

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Planning Committee
AUTHOR/S: Planning and New Communities Director

8 May 2013

S/2364/12/VC – COTTENHAM

Removal of condition 2 (personal to named occupiers) from planning permission (granted on appeal) for the use of land as a residential caravan site, ancillary provision of drains & construction of accesses and hard standings at Plots 1-6 Pine Lane, Off Water Lane, Smithy Fen for Mr Albert Boswell and Others

Recommendation: Approve

Date for Determination: 11 January 2013

Notes:

This Application has been reported to the Planning Committee for determination because the recommendation of approval is contrary to that of the Parish Council.

To be presented to the Committee by Kate Wood.

Site and Proposal

1. Plots 1-6 comprise the length of Pine Lane which, along with Park Lane just beyond Plot 6, runs along the south western side boundary of the overall Smithy Fen travellers site area. Park Lane, Pine Lane, and Setchell Drove from which they lead, comprise the L-shaped northern area of the Smithy Fen Site. Park Lane and Setchell Drove are authorised pitches. The land within the crook of the L-shape is vacant as a result of clearance and bunding following an injunction, and the vacation of a single pitch with personal permission. This, and the land further south beyond Pine Lane, is an area of separation between the northern and southern parts of the Smithy Fen travellers site area.
2. Smithy Fen lies within countryside to the north of Cottenham and gains access from Twentypence Road. Outside the general travellers' site area, the land is generally flat, open agricultural land with occasional field hedges and ditches, including Cottenham Lode to the south. It is also within Flood Zone 3b (high risk).
3. Plots 4 and 5 of the site are currently occupied following planning permission granted on appeal in 2012 for 2 static caravans, 2 touring caravans, 2 utility blocks, a temporary portaloo and parking. Plots 1-3 and 6 are vacant, generally comprising unbound hardcore, and various boundary fences.
4. The planning application, validated on 16 November 2012, seeks the removal of condition 2 of the permission for plots 1-6 that was granted on enforcement

appeal in 2003. Condition 2 restricted the use of land and the occupation of the caravans to named persons.

5. The application does not seek approval for any layout of caravans or buildings within each of the 4 vacant pitches, nor does it suggest who would occupy the pitches instead of the named users. It is proposed that the removal of the condition would enable occupation of the pitches by any defined Gypsy or Traveller.
6. The agent's letter accompanying the application notes that the remaining conditions attached at appeal would still apply. It is asserted that the retention of condition 2 would have no effect on the number of pitches at Smithy Fen, and that there is no condition requiring restoration of the site if it ceases to be occupied by the named persons, such that they would simply fall into dereliction. Furthermore, a personal condition makes it difficult for the pitch owners to raise finance for improvement works or to sell their pitch in order to purchase one elsewhere. There is now an identified unmet need for pitches in the District, and removal of the condition would ensure that Pine Lane continues to contribute to existing supply.

Relevant Planning History

7. S/0958/03 - retention of Plots at 1-3 and 6 Pine Lane refused on the grounds that filling in the gap between approved plots would be detrimental to the open character of the countryside and that flood risk had not been assessed. Planning permission was subsequently granted on appeal against an enforcement notice. At that time plots 1-3 and 6 were occupied by caravans and the Inspector understood plots 4 and 5 to be intended to be laid out as an amenity and play area. The Inspector concluded that the contribution of the gap between existing authorised sites (including those plots) to the character and appearance of the wider landscape was "minor" (para 22), and that "The use of the appeal site causes some harm to the character and appearance of Smithy Fen, but it is not great." On the other hand "the existing authorised caravan sites on Setchell Drove and Orchard Lane / Water Lane are likely to be the dominant elements in the landscape." In balancing the issues, the Inspector considered that it was not demonstrated whether the site's contribution towards meeting the unmet general need for sites was sufficient to outweigh the planning objections. However, he gave considerable weight to the needs and circumstances of the occupiers and that the consequences of their removal from the site "would be disproportionately severe when compared to the degree of benefit to the public interest, mainly deriving from the effects on the landscape" (para 36).
8. The Inspector considered that planning conditions could deal with flood risk. Planning permission was granted subject to conditions which included the submission and implementation of a "Scheme of Works" to incorporate a site layout, parking and turning areas, drainage, reduction of flood risk, boundary treatment and landscaping. Condition 6 required the parking and turning areas within the Scheme of Works to be retained for that purpose. The planning permission was permanent but restricted to personal occupation by named parties. The wording of condition 2 begins: "The use of the land and the occupation of the caravans shall enure for the sole benefit of the following persons and their dependants:..." This means that once they vacate the site, the use of the land is no longer as a traveller pitch, and the fall-back position is agriculture unless the named occupiers return. However, as there is no

condition requiring restoration works, the appearance remains as if it were a traveller pitch.

