, doubling up or overcrowded in connection with the existing public sites are likely to have preference and there would not be space for the majority, if any, of the families connected to this appeal [53, 128]. In any event Mill Place is not available now and is not likely to be deliverable until 2015 at the earliest. In considering this matter I do not consider that family connections and differences should be taken into account as the evidence indicates that the site would be managed to ensure fair access to meet priority need [53, 117, 128].

179. There is no evidence of any other alternative sites being available in the Borough or in the wider area [49, 83]. Other than the Mill Place site, which is being considered outside the development plan, there is little prospect of sites being available as a result of the Local Plan process within 3 years as there is no published timetable and nothing has been produced thus far [22, 54, 119].

180. The Mill Place site is in the Green Belt. Other traveller sites also considered by the Council have also been in the Green Belt [51, 129]. The majority of sites identified in the Preferred Options document for further analysis to meet a range of development needs are in the Green Belt [126]⁴⁴. In these respects the Council accepts that new traveller sites are likely to be in the Green Belt.

181. The lack of alternative sites and the fact that any alternatives are highly likely to be in the Green Belt are considerations in favour of the appeal.

Failure of Policy

182. There has been a failure of the Council to address the needs of travellers over a significant period, notwithstanding the requirements of Government policy in the previous Circular and now PPTS [53]. The existing Local Plan does not allocate sites or include a criteria based policy [20]. The emerging Local Plan has slipped such that there is only a Preferred Options document thus far and the traveller policy does not include traveller site allocations [21]. As referred to above allocations are further off [179]. There are doubts as to whether the Mill Place site is 'deliverable' as defined by Footnote 11 to the Framework and in any event it would not result in a 5 year supply against the GTAA findings. As a result there is no 5 year supply of traveller sites which is accepted by the main parties [54, 83, 110]. Failure of policy is a further consideration in favour of the appeal.

183. In addition these failings mean that the Council has not met its duties under the Housing Act 2004 and is in breach of the Equality Act 2010. There is also the resultant failure to facilitate the gypsy way of life and cause interference with the families' right to a home and a private and family life.

⁴⁴ MM9

Personal Circumstances

184. None of the families appear to have a settled base as they have been doubling up, staying on unauthorised sites or encampments or living on the roadside [56]. Whilst, like many traveller families, they travel around for some of the year, their need for a settled base is not disputed [87, 113] and provision of such a site would in line with PPTS. The benefits of a settled base are well-documented in terms of continuity of education and access to health care. There would also be advantages for the general well-being of the families in being settled and having continual access to basic amenities and a secure living environment. In particular a settled base would be in the best interests of the children.
185. The families have resided in, and resorted to, the Borough but also to other areas within Berkshire [56, 87], although the evidence on travelling patterns was not comprehensive [113]. There is no evidence of specific connections to the Holyport area. The children are not in schools near the site and there are no specific health needs which would benefit from being on this site compared to another in the area. If the families had moved onto the site their circumstances might have been different. The fact that they have not done so should not lessen the weight to be given to their personal circumstances [58]. That said, although there are schooling needs and some specific health conditions, they are not out of the ordinary for a group of 8 gypsy families. In addition the evidence about the education needs of the children was limited [88, 113] making a judgement as to how the best interests of the children would be served by this particular site less certain, other than that achieved by having a settled base and the possibility of continuity in education.

Other Matters

186. The site would be intensively developed and some of the advice within the GPG would not be followed. The indications are that there would be limited space for outdoor amenity or childrens play, taking into account requirements such as parking, drainage and refuse storage [107]. As such the living environment would be less than optimal and not ideal for the children. However, from what is known of the existing circumstances of the families, the site would represent an improved living environment for them. The guidance in the GPG is advisory not mandatory and is particularly relevant to Councils seeking grants [61]. Therefore, the living environment that would be created for site residents would not be a reason to dismiss the appeal.
187. There is little information on how the site would be drained beyond that contained on the application form [106]. Foul drainage is available in Forest Green Road and it would appear to be feasible to connect the site to the mains sewer. In terms of surface water the porosity of the ground has not been tested. The extent of land required to attenuate surface water flows is not known. However, it is likely that provision could be made within the site or on adjoining land for surface water. In this respect I note that land to the west of the site appears to be owned by the appellant⁴⁵. A condition could be imposed requiring details of drainage which would need to reflect ground conditions and the need for greenfield run off rates.

