

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/1702/04/A	C Tirrell Oakington Tomato Farm, Dry Drayton Road Oakington Signs (Retrospective) (Delegated Refusal)	Dismissed 14/02/2005
S/1278/04/F	Mr T Mason former Q8 Petrol Filling Station, Cambridge Road Croxton Change of use to hand car wash and security fencing (Officer Recommendation to Approve)	Dismissed 22/02/2005
S/0456/03/F	Mr P O'Brien 9 Pineview, Smithy Fen Cottenham Siting of travellers caravan & day room. (Delegated Refusal)	Dismissed 11/03/2005
S/0457/03/F	Mr J O'Brien 10 Pineview, Smithy Fen Cottenham Siting of travellers caravan & day room (Delegated Refusal)	Dismissed 11/03/2005
S/0529/03/F	Mrs N Sheridan 11 Pineview, Smithy Fen Cottenham Siting of a travellers caravan (Delegated Refusal)	Dismissed 11/03/2005
S/0530/03/F	Mrs M Flynn 12 Pineview, Smithy Fen Cottenham Siting of a travellers caravan (Delegated Refusal)	Dismissed 11/03/2005

S/0545/03/F	B O'Donoghue 7 Pineview, Smithy Fen Cottenham Siting of travellers mobile home, caravan and day room (Delegated Refusal)	Dismissed 11/03/2005
S/0569/03/F	M O'Donoghue 8 Pineview, Smithy Fen Cottenham Siting of a travellers mobile home, caravan and day room (Delegated Refusal)	Dismissed 11/03/2005
S/0871/03/F	Mr P Quilligan 16 Pineview, Smithy Fen Cottenham Siting of a travellers mobile home (Delegated Refusal)	Dismissed 11/03/2005
S/0872/03/F	Mr D Quilligan 14 Pineview, Smithy Fen Cottenham Siting of travellers mobile home (Delegated Refusal)	Dismissed 11/03/2005
S/0873/03/F	Jerimia O'Brien 15 Pineview, Smithy Fen Cottenham Siting of travellers mobile home (Delegated Refusal)	Dismissed 11/03/2005
E461C	Mr P O'Brien Land off Water Lane Cottenham Enforcement against change of use to residential caravan site	Dismissed 11/03/2005
S/2447/02/F	Mr J Flynn 6A Orchard Drive, Smithy Fen Cottenham 1 Mobile Home, 1 touring caravan and day room (Delegated Refusal)	Dismissed 11/03/2005
S/2370/02/F	J Culligan 7 Orchard Drive, Smithy Fen Cottenham Caravan & day room (Delegated Refusal)	Dismissed 11/03/2005

S/2505/03/F	Messrs D Flynn, M O'Brien, J Flynn, P Flynn, D O'Brien & D Quilligan Plots 1-6 off Water Lane Cottenham Private gypsy site for 6 families (Non-Determination)	Dismissed 11/03/2005
S/1495/04/A	Miss J Garfitt Junction of A10 & Church Road Hauxton Sign (retrospective) (Delegated Refusal)	Dismissed 11/03/2005

2. Summaries of recent decisions of interest

Patrick O'Brien and 16 others – Use of land as gypsy caravan sites – Land at Pine View off Water Lane, Smithy Fen, Cottenham – Appeals dismissed.

Background

1. These 13 appeals were the subject of a public inquiry which sat for 8 days between 20th July and 26th November 2004. Both main parties were represented by Counsel. Both the Parish Council (represented in part by Counsel) and the Cottenham Residents Association played a significant role. Seven other interested parties spoke at the inquiry, including James Paice MP and Cllr Mrs Roberts.
2. The appeals can be broadly split into three groups:
 - (i) One planning appeal for Plots 1-6 Pine View. This site had already been the subject of an enforcement appeal that had been dismissed;
 - (ii) Nine separate planning appeals and one enforcement appeal for Plots 7-16 Pine View; and
 - (iii) 2 separate planning appeals for two further plots in Orchard Drive that can be accessed off Pine View. These sites have never been occupied.
3. The decision to dismiss the appeals has been made by the ODPM. The inspector (and his assistant 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, sustainability, and highway safety.
5. It was the appellant's case at the inquiry that all but four of the appeals were to be decided taking into account gypsy status and other personal considerations. The other appeals for four single plots were to be decided on the basis of occupation by gypsies generally. Only one of the appellants appeared and spoke at the inquiry.

