

Philip Brown  
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Our Ref: APP/B1930/A/11/2153741/NWF  
Your Ref: 11/108

15 December 2011

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY MR NED STANLEY  
AT LAND AT TULLOCHSIDE FARM, HEMEL HEMPSTEAD ROAD, REDBOURN,  
HERTFORDSHIRE, AL3 7AJ  
APPLICATION REFERENCE: 5/10/2087**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Wenda Fabian BA Dip Arch RIBA IHBC, who held a hearing on 24 August 2011 into your client's appeal against a decision of St Albans City and District Council to refuse planning permission for retention of use of land as a residential caravan site for 10 gypsy families each with two caravans, including retention of existing hardstanding, boundary walls/ fencing and associated operational development at Land at Tullochside Farm, Hemel Hempstead Road, Redbourn, Hertfordshire, AL3 7AJ in accordance with application reference 5/10/2087, dated 23 August 2010.
2. On 23 August 2011 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because the appeal involves a proposal for significant development in the Green Belt.

**Inspector's recommendation and summary of the decision**

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

## **Procedural matters**

4. The Secretary of State notes that the description of the scheme at the bullet header on page 1 of the Inspector's report was agreed by the parties at the hearing (IR2) and has proceeded on that basis.

## **Policy considerations**

5. In determining the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
6. In this case, the development plan comprises the East of England Plan (EEP) and the saved policies of the St Albans District Local Plan Review 1994 (LP). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR12, 14 and 15. In having regard to the Council's emerging Core Strategy the Secretary of State has taken into account that it remains at the pre-submission stage (IR16-17) and has attributed little weight to it in determining this appeal.
7. The Secretary of State considers that the revocation of Regional Strategies has come a step closer following the enactment of the Localism Act on 15 November 2011. However, until such time as the East of England Plan is revoked by Order, he has attributed limited weight to the proposed revocation in determining this appeal.
8. Other material considerations which the Secretary of State has taken into account include the documents listed at IR7, and Circular 11/95: *Use of Conditions in Planning Permission*.
9. The Secretary of State has taken account of Circular 1/2006: *Planning for Gypsy and Traveller Caravan Sites* as a material consideration in his determination of this case. However, he has also taken account of his announcement on 29 August 2010 of his intention to revoke it as he considers it to be flawed and he has given less weight to the Circular.
10. In having regard to the draft Planning Policy Statement on Planning for Traveller Sites, along with the draft of the National Planning Policy Framework, as material considerations, he has given them little weight as they have been published for consultation and are therefore subject to change.

## **Main issues**

### **Green Belt**

11. The Secretary of State notes that the parties agree that the proposal is inappropriate development in the Green Belt (IR24) and has attached substantial weight to the harm from this inappropriateness in accordance with national policy in PPG2. For the reasons set out at IR66-68 the Secretary of State agrees with the Inspector that there is modest harm to openness and to the purposes of

including land in the Green Belt and that together these add a moderate amount of weight to the substantial harm by reason of inappropriateness (IR69).

12. The Secretary of State agrees with the Inspector's reasoning and conclusions on the impact on the character and appearance of the countryside at IR70-73. He observes that the effect of the high solid panelled timber fence around the site would happen irrespective of the appeal development, and like the Inspector he considers that the effect at issue is thus the visual impact of the caravan roofs that can be seen above it (IR70). The Secretary of State shares the Inspector's conclusion that, subject to the imposition of the landscaping condition, the development would not harm the character or appearance of the surrounding area or the visual amenities of the Green Belt, and that it would comply with LP policy 1 in this respect (IR73).

### Sustainability

13. The Secretary of State agrees with the Inspector's reasoning and conclusions on sustainability at IR74-76. Like the Inspector he considers that the location of the development is consistent with policies which seek to promote a sustainable pattern of development, meets the advice in PPG13, PPS1 and Circular 01/2006, and would assist the gypsy community to integrate with the settled community (IR75 and 76). However, the Secretary of State also notes the high level of car ownership evident at the site, and agrees with the Inspector that the probability of using other means of transport is low (IR76). He shares the Inspector's conclusion that the issue of sustainability of the site location is neutral in relation to the overall balance (IR76).

### Need for gypsy and traveller sites

14. The Secretary of State notes that the Council does not dispute the gypsy status, as defined in paragraph 15 of Circular 01/2006, of the households now resident on the appeal site (IR24). The Secretary of State notes that the Council accepts that there is a substantial level of unmet need in the District (IR80), but that it disputes the RS figures and is in the process of negotiating with neighbouring Councils to redistribute the cross border requirement (IR77).
15. However, the Secretary of State also notes that no evidence of the Council's progress in this regard (IR77) or any other evidence base in respect of unmet need (IR78) were brought before the hearing. Like the Inspector, he considers that the RS requirement remains the most up to date figure for the purposes of his determination of the appeal currently before him (IR78). Notwithstanding this, the Secretary of State accepts that at such time as the EEP is revoked, the identification of a requirement figure will be a matter for the Council through its development plan process.
16. The Secretary of State has carefully considered the Council's progress with its development plan. For the reasons set out by the Inspector he agrees that allowing the appeal development would not harm the emerging strategy for site provision in the District (IR79). The Secretary of State is particularly mindful in this case that the need identified to 2011 has not been met; that there is no clear timetable for adoption of a site allocations development plan document, and that

the timetable for this plan has already slipped from 2009 to late 2014, and the Council now acknowledge that a realistic forecast would be 2015 (IR80).

17. Overall, the Secretary of State sees no reason to disagree with the Inspector's conclusion in this case that the unmet need for gypsy sites and the failure of the development plan to meet the need weigh significantly in favour of the appeal (IR80).

#### Alternative sites available to the site residents

18. For the reasons set out at IR82-84 the Secretary of State agrees with Inspector's conclusion at IR84 that each family's personal need for a settled site and the lack of available alternative sites adds significant weight in favour of the appeal (IR84). He notes that, outside defined settlement limits, the whole District is in the Green Belt, and agrees with the Inspector that any alternative site in this District would also be in the Green Belt (IR83).

#### Education and Health Needs

19. Having had regard to the Inspector's comments at IR85 on the information provided in respect of the education and health needs of the site occupants, the Secretary of State shares the Inspector's view that there is no reason to doubt the evidence of the appellant on these matters. He further agrees that given the age profiles and number of individuals resident on the site the incidence of health and education needs is not remarkable (IR85).
20. The Secretary of State has carefully considered the health circumstances set out by the Inspector at IR86-87. Like the Inspector (IR87) he considers that the families' eviction from the site would in all probability force them all into a roadside existence, from which access to regular healthcare for the families who need it is much more precarious. In conclusion, the Secretary of State agrees with the Inspector (IR87) that the residents' ongoing health considerations add moderate weight in favour of the appeal and for the those needing pre and post natal care, significant weight should be added (IR87).
21. The Secretary of State has had regard to the circumstances of the six children who attend local primary schools and the one teenager who is receiving home tutoring (IR88). Like the Inspector, he considers that were the appeal dismissed and these four families forced onto the roadside, the education of the seven children would be disrupted (IR88). The Secretary of State agrees that this consideration adds moderate weight in favour of the appeal (IR88).

#### Whether the harm to the Green Belt by reason of inappropriateness and any other harm, is clearly outweighed by other considerations

22. The Secretary of State agrees with the Inspector's balancing of considerations at IR89-93. Like the Inspector he attaches substantial weight to the harm arising from the appeal development by way of inappropriateness, and adds moderate weight from the harm to openness, encroachment and the merging of settlements (IR90). He agrees that no weight attaches from the lack of harm to the character

and appearance of the area and the visual amenity of the Green Belt, or the compliance with sustainability objectives (IR91).

23. In favour of the proposal, he agrees that significant weight should be attached to both the unmet need for gypsy sites in the District, and the failure of the development plan to meet the need, and that personal need of the families now resident on the site for pitches and the lack of available alternative sites add further significant weight (IR92). Like the Inspector, the Secretary of State attaches moderate weight to some of the residents health needs, significant weight to the immediate need for pre and post natal care for the three expectant mothers, and moderate weight to the education need of some of the children (IR93).

