

FOR INFO

6th November 2006

Mr B Cox
South West Law Ltd
1 Hide Market
West Street
Bristol
BS2 0BH

Our Ref: APP/J0215/A/03/1113088
Your Ref:

RECEIVED

08 NOV 2006

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78) -
APPEAL BY MR N SMITH (OTHERWISE KNOWN AS J A SMITH OR L SMITH),
MR B PRICE, MR F DOHERTY, AND MR A HOWARD – WOODSIDE CARAVAN
PARK, HATCH, NORTHILL, BEDFORDSHIRE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Felix Bourne, BA(Hons) LARTPI Solicitor, who held a public local inquiry between 27 June and 17 July 2006 into your clients' appeal against the decision of Mid-Bedfordshire District Council ("the Council") to refuse planning permission for a gypsy caravan site for 4 families (12 caravans) and access arrangements, on land at Woodside Caravan Park, Hatch, Northill, Bedfordshire (application reference number 01/00382/FUL, dated 31 January 2001).
2. The purpose of the Inspector's report was to provide the Secretary of State with information and advice on the appeal to enable her to re-determine the appeal following the quashing of the decision of 23 July 2004 by the Court of Appeal (IR1).

Inspector's Recommendation and Summary of the Decision

3. The Inspector, whose conclusions are reproduced in the annex to this letter, recommended that the appeal be allowed and that a temporary, five year, planning permission be granted. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation and has decided to allow the appeal and grant a temporary planning permission, for a period of five years, subject to conditions. A copy of the Inspector's Report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. The Secretary of State has considered the appeal de-novo. She has paid due regard to the extensive planning history of the site, together with the previous planning decisions relating to the Woodside Caravan Park, of which the appeal site forms only the southern part, as outlined by the Inspector in IR16-18.
5. For the reasons in IR19, the Secretary of State has, like the Inspector, determined the case on the basis that it was in fact an application for 10 caravans on three plots.

Policy Considerations

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises: the Regional Planning Guidance for the South East (RPG9), published in March 2001, and the Milton Keynes & South Midlands Sub Regional Strategy (MKSRS), published in March 2005; the Bedfordshire Structure Plan 2011, adopted in March 1997, and the Mid Bedfordshire Local Plan First Review, adopted in December 2005. The Mid Bedfordshire Local Plan 1993 therefore no longer forms part of the development plan as it did at the time of the First Inquiry.
7. The Secretary of State observes that neither RSS9 nor MKSRS were addressed at the planning inquiry. She agrees with the Inspector that the main relevant policies to these appeals are contained in the local plan and so does not consider that the policies within RSS9 or MKSRS raise any issues which would affect her decision, or require her to refer back to parties, prior to making her decision. The Secretary of State agrees with the Inspector that the development plan policies most relevant to this application are those set out in IR10 to IR14.
8. On 22 June 2006, shortly before the opening of the Inquiry into the above appeal, the report following an examination in public into the emerging Regional Spatial Strategy for the East of England (RSS14) was published. Notwithstanding policy H4 in this report, which seeks to ensure that local authorities make provision for sites/pitches to meet the identified needs of gypsies and travellers in their area, the Secretary of State does not consider that this raises any new issues in relation to the decisions now before her which need to be referred back to parties before the Secretary of State proceeds to a decision.
9. The Secretary of State considers that relevant material considerations also include: Planning Policy Statement 1: *Delivering Sustainable Development* (PPS1); Planning Policy Guidance 3: *Housing* (PPG3); Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS7); and Planning Policy Guidance 13: *Transport* (PPG13); Planning Policy Guidance 25: *Development and Flood Risk* (PPG25). Circulars: 11/95 (ODPM): *Use of Conditions in Planning Permissions* and 1/2006 (ODPM): *Planning for Gypsy and Traveller Caravan Sites* are also relevant material considerations. The Secretary of State has also had regard to draft Planning Policy Statement 3: *Housing* (PPS3), which was published for consultation on 5 December 2005. The Secretary of State has

taken this into account but, as this document is still in draft form, she affords it very little weight.

