

24th February 2011

Green Planning Solutions LLP
Unit D, Lunesdale
Upton Magna Business Park
Upton Magna
Shrewsbury
SY4 4TT

Our Ref: APP/Y3615/A/10/2131590
Your Ref:

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR GEORGE CRAWT
AT LAND TO THE REAR OF PALM HOUSE NURSERIES, GLAZIERS LANE,
NORMANDY, GUILDFORD, GU3 2DF
APPLICATION: REF 09/P/01851**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Clive Hughes, BA (Hons) MA DMS MRTPI, who held a public local inquiry between 16 and 18 November 2010 into your client's appeal for non-determination of an application by Guildford Borough Council (the Council) for the use of land for the stationing of caravans for the residential purposes of 6 no Gypsy pitches together with the formation of additional hardstanding and utility/day room ancillary to that use as well as retaining the use for the stabling of horses in accordance with application number 09/P/01851, dated 12 November 2009.
2. On 3 November 2010, the appeal was recovered for the Secretary of State's determination as it involves proposals 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, except where stated, and partially agrees with his recommendations. The Secretary of State has decided to grant a temporary and personal permission until 31 March 2015. 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. An application was made by your client for an award of costs against the Council. The Secretary of State's decision on this application is the subject of a separate letter.

Policy considerations

5. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
6. In this case, the development plan comprises the 2009 South East Plan (SEP), and saved policies of the 2003 Guildford Borough Local Plan (LP). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR15-16.
7. Following the judgement of the Court on 10 November 2010, in *Cala Homes (South) Limited v Secretary of State for Communities and Local Government* [2010] EWHC 2866 (Admin) the Secretary of State has made clear that it is the Government's intention to revoke Regional Strategies, and the provisions of the Localism Bill which is now before Parliament reflect this intention. Whilst he has taken this matter into account in determining this case he gives it limited weight at this stage of the parliamentary process.
8. The Secretary of State also considers that the Council's emerging *Local Development Framework* is a material consideration although, for the reasons given at IR17, he agrees with the Inspector that the *Core Strategy Further Options* document carries very limited weight. Having had regard to the Inspector's comments at IR17, the Secretary of State also attaches very little weight to the Council's Site Allocations Issues and Options Consultation Paper, which appears not to have progressed beyond consultation stage.
9. Other material considerations which the Secretary of State has taken into account include: the Council's Thames Basin Heaths Special Protection Area Avoidance Strategy 2009-2014; the 2006 West Surrey Gypsy and Traveller Accommodation Needs Assessment (GTANA); Planning Policy Statement 1 (PPS) 1: *Delivering Sustainable Development*; Planning Policy Guidance (PPG) 2: *Green Belts*; PPS3: *Housing*; PPS7: *Sustainable Development in Rural Areas*; PPS9: *Biodiversity and Geological Conservation*; Circular 05/2005: *Planning Obligations*; Circular 11/95: *Use of Conditions in Planning Permission*; and the Community Infrastructure Regulations 2010.
10. 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, in reaching his decision 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.

Main issues

11. The Secretary of State considers that the main issues are those set out by the Inspector at IR96.

The relationship of the proposal to the development plan

12. The Secretary of State agrees with the Inspector's reasoning and conclusions in respect of saved LP policies and SEP policies at IR93-94. For the reasons given by the Inspector at IR93, he agrees that the new buildings proposed for the scheme are inappropriate development under saved LP policy RE2. He also agrees that the development would conflict with criterion (1) of saved LP policy H13 (IR93). He shares the Inspector's conclusion that there is no conflict with SEP policies SP5 or H4 (IR94).

Gypsy status

13. For the reasons given by the Inspector, the Secretary of State also concludes that the site occupiers are all Gypsies for the purposes of paragraph 15 of Circular 01/2006 (IR97).

Green Belt

14. The Secretary of State shares the view of the parties that the proposal constitutes inappropriate development in the Green Belt for the purposes of PPG2 (IR98). PPG2 sets out that inappropriate development should not be approved, except in very special circumstances, and that such development is by definition harmful to the Green Belt. It also advises that the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development. Accordingly, the Secretary of State attaches substantial weight to the harm to the Green Belt in this respect.

Openness

15. The Secretary of State agrees with the Inspector's assessment of the impact of the proposals on the openness of the Green Belt at IR99-100, and his conclusion at IR101 that there would be considerable harm in this respect. For the reasons given at IR101, the Secretary of State also agrees with the Inspector's conclusion that the development would result in some limited harm to one of the five purposes of including land in the Green Belt identified in PPG2, namely that of assisting to safeguard the countryside from encroachment (IR101).

Appearance

16. For the reasons set out at IR102-104 the Secretary of State agrees with the Inspector's conclusion at IR104 that, subject to compliance with a condition requiring the submission and implementation of a landscaping scheme, the overall impact of the development on the appearance of the Green Belt would not result in significant harm.

Thames Basin Heath Special Protection Area

17. The Secretary of State observes that the site lies within 5km of part of the Thames Basin Heath Special Protection Area (TBHSPA), within which any additional development is unacceptable unless accompanied by appropriate mitigation measures (IR105). He agrees with the Inspector's reasoning and conclusions in this respect at IR105-108. Like the Inspector he considers that compliance with the Council's adopted TBHSPA Avoidance Strategy 2009-2014 can be achieved by the Section 106 agreement which has been signed by the appellant, the other site owners, and the Council and he further agrees that the harm to the TBHSPA can reasonably be mitigated by the financial contribution that the site owners have agreed to make (IR108).

Other Considerations

Need for sites

18. The Secretary of State has had regard to the fact that there is no dispute between the parties that there is a general immediate need for more sites for Gypsies and Travellers (IR110), and that the Council has not granted any planning permissions for sites for Gypsies and Travellers since at least 2007 (IR112). For the reasons given at IR110 – 111, the Secretary of State agrees with the Inspector that the need identified in the GTANA for 27 or 30 pitches in the borough is likely to be an underestimate of the true level of need (IR111).

19. Having had regard to the Inspector's comments at IR113, the Secretary of State agrees that, apart from the appellant, none of the site occupiers have a functional need to live on this site, but that none of them have bases from which to travel and all are in need of pitches (IR113).

Alternative sites

20. Having had regard to the Inspector's comments at IR114, the Secretary of State agrees with the parties that there are no alternative sites in the Borough that are available, affordable, acceptable and suitable, and he has taken account of the fact that the Council cannot suggest any sites that the appellant or other site occupiers could resort to if this appeal fails (IR114).

Failure of policy

21. The Secretary of State has had regard to the Inspector's comments at IR115-117. Whilst the Secretary of State gives less weight to the guidance in Circular 01/2006, he agrees with the Inspector's conclusion that the Council will not meet the need identified in the GTANA for the period 2006 -2011 (IR115). The Secretary of State further agrees with the Inspector's reasoning at IR116, and concurs with his view that it is hard to see how the Council will be able to comply with criterion (1) of LP policy H13. In the light of the Inspector's comments at IR17 and IR117, the Secretary of State shares the Inspector's view that there is no reason why the Gypsy and Traveller Site Allocations process should have stalled (IR117). The Secretary of State considers that this failure to progress the delivery of the necessary sites is a matter of considerable weight in favour of the appeal.

Likely location of alternative sites

22. The Secretary of State agrees with the Inspector's comments at IR118 and concurs with him that it seems likely that most of the alternative sites within the Borough will be within the Green Belt (IR118).

Personal circumstances

23. The Secretary of State has had regard to the Inspector's comments at IR119-121, the case made by the appellant at IR39-48, and to the other inquiry evidence before him including inquiry document 20, the medical records of Joe Ball. Like the Inspector, he considers that all the site residents would be likely to benefit from easier access to GP and other health services (IR120) and he is particularly mindful in this respect that there are three children of below school age living on the site, and another on the way (IR121). Having had regard to the Inspector's comments about the two site occupiers who have particular health issues (IR120), he agrees that in one case the health issues relate to pregnancy, so are inevitably short term, and that in the other case no detailed medical evidence was provided to the inquiry to demonstrate that a settled base is needed to aid a full recovery. Nevertheless, he finds the Inspector's conclusion at IR133 that a return to an itinerant lifestyle could be harmful to the health of these two site occupiers, a reasonable one. He considers that the particular health needs of these two site occupiers is also a factor in favour of the appeal.

24. The Secretary of State agrees with the Inspector's comments regarding access to education at IR121. Like the Inspector he considers that if planning permission is granted it seems likely that the child of school age would return to the site and continue his education, and that the three children of below school age and the unborn child would be likely to benefit from a stable base in terms of access to education (IR121).

Human rights

25. The Secretary of State has had regard to the Inspector's comments about human rights at IR122, and to his remarks about the planning history of the site at IR89. The Secretary of State's conclusion about alternative sites for the appellant and the other site occupiers is set out paragraph 20 above. In the light of these considerations, he agrees with the Inspector that, if this appeal is dismissed and the Council instigates enforcement action, it is likely that the appellant and the other site occupiers would be evicted from the site. Furthermore, he agrees that in the event that they were forced to leave the site some, if not all, of the residents would be forced into roadside camping, and that this would be likely to result in hardship, especially to those with, and expecting, children and those in poor health (IR122). He agrees with the Inspector's conclusion that this would result in interference to the occupiers' home and family life under Article 8 of the European Convention on Human Rights (ECHR). However, as the site owners' rights to use the property for its present lawful use would not be affected, he does not agree that it would result in them being deprived of their right to peaceful enjoyment of their possessions in contravention of Article 1 of the First Protocol of the Convention. He has gone on to consider below whether the interference with the occupiers' rights under Article 8 would be proportionate in the circumstances of this case.

Other considerations raised by local residents

26. The Secretary of State agrees with the Inspector's reasoning and conclusions in respect of highways matters and the sustainability of the site as set out at IR123-124. He has taken account of neighbours' concerns as set out by the Inspector (IR125) and in the inquiry evidence and, for the reason given by the Inspector in IR125, he is satisfied that there is no evidence to suggest that noise arising from the proposed use of the site is unacceptable.

Whether the harm by reason of appropriateness, and other harm, is clearly outweighed by other considerations

27. As set out at paragraph 16 of this letter, the Secretary of State has concluded that the proposal represents inappropriate development in the Green Belt. The Secretary of State has had regard to national policy set out in PPG2 which sets out that 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. In reaching his conclusions on this matter, he has also had regard to the decision of the Court of Appeal in *Wycharon DC v SSCLG* [2008] EWCA 692 which indicates that the test to be applied in this respect is whether the benefits of the proposals clearly outweigh any harm to Green Belt, and any other harm, and that if they do, there will be very special circumstances.

Permanent permission

28. In his consideration of a permanent permission, the Secretary of State has had regard to the Inspector's balancing of considerations at IR126-133. As set out at paragraph 14 above, the Secretary of State attaches substantial weight to the harm arising from inappropriateness. In addition, he has identified that the scheme would cause considerable harm to the openness of the Green Belt, some limited harm to one of the purposes of including land within the Green Belt (paragraph 15 above), and to this must be added a little further harm to the appearance of the area. Because of his conclusion at paragraph 17 above that the harm to the TBHSPA can be mitigated, he does not attach any weight to this matter in his balancing of considerations. Like the Inspector (IR127), the Secretary of State considers that, taken together, these considerations amount to a considerable level of harm. Also in common with the Inspector, the Secretary of State considers that the harm arising from the development being in the Green Belt must be viewed in the context described by the Inspector at IR128.

29. In favour of the appeal, like the Inspector (IR129), the Secretary of State attaches considerable weight to the general immediate need for more sites for Gypsies and Travellers. He has given some weight to his conclusions at paragraph 20 about the lack of alternative sites for the appellant and other site occupiers. He also agrees with the Inspector's reasoning at IR130 and, in common with the Inspector, he attaches great weight to the probability that dismissal of the appeal would result in the appellant and other site occupiers having to leave the site, and the consequences of that. As set out at paragraph 21 above, he also attaches considerable weight to the failure to progress the delivery of the necessary sites he has identified.

