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## Appeal Decision

Inquiry opened on 18 March 2014

Site visit made on 21 March 2014

by **B Hellier BA(Hons) MRTPI**

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

Decision date: 2 May 2014

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**Appeal Ref: APP/W0530/A/12/2181439**

**Land at 5-11 Orchard Drive and 14-18 Water Lane, Smithy Fen, Cottenham, Cambridge, CB24 8PN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mrs Kathleen O'Brien against the decision of South Cambridgeshire District Council.
  - The application Ref S/0041/12/FUL, dated 9 January 2012, was refused by notice dated 17 July 2012.
  - The development proposed is change of use of 5,5a,6,10 and 11 Orchard Drive and 15 Water Lane to 6 gypsy/traveller pitches, involving the siting of 6 mobile homes, 6 touring caravans and the erection of 6 amenity buildings and a stable; and change of use of 7,8 and 9 Orchard Drive and 14,16,17 and 18 Water Lane to a community garden, involving the siting of children's play equipment and alterations to Orchard Drive.
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### Decision

1. The appeal is dismissed insofar as it relates to a change of use of 11 Orchard Drive to a gypsy/traveller pitch and a change of use of 7,8 and 9 Orchard Drive and 14,16,17 and 18 Water Lane to a community garden, involving the siting of children's play equipment and alterations to Orchard Drive.
2. The appeal is allowed insofar as it relates to a change of use of 10 Orchard Drive and 15 Water Lane to gypsy/traveller pitches and planning permission is granted for gypsy/traveller pitches at 10 Orchard Drive and 15 Water Lane in accordance with the terms of the application, Ref S/0041/12/FUL, dated 9 January 2012, as amended, so far as relevant to that part of the development hereby permitted and subject to the conditions set out in the accompanying Schedule.

### Application for costs

3. At the Inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

### Procedural matters

4. The Inquiry was held over a period of three days from 18-20 March with a site visit on the morning of 21 March after the Inquiry was closed.

5. Prior to the inquiry the appellant amended the proposal to a smaller site area which excluded pitches 5, 5a and 6 Orchard Drive and reduced the number of caravans. I am satisfied that none of the parties have been prejudiced by these changes and have considered the appeal on the basis of the revised scheme.
6. Consequently it was agreed that the description of the development should be revised to: Change of use of 10 and 11 Orchard Drive and 15 Water Lane to 3 gypsy/ traveller pitches, involving the siting of 4 mobile homes, 4 touring caravans and the erection of 3 amenity buildings and a stable; and change of use of 7,8 and 9 Orchard Drive and 14,16,17 and 18 Water Lane to a community garden, involving the siting of children's play equipment and alterations to Orchard Drive.

### **Gypsy status**

7. The proposed occupiers are culturally Irish Travellers who have all been brought up on the road and continued travelling as adults, living on temporary roadside sites, before settling down with young children or, in the case of David Gammell, because of ill health. All but Kathleen Slattery and David Gammell have been acknowledged as having traveller status in previous appeals. I accept from this and from what I heard at the inquiry that all the adult travellers in this appeal satisfy the planning definition of a traveller in Planning Policy for Traveller Sites<sup>1</sup> (PPTS).

### **Main issues**

8. I consider the main issues are:
  - The effect of the proposal on the character and appearance of the surrounding area;
  - Whether the scale of the proposal together with the existing traveller development at Smithy Fen would unduly dominate the settled communities of Smithy Fen and Cottenham;
  - Whether the proposal would set a harmful precedent for further development;
  - The effect of the proposal on community infrastructure and public open space; and
  - Whether any harm arising from the above is outweighed by other considerations, including the general need for sites, future site provision and the accommodation needs and personal circumstances of the proposed occupiers.

### **Background**

9. The Smithy Fen traveller site occupies a rectangular block of land of about 7ha in area situated some 800 metres from the main built up part of the village of Cottenham. In the late 1980s a Romany Gypsy site was developed along Setchel Drove which forms the north-west boundary. Over the next ten years or so both this Romany site and most of the rest of the land was acquired by Irish Travellers. Planning permissions were granted which have resulted in two separate concentrations of development which now accommodate a total of 50 authorised traveller pitches.