⁴⁵ R6.2 - Appendix 7 – Title documents for the appeal site

188. The fact that advice from some Council Officers was supportive [29] is not a consideration that should be given weight in the appeal. It is the decision of the Council which is under consideration not the lead up to it.

Obligations

189. Policy IMP1 of the Local Plan and the Council's Obligations SPD do not specifically refer to traveller sites but the principle of contributions to offset the impact of the development on infrastructure and services is agreed by all parties [135, 138 and 139].
190. The evidence to justify the level of contribution is limited [140]. It appears that the Inspectors in two other recent cases [135] were faced with similar limited evidence, judging by the content of their reports. However, the need to contribute to education, public open space, highways and public transport and waste disposal and recycling was accepted in those cases. It is assumed that the Council has applied a consistent approach in all three appeals. It seems to me that the level of contributions is not in excess of what is needed to make the development acceptable. Whether the contributions should be greater is not proven.
191. The obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. It meets the tests within CIL Regulation 122 and should be taken into account in the decision. It follows that Policy IMP1 is complied with.

Conditions

192. If planning permission is granted then conditions would be necessary to control the number of pitches, caravans, commercial vehicles and commercial activities [144]. I agree that a limitation on the height of the caravans above ground level would also be required in the interests of the openness of the Green Belt and to limit visual impact. Despite reservations expressed earlier in this report about their effectiveness [156], conditions relating to a tree and hedge survey, tree protection works and the retention of trees and hedges would be necessary to reduce the impact on the character and appearance of the area [144].
193. In view of the limitations of the site layout plan a condition requiring a site development scheme would be necessary for the reasons given earlier [145]. A requirement to maintain measured visibility splays would be needed [165] as would details of drainage, particularly surface water [187].
194. Whether a personal condition should be imposed is dependent on the weight to be given to personal circumstances in the planning balance [143]. Similarly, if the SoS as the decision maker decides that a permanent permission would not be justified but the circumstances in paragraph 25 of PPTS apply then it will be necessary to limit the period of the planning permission.

Overall Conclusions

195. The Framework requires 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.

196. The proposal would represent inappropriate development [27] which attracts substantial weight. The significant loss of Green Belt openness [149] and the conflict with one of the Green Belt purposes [150] also attract substantial weight.
197. In terms of other harm, significant weight should be attached to the harm to the character and appearance of the area [158]. So far as domination of the nearest settled community, the harm is limited and so is the weight attached to it [174]. I have found no other harm.
198. Sustainability is a neutral consideration [162]. A safe access is a necessary requirement and not a benefit, so highway safety is also a neutral factor in the planning balance. Likewise the increased use of the public footpath should not count against the proposal [171].
199. In terms of factors in favour, significant weight should be afforded to the unmet need for traveller sites in the Borough [177], the lack of alternative sites [181] and the failure of policy in providing sites and a 5 year supply [182]. Need and the failure of policy to meet it are different material considerations [55]. In relation to failure of policy the Council has not complied with its duties under the Housing Act 2004 and is in breach of the Equality Act 2010 [183]. The fact that new traveller sites are likely to be in the Green Belt is also a factor in favour of the appeal [181]. However, some caution should be exercised in considering the contribution that the appeal site can make to meeting the need and the 5 year supply due to some uncertainty over whether the development can be implemented [110].
200. The personal circumstances of the families and in particular their need for a settled base is a consideration in favour [184]. However, this factor should only be afforded moderate weight in the planning balance as the information on the benefits of the appeal site in relation to education and health care is not comprehensive [185]. That said, overall the best interests of the children would be met by the provision of a settled base. In addition a settled base would meet the Article 8 Human Rights requirements of the families' right to a home and a private and family life [183].
201. Overall, my conclusions are that the substantial weight to be given to Green Belt harm by reason of inappropriate development, loss of openness and encroachment, together with the significant harm to the character and appearance of the area and limited harm to the settled community are not clearly outweighed by other considerations sufficient to constitute very special circumstances necessary to justify a permanent permission. There would be conflict with Policy GB1 of the Local Plan as very special circumstances have not been demonstrated.
202. The absence of a 5 year supply of sites and longstanding failure of policy are significant material considerations in this appeal (PPTS paragraph 25). There now signs that the Council has recognised the need to provide sites as part of its emerging local plan process or through the duty to cooperate. In addition, although there was little evidence put forward, it is likely that other Councils in the area will do likewise in order to achieve sound plans. Therefore, it is likely that circumstances will change in the next 4 years [65, 119].
203. A temporary permission would limit the harm to the Green Belt, character and appearance and the settled community to the period of the consent. That said

