



## Appeal Decision

Inquiry opened on 11 March 2008 and subsequently adjourned.

Site visit made on 11 March 2008

by **Claire Sherratt** DipURP MRTPI

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

Decision date:  
2 June 2008

### Appeal Ref: APP/W0530/A/07/2049741

### Plots 5, 5A, 6, 10 & 11 Orchard Drive, Smithy Fen, Cottenham CB24 8PT

- 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 Michael O'Brien, Nora O'Brien, Margaret O'Brien, Nora Slattery & Michael Heggerty against the decision of South Cambridgeshire District Council.
- The application Ref S/1631/06/F, dated 4 August 2006, was refused by notice dated 19 April 2007.
- The development proposed is the retention of a residential gypsy caravan site for a temporary period of 4 years.

**Summary of Decision: The appeal is dismissed.**

### Procedural Matters

1. I opened the Inquiry on 11 March. The appellants' agent had withdrawn from the inquiry prior to it opening. In the circumstances, the main parties agreed that an inquiry would no longer be the most appropriate procedure by which to determine the appeal. The main parties agreed that I should determine the appeal based on the written evidence submitted. The main parties and interested persons were given the opportunity to make final comments, in writing, on the written evidence produced in preparation for the inquiry. I have determined the appeal on this basis.
2. All the plots that are the subject of this appeal are currently occupied. They contain both static and touring caravans. Section 73A of the Town and Country Planning Act 1990 expressly provides for the grant of planning permission for development carried out without permission. I have determined the appeal accordingly.
3. I saw that the plots have previously been extended beyond the northern boundary of the site indicated on the submitted plans. I understand this was done without the permission of the landowner and was the subject of an enforcement notice and subsequent appeal. I saw that this land to the north is not separated from the plots within the appeal site by any formal boundary treatment, I nevertheless acknowledge that it is not included within the appeal site (as defined by the red-edge on the plans) and is not to be considered as part of this appeal.

### **Preliminary Matters**

4. Temporary planning permission is sought for a period of 4 years. The plots that are the subject of this appeal are occupied (based on the information received from the appellants<sup>1</sup>) by:
  - Plot 5 - Mr Michael O'Brien and his children.
  - Plot 5A - Mrs Margaret O'Brien and her daughters, Jean (aged 5) and Breda (3).
  - Plot 6 - Mrs Nora O'Brien together with her 4 children James (aged 13), John (12), Jeremiah (7) and David (2). James and John attend Cottenham Village College. Jeremiah attends Cottenham Primary School and David, the youngest is booked into nursery.
  - Plot 10 - Nora Slattery and her 3 children James (11), Margaret and Kathleen (4) who all attend Cottenham Primary School. I understand that Mrs Slattery is also expecting another child.
  - Plot 11 - Michael Heggerty, his wife and their children.

They are all members of an extended family of Irish travellers.

5. Enforcement notices were served in respect of the unauthorised occupation of plots 5, 5A, 6, 10 and 11 Orchard Drive in June 2005. Plots 5, 5A, 6 and 10 were the subject of subsequent unsuccessful appeals. Enforcement notices requiring the vacation of plots 5, 5A, 6, 10 and 11 came into effect in 2006.
6. The gypsy status of the appellants is not disputed. Indeed the gypsy status of the occupiers of 5, 5A, 6 and 10 was accepted by the Inspector who considered the appeals relating to those plots in June 2006. Based on the information available to me, I have no reason to depart from this view and I am satisfied that the appellants are all gypsies as defined in paragraph 15 of Circular 01/2006.

### **Planning Policy**

7. The Development Plan comprises Regional Planning Guidance East Anglia (RPG6); the Cambridgeshire and Peterborough Structure Plan 2003 (SP); the South Cambridgeshire Local Plan (LP); the South Cambridgeshire Local Development Framework Core Strategy Development Plan Document (CSDPD); and the South Cambridgeshire LDF Development Control Policies Development Plan Document (DCPDPD). However, RPG6, the SP, LP and CSDPD contain no policies specific to the provision of gypsy and traveller sites. Whilst the Council refer to SP Policy P7/4, and LP policies HG23 (Gypsies and Travelling Showpeople) and EN1 in the decision notice, these policies were not saved under a direction by the Secretary of State under Schedule 8 to the Planning and Compulsory Purchase Act 2004 and no longer form part of the development plan.