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<sup>1</sup> Annex 1 of Planning Policy for Traveller Sites. DCLG. March 2012

10. The remaining, unconsented, part of the site is situated between the two authorised developments. The Council has consistently resisted any extension of caravans into this area. Its stance has been supported by the Secretary of State who dismissed two appeals in 2005. Since then the Council has obtained injunctions preventing further caravan development.
11. The appeal site is at the southern end of the unconsented area and relates to ten plots with frontages either onto Water Lane or Orchard Drive. These plots do not have planning permission and are for the most part undefined. They may, nonetheless, be described as plots because they are generally in separate ownerships. They were acquired in the past by travellers in the hope that planning permission would be forthcoming or in some cases in the mistaken understanding that they were approved plots. An injunction granted in April 2006 effectively stopped any further caravans being introduced but allowed existing caravans, including those on 10 and 11 Orchard Drive and 15 Water Lane, to be retained. The proposal seeks permission for residential pitches on these three plots and for a further seven plots to be formed into a landscaped amenity area.
12. Since the April 2006 injunction there have been further appeals relating to residential gypsy caravans on plots within the appeal site, together with an appeal against an enforcement notice which have all been dismissed<sup>1</sup>. All current occupation of these plots is unlawful.

## **Reasons**

### ***Character and appearance***

13. The appeal site is surrounded by flat arable farmland, geometric field patterns with long straight droves and drainage channels running out into the fens. Cottenham is a large village built on a slightly higher fen island with good tree cover along its edges. Smithy Fen is a small community which, in addition to the traveller site, consists of a cluster of some 18 properties and the modern Brookfield Business Centre on Twenty Pence Road together with a scattered linear development of individual farms, dwellings and small businesses along Lockspit Hall Drove and Oxholme Drove. There is some shelter belt planting along the droves and a community woodland immediately to the east of the business centre.
14. The traveller site is not on the fen island but is in open fen country. It is bounded by a strong hedge on its south-west edge so that it is not easily visible from Lockspit Hall Drove. Viewed from Setchel Drove some screening is provided by an overgrown hedge on the north-east boundary and by the existing buffer of the unconsented part of the site and from this direction the impact of the caravans is further reduced because they are seen against the backcloth of larger scale industrial buildings within the business centre. However from Twenty Pence Road and the public footpaths on the twin embankments of Cottenham Lode the unscreened existing Water Lane plots on the south-east flank are open to view and are particularly intrusive.

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<sup>1</sup> Appeal Ref APP/W0530/A/07/2049741 Residential gypsy caravan site for a temporary period of four years, Plots 5,5a,,6,10 and 11 Orchard Drive. Dismissed June 2008  
Appeal Ref APP/W0530/A/2081713 Caravan site for four caravans....for a traveller family.... for a temporary period, 16 Water Lane/9a Orchard Drive. Dismissed April 2009  
Appeal Ref APP/W0530/C/06/2013997 Residential caravan and mobile home, 15 Water Lane. Dismissed and Enforcement Notice upheld. January 2007

15. The landscape is classified in the District Design Guide SPD<sup>1</sup> as Fen Edge. In such a landscape the SPD advises that any village extensions should be located on the higher ground of the fen islands, avoiding incremental development on the flat, low-lying fen. It goes on to say that the transition from fen to fen island may be enhanced by the retention and creation of small paddocks with hedgerows.
16. As noted above the traveller site is not on a fen island and it is not a small paddock. I find that it is not in character with the surrounding landscape and has a significant adverse visual impact. However the site is established. It is now part of the landscape and I have to consider the degree of additional harm that would arise from the proposal before me. There would be an intensification of structures on site. It is also the case that to minimise flood risk the bases for the mobile homes would have to be raised slightly above the existing site level. Both they and the amenity blocks would be readily visible through and over the existing Water Lane development and, further along Cottenham Lode, through gaps in the boundary hedge. They would also reduce the openness of the site when viewed from Setchel Drove.
17. It would be possible to plug the gaps in the hedge along the north-east boundary. Even so there would still be an adverse effect on the character and appearance of the surrounding area which could not be satisfactorily mitigated by landscaping. There would therefore be some conflict with Policies DP/3 and NE/4 of the Development Control Policies (DCP) DPD<sup>2</sup> which require development to respect both the character and appearance of the countryside and landscape distinctiveness. I consider the proposal would result in further modest harm to the countryside.
18. One of the core planning principles of the National Planning Policy Framework is that *planning should take account of the different roles and character of different areas ..... recognising the intrinsic character and beauty of the countryside and supporting thriving communities within it*. However this does not prevent appropriate development in rural areas. Notwithstanding my finding of harm to the countryside I do not accept the view of the Council that traveller sites should not be located in the open countryside. National guidance in PPTS is that sites may be suitable in rural or semi-rural settings but that they should be strictly limited in open countryside that is away from existing settlements. In this case the site is not away from existing settlements. It is in an accessible location and is well related to Cottenham.

