

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee

3<sup>rd</sup> March 2010

**AUTHOR/S:** Executive Director (Operational Services)/  
Corporate Manager (Planning and Sustainable Communities)

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### **S/1178/09/F - COTTENHAM**

**Temporary Permission for Chalet, Touring Caravan and Wooden Day Room  
(Retrospective) at Plot 12, Victoria View, Smith Fen for Mr Patrick McCarthy**

**Recommendation: Approval**

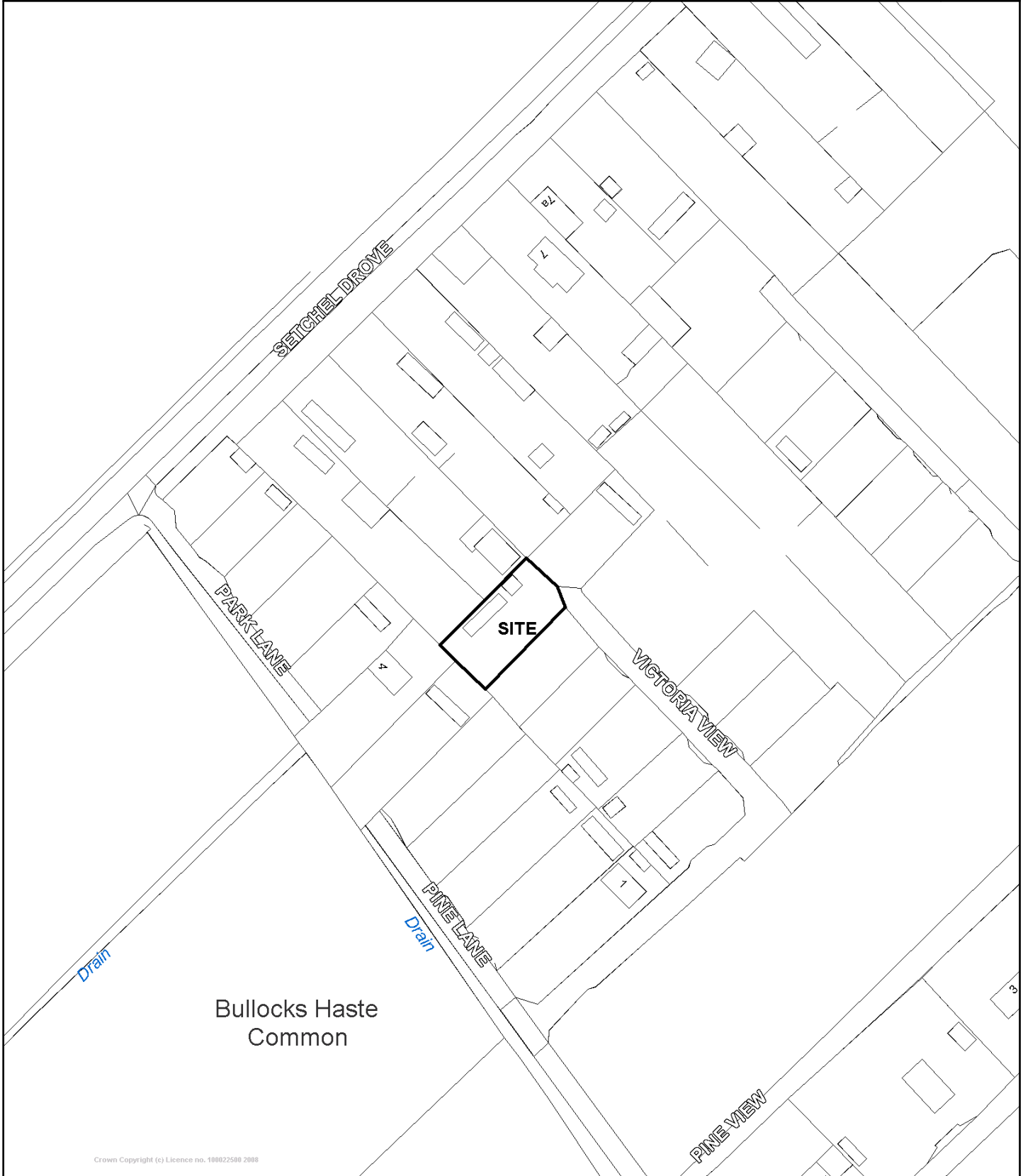
**Date for Determination: 5<sup>th</sup> February 2010**

#### **Notes:**

**This Application has been reported to the Planning Committee for determination as the Corporate Manager considers that the matter should be presented to Planning Committee for decision due to the issues the application raises.**

#### **Site and Proposal**

1. The site comprises a plot measuring 27.5 metres by 14 metres, with an area measuring 0.0385 hectares (ha). It has been laid out with a gravel surface and is enclosed by timber fences measuring between 1.5 –1.6 metres high.
2. The plot currently is used to site a mobile home, a small, domestic style, timber shed, measuring 2.4 metres by 3 metres with a height of 2.1 metres and a timber 'summerhouse' type structure measuring 3.67 metres by 3.60 metres with a height of 2.4 metres.
3. The plot is accessed from a track, laid with road planings, to the southeast, which leads from Smithy Fen to the south of the site.
4. To the north and west of the site are adjoining, authorised Gypsy plots. To the east and southeast is land that has been cleared and banded to prevent access, having been used previously as unauthorised Gypsy plots.
5. The area in which the site is located comprises fenland; flat, open, agricultural land. This landscape is broken by occasional field hedges and ditches. The site is entirely within the countryside, some 1000 metres from the village framework via the road network.
6. This full planning application, received on 11<sup>th</sup> December 2009, seeks retrospective permission for use of the land as a Gypsy plot for the siting of a mobile home and touring caravan and the retention of a wooden day room. It is assumed that the 'summerhouse' type building is the referred to in the application as a 'chalet' and the 'shed' the dayroom to which the application refers.
7. The application is accompanied by:
  1. A Flood Risk Assessment.



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Scale 1/1250 Date 15/2/2010

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March Planning Committee

2. A letter of support from the Head Teacher of Cottenham Primary School, dated 30<sup>th</sup> November 2009, stating that the applicant has participated in two school projects including a literacy session and a project making traditional bender tents. It is stated in the letter that the applicant's support of the school is highly valued and that "...without a doubt, his enthusiasm for education encourages other Traveller parents to allow their children to attend".
3. A letter, dated 2<sup>nd</sup> March 2007, from the applicant's GP at Cottenham Surgery and copies of hospital records which indicate that the applicant has suffered from serious medical conditions since at least November 2006 which have required hospital treatment and that he requires regular medical attention and follow-up for his condition that would benefit from a stable base.