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<sup>1</sup> I note there are some inconsistencies with the audit taken by the Council in 2005 (page 25 of the proof of evidence of John Koch) in respect of the number of children on some plots.



8. RPG6 will be replaced by the East of England Plan which will set out the Regional Spatial Strategy (RSS) for the area up to 2021. A single issue review of the Regional Spatial Strategy entitled 'Planning for Gypsy and Traveller Accommodation in the East of England' has been through the issues and options stage. Following a period of consultation, the Regional Planning Panel recommended that South Cambridgeshire should provide 59 net additional residential caravan pitches during the period 2006 – 2011. This has since been accepted by the Regional Planning Board. This figure allows for the redistribution of the identified need as it currently arises in South Cambridgeshire – some 120 pitches. The final number of pitches required will be confirmed following an Examination in Public later this year.
9. The Council relies on policies contained in its recently adopted DCPDPD. Policies DP/1(p), DP/2(a), DP/3 (2(m)) requires development to conserve and wherever possible enhance local landscape character and not have an unacceptable adverse impact on the countryside. DCPDPD Policy NE/4 deals with landscape character areas. The appeal site is situated at the edge of the Fens.
10. The Council has commenced work on a Gypsy and Travellers Development Plan Document (GTDPD). The Council anticipate that a best estimate of when the GTDPD will be adopted is not before late 2010. The Issues and Options Report 1 sets out a suggested methodology for identifying suitable locations for Gypsy sites in South Cambridgeshire based on a three tier approach.

### **Main issues**

11. I consider the main issues are:
  - (i) the effect of the development on the character and appearance of the area;
  - (ii) whether the development would create a precedent that planning permission should be granted for other unauthorised plots at Smithy Fen;
  - (iii) the effect of the development on highway safety; and
  - (iv) whether any other circumstances exist including the general need for, and availability of, gypsy sites and the personal circumstances of the appellants, that would be sufficient to outweigh any harm identified.

### **Reasons**

#### ***Character and appearance of the area***

12. Smithy Fen is situated about 1km to the north-east of the main built-up part of Cottenham in an area defined as open countryside. It is situated at the edge of the Fens and the surrounding landscape is typically flat with long views and open fields with few hedges. The appeal site comprises a number of plots within a larger rectangular shaped area (the rectangle) of approximately 7.5ha which contains authorised and unauthorised pitches.



13. Within the rectangle there are two areas containing authorised gypsy sites. Some 18 plots are situated along Setchel Drove<sup>2</sup> forming the north west boundary of the rectangle. About 4 further plots extend south east beyond and adjoining 1 Setchel Drove resulting in an L-shaped area of some 22 authorised plots. The remaining authorised plots are accessed from Orchard Drive and Water Lane. A row of plots along Water Lane form the south east boundary of the rectangle. A further block of authorised plots occupy approximately half of the land on the opposite side of Water Lane and the same portion of land either side of Orchard Drive, again creating an L shaped area of some 15 authorised plots. I understand that some of these authorised plots may have been subdivided.
14. The Council considers that the establishment of additional caravan sites at Orchard Drive would further consolidate the area covered by the existing lawful caravan sites at Setchel Drove and Water Lane, making them more obtrusive in the landscape. The use of the site has, the Council asserts, a significant adverse effect on the rural character and appearance of the area in that the former openness of the site and the contribution that it made to the gap between existing authorised sites has been eroded.
15. Circular 01/2006, paragraph 54, recognises that gypsy sites may be found in rural or semi-rural settings. Rural settings, where not subject to special planning constraints, are acceptable in principle. Smithy Fen is not within an area of countryside that is subject to any special planning constraints. Nevertheless, in previous appeal decisions, the countryside at Smithy Fen has been identified as being generally open and flat, with wide views and little natural screening. I agree with assessments made by other Inspectors that it is inherently difficult for such a sensitive fenland landscape to assimilate gypsy caravan development without causing harm to the rural character and appearance of the locality, and that such harm has already been caused by lawful gypsy caravan development at Smithy Fen.
16. Notwithstanding the unlawful pitches that remain in between the two areas of authorised pitches, they are physically separated by open land. I acknowledge that the gap between the two is relatively narrow at the south western side of the rectangle. However it quickly increases in width so that the north eastern side is completely open other than for the width of a single pitch to each end. When viewed from the north east, the large block of land forms a strong visual break between the two authorised areas.
17. The plots that are the subject of this appeal would extend one of the lawful areas towards the north east boundary of the larger rectangle. Only about the width of one plot would remain between plot 6 and the north east boundary. This plot has been the subject of an enforcement notice and an unsuccessful appeal in the past. A gap would remain between plots 10 and 11 and the authorised plots on Water Lane. To the north west of the site is a strip of land onto which plots 4, 5, 5a and 6 have encroached. Beyond this is an area of land that has been the subject of planning and enforcement appeals and injunctive action before being cleared of caravans in October 2006. This land is now enclosed by a bund to prevent future