9. S/0010/11 - Siting of 2 static caravans, 2 touring caravans, 2 utility blocks, one temporary portaloo and parking for 4 vehicles was allowed on appeal in August 2012 following refusal. The Inspector imposed conditions restricting the use to Gypsies and Travellers, the number of caravans, no commercial activities, commercial storage or parking of vehicles over 3.5 tonnes, the removal of the portaloo once the utility blocks are available for use, minimum floor levels (for flood risk). The conditions also required a Site Development Scheme comprising the layout of the pitches, lighting, boundary treatment and landscaping. An application to discharge this condition has been submitted (S/2450/12/DC) but remains un-registered as it is incomplete and awaits further detail.
10. In allowing the appeal at Plot 4 and 5, the Inspector made the following points that are relevant to this application:

"There would be no encroachment on the open countryside since the appeal site is within an area of authorised development." (Para 7)

"The site is difficult to see from the open flat landscape to the east and north. From Setchell Drove to the north and the public footpath alongside Cottenham Lode to the south east it is effectively screened from public view by the development on the existing authorised pitches. A close boarded fence along Pine Lane and Park Lane now effectively screens the site from (other) viewpoints." (Para 8)

"Overall I am satisfied that the appeal proposal would not materially harm the character and appearance of the surrounding countryside." (Para 10)

"The appeal development would not add to the extent of the existing authorised site, in terms of area, and the additional occupiers on the appeal site would not, in my view, increase the population of the overall traveller site to the extent that it would have a noticeable impact on the settled community of Smithy Fen or the wider area." (Para 15)

Planning Policy

National Planning Policy

11. **Planning policy for traveller sites (PPTS)** (March 2012) requires local planning authorities to make their own assessment of need for traveller sites based on fair and effective strategies. Local Plans should include fair, realistic and inclusive policies such that travellers should have suitable accommodation in which to access education, health, welfare and employment infrastructure but for LPAs to have due regard to the protection of local amenity and the local environment. Policy E relates to traveller sites in the Green Belt. It indicates that traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Policy H states that when determining applications, which should be done in accordance with the development plan, LPAs should strictly limit new traveller site development in open countryside away from existing settlements or areas allocated in the development plan. Sites should not place an undue pressure on local infrastructure.
12. With effect from 27 March 2013, if a local planning authority cannot demonstrate an up-to-date five-year supply of deliverable sites; this should be

a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission.

13. PPTS has superseded the advice contained in Circular 01/2006 'Planning for Gypsy and Traveller Caravan Sites'.
14. The **National Planning Policy Framework** promotes a presumption in favour of sustainable development having regard to the soundness of the development plan and the policies therein. It attached 'great importance' to Green Belts. 'Substantial weight' should be given to any harm to the Green Belt. Very special circumstances to justify approval will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Local Planning Authorities should plan for a mix of housing based on the needs of different groups in the community. The NPPF confirms that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms; they directly relate to the development; and are fairly and reasonably related in scale and kind to the development.

Local Plan

15. The Council has determined through revisions to the Local Development Scheme that Gypsy and Traveller issues will be addressed in the emerging single Local Plan review rather than a stand-alone DPD. Issues and Options Report Public Consultations have been undertaken and are intended to take forward the work that has already been done in assessing potential sites. It is anticipated that the new Plan, as a result of the GTANA matters noted below and subject to Cabinet approval of the draft, may contain criteria based policies and opportunities at major development sites rather than specific allocations, in order to meet longer term needs if they arise. The Local Plan will not be adopted until at least the end of 2015.
16. An updated **Gypsy and Traveller Accommodation Needs Assessment (GTANA)** was considered by the Housing Portfolio Holder on 13th June 2012 and accepted. This acknowledged an unmet need for pitches in the District. The assessment shows there to be a projected future need for 20 pitches to 2031, in addition to a backlog of 65 pitches between 2011 and 2016.
17. However, the current position is that, when more recent planning consents are taken into account, such as those at Milton and Willingham, the need has now been met and there is no longer an identified shortfall of sites.

