

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Development and Conservation Control Committee 4th January 2006
AUTHOR/S: Director of Development Services

S/2227/04/F - Cottenham
**Siting of two gypsy caravans (retrospective application) at land off Water Lane,
for Mr & Mrs J. O'Brien**

Recommendation: Refusal
Date for Determination: 27/12/04

Site and Proposal

1. Smithy Fen is an area of generally flat agricultural Fen land with few hedges. Setchel Drove joins Lockspit Hall Drove to the west and this road meets Twenty Pence Road, the B1049, to the southwest. Smithy Fen Bridge takes Lockspit Hall Drove over a watercourse, Cottenham Lode, which is edged by public footpaths on embankments. Lockspit Hall Drove provides access to several homes and farmsteads. Cottenham has a comprehensive range of facilities including food shops, multi-purpose shops, a post office, library, play school, primary school, village college and doctors' surgeries.
2. The application site itself is a rectangular plot with an approximately 14 metre frontage and a depth of 28 metres.

Planning History

3. The site is in an area where there are a number of existing traveller sites some of which have the benefit of planning permission while others are unauthorised. Smithy Fen is part of the countryside to the north-east of Cottenham. A rectangular tract of land within Smithy Fen, approximately 7.5ha in extent, has seen extensive caravan development. The map accompanying this report shows the extent and location of the development. There are two areas of approved gypsy caravan sites in the rectangle, separated by land in between without planning permission. In the northern sector of the rectangle there are 22 approved plots, most gaining access from Setchel Drove. In the southern sector of the rectangle there are 15 plots gaining access from Water Lane and Orchard Drive.
4. There has been some subdivision of these plots resulting in there now being some 48 plots on the approved gypsy caravan land. The existing permissions allow for a minimum of 63 caravans to be on the approved plots.
5. Most of the northern sector of gypsy occupation, plots 2-12 Setchel Drove and 'Park Lane', Setchel Drove and the southern sector are long-standing. However, in 2003 planning permission was granted, on appeal, for a 4 plot gypsy caravan site, 'Pine Lane', which is to the south of the Park Lane plot and in the western part of the land between the northern and southern sectors. A large part of the land between the northern and southern sectors, 'Pine View', was occupied by gypsies in 2003, with their caravans, without planning permission. On 11 March 2005 the First Secretary of State dismissed 12 appeals concerning the gypsy occupation of this land. Further, on 7th December he also dismissed 6 appeals on land at Victoria View. Other land within

the rectangle, including land to the rear of the approved 2-12 Setchel Drove plots, is occupied by gypsies without planning permission.

6. The site formed part of a larger area that was refused planning permission for use of a yard for the repair and maintenance of agricultural machinery under application **S/0928/90/F** in 1990.

Planning Policy

The relevant Development Plan comprises the approved **Cambridgeshire & Peterborough Structure Plan 2003** and the adopted **South Cambridgeshire Local Plan 2004**:

7. **Policy P5/4** of the Structure Plan says that local plans should make provision to meet the locally assessed need for housing specific groups including travellers and gypsies.
8. **Policy P1/2** says, inter alia, that development will be restricted in the countryside unless the proposals can be demonstrated to be essential in a particular rural location.
9. **Policy 7/4** says that development must relate sensitively to the local environment and contribute to the sense of place, identity and diversity of the distinct landscape character areas.
10. **Policy SE8** of the Local Plan says that there will be a general presumption in favour of residential development within village frameworks and that residential development outside these frameworks will not be permitted.
11. **Policy EN1** relates to Landscape Character Areas, and in respect of this site, it is concerned with respecting, retaining and wherever possible, enhancing the Fens Landscape Character & Natural Area
12. **Policy HG23** is a specific policy concerned with caravan sites for gypsies and travelling show-people. It indicates that proposals for caravans for gypsies will only be considered when the need for a site is shown to be essential to enable the applicants to exercise a travelling lifestyle for the purpose of making and seeking their livelihood. Where the need is proven 9 criteria have to be met if planning permission is to be granted for such sites. The criteria relevant to this application are as follows:
 - (1) The site is reasonably located for schools, shops and other local services.
 - (2) The site would have minimal impact on the amenities of existing local residents and adjoining land uses; concentration of sites will be avoided.
 - (3) The site would not, either on its own, or cumulatively, have a significant adverse effect on the rural character and appearance, or the amenities of the surrounding area.
 - (4) The site can be satisfactorily assimilated into its surroundings by existing or proposed landscaping; an approved landscaping scheme will be required.
 - (5) The use of the site would not give rise to unacceptable parking, highway access or service provision problems.