### ***Scale affecting local infrastructure and living conditions***

19. Policy C and paragraph 17 of the PPTS advise that traveller site policies should promote peaceful and integrated co-existence between a site and the local community and that the scale of the site should not dominate the nearest local community. Cottenham has a population of over 6000. There is no evidence that the existing traveller site of 50 authorised pitches has any significant impact on village facilities or infrastructure. It is not visible from the main village and does not have an overbearing physical presence.

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<sup>1</sup> Local Development Framework District Design Guide: *High Quality Sustainable Development in South Cambridgeshire* Supplementary Planning Document. March 2010

<sup>2</sup> Local Development Framework *Development Control Policies* DPD. South Cambridgeshire. Adopted July 2007

20. However the site does dominate the small settled community of Smithy Fen and activities spilling out from the site have an impact on the living conditions of other residents. The Parish Council refers to a number of anti social activities and I saw for myself a considerable amount of fly tipping along Setchel Drove. Whoever is responsible it is clear that these activities cause some tension between the two communities and I consider it is a reasonable concern that any significant increase in the size of the Smithy Fen traveller site would exacerbate these tensions and conflict with the objectives of the PPTS.
21. National design guidance<sup>1</sup> for gypsy sites suggests a maximum of 15 pitches is conducive to providing a comfortable environment which is easy to manage. However this advice is principally directed at Councils and developers who are developing and managing sites, not at the impact on the nearest community. It is not intended, in any event, to apply to private owner occupied sites and I do not consider it relevant to this appeal.
22. The appellant refers to the Chesterton Fen Road area on the outskirts of Cambridge where there is a concentration of over 200 caravans. Whilst the scale is considerably greater than Smithy Fen I was told that the area was relatively isolated and situated between a railway and the River Cam. It would not appear to be comparable with the relationship between the settled and travelling communities at Smithy Fen.
23. In relation to the present proposal there is no suggestion that any anti social behaviour is laid at the door of the proposed occupiers. In this case the three additional pitches would be unlikely to add materially to any existing adverse off site impact on local infrastructure and living conditions and I attach little weight to this concern.

### **Precedent**

24. It is estimated that the capacity of the site, if fully developed, would be 130 pitches. Previous appeal decisions have all given weight to the concern that allowing an individual pitch or a small scale extension would open the way for more development which, cumulatively, would lead to unacceptable impact on the local community and environment. The appellant argues that the proposed occupiers are, with one exception, long term residents who, in the terms of the injunction and unlike most of the other owners, are permitted to remain on the site. The one exception is put forward on the basis of specific health grounds that are unlikely to be repeated. Underlying these special circumstances the extant injunctions and enforcement notices provide a belt and braces control over further development.
25. I am not persuaded by this argument when it is applied to the southern part of the unconsented area served by Orchard Drive and Water Lane. The long history of enforcement action and appeals here is good reason alone to be concerned about creation of a precedent and the occupiers are there in contravention of enforcement notices. Owners of neighbouring plots would note that, in this case, holding out against enforcement action for as long as possible has been successful. Other named owners in the injunction on 5, 5a and 6 Orchard Drive would be encouraged to return. It is also the case that the plots for which community open space is proposed would become part of

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<sup>1</sup> Designing Gypsy and Traveller Sites Good Practice Guide. DCLG May 2008

the approved site. Once land is within the authorised site it would be harder to resist residential use as evidenced by a recent appeal decision on Pine Lane<sup>1</sup>.