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<sup>2</sup> 1 Setchel Drove (Park Lane) contains some 6 authorised plots.



unauthorised occupation by caravans. The appeal site, being separated from authorised plots on three sides, occupies a relatively isolated position. The development would, in my view, significantly erode the gap between the lawful areas.

18. I consider that to allow this appeal would have a significant adverse effect on the rural character and appearance of the surrounding area. This is essentially a landscape where significant amounts of planting, other than in the form of isolated woodland or orchard, are uncharacteristic. In respect of the enforcement appeals relative to some of the plots to which this appeal relates, the Inspector did not believe that the site could be satisfactorily assimilated into its surroundings by existing or additional planting. I consider that remains the case now.
19. To conclude on this issue, I consider the harm to the character and appearance of the landscape would be unacceptable. I have been referred to various appeal decisions concerning plots within the rectangle, including decisions that have had regard to Circular 01/2006. My view is consistent with that taken by the Secretary of State and Inspectors in relation to other unauthorised plots in the rectangle and indeed previous appeal decisions relating to Plot 5, 5A, 6 and 10 Orchard Drive. The development, if allowed, would result in significant adverse harm to the character and appearance of the rural landscape even for a temporary period. Whilst LP Policy H23 is no longer applicable, the policies within the DCPDPD are nevertheless relevant. Furthermore, the Council's GTDPD (Issues and Options 1) sets out a suggested methodology for identifying suitable locations for gypsy sites including that sites for gypsy and traveller pitches would only be permitted where it would not result in any significant adverse impact on the character and appearance of the locality.

### ***Precedent***

20. I consider that allowing the appeals would create a precedent for further development within the rectangle at Smithy Fen, with the eventual effect being further loss of open land, a higher level of occupation and increased traffic along the narrow access road. The area within the rectangle and between the lawful plots has proved to be attractive to gypsy families as demonstrated by the considerable history related to Smithy Fen. I consider that in the event of this appeal succeeding it would be very difficult for the Council to resist other similar proposals. The cumulative impact of such incremental additions would further erode the gap between the two authorised areas and result in substantial harm to the surrounding area.

### ***Highway Safety***

21. Highway safety was not a concern raised by the Council although it was raised by the Parish Council, Smithy Fen Residents Association and other interested parties. Access to the appeal site is off Twenty Pence Road via a public highway known as Lockspit Hall Drove. This is a single-track road that crosses Smithy Fen Bridge which after a sharp bend provides access to Water Lane and Setchel Drove. In my view, the additional traffic arising from this proposal would not be so significant to justify planning permission being withheld on these grounds. I am mindful that the highway authority



raised no objections in respect of the increased traffic using the highway. Nevertheless, as stated above, the cumulative impact of continued development at Smithy Fen would give rise to increased traffic which may at some stage give rise to unacceptable levels of traffic.