24. For the reasons given at IR93, the Secretary of State agrees with the Inspector that dismissal of the appeal would have a disproportionate effect on the right of the residents under Article 8 of the ECHR and that this also adds a significant degree of weight to the other considerations in favour of the appeal (IR93).

### Conditions

25. Having considered the Inspector's comments at IR62-63, the Secretary of State is satisfied that the conditions proposed by the Inspector and set out at Annex A to this letter, are reasonable and necessary and comply with the provisions of Circular 11/95.

### Overall Conclusions

26. The Secretary of State agrees with the Inspector's overall conclusion at IR94. He considers that the appeal receives some support from RS Policy H3. Taking into account his conclusion that very special circumstances exist to justify the appeal, and that the development would not harm the character or appearance of the surrounding area, the Secretary of State is also satisfied that there is no conflict with LP Policy 1. The Secretary of State is particularly mindful in this case of the failure of the development plan to meet needs.

27. The Secretary of State concludes that the harm by reason of inappropriateness and other harm identified is clearly outweighed by the summation of other considerations, and concludes that very special circumstances do exist to justify the inappropriate development in the Green Belt.

### Formal Decision

28. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the change of use of land to a residential caravan site, with up to 20 caravans and retention of use of existing hardstanding, boundary walls and associated operational development following expiration of temporary consent Ref 5/02/1791 (resubmission following refusal of application Ref 5/10/0018) in accordance with application reference 5/10/2087, dated 23 August 2010, subject to the conditions set out in Annex A.

29. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
30. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

**Right to challenge the decision**

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
32. A copy of this letter has been sent to St Albans City and District Council.

Yours faithfully

**Pamela Roberts**

Authorised by Secretary of State to sign in that behalf

## Annex A

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
- 2) No more than 20 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 10 shall be a static caravan) shall be stationed on the site at any time.
- 3) No commercial activities shall take place on the land, including the storage of materials and the stationing of any vehicle over 3.5 tonnes.
- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:
  - i) within 3 months of the date of this decision a scheme for: the internal layout of the site, including the siting of caravans, plots, hardstandings, means of plot division, parking and amenity areas; tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities; shall have been submitted for the written approval of the local planning authority, the said scheme shall include a timetable for its implementation;
  - ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State;
  - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State; and
  - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 5) At the same time as the site development scheme required by condition 4 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting commencing at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

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

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

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

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

#### **Challenges under Section 288 of the TCP Act**

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

### **SECTION 2: AWARDS OF COSTS**

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

### **SECTION 3: INSPECTION OF DOCUMENTS**

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





The Planning  
Inspectorate

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# Report to the Secretary of State for Communities and Local Government

by Wenda Fabian BA Dip Arch RIBA IHBC

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

Date: 26 October 2011

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**TOWN AND COUNTRY PLANNING ACT 1990**

**ST ALBANS CITY & DISTRICT COUNCIL**

**APPEAL BY MR NED STANLEY**

Hearing held on 24 August 2011

Land at Tullochside Farm, Hemel Hempstead Road, Redbourn, Hertfordshire AL3 7AJ

File Ref(s): APP/B1930/A/11/2153741

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**File Ref: APP/B1930/A/11/2153741**

**Land at Tullochside Farm, Hemel Hempstead Road, Redbourn, Hertfordshire AL3 7AJ**

- 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 Ned Stanley against the decision of St Albans City & District Council.
- The application Ref 5/10/2087, dated 23 August 2010, was refused by notice dated 31 March 2011.
- The development proposed is change of use of land to a residential caravan site, with up to 20 caravans and retention of use of existing hardstanding, boundary walls and associated operational development following expiration of temporary consent Ref 5/02/1791 (resubmission following refusal of application Ref 5/10/0018).

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

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**Procedural Matters**

1. The appeal was recovered for decision by the Secretary of State for Communities and Local Government by letter dated 23 August 2011, because the appeal involves a proposal for significant development in the Green Belt. The hearing was held on 24 August 2011 and the site visit took place on the same day.
2. The description shown at the bullet header above differs from those given on the application and the Council's decision notice, but for precision was agreed by both parties at the hearing. The description given on the application form was *retention of use of land as a residential caravan site for 10 gypsy families each with two caravans, including retention of existing hardstanding, boundary walls/fencing and associated operational development*. The Council's decision notice referred to the proposal as *renewal of planning permission 5/02/1791 for the use of land as a residential caravan site, with an increase from 16 to 20 caravans and retention of use of existing hardstanding, boundary wall and associated operational development (resubmission following refusal of 5/10/0018)*.
3. The planning application was refused for the following reasons:

*The site is within the Metropolitan Green Belt in the St Albans District Local Plan Review 1994 wherein permission will only be given for erection of new buildings or the use of existing buildings or land for agricultural, other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. The proposed development is an inappropriate use within the Green Belt which is unacceptable in terms of Policy 1 of the St Albans District Local Plan Review 1994. The proposed development cannot be justified in terms of the purposes specified and no exceptional circumstances and[sic] apparent in this case.*

**The Site and Surroundings**

4. The appeal site, an area of some 0.3 hectares, lies within the Green Belt almost equidistant between Hemel Hempstead, 1km away, and Redbourn to the northeast, 1.2km away. It is close alongside Tullochside and shares an access driveway off the main road with it; this is a substantial dormered house

surrounded by grazing paddocks, which is owned and occupied by the appellant. Both are on gently rising ground well set back from the B487, the main local route from Hemel Hempstead which passes under the M1 to Redbourn. This fast moving stretch of road, flanked by wide grass verges but no footways, has a rural feel with fields on both sides lined by overgrown hedges to the south and by a narrow band of well spaced trees to the north, some of which lie within the appellant's land. The site has been laid out with individual pitches, broadly correlating to the current proposed layout plan, and surfaced with gravel.

5. The site is already in occupation as a residential caravan site, with around 20 caravans on it, and is surrounded by a 2m green stained timber panelled fence with a mature hedge and trees outside it on the west and north sides and more recent intermittent semi-mature mixed deciduous and coniferous tree planting outside the south side, facing towards Hemel Hempstead Road (B487). Within this enclosure, it slopes slightly down towards the house, away from the west and south boundary fences. It is divided from the residential curtilage by a gravelled turning area with a second vehicular access leading off Little Revel End Lane behind the site. The ornate metal gates that lead into the appeal site from this gravelled area are flanked by high curving brick walls.
6. The remainder of the appellant's 3.6ha holding includes grazing paddocks enclosed by white post and rail fences and a timber stables building which backs onto the B487, close to the shared access driveway. Little Revel End Lane, immediately to the north of the site, runs from Holtsmere End Lane to the west, at the edge of Hemel Hempstead, and passes close behind the site and house. The lane bends around the appellant's land and joins the Hemel Hempstead Road close to bus stops on each side. There is a farmstead close-by on Little Revel End Lane and a former farmstead to the west, now apparently in wholly domestic use. Just before the M1, to the northeast, is a small enclave of widely spaced dwellings, along Aubrey Lane, and a country house hotel.

## Planning Policy

### National guidance

7. Current Government guidance that is relevant in this appeal includes: *Planning Policy Statement 1: Delivering Sustainable Development* (PPS1); *Planning Policy Guidance Note: Green Belts* (PPG2); *Planning Policy Statement 3 (PPS3): Housing*; *Planning Policy Statement 7: Sustainable Development in Rural Areas* (PPS7); and *ODPM Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites* (Circular 01/2006).
8. On 29 August 2010 the Secretary of State announced an intention to revoke Circular 01/2006 and replace it with light touch guidance. The draft consultation planning policy statement *Planning for traveller sites* was published in April 2011. The consultation period for this ended in July 2011 and the Government intends to publish the new planning policy statement for traveller sites as soon as possible, following due consideration of the responses. These may prompt amendments to the draft policy and, as Circular 01/2006 has not yet been revoked, it carries greater weight than the draft policy at this stage.

