

APPEALS AGAINST PLANNING DECISIONS AND ENFORCEMENT ACTION

TOWN AND COUNTRY PLANNING ACT 1990

This item is intended to update Members on appeals against planning decisions and enforcement action. Information is provided on appeals lodged, proposed hearing and inquiry dates, appeal decisions and when appropriate, details of recent cases in interest.

1. Decisions Notified by The Secretary of State

Ref. No.	Details	Decision and Date
S/2424/04/O	Mr G, Mr N & Mrs S Compton R/o 6 Westmoor Avenue Sawston Dwelling (Delegated Refusal)	Dismissed 24/11/2005
S/0250/05/LB	Mr & Mrs G Lister Robynet House, Green Street Duxford Internal and external alterations (Delegated Refusal)	Dismissed 29/11/2005
S/0592/04/F	R W S Arnold Bennell Farm, West Street (Comberton) Toft Erection of B1 offices (Officer Recommendation to Refuse)	Dismissed 30/11/2005
S/2062/04/F	R W S Arnold Bennell Farm, West Street (Comberton) Toft Erection of B1 offices (Officer Recommendation to Refuse)	Dismissed 30/11/2005
E502	Mr M Walker 2 Denny End Road Waterbeach Construction of a garage without planning permission	Dismissed 02/12/2005
E 353	Mr P McCarthy Plot 2 & R/o plot 3, Setchel Drove Smithy Fen Cottenham Enforcement against change of use of site to use as a residential caravan site.	Dismissed 07/12/2005
S/1020/03/F	Mr P McCarthy R/o 2 Setchell Drove Smithy Fen Cottenham Siting of 2 gypsy caravans and shower block (Delegated Refusal)	Dismissed 07/12/2005

S/0761/04/F	B Gemmil, A Sheridan, E Sheridan & K Sheridan Plots 1-11 Victoria View, off Orchard Drive Smithy Fen Cottenham Use of land for gypsy caravan site, (11 pitches) part Retrospective (Delegated Refusal)	Dismissed 07/12/2005
S/1569/04/F	Mr M Hegerty Land off Victoria View, Smithy Fen Smithy Fen Cottenham Siting of 4 gypsy caravans (Delegated Refusal)	Dismissed 07/12/2005
S/1589/04/F	M Quilligan Land off Water Lane, Smithy Fen Cottenham Siting of 2 gypsy caravans (Delegated Refusal)	Dismissed 07/12/2005
E498	Ann Sheridan Plot 2 Victoria View, Smithy Fen Cottenham Enforcement against laying of hard surfacing and erection of sheds and other ancillary structures on the land and change of use for stationing of residential caravans	Dismissed 07/12/2005

2. Summaries of recent decisions of interest

Mr & Mrs Patrick McCarthy, Bridget Gammell, Ann Sheridan, Elizabeth Sheridan, Kathleen Sheridan, Margaret Quilligan and Michael Hegarty – Use of land as gypsy caravan sites – Land at Victoria View and off Water Lane, Smithy Fen, Cottenham – Appeals dismissed.

Background

1. These 6 appeals were the subject of a public inquiry which sat for 6 days between 12th and 20th July 2005. Both main parties were represented by Counsel. Both the Parish Council (represented by Counsel) and the Cottenham Residents Association played a significant role. Six other interested parties spoke at the inquiry, including James Paice MP.
2. The appeals can be broadly split into three groups:
 - (i) A planning and enforcement appeal for one plot occupied by Mr & Mrs McCarthy (referred to as Plot 12 Victoria View). This site had already been the subject of appeals that had been allowed but which were the subject of a re-determination following a successful High Court challenge by the Council.
 - (ii) Planning and enforcement appeals for Plots 1-11 Victoria View; and
 - (iii) Two separate planning appeals for two further plots, one off Victoria View, the other at the far end of Water Lane.
3. The decision to dismiss the appeals has been made by the ODPM. The inspector appointed to hold the inquiry had also recommended that all of the appeals be dismissed.