26. I find, therefore, that the proposal would set a precedent for further residential use within the southern section of the unconsented part of the site which, if permitted, would extend development up to the site boundary and reduce the gap between the two existing authorised caravan groups. The scale and form of the resulting development would lead to a considerable further erosion of countryside character and appearance.
27. On the other hand the two strips of land known as The Orchard and Pine View which separate the northern and southern developments are protected by bunds, fenced off and inaccessible. So too is the remaining unauthorised area to the north because its only access via Victoria View has now been closed off by plots on Pine Lane. In this respect the situation has changed since the previous appeals and I do not consider precedent would extend to these areas.
28. In terms of scale, the current clearly defined limit to the size of the authorised site creates certainty and stability within the local community. A significantly larger site and a period of unplanned incremental growth would tend to exacerbate community tensions and conflict with the social sustainability objectives of the PPTS.
29. I conclude that there is realistic and specific concern that a harmful precedent would be set and that this weighs substantially against the proposal.

### ***Open space and community provision***

30. The appellant indicated that the community garden and play area together with a future community building was a high priority for the traveller site. However it was conceded that due to lack of funding and uncertainty over ownership there was no guarantee that the open space would be provided or properly maintained. It would therefore not be possible to enter into a S106 agreement to secure its delivery. Taking this on board it is not entirely clear why the proposal was put forward.
31. As an alternative the Council would seek a financial contribution to off site provision in accordance with DCP Policy DP/4 and it refers specifically to improvements that are needed to two community halls in Cottenham. Set against this it is noted that the Council is not always consistent in applying this policy as three recently approved sites at Chesterton Fen Road have not been subject to a S106 agreement. However the development plan sets out a clear requirement for such a contribution and failure to comply should count against the proposal although in this case I attach only limited weight to this factor.

### ***Other considerations***

#### General need and future provision

32. The appellant relies on a gypsy and traveller accommodation needs assessment (GTANA) carried out in 2006<sup>2</sup>. This included a survey of gypsy households and liaison with the traveller community. It identified a need for 110-130 pitches between 2005 and 2010, later updated to 120 pitches between 2006 and 2011.

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<sup>1</sup> Appeal Ref APP/W0530/A/12/2170121. Siting of 2 static caravans, 2 touring caravans, 2 utility blocks, one temporary portaloos and parking for 4 vehicles, Pine Lane, Smithy Fen. Allowed August 2012

<sup>2</sup> Cambridge Sub-Region Traveller Needs Assessment 2005-2010. Published May 2006

If a standard annual household formation rate of 3% is applied for the period 2011 to 2016 a further 55 pitches are needed giving a 10 year requirement of 175. Against this target it was agreed that 120 new permanent pitches had been approved since 2006. On this basis there remains a significant under provision.

33. The Council relies on a GTANA carried out in 2011<sup>1</sup> which relies heavily on the annual January and July caravan counts and takes into account up to date figures on outstanding temporary permissions. Taking 2011 as the baseline it estimates that there is a 2011-2016 requirement for 65 pitches. Already there have been 105 pitches approved since 2011 so there would appear to be no unmet need. Indeed over the 20 year period 2011-2031 there is an estimated pitch requirement of only 85. On this basis the Council already has a 20 year supply of traveller sites.
34. I have no doubt that the approach adopted by the appellant is too crude. However I have considerable reservations over that adopted by the Council. The lack of a full household survey is an underlying weakness but there are concerns about the methodology.
- There is an assumption that there is no demand from hidden households doubling up or in overcrowded conditions on existing private sites.
  - There is a further assumption that there will be an annual turnover of 4% of pitches which would then count towards supply. There is no evidence of this level of turnover on privately owned sites but more fundamentally it assumes that there will be no net in-migration or internal movements within the District. Indeed it assumes there will be out-migration but no in-migration.
  - One indicator of demand is the waiting list for the two Council sites. This stands at 49. Whilst there may be some double counting in this figure it represents an element of unmet need which is not currently reflected in the assessment model.
  - Demand from households living in conventional housing is assumed to be balanced by those wanting to move in the opposite direction. Yet there is no analysis of those travellers on the housing waiting list to understand whether they would prefer caravan accommodation if it were available.
35. The Council, with other Cambridgeshire housing authorities, will carry out a full traveller household survey in 2015 although I was told this is intended primarily to provide information on health and social conditions. At the moment I conclude its needs assessment has serious weaknesses and that in practice there is a current shortage of sites. Similar findings were identified in recent appeal decisions on four traveller sites in nearby Willingham<sup>2</sup> and by the Inspector examining the East Cambridgeshire Local Plan.
36. The Local Plan<sup>3</sup> has recently been submitted for examination. Adopting the 2011 GTANA figure Policy H19 states that provision will be made for 85 permanent pitches between 2011 and 2031. Since permissions exceed the