9. The consultation draft of the *National Planning Policy Framework* (dNPPF) was published on 25 July 2011 and the Council has drawn attention to the aim of the planning system, set out in it, to achieve sustainable development<sup>1</sup>. This includes planning for prosperity, people and places. This aspect of the emerging policy is a material consideration in this appeal to which I give a small degree of weight. Since the hearing was held, further Government announcements in relation to the final dNPPF include the proposed incorporation of planning policy on traveller sites. The dNPPF is subject to an ongoing consultation and impact assessment. It may be subject to amendment in the light of responses received. The parties to the appeal did not have the opportunity to address the latest announcement on it at the hearing.
10. Overall the dNPPF makes little material change, in relation to this case, to existing national policy in PPG2 (the key elements of Green Belt policy are reiterated) or in Circular 01/2006. In any event, as the draft policy is at an early stage, I can attach little weight to it. Circular 01/2006 for the time being remains in force and is therefore a material consideration, which I am still bound to have regard to.

#### **Development Plan**

11. The development plan for the area includes the Regional Spatial Strategy, the *East of England Plan* (RSS) and the saved policies of the *St Albans District Local Plan Review, 1994, (LP)*. Relevant policies are summarised below.

#### **RSS - Accommodation for Gypsies and Travellers and Travelling showpeople in the East of England – A Revision to the Regional Spatial Strategy for the East of England, published July 2009 (RSSrev)**

12. This single issue review replaces RSS policy H3 – Provision for Gypsies and Travellers and RSS paragraphs 5.11 and 5.12. Policy H3 in the RSSrev requires local authorities to make provision through Development Plan Documents for at least 1,237 net additional residential pitches for Gypsy and Traveller Caravans by 2011, distributed in accordance with figures set out for each District. For St Albans a minimum of 28 additional pitches are required between 2006-2011.
13. On 6 July 2010 the Secretary of State announced the revocation of the Regional Strategies with immediate effect. This was subject to challenge and the outcome of the litigation was that the revocation was quashed on 10 November 2010. The effect of this is that the RSS remains as part of the development plan. However, I have had regard to the intended abolition of the Regional Strategies, which remains a material consideration, albeit of limited weight.

#### **St Albans District Local Plan Review<sup>2</sup>**

14. Policy 1 relates to the Metropolitan Green Belt and records that the whole of the St Albans District lies within this, with the exception of a list of towns and specified settlements listed at policy 2 and three other specific areas of land subject to other allocations, identified within the policy – the appeal site does not lie within any of these areas. The policy reflects national policy set out in

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<sup>1</sup> Council's letter regarding the dNPPF dated 15 August 2011

<sup>2</sup> Council's Hearing Statement, appendix 5

PPG2 and advises that inappropriate development within the Green Belt will not be approved except in very special circumstances.

15. Policy 18 relates to caravans and mobile homes. It sets out a presumption against new building or the intensification of existing uses. Gypsy caravan sites are referred to by a footnote referencing paragraphs 7.25 and 7.26 of the Local Plan, which record the need for the Council to provide adequate accommodation for those living in the County<sup>3</sup>. There are no other development plan policies in respect of provision for gypsies and travellers.

#### **Emerging Local Development Framework (LDF)**

16. I have been given no clear current timetable for the LDF. This has not progressed as anticipated at the time of the Secretary of State's re-determination, in October 2006, of the previous appeal on this site, which envisaged adoption of site allocation Development Plan Documents (DPD) by mid 2009<sup>4</sup>.
17. At the hearing I was referred to a recent appeal decision (the Nuckies Farm decision)<sup>5</sup>, which records that the pre-submission consultation document for the Core Strategy (CS) of the LDF, including criteria-based policy for the assessment of proposals for gypsy sites, was due to be published in summer 2011, with adoption anticipated in autumn 2012 and adoption of a site allocations DPD to follow in autumn 2013. The Council has acknowledged that this has slipped again, due to the ongoing dispute over figures in respect of pitch provision. Publication of the CS is now expected by the end of the year and may achieve adoption by the end of 2013. The Council indicated at the hearing, in respect of the discussion on conditions, that a realistic view of the likelihood of adoption of a site allocations DPD would be in 2015.

#### **Planning History**

18. In 2002 the Council refused planning permission for an application for change of use of the appeal site for a caravan site with 8 residential pitches and 2 transit pitches, by the current appellant. A public inquiry was held in 2003 and the inspector recommended granting planning permission on a permanent basis for the 8 residential pitches only, but refusing the 2 transit pitches. The Secretary of State disagreed with the inspector's recommendation and dismissed the appeal in September 2003<sup>6</sup>. This decision was subsequently quashed by the High Court on 12 October 2004. On 2 October 2006 the Secretary of State issued a re-determined decision<sup>7</sup> (the 2006 decision). This allowed the appeal in part and granted planning permission for use of the land as a gypsy caravan site for 8 residential pitches on a temporary basis with a condition limiting the use to named persons and their dependants.
19. That permission expired on 31 December 2009. On 30 December 2009 the appellant submitted an application for renewal of the temporary permission.

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<sup>3</sup> The content of these paragraphs from the LP was not made available to me but is summarised in the Council's Hearing Statement at paragraph 6.54

<sup>4</sup> Appellant's Hearing Statement, appendix 2, paragraph 36

<sup>5</sup> Council's Hearing Statement, appendix 6, paragraph 14

<sup>6</sup> Appellant's Hearing Statement, appendix 1

<sup>7</sup> Appellant's Hearing Statement, appendix 2

This was refused on 23 April 2010<sup>8</sup> due to the lack of a detailed site layout plan and on the basis that inadequate information had been submitted to enable it to be fully assessed.

20. According to the inspector's 2003 report<sup>9</sup>, in 1996 (prior to those decisions and prior to the appellant's purchase of the appeal site) planning permission on it was refused for a camping and caravan site. Following this the appellant purchased the site and in 1998 the Council issued two enforcement notices requiring that use of the site for stationing residential caravans and portable toilets should cease. Appeals against these notices were dismissed in October 2001. One of the enforcement notices required the reduction of fence heights around the site to no more than 2m. This has taken place.

### **The Proposal**

21. The application is retrospective; the appeal site has been occupied since 1998 by about ten gypsy families. I saw 20 touring type caravans at my site visit, with various small domestic sheds and other domestic paraphernalia as well as parked cars and vans. The appeal scheme layout indicates 10 plots (each with space for two caravans, of which the appellant has indicated that in future one may be a static caravan) with 0.6m high brick walls between pitches to demarcate them.
22. In addition to the 10 pitches proposed, the site layout also shows an existing single caravan<sup>10</sup> and shed with an area of grass lawn at the northeast corner. The parties are agreed that the use of this part of the site is lawful and I shall reach my recommendation on this basis.
23. Ten families currently occupy the site, several of these households are not those referred to in the personal condition attached to the 2006 permission. Details of these current families and of the whereabouts of those named in the condition are set out with the appellant's case.

### **Other Agreed Facts**

24. The Council does not dispute the gypsy status, as defined in paragraph 15 of Circular 01/2006, of the households now resident on the appeal site. The parties also agree that the proposal is inappropriate development in the Green Belt and that substantial weight must be attributed to the harm to the Green Belt that would arise from this. It is for the appellant, therefore, to demonstrate whether very special circumstances exist and they will not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations.

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<sup>8</sup> Refusal notice – Appellant's Statement, appendix 3

<sup>9</sup> Appellant's Hearing Statement, appendix 1 – inspector's report, paragraph 15, page 3

<sup>10</sup> I saw that this is a static caravan, as described in the Design and Access Statement

## **The Case for the Appellant – from the submitted statement as supplemented by oral evidence to the hearing**

### **Policy**

25. The policy context has changed since re-determination of the appeal in October 2006. The *Hertfordshire Structure Plan* is no longer extant and has been superseded by the *East of England Plan (RSS)*; the *St Albans District Local Plan Review* policy 105, referred to previously in respect of a landscape development area, has not been saved; *Planning Policy Statement 3: Housing* has replaced *Planning Policy Guidance 3*.