30. In his balancing of the factors weighing for and against a permanent permission, the Secretary of State has also taken into account the personal circumstances of the site occupiers. He attaches some weight to their health needs and has taken account of the specific needs of two of the site occupiers. He also attaches some weight to the benefits to some of the occupiers in terms of access to education should permission be granted.
31. The Secretary of State has concluded (at paragraph 25 above) that dismissal of the appeal may result in an interference with the occupiers' rights under Article 8 of the ECHR. He has weighed that interference against the harm to the Green Belt which he has identified above and he is satisfied that the interference which would be caused by a refusal of permanent planning permission is a necessary and proportionate response when balanced against the wider public interest. He concludes that the protection of the public interest cannot be achieved by means which are less interfering.
32. In conclusion, having weighed the factors he has identified as being in favour of a permanent permission against the considerable level of harm he has identified, the Secretary of State considers that harm is not clearly outweighed and he concludes that very special circumstances do not exist in order to justify the development in the Green Belt on a permanent basis.

Temporary permission

33. The Secretary of State has carefully considered the Inspector's comments at IR134-135 on whether a temporary planning permission should be granted, and his recommendation that 5 years would be the appropriate period for such a permission (IR135). Bearing in mind the urgent requirement for sites to meet the unmet need in Guildford in 2006-2011 and the fact that the Council conducted a public consultation on potential sites for gypsies and travellers in 2008, the Secretary of State considers that it should be possible for the Council to make sufficient progress to enable it to allocate some sites in advance of the anticipated date of 2013/14 indicated in Mr Ward's Proof of Evidence, and to have made good progress in making sites available by the end of 2014. He is therefore satisfied that he can expect planning circumstances to have changed for the site occupiers by early 2015, and he has gone on to consider whether or not to grant a temporary permission on that basis.
34. In considering the case for a temporary permission, the Secretary of State attaches substantial weight to the general unmet need, as set out at paragraph 18 above. He has also taken into account the other material considerations in favour of the appeal that he has identified above, which include the occupiers' personal circumstances.
35. Weighing against this proposal, the Secretary of State attaches substantial weight to the harm which arises as a result of the development being inappropriate in the Green Belt. However, he considers that the harm that would result from a grant of permanent permission, as summarised at paragraph 28 above, would not be so great given that the proposal would be of temporary duration.

36. In conclusion, the Secretary of State considers that the factors he has identified in favour of a grant of temporary permission together clearly outweigh the substantial harm to the Green Belt and other harm he has identified, and he concludes that very special circumstances exist to justify a grant of planning permission on a temporary and personal basis.

Conditions

37. The Secretary of State has considered the proposed conditions at the Annex of the IR, and the Inspector's comments at IR87 and at IR136-138, as well as national policy in Circular 11/95. Because of his conclusions above that a temporary, personal planning permission is justified in this case, it is not necessary for him to impose proposed condition 2 in the IR Annex. He has also amended the time period attached to condition 8(i)(c) in recognition of the duration of this permission. He has accepted the remaining conditions, which are renumbered and set out at Annex A to this letter. He is satisfied that these conditions are necessary and relevant to the proposed development and meet the policy tests of Circular 11/95.

Obligation

38. The Secretary of State has considered the Section 106 Agreement and the Inspector's comments at IR105-108, as well as national policy as set out in Circular 05/2005 and in the 2010 Community Infrastructure Levy (CIL) Regulations. He is satisfied that the Agreement is fairly and reasonably related to the development and that it meets the requirements of Circular 05/2005 and of the CIL Regulations (IR108).

Overall Conclusions

39. The Secretary of State concludes that the appeal conflicts with saved LP policies RE2 and H13. The proposals are inappropriate development in the Green Belt and, having weighed up all material considerations, he does not consider that the factors which weigh in favour of the proposal, either individually or cumulatively, clearly outweigh the harm that would arise from a permanent permission. However, in his consideration of whether or not to grant a temporary permission, the Secretary of State is satisfied that those factors would clearly outweigh the harm that would arise from the proposal because of its limited duration. In view of this, he considers that very special circumstances do exist to justify him allowing the appeal proposals on a temporary and personal basis until 31 March 2015. Overall the Secretary of State concludes that the material considerations are of sufficient weight to enable him to determine the appeal other than in accordance with the development plan and to grant planning permission for the proposals for a limited period.

Formal Decision

40. Accordingly, for the reasons given above, the Secretary of State partially agrees with the Inspector's recommendation to the extent he is granting a temporary and personal planning permission. He hereby allows your client's appeal and grants temporary planning permission for a period between the date of this decision

letter and 31st March 2015 for the use of land for the stationing of caravans for the residential purposes of 6 no Gypsy pitches together with the formation of additional hardstanding and utility/ day room ancillary to that use as well as retaining the use for the stabling of horses in accordance with application number 09/P/01851, dated 12 November 2009, subject to conditions set out at Annex A to this letter.

41. 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.
42. 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

43. 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.
44. A copy of this letter has been sent to Guildford Borough Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Christine Symes

Authorised by Secretary of State to sign in that behalf

Annex A: Conditions

Restriction of occupancy of the site to Gypsies and Travellers

- 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.

Temporary and personal conditions

- 2) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants:
 - Plot 1 James Ridgley and Shelby Cole
 - Plot 2 Joe Ball, Mary Anne Ball and Jake Ball
 - Plot 3 Mark Louder and Billy Jean Pullen
 - Plot 4 George Cawt and Lily Smith
 - Plot 5 John Smith and Natalie Smith
 - Plot 6 Kevin Dunphy and Eileen Dunphy

and shall be for a limited period from the date of this decision until 31st March 2015, or the period during which the premises are occupied by them, whichever is the shorter.

- 3) When the land ceases to be occupied by those named in condition 2 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use including the amenity blocks (says utility/day rooms in application) hereby approved, shall be removed. Within 3 months of that time the land shall be restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

Number and type of caravans and pitches

- 4) No more than twelve caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than six shall be a static caravan or mobile home) shall be stationed on the site at any time.
- 5) There shall be no more than 6 pitches on the site and on each of the 6 pitches hereby approved no more than two caravans shall be stationed at any time, of which only one shall be a static caravan or mobile home.

Industrial and commercial activities on the site

- 6) No commercial activities shall take place on the land, including the storage of materials. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

Approved plans

- 7) The development hereby permitted shall be carried out in accordance with the following approved plans: 09_296_001, 002, 003 and 004.

Submission of further details

- 8) 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 of the requirements set out in (i) to (iv) below:
- i) Within 3 months of the date of this decision, or such longer period as the local planning authority may agree in writing, a scheme shall be submitted in writing to the local planning authority. The scheme shall include details of:
 - a) The internal layout of the site, including the siting of the caravans, vehicle parking areas, utility buildings and hardstanding;
 - b) Boundary treatment, trees, hedges and shrubs to be retained and proposed tree, hedge and shrub planting, including details of species, plant sizes and proposed numbers and densities;
 - c) A schedule of maintenance for a period of two years of the boundary treatment and planting, including the replacement of any tree, hedge or shrub that is removed, uprooted, destroyed or dies or becomes seriously damaged or defective;
 - d) The provision of any external lighting;
 - e) Provision for foul and surface water drainage for the site;
 - f) Full details of the utility/ day rooms;
 - g) Details of screens to prevent the headlights of vehicles entering or leaving the site from shining into the windows and gardens of adjoining dwellings;and
 - h) A timetable for the implementation of each of the elements of the scheme.
 - ii) if within 11 months of the date of this decision the site development scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

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

Report to the Secretary of State for Communities and Local Government

by Clive Hughes BA (Hons) MA DMS MRTPI

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

Date: 23 December 2010

TOWN AND COUNTRY PLANNING ACT 1990

GUILDFORD BOROUGH COUNCIL

APPEAL BY

MR GEORGE CRAWT

Inquiry opened on 16 November 2010

Land to the rear of Palm House Nurseries, Glaziers Lane, Normandy, Guildford GU3 2DF

File Ref: APP/Y3615/A/10/2131590

File Ref: APP/Y3615/A/10/2131590

Land to the rear of Palm House Nurseries, Glaziers Lane, Normandy, Guildford GU3 2DF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr George Crawl against Guildford Borough Council.
- The application Ref 09/P/01851 is dated 12 November 2009.
- The development proposed is the use of land for the stationing of caravans for the residential purposes of 6 no Gypsy pitches together with the formation of additional hardstanding and utility/ day room ancillary to that use as well as retaining the use for the stabling of horses.
- The inquiry sat for 3 days on 16, 17 and 18 November 2010.

Summary of Recommendation: The appeal be allowed.

Procedural Matters

1. At the Inquiry an application for costs was made by Mr George Crawl against Guildford Borough Council. This application is the subject of a separate Report.
2. This appeal was recovered for determination by the Secretary of State as it involves proposals for significant development in the Green Belt.
3. The use has already commenced although not all the caravans and mobile homes now applied for are on the site. I carried out an unaccompanied site visit on 15 November 2010, prior to the opening of the Inquiry, and an accompanied visit on 22 November 2010. The unaccompanied visit included viewing the site from the public footpath network to the east and north east of the site. On 22 November I made an accompanied visit to the appeal site itself. I also visited one of the adjoining properties and saw the immediate surroundings including the access road. I also saw two Council-run residential sites for Gypsies and Travellers in the area (at Cobbetts Close and Ash Bridge), a private site that was recently allowed on appeal (known as the Roundabout site) and a residential site for Travelling Showpeople (at Whittles Drive). The locations of these other sites in relation to the appeal site are shown on Document 38.
4. During the course of the Inquiry the identity of the occupiers of one of the pitches changed as the father of the appellant had recently found alternative accommodation elsewhere at a site in a neighbouring Borough. The new site occupier (John Smith) gave evidence to the Inquiry.
5. A draft Agreement under section 106 of the Act was submitted during the Inquiry; a signed and completed Agreement was submitted 5 days after the Inquiry closed (Document 39). The delay was due to the hospitalisation of one of the site occupiers who is also a land owner. This Agreement accords with the Council's *Thames Basin Heaths Special Protection Area (TBHSPA) Avoidance Strategy 2009-2014* which was drawn up in consultation with Natural England. The Council agreed that this overcomes the third putative reason for refusal.

Reasons for Refusal

6. Under powers delegated to the Head of Planning Services, on 14 October 2010 the Council resolved that had it been in a position to determine the application it would have refused it for the following reasons: (Document 3 Appendix GBC-10)

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- 1. *The proposed development is located in the Green Belt outside any identified settlement area, and represents inappropriate development. This is, by definition, harmful to the Green Belt. The applicant has not demonstrated that alternatives to this Green Belt location have been considered, and no other "very special circumstances" have been identified by the applicant to outweigh the harm by way of inappropriateness. The development is contrary to policies RE2 and H13 of the Guildford Borough Local Plan (as saved by DCLG Direction on 24/09/2007), and the guidance contained in PPG2: Green Belts.*
 - 2. *The change of use of the land for the siting of residential caravans, and the construction of additional hardstanding and ancillary utility/ day rooms, would have a detrimental impact on the openness and visual amenities of the Green Belt. The proposal is therefore contrary to policies RE2 and H13 of the Guildford Borough Local Plan (as saved by DCLG Direction on 24/09/2007), and the guidance contained in PPG2: Green Belts.*
 - 3. *The applicant has failed to enter into a s.106 legal agreement to provide a financial contribution in line with the Council's TBHSPA Avoidance Strategy 2009-2014 (February 2010). The local planning authority, in the absence of an appropriate assessment or any alternative mitigation measures, is therefore unable to satisfy itself that the proposals would not have an adverse effect on the integrity of the TBHSPA. In this respect, significant concerns remain with regard to the adverse effect on the integrity of the TBHSPA, including the deterioration of the quality of the habitat and increased disturbance to birds. As such, the development is contrary to policies NE1 and NE4 of the Guildford Borough Local Plan (as saved by DCLG Direction on 24/09/2007), and the Council's TBHSPA Avoidance Strategy 2009-2014 (February 2010).*
7. These reasons are the same as those used by the Council's Planning Committee in refusing planning permission, contrary to Officer advice, for an identical application (ref 10/P/01313) on the same site in September 2010.