DCLG "Designing Gypsy and Traveller Sites: Good Practice Guide", May 2008

18. **South Cambridgeshire Local Development Framework Core Strategy 2007**
ST/5 Minor Rural centres
19. **South Cambridgeshire Local Development Framework Development Control Policies 2007**
DP/1 Sustainable Development
DP/2 Design of New Development
DP/3 Development Criteria
DP/7 Development Frameworks

NE/4 Landscape Character Areas
NE/10 Foul Drainage
NE/11 Flood Risk
NE/14 Lighting Proposals

20. **District Design Guide SPD** - Adopted March 2010

Consultations

21. **Cottenham Parish Council** recommends Refusal: the Parish Council are unsure why they need to be amended. There is not a general need and the site has no historical Traveller permission. It is also outside of the village framework and considered unsustainable. To approve the application would open it up as a general Traveller site; the assumption is that had the Inspector not made condition 2 then permission would not have been granted. We therefore wish to reject the application.
22. **Environment Agency** - No objection in principle. It is recommended that a 'Flood plan' for the site be established to safeguard occupants in the eventuality of severe flooding.
23. **Old West Drainage Board** - no comment from a drainage point of view.

Representations

24. The Smithy Fen Residents Association (letter signed by the occupiers of 12 nearby properties) states that whilst the 2003 Inspector found for the applicants, it is in his summation that grounds for rejecting this application are to be found.

At appeal the Inspector weighed the “needs” of the applicants against the terms of local policy HG29, and he assessed those “needs” very specifically (para 28 of Appeal 1113679) in the light of their Irish origins and customs. He accepted that as Irish they would not/could not mix (live) with the English and that alternative site provision by the LPA for the Irish was non-existent. He concluded, then, that the ‘needs’ of the Irish outweighed the ‘need’ to uphold the terms of plan HG29.

However, despite recognising the ‘needs’ of the applicants the Inspector was minded to restrict occupancy to “named persons and their dependants” and in doing so clearly acknowledged three things:

- the use of the land as Gypsy/Traveller pitches for other than those named would be inappropriate without establishing comparable “need”
- the use of this land would be inappropriate for anything other than an Irish contingent “in need”
- the use of the land is not, as of fact, granted general planning (for Irish Traveller or any other Gypsy/Traveller occupation) because the Inspector had no wish to see general planning policy flouted for such as profit as opposed to just cause. For this type of thinking there is a more recent precedent: McCarthy January 2011 APP/W0530/A/10/2135632 in which (para 37) the Inspector states (in granting occupancy to named persons only): “This does not indicate that a permanent permission is appropriate or that any further grant of planning permission would be appropriate in the Smithy Fen location.”

Unless the planning system has generally become dishonest or been corrupted in some way then the Planning Authority is obliged to offer the public consistency. No matter how misguided some may feel the original appeal decision to have been the Planning Authority is obliged to uphold the decision and abide by its conditions. It should be remembered that just as a decision of the House of Lords can only be overturned by itself so Local Planning Authorities must accept that it is not their place, not within their remit, to offer any opinion, advice or decision which purports to undermine or usurp the power of the Inspectorate. No matter what the 'opinion' of the SCDC planners this application must be refused in order that the appeals process be engaged and the Inspectorate alone be allowed to decide upon the long-term validity of conditions embodied in an earlier decision.

Finally it is the view of this Residents Association that SCDC could take this application to appeal and have it dismissed on the grounds that there is no longer a general need because the applicants, by requesting removal of condition 2, have demonstrated that they no longer require the pitches. Indeed, as was made known to officers at SCDC, by the spring of 2012 the pitches in question had already been abandoned and thus SCDC had/has every right to withdraw licenses and seek a reinstatement of the land to agricultural.