### **Green Belt openness, other purposes and visual amenity**

26. On openness, the Secretary for State in the 2006 decision found that the existing caravan site (which then contained 20 caravans) harmful to the appearance and openness of the Green Belt. In mitigation it was noted that the existing fence already affects openness, is lawful and is likely to be retained. The fence, associated landscaping and proposed relocation of caravans within the site would limit the effect on openness and the appearance of the Green Belt, but nevertheless additional harm was found arising from the proposal due to loss of openness and the effect on its visual amenity. The proposal in this appeal would make no difference to the effect on openness over that assessed previously by the Secretary of State.
27. In relation to the other purposes of the Green Belt it was found that the proposal would result in sprawl in a rural location, encroachment of the development into the countryside and make a small contribution to the merging of Redbourn and Hemel Hempstead.
28. Circular 01/2006, clarified by the *Wychavon v SSCLG & Butler [2008] EXCA Civ 692* case, does not indicate a greater need for visual screening of sites that are in the Green Belt over those in other rural locations. Annex C to the circular considers the provision of additional landscaping and planting to supplement existing. Thus, gypsy sites do not need to be fully screened or hidden from view at the outset.
29. Planting carried out along the southern boundary at the time of the 2006 decision has matured. This has reduced views of the caravans on the appeal site; only the tops of some of the caravans are visible from the Hemel Hempstead Road, which is over 120m away. These views are further filtered by existing roadside trees and hedges. The caravans and the site are glimpsed only in close proximity to the farmhouse, Tullochside, and as the development does not harm the character and appearance of the countryside it would consequently cause little harm to the visual amenity of the Green Belt.

### **Sustainability**

30. The appeal site is within 1km (reasonable walking or cycling distance) of Hemel Hempstead for access to community services and facilities, including schools and health care, which enables the residents to integrate with the local community and reduces the need for frequent long distance travel. There are also two bus stops on the main road close to the site, with services every day throughout the day every 20 minutes. Although there are no footways, people

do walk past the appeal site to work at the nearby hotel. Little Revel End Lane provides access to Hemel Hempstead and is suitable for cycling; there are sign-posted cycle routes at the end of the lane. Thus the appeal site is in a highly sustainable location in terms of paragraph 64 of Circular 01/2006.<sup>11</sup>

#### **Need for gypsy and traveller sites**

31. *An Assessment of the Accommodation Needs of Gypsies and Travellers in South and West Hertfordshire* (GTAA)<sup>12</sup>, published November 2004, recommended the provision of 80 additional pitches across the study area (including St Albans) over the 5 year period to 2009, with an additional 30 transit pitches – a total of 120 pitches. This figure informed the single issue review of the RSS, published July 2009, and RSSrev policy H3 sets a requirement for the provision of a minimum 28 net additional residential pitches for gypsies in St Albans in the period 2006-2011.
32. This figure, set out in the development plan, is the best available guide to the level of unmet need in the District. It represents a 50% increase over the existing provision, which was recorded, at policy H3, as 52 pitches in January 2006. Since 2006, various planning permissions for gypsy sites have been granted at appeal<sup>13</sup> but these are all for a temporary period. They do not count towards the supply of permanent sites and there remains a substantial unmet need for additional gypsy sites in St Albans.
33. The 2006 decision by the Secretary of State to grant planning permission on the appeal site for a temporary period was made on the reasonable expectation that new sites would be likely to become available following adoption of the site allocations DPD in mid 2009. The timetable has slipped by more than 4 years since then. There is no prospect that the Council will meet the requirement set in the RSS by the end of the period 2006-2011. It will not comply with the aim of Circular 01/2006 to increase significantly the number of gypsy and traveller sites in order to address under provision within 3-5 years, by February 2011.
34. The Council will not have a 5 year supply of suitable, available and deliverable land to provide for gypsy sites for at least another 2-3 years. This is also contrary to the requirement of PPS3. In these circumstances PPS3 at paragraph 71 states that favourable consideration should be given to applications for housing. A recent appeal decision by the Secretary of State shows that this should apply equally to the gypsy population<sup>14</sup>.
35. Both the substantial unmet need in the District and the failure of local policy in this respect weigh significantly in favour of the proposal.

#### **Availability of alternative sites**

36. Paragraph 49 of Circular 01/2006 does not preclude the possibility of planning permission being granted for sites within the Green belt, at least as a last resort. Whilst alternatives should be explored first, it has been clarified that this reference is to the identification of sites for DPD allocation. Planning law *SCDC*

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<sup>11</sup> Design and Access Statement submitted with the application, main file

<sup>12</sup> Council's Hearing Statement, appendix 7

<sup>13</sup> Appellant's Hearing Statement, appendices 5 & 6

<sup>14</sup> Appellant's Hearing Statement, appendix 7



*v SSCLG and Julie Brown [2008] EWCA Civ 1010, paragraphs 24, 2-36* has shown that there is no requirement for an applicant to prove that no alternative sites are available, even in areas of Green Belt.

37. It has previously been agreed by the Council (at the inquiry in respect of the appeal site that led to the 2006 decision) that any alternative gypsy site in south Hertfordshire will be in the Green Belt. There are three public gypsy sites in St Albans, with a total of 40 pitches. These are all full, with large waiting lists. I was told that site residents had approached the Council's Gypsy Liaison Officer with a view to putting themselves on the waiting list. They were advised that, notwithstanding the long wait likely, there would be little prospect of securing places as the Council's selection policy includes a requirement that residents should be in receipt of state benefits, in order to ensure rental for the pitches. No-one from the Council was available to comment in this respect.
38. The Paddocks is a permanent private site, for around 7 pitches, but is fully occupied and would not be available to the residents of the appeal site – this was accepted by the inspector and the Secretary of State in the previous appeal decision. There is only one other private site in the District which has only 1 permanent pitch (the other 2 pitches at the site have permission only on a temporary basis).
39. It was accepted in the 2006 decision that a systematic search for another site had been carried out on behalf of the appellant in south Hertfordshire and that there was no realistic prospect of the site occupants being able to buy or rent a suitable alternative site in the area. Subsequent appeal decisions<sup>15</sup> in the District, as recently as July 2011, have found that given the extent of Green Belt around St Albans and the surrounding Districts it is inevitable that any search for alternative suitable private sites would be fruitless and the Council was unable to identify any specific available alternative sites. This adds significant weight in favour of the proposal.

#### **Personal circumstances of the site residents**

40. Of the eight people named in the condition attached to the 2006 decision, only Tina Stanley, now with her young daughter, remains in occupation at the appeal site. Roy Amer moved to take over his father-in-law's pitch, in Accrington, after his death. After a dispute with other site residents at Tullochside, Emily Smith now lives elsewhere in the District at The Paddocks, where she already had family. John Watson moved to a site owned by his father at Abbots Langley where permanent planning permission was allowed at appeal in 2004/5. Patrick Handringham's wife was killed in a traffic accident in July 2010, he moved for childcare reasons to live with her mother on a site in Milton Keynes. Both John Evans, father and son, moved to Ireland for work. Tom Dennis had marital problems and has moved with his new partner to a site near Cambridge that has temporary planning permission, his previous wife moved in with her parents.<sup>16</sup>
41. There are currently ten households resident on the appeal site. Details of each individual, their relationship to the appellant, their occupations, any health

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<sup>15</sup> Appellant's Hearing Statement, appendices 5 & 6

<sup>16</sup> Details given verbally by appellant at the hearing

needs and the children's ages and their health and educational needs are detailed<sup>17</sup> below:

- i) Tina Stanley (appellant's niece – named in personal condition to the 2006 permission)  
Olivia, daughter (5 years) born at appeal site, attends local primary school
- ii) Nelson Stanley (appellant's son, grew up at appeal site, married 2010 and needs own home) occupation is horse breeding with his father based at Tullochside  
Ann Marie Stanley  
Nelson, son (1 month)
- iii) Nathan Stanley (appellant's son, grew up at appeal site, married 2009 and needs own home) occupation is horse breeding with his father based at Tullochside, suffered hepatitis as a child and was hospitalised, consequently requires ongoing regular treatment for liver damage and to manage asthma and has been treated at Moorfields eye hospital following an eye injury  
Lena Stanley expecting second child due late August 2011  
Francis, son (1 year)
- iv) Ricky Gentle occupation is installing guttering, resident at appeal site since 2007/8  
Eileen Gentle (her sister lives at a Council site in the area and is married to a cousin of the appellant's wife)  
Shannon, daughter (13 years) home-schooled by the Travellers Education Project  
Richard, son (9 years) attends local primary school  
The whole family, including Bridgit Ward – see v) below, moved from Wood Green, closed due to the Olympic development, needs to be close to her family.
- v) Bridgit Ward (69 years, Eileen Gentle's mother) resident at appeal site since 2007/8, has arthritis, dependant on daughter Eileen (above) for care, needs to live close to both her daughters – see iv) above
- vi) Mark Taylor occupation is property maintenance, resident at appeal site since 2007/8  
Tammy Taylor (cousin of Walter Squires, see viii) below) fifth child expected November 2011  
Milly, daughter (9 years) attends local primary school  
Madison, daughter (7 years) attends local primary school  
Macey, son (5 years) attends local primary school  
Tommy, son (2 years)
- vii) Lawrence Knowles occupation is decorating, resident at appeal site since 2007/8  
Ann Knowles  
Wesley, son (29 years)  
Audie, daughter (22 years)

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<sup>17</sup> Appellant's Hearing Statement, paragraphs 5.22 – 5.26, supplemented verbally

Hazel, daughter (17 years) on-going spinal curvature problems  
The Knowles are personal friends of the appellant who have suffered depression following the death of their son in a traffic accident and have consequently moved away from their previous area.

- viii) Walter Squires (cousin of appellant) occupation is tree work, resident at appeal site since 2007/8  
Mary Squires expecting second child, due approximately March/April 2012  
Cody, son (4 years) attends local pre-school
  - ix) Jim Penfold (long standing friends of the appellant – grandparents worked together fruit picking) occupation is tool sales, resident at appeal site since mid 2010  
Carol Penfold  
Matthew, son (19 years)
  - x) Jim Penfold (son of Jim Penfold see ix) above) occupation is tool sales, resident at appeal site since mid 2010, needs regular hospital appointments for a hearing problem  
Laura Penfold  
Jim, son (1 year)  
Both the Penfold families were evicted from part of a site in Staines, closed for Heathrow T5, there were no alternative sites in that area.
42. All the residents are registered with local GPs. Two adults receive regular medical treatment and two others have ongoing health issues. Three women on the site are expecting babies, due in September 2011, November 2011 and around March/April 2012 and need pre and post natal care. In total there are eleven children aged between 1 month and 13 years old. Of these, six children attend local schools and one teenage girl receives home schooling, four children are below school age.
43. These health and education needs would be severely disrupted were the families forced to leave the site.

#### **Human Rights**

44. If this appeal is dismissed the Council confirmed at the hearing that it would be likely to seek the eviction of the families living on it. This would inevitably lead to the families being forced into road-side camping as it was acknowledged that there are no available alternative sites in the area. This would result in an interference with their home and family lives, under Article 8 of the European Convention of Human rights (ECHR). The harm caused to their human rights would be far greater than any harm to the Green Belt by way of inappropriate development (particularly as roadside camping would also take place within the Green Belt and would cause environmental damage, highway danger and increased community annoyance). In *Wychavon v SSCLG & Butler [2008] EXCA Civ 692* it was found that for a gypsy family the loss of their home in these circumstances was disproportionate in relation to the harm to the Green Belt caused by the development.

#### **Overall Balance**

45. The harm to the Green Belt by inappropriate development carries substantial weight. There is harm to openness and to the purposes of including land within

the Green Belt to a similar degree as at the 2006 decision. Set against these harms, the site is now better screened than it was at that time and does not harm the character and appearance of the countryside or the visual amenity of the Green Belt. Overall, harm to the Green Belt has diminished since the 2006 decision.

46. The meaning of 'very special circumstances' has been clarified by the case of *Regina v. Secretary of State and Temple*<sup>18</sup>, in which it was found that in planning as in ordinary life, a number of ordinary factors may when combined together result in something very special. Whether any particular combination amounts to very special circumstances for the purpose of PPG2 is a matter for the planning judgment of the decision taker.
47. Harm to the Green Belt is clearly outweighed by: the significant weight that must be attributed to the unmet need for gypsy sites in St Albans and to the failure of the development plan to meet the need; the lack of alternative sites; significant weight also attaches to the personal needs of the residents for a settled site and to their health and education needs. An added benefit arising from the proposal would be its contribution towards meeting the need for gypsy sites in the District. Overall these factors together are sufficient to justify consent on a permanent basis.

#### **Temporary planning permission**

48. If it is decided that these other considerations do not amount to the very special circumstances necessary to justify a permanent planning permission then the situation is as set out at paragraphs 44 and 46 of Circular 01/2006. The balancing exercise should be undertaken in respect of a temporary permission. In this case the harm to the Green Belt would be reduced by its temporary nature. There is a reasonable prospect of alternative sites becoming available to the site residents via the Council's site allocations DPD process within 4 years.

#### **The Case for the Council– from the submitted statement as supplemented by oral evidence to the hearing**

##### **Green Belt openness, other purposes and visual amenity**

49. The site in its authorised state is open and maintains the openness of the Green Belt. Filling the site with 20 caravans, vehicles and associated residential paraphernalia has caused clear harm to openness. The appeal site is an isolated spot in the countryside and the development has created urban sprawl, failed to protect the countryside from encroachment or to maintain the separation between settlements and has not taken place on derelict land. It conflicts with the purposes of including land within the Green Belt.
50. Although established landscaping and its relationship with neighbouring buildings limit views of the appeal site from other directions, the 2006 decision found that the site is prominent from the Hemel Hempstead Road to the south, harmed the character and appearance of the surrounding area and had an urbanising effect on it. This has not changed. Whilst the boundary fence remains in place and some landscaping has been established along it, the

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<sup>18</sup> *Basildon DC v FSS & Temple* [2004] EWHC 2759 (Admin)

caravans remain readily visible from this direction and are out of keeping with the rural setting. Development on the appeal site also reduces the separation between the two settlements of Redbourn and Hemel Hempstead.

51. The scheme granted temporary planning permission by the 2006 decision aligned the caravans along the western part of the site, leaving the remainder of the site open for parking vehicles. The layout currently in place and subject to this appeal has altered from this previously authorised layout significantly, with caravans arranged across the whole site. This results in a significantly greater impact on openness and on the rural character of the area.

### **Sustainability**

52. The distance from the site to facilities in either Hemel Hempstead or Redbourn is well over 1km and unlikely to be attractive for access on foot. The traffic conditions on the Hemel Hempstead Road do not produce a safe secure route for walking or cycling as advised by *Planning Policy Guidance Note 13 – Transport* (PPG13). It is likely that residents would rely on the private car to access schools and healthcare. The site location is not significantly sustainable in this respect. Sustainability is more widely defined by PPS1, which puts this aim at the heart of the planning system. The need to protect environmental assets and the wider landscape is an important element of sustainability. The development does not protect the character of the area and is not sustainable in this respect.