Determining Issues

4. Generally speaking, the Council's refusal of planning permission was because of conflict with countryside policies and policy for gypsy caravan sites with regard to the impact on the landscape and rural character of the area, impact on the amenities of existing residents, concentration of sites, sustainability and highway safety. The Council sought to question whether the appellants are gypsies for the purposes of planning policy – i.e. that they travel, or have travelled to seek their livelihood, or if they have stopped travelling, that there is a realistic intention to travel in the future. The Council sought a compliance period of two and three months in the enforcement appeals.
5. It was the appellants' case at the inquiry that they were seeking personal permissions for occupation of Plots 1, 2, 4, 6, 8, 10, 11 and 12 Victoria View. No evidence was put forward in respect of Plots 3, 5, 7 and 9 and no permission was sought for these plots. Only very limited evidence was given in respect of the other two separate appeals.

The Case for the Appellants

6.
 - The appellants are all Irish travellers and have gypsy status for planning purposes. The relevant High Court judgement on gypsy status (the 'Wrexham' decision) is wrong. It is incompatible with the European Convention for Human Rights. Even if only some of the appellants are found to be gypsies, all of the applications should be judged against gypsy policy (HG23), so that those with gypsy status are not prejudiced.
 - Policy HG23 is not derived from any quantitative assessment (QA) of need. This failure of the Council should weigh in favour of the proposals. A QA would have led to the true level of need being identified and land being allocated. The appellants may then have been able to find another site.
 - The allocated land at Chesterton Fen only has a limited and short-term potential..
 - Policy HG23 has been ineffective in bringing new sites forward.
 - The proposals comply with all aspects of Policy HG23.
 - The requirement to avoid a concentration of sites is incapable of proper interpretation. There is a greater concentration of sites at Chesterton Fen.
 - The location of the sites and the needs of the appellants are materially different than in the earlier Pine View appeal. Arguments about precedent do not apply in this case.
 - The general need for gypsy caravan sites and the lack of suitable provision must carry significant weight in these appeals
 - If planning permission is refused, the appellants have nowhere else to go. There are several children in need of education and many of the residents have health problems. The mutual support of extended family networks would be lost.
 - If permanent permission is not forthcoming, a temporary permission (for three years pending a needs assessment) is appropriate.
 - The compliance period is too short. In view of the difficulties in finding other sites, two years would be reasonable

The Case for the Council

- 7.
- Only two of the occupants are accepted to be gypsies as statutorily defined. Their applications should therefore be judged solely against normal countryside policies.
 - The Council's policy for gypsy site provision encompasses both an allocated site (Chesterton Fen) and criteria-based policies. This goes further than many local authorities and the lack of a quantitative assessment should be seen in this context. Any such assessment could not have predicted the influx of Irish travellers to Smithy Fen. The lack of an assessment does not invalidate the criteria in Policy HG23. These criteria should not be applied liberally.
 - Because of the demand for sites, allowing these appeals will set a visual context and expectation that other sites will be approved.
 - A further concentration of sites will continue to harm the amenities of local residents whether this is actual or a perceived fear; whether taken individually or collectively, the sites harm the character and appearance of the area; and the convenient, safe and enjoyable use of Lockspit Hall Drove has been impaired.
 - The need for further gypsy sites is only relevant to two of the appellants. It is accepted that there is both a national and local shortage of gypsy sites. It is important to distinguish between "demand" and "need" for sites. In this case the occupiers have not arrived, travelled or worked together.
 - South Cambridgeshire has more gypsy caravans than any other district in the east of England and more than its fair share of caravans.
 - Chesterton Fen still provides some capacity for caravans.
 - The appellants' personal circumstances should only be given limited weight. They are not exceptional or outweigh the conflict with planning policy.
 - Refusal of planning permission is a proportionate action when considering the appellant's human rights
 - A temporary planning permission is not justified. There is no reason to think that any unmet need should be met in South Cambridgeshire. A QA may take some considerable time to complete. A temporary permission will be seen as an endorsement of continued unauthorised development at Smithy Fen.
 - The compliance periods could arguably be extended to four months to allow children to finish a school term. There was no justification for anything longer.