- (6) The use would not detract from convenient, safe and enjoyable use of a public right of way.
13. **Policy CNF6** of the Local Plan says that the expansion of existing residential caravan sites or the sporadic siting of individual caravans will not be permitted, with the exception of an area on the west side of Chesterton Fen Road up to and including the Grange Park site where permission may be granted for private gypsy sites to meet local need so long as they are properly landscaped and drained.
14. Also relevant are **Circular 1/94 - Gypsy Sites and Planning**, **Circular 18/94 - Gypsy Sites Policy and Unauthorised Camping**, the draft circular - **Planning for Gypsy and Traveller Sites Consultation Paper December 2004**, **PPG3 Housing** and **PPS7 Sustainable Development in Rural Areas**. A letter issued by the DETR reminded all local planning authorities that compliance with the guidance in Circular 1/94 is essential to fulfilling the Government's objective that gypsies should seek to provide their own accommodation and may also wish to consider whether the absence of gypsy site provision may prejudice successful enforcement action against unauthorised encampments or give rise to grounds for appeal against the refusal of an application for a new site.

Consultation

15. **Cottenham Parish Council** strongly opposes this application on the following grounds:
1. There are currently 48 approved gypsy caravan pitches at this location. This Council considers that Cottenham has already more than discharged its acknowledged responsibility to provide sites for travellers. Based on SCDC's latest Tax Base figures the Parish represents 4.2% of the properties in South Cambridgeshire, but, because of the piecemeal expansion of this site that has been allowed in the past, it now accommodates 15% of the approved traveller sites in the whole district. This load is clearly disproportionate and unreasonable and therefore further expansion is strongly opposed.
 2. There was a dramatic increase in the number of Traveller caravans in this locality in 2003. At times the total on the site has been more than twice allowed by planning permissions. Nearly all of this was unauthorised and subject to Planning Enforcement action, which although enforced, action has still failed to be taken against them by SCDC. This Council would object strongly to any further approvals being granted until the outcome of all the currently ongoing enforcement actions are concluded and a rational plan has been established for the whole site rather than the piecemeal approach as in the past.
 3. On the 11th March 2005 Appeals made for land off Water Lane, Cottenham, CB4 8PT were dismissed by the Office of the Deputy Prime Minister. The Secretary of State agreed with the Inspector that the site at Smithy Fen had a potential for an estimated 130 plots if land between the current lawful areas is occupied. The recommended site size, as per the Deputy Prime Minister's Office, is 20 plots per site. This Council has constantly opposed the expansion of this site based on this recommendation. The Secretary of State also agreed with the Inspector with regard to the effect that further development at Smithy Fen would have on the rural character and appearance and landscape, in 'that each plot would have an adverse impact on the rural character and appearance of the area'. The Secretary of State further stated that 'the appeals proposals conflict with the development plan, in particular with criteria

in LP Policy HG23'. In addition he stated 'that the proposals would have an adverse impact on the rural character and appearance of the Fenland landscape ... the proposals would also fail to protect the amenities of the local residents and enjoyment of public rights of way and give rise to problems of highway safety'. The Secretary of State also agreed with the Inspector 'that allowing the appeals would create a precedent for further development within the rectangle at Smithy Fen, with the eventual effect being further loss of open land, a much higher level of occupation, and the consequent additional traffic, and a detrimental impact on highway safety and amenity of residents'.

4. Unlike what would happen with other developments there appears to have been little or no co-ordination between the Planning Authority and those responsible for service provision (e.g. health, sanitation, education, policing). The additional load on these services from the travelling community already exceeds the capacity of village resources and further demand cannot be accommodated, indeed demand should be reduced.

Taking the above into account Cottenham Parish Council is unable to support this application and would strongly urge SCDC not to issue planning permission.

16. **Cottenham Village Design Group**

Despite the approved development, the area has retained its essentially rural character with locally distinctive open views of fen edge landscape. The cumulative effect of additions to the open landscape would seriously threaten the character of this landscape. Development in this area does not conform to essentially nuclear settlement pattern established within the parish and are likely to be poorly integrated with the village and its facilities. The caravans and mobile homes do not meet the Design Statement requirements in respect of design and locally distinctive building forms and materials.

17. **Environment Agency**

No objections, advisory comments only.