### **Need for gypsy and traveller sites**

53. The Council has engaged in a considerable level of work to respond to the requirement placed on it, as set out in Circular 01/2006, to deliver satisfactory levels of gypsy and traveller sites. Extensive research has been undertaken on behalf of the District Councils in the area in recent years, including a county-wide quantitative needs survey published in 2005<sup>19</sup>, prior to the circular; this is the Gypsy and Traveller Accommodation Assessment (GTAA) for the area. The Council accepts there is a need to provide additional opportunities for gypsy and traveller accommodation in south and west Hertfordshire as a whole, amounting to 115 pitches<sup>20</sup>. Following the GTAA, a report<sup>21</sup> published in March 2007, prepared by Scott Wilson on behalf of the Council, sought to identify potential sites. This identifies specific locations for potential gypsy sites across the county with an assessment of the constraints affecting them and their suitability against a range of criteria. It will inform the next stage of the process leading to the allocation of sites in a DPD.
54. The timetable for the CS and DPD has been delayed as a result of the Government's commitment to the abolition of the Regional Strategies and the need for local authorities to determine their own housing figures. As a result the requirements for the District are being re-examined and a further

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<sup>19</sup> Council's Hearing Statement, appendix 7

<sup>20</sup> This figure is taken from page 4 of the Executive Summary to the GTAA, the Council agreed at the hearing with the appellant's figure, given at paragraph 31 above

<sup>21</sup> Council's Hearing Statement, appendix 8

consultation on this issue and the location of new development was published in December 2010<sup>22</sup>.

55. In relation to unmet need in the District, with reference to the pitch requirement for St Albans (a minimum of 28) set in the RSS, the Council acknowledges that this is the most up to date figure but has previously disputed the level of need and intends to negotiate with neighbouring Councils regarding the cross boundary distribution of the requirement in the expectation of reducing the proportion to be provided in this District. The Council agrees that the level of unmet need in the District exceeds the number of pitches proposed on the appeal site.

#### **Availability of alternative sites**

56. The 2006 decision recognised that there were no obvious alternatives for accommodating the residents of the appeal site until permanent sites were identified in a DPD. This lack of alternative sites was not found sufficient to merit a grant of permanent permission. The Council acknowledges that there are no alternative public sites in the District. No permanent sites have been granted at appeal since then, the most recent decision (Nuckies Farm) was made on 5 July 2011 and granted temporary planning permission only.
57. Insufficient information was provided with the application to enable the Council to verify whether there are alternatives available to these individuals now occupying the site. In the Riverbank Stables appeal decision<sup>23</sup> the residents of that site owned land elsewhere that was not in the Green Belt.

#### **Personal circumstances of the site residents**

58. There is an absence of any substantive information regarding personal circumstances in the current appeal. Very detailed evidence was presented in respect of personal circumstances for the 2006 decision and this was found insufficient to justify a permanent permission. Approval of a permanent permission, as applied for, would undermine the plan-led approach to meeting the needs of gypsies and travellers advocated in Government guidance.

#### **Overall Balance**

59. The harm to the Green Belt caused by the development is not clearly outweighed by the consideration put forward in favour of the development and very special circumstances to justify the proposal do not, therefore, exist.

#### **Temporary Permission**

60. The use of temporary permissions is an exception to the adopted process for securing site allocation through the development plan. They may be used to meet an immediate need where there is no alternative to the site proposed. There has been no evidence presented to demonstrate an immediate need for the persons now identified as residents of the appeal site.

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<sup>22</sup> This document has not been provided

<sup>23</sup> Council's Hearing Statement, appendix 6

## Written Representations

61. The Redbourn Parish Council supports the decision made by the Council. The proposal lies within the Metropolitan Green Belt, there are no exceptional circumstances which need consideration and it contravenes Local Plan policy 1.

## Conditions

62. A list of conditions was submitted at page 26 of the Council's Hearing Statement and discussed at the Hearing. Should the Secretary of State be minded to grant planning permission the Schedule of Conditions appended to this Report at Annex A comprises those that I consider should be imposed. Further suggested conditions relating to temporary and personal planning permission are included, should the Secretary of State disagree with my recommendation. The conditions comply with Circular 11/95 *The Use of Conditions in Planning Permissions* and one of the conditions is worded so as to deal with the fact that the development has already been implemented.
63. A condition is suggested to restrict the use of the site to gypsies and travellers only, in order to ensure that the site meets the needs of that population. In order to protect the appearance of the area conditions are required restricting commercial vehicles and activities as well as the number and type of caravans to be sited on the land (this was clarified to include a proportion of static caravans or mobile homes). As suggested at the Hearing, the submission of further details of the site layout, and a scheme of landscaping and its maintenance are also necessary to protect the appearance of the area.

## Inspector's Conclusions

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

### Main Considerations

64. The parties both acknowledge that the proposal would be inappropriate development in the Green Belt and I agree. The main considerations in this case are therefore:
- i) the effect of the development on the openness of the Green Belt, on the purposes of including land within it and its visual impact;
  - ii) whether the location of the development is consistent with policies which seek to promote a sustainable pattern of development;
  - iii) whether the harm to the Green Belt by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

### Green Belt

65. Circular 01/2006 states that new gypsy and traveller sites in the Green Belt will normally be inappropriate development and reiterates the general presumption set out in PPG2. Paragraph 3.2 of PPG2 advises that inappropriate development is, by definition, harmful to the Green Belt and records that substantial weight will be attached to that harm. LP policy 1 reflects this national policy.
66. PPG2 sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the most important attribute of Green Belts is their openness. The appeal site is surrounded by a 2m high fence, which has itself reduced the openness of the Green Belt to a modest degree. However, the fence exists and is not part of the proposal; it was noted at the time of the 2006 decision that it would not be removed were that appeal to be dismissed and these circumstances have not changed. In all, 20 caravans have been in place since 1998 (16 of these were authorised in 2006, but only on a temporary basis until 2009) and have caused a discernible additional physical intrusion into the openness of the Green Belt. [18, 20, 26, 49]
67. The appellant has acknowledged that harm to the openness of the Green Belt would result from the proposal. It is evident that further to the assessment made in respect of the 2006 decision, the increase in the density of caravans on the site from 16 to 20, with the accompanying domestic paraphernalia, albeit within the same site area, has increased the volume of physical intrusion proportionately. The appeal development has in my assessment caused a modest degree of harm to the openness of the Green Belt. [26]
68. PPG2 also sets out five purposes of including land in the Green Belt. The appellant acknowledges that the development affects two of these and I agree. It has caused some encroachment into the countryside and, by its location mid-way between two settlements, has caused merging of them into one another, to a small degree. [27]



69. I consider that the modest harm to openness and to the purposes of including land in the Green Belt together add to a moderate amount of weight to the substantial harm by reason of inappropriateness.
70. The character and appearance of the countryside has already been altered by the erection of the high solid panelled timber fence around the site. This has inevitably changed the appearance of this particular piece of countryside within the Green Belt. However, this effect on character and appearance (as with its effect on openness) would happen irrespective of the appeal development and the effect at issue is thus the visual impact of the caravan roofs that can be seen above it, bearing in mind that caravans, whilst not a part of the natural environment of the countryside are not wholly unusual features of rural recreation. [4, 5, 6]
71. The site is also surrounded on all but the south side by existing indigenous planting, which screens and assimilates it into its surroundings. Viewed from along the Hemel Hempstead Road, to the south, the appeal site is more noticeable than from elsewhere, being located a little higher than the road. The planting (much of it evergreen) that was introduced along the outside of the fence on this side at the time of the 2006 decision has matured in the five years since then, as have, presumably, the other hedges and trees around the site. This has softened the effect of the fence and substantially reduced views of the caravan tops that project above it. Consequently, the visual effect of the development at appeal now is much reduced. The inspector noted in the 2006 decision that re-locating the caravans a little more into the site, away from the south boundary fence would also diminish their visual impact and this could still be achieved now through the suggested condition requiring submission of a further detailed layout. [50, 51]
72. In addition, the site is located directly adjacent to a large dwelling, a large out-building and is seen in the context of extensive post and rail fencing and a long timber stable building at the roadside. The immediate area, whilst mainly agricultural in appearance, includes other large residential homesteads; this surrounding context also reduces the visual impact of the development, such that it is now not particularly eye catching. It has caused very little harm to the character and appearance of the area. The effect of the proposal on the visual amenity of the Green Belt is, therefore, minor. Suitable supplementary planting, as suggested, could be added to further assimilate it with the surrounding native hedges and trees. [6, 63]
73. Subject to the imposition of a landscaping condition, I consider that the development would not harm the character or appearance of the surrounding area or the visual amenities of the Green Belt. In this respect it would comply with LP policy 1.