Furthermore SCDC's own (as adopted by Council) quantitative needs assessment shows just 6 Irish families in need in the whole of the District, to wit: 5, 5a, 6, 10 & 11 Orchard Drive and 15 Water Lane. Thus to allow the "removal of condition 2" would be inept, unjust and irresponsible being as it would: a) enable a "sale of the pitches for profit" (something the Inspector of Appeal (1113679) was clearly intent on avoiding) to those without a demonstrated need, whilst b) denying those with a genuine need (as defined by the Inspector at appeal and identifiable under SCDC's own needs assessment) access to land that is, arguably, most certainly suitable for an "amendment to condition 2".

25. The occupiers of Derwent Cottage, Smithy Fen object: We are strongly objecting to the removal of condition 2. These plots were the first to win permission on Smithy Fen on appeal. They only did so because of supposed personal circumstances of illness and need to be here. Therefore the planning was not given as it should always be given, on the land, as we now know personal circumstances can change. Secondly these plots are now four as a further two that at the time of approval were for a turning circle, have since been sold by applicants to Mr Walls and he has now been given planning. Had they tried to get the personal circumstances lifted 8 months ago, planning for the two pitches previously owned may not have got permission. As these 4 plots now not needed, could have provided an alternative. The applicants have never lived on the plots!. Is Mr Rodger Slattery the same one that also owns a legal pitch on Setchell Drove and land at Twenty Pence Road? Please can you ascertain where these families are now living because there is a huge likelihood of them returning using maiden or children's names to apply for more pitches on unlawful land at Smithy Fen. Also as we are continually told about the family units need to be together there may be more accommodation where they are living now for our illegals.

We have been made aware over the years that owning the land that

is then applied for permission on is not necessary, as is happening on most of the O'Brien applications going through at present. Is the council aware if these plots have already changed hands i.e. Ownership at land registry.

To lift these conditions is unacceptable, and with the councils ability for licencing surely you have some control. If the appellants do not need this land then they should not now financially benefit, as this will only make the size of the site increase even more. It will encourage more applications on personal circumstances, Which now clearly is shown to be wrong, as also with the McCarthy plot given on personal circumstances, has not been occupied for two years! These plots would not have ever been given permission without these personal circumstances, cleverly selling the two plots that were the turning circle to Mr Walls it was obvious he would get permission granted because it was in the middle of two sets of plots, if this had come up before they sold the two plots to Mr Walls he might not have got his permission, so a lot of thought has gone into the timing of this application.

26. The occupiers of Goose End Cottage state that they also have similar concerns to those expressed by the occupiers of Derwent Cottage, the continuing development of the site and changes to plots, and would like to lodge an objection.
27. The occupiers of The Windrush state that the 2003 appeal was allowed principally under the heading of Human Rights and Balance of Interests. It appears the appeal only succeeded with this personal condition in place, removal of which could set a precedent for other personal permissions to be changed or overturned. Removal of the condition would allow the plots to be sold on the open market and bring more families onto the site potentially increasing the number of caravans on the site although the condition limiting the occupation to Gypsies would remain. The plots have been empty for several years so clearly there is no longer a need for them by the families, no-one else has taken occupation
28. The occupiers of Merton Hall request refusal. The plots were the first to be bought by Irish travellers who subsequently acquired all the legal plots on Smithy Fen. This has led to the Council, over the years, giving permission to those who sold their Smithy Fen plots, at Willingham, Histon and Rampton, so SCDC cannot be found at fault for not providing for travellers within the District. The personal reasons no longer exist. The Inspector protected the local residents by giving personal permission. As the plots have been empty, bringing them back into use would mean more cars, vans, noise, etc. Why is there a sudden need to improve or replace caravans now, or to sell pitches to move elsewhere? As the pitches are vacant the occupiers have already moved elsewhere, so this is just to sell the plots to their advantage. We are also very concerned that there is no effective sewerage system. raw sewage and effluent is regularly deposited in open ditches and sides of the road, any more people will add to this problem.
29. The occupier of Bridge Farm objects as the pitches haven't been occupied for some years so the applicants can't have nowhere else to reside. The area is already packed with all manner of caravans, walls have been built, tarmac laid, fences erected onto my field. The existing occupiers pump their sewage into my ditches, which I am responsible for, and blocked ditches lead to flooding of my yard. There is also constant fly-tipping, straying dogs and fast driving. Please say no to any more planning.