6. The Case for the Appellants

- The appellants have travelled and worked in this area for many years. They are a unique group who hawk furniture. They have never had a fixed base. The appeal sites were purchased in order to secure a fixed base from which to travel and to secure education for the children. There was no need to justify the sites based on specific personal needs. The English travellers who were previously living at Smithy Fen were not forced out.
- Part of the land previously had planning permission. There is a significant shortage of gypsy sites. It would be unreasonable to require them to leave the site with nowhere else to go.
- Opposition to the applications was orchestrated. It would disappear after planning permission was granted.
- The right to education is a basic human right. Schools would not be overburdened. The children are doing well. Families should be allowed to live close to one another and provide mutual support.
- There have been significant policy failings. The Council has not undertaken a needs assessment. This will take up to five years to provide the necessary sites. The Council has carried out a general housing needs assessment for the settled community and this is discrimination.
- There is no conflict with any of the criteria in the Council's Gypsy Policy HG23. While there is a concentration of sites at Cottenham, this is not an 'over-concentration'. There is a greater concentration of sites at Chesterton Fen. Any available provision here would be needed for families from that area.
- Provision for gypsy caravan sites in the district was comparatively high. But no other authorised sites were suitable. English and Irish travellers do not mix. While there may be an imbalance between the settled community and gypsies living at Smithy Fen, there was no evidence of friction. Pine View residents are not aggressive or offensive. All but one of the appellants were afraid to attend the inquiry. Local fears have been self-induced, aided by bad publicity.
- The appeals should not be seen as a precedent. Approval will make future applications more difficult to approve. (Conversely, the whole of Smithy Fen was likely to be occupied by gypsies over the next 20 years). Some of the plots at Pine View are not occupied at present as some families are doubling up.
- The Residents Association could not engage human rights legislation as a group. Their needs have to be balanced against the significant needs of gypsies. Refusal of planning permission was not a proportionate action.
- The Council has done nothing to encourage gypsies to discuss planning applications in advance. It has not facilitated the gypsy way of life. The Council steadfastly refuses to reopen the two closed public sites. Proposals for land-swap have been rebuffed.
- If permanent permission is not forthcoming, a temporary permission (for at least two years pending a needs assessment) is appropriate.

7. **The Case for the Council**

- Gypsy status was conceded once the appellants had properly demonstrated they travel to seek their livelihood. While the appellants may all form one discrete group, each appeal must be considered on its own merits.
- 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. The Local Plan is up-to-date and gypsy policies were subject to widespread consultation.
- The site is not reasonably located for schools and other services; the concentration of sites will continue to harm the amenities of local residents; 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.
- It is accepted that there is both a national and local shortage of gypsy sites.
- It is not accepted that the appellants formed part of a local need before they moved onto the site. This was not until early 2003. The appellants were prepared to live elsewhere if a site had been available. They had not looked at other sites in the district. Their need is part of the national shortfall. Their search should be wider. The district is home to more travellers than most districts and has been subject to 'the honeypot effect'.
- The personal circumstances that were advanced were limited. Attendance at school was sporadic. The need for education should carry limited weight.
- The Council always offers advice to travellers on a drop-in basis if they request it.. Some of the appellants knew they needed permission and knew the risks they were taking. The failure of the appellants to consult beforehand weighs against the grant of planning permission
- Allowing the appeals will set a precedent. The inspector in the Boswell (Pine Lane) appeal was naïve in thinking otherwise.
- Eviction does not mean that all of the appellants will be on the road. There are unexplored alternatives.
- Local 'fear' is capable of being a material consideration.
- Considerable weight should be given to the development plan. Refusal of permission is a proportionate action when balanced against the interests of the local community.

8. **The Case for the Cottenham Residents Association**

- Individual evidence submitted in respect of abuse of land, safety, welfare and anti-social behaviour. Residents were right to be apprehensive.