The Case for the Cottenham Residents' Association

- 8.
- There have been previous horrendous examples of anti-social behaviour and intimidation witnessed by villagers. The Council and the Police failed to take adequate action. The CRA had evolved to restore the quality and safety of village life and to promote the integration with travellers living lawfully at Smithy Fen.
 - Unnecessary damage to the countryside. Approval would invite others to seek planning permission.
 - Loss of amenity through sheer weight of traffic. Damage to rural businesses.

- The Human Rights of local residents would be breached. Any further caravan development would be disproportionate and is not in the interest of either the settled or travelling community.
- Fear of crime is a material consideration. There is not a fear of travellers per se, but what might happen through any expansion of the site. While the appellants may be responsible in their behaviour, other family members could return with a different attitude to residents.
- The appellants have not demonstrated a need to be here. They have no long-term connection with the area. The Council should consider 'land swap'.
- A precedent would be set. The appellants made no attempt to approach the Council before occupying the site.
- Mr and Mrs McCarthy are an exception. They should not be subject to further stress.

The Case for Cottenham Parish Council

9.
 - Fear of crime and anti-social behaviour should be given substantial weight. The fact that personal permissions are sought is of limited value. In this case, the appellants rely upon extended family networks at Smithy Fen and therefore must accept a degree of communal responsibility for the acts of their extended families.
 - Planning permission for just one plot will act as a precedent. There is no substantive difference between the plots at Victoria View and any other plots at Smithy Fen.
 - The unlawfulness of occupation should weaken any claim relating to personal circumstances. The educational needs are not significant. No undue disruption to health needs would be caused.
 - There are only 12 settled families at Smithy Fen, yet 48 lawful caravan sites. This is a disproportionate balance.
 - Non-compliance with Policy HG23 in respect of impact on residential amenities and highway access
10. The case for other interested persons added to, but did not raise any other issues materially different to those already listed.

Inspector's Conclusions

11. **Gypsy Status.** Reliance on the 'Wrexham' decision is the correct approach. Having regard to this and the evidence presented to the inquiry, only Danny O'Rourke (grandson of Mr and Mrs McCarthy) and John Sheridan (Plot 8) are gypsies.
12. **Countryside Policies.** There is a clear breach of policies designed to protect the countryside.
13. **Conformity with Gypsy Policy (HG23).** Contrary to the claims of the appellants, the policy sets out clear, realistic criteria for gypsy sites. Neither should they be interpreted liberally. While the lack of a QA means that the local plan is deficient, it is still appropriate to attach considerable weight to Policy HG23. Neither has it been shown that the allocation at Chesterton Fen has been exhausted.

14. The possibility of crime and anti-social behaviour was shared by most of the objectors. The very recent Court of Appeal case *Smith v. FSS and Mid-Bedfordshire DC* was published the day after the inquiry closed. This held that a gypsy site is not inherently a use that must cause concern, particularly if those fears are not based on evidence as to the characteristics of future occupants. There was no evidence that could be linked to the occupation of Victoria View.
15. The Policy does not define what amounts to a concentration of sites. In view of the 'Smith' decision, this aspect should not be relied upon. Criterion HG23(2) is satisfied.
16. Smithy Fen has "a historic atmosphere". It is inherently difficult for such a sensitive fenland landscape to assimilate gypsy caravans without harm to the rural character and appearance of the locality. The lawful areas of caravans have already caused harm and it would be undesirable to add to it. Any further addition to the 48 plots should be resisted. Screening of development would look unnatural.
17. If it were found that all the occupants of Victoria View were gypsies, the cumulative impact of traffic, particularly along Lockspit Hall Drove would be partly responsible for inconvenience to other road users, although not sufficient to materially conflict with the policy
18. In conclusion, the proposals fail to comply with Policy HG23 (3) and (4) – visual impact. The remaining criteria are complied with.
19. **Precedent** is an important consideration. There is a considerable demand from gypsies to live at Smithy Fen. Much of this is from extended family groups. It is highly likely that the grant of planning permission would set a precedent. It would encourage the Pine View residents to remain on their sites and encourage others to settle. Ultimately, the justification for retaining the gap between authorised sites would become less and less. The consequences would lead to considerable conflict with criteria designed to protect the rural character of the area, to restrict the volume of traffic and the safe and convenient use of rights of way.
20. The 'Smith' judgement does not support increased fears re crime and anti-social behaviour. Neither was there any direct evidence from the services themselves, that health and education services would be adversely affected.
21. **Personal circumstances.** The personal circumstances of the occupants are little different from those that are often pleaded. They should not carry very much weight in this case.
22. **Alternative sites.** There has been no search by the occupants for alternative sites. In respect of the two appellants who are considered to be gypsies, the availability of occupying vacant plots elsewhere at Smithy Fen was too lightly dismissed by the appellants. Nonetheless, there remains a real and serious problem in finding alternative sites.
23. There is an undisputed need for further gypsy sites. The need in South Cambridgeshire is harder to determine without a QA of need. Approval would contribute to meeting the general need for sites.
24. **The case for temporary planning permission.** As precedent was a matter where "... particularly significant weight should be given", a permanent planning permission would be inappropriate. A temporary three-year consent was also inappropriate. There is no certainty that the Council will identify sites in that time and it would give the appellants no incentive to look for another site.