Planning Comments

30. The site comprises plots 1-6, since the personal condition applied to the overall site. However, in real terms it relates to plots 1-3 and 6, since plots 4 and 5 were not dealt with as occupied pitches in the appeal, and have since been granted separate permission for use as pitches. The authorised use of the site in terms of plots 1-3 and 6 is either as traveller pitches for the applicants or agriculture as a fall-back position once those named persons cease to occupy the site. However, there is no condition requiring the land to be physically restored to agriculture, it is simply that the use of the site for traveller pitches ceases as well as the occupation. The pitches are therefore simply vacant and remain with hardstandings, hardcore and various forms of boundary treatment.
31. The application, if approved, would result in the pitches being able to be occupied by any Gypsy or Traveller. It is important to distinguish between ownership and occupation: the pitches can be sold at any time to anybody, but a purchaser would be unable to occupy them unless they were the one of the named persons. If the pitches were sold, they could still be occupied by the named persons, and approval of the application to remove the personal restriction doesn't mean that the named persons would be prevented from owning or occupying the pitches. If the application were refused, the pitches would either remain vacant, with no requirement to do any works to them, or could be re-occupied by the persons named in the condition. They would not have an open appearance as is the case for pitches that have been vacated within the gap area.
32. Paragraph 22 of the national Planning Policy for Traveller Sites (PPTS) requires applications to be determined taking the following matters into account:
 - a) the existing level of local provision and need for sites
 - b) the availability (or lack) of alternative accommodation for the applicants
 - c) other personal circumstances of the applicant
 - d) that the locally specific criteria used to guide the allocation of sites in plans (or which form the policy where there is no identified need for pitches/plots) should be used to assess applications that may come forward on unallocated sites
 - e) that they should determine applications for sites from any travellers and not just those with local connections.
33. Paragraph 23 requires that local planning authorities strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. They should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.
34. Therefore, the main issues in this case are:
 - A. The need for Gypsy and Traveller sites in the District;
 - B. The applicants' personal needs and circumstances;
 - C. Compliance with the LDF policies;
 - D. Impact of the scale of development on the settled community;

E. Whether, if approved, a permanent, temporary or personal permission should be considered.

35. Issue A - The need for Gypsy and Traveller sites

For some considerable time now, the two public sites at Milton and Whaddon have remained full with waiting lists of at least a year for Milton and considerably longer at Whaddon. However, recent decisions to grant planning permission for private sites, such as at Milton and Willingham, means that the need for 65 pitches 2011 to 2016 (as identified in the GTANA noted at paragraph 15 above) have been exceeded. Indeed the further need for 20 pitches up to 2021 is also met in numeric terms, such that the Council no longer has an unmet need in the District. Thus, as the Council can demonstrate a 5 year supply of deliverable sites, need is not a material consideration in this application. The lack of need does not mean, however, that applications should automatically be refused, simply that they should be considered on other planning merits.

36. Issue B - The applicants' personal needs and circumstances

The applicants no longer live on the plots, and have not done so for some time. The agent is not aware of their current whereabouts. No case has been made for them to remain at the site in terms of family associations, educational or medical needs, etc. Granting planning permission for the removal of the personal condition would not prevent them from returning to the site if they so desired. Whether or not they sell any or all of the plots is not a relevant planning matter, provided they are only occupied by Gypsies or Travellers, and a condition to this effect remains extant.

37. Issue C - Compliance with the LDF policies

The Council's adopted LDF policies listed in paragraph 18 above should be given full weight because of their adopted status but there are no specific policies for Gypsy and Traveller development proposals. The Council therefore primarily relies upon the general principles policies DP/1 - DP/3, although these need to be utilised in accordance with the advice in the PPTS and numerous appeal decisions, that such sites are often located in the countryside and that issues of sustainability should be seen in the round given Travellers' normal lifestyle.

38. The principle concerns in terms of this site are the impact on the character and appearance of the area and the ability to provide an adequate means of foul water drainage and protection from flooding.