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<sup>1</sup> Cambridge Sub-Regional Gypsy and Traveller Accommodation Needs Assessment 2011. Published October 2011

<sup>2</sup> Appeal Refs APP/W0530/A/12/2184129, 2185676, 2186665 and 2186669 various sites in Willingham determined October 2013.

<sup>3</sup> South Cambridgeshire Local Plan Submission Document. Approved for submission 13March 2014

identified need no new allocations are proposed (see para 33 above) although Policy H20 indicates that opportunities will be sought to deliver sites within major development proposals. Policy H21 is a criteria based policy which will be used to assess windfall proposals.

37. Little weight can be attached to the Local Plan at this stage particularly as the GTANA assumptions are likely to be contested. The Council has an allocation of £500,000 from the Homes and Communities Agency for site development/improvement which must be spent before April 2015 but it is not able to say how or where it will be spent.
38. Overall I consider the current shortage of traveller sites and the lack of any prospect of future provision weighs significantly in favour of the proposal.

#### Accommodation needs of the proposed occupiers

##### *Kathleen and Jimmy O'Brien (15 Water Lane)*

39. They married in 1996 and travelled until 1998 when Mrs O'Brien moved to a local authority site at Gerrards Cross. She moved to Smithy Fen in 2002 with her children to a plot owned by her father at 4 Orchard Drive (also within the unconsented area). Her relatives bought her the plot at 15 Water Lane and she moved there in 2004. She and her husband have lived there ever since.
40. Mr O'Brien travels to markets and fairs selling antiques. Their son John (17) has travelled abroad for work and Jimmy (14) has left school but is hoping to gain a qualification in block paving before completing his formal education. Jean (12) attends the secondary school in Cottenham. Their young daughter Eileen (5) lives in Wolverhampton with her grandmother and aunt. The family has always lived in caravans and when they visit Eileen they stay in a caravan.
41. Since the enforcement notice was upheld in 2007 they have looked for an alternative site. They looked at a Council owned site at Willingham and suggested taking it over but the Council had resolved to close it. They investigated a pitch at one of the two Council owned sites but these are dominated by Romany Gypsy families. The Council does not specifically debar Irish Travellers but the two groups do not mix well and it was agreed that in practice the Council sites were not available. The family also looked further afield in the Spalding, Ely and Peterborough areas but found that sites were either full or do not take Irish Travellers.
42. There are a number of vacant pitches within the authorised Smithy Fen site. I saw two in Water Lane, one in Orchard Drive, one in Pine Lane and nine of the twelve pitches in Setchel Drove. On the face of it these would appear to provide a solution but Mr O'Brien stated that they are either retained for future family use or, if they are for sale, they are unaffordable. Whilst the Council maintains that the vacant sites are available it did not provide any evidence. It has tried to facilitate possible land swaps and considered compulsory purchase of plots on Setchel Drove but to date it has been unable to unlock these sites. It is unable to suggest any sites other than these.
43. The family moved onto 15 Water Lane without the benefit of planning permission and are currently occupying the site unlawfully. This weakens their case. However they have lived here for 10 years and for the last six years the Council has been in a position to bring the matter to a head. It is not a criticism that it has not but it does reflect an acknowledgment that there is no



easy alternative accommodation option. Taking this into account and the lack of alternative available and affordable accommodation I give significant weight to their accommodation needs.