### **Planning History**

8. On 28<sup>th</sup> April 2003 Mr & Mrs McCarthy submitted a planning application (ref. **S/1020/03/F**) to occupy land at plot 2 and to the rear of plot 3 Setchell Drove. This application was refused on 26<sup>th</sup> June 2003 on grounds that it was non-essential development in the countryside and harm to the open views of the traditional fen landscape due to the accumulation of plots and lack of existing or potential for future landscaping to provide screening.
9. Appeals were lodged against this refusal and an enforcement notice (ref. **E353**) served by the Council. On 16<sup>th</sup> February 2004, the appeal was allowed, subject to planning conditions: (1) restricting its occupation to Mr and Mrs P McCarthy and, for as long as the site is occupied by them, their grandson Mr Daniel O'Rourke; (2) no trade, business or storage of materials on site; and (3) cessation of the site's use and restoration to its former condition once Mr and / or Mrs P McCarthy cease to occupy it. The enforcement notice was also quashed.
10. On a point of law, the Council successfully challenged this decision through the High Court, and the effect of this was to rescind the decision and reconsidered by a different Planning Inspector, who submitted a report to the Secretary of State for his decision. The Secretary of State, on 7<sup>th</sup> December 2005 agreed with the recommendations of the second Inspector and the appeals were dismissed. The time period for the compliance with the Enforcement Notice was varied from 3 months to 12 months.
11. In his conclusions the Secretary of State confirmed his agreement with the Council's case that the proposal was seriously harmful to the character and appearance of the open countryside, and set a precedent for further development that would result in the harm accumulating. He also agreed with the Council's view that there were no other material considerations sufficient to outweigh the serious harm to the open countryside.
12. In relation to Plot 12 the Planning and Enforcement Sub-Committee subsequently considered, at its meeting of 18<sup>th</sup> June 2009, taking further enforcement action. It was reported that: 'Counsel's advice in relation to Plot 12 Victoria View currently occupied by Mr and Mrs McCarthy was that notwithstanding that permission for appeal has been refused by the High Court and albeit that the personal circumstances of the occupiers have already been fully explored by the Courts and last looked at in some detail in 2005, given the ongoing health problems in particular of Mr McCarthy it would not be expedient to issue proceedings in respect of Plot 12 at the current time.

13. The minute of that meeting minute states:

'The Planning Sub-Committee considered a report updating Members about the action being taken in respect of Victoria View, Smithy Fen, Cottenham following discussion at its meeting on 22nd February 2007 when Members resolved, among other things, that subject to further consideration being given to Human Rights Act implications, the assessment of need, and the personal circumstances of those affected, action be taken in the High Court to obtain injunctions under Section 187 of the Town and Country Planning Act 1990...

...The Corporate Manager (Planning and Sustainable Communities) outlined the different circumstances relating to Plots 1-11 Victoria View, on the one hand, and Plot 12, on the other. The Council had been advised that, taking immediate action against Plot 12 Planning Sub-Committee Monday, 18 June 2007 might compromise its stance with respect to Plots 1 to 11. It was noted that there were medical factors relating to the occupier of Plot 12 who had, in any event, been broadly supportive of the Council's objectives at Smithy Fen.

Those present discussed a number of options, including simply tolerating the current situation, the granting of temporary planning consent, and the grant of a licence to occupy. However, the Principal Solicitor pointed out that a licence to occupy the land would not be possible because the Council did not own the land in question. In relation to just tolerating the current situation, Cottenham Parish Council had made it clear that, while it sympathised with the personal circumstances of the occupier of Plot 12, it could not support any tolerance of the plot itself. Those present discussed the possibility of voluntary relocation of the occupier to a lawful site nearer family, but the Corporate Manager (Planning and Sustainable Communities) urged caution in seeking to tolerate the continued occupation of Plot 12 in case this prejudiced the Council's stance in relation to Plots 1 to 11.

The Council had to be consistent and fair in its dealings with both the Traveller and "settled" communities.

The Planning Sub-Committee:

- (1) NOTED the position in relation to ongoing enforcement action in respect of Plots 1-11 Victoria View, Smithy Fen, Cottenham; and
- (2) RESOLVED, in respect of Plot 12 Victoria View, that no action be taken at the current time against the occupiers in light of the medical condition referred to in Appendices 1 and 2 to the report from the Corporate Manager (Planning and Sustainable Communities) and Principal Solicitor'.

### **Planning Policy**

14. **South Cambridgeshire Local Development Framework (LDF) Core Strategy DPD, adopted January 2007:**  
**ST/5** Minor Rural Centres.
15. **South Cambridgeshire LDF Development Control Policies DPD, adopted July 2007:**  
**DP/1** Sustainable Development  
**DP/2** Design of New Development  
**DP/3** Development Criteria  
**DP/4** Infrastructure and New Developments  
**DP/5** Cumulative Development  
**DP/7** Development Frameworks

**NE/4** Landscape Character Areas  
**NE/6** Biodiversity  
**NE/9** Water and Drainage Infrastructure  
**NE/10** Foul Drainage - Alternative Drainage Systems  
**NE/11** Flood Risk  
**NE/14** Lighting Proposals  
**TR/1** Planning for More Sustainable Travel  
**TR/2** Car and Cycle Parking Standards.

16. **South Cambridgeshire LDF Gypsy and Traveller DPD: Issues and Options 2, published July 2009:**

The Council's Gypsy and Traveller Development Plan Document (DPD) must include land allocations to demonstrate how these Gypsy & Traveller pitches will be delivered. Since 2006 some Gypsy & Traveller pitches have already come forward, reducing the number of Gypsy & Traveller pitches to be allocated within the DPD to 88.

17. The revision to the East of England Plan also requires 40 transit pitches (by 2011) and 27 Travelling Showpeople plots (by 2021) in Cambridgeshire and Peterborough. A county-wide process to identify sites is being considered.

18. The DPD will:

- (a) Allocate sites in order to implement the East of England Plan at a district level;
- (b) Cover the period to 2021; and
- (c) Set out planning policies to address proposals for Gypsy and Traveller and Travelling Showpeople sites.

