



Appeal Decision

Inquiry held on 17-18 September 2003

Site visit made on 18 September 2003

By J G Roberts BSc(Hons) DipTP MRTPI

An Inspector appointed by the First Secretary of State

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Appeal Ref: APP/W0530/C/03/1113679

Land known as Pine Lane (off Water Lane), Smithey Fen, Cottenham, Cambridgeshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Albert Boswell against an enforcement notice issued by South Cambridgeshire District Council.
- The Council's reference is E460.
- The notice was issued on 19 March 2003.
- The breach of planning control as alleged in the notice is without planning permission, use of land as a residential caravan site, ancillary provision of drains and construction of accesses and hardstandings.
- The requirements of the notice are:
 - (i) cease to use the land as a residential caravan site;
 - (ii) remove all caravans/mobile homes from the land;
 - (iii) take up all drains and other services; grub up all accesses and hardstandings;
 - (iv) remove from the land all displaced materials referred to in (iii) above;
 - (v) restore the land to its condition before the breach of planning control took place.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the 1990 Act.

Summary of decision: the appeal is allowed, the notice is quashed and planning permission is granted on the deemed application subject to conditions.

Background

1. The appeal site is an area of about 0.3ha of flat land in an area known as Smithey Fen beyond and to the north of the main built-up area of Cottenham. It is not within the Green Belt. Four plots (Nos 1-3 and 6) have been laid out and are occupied by caravans. A further plot of double width is, I understand, intended to be laid out as an amenity and play area. Adjoining it to the north, fronting Setchel Drove, are 18 authorised gypsy caravan pitches. Adjoining it to the south east are unauthorised pitches fronting Pine View, with a further area of authorised sites (15 pitches) off Orchard Lane and Water Lane beyond. On my visit much of the area between the caravan pitches on Setchel Drove and Orchard Lane/Water Lane had been marked out for further pitches, some of which were occupied.
2. The Council first became aware that the appeal site was (partly) occupied in February 2003. Planning Contravention Notices were issued, followed by the enforcement notice and a Stop Notice. An application for planning permission for retention of the caravan site was made on 16 April 2003 (Ref S/0958/03/F) and refused on 19 June 2003. By the time of the inquiry Plots 1-3 and 6 were occupied by a total of 11 adults and 10 children.

Planning policy

3. The statutory development plan is the Cambridgeshire Structure Plan 1995 (CSP) together with the South Cambridgeshire Local Plan (SCLP) adopted in 1993. These generally seek to restrain development in the countryside, and to ensure that where it takes place it is sensitive to the local environment. CSP Policy SP4/5 makes residential caravan sites generally subject to the same locational policies as permanent housing. However, SP4/6 requires adequate provision to be made for gypsies who reside in or resort to the County. The adopted SCLP has no specific policy relating to such provision.
4. The CSP is under review. Its emerging successor contains a policy similar to SP 4/6. Proposed modifications to the replacement SCLP were published in October 2002. The new plan is due to be adopted by the end of 2003. It contains a new policy H29 which allows for caravan sites for gypsies and travelling show people outside the green belt in certain circumstances. The site should be necessary to enable the applicants to continue to exercise a travelling lifestyle for the purpose of making and seeking their livelihood. Occupation would be restricted and may be limited to a temporary period and/or for the benefit of named occupiers.
5. In addition 9 criteria would have to be met, the last of which was added on the recommendation of the Local Plan Inspector. The site should be reasonably located for schools, shops and other local services. It should have minimum impact on the amenities of existing local residents and adjoining land uses, and the concentration of sites should be avoided. The site should not on its own or cumulatively cause significant harm to the rural character or appearance or the amenities of the surrounding area. It should be capable of being assimilated into its surroundings by existing or proposed landscaping. Unacceptable parking, access or servicing problems should not be likely to result. The site should not harm buildings of historic or archaeological importance, or sites of wildlife or nature conservation value. The only built development that will be permitted would be utility outhouses and, on their own merits, stables. Adequate connections to services such as water supply should be present. The convenient, safe and enjoyable use of a public right of way should not be harmed.
6. A further modification revised Policy CNF11 to allow an area on the western side of Chesterton Fen Road to be developed for private gypsy sites to meet local need.
7. Concerns relating to flooding did not form part of the stated reasons for issuing the notice, but were raised in the refusal of application No S/0958/03/F. Policy SP8/6 and emerging local plan policy CS8 indicate that planning permission will not be granted where the site is liable to flooding, or where the development is likely to increase the risk of flooding or the number of people or properties at risk, unless appropriate alleviation and mitigation measures can be secured.
8. National planning policies are also referred to by the parties, including Planning Policy Guidance Note 3 (PPG3), which encourages housing to meet the needs of all, including groups with specific requirements such as gypsies. Circulars 1/94 and 18/94 refer specifically to gypsy sites. These are relevant also. The first is concerned with provision of sites. The second gives advice following the enactment of the Criminal Justice and Public Order Act 1994, which affects gypsies and unauthorised campers through its powers to control unauthorised camping by eviction. It also outlines local authorities' obligations