The Site and its Surroundings

8. The appeal site lies to the east of Glaziers Lane, a minor road that links the settlements of Normandy and Flexford. The site lies almost equidistant from these settlements and also equidistant from the major towns of Guildford and Aldershot. It is outside any settlement boundary as identified in the Guildford Borough Local Plan.
9. The site is located towards the end of a short, private access road that also serves a few dwellings, nurseries and a commercial site that advertises itself as providing pet, farming and fishing supplies as well as being a horticultural and agricultural recycling station (*C P Backhurst & Co Ltd*). The site immediately adjoins the gardens of bungalows to the west, substantial glasshouses to the south, and fields used for grazing horses to the north and east. There is a public footpath, part of the Fox Way, which runs along the edge of the field immediately to the east of the site, and further footpaths that head off towards the east. The footpaths are shown in Appendix GBC-9 of Mr Ward's evidence (Document 3)
10. The site itself is roughly rectangular with a dog-leg to the access road. Within the site 6 individual plots have been laid out. They have mostly gravel surfaces and are separated from one another by wooden fencing. Plot 6 has a mobile

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- home with a brick surround and other plots have caravans and such domestic paraphernalia as dog kennels. The mobile home appears to be connected to mains drainage, although the line of this differs from that shown on the plans. There are stable blocks at either end of the site that pre-date the use of the site by the appellant. One of the buildings at the eastern end is in a very poor state of repair; the others are in good condition and have concrete aprons. At the eastern end of the site there are still signs of a former sand school and some loose form of hard surfacing through which the grass and weeds are permeating.
11. There are ditches and planting along the northern and eastern boundaries; along the eastern boundary the planting takes the form of pollarded trees that have recently been cut back to keep their branches clear of the overhead power lines. On this boundary the site is raised above the level of the adjoining field. On the northern boundary two of the plots have been extended over the ditch which has been culverted. The plans show that substantial planting is proposed within the site along these boundaries to supplement the existing planting which mostly lies outside the site. This will necessitate the removal of some of the hard surfacing/gravel and re-opening the ditch.
 12. The southern boundary is formed by the wall and glass of one of the glasshouses. Along the western boundary, and at the western end of the northern boundary, there are hedges abutting the gardens of adjoining bungalows. To the west, where it abuts the garden of No 67, there is a high beech hedge, beyond which are the living room and bedroom windows of No 67 and a raised patio.
 13. Glaziers Lane is mostly fronted by a ribbon of dwellings with the occasional field. Behind these dwellings are more fields. The junction of the access road with Glaziers Lane has good visibility in both directions. The access road is, for the first few metres, wide enough for two vehicles to pass. Beyond this there are passing places.
 14. The only public views of the site are from the footpaths to the east. For a short stretch, the mobile home on Plot 6 is particularly visible as it is at a higher level and the boundary planting is limited. From longer views the mobile home is generally seen in the context of a massive glass house. This glasshouse blocks all views of the site from the public footpath to the south.

Planning Policy

15. The development plan includes the *South East Plan* (2009) and the *Guildford Borough Local Plan 2003*. At the time of the Council's putative reasons for refusal, the *South East Plan* had been revoked; it was reinstated before the Inquiry opened. The Council argued that it still attracts some weight. Policy SP5 relates to the Green Belt; the supporting text reiterates the purposes of the Green Belt as set out in PPG2. The intention to review the boundary to the north east of Guildford was subject to a successful challenge and has now been deleted. Policy H4 relates to the type and size of new housing; it identifies Gypsies as being a group with particular housing needs. Policy NRM6 requires that measures be put in place to avoid or mitigate any adverse effects of new residential development on the TBHSPA.
16. Concerning the Local Plan, Policy H13 is a criteria-based policy for the location of Gypsy caravan sites. These criteria include not conflicting with policies for the Green Belt; being within a reasonable distance of facilities; and not harming the environment or character of the locality. Policy RE2 seeks to protect the Green

Belt; new building will be inappropriate unless for one of several specified purposes. Policies NE1 and NE4 seek to protect potential special protection areas; candidate special areas of conservation; and species. The Council's adopted *TBHSPA Avoidance Strategy* seeks to protect and, where necessary, mitigate the impact of developments on the TBHSPA.

17. Emerging policy includes the *Guildford Local Development Framework*. The *Core Strategy Further Options* was the subject of public consultation in March/ April 2009 but the emerging policies have not been adopted and so carry very limited weight. Draft Policy CP14 states that additional pitches for Gypsies and Travellers will be identified through a Site Allocations DPD using a sequential approach. Although potential sites have been identified, and public consultation has been carried out, there is no evidence concerning the outcome of this consultation or of any progress since the consultation period ended in January 2008. Draft Policy CP26 relates to the TBHSPA.
18. I have also had particular regard to ODPM Circular 01/06 *Planning for Gypsy and Traveller Caravan Sites*; PPG2: *Green Belts*; PPS3: *Housing*; PPS7 *Sustainable Development in Rural Areas*; PPS9 *Biodiversity and Geological Conservation*; Circular 05/2005 *Planning Obligations*; and Circular 11/95 *The Use of Conditions in Planning Permissions*. Concerning Circular 01/2006, the Secretary of State has announced an intention to revoke it, describing it as flawed. No timing of such revocation has yet been announced and he has indicated that an impact assessment is required. This announcement is a material consideration which must be taken into account, and affects the weight that can be attached to the Circular as a statement of Government policy, albeit that it remains in place for the time being.

Planning History

19. In January 1988 an appeal was dismissed in respect of an application for planning permission for the erection of 3 detached houses following the clearance of derelict greenhouses on land at Seven Acres Farm, Glaziers Lane. This decision is relevant insofar as the Inspector was concerned about the resultant finger of development protruding into mainly open countryside and being contrary to policies to protect the Green Belt. His concerns about visibility at the junction of the access road with Glaziers Lane have not been raised by the Council in respect of this appeal.
20. There have been four Enforcement Notices relating to various unauthorised developments at the appeal site. These relate to the storage and sale of cars (1988); the repair and maintenance of motor vehicles (1991); hardstanding, sand bays, storage, Portacabin, and parking of commercial vehicles; and the stationing of a residential caravan (1992).
21. On 8 October 2009 a temporary Stop Notice was issued in relation to the formation of hard surfaces, paths, roadways, the installation of sewerage, water and electrical infrastructure, and any activity associated with the use of caravans for residential purposes. It ceased to have effect on 5 November 2009.
22. The application the subject of this appeal was submitted on 12 November 2009; it was appealed for non-determination on 30 June 2010. A week later a fresh planning application, for the same development, was submitted. This was refused by the Planning Committee in September 2010. The scheme is for the use of the land for the stationing of caravans for residential purposes.

23. The development has already commenced. The proposed layout plan (Plan C) shows the site to be sub-divided into 6 plots using the existing access drive along the southern boundary. Each plot would be hard surfaced and used for the stationing of one mobile home and one touring caravan. A utility/ day room would be built on each plot. The stables would be retained. The area between the stables and the gardens of the dwellings to the west would be grassed. Additional planting would be provided to supplement the existing planting along the northern and eastern boundaries. The notation on the plan says that this would include low level planting to screen views under the canopies of existing trees. However, since the scheme was drawn up the trees have been severely pollarded. The plots would be hard surfaced; where practical the existing hard surfacing would be retained. Each plot would be connected to the main sewers.

Other Agreed Facts

24. The appeal site is located within the Metropolitan Green Belt. The development does not fall into any of the categories of development that may be exceptionally permitted in the Green Belt as specified in the development plan and PPG2. The parties agreed that the proposals constitute inappropriate development in the Green Belt.

The Case for Mr George Crawl

The material points are:

25. It is common ground that the site lies in the Green Belt and as such constitutes inappropriate development by definition. However, the harm to openness and other harm is limited. The effect on visual amenity can be mitigated by landscaping. There are other material considerations which, when taken together, clearly outweigh the harm. These constitute the very special circumstances that justify the development and so a permanent permission is appropriate. As an alternative, a temporary permission for five years is sought. If it is not considered that the general material considerations are sufficient, then the personal circumstances of the appellant and the other site occupiers are such that a personal permission should be granted.
26. Concerning the status of Circular 01/2006, the appellant argued that it is a current Circular. There is no draft Circular to replace it. While the Government has announced its intention to revoke it, it is unlikely that the Localism Bill will be on statute before October 2011. In the meantime the Government's stated intention carries no weight while the Circular retains its full weight. Concerning the Partial Review of the RSS, this is only a draft document on which work is unlikely to continue so it will not end up as a published document. The interim RSS policy carries very limited weight.

Gypsy status

27. All the site occupiers are Romany Gypsies who fall within the definition in paragraph 15 of Circular 01/2006. This is not disputed by the Council. All the occupiers have a history of travelling for work. Those occupiers whose parents have resorted to conventional housing returned to travelling when they were no longer under the care of their parents. The individual circumstances of each of the site occupiers are set out in paragraphs 41-48 (below).

Harm

28. It is accepted that the harm to the Green Belt by reason of inappropriateness carries substantial weight. There is some harm as a result of actual impact on openness. The harm by way of conflict with one of the purposes of including land in the Green Belt, encroachment, is limited. This is due to the previous uses on the site which include stables, a sand school, a hard surfaced access road and some hard surfacing over the paddock area. This latter surfacing can be seen in the aerial photographs.
29. In terms of the effect on visual amenity, this is a mixed residential, commercial, agricultural area. The site can only be viewed from public footpaths in the context of large commercial glasshouses that immediately adjoin the site. Any harm to the views from the footpath can be mitigated by landscaping; this can be the subject of a condition.

TBHSPA

30. The appellant and the Council accept that any potential impact on the TBHSPA can be mitigated by a financial contribution to a *Suitable Alternative Natural Green Space* (SANGS). This approach is commonplace and the appellant has willingly entered into an Agreement under s106 with the Council. In the event that a temporary planning permission is granted, then the appellant and the Council have agreed that a contribution of 1/80th the full amount per year of the permission. A payment of the full amount for a temporary permission would make the development unviable.

Material considerations

31. The appellant asserted that the material considerations, when considered together, clearly outweigh the identified harm. He referred to the *Temple* case in which Sullivan J stated that a series of very ordinary circumstances when considered cumulatively may amount to something very special.

Need for sites

32. It is agreed by the parties that there is an immediate unmet need; this is set out in the Statement of Common Ground (SoCG)(Document 15). The Borough is in the top 6 in the country in terms of unauthorised encampments. The exact need has not been quantified; it is in excess of 27 pitches. The *West Surrey Gypsy & Traveller Accommodation Needs Assessment - 2006* (GTANA) figure of 30 is almost certainly an under-estimation due to low pitch turnover and hidden need. While the Council does not consider this level of need to be significant, the basis for this conclusion is unclear. The Council does accept, however, that it needs to find sites but that this will not be within the Circular 01/2006 timeframe of 2011. The Council has not granted a planning permission for a Gypsy and Traveller site in over three years; progress on site allocations has stalled. The Inspector in the nearby Roundabout decision (Document 3 Appendix GBC-1) found that the same situation pertained in Guildford in May 2010 and gave it considerable weight in favour of allowing the appeal. That temporary permission, it is agreed, does not count towards the requirement to provide permanent pitches. The need for sites should carry substantial weight in favour of the appellant.