19. No additional plots at Smithy Fen have been put forward by the Council in its site consultation, carried out between 10<sup>th</sup> July to 9<sup>th</sup> October 2009. The document sets out in Appendix 1 the reasons for rejecting the allocation of land at Smithy Fen for further up to thirty more plots:

'Smithy Fen is located in the countryside to the northeast of Cottenham. It comprises 48 pitches on authorised sites, with an area in between that has been used as unauthorised pitches. The allocation of the site as a whole could result in a development of over 100 pitches, which has previously been demonstrated as inappropriate through the planning application and appeals process. The assessment confirms that the site does not provide a suitable site option for consultation against the site assessment criteria.

The site has relatively poor access to services and facilities, and is beyond 2,000m to the nearest primary school or food shop. Public Transport services nearby only offer a bus every two hours. The site lies in Flood Zone 3. According to PPS25: Development and Flood Risk caravans and mobile homes intended for permanent residential use are classified as highly vulnerable, and should not be allocated in Flood Zone 3.

Smithy Fen is part of the countryside to the northeast of Cottenham. The appearance and character of this site is unsympathetic to the countryside setting. It relates insensitively to the local rural environment and the distinctive fenland landscape character of the locality. Further development at Smithy Fen would harm local character and appearance. It would reduce the important gap between the two permanent sites. This impact would be very difficult to mitigate due to the nature of the landscape. It is therefore not considered suitable for further site allocations'.

20. The draft policy '**GT1: Sites for Gypsies, Travellers and Travelling Showpeople on Unallocated Land Outside Development Frameworks**' states:

'Planning permission for Gypsy and Traveller caravan sites and sites for Travelling Showpeople on unallocated land outside development frameworks and outside the Cambridge Green Belt, as shown on the Proposals Map, will only be granted where:

1. The Council is satisfied that there is a clear established need for the site in the district, and the number, type and tenure of pitches proposed cannot be met by a lawful existing or allocated site in the region.
  2. The site is located in a sustainable location, well related to a settlement with a range of services and facilities, including a primary school, a food shop and healthcare facilities, and is, or can be made, accessible on foot, by cycle or public transport;
  3. The number and nature of pitches provided on the site is appropriate to the site size and location, will address the identified need, and will not normally exceed:
    - (a) 15 pitches per site in / adjoining Cambridge, Northstowe, Rural Centres and Minor Rural Centres;
    - (b) 8 pitches per site in / adjoining Group Villages;
    - (c) Generally no pitches should be permitted in / adjoining Infill Villages
  4. The needs of residents of the site can be met appropriately by local facilities and services without placing a strain on them;
  5. The site would not present unacceptable adverse or detrimental impact on the health, safety and living conditions of the residents of the site by virtue of its location;
  6. The site, or the cumulative impact of the site, in combination with existing or planned sites, would respect the scale of, and not dominate, the nearest settled community;
  7. The site, or the cumulative impact of the site, in combination with existing or planned sites, would not harm the character and / or appearance of the area and / or result in unacceptable impact, in terms of visual intrusion and landscape impact;
  8. The site location would avoid adverse impact on existing or proposed public rights of way and would not detract from their convenient, safe and enjoyable use;
  9. Sites for Travelling Showpeople must also be suitable for the storage, maintenance and testing of large items of mobile equipment'.
21. **South Cambridgeshire LDF Supplementary Planning Documents: Biodiversity**, adopted July 2009  
**Cottenham Village Design Statement**, adopted November 2007
22. **Cambridgeshire and Peterborough Structure Plan, adopted 2003: P9/8 Infrastructure Provision**

23. **East of England Plan, adopted May 2008:**  
**Policy SS1** Achieving Sustainable Development  
**Policy H3** Provision for Gypsies and Travellers  
**Policy ENV 7** Quality in the Built Environment  
**Policy CSR1** Strategy for the Sub-Region

24. South Cambridgeshire has been required to find at least 88 new permanent pitches by 2021.

25. **Planning Policy Guidance / Statements:**  
**Planning Policy Statement 1:** Delivering Sustainable Development  
**Planning Policy Statement:** Planning and Climate Change - Supplement to **Planning Policy Statement 1**  
**Planning Policy Statement 3:** Housing  
**Planning Policy Statement 7:** Sustainable Development in Rural Areas  
**Planning Policy Statement 9:** Biodiversity and Geological Conservation  
**Planning Policy Guidance 13:** Transport  
**Planning Policy Statement 25:** Development and Flood Risk

26. **ODPM Circular 01/2006 (Planning for Gypsy and Traveller Caravan Sites):**

The Circular advises that Gypsies and Travellers can be defined as 'persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently'.

The circular requires councils to identify sufficient land for Gypsy sites. Where a Gypsy Traveller Accommodation Assessment (GTAA) has identified a need for sites exists, consideration should be given to giving temporary permissions in order to meet an individual family's need pending the completion of the DPD process.

It advocates (paras. 45-46) that where this work is on-going in relation to policy it may be appropriate for LPAs to grant temporary permissions where it has a reasonable expectation that at the end of period new sites will become available. Such permissions should not be regarded as setting a precedent for the determination of future applications for full permission.

It goes on to advise that, where there is an absence of existing provision, consideration be given to whether enforcement action or an appeal against refusal of planning permission for a new site may be prejudiced (para. 63). It recognises that in order to cater for Gypsies in rural areas, local landscape and nature conservation designations should not be used to refuse planning permission for Gypsy sites (other statutory designations must not be compromised e.g. SSSIs).

It encourages local authorities to adopt criteria based policies for the location of Gypsy sites that are fair, reasonable, realistic and effective in delivering sites, as this will help with identifying land allocations and in assessing planning applications.

The Circular advises that, in determining planning applications, planned sites should be given preference over windfall sites and that other considerations may include the impact on the surrounding area, the existing level of provision and need for sites in the area, the availability (or lack of) alternative accommodation for the applicants and other personal circumstances.

27. **DCLG 'Designing Gypsy and Traveller Sites: Good Practice Guide', May 2008** provides guidance for the design and layout of sites, including day rooms.
28. **ODPM Circular 11/1995 'The Use of Conditions in Planning Permissions'** advises that conditions should be necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects.