### ***Other Considerations***

#### *The need for Gypsy sites*

22. The Council, in partnership with 8 other local planning authorities, carried out the Cambridgeshire Sub-Regional Traveller Needs Assessment in May 2006. This demonstrated a need arising for some additional 110-130 pitches during a five year period ending 2010 in South Cambridgeshire. The single issue review had regard to this assessment and proposes to redistribute some of that need resulting in the reduced figure of 59 net additional pitches, previously referred to, to be provided by 2011. Although the review remains at a relatively early stage and final pitch numbers may change, a need for additional pitches is nevertheless demonstrated.
23. The Council accepts that there is a shortage of gypsy sites in the district. However, the Council refer to two sites that have the benefit of temporary planning permissions amounting to a total of 48 pitches at Sandy Park, Chesterton Fen, Milton; a further 8 pitches at Swavesey and 6 pitches in Willingham. These, together with two further sites for which temporary planning permission has been renewed could, the Council asserts, result in a surplus of sites if only 59 are required in the district, should they be found acceptable as permanent sites as part of the Council's GTDPD.
24. Nevertheless, nationally, across the sub-region and in the district currently, there is undoubtedly a shortage of pitches. The site would help to meet some of this need, albeit for a temporary period. This is a material consideration weighing in favour of the appellant.

#### *The personal accommodation needs of the appellants*

25. The appellants all form part of an extended family of Irish Travellers. They were born in England and have lived on the appeal site for over 5.5 years, having previously lived on sites at Tring, Hemel Hempstead, and Blackbridge, Cambridge but for the most part on the roadside. They moved to Smithy Fen to obtain schooling for their children in a location where they already have family connections. The parents of Michael and Nora O'Brien live on Plot 2 Orchard Drive. Nora O'Brien's son, David, is registered with an eye specialist at Addenbrooks and one of her other sons, John, is fighting cancer. Nora also cares for her father who is ill. Nora Slattery's brothers live in Water Lane, Park Lane, Sedgewick Grove and Pine Lane. She suffers with high blood pressure and is due to have a baby shortly. She relies on the help of her family.
26. I understand from the information available that three of the five households have children attending school locally. Whilst resident on the site, the appellants have also been able to register with a GP. These are benefits arising from a settled base that are recognised in Circular 01/2006. Access to healthcare and education are not specific to the appeal site and



could also be met elsewhere, should sites be available. I recognise that the support of other family members is desirable. However, I have only limited information about the extent of care and help necessary and whether it could only be provided should all the family live on the same site. I give these personal circumstances limited weight.

*The lack of alternative sites*

27. The public gypsy sites in Cambridgeshire are full, with waiting lists for any pitches that occasionally become available. I understand that there are two authorised local authority sites at Whaddon and Milton. Whilst these are currently full, the Council points out that the waiting times for pitches are generally 3 years for Whaddon and one year for Milton. Both have waiting lists at present. Nevertheless the Council asserts that had the appellants applied to go on the waiting list in 2002, when they first occupied the appeal site, in all likelihood, they would have been accommodated by now.
28. That may be so, but it is perhaps not surprising that the appellants choose not to do so given that they were pursuing planning permission and subsequent appeals against enforcement notices on their own sites. I have no information to suggest that any of the appellants have put their names on the waiting list since the enforcement appeals were dismissed and the notices upheld or whether there are any reasons for not doing so. Nevertheless, not all of the appellants are likely to have been accommodated since then.
29. LP Policy CNF6 (saved under a direction) sets out a presumption in favour of applications for private gypsy sites within a defined area on the west side of Chesterton Fen Road, approximately 16 km from Smithy Fen. Much of that allocation has, the Council confirms, been taken up. The appellants suggest that land opposite Canalside Farm is only available to relations of the owner and the remaining allocated land is held on a long term lease by Greengate Piggeries. Any land left within the allocation would not therefore appear to be available to them. I understand that the Council are considering an application to extend the site but in the absence of any information in respect of the outcome of this decision or whether it is likely to be available to the appellants I give this little weight.
30. The Council also refer to vacant plots on Water Lane, Smithy Fen. I saw these on my visit. However, the appellants draw my attention to the lack of evidence produced by the Council to show that the empty plots along Water Lane are for sale or to rent or indeed would be affordable to the appellants. I am minded to agree that although they appear to be vacant that does not necessarily mean they would be available to the appellants. I give little weight to the Council's suggestion that the area of land between plots 3 and 6 would be an alternative option. It is currently 'amenity land' and does not have the benefit of planning permission for the use of land for the stationing of caravans.
31. The Council suggests that there was a reasonable expectation that the appellants could have found alternative sites in the years since the enforcement appeals were dismissed in 2006. I have not been provided