### **Sustainability**

74. The site is located less than 1.5km in each direction along the B487 from two settlements, each with a good range of local facilities and services. Traffic along the road is fast moving and this is likely to deter foot and cycle traffic from using it. However, Little Revel End Lane can provide a much safer route linking to the footways in the built up part of Hemel Hempstead and with access to cycle routes. Bus services from close to the site are also frequent and are sustained until the early evening. All of these provide significantly better

opportunities for alternatives to using private cars than in many other rural locations. [30, 52]

75. I consider that the location of the development is consistent with policies which seek to promote a sustainable pattern of development. It accords with the Government's aim to encourage a reduction in travel by private car and meets the advice within PPG13, PPS1 and Circular 01/2006. No development plan policies were drawn to my attention in this regard.
76. Despite this conclusion, having seen the high level of car ownership evident at the site, I accept the Council's view that the probability of residents using other means of transport is low. Balanced against this, the site location, within easy reach of local community services, would assist the gypsy community to integrate with the settled community; it would not be isolated from it. (I note in this regard a third party response to the planning application, which although objecting to the proposal on Green Belt policy grounds, acknowledges that there are no unsociable issues arising at it.) The dNPPF records that delivering sustainable development means, amongst other things a social role for planning, using the planning system to promote strong, vibrant and healthy communities. This reflects an objective of PPS1. Taking these matters together, I consider the issue of sustainability of the site location to be neutral in relation to the overall balance.

#### **Other Considerations – Need for gypsy and traveller sites**

77. The Council acknowledges that there is unmet need in St Albans for gypsy sites in excess of the 10 pitches that would result were this appeal allowed. The Council has acknowledged that no provision has been made to date (late summer 2011) in respect of the requirement, set in the RSS, to provide a minimum of 28 pitches in the District by 2011, but disputes this figure and is in the process of negotiating with neighbouring Councils to redistribute the cross border requirement. However, it has not provided any evidence of progress in this regard. [53, 54, 55]
78. Although the Government has made clear its intention to revoke the Regional Strategies, the RSS remains part of the development plan and as no other evidence base in respect of unmet need for gypsy sites has been drawn to my attention, this remains the most up to date figure. Moreover, PPS3 also requires local authorities to demonstrate a 5 year supply of housing land. The RSS also notes<sup>24</sup> a further requirement for a 3% annual compound increase in pitches after 2011, based on 80 pitches, the total number of pitches required by 2011. Thus looking to the next 5 years the need for additional pitches in the District recorded in the RSSrev would be in excess of 28 and well in excess of 10, the number of pitches proposed. [12, 55]
79. Other than the 2007 Scott Wilson report, which does not look at site deliverability, no draft site allocation DPD has been produced. In these circumstances, whilst a third party response to the application has suggested that allowing the appeal in advance of the DPD process would be premature, the appeal development would contribute to meeting the existing substantial unmet need already identified. As the whole District, outside the built up areas, is

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<sup>24</sup> Council's Hearing Statement, appendix 4 – footnote 2, page 5

within the Metropolitan Green Belt it is not clear that significantly better alternative locations to the appeal site would be identified. It can therefore be concluded that the appeal development would not harm the emerging strategy for site provision in the District. [16, 17, 37, 53, 54]

80. The substantial level of unmet need in the District is not disputed. The need identified to 2011 has not been met by the development plan. There is no clear timetable for adoption of a site allocations DPD; the timetable for this has already slipped from 2009 to late 2014 and the Council has now acknowledged that a realistic forecast would be 2015. The Council is unable to demonstrate a 5 year supply of deliverable sites in the area in accordance with PPS3. Consequently, the unmet need for gypsy sites and the failure of the development plan to meet the need weigh significantly in favour of the appeal. [17, 55]
81. Whilst other recent planning permissions in the area have been granted on a temporary basis, none of these followed the previous grant of permission for a temporary period, as in this case. The decision made previously in respect of the appeal site arose from a reasonable expectation that alternative sites would be available by the end of 2009; the particular circumstances in this case are thus wholly different. [18, 39, 56]

#### **Other Considerations – Alternative sites available to the site residents**

82. There is no reason to doubt the current resident households of the site are gypsies, as defined in Circular 01/2006 and the Council does not dispute this. They all, therefore, have need of a pitch on a gypsy site. Two of the heads of these households have grown up on the appeal site. Others have arrived at the site following the closure of gypsy sites elsewhere and others are there for family relationship reasons. It has previously been demonstrated that there are no alternative sites available in the District. Public sites in the area are full, with long waiting lists. [24, 37, 38, 41, 56]
83. Circular 01/2006 states that alternatives should be explored before Green Belt locations are considered. The Secretary of State will be aware of the judgement in *South Cambridgeshire v SSCLG & Brown [2008]* in which it was held that there is no requirement on the appellant to prove non-availability of alternative sites. As noted above, outside defined settlement limits, the whole District is in the Green Belt, so that any alternative site in this District would also be in the Green Belt. [14, 37]
84. The Council is unable to point to any alternative sites that the residents could go to if planning permission is refused for this site. Each family's personal need for a settled site and the lack of available alternative sites adds significant weight in favour of the appeal.

#### **Other Considerations – Education and Health Needs**

85. The Council has expressed concern that very limited information was provided with the application in relation to the identity and personal circumstances of site residents. This was only supplemented in broad outline, with no accompanying evidence in the appellant's Hearing Statement; more detail was provided orally at the Hearing. However, the Council did not seek additional information in determining the application, nor has the information provided in the statement been followed up in the month following its submission in mid July 2011. In the

absence of any contribution in submissions or at the Hearing by the Council's specialist officers, there is no reason to doubt the evidence of the appellant on these matters. Moreover, given the age profiles and number of individuals resident on the site the incidence of health and education needs is not remarkable. [40, 41, 42, 58]

86. Two adults on the site require regular medical treatment for ongoing health problems. One has had operations for spinal curvature problems and may need further treatment in future. An elderly resident has arthritis which causes her to be dependant for care on her adult daughter, another site resident. Two women on the site will give birth within the next three months and require frequent medical check-ups as is normal for pre-natal health care. They will also need post-natal care for themselves and the babies. In addition, another woman on the site is newly pregnant and similar circumstances will apply for her in the near future, in early 2012. All of these individuals require regular access to GPs and hospital care. In addition, there are 4 children on the site who are under three years old who will also, clearly, benefit from a settled site from which to access healthcare. [41]
87. Circular 01/2006 records that gypsies and travellers have the worst health and education status of any disadvantaged group in England. Whilst most of the residents' particular health circumstances are unlikely to be significantly different from those of many gypsies and could be met from settled sites other than this one, the Council has acknowledged that if the appeal is dismissed the logical step would be for it to seek the families' eviction. In the absence of available alternative sites in the District, this would in all probability force them all into a road-side existence, from which access to regular healthcare for the families who need it is much more precarious. This would be particularly significant for the health of the women who are expected to give birth imminently or early in 2012 and for their unborn babies. The residents' individual ongoing health considerations add moderate weight in favour of the appeal and for those needing pre and post natal care, significant weight should be added. [41, 42, 44]
88. There are 6 children attending local primary schools from the appeal site and 1 teenager who is receiving home tutoring through the Council's Travellers Education Project. These educational needs are no different to those of other gypsy children and could be met equally well from other settled sites. However, as set out above there is little prospect of this. Were the appeal dismissed and these 4 families forced onto the roadside, the education of the 7 children would be disrupted. This consideration also adds moderate weight in favour of the appeal. [41, 42]

**Whether the harm to the Green Belt by reason of inappropriateness and any other harm, is clearly outweighed by other considerations**

89. At paragraphs 3.1 and 3.2, PPG2 sets out the general presumption against inappropriate development within the Green Belt. It states that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

90. Substantial weight should be given to the harm arising from the appeal development by way of inappropriateness; and moderate weight should be added arising from the harm to openness, encroachment and the merging of settlements.
91. No weight attaches from the lack of harm to the character and appearance of the area and the visual amenity of the Green Belt or the compliance of the development with sustainability objectives.
92. In favour of the proposal, significant weight should be attributed to both the unmet need for gypsy sites in the District and the failure of the development plan to meet the need. The personal need of the families now resident on the site for pitches and the lack of available alternative sites add further significant weight.
93. The health needs of some of the residents attract moderate weight and the immediate need for pre and post natal care add significant weight for the three expectant mothers. The education need of some of the children also attracts a moderate amount of weight in favour of the development. Were the appeal dismissed the Council would be likely to seek the eviction of all the families from their caravan homes on the appeal site. There is little prospect of them finding alternative sites and none has been identified as available. I consider that this would result in an interference with the home and family life of the occupants, which outweighs the harm that has been and would continue to be caused by the development to the public interest. Dismissal of the appeal would have a disproportionate effect on the right of the residents under Article 8 of the ECHR and this also adds a significant degree of weight to the other considerations in favour of the appeal.