Paragraph 93 advises that 'unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions, however, where it is proposed exceptionally to grant permission for the use of a building or land for some purpose which would not normally be allowed at the site, simply because there are strong compassionate or other personal grounds for doing so. In such a case the permission should normally be made subject to a condition that it shall enure only for the benefit of a named person - usually the applicant (model condition 35)'.

Paragraph 110 advises that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission. Where there is unmet need but no alternative Gypsy and Traveller site provision in an area, but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need, Local Planning Authorities should give consideration to granting a temporary permission. Such circumstances may arise, for example, in a case where a Local Planning Authority is preparing its site allocations DPD. In such circumstances Local Planning Authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified.

The fact that temporary permission has been granted on this basis should not be regarded as setting a precedent for the determination of any future applications for full permission for use of the land. In some cases, it may be reasonable to impose certain conditions on a temporary permission such as those that require significant capital outlay.

### **Consultation**

29. **Cottenham Parish Council** 'fully supports this application and strongly recommends approval, subject to conditions:
1. That this approval be for temporary approval for Mr and Mrs McCarthy and for them alone.
  2. That this personal approval will cease if their circumstances change and they no longer live at this location or upon their decease.
  3. That no other person may live at this location and this to include any potential carers'.

It has also requested that if the Council is minded to refuse that it be contacted to discuss this prior to the decision being made.

30. **Planning Enforcement Officer**

A 'Needs Audit' has been carried out. This confirms that: the applicant owns the site; the applicant requires medical treatment on a regular basis, to be in touch with his GP and has needed emergency medical treatment since moving to the site; the applicant has nowhere else to go other than the roadside and would need a caravan site in order not to be homeless; the applicant could not live in a house and needs to be in



the Cottenham area to be with family; is an Irish Traveller who has lived in England since 1959; has no other income due to retirement; and has two dogs.

It has been clarified that the applicant has a grandson, Daniel O'Rourke, who does not live or intend to live at the site but will occasionally visit i.e. as a guest.

31. The **Traveller Site Team Leader** advises that the applicant has a daughter who lives next door and his wife has family in Setchell Drove. In addition she comments:

"Patrick and Bridgitte McCarthy are both suffering ill health and wish to obtain temporary consent to remain on their land at Victoria View for the remainder of the their lifetimes. Mr McCarthy has been a valued spokesperson between the travelling community at Smithy Fen and the Council over the years. Despite his own concerns he has always made himself available to discuss and try to resolve issues and this is widely known by the many members of the Council who have met him.

I would support his application for temporary consent on both the basis of the need to have the security of tenure, which would allow them to enjoy the remainder of their lives without the worry of being moved off the land and also on the basis that Patrick continues to be a much valued contact within the community".

In response to specific questions, she has also advised:

1. It is very difficult to determine waiting times as, like housing, it is dependent upon current residents making a decision to move and with a lack of sites all over, this has happened very rarely, I think, in the 18 months I have been doing this job.
2. I currently have about twenty people waiting for places on the sites.
3. Mr and Mrs McCarthy have not applied to go onto a site, but at the moment even if they did all our sites are occupied by English Gypsies and it would be very difficult to integrate an Irish Traveller family onto either of the sites. Unfortunately, this is something we have little control over, as the English will not welcome Irish and vice versa. It is a cultural thing.
4. I would also be very reluctant to consider moving the McCarthys away from their family - they are elderly, in poor health and need the security of the family around them. Moving them onto a site full of strangers would have a really negative impact on them.

32. **Environment Agency** – an update will be provided.

### **Representations**

33. Set out in the paragraphs below are the comments received raising material planning considerations. In addition to the letters received with the application from the applicant's doctor and from the head teacher of the local school, two further letters of support and five objecting from residents in the surrounding area and the Cottenham Village Design Group have been received. A number of the objection letters also raise queries relating to how the application has been processed: these are not material have not been summarised therefore, and will be responded to separately.

34. **Cottenham Village Design Group** objects to the development commenting that:

- (a) It is concerned about the continuing applications of this type in Smithy Fen. Despite some development, this area, which is outside the village framework, is still of essentially rural character with locally distinctive open views of fen edge landscape. It considers the cumulative effect of additions to the planning consents already granted would seriously harm the character of this landscape.
- (b) It also notes that developments in this area do not conform to the essentially nuclear settlement pattern established within the parish and are likely to integrate poorly with the village and its facilities.
- (c) The Design Group contributed to a planning inquiry following appeal against refusal of a previous application on this same site, which was subsequently dismissed on 7<sup>th</sup> December 2005. It is disappointed that this plot is the subject of a new and almost identical application four years later.
- (d) It refers to policies L/4, S/1 and B/8 of the Cottenham Village Design Statement.

35. An occupier at **Fen End Farm** writes in support of the application on grounds that:

- (a) This would enable the applicants to live out their lives on their pitch.
- (b) Both suffer ill-health and the prospect of them being put back on the road does not bear thinking about. Patrick would be totally incapable of hooking up a caravan due to his in operable hernia.
- (c) On Smithy Fen they have the support of other family members living on adjacent legal plots.
- (d) Mr McCarthy is considered a respected member of the Cottenham community and serves a vital role as mediator between the travelling and settled communities. He has done this despite often heated criticism from both communities.
- (e) Unless the Council has a suitable local housing solution for the McCarthys it is urged that permission be granted for them to remain for their lifetimes in the present location.

36. An occupier at **Turks Head Farm** writes in support noting that:

- (a) The Council has been successful in all but one of the appeals at Smithy Fen because of concentration on material planning considerations, an exemplary attention to detail, on pre-planning to ensure the existence of detailed criteria on which council decisions can be based, and on consistency.
- (b) An exception should be made for the McCarthys, however, on the basis that:
  - 1. Patrick and Bridgette share ill-health. Being able to remain close to family on adjacent lawful pitches will give them great comfort in their twilight years.
  - 2. By way of recognition that despite having an unlawful pitch, Mr McCarthy was only one of three people from the community who, in 2003-2004, worked to persuade both sides that differences could be settled without overt hostility, acting as an essential broker between the Traveller and local communities.