Main Issues

10. The Secretary of State agrees with the Inspector (IR139) that the status of the appellants and other occupiers of the site as Romany gypsies is not in doubt. The main issues in this appeal are therefore the effect of the development on:

- the character and appearance of the countryside;
- the amenities of nearby residents;
- flood risk;
- the achievement of policy objectives relating to the provision of sites for gypsies, including sustainability;
- the fulfilment of a need for a further gypsy site in this location; and
- the fulfilment of a need arising from the personal circumstances of occupiers of the site, including their health and education needs.

The effect of the development on the character and appearance of the countryside

11. The Secretary of State agrees with the Inspector that the effect of the development on the character and appearance of the countryside is less severe than when the entire Woodside Caravan Park site was occupied (IR144). She has had regard to the Inspector's findings in IR144 regarding the extent of built development in the area surrounding the appeal site.

12. The Secretary of State has given consideration to the fact that three Inspectors have concluded that a gypsy site in this location would be acceptable, provided it was on a small enough scale to avoid harm to the countryside (IR145). She has also taken account of the Secretary of State's view, expressed in his appeal decision of 20 June 2002, that the southern field represented a reasonable interpretation of the concept of a much reduced site (IR145). However, the Inspector who held the First Inquiry expressed the view that the development (which at that time involved twelve, rather than the current ten, caravans, for four families) would spoil the character and alter the appearance of the countryside at this location (IR146).

13. For the reasons in IR146, the Secretary of State agrees with the Inspector that the appeal development, with ancillary structures in place to serve the site, would inevitably have a significant, urbanising, effect on the character and appearance of the countryside, and that, at night, outside lighting, unless controlled, could also introduce an alien feature into a largely rural setting where there is no street lighting.

14. For the reasons in IR147, the Secretary of State agrees with the Inspector that there are places where development on the site remains prominent, even in summer, that it would be more prominent in winter, and that this prominence would increase to a limited degree if the caravans are raised to ameliorate the risk of flooding.

15. The Secretary of State does not agree with the Inspector's conclusion, that following on from paragraph 54 of Circular 01/2006, there is no more need to hide a gypsy site in the countryside than an agricultural building (IR149). The Secretary of State considers that each case must be considered on its merits. Whilst the acceptability of gypsy caravan sites in the countryside is recognised in policy HO12 and paragraph 54, this is subject in each case to local circumstances and the impact of the development on its surroundings.

16. For the reasons in IR147, 148 and 150, the Secretary of State agrees with the Inspector that, whilst the landscaping proposals would go some way to ameliorating the effect of the development, they would not fully mitigate its visual impact, and that therefore the development would be in conflict with Local Plan Policy HO12, criterion (i). The Secretary of State considers that there would also be some degree of conflict with the policies in the Structure Plan in relation to development in the countryside. She agrees with the Inspector that the lack of compliance with the development plan weighs against the grant of planning permission (IR150).

The effect of the development on the amenities of nearby residents

17. For the reasons in IR151-154, the Secretary of State agrees with the Inspector that, whilst the development would have some effect on the amenities of nearby residential property, there need not be unacceptable harm, and therefore, like the Inspector, she does not identify conflict with Local Plan Policy HO12, criterion (iii) (IR155).

Flood Risk

18. For the reasons in IR156-158, the Secretary of State agrees with the Inspector that the floor level of the proposed caravans should be 600 mm above the agreed 1 in 100 year flood level of 23.9 metres Above Ordnance Datum, and that, subject to the safeguards set out in IR157-8, the proposed development would not result in an unacceptable flood risk (IR159).

The achievement of policy objectives relating to the provision of sites for gypsies, including sustainability

19. The Secretary of State has had regard to the fact that the Council accepts that the assessment of need undertaken before the adoption of Local Plan Policy HO12 had not been as robust as would now be expected (IR160). However, she agrees with the Inspector that, despite being criterion-based, Policy HO12 complied with Government advice at the time that it was formulated and adopted. That advice has now been replaced by ODPM Circular 01/2006. She agrees with the Inspector that, to the extent that there is conflict between the two, the more up-to-date advice contained in Circular 01/2006 should carry the greater weight (IR160).

20. For the reasons in IR161-162, the Secretary of State agrees with the Inspector that, although not ideal in terms of location, the overall position of the appeal site is not unacceptably remote, whether in terms of Local Plan Policy HO12 or Circular 01/2006.

21. The Secretary of State agrees with the Inspector that the absence of community facilities in Hatch itself is a disadvantage but that the facilities in Upper Caldecote and Sandy are not unacceptably distant (IR163).