the harm to the Green Belt, the character and appearance of the area and the settled community would, taken together, still be substantial. Although the balancing of these factors is a matter for the decision maker, my own conclusion is that the harm, albeit time limited, would still not be clearly outweighed by other considerations sufficient to constitute the very special circumstances necessary to justify inappropriate development in the Green Belt.

204. In arriving at both of these conclusions I have had regard to the fact that the best interests of the children are a primary consideration. But the fact that it is a primary consideration does not mean it is determinative [82]. I have also taken into account the failings of the Council in relation to the Housing Act and the Public Sector Equality Duty. However, these considerations, taken together with the other factors in favour, are not sufficient to clearly outweigh the harm, particularly as how occupation of the appeal site would be in the childrens' best interests has not been clearly explained.
205. It seems, based on the available evidence that dismissal of the appeal would continue to leave the families without a settled base which would interfere with their Human Rights. However, such rights are qualified. Moreover, there would not be any direct loss of any home, although the families would need to continue to adopt an itinerant lifestyle. Dismissal of the appeal would be a proportionate response in view of the harm that would occur.

Recommendation

206. I recommend that the appeal be dismissed.
207. If the Secretary of State is minded to disagree with the recommendation, the attached Appendix C lists the conditions that should be attached to any permission granted, including requirements limiting the use to a temporary period and to the families referred to in the evidence, in accordance with the reasoning above.

Mark Dakeyne

INSPECTOR

APPENDIX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Guy Williams	Of Counsel, instructed by Maria Lucas, Head of Legal Services
He called	
Helen Leonard Dip Arch (RFS), F Arbor, A MICFor	Arboricultural Coordinator
Melvin Andrews B Eng (Hon)	Highway Development Control Engineer
Victoria Gibson BA (Hons) Dip TP MRTPI	Principal Planning Officer

FOR THE APPELLANT:

Stephen Cottle	Of Counsel, instructed by Philip Brown Associates Ltd
He called	
Jeremy Hurlstone BSc (Hons) CMILT MCIHT	The Hurlstone Partnership
Philip Brown BA (Hons) MRTPI	Philip Brown Associates Ltd
Maurice McCann	Appellant
Len Gregory	Proposed Site Occupant
Geoffrey Dixon	Proposed Site Occupant
Donna Sharkey	Proposed Site Occupant
Jason Coates	Proposed Site Occupant
Andrew Taylor	Proposed Site Occupant
Maggie Smith-Bendell	Romani Gypsy Liaison Officer

FOR THE RULE 6 PARTY:

Hugh Richards	Of Counsel, instructed by Pegasus Planning Group
He called	
James Tarzey BA (Hons) MRTPI	Pegasus Planning Group

INTERESTED PERSONS:

David Coppinger	Local Resident and Borough Councillor
Christopher Yates	Bray Parish Council