3. On humanitarian grounds, as the McCarthys have lived peacefully on their pitch for at least six years; their medical conditions are a matter of public record; and Patrick's contribution to the community.
  4. Their pitch sits at the end of a 'bunded' Victoria View: it cannot be enlarged and, as is known to them, has no long-term residential value. There is no danger of a precedent being set from allowing them to stay, as their circumstances are exceptional, a genuine one-off; there can be no benefit from asking the McCarthys to leave their home or benefit drawn by a council flexing its muscles on an ailing couple. Logic says to let them stay for their natural lives.
37. Another occupier at **Turks Head Farm** has written urging the Council to refuse the planning application on grounds that:
- (a) Previous applications and appeals for both permanent and temporary residency at Smithy Fen have been rejected by the LPA, Planning Inspectorate and the High Court.
  - (b) At Pine View, Victoria View, Orchard Drive and Water Lane appeals the Inspectors have continuously concluded that "even temporary permission cannot be justified given the serious harm to the rural area".
  - (c) Daniel O'Rourke has never lived at Smithy Fen and has no need to reside in the area.
  - (d) Mr and Mrs McCarthy's health is failing; indeed the Sheridan appeal decision of April 2009 it is stated that the Council has tolerated continued occupation in view of medical circumstances. 'Tolerated' has a considerably different connotation to the legality of this pitch. To grant temporary permission could open the flood gates for many more applications and having given one it might be difficult to justify refusing others.
  - (e) The McCarthy's understandably want some security of their situation, however, temporary permission is not the correct solution.
38. Occupiers at **Derwent Cottage** object to the proposal raising the following points of concern:
- (a) The Secretary of State gave no weight to personal circumstances, which was not considered sufficient to outweigh the harm. Temporary, full permission and screening hedging were also covered in the report and could not be accepted.
  - (b) There is no difference to the original planning application, where the site has an enforcement notice on it, which has not been complied with; even though the Secretary of State gave twelve months to vacate the site in December 2005.
  - (c) This should be about planning law and not a popularity contest. Just because three letters of support from people who say "he is a good guy" does not mean anything in planning law.
  - (d) The application should be decided on planning law so that there is no comeback to the Council of unfairness to the settled community e.g. enforcement on Joanna Gordon-Clarke's land; the rules should apply to everyone.

- (e) Mr McCarthy has been living unlawfully for a number of years, which has cost the Council a lot of money in enforcement, appeals, Secretary of State judgements etc. and the Parish Council has also paid for its own legal representative to fought this unlawful development at great cost what has changed?
- (f) Concerns about the planning process including: following the injunctive action at Victoria View, which took priority, why has no similar action been taken against this breach of planning? This is despite it having been raised at several Planning Sub-Committee meetings. It was also understood that Gareth Jones was to meet the applicant and a Traveller representative but nothing has been heard for the last eight months.
- (g) The Secretary of State's report and decision should be reviewed and planning law applied fairly.
- (h) The Old West Internal Drainage Board should be consulted.
- (i) Reference is made to a main sewer that does not exist on Setchell Drove.
- (j) Questioned the flood map which does not seem to tie up with the area not flooding.
- (k) Queries the amount of parking stated – eight cars, does this include cars, vans and caravans?
- (l) Why aren't the Council exploring alternative options such as the McCarthy's moving to a lawful plot nearby where their daughter lives?
- (m) Likelihood of setting a precedent encouraging other future applications on personal circumstances such as old age and ill health.

39. Occupiers at **Merton Hall** object to the application proposals noting:

- (a) The planning history for this site includes appeals and enforcement action culminating in August 2005 with the applicant being given one year to find alternative accommodation. Why has no action been taken in **four years**?
- (b) The planning history should carry some weight in the decision.
- (c) The Council has worked extremely hard, in dealing with all applications, on consistency and concentrating only on planning law and policy, has gone through very lengthy procedures with the support of locals, but it would appear now that all the previous hard work is to be forgotten and previous guidelines ignored to give this approval.
- (d) Is the septic tank now to be pumped as there is no known pumping works in Setchell Drove? Bear in mind the huge cost the Council has borne in 2008 dealing with sewage flooding on the private site as a whole. There should have been prioritised an investigation. If surface water is running into ditches around the site this will obviously cause a problem on adjoining land.
- (e) Mr & Mrs McCarthy could move onto their daughter's lawful pitch or to his daughter's site in Nottingham.

- (f) The applicants' personal circumstances carry no weight in planning terms; only the applicants' doctor can comment on health issues. The applicants are still independent and a desire to live near to ones children in their "twilight years", as others would love to, does not come into planning policy.
- (g) The access is via a dirt track in excess of .25 miles long. This cannot be good for the applicant's health when he could live at his daughter's plot accessed via a made up, proper track road in Setchell Drove.
- (h) There is no real possibility of the applicant having to live on the road if refused planning permission. Many would like to live close to their families in the countryside in their later stages of life but planning policy does not and should not allow for this.
- (i) They question the claim that Mr McCarthy is an "essential broker with the travellers and local community" as most in the village would not know him and he has said himself that he "had little or no control over the other residents or visitors to the site".
- (j) To allow this application would blatantly ignore planning guidance and may stand as a precedent for many future applications in the district.

40. Occupiers of **The Windrush** object to the application, commenting:

- (a) Planning applications for this particular plot have been through all the correct planning process rigorously. To date, this plot is subject to an eviction notice; why has SCDC taken no action on this?
- (b) For SCDC to give its agreement to this planning application would make a mockery of the whole planning procedure and judicial system. Not only has it spent time and money in the past but so has the Parish Council, in reality this is **OUR** money. Why has the Parish Council changed its views on this plot? The position of the Parish Council is also questioned, as its comments appear to be personal comments, contrary to the Standards Board requirements.
- (c) The letters of support indicate that the applicant is somewhat of a go between the Travellers and the settled community. We believe this NOT to be the case. Mr McCarthy said at an OPEN public meeting that he "cannot be held responsible for other site residents and their visitors".
- (d) Letters of support states that "the applicants and Cottenham believe they should be allowed to stay for their natural lives" - the author of that letter does NOT speak for Cottenham; it was a personal letter and as such should have been written in that context.
- (e) In reference to the quote "the rest of Cottenham being indifferent", this is correct owing to the fact that those who opposed many planning applications, appeals, high court judgements relating to Smithy Fen made it their business to inform the rest of the village. Some of these people it would appear have now changed their views. It's a real pity that the village was not made aware of this retrospective planning application, and then they are sure the village would not be "indifferent".
- (f) They request that this planning application be viewed with no reference to medical, recognition or humanitarian reasoning but simply on planning policy.

They reiterate that the planning process on this plot has already been dealt with at ALL levels and to save SCDC further embarrassment they respectfully request a simple refusal having made reference to the planning history.