22. For the reasons in IR164, the Secretary of State agrees with the Inspector that, whilst the development does not fully respect the scale of the nearest settled community, it does not dominate it. Nevertheless, she agrees with the Inspector that the scheme does not fully comply with the policy advice in Circular 01/2006, and that this must, to some extent, weigh against the grant of planning permission, at least on a permanent basis, unless and until the site is assessed against other possible sites and found to be as acceptable as any realistic alternative (IR164).

The fulfilment of a need for a further gypsy site in this location

23. The Secretary of State has taken into account the Council's assessment that the extent of the general need did not justify the grant of planning permission on the appeal site, and could be met elsewhere (IR165).

24. The Secretary of State agrees with the Inspector that, whatever the truth of the situation regarding Mr Davis' attitude to allowing Mr Smith and his family to live on the Talamanca site (IR166), the appellants, or at least some of them, would, for the reasons in IR167, be unwilling to live at Talamanca. She also agrees with the Inspector (IR167) that, given the very limited facilities at Talamanca, the needs of Mrs Smith and Billy Price would not be adequately catered for there.

25. The Secretary of State has taken account of the Council's view that there was some pressure for additional sites (IR43) and its assessment that there is a need for an additional 15-20 pitches within Mid Bedfordshire by 2009 (IR44). She has also taken account of the fact that the Council has, on the basis of the criteria on gypsy site provision in the Local Plan, granted planning permission for two single family pitches, and, at the time of the Inquiry into this appeal, was considering an application for an additional 10 pitches at the existing authorised private site at Talamanca. Despite the Council's efforts, the Secretary of State agrees with the Inspector that the needs of these families is evidence of an unmet need in the area and that this need should weigh in favour of the appellants, although she does not consider that general need necessarily means that the appeal site is the optimum location for that need to be met. In terms of the future allocation of gypsy sites, the Secretary of State has had regard to the fact that the Council plans to develop a new stand-alone policy by 2007, and expects that the examination of identified sites could take place in 2009 (IR28).

The fulfilment of the need arising from the personal circumstances of the occupiers of the site, including their health and education needs

26. For the reasons in IR171 and 172, the Secretary of State agrees with the Inspector that the Talamanca site would be inadequate to meet the needs of Lydia Smith and Billy Price (IR172).

27. The Secretary of State has had regard to the fact that, although the appellants have not joined the Waiting List for any authorised sites, they do appear to have searched for other sites, particularly in the last couple of years (IR172).

28. The Secretary of State has also had regard to the fact that Talamanca was the only alternative site where the Council suggested that there was spare accommodation at the time of the Inquiry. She agrees with the Inspector that a return to a life "on the road" would be intolerable for both Lydia Smith and Billy Price, and that the requirements of these occupiers are such that the grant of planning permission on the appeal site would fulfil their health needs. She agrees with the Inspector that this is a consideration of significant weight (IR173). For the reasons in IR174 and IR186, she agrees with the Inspector that, in the circumstances of the case, it would not be appropriate to grant planning permission only for those occupiers with the most exceptional needs.

29. For the reasons in IR175-176, the Secretary of State agrees with the Inspector that the opportunity to secure a regular education, and the disruption that might occur were the occupiers forced to move, is also a matter which carries some weight in deciding whether planning permission should be granted (IR177). Whilst she agrees with the Inspector that the educational needs of the occupiers are not exceptional (IR184), the Secretary of State regards the educational needs of the children as a material consideration of some weight. However, she does not consider that this is a matter which is determinative of the case.

Other matters

The fall-back position

30. The Secretary of State does not consider that she can give more than limited weight to the possibility that the fall-back position could be implemented, due to the factual and legal uncertainties associated with it. She also agrees with the Inspector that even if it could be implemented, the fall-back position is unlikely to amount to anything other than a small site for touring caravans.

Fear of crime

31. The Court of Appeal (*N Smith v The Secretary of State and Mid-Bedfordshire District Council* [2005] EWCA 859) has made clear the appropriate approach to the question of fear of crime in the determination of planning matters. The Secretary of State has carefully considered the evidence about fear of crime which was presented to the Inquiry. Whilst she does not doubt the existence in the Hatch area of such fear, she concludes that it does not arise in relation to the use of the land for the proposals as such, or in relation to the occupiers of the appeal site, of whom nobody had a bad word (IR179).