APPENDIX B: PLANS AND DOCUMENTS

APPLICATION PLANS AND DOCUMENTS

Plan1 Location Plan
Plan2 Site Layout Plan Scale 1:500 and Key
Plan3 Front Elevation of Proposed Amenity Blocks
Plan4 Rear Elevation of Proposed Amenity Blocks
Plan5 Side Elevations of Proposed Amenity Blocks
Plan 6 Floor Plan of Proposed Amenity Blocks
Plan 7 Post and Rail Fence Detail
DOC1 Design and Access Statement
DOC2 Transport Statement

OTHER DOCUMENTS SUBMITTED BEFORE THE INQUIRY

GENERAL DOCUMENTS

GEN1 Questionnaire
GEN2 Notification about receipt of appeal (23 October 2013)
GEN3 Letter of representation in response to appeal notification
GEN4 Notification of inquiry arrangements (18 March 2014)

APPELLANTS' DOCUMENTS

APP1 Statement of Case
APP2 Proof of Evidence of Jeremy Hurlstone and Appendices JPH-A to JPH-J
APP3 Proof of Evidence of Philip Brown and Appendices PBA1 to PBA8

LPA DOCUMENTS

LPA1 Statement of Case
LPA2 Proof of Evidence of Helen Leonard and Appendices 1 to 7
LPA3 Proof of Evidence of Melvin Andrews and Appendices A to G
LPA4 Proof of Evidence of Victoria Gibson and Appendices VG1 to VG16

RESIDENTS GROUP DOCUMENTS

R6.1 Statement of Case
R6.2 Proof of Evidence of James Tarzey and Appendices 1 to 14
R6.3 Summary of Proof of Evidence of James Tarzey

DOCUMENTS SUBMITTED AT THE INQUIRY

GENERAL DOCUMENT

ATT1 Attendance Lists for Days 1 to 3

STATEMENTS OF COMMON GROUND

SOCG1 Statement of Common Ground signed on behalf of the appellant, Council and Residents Group on 1 April 2014

SOCG2 Agreed Measurements taken on site on 1 April 2014 by the appellant and Council

APPELLANT'S DOCUMENTS

- MM1 Gypsy Liaison Officer Statement
- MM2 E-mail from Maggie Smith-Bendell dated 26 March 2014
- MM3 Opening Statement on behalf of the appellant
- MM4 Certificate B from application form dated 29 April 2013
- MM5 Letter from North Bristol NHS Trust dated 10 March 2014
- MM6 Unilateral Obligation dated 2 April 2014
- MM7 Extract from DMRB Chapter 1 Volume 6 Section 2 Part 7 TD 41/95
- MM8 Commission for Racial Equality (CRE) – Summary of a report on a CRE inquiry in England and Wales – Common Ground – Equality, good race relations and sites for Gypsies and Irish Travellers
- MM9 Extract from Borough Local Plan: Preferred Options Consultation (Jan 2014) – Areas in the Green Belt for Future Analysis
- MM10 Outline to closing on behalf of the appellant
- MM11 SoS Appeal decision APP/G5180/A/11/2154680 dated 14 August 2013 – Land at and adjacent to 148 Croydon Road, Keston
- MM12 *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74

COUNCIL'S DOCUMENTS

- WM1 Opening Submissions of the Council
- WM2 Draft Unilateral Obligation
- WM3 Gypsy Counts of January and July 2013
- WM4 Plan of Shurlock Road site, Waltham St Lawrence
- WM5 Statement from Council's Planning Policy Team
- WM6 List of suggested conditions (updated from VG16)
- WM7 Closing submissions of the Council

RESIDENTS GROUP DOCUMENTS

- RG1 Opening Statement on behalf of Residents Group
- RG2 Static Caravan dimensions
- RG3 Notice under Section 154 of the Highways Act dated 25 March 2014
- RG4 Letter from Aston Bond Solicitors dated 15 June 2005
- RG5 Closing submissions on behalf of Residents Group
- RG6 *Timmins, AW Lymn Ltd v Gedling Borough Council v Westerleigh Group Ltd* [2014] EWHC 654
- RG7 *Stevens v SoS and Guildford Borough Council* [2013] EWHC 792
- RG8 *Collins v SoS and Fylde Borough Council* [2013] EWCA Civ 1193