under other legislation when considering the question of eviction, including education, health and welfare.

9. The Human Rights Act 1998 enshrines in domestic law the convention rights accepted by the government long ago, including those to respect for private and family life and the home, and freedom from discrimination. There should be no interference with these rights except as is in accordance with the law and is necessary in a democratic society in the interests of, among other things, the prevention of disorder or crime and the protection of the rights and freedoms of others. Any such necessary interference should be proportionate to the harm caused to such public interests.

Main issues

10. The main issues are the application of Policy H29 and the balance to be struck between any planning objections and the needs for gypsy caravan sites generally and the circumstances of the occupiers of the appeal site in particular.

Reasons

Policy H29

General

11. There is no evidence that Policy H29 is likely to be modified further before adoption of the replacement local plan. It would normally, therefore, carry considerable weight, but the appellant argues that it should be given little for 2 reasons. First, it is not based on a quantitative assessment of need, as at least implied by PPG3 and clearly stated in PPG12. Secondly, it places the onus on the applicant to prove the need for a site, whereas the duty lies upon the local authority to assess the need and make or facilitate appropriate provision.
12. No formal quantitative assessment of need has yet been undertaken, but the Council is well aware of the results of the bi-annual counts of caravans and their upward trend in these parts. Even if such an assessment had been carried out as the basis for local plan policies, the present needs of the families occupying the appeal site, and indeed those occupying other recently developed pitches in the vicinity, could not reasonably have been predicted sufficiently far ahead for the policies to have taken their presence into account. The criteria based policy has the advantage of being capable of application to any number of sites, as part of an assessed need or otherwise.
13. The absence of a quantitative assessment of need may have relevant to the weight to be given to an argument that sufficient provision has been made to meet current needs, but that does not, in my opinion, invalidate the application of the 9 criteria in the assessment of individual applications. Other material considerations may be weighed against any failure to meet one or more of the criteria.
14. On the second question, the gypsy status of the occupiers of the appeal site is not disputed. They clearly travel as a means of livelihood, the main breadwinners for much of the time, and the others when other commitments, such as school, permit it. It seems to me that the implication of Circular 1/94 and PPG3 is broadly as suggested by the appellant. The duty lies upon the local authority to assess need and facilitate provision. The occupiers of the appeal site should not be required to prove that they, or their close relatives, have traditionally or habitually resorted to the area or resided in it. They are there now, for

whatever reason, and some of them at least have close family ties with people living on authorised pitches nearby, so it is within this locality that the present need arises. Local authorities are advised by Circular 1/94 to recognise that they may receive applications from gypsies without local connections which could not have been foreseen in their development plan policies.

15. Two publicly owned sites have had to be closed for reasons that were explained at the inquiry, including incidents of disorder. Two remain, but are full or almost so. In any event, the adequacy of public provision is not a good reason for refusing planning permission for private sites. The immediate availability of the recently allocated land at Chesterton Fen Road is questioned. So is its suitability for the families living on the appeal site, because of their origins, culture and relatively modest financial resources. The Council concedes that although there is a high level of authorised provision, largely as a result of permissions granted by it, there remains a general unmet need for sites in South Cambridgeshire. However, whilst the references to essential need in policy H29 may have limited weight, they do not in my view undermine the relevance of the criteria as a means of assessing the merits of particular sites.

Criteria (1) and (5) to (9)

16. The site is close to the large village of Cottenham with its school, several shops and other facilities (Criterion 1). There are no highway or access objections (5). It does not affect any buildings of archaeological or historic interest or land of wildlife or nature conservation value (6). No buildings are present or proposed other than those which are acceptable under Criterion 7. The site has mains water and electricity, and although currently on a cess pit foul drainage system it is not disputed that it could be connected to the public sewer (8). No public rights of way are directly affected (9). All these criteria are met.