25. **Human Rights.** On balance, dismissal of the appeals would not have a disproportionate effect on the appellants in terms of their human rights.
26. **Compliance with enforcement notices.** Given the large number of schoolchildren involved and the various health care problems, a compliance period of 12 months was more appropriate. It would give the occupants some reasonable opportunity of dealing with their accommodation problems, if only by making temporary arrangements until such time that a permanent solution could be found.
27. **The two separate planning appeals.** In view of the general lack of evidence by the two appellants, and the objections to the other appeals, planning permission should not be granted.
28. **Recommendations.** The planning appeals should be all dismissed. The enforcement notices should be upheld, subject to the compliance period being extended to 12 months (i.e. until 7 December 2006).

The Secretary of State's decision

28. The Secretary of State agrees with his inspector on the relative merits of and objections to the proposal. His findings appear to echo those of the inspector in most respects. He concludes that there are strong planning objections to the grant of planning permission, including temporary permission.
29. The one area of difference was the approach to gypsy status. The Secretary of State considered that this issue should take into account the change of definition as proposed in the Consultation Paper. This basically redefines gypsy status such that it cannot be lost if they wish to maintain a traditional caravan-dwelling lifestyle. On this basis, he was satisfied that all of the appellants who provided evidence for the inquiry have gypsy status. Because of their status, their personal circumstances carry more weight than given by the inspector. However, this was still not sufficient to justify planning permission.

Comment

30. Taken as a whole, the decision reflects many of the conclusions and findings in the Pine View appeal. The main differences are that the fear of crime and anti-social behaviour arising from gypsy sites and concerns regarding the concentration of sites has been overruled. This is essentially as a result of the 'Smith' case and the difficulties in demonstrating that a gypsy site is inherently likely to give rise to such problems.
31. The inspector who gave the original (and first appeal) decision at Pine Lane did not consider precedent an overriding issue. The Pine View decision countermanded this. This decision further confirms that the precedent argument is very important and reinforces arguments that any further occupation other than of lawful sites at Smithy Fen is unjustified.
32. The decision to refuse planning permission for Plot 12 (McCarthy) overturns the earlier decision allowed by an inspector. In doing so, the earlier inspector's findings on visual impact and precedent have also been overturned.
33. The Pine View occupants were given three months to comply. In this case, the evidence on behalf of the occupants was more robust; their circumstances were materially different (and particularly in the case of Mr and Mrs McCarthy, arguably more deserving). This was sufficient to justify a 12-month compliance period.