*Nora Slattery (10 Orchard Drive)*

44. Mrs Slattery moved to Smithy Fen about ten years ago and lived initially on 10 Orchard Drive. After the injunction was granted she moved to live with her brother Patrick on an approved pitch at 6 Pine Lane. Another brother James also lived elsewhere on the site. She has four children. Michael (5), Kathleen (10), Margaret (15) and James (17). James has moved away and is working with his uncles. Her brothers left Smithy Fen in 2013 and, rather than making any provision for her, sold their pitches. Although she has not looked for other sites the situation for her is the same as for the O'Brien family. This leaves her with only 10 Orchard Drive, which she owns, as a potential site.
45. The boundaries to No.10 are undefined and the surface is potholed. Although there was a touring caravan there on my site visit photographs submitted by the Council taken in January 2013 and January 2014 show the site to be vacant. It was agreed that in its present condition it was not really suitable for occupation. It is not clear where the family has been living since her two brothers moved on but it has not been on No.10. In these circumstances I consider only limited weight should be given to their accommodation needs.

*Kathleen Slattery and David Gammell (10 Orchard Drive)*

46. Mrs Slattery moved to Smithy Fen in 2002. Three of her four sons have moved away leaving herself, Michael (11) and Mr Gammell, the father of her boys on the site. Mr Gammell moved to the site in 2008 because he was ill and could be looked after by Mrs Slattery. Prior to this she and her sons do not appear to have been on this particular pitch. In 2011 their mobile home burnt down and they then moved off the site and lived elsewhere on Smithy Fen. She is currently doubling up at 11 Orchard Drive but this is a move that has only occurred recently.
47. Mr Gammell is essentially bed bound although he does go out in a wheelchair. Whilst previously doubling up was possible, Mr Gammell now has a need for a larger caravan and a site to accommodate it. A prerequisite for any funding assistance with more spacious accommodation and appropriate equipment and facilities is that the site occupied by Mr Gammell is lawful. This is a very specific accommodation need to which I attach significant weight.

*Kathleen O'Brien and Michael Heggarty(11 Orchard Drive)*

48. Mrs O'Brien has lived on the Smithy Fen site since 2011. Her husband Mr Heggarty no longer lives with her. Two of her children, Michael (11) and Mary (8), live with their grandmother in Mansfield<sup>1</sup>. She occupies a mobile home on No.11 with Richard (3). She does move away to stay with family members for periods but this causes overcrowding and is not a satisfactory permanent solution. Whilst her children are now settled in school in Mansfield she would like to have the opportunity to bring them back to live with her. My assessment is that at the most she relies only partly on No.11 as a base and that only limited weight should be given to her accommodation needs.

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<sup>1</sup> The written evidence from Michael Heggarty was that they lived with their grandmother in Dublin

Personal circumstances of the proposed occupiers

*Kathleen and Jimmy O'Brien (15 Water Lane)*

49. Their daughter Jean has just started in Year 7 at Cottenham College and would benefit from being settled. It is still unusual for traveller girls to progress into secondary education. Jean, together with another girl from the site, has a weekly education support session in Cottenham Library. Mr and Mrs O'Brien have also participated in a lottery funded project to develop literacy skills. I attach further modest weight to the benefits of a settled base which would allow Jean to continue her education at the school.

*Nora Slattery (10 Orchard Drive)*

50. It is anticipated that her son Michael will start school in September but in view of my conclusion on her accommodation circumstances this adds little weight. However she provides assistance to her sister Kathleen in transporting Mr Gammell to hospital and to other appointments and her presence nearby adds some support to her case.

*Kathleen Slattery and David Gammell (10 Orchard Drive)*

51. Mr Gammell has a degenerative neurological condition which has left him reliant on Mrs Slattery and, to a lesser extent, his young son Michael for his personal care. They do not have a mobile home and have to use an outside toilet. A pilot move to respite care was unsuccessful. Mr Gammell wants to be with his family and this would appear to be not only in his interests but also those of the national health service. It is also important to be within easy travelling distance of Addenbrooke's Hospital in Cambridge where there is a specialist unit and where his consultant is based.
52. I find it unhelpful that there is no corroborating evidence from those health and social services professionals caring for Mr Gammell. Nevertheless the caring needs arising from his condition are plain to see and it is a matter of considerable importance that they are provided for.

*Kathleen O'Brien and Michael Heggarty (11 Orchard Drive)*

53. I accept that Mrs O'Brien would like a fresh start with all her children living with her. However I am not persuaded that her accommodation arrangements are the main constraint to achieving this. I do not find that there are any personal circumstances that would add further support to her case or to that of Mr Heggarty who now lives elsewhere.