Criterion (2)

17. This is divided into 2 parts. The first is that sites should have minimal impact on the amenities of existing local residents and adjoining land uses; the second is that concentration of sites will be avoided. The nearest permanent housing is nearly 200m away on Lockspit Hall Drove, with pasture land bounded mainly by hedges in between. The effect upon existing residents of permanent housing would be minimal. The site adjoins the authorised caravan sites on Setchel Drove. There is no evidence that its presence causes unacceptable noise or disturbance to these residents, but their previously open rear outlook of the occupiers of some of these is affected. To that extent, and that limited extent only, the caravan site enforced against fails to meet the first part of Criterion 2.
18. It does, however, increase the concentration of sites in this location, contrary to the second part of Criterion 2. It lies between 2 substantial authorised groups of pitches, and alongside various unauthorised ones on the land between Setchel Drove and Orchard Lane/Water Lane which the Council had intended to keep open. It is not clear from the text supporting Policy H29 what the purpose of avoiding concentration might be. The appellant argues that it has advantages. For instance it may be far less harmful to the countryside as a whole to allow a discrete block in a single location such as this rather than many small sites dispersed over a wide area. On the other hand, Cottenham Parish Council is concerned that if the appeal is allowed a situation will exist, if it does not already, in which 'the influx of travellers will become unmanageable' and place a serious burden on medical and

educational services. However, there is no indication from other sources that this is, in fact, the case.

Criteria (3) and (4)

19. I look at these together. Both relate to the effect of the development upon the character, appearance and amenity of the area, and on this there is substantial disagreement between the parties. The appeal land, along with other land between the authorised pitches on Setchel Drove and Orchard Lane/Water Lane was formerly undeveloped agricultural land. In the Council's view it provided a distinctive break between the 2 sites, the continued openness of which was found to be important by an appeals Inspector in 2000. Use of the appeal site as a caravan site harms the rural character and appearance of the area by reducing this openness and the views across the landscape. The concentration of caravans is intrusive. The site is not well screened, especially from the west, and extensive planting would not be appropriate in the open fenland landscape. It would be a precedent for further development of the whole block between the 2 authorised sites. Hence the Council's argues that it fails to protect the distinctive character of the landscape as required by Policies SP12/6 and HG29.
20. However, it seems to me that clear views of the site are limited. It is directly visible through a gap in the hedge at a gate on Lockspit Hall Drove, and obliquely so from the open south west section of Setchel Drove. If the other caravans to the north east of the appeal site were removed, then it would be possible to see it as an extension to that on Setchel Drove from points to the north east along that road. The hedges bounding the small fields between the site and Lockspit Hall Drove are not within the control of the appellants, and if these were to be removed then the views of the authorised and the appeal sites would be more open.
21. However, the existing authorised caravan sites on Setchel Drove and Orchard Lane/Water Lane are likely to be dominant elements in the landscape even in the absence of caravans on the land in between. From the north east these, plus any caravans on the appeal site, are seen with Cottenham village behind, so that the view is not of entirely open fen. In some views around the area the industrial buildings south of Cottenham Lode are a strong element. In others large farm buildings are also prominent. A belt of trees and woodland has been planted on the northern side of Twenty Pence Road as it runs towards Wilburton which effectively limits views from this main through route.
22. I therefore consider that the contribution of the gap between the existing authorised sites to the character and appearance of the wider landscape is minor. The area is not at present subject to any special landscape designation, despite the representations of the Cottenham Village Design Group. The use of the appeal site causes some harm to the character and appearance of Smithy Fen, but it is not great. Some of this, but probably not all of it, could be alleviated by planting along the south west boundary of the appeal site and perhaps by some within the plots. Nonetheless the site would not wholly meet Criteria 3 and 4 of Policy H29.

Flood risk and alleviation

23. Flood risk, its alleviation and mitigation and the absence on an assessment of these matters, were not referred to in the reasons why the Council considered it expedient to issue the notice. Nor do they seem to have been raised as concerns in other cases on Smithy Fen,

despite the usual consultations. The Council's witness did not know the reason for this. They were introduced only as a reason for refusal of planning application No S/0958/03/ for the retention of the caravan site enforced against.