Alternative sites

33. It is agreed in the SoCG that there are no alternative available sites in the Borough. Case law has established that alternative sites need to be available, affordable, acceptable and suitable. There is no onus on an appellant to prove that no other sites were available (Document 34). While the Council has argued that as the appellant and other site occupiers travel, there is no evidence to show that there are alternative sites available elsewhere. The Council has now amalgamated its waiting lists; the absence of a significant drop in numbers shows that there was little duplication. The appellant gave evidence to show that the 6 adjoining authorities had no vacant sites. There is no point in making a fruitless search for sites when it is known that there are none available.
34. The appellant, and other site occupiers, are not on any waiting lists. However, these are generally young men travelling on their own for the first time. They travel widely. Their only connection to an area is based upon where they were born; that is mostly in the Guildford/ Surrey/ Hampshire area. It is argued that, as with the Roundabout case, considerable weight should be given to the lack of alternative sites.
35. In terms of the Green Belt, most of the Borough (about 85%) falls within the boundary. The Council's alternative sites, set out in the consultation on the Site Allocations DPD, include 6 (out of 8) sites that lie in the Green Belt. This is a measure of the difficulty in identifying sites outside the Green Belt. All 8 sites have some constraints, including 4 of the sites being partly within Flood Zone 3, while two are landfill sites and others have land use constraints or designations. Alternative sites are likely to be in the Green Belt. This impacts on the assessment of the actual harm in this case.

Failure of Policy

36. There is no development plan policy that is based upon a robust assessment of need. The Council's Site Allocations DPD stalled in January 2008. Paragraph 12 (c) of Circular 01/2006 sought to increase significantly the number of Gypsy and Traveller sites in appropriate locations within 3-5 years; that period expires in February 2011. There is no evidence to show that the Council has granted any permissions in the last three years. This is evidence of the historical failure of the current policies. The Council has not complied with paragraphs 21 or 52-57 of PPS3; there is no deliverable supply of land for sites. Paragraph 71 of PPS3 is therefore relevant.
37. The Council's failure to adopt any form of transitional arrangements as required by paragraphs 41-46 of Circular 01/2006 shows the Council's flawed approach to site provision. This failure of policy should be given substantial weight in the appellant's favour. The approach of the Inspector in the Roundabout case was to give this failure considerable weight.
38. It was also argued that the criteria set out in Policy H13 of the Local Plan would be complied with. The Council's concerns about criterion 1 are unfounded as the policy refers back to Policy RE2 which in turn relates to new building in the Green Belt. This development involves a use of the land with the utility rooms being ancillary to the land use. Landscaping can be provided, as shown on the submitted plans, to accord with criteria 5 and 6.

Personal circumstances

39. All the appellants have a need for a pitch; in the context of the lack of alternative sites this is significant. The site occupiers are mostly young and have young families. The appellant's younger son is of school age but has moved off the site with his mother pending the outcome of this appeal due to the poor living conditions on the site. Prior to this he attended the local primary school. There are three other children under the age of two, and a further child expected, who will be put into school in due course. This aspiration should be given some weight. Schooling can best be achieved from a stable base. Dismissal of this appeal and subsequent eviction would be likely to be harmful to the education prospects of these children. Many of the site occupiers were themselves denied the chance to go to school.
40. The health of one of the site occupiers is poor. Since he contracted measles in the summer he has been very ill; details of hospital appointments have been provided. There is also the general point that access to health facilities is easier from a stable base. The lack of any overwhelming needs by most of the site occupiers does not mean that this factor should not attract weight. Substantial weight should be given to the personal needs of the appellant and site occupiers.
41. The appellant and other site occupiers gave evidence to the Inquiry. They all stated that they did not have the resources to buy another site if this appeal is dismissed. Their individual circumstances are set out below:
42. *George Crawl* aged 38 is a Romany Gypsy who intends to live on Plot 4 with his wife Lily Smith and their three children aged 16, 15 and 8. They have never had a permanent pitch, moving around and staying on friends' pitches where possible. His younger son has been taken out of the local school as his wife could not live on the site in its unfinished state. His wife, daughter and younger son are away travelling. Mr Crawl, who was born in Chertsey, works as a painter and decorator, travelling to find work. He has travelled extensively, as far west as Bristol and north to Scotland, rarely staying in one place for more than 3 to 4 weeks. He has six horses that he keeps in a field near Reading; they are looked after by a friend. He travels to fairs such as Appleby, Stowe, Pretty Fair and Epsom races. His family are in good health.
43. His children have had very little schooling; his older son aged 15 works with him. He has been looking for sites for years. As far as he has been told, local authority sites are all full and have waiting lists. His parents have recently moved onto a Council site about 15 minutes' drive away having been on a waiting list. His mother has mental health problems and needs care.
44. *Kevin Dunphy* is an 18 year old Romany Gypsy who lives on Plot 6 with his wife Eileen and 5-month old daughter. He works as a landscaper, travelling to find work. Often he stays by the roadside, sometimes with friends. Initially he travelled with his parents in the south and midlands but moved out 2 years ago. He also travels to Christian meetings around the country. The family visit fairs such as Appleby and Stowe; they have been away for much of the last 5 or 6 months. He was born in Frimley and wants his daughter to go to school locally. His family are all in the Guildford area.
45. *James Ridgley* is an 18 year old Romany gypsy who lives on Plot 1. He will marry Shelby Cole in the spring. His parents have a house in Wiltshire but he cannot live in his caravan there. As soon as he got his driving licence he left the house

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- and travelled to find work, mostly in Surrey and Hampshire. He stops by the roadside or doubles up with friends if possible. He works as a gardener and does general maintenance work. Around Christmas he works in Wisbech cutting Christmas trees with his uncle. He travels to fairs such as Appleby, Stowe, Cambridge and York. His fiancée's family are from the Surrey area, as is most of his family. He has no health problems. He has had almost no schooling. He has not been out and about long enough to go on a waiting list.
46. *Mark Louder* is a 20 year old Romany Gypsy who lives on Plot 3 with his girl friend, Billy Jean Pullen and their two children aged 2 and one. He works as a tree surgeon and has travelled extensively for work on his own since he was 15. He also travels to fairs such as Appleby and Stowe, using them as bases to find work. His parents have now settled in a house in Farnborough; he lived with them until he was old enough to travel. He would not return to living in a house. He has no health problems but wants his children to have an education; he had very little education. He is a cousin of George Crawl. He is from Frimley, having been born in Farnborough, Surrey.
47. *John Smith* is a 19 year old Romany Gypsy who lives on Plot 5 where he would be accompanied by his wife Natalie who is expecting their first child in May/ June 2011. They were living on the side of the road until recently; this plot was to have been occupied by George Crawl's parents until they managed to get onto a Council run site. He is a tree surgeon who travels to find work. He currently mainly travels in a 30 mile radius of Guildford. He has relatives and friends in this area. He also travels to fairs such as Appleby and Stowe and to Christian conventions. He has no health problems but his wife has had problems of dehydration and high blood pressure during pregnancy. She is registered at Chertsey Hospital. His parents are on a site in Iver but it is overcrowded. Since leaving there he has not lived anywhere lawfully. He lived on the appeal site, doubling up, until a plot became vacant. He has had some limited schooling.
48. *Jake Ball* gave evidence on behalf of his older brother, *Joe Ball*, who is unwell. Joe Ball, one of the site owners, is a 19 year old Romany Gypsy who lives on Plot 2 with his brother and his mother, Mary Cole. When he marries, his fiancée will live on the pitch with him. He has never had a permanent pitch; when he was well he travelled with his mother and brother doing landscape gardening and tree surgery. They lived in car parks and at the roadside. They visit fairs such as Appleby, Stowe, Cambridge and York. Joe Ball has recently been in intensive care with measles which has left him with long QT syndrome, which is a heart condition for which he is receiving ongoing treatment at Frimley Park Hospital. He was in hospital in London during the Inquiry for further tests and to have a heart monitoring device fitted. If successful, and subject to health issues, they wish to use the site as a base for travelling. They had lived on land at his grandmother's house in Farnborough last winter but had to move off when a recently married aunt needed it. They have relatives in the area. Apart from Joe Ball, the family are in good health. They have no education requirements.

Human rights

49. The Article 8 rights of the appellant and the other site occupiers are clearly engaged. They occupy the appeal site and are likely to be evicted if the appeal is dismissed. The effect of dismissal and eviction would be disproportionate when considering the harm to the Green Belt caused by the development. The ECHR case of *Chapman* (Document 8 Appendix B1) established that there is a positive

obligation by virtue of Article 8 to facilitate the Gypsy way of life. In order for an interference with human rights to be justified it must be shown that the harm caused by the interference is proportionate as in *Angela Smith v Doncaster* (Document 8 Appendix B6.)

Transitional arrangements and temporary permission

50. The Council is in a transitional period so the arrangements set out in paragraphs 41 to 46 of Circular 01/2006 apply. There is an obligation on local authorities to bring forward site allocations DPDs in advance of regional consideration of pitch numbers where there is a clear and immediate need. The Council accepts that this is the case here as set out in the SoCG. The transitional arrangements are not discretionary; to ignore the immediate need is clearly contrary to the aims, intentions and requirements of the Circular. The lack of progress since January 2008 could be regarded as intentional failure to address the requirements.
51. The Circular gives advice on the consideration of temporary permissions; it is necessary for the Council to consider conditions. The Council has accepted the need, acknowledged the lack of alternative sites and confirmed that it intends to allocate sites in 2013/2014. In considering temporary permission, the balancing exercise is different to a permanent permission as the decision maker must give *substantial* weight to the unmet need. This is the only place in the Circular where the decision maker is directed to the weight to be given to an element in the balancing exercise. The Circular makes it clear that the grant of temporary permission in such cases does not set a precedent. The circumstances of this case are similar to *Wycharon v Butler*. (Document 8 Appendix B4)

Other matters raised by third parties

Highway safety

52. In response to submissions from third parties the appellant referred to the lack of any highway safety objections from the County Highways Authority. No evidence concerning the two fatalities was available to the Inquiry; in the absence of any details they should attract little or no weight. Visibility at the junction is good.

Sustainability

53. The sustainability of Gypsy and Traveller sites must be assessed in the wider context of Circular 01/2006 and not just in the traditional sense of transport mode and distance. The Council agrees with the appellant that the site is sustainable in this wider context.

The Case for Guildford Borough Council

The material points are:

54. The Council based its case on the putative reasons for refusal. It considered that the s106 Agreement signed by the appellant, the other land owners and the Council, provides for a sufficient financial contribution to adequately mitigate any potential harm to the TBHSPA. The harm arising from the other two reasons for refusal is considerable and should weigh heavily in the balance.
55. Concerning the weight to be given to Circular 01/2006, some weight needs to be given to the Secretary of State's intention to revoke it. However, it is still

Government policy so it attracts primary weight. The RSS is once again part of the development plan and so attracts weight.

Harm to the Green Belt

56. PPG2 is clear that where there is harm to the Green Belt it should be given substantial weight. This development is inappropriate development in the Green Belt; the inappropriateness relates to both the use of the land for the purposes of siting caravans as well as the buildings and hardstandings.
57. There is also significant harm to the openness of the Green Belt. PPG2 advises that the fundamental aim of the Green Belt is to keep land permanently open; the most important attribute of the Green Belt is its openness. The appellant accepts that there will be an impact on openness but does not mention its extent. It will comprise the siting of caravans and mobile homes, dayrooms, fencing and other residential paraphernalia. The impact can be determined by what was previously on the site. Much of the alleged hard surfacing had been wholly grown over and the overall level of development was very minor. The proposal will add significantly to the extent of the built development on the site.
58. The development will also undermine one of the five purposes of including land in the Green Belt as set out in PPG2, namely assisting in safeguarding the countryside from encroachment. This is accepted by the appellant notwithstanding the fact that significant parts of the site contained hardstanding. That this purpose is undermined should carry substantial weight.