- The human rights of the settled community far outweigh those living on the site.
- Direct action to evict is not supported. The Council should instead allocate resources to resettling the appellants elsewhere as part of a land swap. Any such site should be subject to a maximum size of 18 pitches.
- The local authority could carry out a quantitative assessment and find alternative sites within a matter of months.
- The present Smithy Fen site is already twice the size of what was recently recommended in the Select Committee report. The appellants want to live as a group so the impact of any single plot is irrelevant. No further development at Smithy Fen should be tolerated. The Council should not expect Cottenham to bear a disproportionate responsibility for travellers.
- The appellants acknowledge that they have family links with Ireland. They have not demonstrated a need to be here. They have no long-term connection with the village or the district. Education has no bearing on many of the plots.
- Impact on the landscape, concentration of sites.
- There is no objection to gypsies per se. There was no conflict with the English gypsies previously living at Smithy Fen.
- Threats to the drainage system and highway safety.
- Fear is a material consideration in this case.

9. **The Case for Cottenham Parish Council**

- Eviction is supported if it is the next step in the planning process. Questions of fault and long-term solutions are irrelevant.
- The development has led to an unwelcome concentration of sites. Cottenham does not have the capacity to cope. Also important to look at capacity of Smithy Fen as an isolated part of the wider community. Concentration should be judged proportionally with the host settlement. Thus Chesterton Fen is seen in context of the City. Smithy Fen is proportionately too small to cope with the additional sites. Any grouping in excess of 18 pitches is a concentration of sites.
- Unacceptable highway access problems. Poor state of Smithy Fen Bridge and the surface of Lockspit Hall Drive.
- Enhanced and continuing public fear of anti-social behaviour. Fears are rational and justified given the sheer number of reported incidents
- The honey-pot effect has led to a large, sudden and unplanned fluctuation in numbers. Difficult to provide for e.g. education.
- Coalescence of the two authorised sites.

- Educational needs are of insufficient weight to warrant approval. No evidence of special educational needs.
 - The appellants have failed to show a local connection. They have failed to provide evidence of their identity and indeed of their existence in some cases.
10. The case for other interested persons did not raise any other issues materially different to those already listed.

Inspector's Conclusions

11. **Gypsy Status.** There was first a need to consider the gypsy status of all but four of the appellants. There was no identified occupier in the other appeals. The inspector found that gypsy status was proven, at least for the purposes of these appeals.
12. The probable scale of cumulative development cannot be ignored. There is compelling evidence that pressure to develop other sites exists. The inspector's decision in the Boswell case (where the appeal was allowed) is "flawed" as it is illogical to treat adjoining parcels of land with similar characteristics on their merits such that different conclusions are likely to be reached. Approval of one set was likely to set a precedent. The estimated potential for 130 plots at Smithy Fen, each with two caravans is realistic and does not take account of intensification.
13. **Conformity with Policy HG23.** The sites are not in a sustainable location, but are accessible to schools, shops and other local services. Criterion HG23 (1) is met.
14. Activity **within** the sites or the larger Smithy Fen "site" would not have a material impact on the settled community. The reports of anti-social behaviour outside of the sites are considered to be, in the main, genuine and accurate. The influx of travellers in 2003 has also led to "... a genuine, very substantial and reasonably-based fear of, or apprehension about, the consequences of the continued occupation of Smithy Fen by the travellers." It is not accepted that occupation of the appeal sites over and above the authorised sites will not make any difference. It could never be assumed that none of the appeal sites would be the origin of unwelcome behaviour described by residents. This is even though there was no finding that any of the appellants themselves had been responsible for anti-social behaviour. Residents' apprehensions are not the result of prejudice or media influence and an increase in the authorised area would increase reasonable apprehensions.
15. While the impact from allowing an individual site would be modest, the collective significance would be increased. The amenity of local residents would be harmed. A concentration of sites would not be avoided. Criterion HG23 (2) would not be complied with.
16. Similarly, the enjoyment of rights of way, the feeling of personal security and the freedom from inconsiderate behaviour would be affected. There would be conflict with criterion Policy HG23 (9).
17. If it had been appropriate to grant a personal permission to the one appellant who gave evidence himself, and nobody else, the question of residents' fears should not, by itself, be a basis for refusing permission.