Precedent

32. The Secretary of State acknowledges the concerns of local residents and the Parish Council regarding the possibility that the granting of planning permission on the appeal site would create a precedent for the re-occupation of the northern part of Woodside Caravan Park. However, the Secretary of State does not consider that her decision on the appeal proposals would constitute a precedent for the development of any other land. She considers there to be a unique combination of factors to be taken into account on these appeals which must be examined, as with all appeal proposals, on a case by case basis. The Secretary of State considers that this applies whether a permanent or a temporary permission is under consideration. In the longer term, the allocation of sites for

Gypsies and Travellers through the development plan process will provide greater certainty. In reaching her conclusions under this heading, the Secretary of State has had regard to paragraph 46 of 1/2006 (ODPM); *Planning for Gypsy and Traveller Caravan Sites* which states that the fact that temporary permission has been granted should not be regarded as setting a precedent for the determination of any future applications for full permission.

Unlawful occupation

33. For the reasons in IR182, the Secretary of State agrees with the Inspector that, in the circumstances of this particular case, the appellants' unlawful occupation of the appeal site should not weigh against them, whether in consideration of their Human Rights, or in relation to other issues.

Unilateral Undertaking and Conditions

34. The Secretary of State has, like the Inspector, placed no weight on the Unilateral Undertaking completed in 2004 (IR185).

35. For the reasons in IR135-138, the Secretary of State agrees with the Conditions recommended by the Inspector.

Conclusion

36. The Secretary of State concludes that the appeal development is in overall conflict with the development plan, although it complies with the development plan in some respects. The development would have a significant, urbanising effect on the character and appearance of the countryside and landscaping would not fully mitigate the visual impact of the development. In view of this conflict, the Secretary of State has considered whether an exception should be made within the terms of Policy CS19 of the Local Plan in this case, or whether there are any material circumstances which suggest that she should determine the appeal other than in accordance with the development plan.

37. The Secretary of State concludes that there is some general need for gypsy sites in the area, and that the occupiers clearly require a site. The occupiers also have educational needs to which the Secretary of State accords some weight. There are also, in the case of two of the occupiers, Lydia Smith and Billy Price, serious health issues, and a return to a life "on the road" would be intolerable for both of them. The Secretary of State considers that the needs of Lydia Smith and Billy Price should carry very significant weight, and that the Talamanca site would be inadequate to meet those needs. The degree of inter-dependence between the occupiers of the site is such that it would be untenable to grant permission only to those with the most urgent needs.

38. The Secretary of State concludes in relation to the grant of permanent planning permission that the needs of Lydia Smith and Billy Price, the educational needs, and the general need for a gypsy site, are insufficient for her to grant permission on a permanent basis. In addition, even having regard to the human rights of the occupiers or the appellants, and taking all of these matters into account, the development would not comply in her judgement with the development plan and there would not be any material considerations of such weight that permanent

planning permission should be granted other than in accordance with the development plan.

39. Given the particular circumstances of this case, the Secretary of State concludes that a temporary and personal permission for a period of five years should be granted; this would allow the Council time to assess need across their District and to determine how best that need should be satisfied, whether the appeal site should play a part in meeting that need or whether some alternative provision should be found for the appellants and their families. A permission limited to the appellants and by reference to a period of five years would ensure that due weight can be given to the outcome of the site allocation process in the District, including whether the appeal site should play a part in meeting needs, or alternatively whether some alternative provision should be found for the appellants and their families. This would in the Secretary of State's judgement strike an appropriate balance now, and allow for an appropriate balance to be struck at that time, between meeting the appellants' needs and affording due protection to their human rights (and those of other occupiers on the site) and the protection of the countryside.
40. The Secretary of State has had regard to paragraph 46 of Circular 01/2006 which states that the fact that temporary planning permission has been granted on the basis that a local planning authority is preparing its site allocations Development Plan Document should not be regarded as setting a precedent for the determination of any future applications for full planning permission. She concludes that, whether or not the temporary planning permission became, in due course, a permanent permission, would depend upon the need, and leading on from that, the possible sites identified by the Council.
41. The Secretary of State accepts that the minimum period within which any such sites might be forthcoming would appear to be around three years, and that the grant of planning permission for five years in this case would allow for the possibility of slippage in terms of the allocation of sites in the Development Plan Document. She considers that it would also give the appellants sufficient time to relocate, in the event of this site not being allocated as a gypsy site. Given the particular circumstances of this case, the Secretary of State supports the continued occupation of the site for a limited period of time.