***Balancing harm against other considerations***

54. The proposed development is relatively small scale. It would have a modest adverse impact on the intrinsic character of the surrounding landscape and on public views into the site. There would also be limited harm arising from the lack of open space and community provision with little harm from the physical and social impact on the local settled community.
55. My analysis of the impact of extending development into the unconsented area differs from that of previous appeal decisions because, for the reasons set out at paragraphs 25-27, I do not consider it likely the proposals would set a precedent for development in the northern part of the site. Nonetheless, there is an important and well founded concern that allowing the proposal would set

a precedent for a further unplanned extension of development in the southern part of the site. This would have a substantial adverse effect on the character and appearance of the surrounding countryside and be of a scale that would be likely to exacerbate tensions with the Smithy Fen settled community. This would conflict with development plan Policies DP/3 and NE/4 and with Policy C and paragraph 17 of the PPTS.

56. Set against this harm is the significant weight that must be given to the general need for sites and the lack of planned future provision, together with the individual accommodation needs and personal circumstances of the proposed occupiers. I conclude that these considerations would not outweigh the harm that would be caused by granting a permanent permission.
57. However I have considered whether a temporary permission would be appropriate. It would restrict the harm to a limited period and in the long term would not dilute the principle of containing development within the existing site boundaries. When this reduced harm is taken into consideration I conclude that the particular situation of Kathleen and Jimmy O'Brien and their daughter Jean and the special health considerations that apply in the case of David Gammell would justify temporary permission on 15 Water Lane and 10 Orchard Drive respectively. The accommodation needs of Nora Slattery are not determinative but I accept that sharing the pitch with her sister would be helpful in the care of David Gammell.
58. A temporary permission would only be justified if planning circumstances may be expected to change in a particular way at the end of that period. Whilst the Council has no plans for further site provision it has an allocation of funding for improved provision and there is a window of opportunity during the Local Plan examination to review the position. A four year period would give adequate time to identify and bring forward one or more sites. By the end of this period Jean O'Brien would be coming to the end of Year 11 at school. The prognosis for David Gammell is uncertain but it is likely his circumstances too will change during the next four years.
59. I do not consider dismissing the appeal for Kathleen O'Brien on 11 Orchard Drive would leave her homeless as the evidence is that she has a number of relatives on site and has other places to stay. Whilst this may not be ideal I consider the interference with her human rights and those of her young son would be a proportionate response having regard to the substantial harm caused by the proposal.
60. The community garden, if implemented, would become an integral part of the site and strengthen the precedent argument. It should be resisted on this basis alone but it is also not likely to be deliverable.

### **Split decision**

61. I consider the proposal before me can be considered as a number of parts which are clearly severable both physically and functionally. They are the residential pitches each of which is a separate entity and the community garden which, although extending over a number of plots, is a further separate element. I propose to grant a four year temporary permission for residential pitches on 15 Water Lane and 10 Orchard Drive but to dismiss the appeal as it relates to 11 Orchard Drive and to the community garden.

## Conditions

62. Suggested conditions were included in the Statement of Common Ground and I have considered these in relation to the advice in national planning practice guidance. Since gypsy policies apply in this case and, since it is only personal circumstances that have tipped the balance in favour of the decision, both gypsy occupancy and personal conditions should be imposed.
63. Since the permission is temporary it would not be appropriate to permit permanent amenity buildings or a stable block although alternative temporary amenity units would be acceptable. To limit visual impact the number of caravans should be restricted to those applied for. The mobile home bases should be raised above flood level and the mobile homes securely fixed to the ground. Conditions should be imposed to secure these requirements.
64. A condition is also required for the submission and approval of a scheme which should include pitch layout and drainage arrangements, together with details of lighting and the means of securing the mobile homes.
65. I do not consider it would be reasonable to seek a landscaping scheme in light of the limited period of the consent.

## Conclusion

66. I find that South Cambridgeshire has a current unmet need for traveller sites which is unlikely to be resolved in the near future. Taking this into account I find that the individual accommodation needs and personal circumstances of the proposed occupiers of 15 Water Lane and 10 Orchard Drive are such as to outweigh the limited conflict with countryside protection and community integration planning policies so as to justify a temporary permission. A temporary permission which is tied to specific health, education and accommodation needs would not provide a general precedent for any further incursion into the unconsented area at Smithy Fen.
67. For the reasons given above I conclude that the appeal should be allowed in part and dismissed in part in the terms set out in paragraph 61.