18. Any harm to the rural character and appearance of the area may occur as a result of approving all or several of the appeals and may be potentially increased by any precedent created. The land contributes to openness and acts as a strong visual break between lawful developments. The development of each plot would have an adverse effect on the rural character and appearance of the area. This would be “significant” even without regard to the cumulative impact. Piecemeal development would reduce the size and continuity of the open gap and undermine the potential to maintain and use this successfully. While approval of just a central plot would have least impact, there is no basis for distinguishing a particular area of land as separate or distinctive. There would be conflict with Policy HG23 (3).
19. Landscaping may soften or block views of the development. Tree planting and extensive natural screening is not characteristic of the fen landscape and would draw attention to the development. Criterion HG23 (4) is not met.
20. The Boswell decision has only served to narrow the gap between the lawful sites. The approach in that decision also seems misguided in its assessment of the landscape at Smithy Fen and its importance as open countryside in its own right. Approval of the appeals would also provide a new context for development of other plots. The landscape harm arising from this would certainly be less than from the current appeal sites. The potential for a cumulative adverse impact is obvious.
21. Police evidence of non-injury accidents, recent damage to the parapet of Smithy Fen Bridge and extensive verge overrunning are evident. They strongly suggest that the highway network close to the site is deficient. These limitations are significant when considering the appeals as a whole. These do not amount to an overriding highway objection, but should be taken into account in considering the suitability of the use.
22. Overall conformity with Policy HG23 is such that when looking at the single plot most likely to comply (5 Pine View), there would be conflict with criteria (3) and (4). Collectively, the appeals would conflict with Policy HG23 (2), (3), (4), (5) and (9). While the lack of a quantitative assessment makes the Local Plan “plainly unsatisfactory” Policy HG23 provides clear and realistic criteria and the development plan should be given “considerable weight”.
23. **Other material considerations.** Additional development at Smithy Fen would have the potential to cause fluctuations in the number of children requiring education. The adverse effect of this on the education service and social integration would be negligible. The County Council’s request that education contributions be provided should not be upheld as an objection to the development. This would be inconsistent with the important aim to encourage and facilitate traveller education.
24. There is a significant need for more gypsy sites at local level. This has emerged only recently. The appeal sites help to meet some of this need. The closure of the two former public sites has not been material to the recent increase in need. The appellants had not contested the capacity of the allocation that remains at Chesterton Fen, which could help reduce this unmet need. Even if fully developed, Chesterton Fen could not accommodate all of the unauthorised caravans in the district.

25. While the appellants have collective interests, it does not automatically follow that they must all find an alternative site together. This may be desirable, but it is not essential. If it were, it would be very difficult to find such a site. Finding a new site will not be easy. It is reasonable to assume that the appellants were taking a risk in spending money buying the land before obtaining planning permission. It was far from clear that the appellants need to be based near Cambridge given the extent of their travelling.
26. A permanent base would facilitate children's education, although the precise number that would be affected is uncertain. No special educational needs have been identified.
27. In short, the personal circumstances in all these cases fall short of being sufficient to outweigh the conflict with the development plan and the other disadvantages.
28. **Overall Conclusions.** Approval of any one plot has the potential to lead to further development. The cumulative impacts and the collective merits are relevant. It does not matter whether this is through rapid development or through a series of smaller schemes. "...Judged in this way, the case against the grant of planning permission is very strong".
29. A grant of temporary planning permission is inappropriate. None of these sites are likely to be identified as being suitable once a needs assessment has been undertaken. This may take longer than two years, maybe considerably more. The harm identified outweighs occupation of the sites while a search for a further site is made. The appellants would not need to look for an alternative site and the onus would instead be on the Council. The two closed public sites may not be regarded as suitable sites in the future.
30. The concept of land swap is "attractive", but there are "considerable practical difficulties". This is unlikely to proceed in advance of the more comprehensive review of sites.
31. **Human Rights.** Ceasing the unauthorised use of those occupied sites would have serious consequences for the occupants. The harm to the public interest should not be allowed to continue indefinitely. The enforcement notice gives a compliance period of three months. Dismissal of the appeals will not place a disproportionate burden on the appellants. A quantitative assessment would not have predicted the large arrival of Irish travellers to Cottenham in 2003. The appellants had not attempted to establish whether planning permission would be granted or whether there were alternative sites.
32. As far as the main village of Cottenham is concerned, it is unlikely that any residents would personally suffer to such a degree that there would be a violation of their human rights. The situation is less clear-cut in the case of residents at Smithy Fen. No firm conclusion is drawn. If however, planning permission is refused as recommended, no violation could occur in any event.
33. **The Secretary of State's decision**