### **Overall conclusion**

94. Overall, the harm by reason of inappropriateness and the additional harm identified is clearly outweighed by the summation of the other considerations set out above. In this case the residents of the appeal site all have a clear need for a site and have no other sites to which they could move. Some of them have health issues and education needs. Dismissal of this appeal would ultimately result in their being forced from the site, causing distress and hardship. Such consequences would, in my view, be disproportionate to the harm caused. On balance, taking the case as a whole, I conclude that very special circumstances do exist to justify the inappropriate development in the Green Belt that has taken place.

### **Recommendation**

95. I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in Annex A.
96. If the Secretary of State disagrees with my recommendation, I set out some further considerations below.

### **Temporary planning permission**

97. If the Secretary of State disagrees with my conclusion, set out above, and considers that very special circumstances do not exist in this case to justify the

development on a permanent basis, it is necessary to consider whether the development should be approved for a temporary period.

98. A temporary permission would affect the weight which should be given to the harm identified to the Green Belt. The weight to the Green Belt by way of inappropriateness would be unchanged, but that arising from openness and to conflict with two of the purposes of including land in the Green Belt would be reduced as the development would be time limited.
99. The factors in favour of the development would be as set out at paragraphs 91-93 above. In these circumstances current advice in Circular 01/2006 is that substantial weight should be attached to the unmet need for gypsy sites in considering whether temporary planning permission is justified. This may be justified where it is expected that the planning circumstances will change at the end of the period of temporary permission.
100. In respect of a temporary permission the Council has suggested a four year period. The likely timescale for adoption of the Site Allocations DPD is late 2014, with sites becoming available in 2015, as set out at paragraph 17 above. In the light of the slippage that has already occurred in the timetable for the DPD and the uncertainty over a cross-boundary agreement on the District's requirement figures, to ensure a reasonable prospect of delivery an additional year should be allowed for further slippage; planning permission should be granted to 2016, a temporary period of five years.
101. In these circumstances, I consider that the harm identified would be clearly outweighed by the other considerations in the short term, until the need can be met on sites allocated through the Site Allocations DPD. Very special circumstances would therefore exist to justify a grant of planning permission for a temporary period of 5 years.
102. If the Secretary of State considers that the other considerations do not outweigh the totality of the harm, either for a permanent or temporary period and that very special circumstances do not therefore exist, the following should be considered.
103. The appeal relates to a number of separate but inter-related families. The families have indicated that they would wish to stay together, as they provide support to each other. However, in the judgement in *Moss v FSS & South Cambridge DC [2003] EWHC 2781* it was found that consideration should have been given to the possibility of allowing some of the appeals for those whose personal circumstances were the most compelling.
104. In this case the personal circumstances that are the most compelling are of the families of: Tina Stanley, Ricky Gentle, Mark Taylor and Walter Squires, in respect of their children's educational needs, to which I have attached moderate weight; and of the families of Nathan Stanley, Mark Taylor and Walter Squires whose wives (Lena Stanley, Tammy Taylor and Mary Squires) are currently pregnant, in respect of these individual's need for pre and post natal care, to which I have attached significant weight. In addition, the family of Lena Stanley also attracts moderate weight in favour of their residence by way of a need for ongoing health treatment for Nathan Stanley. Also in addition, Bridgit Ward has need of a separate pitch, but is dependant for health reasons on her daughter (Ricky Gentle's wife) and this need adds to the moderate weight in respect of

that family's children's education. (Whilst Hazel Knowles has had previous operations for spinal problems and may need them in future, this possibility carries less weight than others' ongoing medical needs and this family has no school age children.)

105. Were permission granted in respect of these six households only, the harm arising from the development by reason of inappropriateness would remain substantial. However, the number of caravans would be reduced by 40% and thus the degree of harm in respect of openness and to the other two purposes of including land in the Green Belt, which I have found to be moderate in respect of the whole development, would be reduced further. This would be balanced by the weight attributed to the personal circumstances of these families separately from the others.
106. Further consideration should also be given to granting planning permission for a temporary period for these same six households if my recommendation for a permanent planning permission is not accepted, in which case the harm factors to the Green Belt would be further reduced.
107. If planning permission is considered on this basis, the Secretary of State may then wish to consider the extent of the additional harm which would be caused by the remaining four pitches for the other families if these six named households are themselves allowed to stay on the site. Again, consideration should be given to granting both permanent and temporary planning permission for the others in such circumstances.

*Wenda Fabian*

Inspector

## Annex A

### Recommended conditions in the event that planning permission is granted

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
- 2) No more than 20 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 10 shall be a static caravan) shall be stationed on the site at any time.
- 3) No commercial activities shall take place on the land, including the storage of materials and the stationing of any vehicle over 3.5 tonnes.
- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:
  - i) within 3 months of the date of this decision a scheme for: the internal layout of the site, including the siting of caravans, plots, hardstandings, means of plot division, parking and amenity areas; tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities; shall have been submitted for the written approval of the local planning authority, the said scheme shall include a timetable for its implementation;
  - ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State;
  - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State; and
  - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 5) At the same time as the site development scheme required by condition 4 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting commencing at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.



**If the Secretary of State is minded to grant planning permission for a temporary period:**

- 6) The use hereby permitted shall be for a limited period being the period of 5 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place.

Conditions 1 – 3 above would also need to be included in this situation. Further landscaping would be unnecessary on a temporary basis. Condition 4 should require compliance with the proposed site layout plan submitted with the appeal and a condition would need to be added to require a scheme to be submitted specifying the condition of the land before the development took place and the works necessary to restore the land to that condition, or some other state as agreed with the local planning authority, and the time period within which the restoration works must be undertaken.

**If the Secretary of State is minded to grant planning permission for named persons only:**

- 7) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Tina Stanley, Nathan Stanley, Ricky Gentle, Mark Taylor, Bridgit Ward and Walter Squires.
- 8) When the land ceases to be occupied by those named in condition 7 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.

Conditions 1 and 3 would also need to be included in this situation. Condition 4 should require compliance with the proposed site layout plan submitted with the appeal and a condition would need to be added to require a scheme to be submitted specifying the condition of the land before the development took place and the works necessary to restore the land to that condition, or some other state as agreed with the local planning authority, and the time period within which the restoration works must be undertaken. Condition 2 above would need to be altered according to the number of caravans attributable to the named persons.

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Philip Brown BA (Hons) MRTPI	Managing Director, Philip Brown Associates Ltd
Mr Ned Stanley	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Philip Smith BA (Hons) MRTPI	Associate Director, Brian Barber Associates, Chartered Town Planning Consultants
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## **DOCUMENTS – No documents were submitted at the hearing. All documents listed are on file or attached to it.**

- 1 Council's letter of notification of the hearing and distribution list
- 2 Hearing Statement and appendices by Mr P Brown for the appellant
- 3 Hearing Statement and appendices by Mr P Smith for the Council

## **PLANS**

- A Site location Plan
- B Site layouts as existing & as proposed
- C Toilet block plan, roof plan & elevations