Formal Decision

42. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation and hereby grants a temporary planning permission, for a period of five years, for a gypsy caravan site for 3 families (10 caravans) and access arrangements, on land at Woodside Caravan Park, Hatch, Northill, Bedfordshire (application reference number 01/00382/FUL, dated 31 January 2001, as amended), subject to the following conditions:

1. This permission does not authorise use of the land as a caravan site by any persons other than gypsies and travellers, as defined in paragraph 15 of ODPM Circular 01/2006.

2. The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants, namely: Abraham Howard (born 11/9/56);

Pamela Howard (born 10/4/58); Donna Marie Howard (born 14/2/78); Jo Cooper (born 1/7/82) and Pamela Cooper (born 6/8/84); Lennie Smith (born 1/7/47); Lydia Smith (born 16/7/44); Lucy Smith (born 5/3/86); Ellen Louise Smith (born 14/3/86); Joseph Smith (born 12/1/82); James Smith (born 26/2/76); and Corinna Smith (born 1/1/78); Billy Price (born 15/10/71); and Laura Price (14/12/74); and shall be for a limited period being the period of five years from the date of this decision, or the period during which the site is occupied by them, whichever is the shorter.

3. When the land ceases to be occupied by those named in condition 2 above, or at the end of five years, whichever shall first occur, the use hereby permitted shall cease and all caravans, vehicles, trailers and structures (including all structures, hardstandings and all means of enclosure including all gates, walls, and fences, but excluding natural landscaping) shall be removed. Within three months of that time the land shall be restored to its condition before the use commenced.

4. No more than 10 caravans (of which no more than 3 shall be static caravans) shall be stationed on the site at any one time. Of these no more than 4 caravans (of which no more than 1 shall be a static caravan) shall be stationed on Plot 2A, and no more than 3 caravans (of which no more than 1 shall be a static caravan) shall be stationed on each of Plots 2 and 3. No caravans or vehicles shall be stationed, parked or stored on Plot 1.

5. 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 three months of the date of failure to meet any one of the requirements set out in (1) to (4) below:

1. within 3 months of the date of this decision a scheme (the scheme) for both hard and soft landscaping works, to include the full extent of hardsurfacing, including the proposed levels of hardstandings and of walkways, and any other revised levels for the site, and any other proposals for the mitigation of flooding, shall have been submitted for the written approval of the local planning authority and the scheme shall include timetables for its implementation. The landscaping details included within the scheme shall also include all landscaping to be retained, proposed tree and shrub planting, finished levels, means of enclosure, hard surfacing materials, minor artefacts and structures (including all domestic paraphernalia including television aerials or dishes, and outside lighting), proposed and existing surface and underground services, and proposals for the management of landscaping. The scheme shall also include details of flood compensation measures located outside the 100 year flood limit area, details of permeable surfacing and material located on the appeal site; and details of the internal floor levels of the proposed caravans to ensure that they are 24.50 metres Above Ordnance Datum (that is, 600 mm above the estimated 1 in 100 year flood level of 23.9 metres AOD)

2. within 11 months of the date of this decision the scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State

3. if an appeal is made in pursuance of 2. above, that appeal shall have been finally determined and the scheme shall have been approved by the Secretary of State

4. the scheme as approved shall have been carried out and completed in accordance with the approved timetable.

6. At the same time as the scheme required by Condition 5 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of five years of the proposed planting commencing at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

7. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within three months of the date of failure to meet the following requirement: within 3 months of the date of this decision the proposals for the disposal of foul and surface water detailed in the Wormald Burrows Partnership Report of May 2006 shall be implemented.

43. An applicant for any consent, agreement or approval required by condition of this permission and for the agreement of the 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.

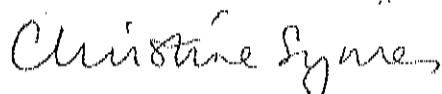
44. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than that required under section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

45. 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 6 weeks of the date of this letter.

46. A copy of this letter has been sent to Mid-Bedfordshire District Council and interested third parties.

Yours faithfully



Christine Symes

Authorised by the Secretary of State to sign in that behalf