39. The site lies in the Fens Landscape Character Area as defined in Policy NE/4, although the District Design Guide SPD classifies the area as 'Fen Edge'. The area is characterised by a generally low-lying, open landscape with large agricultural fields and long-distance views. The land is not otherwise designated or protected. The flat open landscape means that the authorised pitches are not satisfactorily assimilated given their overall number and the extent of land coverage, so that small additions can be cumulatively harmful, especially if they erode the gap between the 2 main parts of the site. The overall effect is that in the main, the overall Smithy Fen site appears as an 'island' in an otherwise open landscape.

40. The application site effectively comprises 2 parts, plots 1-3 and plot 6. Plot 6 is a narrow infill plot between the authorised pitches at Park Lane and Plots 4 and 5 Pine Lane. The Inspector into the appeal at 4 and 5 Pine Lane noted

that those pitches were not visible in views towards the site and that it "would not materially harm the character and appearance of the surrounding countryside". As this pitch is even more enveloped among the authorised pitches, there would be no harm to the character or appearance of the area, thereby complying with Policy DP/2 which requires the character of the local area to be preserved or enhanced, and would have an acceptable impact on the countryside and landscape character as required by Policy DP/3.

41. Plots 1-3 comprise the end of one leg of the L-shape of authorised pitches in the northern area. It does protrude southwards towards the southern area of the overall Smithy Fen traveller site, but the gap between plot 1 and the nearest pitch in Orchard Drive is approximately 75m. The southern side of plot 1 also follows the logical boundary with parcels of land to the rear. The retention of the personal condition would not result in the restoration of the pitches to open land: whilst they would not be able to be used other than by the named persons, they would still be of rough, fenced ground that would not contribute to the otherwise open character of the gap between the northern and southern areas. Additionally the pitches are established as authorised pitches, albeit restricted to named occupiers. The Inspector considering the appeal at plots 4 and 5 adjacent considered that they would not encroach on the open countryside since the appeal site is within an area of authorised development, that the site is difficult to see from wider vantage points, and would not materially harm the character and appearance of the surrounding countryside. He also noted that the site would not add to the extent of the existing authorised site, in terms of area. On this basis, and on balance, it is considered that the removal of the personal condition from plots 1-3 would not erode the important gap between the 2 main parts of Smithy Fen and would also comply with DP/2 and DP/3 as noted for plot 6 above.
42. **Access.** The site is served by a hard-surfaced access track. The local highways Authority has not commented on the application, but the safety of access has not previously been found to be of concern during applications at Smithy Fen. The pitches are large enough for vehicles to park and turn, and the access road is sufficient for refuse collection and emergency access.
43. **Drainage.** A condition to this effect would be appropriate bearing in mind that a drainage scheme was not submitted following the 2003 permission.
44. **Flood risk.** No FRA was submitted with the application as the site is established. On plots 4 and 5, the Environment Agency took the pragmatic view in the knowledge of the Smithy Fen site, that ensuring the floor level of the building and the underside of the static caravans are 300mm above ground level will suffice. It is not reasonable to add a condition to this effect when the application is simply to remove a personal condition, but should be added as an informative.
45. **Contributions** to support local community facilities and public open space are usually sought with planning permission for new residential uses. However as this site is not a new residential use, and can continue to be occupied, it is not appropriate in this case to seek contributions as there would technically be no additional population than has been previously authorised.
46. **Issue D - Impact of the scale of development on the settled community**

The Inspector into the appeal at Plots 4 and 5 considered that "the additional occupiers on the appeal site would not, in my view, increase the population of the overall traveller site to the extent that it would have a noticeable impact on the settled community of Smithy Fen or the wider area." Bearing in mind that plot 1-3 and 6 are already authorised for occupation, there would technically be no difference in the population of the site and their consequent demand on facilities, services and infrastructure.

47. **Issue E - Whether, if approved, a permanent, temporary or personal permission should be considered**

As stated above, the removal of the personal condition from the site is on balance acceptable because there is no planning harm resulting from the proposal. Bearing in mind its location between and adjacent to permanent pitches, it would be inappropriate only to grant temporary permission because the situation is not of a temporary nature. For the same reason, that the application proposal is considered generally acceptable rather than acceptable because of personal circumstances, it would be inappropriate to restrict the use of the site to a personal permission. Indeed, the application has not been made on the grounds of the needs of the intended occupiers but on the basis of compliance with planning policy. Should planning permission be granted for the removal of the personal condition, it should therefore be permanent.