INTERESTED PERSONS DOCUMENTS

- LR1 Statement from David Coppinger

APPENDIX C: RECOMMENDED CONDITIONS

- 1) The use hereby permitted shall be carried on only by the following: Maurice and Rose McCann, Barry and Lorraine Wood, Geoffrey and Julie Dixon, Len and Mary Gregory, Jason and Cherie Coates, Simon Shervell and Donna Sharkey, Andrew and Marie Taylor and James and Linda Light and their resident dependants, and shall be for a limited period being the period of 4 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the premises cease to be occupied those named in condition no 1 above, or at the end of 4 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored in accordance with details approved under condition no 8.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Front Elevation of Amenity Blocks, Rear Elevation of Amenity Blocks, Side Elevations of Amenity Blocks and Floor Plan of Amenity Blocks.
- 4) There shall be no more than 8 pitches on the site and on each of the 8 pitches hereby approved no more than 2 caravans, shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 5) No caravan shall exceed 4m in height measured from ground level.
- 6) No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) Notwithstanding the details shown on the Site Layout Plan and Post and Rail Fence Detail no development shall take place until a Site Development Scheme has been submitted to and approved in writing by the local planning authority to include:
 - (i) details of the siting of the static and touring caravans and amenity buildings;
 - (ii) a landscaping scheme to include details of existing trees and hedges to be retained; parking and turning areas; surfacing materials for all hardstandings; screening to the refuse and recycling area; fencing and gates; and planting plans (including cultivation and other operations associated with plant and grass establishment; schedules of plants, noting species, plant sizes and proposed numbers/densities);
 - (iii) details of restoration of the land to its condition before the development took place, the restoration to take place when the site ceases to be occupied in accordance with condition no 2;
 - (iv) provision for refuse and recycling;
 - (v) external lighting.The Site Development Scheme shall include a programme of implementation. The development shall be carried out in accordance with the approved details and programme. No surfacing, fencing, gates or

lighting shall be carried out or erected on the site other than that approved pursuant to this condition.

- 9) The plans and particulars submitted in accordance with condition no 8 above shall include:
- i) a plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75 mm, together with perimeter hedgerows, showing which trees and hedgerows are to be retained and the crown spread of each retained tree and the spread of each hedgerow;
 - ii) details of the species, diameter (measured in accordance with paragraph (i) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and hedgerow and of each tree and hedgerow which is on land adjacent to the site and to which paragraphs (iii) and (iv) below apply;
 - iii) details of any proposed topping or lopping of any retained tree or hedgerow, or of any tree or hedgerow on land adjacent to the site;
 - iv) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree or spread of any hedgerow or of any tree or hedgerow on land adjacent to the site;
 - v) details of the specification and position of fencing for the protection of any retained tree or hedgerow from damage during the carrying out of the development;
 - vi) In this condition "retained tree or hedgerow" means an existing tree or hedgerow which is to be retained in accordance with the plan referred to in paragraph (i) above.
- 10) No obstruction above the level of the carriageway shall take place within a visibility splay of 2.4m (x distance) by 111m (y distance) to the east of the junction of the access track with Forest Green Road and a visibility splay of 2.4m (x distance) by 72m (y distance) to the west of the junction of the access track with Forest Green Road both measured from the nearside carriageway edge.
- 11) No development shall commence until a scheme for the foul and surface water drainage of the site (including details of the future management and maintenance of the scheme) has been submitted to and approved in writing by the local planning authority. The site shall not be occupied for residential purposes until drainage works have been completed in accordance with the approved scheme. Thereafter, the approved drainage shall be managed and maintained in accordance with the approved details for the lifetime of this permission.

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: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for permission to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: 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 4: 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.