Harm to visual amenity

59. The harm is significant, especially when seen from public footpaths in the area. It is acknowledged that caravan sites in the countryside are acceptable as a matter of principle by virtue of Circular 01/2006 and that here they are seen in the context of the glasshouses. The Council considers that the caravans are alien in the sense that they are a surprise in the locality. The Council also considers that character is connected to visual amenity; attractive rural countryside is clearly related to visual amenity. The extent of existing development on the site is minimal. The Council has long resisted development on the site as seen by the four Enforcement Notices. The landscaping proposals are inadequate to properly screen the site as there is insufficient width to provide a sufficient landscaping belt and the planting would be low level. An amendment to the scheme would need a further application; fences would need to be moved.

Policy harm

60. Some local policies have been undermined, in particular Policy RE2 of the Local Plan. The appellant is clearly wrong to say it does not apply in this case; buildings are proposed comprising the day rooms, fencing and the walls that have been built. Local Plan Policy H13 (1) is also contravened. This saved policy accords with the guidance on criteria-based policies in Circular 01/2006. It also relates to national policy so if PPG2 is contravened, then so is this policy.
61. Concerning the TBHSPA, when the s106 Agreement is completed and signed, then the Council is satisfied that this issue is settled. If for any reason it is not completed or the land registry title is not forthcoming, then the appeal should fail as it would contravene the relevant Local Plan policies and national advice.

Other material considerations

Need for sites

62. The appellant considers that the level of need alone is capable of justifying the development. His relies on the *Yvette Jones* case (Document 8 Appendix B9). This is not comparable, however, as the level of need in that case was 75 pitches in 2007, potentially more in 2011. That is not comparable to the Guildford position. While the aim of Circular 01/2006 is to increase the number of pitches, it is wrong to suggest that only if sufficient provision is made can appeals be dismissed. Paragraph 62 of the Circular makes it clear that is not the case.
63. The Council agrees with the findings of the GTANA in that the unmet need is in the order of 27 pitches; even if that is an under estimation the level of need only grows to around the mid-30s. In the Roundabout case the level of need was not sufficient to grant a permanent planning permission. It is not close to the *Yvette Jones* situation in South Gloucestershire. The Council acknowledges that there is some need and that the need attracts some weight.

Alternative sites

64. The Council does not dispute that it is right in law that there is no burden on the appellant to establish that there are no alternatives. However, the point made by the Council is that the lack of searches by the appellant, or other site occupiers, in appropriate locations should count against the appellant. This is particularly so in a Green Belt case. The appellant, and the other site occupiers, travel widely and have not looked for sites. They are not on any waiting lists and have made no real attempts to discover or obtain alternative locations. The only potential site occupiers, the appellant's parents, who were on a waiting list have been offered and have taken up a place at Penny Hill Park (Document 26). The only site occupier with a functional need to remain in this area is the appellant; the others who travel extensively would be able to establish themselves elsewhere. The lack of any search should count against the appellant.

Location of alternative sites

65. The Council has identified potential alternative sites; not all of these are in the Green Belt. However, the potential alternative locations for the occupiers are considerably beyond the boundary of Guildford Borough and so there is a greater potential for non-Green Belt sites. The fact that most of the future identified sites in Guildford are in the Green Belt should carry limited weight.

Alleged failure of policy

66. The appellant argues that the Council has failed to produce a Site Allocations DPD, cannot identify a 5-year supply of deliverable sites and so paragraph 71 of PPS3 is relevant and has acted contrary to paragraph 43 of Circular 01/2006 by not producing a DPD in advance of the LDF. The Council has good reasons, however, for taking those steps. Consultation on the Site Allocations DPD took place in 2008; it needed time to consider the results. The Council successfully challenged the RSS in 2009; in 2010 the Government announced it was to revoke the RSS. In these circumstances it would be wrong to place weight on paragraph 71 of PPS3 or paragraph 43 of Circular 01/2006. The fact that identified sites have other constraints does not preclude development, as shown in *Mitchell v*

Waverley (Document 8 Appendix B12) which is in an Area of Great Landscape Value.

Personal circumstances

67. The personal circumstances of the appellant and other site occupiers should be given limited weight. Even the appellant only gave it "some weight". There is only one child who needs to attend school at present; he does not appear to have had a settled period at the school. This compares to the Roundabout case where two children had a settled education. Only two site occupiers have health issues; one of these is temporary as it relates to a pregnancy. Concerning Joe Ball, there is a lack of hard evidence as to the severity of his problems or the degree to which he needs a settled location as a result of his medical needs. The lack of certainty includes the potential issues surrounding his heart condition; the frequency of necessary hospital visits; or whether the monitoring requires a settled base. Most of the occupiers are just starting out and their personal circumstances do not point to the need for a settled base.

Human rights

68. The Council took the human rights of the appellant and other site occupiers in its assessment of matters reported to the Planning Committee (on the re-submitted application). This balanced the appellant's and site occupiers' needs against the necessary protection of the Green Belt. The harm is not outweighed by the material considerations relied on by the appellant.

69. On the balance before the Inquiry, the harm is such that it is necessary to refuse permission in the general interest and to protect the Green Belt. The refusal is proportionate. As set out in *Lough* (Document 23) this concept is the striking of a fair balance between the competing needs. In this case the balance should lie firmly in favour of refusing permission, whether on a permanent or temporary basis.

Temporary permission

70. The Council considered whether temporary planning permission should be granted. There is a likelihood that sites will become available, but this must be seen against the harm that would arise in allowing the site to remain in a developed state. The Council's intentions can be seen by the fact that it has started the Site Allocations DPD process and has sought out potential sites for Gypsies and Travellers. In this case the harm outweighs even the substantial weight that should be given to the unmet need.

71. The Roundabout site is clearly distinguishable from this case in that it is smaller; it is previously developed land; two children had a settled education; and the site is only visible from close to. In contrast, this is a larger site that was essentially green field; there are limited education requirements; and it is visible from longer distances.

Oral representations made at the Inquiry in support of the Council

The material points are:

72. **Nick Norton**, a local resident whose house abuts the access drive, provided statistics to demonstrate that there are more Gypsies and Travellers on public sites in Surrey than anywhere else in the country. Guildford accommodates 22%

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- of the County's caravans. He was concerned that the application had not been determined and that Gypsies and Travellers could turn up, buy a plot of land, develop it and then successfully apply for planning permission. The appeal decision on the Roundabout site should not have been used by the Officers as a precedent. He was also concerned that in the consultation on the Site Allocations DPD it was said that expansion of provision in Normandy would have the least impact on the other areas of the Borough. It should not be politically expedient to place more Gypsies and Travellers in this area. Normandy parish already accommodates 12 Travelling Showpeople pitches; there are public Gypsy and Traveller sites at Cobbetts Close and Ash Bridge; this area already supports most of the sites in the west of the Borough.
73. In answer to questions he said that there is enough provision in this area; the public sites bracket the parish. The appellants could have discussed their application before going to appeal. There are problems associated with this site due to the use of the access with vehicles using it to access the commercial use.
74. **Jim McAuley**, a local resident whose bungalow is immediately to the west of the site, stated that the site did not appear to be being used residentially. It had become quiet in September; by October only one caravan had lights on most evenings. He had kept a log of the number of caravans with lights on which showed that few were being occupied. He could see the site through his hedge.
75. **Beryl McAuley**, wife of Jim McAuley, spoke about her brother who lives with them and has Down's Syndrome. His main interest is photography, and the only independence he has is to go off down the access road to take photographs. He can hear the large lorries that use the road to access the commercial premises but the speed of the Gypsies' vehicles frightens him. In answer to questions about her letter to the Council, she referred to the appellants having a different way of life. They are young, noisy youths, who drive fast and have barking dogs. They constitute a larger group than you would usually get in a family. She was concerned that the appellants were getting away with things that the settled community could not do; the settled community had to wait on Council house waiting lists.
76. **Michael Hughes** spoke on behalf **Normandy Parish Council** and **himself**. The site is in the Green Belt and the Parish Council objects to the development. There had been a previous application for houses that was refused in 1988. This scheme does not comply with Policy H13 of the Local Plan and should be refused. He referred to two fatalities at the junction of the access road with Glaziers Lane but could not recall the details. The access is used by large lorries which have to cross the centre of the road to enter/ leave. Gypsy sites should be provided on a planned basis, not on an ad hoc approach by the Gypsies themselves. The Council's failure to provide sites is not a reason to allow sites such as this.
77. On his own behalf, he raised concerns that the site is remote from shops; the local school is over-subscribed. While there is a bus along the A323 this is some distance away. In answer to questions he acknowledged that there are sites in the Green Belt but more sites should not be forced on the community. It should go through the proper process with involvement by the Council, Gypsies and Travellers and the local community. The Parish Council accepts the need for sites but there are too many in Normandy.

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78. **Cllr Diana Lockyer-Nibbs** is the Borough Councillor for Normandy. She supported the Council's putative reasons for refusal as the development was inappropriate in the Green Belt. In determining the second application, the Officers had considered the lack of alternative sites and that the current unmet need could constitute very special circumstances. However, Circular 01/2006 says they should not depart from national planning policies; the Officers now accept that their opinion was incorrect. Sites outside the Green Belt have not yet been fully explored so paragraph 49 of the Circular has not been met. This site differs from the Roundabout site; that site only involved a single pitch.
79. The Council only has two official sites; they are both close to the boundaries of Normandy parish and there is a Travelling Showpeople site in Normandy. Normandy should not be the easy option for considering sites in Guildford. None of the proposed site occupiers are on the Council's waiting list; allowing this appeal would not alter Guildford's requirement to provide 30 pitches. Concerning visual amenities, the officers' report ignores the two adjoining dwellings and in order to accommodate planting, Plot 6 would need to be reduced in size.
80. In answer to questions, the Councillor acknowledged that she was on the Committee that resolved to refuse the second application. It is a democratic process and the members do not need to follow officer advice. She did not recall that most of the discussion had been about the recent letter from the Secretary of State on the revocation of Circular 01/2006. She stressed that she did not consider this to be a suitable site for another Gypsy and Traveller site. She agreed that she did not want another such site in Normandy as such sites cause friction. She favoured dispersal of sites around the Borough. She did not consider that the Council's failure to provide sites was a sufficient reason to allow sites. In response to the fact that 6 of the Council's identified sites are in the Green Belt, she considered that the Council should reject them if in Normandy. She would not support another site in the Green Belt in Normandy; she did not consider that this showed that she was pre-determining applications. She could not see why Gypsies and Travellers could not live in houses.

Written Representations

81. **Fifty-four letters and emails** were submitted in response to the Council's notification letter, all raising objections to the development. The main reasons for the objections related to the following matters:
- Land is in the Green Belt and so should not be allowed to be developed for homes;
 - Work carried out without planning permission on a Friday night;
 - Residents not adhering to the rules the rest of society obey;
 - Traffic generation and a dangerous access where there have been two fatal accidents;
 - Adverse effect on infrastructure;
 - If allowed, surrounding fields and paddocks may also be vulnerable to such development;
 - Unacceptable noise from dogs, roosters, generators, vehicles;

- Dangerous use of access drive by ponies pulling buggies;
 - Occupiers have no respect for adjoining property as seen by broken windows at glasshouses;
 - Nearby properties have been devalued, the only option may be to sell more land to these Gypsies;
 - There are enough Gypsy and Traveller sites in and around Normandy, some do not have planning permission;
 - Need for affordable housing;
 - Adverse effect on the character of the village and appearance of the countryside; and
 - Temporary planning permission would make it more difficult to move the site residents as they would have children at school.
82. In addition to the above, letters were received from the following organisations:
83. **Normandy Parish Council** reiterated its formal objections made to the Borough Council. The site is in the Green Belt and outside the settlement area. It is quite unsuitable for such a development. Also concern about traffic exiting onto Glaziers Lane. The Council further commented that a well attended meeting of the Normandy Action Group strongly opposed the development.
84. **CPRE Surrey** objects on the grounds that the site lies within the Green Belt. The development involves an illegal incursion onto agricultural land. It affects openness and encroaches into the countryside on the rural fringe of the community. It is contrary to the Local Plan policy. The inadequacy of site provision is not sufficient; it is up to the local authority and the appellant should not take the law into his own hands.
85. **Natural England** submitted a report concerning the protection of the TBHSPA.
86. In respect of the re-submitted planning application which was reported to the Council's Planning Committee, the Council received **eighty-two letters raising objections** to the development. The objections broadly refer to the same matters as listed above, with the following additions:
- Increase in local flooding pressures;
 - The development contravenes planning policies;
 - There no very special circumstances to justify the development; and
 - Loss of local trees and hedgerows.