Other matters

48. **Precedent.** As noted at Paragraph 40 above, officers are satisfied that there would be no physical or visual difference on the site whether this application for the removal of the personal condition was approved or not. Therefore, there would be no precedent set, since the development of new pitches would have a visual impact. The allocation of, or permission for additional numbers of pitches at Smithy Fen is inappropriate due to overdevelopment of the site, impact on the landscape and poor access to services, but these pitches are established already and can continue to be occupied.

49. Neither is a precedent for refusal set by the refusals and injunctions on other parts of the Smithy Fen area. This is because views of the application site from the wider area are limited, as noted above, whereas there are more prominent views of the southern area and gap area from Setchell Drove to the north east, and from the Cottenham Lode to the south. Development in the southern area therefore has a greater detrimental visual impact on the character and appearance of the area.

50. **Human rights.** Refusal of the planning application would not lead to interference with the applicant's rights under Article 8 of the European Convention on Human Rights, because it would not lead to the applicants being made homeless.

Conclusion

51. Removal of the personal condition as proposed would not, on balance, result in undue harm to the wider landscape or affect the important visual separation between the northern and southern areas of the Smithy Fen travellers' site area. Whatever the decision, the site would continue to comprise hard surfaces and fences, and could be resorted to by the named occupiers. It will therefore not contribute to any sense of openness. Inspectors in 2003 and

2012 have confirmed that, unlike other parts of the Smithy Fen area, the impact of the site (or the impact of plots 4 and 5 in the 2012 case) is "minor" and "screened from public view by the development on the existing authorised pitches."

52. Since the Scheme of Works required by the Inspector in 2003 has not been submitted, it is considered appropriate to add a condition requiring the same submissions, namely pitch layout, parking and turning areas, drainage, boundary treatment and landscaping. Reduction of flood risk was also included in that Scheme requirement, but at last year's appeal on plots 4 and 5, the Inspector imposed a condition requiring minimum floor levels, which would be appropriate to reproduce here. The similar "Site Development Scheme" condition the appeal on Plots 4 and 5 also required lighting details, which should also apply to these pitches. Bearing in mind the nature of the application, to remove a personal condition, it is only possible to apply such conditions to new occupiers, since those named in the original permission remain covered by the conditions contained therein.
53. The remaining conditions set in 2003 would continue to apply, namely that the pitches could only be occupied by defined Gypsies or Travellers; no more than 12 caravans (of which no more than 4 shall be static) may be stationed on the site (plots 1-3 and 6); and no commercial activity including storage or vehicles greater than 3.5 tonnes.

Recommendation:

54. Approve subject to the following conditions:
 1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
(Reason - To ensure that consideration of any future application for development in the area will not be prejudiced by permissions for development, which have not been acted upon.)
 2. 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 any one of the following requirements not being met:
 - i) Within 3 months of the date of this decision, or prior to the first occupation of each of plots 1, 2, 3 and 6, there shall have been submitted for the written approval of the Local Planning Authority a Site Development Scheme. The Scheme shall include: the internal layout of the pitch including the positions of the caravans, the extent of hardstanding, parking and amenity areas, any proposed external lighting, the means of foul water drainage, the position, design, height and materials of boundary treatment, landscaping, and a timetable for their implementation.
 - ii) If, within 8 months of the submission of the Scheme, the Scheme has been refused by the Local Planning Authority, or the Local Planning Authority fails to give a decision within the prescribed period, an appeal shall have been lodged and accepted by the Secretary of State;
 - iii) In the event of an appeal being made in pursuance of requirement (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) All works comprised in the Site Development Scheme as approved shall have been implemented, and completed within the timetable set out in the approved schemes.
(Reason - To ensure that a Site Development Scheme is implemented in accordance with Policies DP/2, DP/3, NE/10, NE/11 and NE/14 of the adopted Local Development Framework 2007.)

Informative

The underside of the caravans and the ground floor of any other building approved under condition 2 above, shall be a minimum of 300mm above the surrounding ground level.

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

- Planning Policy for Traveller Sites 2012
- NPPF 2012
- South Cambridgeshire Local Development Framework 2007
- Planning application files S/2364/12/VC, S/0010/11
- Appeal decisions APP/W0530/C/03/1113679 and APP/W0530/A/12/2170121

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