### **Planning Comments – Key Issues**

41. Officers are satisfied that a permanent consent for this proposal would result in significant harm, and in accordance with the previous decisions of this Council supported on appeal by the Secretary of State, any proposal to make permanent the consent should be resisted. However this application is for a temporary consent aligned to the personal circumstance of the applicant and his wife. Officers are also satisfied that the harm here resulting from any such consent is not outweighed by the general need for sites in the area. It follows that in determining this planning application all other material planning matters must be balanced against the harm that it causes. In particular, circumstances have changed since the last planning application was considered in terms of government advice in the form of Circular 01/2006, the situation at Smithy Fen due to plots having been cleared, and the applicant's health.

### ***Gypsy status***

42. The Secretary of State (SoS) noted in relation to Plot 12, that the occupiers, Mr and Mrs P McCarthy, "do enjoy the status of Gypsies" (para. 14) given then-emerging policy advice. Paragraph 15 of Circular 01/2006 cemented this approach i.e. that the definition of a Gypsy or Traveller now includes '...such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently'...Mr and Mrs P McCarthy have ceased travelling due to old age and health problems. They are however confirmed to be of Irish Traveller origin, and that they have in the past lived a travelling lifestyle. This has been accepted by the Council and the Secretary of State in the context previous appeals and the current Needs Assessment for the couple.

### ***Planning policy considerations***

43. The Issues and Options 2 of the draft Gypsy and Traveller DPD carries limited weight, as it has not been sufficiently advanced and is subject to further consultation. Notwithstanding, it is a useful starting point in determining applications, as it reflects the RSS requirements for sites to be identified and includes some criteria for the assessment of sites that are not allocated and are outside frameworks.
44. These criteria are not entirely met by this proposal and the site is currently ruled out as a possible option for future further Gypsy and Traveller pitches.
45. The application site is in the countryside and as such is contrary to policy DP/7 of the LDF in that it will not provide for a use that requires being located in the countryside. Notwithstanding, Circular 01/2006 does advocate that to restrict Gypsy and Traveller pitches to within frameworks will 'thwart site provision' (para. 7, Annex C). This is acknowledged in the Issues and Options 2 of the draft Gypsy and Traveller DPD, 2009 (p.83):

'Development outside development frameworks is tightly controlled (Development Control Policies DPD Policy DP/7) and proposals for Gypsy and Traveller caravan sites will need to demonstrate a clear need, particularly if the needs identified by the East of England Plan have already been or will be met. This policy therefore addresses the criteria a site proposal outside a development framework would need to meet.

Circular 01/2006 provides clear guidance that sites should be considered on a sequential basis, with allocated sites being used before windfall sites. In the countryside it will need to be clearly demonstrated by applicants why there is an unexpected need for sites in the district, which cannot be met by lawful existing or planned sites in the region'.

46. In relation to the proposed criteria-based assessment set out in the draft GTDPD the following comments are made:

**1. The Council is satisfied that there is a clear established need for the site in the district, and the number, type and tenure of pitches proposed cannot be met by a lawful existing or allocated site in the region.**

47. The Council has currently ruled out further pitches at Smithy Fen on the basis that it considers the numbers required can be accommodated on sites allocated elsewhere which meet the various assessment criteria used.

**2. The site is located in a sustainable location, well related to a settlement with a range of services and facilities, including a primary school, a food shop and healthcare facilities, and is, or can be made, accessible on foot, by cycle or public transport.**

48. The Secretary of State, previous Inspectors and the Council have previously determined the site to be reasonably well located in relation to facilities and services within the village.

**3. The number and nature of pitches provided on the site is appropriate to the site size and location, will address the identified need, and will not normally exceed:**

- (a) **15 pitches per site in / adjoining Cambridge, Northstowe, Rural Centres and Minor Rural Centres;**
- (b) **8 pitches per site in / adjoining Group Villages;**
- (c) **Generally no pitches should be permitted in / adjoining Infill Villages.**

49. Cottenham is a Minor Rural Centre in the adopted Core Strategy DPD. This permits residential developments within frameworks of up to 30 dwellings. Smithy Fen currently provides plots for 48 plots /pitches that have permission or are 'tolerated'. This exceeds the proposed limit for sites in or near Minor Rural Centres.

**4. The needs of residents of the site can be met appropriately by local facilities and services without placing a strain on them.**

50. The applicants have been served by the local doctors' surgery for several years and are supported in their application by their GP. In addition the applicant does not have children that require education. It is reasonable to conclude that this single plot will not place undue strain on local services.

**5. The site would not present unacceptable adverse or detrimental impact on the health, safety and living conditions of the residents of the site by virtue of its location.**

51. The site is not known to suffer any issues that would be impact upon the occupiers health. It is, however, in Flood Zones 2 and 3 according to Environment Agency maps.
52. The submitted flood risk assessment does not make reference to Flood Zone 3 and as such potentially underestimates the risk to the occupiers of the site. Environment Agency standing advice indicates that it 'is highly likely to OBJECT in principle to this application. Tables D1 and D3 of PPS25 state that 'Highly Vulnerable' development is not appropriate in Flood Zone 3'. It requires that it should be consulted in respect of this planning application together with a copy of the Flood Risk Assessment and a response is awaited. An update will be provided.

**6. The site, or the cumulative impact of the site, in combination with existing or planned sites, would respect the scale of, and not dominate, the nearest settled community.**

53. Previous applications have considered the cumulative impact of development at Smithy Fen. The situation has altered on the ground since other unauthorised plots have been cleared and banded to prevent future unauthorised occupation recurring. The total number of pitches is greatly reduced as a consequence. In this instance the plot for one couple will not significantly increase the Traveller population or, as a consequence, impact unduly on the settled community.