Conditions

87. The Council submitted a list of suggested conditions (Document 14); the agent for the appellant included a list of topic areas for conditions in his proof of evidence (Document 8, paragraphs 163-167). These suggested conditions were discussed at the Inquiry and a schedule is attached to this report. The schedule provides alternatives depending on whether the Secretary of State is minded to grant permanent or temporary permission and whether any permission should be personal to the appellant and the other site occupiers.

Conclusions

88. The following considerations are based upon the evidence given at the Inquiry, the written representations made and my inspection of the site and the surrounding area. In this section the numbers in square brackets [] refer to paragraphs in the preceding sections of this Report.

Planning History

89. The planning history is relevant insofar as the Council has consistently taken enforcement action against various unauthorised uses on this land when they have taken place. This shows the Council's commitment to maintaining the openness of the Green Belt. It also indicates that if this appeal is unsuccessful the Council is likely to take action to evict the appellant and other site occupiers from the land. [19-21]
90. The site has been in use as a riding establishment with stables, storage, a sand school/ ménage and an access drive. This is clear from the aerial photographs (Document 5). The mid part of the site appears to have been loosely surfaced at some point between 1998/9 and 2004/5, although the surfacing did not prevent vegetation from regenerating and by 2009 it had fully greened over again. Some traces of the surfacing remain on the site but this is mostly covered by the gravel put down by the site occupiers. [19-21, 28]
91. The planning application the subject of this appeal would have been refused by the Council under powers delegated to the Officers had the appeal against non-determination not been made. An identical application was submitted concurrent with the appeal which was reported to Committee with a recommendation that it be approved subject to conditions and subject to the applicant entering an Agreement under s106 of the Act to secure financial contributions in respect of the TBHSPA. These recommended conditions would have limited the occupation of the site to the current appellant and site occupiers (apart from Plot 5 where there has been a recent change of occupier) and time limited the permission to 5 years. The Committee resolved to refuse the application. This application was refused before the Officers' delegated decision. [Document 3 Appendix GBC-3; 4, 22]

Planning Policy

92. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan includes the South East Plan 2009 and the Guildford Borough Local Plan 2003. The emerging LDF is at an early stage and while it includes a policy for Gypsy and Traveller accommodation (Policy CP14, Document 3 Appendix GBC-12) the plan is at such an early stage that it carries very little weight. At the time that the putative reasons for refusal were drawn up, the South East Plan had been revoked; it was reinstated during the week before the Inquiry opened. The RSS policies, about which evidence was produced at the Inquiry, add little to the relevant Local Plan policies. The cited Local Plan policies have been saved by virtue of a Direction under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004. [15-17, 38, 60, 61]
93. The site lies within the Metropolitan Green Belt. Under Policy RE2 of the Local Plan the new buildings now proposed are inappropriate development. I do not

agree with the appellant's contention that this policy is not relevant; the policy relates to new buildings and new buildings are included in the current proposals. The fact that these buildings would be ancillary to the residential use of the land does not affect the relevance of this policy. The development would be contrary to Policy H13 of the Local Plan. This is a criteria based policy and the proposals conflict with criterion (1) which relates back to policies for the Green Belt. [15, 16, 24, 38, 60]

94. Concerning the RSS, there is no conflict with Policy SP5 (Green Belts) which says that the broad extent of the Green Belt in the region is appropriate, or with Policy H4 which requires local authorities to identify the full range of existing and future housing needs and identifies Gypsies as having particular housing needs. [15]
95. Concerning Circular 01/2006, both the main parties argued that this should be afforded full weight, notwithstanding the Secretary of State's stated intention to revoke it. This Circular remains extant and it is not known what will replace it, or the timescale for its replacement. In the meantime, it is the principal source of advice on sites for Gypsies and Travellers. I consider that its weight must be reduced by the Secretary of State's stated intention but it nevertheless retains substantial weight. It has been relied upon by both the appellant and the Council in this appeal. [18, 26, 55]

Main issues

96. It is accepted that the development constitutes inappropriate development in the Green Belt. The main issues are:
- Whether the appellant and other site occupiers are Gypsies as defined in paragraph 15 of Circular 01/2006;
 - The impact of the development on the openness of the Green Belt;
 - The impact of the development on the appearance of the Green Belt;
 - Whether the development would have an adverse effect on the integrity of the TBHSPA; and
 - 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. [6]

Gypsy status

97. The SoCG states that the Gypsy status of the appellant and the other site occupiers is agreed. The appellant and the site occupiers all gave evidence at the Inquiry. This evidence demonstrated that none of them have any base other than the appeal site and that they all travel to find work. While two of the occupiers have lived in houses with their parents, they both left home and started travelling when old enough to drive. The evidence of an adjoining occupier, including a survey of site occupation, accords with their evidence that they are away travelling for much of the year. Based upon the evidence of the appellant and other site occupiers and the lack of any evidence to the contrary, I conclude on the first issue that they are all Gypsies for the purposes of paragraph 15 of Circular 01/2006. [27, 41-48, 74]

Green Belt

98. The SoCG states that the proposal constitutes inappropriate development in the Green Belt as described in PPG2. Paragraph 3.1 of PPG2 advises that there is a general presumption against inappropriate development in the Green Belt; paragraph 3.2 advises that inappropriate development is, by definition, harmful to the Green Belt. Substantial weight is attached to that harm to the Green Belt. [18, 24, 28, 56, 83, 84]

Openness

99. There is also harm to the openness of the Green Belt; that is not disputed by the appellant. PPG2 advises 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. In this case the harm to openness arises from the siting of the proposed six mobile homes, six touring caravans, six day rooms and associated fencing, hardstandings, parking and domestic paraphernalia. For parts of the year it is likely that some, or all, of the touring caravans and some, or all, of the vehicles would be off-site when the site occupiers are away travelling for work or to the various fairs that they all attend. [18, 23, 25, 28, 57, 84]

100. It is also necessary to take into account the development that was on the site before the current occupiers arrived as this reduced its openness. There would not be any demolition that could mitigate the impact on openness as the stables and storage building would be retained; nor is it proposed to remove any of the original hardstanding. However, the occupiers would utilise the existing access drive that runs along within the site close to the southern boundary. The former sand school/ ménage also reduced openness, as did the loose hard surfacing over the middle part of the site. This latter feature only attracts very limited weight as the vegetation was clearly reclaiming this part of the site by 2006/7. [18, 28, 57]

101. There is further harm arising from the conflict with one of the five purposes of including land in the Green Belt as identified in PPG2. The development would fail to assist in safeguarding the countryside from encroachment. The site lies outside any defined settlement; it therefore lies in the countryside. The increase in the amount of development on the site would result in harm by way of encroachment, although this harm is limited by the previous use of the land and its associated development. PPG2 advises that the purposes of including land in the Green Belt are of paramount importance to their continued protection; this development would fail to provide that protection. I conclude on the second issue that the development would result in substantial harm to the Green Belt by reason of inappropriateness; considerable harm to the openness of the Green Belt; and some limited harm to one of the purposes of including land in the Green Belt. [18, 28, 58, 84]

Appearance

102. The site is set well back from Glaziers Lane, accessed down a private access road. The planting, dwellings and glasshouses prevent any views of the site from the road. Indeed, due to the substantial glasshouse to the south of the site it is only possible to see the development on the site from this direction once one has entered the site from the access road and turned the sharp corner within the site. However, the development that has already taken place on the site is clearly

visible from public viewpoints as there is a network of public footpaths, including the Fox Way, which runs along the edge of the field immediately to the east of the site. There are further footpaths that head off into the open countryside from which further, longer, views of the development may be seen. [8-14, 23, 29, 59]

103. At the time of my site visits the mobile home on Plot 6 was particularly visible from the footpaths. It is sited close to the eastern boundary of the site where the ground level is above that of the footpath. The row of trees that are just outside the eastern boundary of the site have recently been severely pollarded, due to the proximity of overhead electricity cables, and so now provide less screening than they would have done when the appellant's landscaping scheme was conceived. In most of the more distant views from the footpaths, the mobile home, and the other caravans that are located deeper into the site, can only be seen against the backdrop of, or in the context of, the very substantial glasshouse that abuts the site. It is only when seen from close by that the mobile home is particularly conspicuous. [11, 14, 23, 29, 59]
104. There is ample space within the site to provide further landscaping. The plans show a landscaped strip about 3m deep within the site along this boundary; this could be increased without needing to resite the mobile home as some planting could be inside the line of the proposed fence. I consider that satisfactory landscaping could be provided and that this would significantly reduce any harm to the visual amenity of the area. The development on the site, and in particular the top of the mobile home on Plot 6, would still be likely to be visible and this would cause some harm to the rural character of the area. However, I conclude on this issue that, subject to compliance with a condition requiring the submission and implementation of a landscaping scheme, the overall impact of the development on the appearance of the Green Belt would not result in significant harm. [Plan C; 29, 59, 87]

TBHSPA

105. The site lies within the 5km radius of the Ash to Brookwood Heath SPA, which is part of the TBHSPA, and within which any additional residential development is unacceptable unless accompanied by appropriate mitigation measures. The Council, in consultation with Natural England, has adopted the *TBHSPA Avoidance Strategy 2009-2014*. This took effect from 1 April 2010. It allows new residential development provided it is accompanied by an Agreement under s106 to secure a financial contribution towards off site mitigation measures (SANGS). [5, 15-18, 30, 54, 85]
106. Concerning the potential impact of this development on the TBHSPA, I have had regard to the Agreement that has been completed and signed by the appellant, other site owners and the Council. This Agreement makes provision for the payment of £29,344.38. This is made up of £24,664.38 in respect of the SANGS contribution, £3,780 in respect of the Access Management Contribution and £900 for legal and monitoring costs. This would be payable in full within 14 days of the grant of permanent planning permission. [Document 39; 5, 16]
107. In the event that temporary planning permission is granted, then the Agreement requires that within 14 days of the decision the signatories will pay to the Council a SANGS contribution of £308.28 and an Access Management Contribution of £47.28 for each year, or part of a year, that the land may be occupied under the temporary permission. These sums are equal to 1/80th of the

total payable in the event of a permanent planning permission. In addition the full £900 legal and monitoring costs would be paid. There is no provision for any repayment in the event that the use ceases before the end of any temporary period. These terms are the same as those accepted by the Inspector in the nearby Roundabout case. [Document 39; 5, 16]

108. The use of the land commenced after the designation of the TBHSPA. While it is possible that, if the appeal fails and the site residents are evicted they may continue living in this area due to their close family ties, the potential significant impact on the TBHSPA can only reasonably be mitigated by compliance with the Council's adopted *Avoidance Strategy*. That compliance can be achieved by the Agreement. It is fairly and reasonably related to the development and it meets the requirements of Circular 05/2005. I conclude on this issue that the harm to the TBHSPA can reasonably be mitigated by the financial contribution that the site owners have agreed to make. [5, 16]

Other Material Considerations

109. The other material considerations advanced by the appellant in support of the proposals relate to the need for sites; the lack of alternative sites; the failure of policy; the likely location of any alternative sites if and when they become available; human rights and the personal circumstances of the appellant and other site occupiers including health and education considerations. Other material considerations advanced against the proposals include highway issues; the sustainability of the site; and harm to the living conditions of nearby residents.