18. **Chief Environmental Health Officer**

Considered proposals in respect of noise & environmental pollution & concluded that there's no significant impact

19. **Old West Internal Drainage Board**

The Board's surface water receiving system has no residual capacity to accept increased rates of run-off from new developments. SCDC needs to be satisfied that soakaways are an effective means of surface water disposal in this heavy clay area

Representations

20. Advertised in Cambridge Evening News 16/11/04:

10 Letters of objection in which the following comments were made:

- a) Retrospective applications should not be countenanced
- b) Although there are no objections in principle to Traveller sites further sites cannot be supported by the village's infrastructure e.g. primary school & doctor's surgery are already operating at full capacity
- c) Sites will not meet identified local need

- d) Increased litter & fly tipping correlates with the increase in numbers of Travellers' sites
 - e) Scale of development exceeds the optimal size for Traveller sites of 10-15 plots (20 absolute maximum) as supported by the Gypsy Council
 - f) Loss of rural character due to scale of development & light pollution
 - g) Increasing traffic & its speed discourage use of local roads & bridleways
 - h) Associated commercial activity leads to road being blocked
21. Cottenham Residents Association has raised the following objections:
- a) Those applying have done so in full knowledge that what they propose is unlawful
 - b) Scale exceeds Government guidelines on the scale of such development
 - c) Drove roads inadequate for the scale of development proposed
 - d) Fly tipping & litter
 - e) Obstruction of the highways
 - f) Harassment and noise pollution
 - g) Health issues relating to defecation in public areas
 - h) Highway safety issues relating to speed of traffic
 - i) Danger to horse riders from traffic
22. The Association's letter is accompanied by a petition in the name of the Smithy Fen Residents Association supported by 450 signatories
23. One letter of support has been submitted by Friends, Families, and Travellers Advice & Information Unit. It comments that:
- a) There is a desperate need for such sites
 - b) The cost of this shortage is immense both in financial and human terms
 - c) The lack of authorised sites results in travellers having the highest infant mortality and illiteracy rates, lowest life expectancy and educational achievement
 - d) As a distinct ethnic minority in the Race Relations Act 2000, an assessment of racial impact must be carried out on all policy that may effect them
 - e) Their needs are rarely considered properly when policies on homelessness, planning, housing and community are drawn up

Personal Circumstances

24. There are two adults living on the site with 3 children two of whom attend a local primary school. One of the children has bowel problems and severe asthma and visits his GP twice a month, and hospital one every three months.

Planning Comments – Key Issues

25. The key issues are conflict with countryside policies and policy for gypsy caravan sites with regard to the impact on the landscape and rural character of the area, impact on the amenities of existing residents, concentration of sites, sustainability and highway safety

Countryside Policies

26. There is a clear breach of policies designed to protect the countryside. The development is beyond any village framework and so conflicts with Policy SE8. The appearance and character of this caravan development, with its motley assortment of touring and static caravans, sheds, fencing, hard surfacing and parked vehicles, is unsympathetic to the countryside. It relates most insensitively to the local rural environment and contributes nothing positive to the sense of place, identity or diversity of the distinctive fenland landscape character of the locality.

Conformity with Gypsy Policy (HG23)

27. The policy sets out clear, realistic criteria for gypsy sites. Many of the criteria have been met, and this has been established on appeal in connection with other cases in the immediate area. However, this is not the case in respect of criteria 3 & 4 i.e. “effect on the rural character and appearance of the surroundings”.
28. The possibility of crime and anti-social behaviour has been argued in respect of other decisions in the area. However, the very recent Court of Appeal case *Smith v. FSS and Mid-Bedfordshire DC* held that a gypsy site is not inherently a use that must cause concern, particularly if those fears are not based on evidence as to the characteristics of future occupants. There was no evidence that could be linked to the occupation of this plot.
29. Smithy Fen has “a historic atmosphere”. It is inherently difficult for such a sensitive fenland landscape to assimilate gypsy caravans without harm to the rural character and appearance of the locality. The lawful areas of caravans have already caused harm and it would be undesirable to add to it. Any further addition to the approved plots should be resisted. Screening of development would look unnatural.
30. The cumulative impact of traffic, particularly along Lockspit Hall Drove would be partly responsible for inconvenience to other road users, although not sufficient to materially conflict with the policy
31. In conclusion, the proposals fail to comply with Policy HG23 (3) and (4) – visual impact. The remaining criteria are complied with.
32. ***Precedent*** is an important consideration. There is a considerable demand from gypsies to live at Smithy Fen. Much of this is from extended family groups. It is highly likely that the grant of planning permission would set a precedent. It would encourage the Pine View and Victoria View residents to remain on their sites and encourage others to settle. Ultimately, the justification for retaining the gap between authorised sites would become less and less. The consequences would lead to considerable

conflict with criteria designed to protect the rural character of the area, to restrict the volume of traffic and the safe and convenient use of rights of way.