*Bern Hellier*

INSPECTOR

## Schedule of Conditions (10)

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The pitches shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites.
- 3) The use hereby permitted shall be carried on only by the following: Kathleen and Jimmy O'Brien (15 Water Lane) and Nora and Kathleen Slattery and David Gemmell (10 Orchard Drive) and their resident dependants, and shall be for a limited period being the period of four years from the date of this

- decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 4) When the premises cease to be occupied by those named in condition 3 above, or at the end of four years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place.
  - 5) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan) shall be stationed on 15 Water Lane and no more than 4 caravans (of which no more than 2 shall be a static caravan) shall be stationed on 10 Orchard Drive.
  - 6) Notwithstanding the submitted application and plans this permission does not grant consent for any permanent amenity buildings or for a stable block.
  - 7) The concrete mounting pads for the mobile homes shall be set no lower than 4.05m above AOD (Newlyn) and the mobile homes shall be securely anchored to the pads or otherwise to the ground.
  - 8) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:
    - i) within 3 months of the date of this decision a scheme for: the internal layout of the two pitches, including the siting of caravans, any temporary amenity block, hardstanding and amenity areas and boundary treatment; the means of foul and surface water drainage; proposed and existing external lighting; and details of the means of securing the mobile homes as required by Condition 7:
    - ii) within 11 months of the date of this decision the site development 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:
    - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State:
    - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
  - 9) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the two pitches hereby approved.
  - 10) No commercial activities shall take place on the two pitches hereby approved, including the storage of materials.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Saira Kabir Sheikh	of Counsel
She called	
Mrs Emily Temple	Principal Planner, Pegasus Group
Mr Stephen Hills	Director of Housing

### FOR THE APPELLANT:

Mr Marc Willers	Of Counsel
He called	
Mr Michael Hargreaves	Michael Hargreaves Planning
Mrs Kathleen O'Brien	Applicant and proposed occupier 15 Water Lane
Mr Jimmy O'Brien	Proposed occupier 15 Water Lane
Mrs Nora Slattery	Proposed occupier 10 Orchard Drive
Mrs Kathleen Slattery	Proposed occupier 10 Orchard Drive
Mrs Kathleen O'Brien	Proposed occupier 11 Orchard Drive
Mrs Margaret Wood	Traveller education advisor

### INTERESTED PERSONS:

Mr Phillip Kratz	Representing Cottenham Parish Council
Mrs Joanne Clark	Local resident

## DOCUMENTS

- 1 East Cambridgeshire Local Plan Examination. Inspectors Note. 19 February 2014
- 2 List of gypsy/traveller approvals since 2011
- 3 Council Opening Statement
- 4 Council emails re highway response and re David Gammell. April 2012
- 5 Council response to complaint re consultation. 29 Feb 2012
- 6 Council response to witness statement of Jannie Brightman
- 7 Council viewpoints for site visit
- 8 Amended 1:1250 location plan from appellant
- 9 Last 10 caravan counts for South Cambridgeshire
- 10 Photographs of the site taken 4 January 2013 by Mrs Temple
- 11 Aerial photograph and views of surrounding area from Mr Hargreaves
- 12 Schedule of permissions at Chesterton Fen Road from Council
- 13 Two witness statements from Mrs J Clark
- 14 SI 2012 No.628 re transitional provisions of the Localism Act 2011
- 15 Witness statement from David Gammell
- 16 Council response to Doc 1 above
- 17 South Cambridgeshire Local Plan. Submission document March 2014
- 18 Central Bedfordshire Council v SSCLG and Michael Kiely CO/14561/2013
- 19 Leanne Codona v Mid-Bedfordshire District Council [2004] EWCA Civ 925
- 20 Elizabeth Collins v SSCLG and Fylde Borough Council [2013] EWCA Civ 1193
- 21 Appeal Ref APP/X0360/A/11/2163400 Wokingham Borough Council
- 22 The Queen v South Cambridgeshire District Council [2014] EWHC (Admin)
- 23 Closing Submissions