Need for sites

110. There is no dispute that there is a general immediate need for more sites for Gypsies and Travellers. That need is national, regional, local and personal. The sub-regional GTANA identified a need for 96 pitches in the sub-region, with a need of 27 arising from Guildford. In accordance with a redistribution of this need based upon preferences for an ideal location throughout the sub-region, and taking account of a supply of 10 pitches arising from vacancies, a projected distribution of 30 pitches was required for Guildford for the period 2006-2011. The GTANA has a number of shortcomings. These include carrying forward one year's potential vacancies (2) over the 5 years to give the total of 10; an unlikely total given the low turnover on the Council-run sites. More significantly, the GTANA did not carry out a vigorous survey of needs arising from those currently living in bricks and mortar. The fact that two of the young site residents had moved out of bricks and mortar as soon as they were able to travel independently is indicative of this hidden need. [32, 41-48, 62, 63]

111. The level of need is also likely to have risen since the GTANA was carried out. This is evidenced by the waiting lists for the two Council-run sites in Guildford that totalled 34 applicants at the time of the GTANA but the most recent individual figures total 54 applicants. The waiting lists have now been combined to a single list, with about 47 applicants, which shows that the level of duplication was low. The level of need is also evidenced by the number of unauthorised sites in the Borough. The latest figures provided to the Inquiry show 32 caravans on 11 sites including the appeal site. One of these caravans is tolerated. The identified need for 27 pitches (without sub-regional redistribution) or 30 pitches

(with redistribution) is therefore likely to be an underestimate of the true level of need. [Document 3 Appendix GBC-3; Document 29; 3, 32, 62]

112. It was not disputed that subsequent temporary planning permissions, such as that at the Roundabout site, do not address this longer term need. It is not disputed that the Council has not granted any planning permissions for sites for Gypsies and Travellers since at least 2007. [32, 63]
113. The appellant and other site occupiers also have a requirement for a site. If permission is refused the Council is likely to take enforcement action and so they would be likely to be evicted. While the appellant and site occupiers tend to travel widely throughout the country, this is a consequence of the lack of work in this area. They all have family connections in the Surrey area and limited connections elsewhere. The appellant has his elderly parents, one of whom is ill and needs care, living nearby. His horses are kept near Reading. While none of the other site occupiers have a functional need to live on this site, none of them have bases from which to travel and all are in need of pitches. [32, 41-48]

Alternative sites

114. It is common ground that there are no alternative sites in the Borough that are available, affordable, acceptable and suitable. The Council cannot suggest any sites that the appellant or other site occupiers could resort to if this appeal fails. None of the site occupiers are on any Council or private waiting lists, but given their youthfulness, limited number of dependants, and absence of medical needs, they would be unlikely to get preferential treatment. The Council's waiting list is lengthy and pitch turnover is low. While they are mobile and so, in theory, could live elsewhere in the country they all have local family connections. Nonetheless they have not carried out any systematic search for sites elsewhere and there could be sites available that do not have constraints such as Green Belt. However, no such sites have been identified. [33-35, 64]

Failure of policy

115. The Council has started on its process of finding alternative sites; a Site Allocations Issues and Options Consultation Paper was the subject of public consultation. No results of this consultation exercise were available to the Inquiry, even though the consultation period ended in January 2008. The consultation paper identified 7 potential sites for Gypsies and Travellers and one for Travelling Showpeople. Two of these involved extensions to the Council's two existing sites. The process appears to have stalled; the Council accepted that it is unlikely that sites will be allocated and become available until 2014 or 2015. This is well beyond the timescale envisaged in Circular 01/2006. One of its intentions is to increase significantly the number of Gypsy and Traveller sites in appropriate locations within 3-5 years; that period ends in February 2011 by which time no sites will have been identified and allocated by this Council. The GTANA covers the period 2006-2011; again the findings of immediate need will not be met within its timescale. [15-17, 36-38, 66]
116. The saved policy in the Local Plan, Policy H13, is criteria-based and criterion (1) requires that sites do not conflict with policies for the Green Belt. Given the extent of the Green Belt in the Borough, it covers most of the Borough outside the urban area, and that 7 of the Council's identified 9 possible sites the subject of the public consultation are in the Green Belt, it is hard to see how the Council will be able to comply with this criterion when allocating sites. [15-17, 36-38, 66]

117. Paragraph 71 of PPS3 advises that where a Council cannot demonstrate a five year supply of deliverable sites they should consider favourably planning applications for housing, having regard to such factors as the suitability of the site for housing. This Council does not have any supply of deliverable sites. While the Council argues that the Green Belt location makes it unsuitable, this is in part undermined by its own suggested sites being mostly located in the Green Belt. In any event, the Council has failed to bring forward a Site Allocations DPD in advance of the Core Strategy as advocated by Circular 01/2006. The Council's reasons for not doing so are based upon its challenge to the RSS. That, however, related to conventional housing and there is no reason why the Gypsy and Traveller Site Allocations process should also have stalled. [15-17, 36-38, 66]

Likely location of alternative sites

118. The Council's argument is that the appellant should look beyond this Borough for sites that may not be in the Green Belt. However, this rather misses the point that there is a known (minimum) level of need in the Borough that will have to be met. Although two of the Council's suggested sites are outside the Green Belt, the other 5 sites fall within it. It seems likely that most of the alternative sites within the Borough will be within the Green Belt. [Document 5 Appendix GBC-5; 32, 35, 63-65]

Personal Circumstances

119. Paragraph 5 of Circular 01/2006 advises that Gypsies and Travellers are believed to experience the worst health and education status of any disadvantaged group in England. It adds that research has consistently confirmed the link between the lack of good quality sites for Gypsies and Travellers and poor health and education. It was clear at the Inquiry that few of the adults living on the site had been able to receive much of an education. [18, 39-48, 67]

120. Two of the site occupiers have health issues. One of these relates to a pregnancy and so is, inevitably, a short term problem. The seriousness of the other, concerning Joe Ball, is not known as he was still undergoing tests at the time of the Inquiry. No detailed medical evidence was provided to demonstrate that he needs a settled base in order to aid a full recovery. All the site residents, however, would be likely to benefit from easier access to GP and other health services. [40, 47, 48, 67]

121. There is one child of school age who lived on the site and attended a local school. He was away travelling with his mother at the time of the Inquiry due to the poor living conditions on the site. If permission is granted it seems likely that he would return to the site and continue his education. There are three other children of below school age living on the site and another on the way; all four would be likely to benefit from a stable base to enable them to have an education. The benefits of access to GP and other health services and of regular education are identified as considerations of sustainability in paragraph 64 of Circular 01/2006. [39, 42-44, 46, 67]

Human Rights

122. If this appeal fails and the Council instigates enforcement action it is likely that the appellant and the other site occupiers would be evicted from the site. There

is no identified alternative accommodation that is available, affordable, acceptable and suitable. The likelihood is that some, if not all, of the residents would be forced into roadside camping. This was their lifestyle before they moved on to the site. This would be likely to result in hardship, especially to those with, and expecting, children and those in poor health. The opportunities for regular education and easier access to health care would be lost. This would result in interference to home and family life under Article 8 of the *European Convention on Human Rights*. It would result in the site owners being deprived of their right to peaceful enjoyment of their possessions in contravention of Article 1 of the First Protocol of the *Convention*. These considerations form part of the overall balancing exercise. [49, 68, 69]

Other considerations raised by local residents

123. Concerning highways matters, there were no details available to the Inquiry about the fatal accidents at or in the vicinity of the site entrance. The Surrey County Council, as Highway Authority, raised no objections on highway safety grounds. The site visit showed that visibility at the junction of the access with glaziers Lane is good in both directions; the required visibility distances have changed since the 1988 appeal decision when the Inspector was concerned about visibility from a point 4.5m back from the highway. The access drive is also wide enough to accommodate two vehicles close to the junction so vehicles would not have to wait in the road to access the site. [52, 76, 83]
124. Concerning the sustainability of the location of the site, it is not located in a reasonable walking distance of shops, schools or other key services. However, both the Council and the appellant relied upon advice in Circular 01/2006 which, at paragraph 64, advises that issues of sustainability should not only be considered in terms of transport mode and distances from services. The Circular sets out that considerations of sustainability should include such matters as the promotion of peaceful and integrated co-existence between the site and the local community; the provision of a settled base to reduce the need for long distance travelling and possible damage caused by unauthorised encampment; and the health and education issues raised above. [53, 77]
125. With regard to neighbours' concerns about noise from the use of the access road, dogs and cockerels, these are matters that could arise from any residential use and are not necessarily specific to these occupiers.

Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations

126. Paragraph 3.1 of PPG2 sets out the general presumption against inappropriate development in the Green Belt and says that such development should not be approved, except in very special circumstances. Paragraph 3.2 says that inappropriate development is, by definition, harmful to the Green Belt and that it is for the appellant to show why permission should be granted. It further says that 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.
127. In this appeal there is the harm arising from inappropriateness which attracts substantial weight. In addition there is considerable harm to the openness of the Green Belt and some limited harm arising from the conflict with one of the purposes of including land within the Green Belt, although this harm is reduced

due to the development that existed on the site before the present use commenced. There is also some harm to the appearance of the area, although this harm is highly localised and could easily be significantly reduced by additional landscaping. Taken together, however, this amounts to a considerable level of harm.

128. The harm arising from the development being in the Green Belt must, however, be viewed in the context that 7 of the 9 sites identified by the Council as potential Gypsy and Traveller or Travelling Showpeople sites in its public consultation on a Site Allocations DPD are also within the Green Belt. That is the most likely location for such sites in a Borough that is almost entirely Green Belt outside the urban areas. Of the 2 identified sites outside the Green Belt, one involves a small extension to an existing Gypsy and Traveller site where part of the land lies within Flood Zone 3a. That site would be too small to accommodate all these site occupiers. The only other identified site outside the Green Belt has other constraints as it lies within the Blackwater Valley Strategic Gap.
129. Against this harm it is necessary to weigh the other considerations advanced by the appellant. In particular there is a significant immediate need for additional Gypsy and Traveller sites. The GTANA and the bi-annual counts show that there is a significant difference between the level of site provision and the need for sites, both in the Borough and in the sub-region. Considerable weight must be attached to this need. It is not disputed that there are no suitable alternative sites in the area that are affordable and available; there is no evidence to show that any will become available until after the Site Allocations DPD has been completed, adopted and acted upon. This is likely to be in excess of 4 years; in the meantime there is no 5-year supply of deliverable sites.
130. Great weight should be given to the fact that a refusal of permission would be likely to result in the appellant and other site occupiers having to leave the site. In the light of their recent life style and the undisputed inability of two of the residents to settle in a house this is likely to result in a return to roadside camping. This would result in serious harm to their quality of life and could adversely impact upon the health of two of the site occupiers and the future education of the children. As most of the Borough is either urban or in the Green Belt, roadside camping would be likely to be equally harmful to the Green Belt and potentially more harmful to the appearance of the countryside.
131. Circular 01/2006 advocates a plan-led approach to the identification and provision of sites for Gypsies and Travellers. However, that approach has failed in this Borough and it is clear that until additional sites are identified in an adopted DPD, there is no realistic prospect that an alternative site will become available for the appellant or the other site occupiers. The likely alternative is a roadside existence. Eviction from this site, which may well follow if planning permission is not forthcoming, would be likely to result in the loss of their homes and result in a serious interference with their rights under Article 8 and Article 1 of the First Protocol of the *European Convention on Human Rights*. For the reasons given above this harm would not be proportionate. Even if the personal circumstances are not taken into consideration, the harm by reason of inappropriateness, and the other identified harm, is clearly outweighed by the other considerations. It is therefore necessary to determine whether very special circumstances exist that justify this inappropriate development.