24. This is not a question addressed in any detail by the parties to the inquiry. It is not argued that appropriate amelioration and mitigation measures could not be secured if found to be necessary. It has not been shown to be a sufficient reason by itself to justify refusal of the deemed application. In my view it is likely to be a matter that could be addressed by means of conditions on a planning permission granted on the deemed application.

Precedent

25. The Council is concerned that if this appeal is allowed it would set a strong precedent for the retention or development of all the remaining land between the 2 currently authorised sites on Setchel Drive and Orchard Lane/Water Lane, the whole of which is now owned by gypsies. However, in my opinion each case falls to be determined on its own merits. Each is likely, in practice, to be somewhat different. The greater the number of permitted pitches the greater the degree of concentration that may arise, and the degree of harm caused to the character and appearance may then be different. At the same time any absolute shortfall in general site provision would decrease, and with it the extent of the unfulfilled general need. The balance may then be different.
26. Further, in the case before me a strong element of individual need is claimed, which arises from family ties between the people residing on the authorised pitches and those on the appeal site. The individual needs of people on other unauthorised sites are not known to me. Nor are the likely consequences upon those individuals of being required to move. Again, the balance between conflicting interests may be different.

Need

General need for sites

27. At the inquiry the figures for the July 2003 count of gypsy caravans became available. They show a substantial increase in unauthorised camping from those recorded in January 2003, whilst authorised numbers remained similar. It is accepted that the figures are not wholly reliable; they are necessarily a snapshot, and some caravans could be missed out inadvertently. They may, in fact, underestimate the scale of unauthorised camping. The January figures show a general need for additional pitches in South Cambridgeshire. The July figures show a greater one. Under cross-examination the Council's witness accepted that there is an unmet general need, and that if this appeal fails the occupiers would be looking for another site in competition with others.

Specific needs of the occupiers of the appeal site

28. This group of gypsies form part of a wider group known as Irish gypsies. They have their own distinct origin, culture and customs, even though many were born in Britain. Those on the appeal site form a very close-knit community of generally interrelated families who work together, travel together and look after each other. For these reasons they do not mix well with English gypsy groups, who are unlikely to tolerate their presence on a shared site. There may also be conflicts between different families within the general groups of similar national origin.

29. At the inquiry Mrs Boswell and Mr O'Brien explained their family connections with people living on the authorised pitches nearby. Some of these relationships are very close ones, and that is why they bought their plots and moved to this site. It is now their home. They have invested their savings in their plots. One of them bought his plot with finance provided by his brother; he is still repaying that debt.
30. Some individuals have health problems. Mrs Boswell, for instance, takes her mother to her frequent hospital visits, and looks after her sister and her children, as her sister has mobility problems. The site residents are registered with local doctors. Education is also seen as highly important. The adults, never having had a settled life, have very few literacy skills, and some have none at all, but they wish their children to acquire them. At the time of the inquiry 4 children already attended school in Cottenham, and a fifth was due to start at nursery school on the following Monday. Older children have the problem that their literacy skills are years behind those of other children of comparable ages, but Cottenham school has, apparently, the ability to cope with this.
31. Mr O'Brien had made regular visits to Cambridge selling rugs, carpets and furniture, and had stayed with family members at Smithey Fen in recent years, but had spent most of the time travelling widely. Mrs Boswell had been on a site near Tring for 9 months before moving to Cottenham, but left before the occupants were evicted and the site was cleared. Before that she was on the road, often being given only a few days before being required to move on. Sometimes they had to move immediately whilst the menfolk were out at work, with no knowledge of where they might go next. The children's education is impossible in such circumstances, and health and welfare suffer from poor living conditions.
32. Some of these needs may be capable of being met on other sites, but not all of them. Family support and education in particular would be severely disrupted by any further relocation. Overall, the evidence suggests to me that the occupiers of the plots on the appeal site have specific needs which could not be met easily on other sites elsewhere, even if these were genuinely available at affordable prices.