**7. The site, or the cumulative impact of the site, in combination with existing or planned sites, would not harm the character and / or appearance of the area and / or result in unacceptable impact, in terms of visual intrusion and landscape impact.**

54. The first Inspector opined at para. 13, in relation to Plot 12, "that the caravan and related structures on the appeal site cannot be seen from any publicly accessible point outside the gypsy encampment. It represents a relatively small expansion of the authorised area and in my opinion does not lead to an unacceptable concentration of gypsy sites in visual terms. Because of its small size and well-screened position I consider that landscaping is neither necessary nor practical the site has no unacceptable effects on the rural character and appearance of the area".
55. The Secretary of State did not support this view, noting the second Inspector's assessment at para. 13.34 that: "any further addition of plots would, in my view, detract unacceptably, in terms of rural appearance and character, from the fenland landscape at Smithy Fen. Furthermore, caravan development on plots 8 and 12 is not totally screened from public view. It does, in fact, despite being in a backland location, add to the visual density of 'built' development when viewed from Setchel Drove to the north and Lockspit Hall Drove to the west".
56. The situation has altered somewhat on the ground since all other unauthorised plots at Victoria View have been cleared and banded to prevent future unauthorised occupation recurring. Similar applications for individual plots have been refused by the Council, however, in this instance the site is better related to the existing authorised Traveller camp and would be seen in relation to it, as noted by the first Inspector.
57. Officers remain firmly of the view that wider development of plots would be undesirable due to the harm to the rural landscape and accepts that some harm to the appearance of the area will result from allowing this application.



**8. The site location would avoid adverse impact on existing or proposed public rights of way and would not detract from their convenient, safe and enjoyable use.**

58. The site does not affect any public rights of way. The track now only serves this one plot and is adequate for the purpose. It is away from the public footpath at Cottenham Lode.

**9. Sites for Travelling Showpeople must also be suitable for the storage, maintenance and testing of large items of mobile equipment.**

59. This is not pertinent to this application.

60. In policy terms, in the absence of an adopted GTDPD, it is concluded that some harm will result from the proposal in terms of potential flood risk, and in terms of cumulative impact upon the village of Cottenham and the character and appearance of the rural area.

**Assessment of need**

61. General need for South Cambridgeshire has been identified through the RSS and is addressed in the emerging GTDPD. The Council is currently working to identify a shortfall of 88 pitches needed to meet the targets set in the RSS for the period 2006 – 2021. It has identified sites that could potentially be allocated to meet this requirement. The plot, if approved, would serve to meet part of the identified need, which includes the applicant and his wife, albeit it is proposed to be on a personal basis that would not result in long-term provision.

62. In accordance with Circular 01/2006, the assessment of need also includes the individual needs of the persons to be served by the application proposals; this is covered in more detail under the heading 'Personal Circumstances', below. As Irish Travellers they have a personal need for a site.

**Availability of alternative sites**

63. Within South Cambridgeshire there are the two public sites, which are both currently at full capacity, with 15 and 14 pitches occupied respectively. However at Blackwell there is wide dissatisfaction with its suitability as a permanent Gypsy and Traveller residential site due to its location adjacent the A14. These sites are not likely to provide a suitable alternative site for the applicants.

64. Within South Cambridgeshire there were 474 caravans at the July 2009 count. Of these 33 were unauthorised. At Smithy Fen, current figures indicated that there are 48 permitted / tolerated plots and 14 unauthorised; of the latter, 6 are currently occupied. No instruction to take further enforcement action against these, which are at Orchard Drive / Water Lane, has been given. It is understood that, at this time, there are no plots at Smithy Fen that are currently available, as unoccupied plots are in other ownerships. The applicants would not be able to move onto land they do not own. It is reasonable to conclude that there are limited alternative legal sites close to the applicant's family.

**Personal circumstances**

65. The Secretary of State and previous Inspector attributed less weight to the personal circumstances of the applicants than might otherwise have been given, as it had at

that time been determined that the applicants were not Gypsies or Travellers within the legal definition. It is, therefore, a significant material change in circumstance that since that time the publication of Circular 01/2006 has altered the definition and as such greater weight can now be afforded to the applicant's personal circumstances, as noted by the second Inspector at para. 13.51 of his report.

66. It is understood that the applicants have lived at the site since 2003, having previously lived a nomadic lifestyle. They live here close to their family. In the first appeal the Inspector noted that the couple's accommodation needs could not be easily accommodated on adjoining family pitches, that they would not be able to have a place of their own and that they would suffer severe hardship as a consequence, and that it was very unlikely that they would find an alternative site where they would benefit from the care and support of their own family.
67. In the second appeal the Inspector noted that residents were unlikely to be able to afford authorised plots elsewhere on Smithy Fen due to limited income and capital. The applicants are retired and of limited financial means. They would be homeless within the legal definition if not permitted to stay on this site.
68. The Council has previously accepted that it was not expedient to require the couple to leave the site as their medical needs were so acute that occupation of the site was essential. The couple's medical position is such that they do require local health care and support from nearby family. If forced to move this would be disrupted. Their GP has written affirming that the couple require on-going medical support. It is also understood that the health of the couple, in particular Mrs McCarthy, has deteriorated significantly since the second appeal.
69. The applicant's role as a "go-between" the Traveller and settled communities is not considered to be a material planning consideration to which great weight can be afforded. That is not to detract at all from what the applicant has endeavoured to do and has helped to achieve.

### ***Precedent***

70. Previously considerable weight has been given to the concern that allowing further proposals would lead to pressure to develop other Gypsy plots at Smithy Fen and it was accepted that it would be likely to set a precedent for other Gypsies in the area to seek planning permission. Cumulatively, significant adverse impact on the character and appearance of the countryside and increased traffic on the narrow lanes were considered to be likely undesirable consequences.
71. It is still likely that others will see the approval of this application as encouragement to pursue their own applications, however each would have to be assessed on its individual planning merits. It is officers' view that this single plot, if permitted based on the personal circumstances of the applicant, would not set a precedent difficult to overcome if further applications for other plots were to come forward.

### ***Flooding***

72. This issue is to be addressed and an update will be provided.

### ***Drainage***

73. The issue of field drainage has been raised. Investigations are to be made as to the likelihood of such issues arising and Members will be updated.

### ***Pattern of development in Cottenham***

74. A single plot adjacent to the existing authorised Gypsy site is not likely to materially alter the pattern of development and evolution of the village's form.

### ***Enforcement***

75. The current occupiers are living on the plot without the benefit of planning permission. The Secretary of State modified the enforcement notice to require the plot to be vacated within twelve months.
76. Subsequent to the Secretary of State's decision, at the 18<sup>th</sup> June 2007 meeting of the Planning Sub-Committee it was decided: 'in respect of plot 12 Victoria View, that no action be taken at the current time against the occupiers in light of the medical condition'.
77. It was also resolved that the Head of Policy, Performance and Partnership should contact the applicant to see if the matter could be resolved. That officer left the authority not long after this, and the matter was not picked up again until relatively recently by the Traveller Site Team Leader. She has met with the applicant and his wife and, following these discussions and before a new application was submitted, she explored with the applicant all reasonable alternatives.
78. Officers are satisfied that there is no reasonable alternative and that the stress resulting from the continued uncertainty is adding to the couple's health issues

### ***Poor access road***

79. The site is served by a hard surfaced track. This is sufficient to serve a single plot. The Local Highway Authority has not commented on the application, and the safety of the access has not previously been found to be a concern carrying any significant weight.