Do very special circumstances exist?

132. The appellant and the other site occupiers have made their homes on land that they own, albeit that their occupation was in advance of a decision on a planning application. As Gypsies they have particular accommodation needs that the Council accept cannot be met on any alternative site in the locality in the foreseeable future; the Site Allocations DPD is unlikely to be adopted before 2014 and it will take additional time for the sites to become available for occupation. They have no alternative accommodation; if this appeal is dismissed the likely consequence is that they would be evicted from the site and become homeless. This is the type of scenario that Circular 01/2006, at paragraph 12 (i), seeks to avoid. Their return to an itinerant lifestyle, which has been in the past a series of unauthorised encampments or doubling up with friends or relatives, would be likely to cause hardship to the families involved and disruption, nuisance and cost to those on whose land they settled. Doubling up is likely to be contrary to the site licences of those with whom they share.
133. It would also be likely to result in harm to the Green Belt and the countryside as they are local families who, notwithstanding their extensive travelling, keep returning to their family and friends in this area. It could be harmful to the health of two of the site residents. It would mean that the appellant's school-age child would be less likely to be able to enjoy a full education. If the appellant and the other site occupiers were to remain on the site, the harm caused to the Green Belt and to the appearance of the area would be limited. All in all, I find that taken together these circumstances can objectively be regarded as very special and I recommend that permanent planning permission be granted.

Temporary Permission

134. If the Secretary of State is not minded to grant permanent planning permission, then it is necessary to consider whether a temporary planning permission should be granted. This requirement is set out in paragraphs 41-46 of Circular 01/2006. Paragraph 45 advises that where there is an unmet need, no available alternative site provision and a reasonable expectation that new sites are likely to become available at the end of the period, local planning authorities should give consideration to granting a temporary permission. Paragraph 46 advises that where a local planning authority is preparing a site allocations DPD, local planning authorities are expected to give substantial weight to the unmet need in considering whether temporary planning permission is justified.
135. These circumstances pertain in Guildford. The SoCG acknowledges that there is an immediate unmet need for sites and no alternative sites. The Council is in the throes of preparing its site allocations DPD; its own estimate is that sites should be allocated in 2014 and available for use by 2015. In considering a temporary permission the weight given to the unmet need changes as it now has to be substantial. There is also a shift in the weight to be given to the harm caused by the development. As set out in *McCarthy v SSCLG & South Cambridgeshire DC* [2006] EWHC 3287 (Document 35) if permission is temporary, then logically the harm has to be less than a permanent permission for the same development. If temporary permission is to be granted, then it is necessary to take the personal circumstances of the appellant and other site occupiers into account. In the case of *Wychavon DC v SSCLG & Butler* [2008] EWCA Civ 692 (Document 8 Appendix B4) the decision maker is entitled to take account of the likely eviction of a Gypsy family with young children with nowhere to go as constituting very special

circumstances justifying a temporary planning permission. In this case there is more than one family in that situation. I consider that if permanent planning permission is not granted, then a personal, temporary planning permission for a limited period of 5 years would be appropriate.

Conditions

136. If the Secretary of State is minded to allow the appeal I consider that the conditions set out in the Annex to this report should, where appropriate, be attached to any permission granted. These conditions were discussed and agreed between the appellant and the Council at the Inquiry. If the Secretary of State is satisfied that the appellant and the other site occupiers meet the definition of Gypsies and Travellers as set out in Circular 01/2006 then it would be appropriate to impose condition (1). If he is minded to grant a temporary planning permission then condition (2) would be appropriate; if that permission is also to be personal to the appellant and other site occupiers then conditions (3) and (4) would be appropriate.
137. If temporary or permanent permission is granted, I recommend the imposition of conditions limiting the number and type of caravans and the number of pitches (Conditions 5 & 6); prohibiting industrial and commercial uses (7); and citing the approved plans (8). These conditions are necessary to prevent the overdevelopment of the site, in the interests of the amenities of the area, and in the interests of proper planning.
138. I also recommend the imposition of a condition (9) requiring the submission and implementation of schemes for the internal layout of the site, including the siting of the caravans, vehicle parking areas, utility buildings and hardstanding; landscaping including maintenance; external lighting; foul and surface water drainage; full details of the utility/ day rooms; and details of screens to prevent the headlights of vehicles entering or leaving the site from shining into the windows and gardens of adjoining dwellings. This condition should also require the submission of a timetable for the implementation of each of the elements of these schemes. This condition is necessary in the interests of the visual amenities of the area; because insufficient landscaping details have been provided and the trees have been pollarded since the plans were drawn up; because the plans do not reflect the drainage arrangements that have been carried out on the site; because only indicative plans of the utility/ day rooms have been provided; and to protect the living conditions of occupiers of adjoining dwellings.

Overall conclusions

139. I have taken account of all the other matters raised at the Inquiry and in the written representations. Concerning the alleged over-concentration of such sites in the vicinity of Normandy, and the allegation that allowing this appeal would set a precedent for further development on adjoining land, I have some sympathy with the residents' views as both the Council's official Gypsy and Traveller sites and its Travelling Showpeople site are in or near to Normandy. The Roundabout site is also close by. However, this is a matter that should be addressed by the Council by means of a plan-led approach as advocated in Circular 01/2006. The Council has failed to complete its Site Allocations DPD; it is still at an early stage in identifying sites. In the interim an ad hoc approach to site delivery is inevitable. Concerning precedent, each site would need to be considered on its

individual merits. This site was formerly in equestrian use and has some development on it. Other sites would need to be assessed individually. The existing sites are far enough apart for this development, when considered together with the other existing sites in the area, not to result in any significant harm to the character of the area.

Recommendation

File ref: APP/Y3615/A/10/2131590

140. I recommend that the appeal be allowed and that planning permission be granted.

Clive Hughes

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Reed of Counsel Instructed by Head of Legal and Democratic Services, Guildford Borough Council

 He called
 C I Ward BA LLM MRTPI Director, Bryan Jezeph Consultancy Ltd

FOR THE APPELLANT:

Mike Rudd of Counsel Instructed by Matthew Green, Green Planning Solutions LLP

 He called
 Matthew Green Partner, Green Planning Solutions LLP
 George Cawt Appellant
 Kevin Dunphy Site resident
 James Ridgley Site resident
 Mark Louder Site resident
 John Smith Site resident
 Jake Ball Site resident

INTERESTED PERSONS (in order of appearance):

Nick Norton Local resident
Jim McAuley Local resident
Beryl McAuley Local resident
Michael Hughes Local resident and representing Normandy Parish Council
Cllr Diana Lockyer-Nibbs District Councillor

DOCUMENTS SUBMITTED BEFORE THE INQUIRY

- 1 Council's notification letter and list of persons notified
- 2 Letters received in response to notification letter
- 3 Proof of evidence and appendices of Mr Ward
- 4 Supplementary proof of evidence of Mr Ward
- 5 Dated aerial photographs to replace Mr Ward's Appendix GBC-6
- 6 Draft Agreement pursuant to section 106 of the Act
- 7 Draft Statement of Common Ground
- 8 Proof of evidence and appendices of Matthew Green
- 9 Witness statement of George Cawt
- 10 Witness statement of Kevin Dunphy
- 11 Witness statement of James Ridgley
- 12 Witness statement of Mark Louder
- 13 Witness statement of Joe Ball
- 14 Suggested conditions
- 15 Signed Statement of Common Ground

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 16 Extracts from The South East Plan (2009) pp27/8, 59/62, 99/100

- 17 PINS advice: Regional Strategies – impact of Cala Homes litigation
- 18 Amended witness statement of George Crowth
- 19 Witness statement of John Smith
- 20 Medical records of Joe Ball
- 21 Appeal decisions; Land on east side of Newlands Road, Wickford –
APP/V1505/C/10/2124875 & 2124878
- 22 Opening submissions for the Council
- 23 *Lough and others v First Secretary of State* [2004] EWCA Civ 905 12 July
2004
- 24 *Cala Homes (South) Ltd v Secretary of State for Communities and Local
Government* [2010] EWHC 2866 (Admin) 10 November 2010
- 25 Chris Ward; details of experience and qualifications
- 26 Google Maps of area showing location of Penny Hill Caravan Site
- 27 Statement and appendices of Nick Norton
- 28 Statement and survey by Jim McAuley
- 29 List of Unauthorised Traveller sites, Guildford BC
- 30 Statement by Cllr Diana Lockyer-Nibbs
- 31 Letter and plan from J R Franks
- 32 Closing submissions on behalf of the Council
- 33 Closing submissions on behalf of the Appellant
- 34 *South Cambridgeshire DC v SoS for Communities and Local Government and
Archie Brown and Julie Brown* [2008] EWCA Civ 1010 5 September 2008
- 35 *Patrick and Bridget McCarthy; James Sheridan and others v Secretary of
State for Communities and Local Government and South Cambridgeshire DC*
[2006] EWHC 3287 (Admin) 20 December 2006
- 36 Outline application for costs on behalf of the Appellant
- 37 Response of the local planning authority to the appellant's application for
costs
- 38 Plans showing sites to be visited at site visit
- 39 Completed Agreement under s106 of the Act
- 40 Title No SY567836; extract from Land Registry

PLANS

- A 09_296_001 – site location plan
- B 09_296_002 – existing site layout
- C 09_296_003 – proposed layout of site
- D 09_296_004 – utility/ day room – indicative layout, elevation

ANNEX: List of suggested conditions

Restriction of occupancy of the site to Gypsies and Travellers

- 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.

Temporary condition

- 2) 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 materials and equipment brought on to the land in connection with the use shall be removed, and the land restored to its former condition in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

Temporary and personal conditions

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

- Plot 1 James Ridgley and Shelby Cole
- Plot 2 Joe Ball, Mary Anne Ball and Jake Ball
- Plot 3 Mark Louder and Billy Jean Pullen
- Plot 4 George Cawt and Lily Smith
- Plot 5 John Smith and Natalie Smith
- Plot 6 Kevin Dunphy and Eileen Dunphy

and shall be for a limited period of 5 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

- 4) When the land ceases to be occupied by those named in condition 3 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use including the amenity block hereby approved, shall be removed. Within 3 months of that time the land shall be restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

Number and type of caravans and pitches

- 5) No more than twelve caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than six shall be a static caravan or mobile home) shall be stationed on the site at any time.
- 6) There shall be no more than 6 pitches on the site and on each of the 6 pitches hereby approved no more than two caravans shall be stationed at any time, of which only one shall be a static caravan or mobile home.

Industrial and commercial activities on the site

- 7) No commercial activities shall take place on the land, including the storage of materials. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

Approved plans

- 8) The development hereby permitted shall be carried out in accordance with the following approved plans: 09_296_001, 002, 003 and 004.

Submission of further details

- 9) 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 of the requirements set out in (i) to (iv) below:
- i) Within 3 months of the date of this decision, or such longer period as the local planning authority may agree in writing, a scheme shall be submitted in writing to the local planning authority. The scheme shall include details of:
 - a) The internal layout of the site, including the siting of the caravans, vehicle parking areas, utility buildings and hardstanding;
 - b) Boundary treatment, trees, hedges and shrubs to be retained and proposed tree, hedge and shrub planting, including details of species, plant sizes and proposed numbers and densities;
 - c) A schedule of maintenance for a period of five years of the boundary treatment and planting, including the replacement of any tree, hedge or shrub that is removed, uprooted, destroyed or dies or becomes seriously damaged or defective;
 - d) The provision of any external lighting;
 - e) Provision for foul and surface water drainage for the site;
 - f) Full details of the utility/ day rooms;
 - g) Details of screens to prevent the headlights of vehicles entering or leaving the site from shining into the windows and gardens of adjoining dwellings;and
 - h) A timetable for the implementation of each of the elements of the scheme.
 - ii) if within 11 months of the date of this decision the site development scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.