Human rights and the balance of interests

33. I have concluded that the criteria of Policy H29 provide a useful checklist against which to assess the suitability of sites not allocated by the local plan. The development enforced against fails in part to meet Criterion (2). It also fails to meet Criteria (3) and (4), but the degree of harm to the rural character and appearance of the area is not great.
34. Against this there is a substantial unfulfilled general need for additional site provision in South Cambridgeshire which the appeal site would, in a small way, help to meet. However, it has not been demonstrated that its contribution towards meeting that general need is sufficient to outweigh the planning objections to its retention.
35. Crucial, in this case, are the individual needs and circumstances of the occupiers, and what is likely to happen to them if this appeal fails. It is probable, if not almost certain, that if they are required to leave their own land the families concerned will be forced back to an insecure, uncertain and primitive life on the roadside or in a series of illegal encampments from which they might face eviction or prosecution at any time. The evidence suggests strongly that they would have nowhere lawful to go in the District, the County or nearby. The mutual support provided by close family nearby would be lost, the education of the children would cease or at the very least be very severely disrupted, and the health and

welfare of the individuals concerned, especially the very young, the elderly and infirm, is likely to be harmed. I give these likely consequences considerable weight.

36. In my opinion the degree of interference with their right to respect for their private and family life and their homes would be severe, and particularly so to the Boswell and Slattery families on Plot 2. It would be disproportionately severe when compared to the degree of benefit to the public interest, mainly deriving from the effects on the landscape, that would be likely to arise from requiring them to leave. Therefore I conclude that these factors are sufficient to outweigh the planning objections to retention of this caravan site. The appeal succeeds on ground (a). It is not necessary to consider the appeal on ground (g).

Conditions

37. I was invited to consider the need for conditions on planning permission along the lines of those imposed in the 'Pylon Site' case (APP/N1920/A/01/1068324). Permission is justified both because of the needs of gypsies in the area and the particular circumstances of the present occupiers of the site. I therefore impose conditions limiting the use to gypsies and to the named occupiers and their dependants. It is also necessary to limit the numbers of caravans in order to allow for adequate landscaping, parking and turning, and to restrict business activity in the interests of the living conditions of adjoining families. Site layout, landscaping and drainage works are the subject of conditions requiring a scheme to be submitted for the approval of the local planning authority.

Formal decision

38. In exercise of the powers transferred to me I allow the appeal, quash the enforcement notice and grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the use of land now known as Pine Lane (off Water Lane), Smithey Fen, Cottenham, Cambridgeshire as a residential caravan site, ancillary provision of drains and construction of accesses and hardstandings, subject to the following conditions:
1. the occupation of the land and the caravans shall be restricted to persons defined as gypsies in section 24(8) of the Caravan Sites and Control of Development Act 1960 or any act revoking and re-enacting that Act;
 2. the use of the land and occupation of the caravans shall enure for the sole benefit of the following persons and their dependants: Daniel & Nora McCarthy, Albert & Bridget Boswell, Anne-Marie Slattery, Roger & Mary Slattery, Thomas & Mary Flynn, Jeremiah & Bridget O'Brien;
 3. no more than 12 caravans (of which no more than 4 shall be static caravans) shall be stationed on the land at any one time;
 4. no commercial activity shall take place on the site, including the storage of materials other than those to be used for works on the site itself, and no vehicle exceeding 3.5 tonnes in weight shall be kept on the land;
 5. the use hereby shall cease and all materials and works brought onto the land for the purpose of the use, including those used to create access roads and to provide utility services, shall be removed, and the site shall be restored to a condition suitable for

agricultural use, within 3 months of any one of the following requirements not being met:

- (i) within 3 months of the date of this decision there shall have been submitted for the approval of the local planning authority a scheme for the layout of the site (including parking and turning areas), the provision of foul and surface water drainage, appropriate means of reducing the risk of flooding or ameliorating its effects, and the provision of boundary treatment and landscaping (hereinafter referred to as a Scheme of Works) and the said scheme shall include a timetable for its implementation;
 - (ii) within 11 months of the date of this decision a Scheme of Works shall have been approved by the local planning authority or, if the local planning authority fails to approve such a scheme, or fails to give a decision within the prescribed period, an appeal shall have been lodged and accepted by the First 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 Scheme of Works shall have been approved by the secretary of State;
 - (iv) all works comprised in the Scheme of Works as approved shall have been implemented, and completed within the timetable set out in the approved scheme.
6. the parking and turning areas as defined in the Scheme of Works as approved in pursuance of Condition 5 above shall be retained and kept available for such purposes, and the approved landscaping areas shall be retained as set out in that scheme subject to any management requirements provided for in that scheme.

Information

39. Particulars of the right of appeal against this decision to the High Court are enclosed for those concerned.
40. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
41. An applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period.



Inspector