### ***Local Comments***

80. There continues to be concerns about this development, and officers accept the majority of the comments of those that object. It is understandable that they would be concerned about any weakening of the Council's approach to enforcement given the area's recent planning history. However officers give greater weight than they do to the changes in circumstances since the last decision on the site, and have come to a different conclusion, and this view is supported by two of those making representations. In coming to this view, officers stress that it would not weaken the Council's resolve or case elsewhere to properly enforce against breaches of planning control.

### ***Parish Council's comments***

81. Previous proposals on this site have not been supported by the Parish Council, but their recommendation on this proposal confirms their support, subject to the conditions set out at the end of this report.

### ***Temporary and personal permission***

82. The planning application seeks a personal permission to allow Mr & Mrs McCarthy to remain on the plot for the remainder of their lives, and is in effect a temporary permission, albeit the end date is unknown.
83. As the key justification for approving the application would be on the personal circumstances of the applicants, a personal permission is appropriate and accords with guidance set out in Circular 11/1995 at para. 93. The permission would be based on the strong compassionate grounds and personal circumstances of the applicant.
84. The guidance in Circular 11/1995 at paragraphs 108-113 indicates that temporary permission would not be suitable where the development proposed otherwise accords with the development plan. This is not the case in relation to this application. There will be some harm to the character and appearance of the countryside, which cannot be mitigated. In these circumstances it is necessary to consider whether or not allowing the short-term use of the site would be reasonable as circumstances are likely to change during the life of the permission e.g. because the GTDPD may have evolved and identified more suitable, alternative sites. If temporary permission were granted it would not set a general precedent for any future applications. Rather, it would follow the Council's approach where the special circumstances of the applicant are considered and weighed against all other material considerations.

### ***Human Rights***

85. The Secretary of State concluded that requiring the Gypsies to vacate their sites 'may result in them having to use unauthorised sites or living by the roadside and this would interfere with their rights to home and family life, however, such interference must be balanced against the wider public interest in pursuing the legitimate aims of Article 8 of the European Convention on Human Rights, which include protection of the environment'. These circumstances are not altered and the applicant's Human Rights would not be violated if the application were to be refused.

### ***Race Relations***

86. The applicants are Irish Travellers, a minority group. Families from the Gypsy and Traveller communities make up approximately 1% of the district's population. There may be an indirect benefit for both the Gypsy and Traveller and settled communities from providing greater certainty, and delivery of new sites across the region should reduce the need for illegal encampments.

### ***Conclusions***

87. It is officers' opinion that the case based upon the personal circumstances of the applicant is sufficient to warrant the grant of planning permission.
88. Potential concerns relating to flood risk and drainage must be addressed prior to a decision being issued and updates will be provided.
89. If approved, it is recommended that it should be made personal to the applicant, that no trade or business be operated from the site in order to limit the amount of traffic, and that when the site is no longer required for occupation by the applicants it shall be returned to its former condition.

90. Without prejudice, if Members are minded to refuse, planning permission, the above-mentioned factors should be reflected in the reasons for refusal and enforcement action should reflect the circumstances, including homelessness.

### **Recommendation**

91. Subject to the comments of the Environment Agency in relation to flood risk and drainage, **approval** is recommended.

### **Conditions**

- 1. The site and the mobile homes and transit caravans, hereby permitted, shall not be occupied other than by Mr and Mrs P McCarthy.**

(Reason – Mr and Mrs McCarthy are Irish travellers and the permitted use would not normally be granted on this site because it would be contrary to Policy DP/7 of the adopted Local Development Framework 2007. Occupation by other persons would not amount to special circumstances for permitted development in this location.)

- 2. The site shall not be used for any trade or business purpose and no materials associated with such activities shall be stored in the open on the site.**

(Reason - In order to limit the impact of the development on the area's rural character and the residential amenities of the neighbours in accordance with Policy DP/3 of the adopted Local Development Framework 2007.)

- 3. When the land ceases to be occupied by those named in Condition 1 above, the use, hereby permitted, shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use, hereby approved, shall be removed. Within 6 months of that time the land shall be restored to its condition before the use commenced or to a condition to be agreed in writing with the Local Planning Authority in accordance with a scheme of work submitted to and approved in writing by the Local Planning Authority.**

(Reason - To ensure that the site is restored when it is no longer occupied by the named occupiers in the interests of rural amenity in accordance with Policies DP/2, DP/3 and DP/7 of the adopted Local Development Framework 2007.)

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

- South Cambridgeshire Local Development Framework (LDF) Core Strategy DPD, adopted January 2007
- South Cambridgeshire LDF Development Control Policies DPD, adopted July 2007
- South Cambridgeshire LDF Gypsy and Traveller DPD: Issues and Options 2, published July 2009
- South Cambridgeshire LDF Supplementary Planning Document Biodiversity, adopted July 2009
- South Cambridgeshire LDF Supplementary Planning Document Cottenham Village Design Statement, adopted November 2007
- Cambridgeshire and Peterborough Structure Plan, adopted 2003
- East of England Plan, adopted May 2008
- Planning Policy Statement 1: Delivering Sustainable Development
- Planning Policy Statement: Planning and Climate Change - Supplement to Planning Policy Statement 1
- Planning Policy Statement 3: Housing
- Planning Policy Statement 7: Sustainable Development in Rural Areas

- Planning Policy Statement 9: Biodiversity and Geological Conservation
- Planning Policy Guidance 13: Transport
- Planning Policy Statement 25: Development and Flood Risk
- ODPM Circular 01/2006 (Planning for Gypsy and Traveller Caravan Sites)
- DCLG 'Designing Gypsy and Traveller Sites: Good Practice Guide', May 2008
- ODPM Circular 11/1995 'The Use of Conditions in Planning Permissions'
- Planning File Refs: S/1178/09/F and S/1020/03/F
- Documents referred to in the report including appendices on the website only and reports to previous meetings

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