with any information about any attempts by the appellants to find alternative sites. Nevertheless, it appears that should the appeal fail, it would prove difficult for the appellants to find alternative sites at least in the short term. This is a consideration weighing in favour of the appellants.

### **Balance and Conclusions**

32. Temporary permission is sought for a period of 4 years. Paragraph 45 of Circular 01/2006 advises that where there is an unmet need and no alternative gypsy site provision, but there is a reasonable expectation that sites will become available within a given timescale to meet that need, local planning authorities should consider granting a temporary permission. In deciding whether to grant temporary planning permission, substantial weight must be given to unmet need.
33. It is accepted by the main parties that there is an unmet need. There appears to be a lack of alternative sites that would be available to the appellants at the present time. As such, the benefits arising from a settled base, in particular access to regular education and healthcare would be compromised should the families have to return to a roadside existence.
34. The Council considers that the GTDPD is unlikely to be adopted (best estimate) until at least the end of 2010. It is nevertheless underway. In this regard, this appeal differs from others that I have been referred to at Smithy Fen that post date Circular 01/2006. In those instances, a GTDPD was not underway. However, it still remains in the early stages of preparation.
35. In deciding whether to grant a temporary permission, substantial weight must be attributed to this unmet need. This must be balanced against the significant adverse harm that would arise to the countryside even if only for a temporary period. I am also mindful that the area has proven to be very attractive to gypsies. The Council has consistently sought to avoid any dilution of the gap between the lawful areas that would further impact on the surrounding countryside. This has been supported on appeal on numerous occasions. There are no overriding personal circumstances in this case that are likely to distinguish this case from other gypsy families with children at school. If I were to allow the appeal, even for a temporary period, I consider it would seriously undermine the ability of the Council to resist other similar proposals on the land in between the lawful areas. In my view, the cumulative harm that could arise, even if only for a temporary period, would outweigh the unmet need for further sites in this particular case.
36. I recognise that dismissal of this appeal would interfere with the appellants' homes and private and family life. In particular, it could result in the loss of their homes with no satisfactory alternative. However, the appellants started living on the land without obtaining prior planning permission. Their homes in this case have been established unlawfully and previous appeals against enforcement notices served on the sites upheld. The need to maintain a gypsy lifestyle is an important factor in the decision-making process. Those gypsies without an authorised site face difficulties in



endeavouring to continue to live their traditional way of life within the law. Nevertheless, that interference and the rights of these gypsies must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8 of the European Convention on Human Rights, particularly the economic well-being of the country (which includes the preservation of the environment). The objections to the development which has taken place are serious ones and cannot be overcome by granting a temporary planning permission or one subject to other conditions. There are strong environmental reasons for refusing this appeal and I am satisfied that this legitimate aim can only be safeguarded by dismissing the appeal.

37. On balance, I consider that the dismissal of the appeal would not have a disproportionate effect on the appellants. I therefore consider that dismissal of this appeal would not result in a violation of their rights under Article 8 of the Convention.
38. For the reasons given above I conclude that the appeal should be dismissed.

**Overall Decision**

**Appeal Ref: APP/W0530/A/07/2049741**

39. I dismiss the appeal.

*Claire Sherratt*  
INSPECTOR