Mr M Walker – Construction of garage without planning permission – 2 Denny End Road, Waterbeach - Enforcement Appeal dismissed

1. Planning permission was granted in 2003 for a garage with studio over. The appellant has erected a different building, however, which is nearer to 3 Bannold Court and with a higher ridge and eaves line. The enforcement notice was issued because of undue loss of privacy, overshadowing and the overbearing effect of the building.
2. The permitted garage has a small first floor area with limited headroom. The increased height and massing of the garage has allowed for an upper floor with good headroom over much of its area. It contains a main room with sink unit and a toilet, shower room. There are two velux windows facing both adjoining properties. There is considerable scope for ancillary uses.
3. The inspector found that the potential for a loss of privacy towards no. 3 could nonetheless be mitigated through the use of conditions. Overlooking of 1a Bannold Road is not so serious to make the building unacceptable. The position of the garage is unlikely to lead to a harmful amount of overshadowing or loss of light for much of the neighbour's house and garden, although as the area most affected is the most private part of the garden, the enjoyment of the property would still be reduced.
4. The Council's case focussed mainly on the impact of the garage. The side wall of the garage has replaced a row of conifers. While the trees would have given a green outlook of some natural interest, the inspector found that the garage "... appears as an unusually large and imposing building. It towers above the fence and forms a dominating feature prominently seen from ... windows in no. 3 as well as from the patio area and most of the rear garden... (It) ... creates an unduly overbearing effect ... (and) seriously detracts from the reasonable enjoyment of the adjoining property.
5. In his defence, the appellant argued that the existing garage is little different in its impact and can still be erected. The Council accepted that it could still be erected, but that the new building was substantially nearer to no.3 and more imposing. The inspector agreed. She also commented, however, that in the event of the permitted building proceeding "... there would still be a loss of privacy primarily to no. 3 ... (and) a harmful overbearing effect at no. 3. Nonetheless, this effect would be significantly less severe than the building as erected.
6. Planning permission for the deemed application was therefore refused and the appeal dismissed. In the circumstances, the inspector accepted that the appropriate course of action is to demolish the garage, rather than simply reduce its height as the appellant had argued. The appellant has three months to demolish the garage (i.e. by 2 March 2006) and a further three months to remove the resultant materials unless the permitted garage is erected in its stead.

3. Appeals received

Ref. No.	Details	Date
S/2153/04/F	Mr R Kennedy & Ms C Romeyer 2 Manor Farm Barns, Litlington Change of use of land to garden land and retention of garden room (retrospective application) (Officer Recommendation to Approve)	22/11/2005

E511	Mr R Kennedy & Ms C Romeyer 2 Manor Farm Barns Litlington Enforcement against change of use of land to garden land and retention of garden room (retrospective application)	22/11/2005
S/1150/05/O	Mrs B Ward r/o 12 West Drive Caldecote Dwelling and garage (Delegated refusal)	25/11/2005
S/0857/05/F	Mr M Laverty & Mrs D Burelli Green Hedge Farm, Gog Magog Way Stapleford Change of use of land from agricultural to garden land (Delegated Refusal)	30/11/2005

4. Local Inquiry and Informal Hearing dates scheduled before the next meeting on 4th January 2006

Ref. No.	Details	Date
S/1909/04/O	Mr & Mrs Cole 66 Cambridge Road Great Shelford 3 houses and garages (Hearing)	10/01/2006 Monkfield Room 10.00 am
S/2533/04/O	Mr & Mrs Cole 66 Cambridge Road Great Shelford 2 houses and garages (Hearing)	10/01/2006 Monkfield Room 10.00 am
S/0917/05/O	Mr & Mrs G Cole 66 Cambridge Road Great Shelford 4 dwellings following demolition of existing dwelling (Hearing)	10/01/2006 Monkfield Room 10.00 am

5. Appeals withdrawn or postponed

None

6. Advance notification of future Local Inquiry and Informal Hearing dates (subject to postponement or cancellation)

Ref. No.	Details	Date
S/2505/04/F	Mr & Mrs A Brown Schole Road Willingham Siting of 2 gypsy caravans (retrospective) utility block and mobile medical unit for disabled person (Local inquiry)	07/02/2006

E501	Mr P Denny Unit 135 Cambridge Road Milton Enforcement against change of use from warehouse/storage to use for retail sales and associated showroom (Local inquiry)	14/02/2006 Confirmed
S/6258/04/RM	MCA Developments Land South of Great Cambourne Cambourne Alterations in land form (dispersion of soil from building works.) (Local inquiry)	09/05/2006 Confirmed