33. The 'Smith' judgement does not support increased fears re crime and anti-social behaviour. Neither was there any direct evidence from the services themselves, that health and education services would be adversely affected.

Personal circumstances

34. The relevant personal circumstances of the occupants of Water Lane include their personal need for accommodation, their wish to live together in extended family groups for care and support in accordance with Irish gypsy tradition, and access to doctors. These personal circumstances are material considerations and the grant of personal planning permissions for the occupants to remain at Water Lane would bring clear and substantial benefits to the persons concerned. However, the benefits are not exceptional or unusual, nor are they benefits that could only be obtained by the occupants living at Smithy Fen.

Furthermore, planning permissions normally run with the land and it is seldom desirable to provide otherwise. The caravan development involved at Pine View includes works of a permanent nature and the particular permissions sought would not be limited in time but would enable ongoing occupation by dependents of the named individuals. In practice it must be assumed that the development would remain long after some of the personal circumstances involved have ceased to be material. The personal circumstances of the occupants of Water Lane are little different to the personal circumstances that can often be pleaded by applicants who want to live in the countryside near to relatives and I consider that they should not carry very much weight in the determination of this application.

Alternative sites

35. There has been no search by the occupants for alternative sites. Nonetheless, there remains a real and serious problem in finding alternative sites. There is an undisputed need for further gypsy sites. Approval would contribute to meeting the general need for sites. However there are compelling reasons as outlined above and detailed below in this case as to why consent should not be granted here.

Human Rights

36. On balance, dismissal of the appeals would not have a disproportionate effect on the appellants in terms of their human rights.

Need for enforcement

37. Without such action, the breach with its concomitant harm to the countryside will continue.

Compliance with enforcement notices

38. A compliance period of 12 months is appropriate given that the children are attending school locally and the medical treatment one of them receives. It would give the occupants time to make other arrangements.

Recommendation

A. Refusal on the following grounds:

1. Cottenham lies on the edge of the Fens. The landscape is typically flat with wide open and long distance views and with little natural screening. The creation of an additional caravan site at Water Lane

further consolidates the area covered by existing lawful caravan sites at Setchel Drove and Water Lane, making them more obtrusive in the landscape. The use of the site has a significant adverse effect on the rural character and appearance of the area in that the former openness of the site and the contribution that it made to the gap between existing authorised sites has been eroded. The importance of the open area between existing authorised sites was recognised in both the "Pine View" appeal decision in March 2005 and the "Victoria View" appeal decision in December 2005. The site cannot be satisfactorily assimilated into its surroundings by existing or proposed landscaping. Significant landscaping would also be contrary to the generally open landscape character of the surrounding area.

As such the development would not relate sensitively to the local environment or the distinctive landscape character of the area. The proposal is therefore contrary to Policies P7/4 of the Cambridgeshire and Peterborough Structure Plan 2003 and HG23(3), (4) and EN1 of the South Cambridgeshire Local Plan 2004.

2. Approval of the site cannot be considered in isolation from its potential impact on the longer-term development of Smithy Fen. There are currently four other applications or deemed applications for planning permission in respect of adjoining and nearby plots. Approval of this application would create a precedent that planning permission should be granted for all five plots and other plots at Smithy Fen. This would be undesirable given the adverse impact on the character and appearance of the countryside already caused by existing lawful development.
 3. The Council is unaware of any personal circumstances that are sufficient to outweigh the non-compliance with the development plan and the potential cumulative impact of the appeal site on the future development of Smithy Fen.
- B. In addition that authorisation be given to instigate formal enforcement action to secure the removal of mobile home, caravans, day room and hardstandings and to secure the cessation of the unauthorised uses of land within 12 months of the notices coming into effect. If the Notices are not complied with within the specified period, that prosecutions be authorised subject to a reconsideration of material circumstances at that time.

Background Papers: the following background papers were used in the preparation of this report:

- South Cambridgeshire Local Plan 2004
- Cambridgeshire and Peterborough Structure Plan 2003
- Planning Application File Reference S/2227/04/F

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