The Secretary of State agrees with his inspector on the relative merits of and objections to the proposal. His conclusions appear to echo the inspector's findings in all respects. He concludes that there are strong planning objections to the grant of planning permission, including temporary permission.

34. Implications

The implications for the appeal sites are:

1. The occupants of Plots 1-6 Pine View have until 11th June 2005 to comply with the terms of the enforcement notice. This requires them to cease using the land as a residential caravan site, remove the homes from the land, remove drains, hardstandings etc and restore the land to its former condition.
 2. The enforcement notice for plots 7-16 has already come into effect. The occupation of the few plots that are currently occupied is unlawful.
 3. The two additional plots at 6a and 7 Orchard Drive remain unoccupied and no further action is pending.
35. This decision still leaves outstanding appeals for land at 1-11 Victoria View, the adjoining single "McCarthy" site, the larger adjoining "Hegarty" Site and a single plot off Orchard Drive. The appeals are due to be heard together. The Planning Inspectorate continues to prevaricate over the date of the public inquiry, though it is currently being scheduled for some time in July 2005.

3. Appeals received

Ref. No.	Details	Date
E 353	Mr P McCarthy 08/02/2005 Plot 2 & R/o plot 3, Setchel Drove Cottenham Enforcement against change of use of site to use a residential caravan site. (Re-Determination following High Court Challenge)	
S/1020/03/F	Mr P McCarthy R/o 2 Setchell Drove Cottenham Siting of 2 gypsy caravans and shower block (Re-Determination following High Court Challenge)	08/02/2005
S/2230/04/O	Mr & Mrs C Elsom R/o 17 Cambridge Road Linton Bungalow (Delegated Refusal)	15/02/2005
S/2177/04/F	Mr & Mrs R Walker Adj 1 Bartons Close Balsham Dwelling (Officer recommendation to Approve)	14/02/2005
S/0856/04/F	Mr D Bibby The Stables, Schole Road Willingham 4 mobile homes (Officer Recommendation to Refuse)	21/02/2005

S/2128/04/F	David Charles Ltd Bluebell Wood Caravan Site, Ely Road Landbeach Redevelopment of mobile home park to provide 16 retirement mobile units and excavation of amenity lake (Officer Recommendation to Refuse)	21/02/2005
S/2280/04/O	Mr F Oldham 88 Swaynes Lane Comberton Dwelling (Delegated Refusal)	24/02/2005
S/2533/04/O	Mr & Mrs Cole 66 Cambridge Road Great Shelford 2 houses and garages (Delegated Refusal)	28/02/2005
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.	01/03/2005
S/2079/04/F	Mr & Mrs Clark 18 Granhams Road Great Shelford Extension (Delegated Refusal)	02/03/2005
S/1851/04/F	Dudley Developments 139 Cambridge Road Great Shelford 8 dwellings following demolition of existing (Delegated Refusal)	07/03/2005
S/2239/04/LB	Mrs L R Maddison Lordship Cottage, Fardells Lane Elsworth Change of thatching material on front elevation (Delegated Refusal)	11/03/2005

4. Local Inquiry and Informal Hearing dates scheduled before the next meeting on 4th May 2005

Ref. No.	Details	Date/Time/Venue
E 502	Mr H Price Adj Moor Drove, Cottenham Road Histon Enforcement against: 1) Operational development by the laying of hardcore, roads and Septic tanks. 2) Material change of use of land from agriculture to the storage and Residential use of caravans. 3) Operational development by the installation of foul sewers and mains Water and electricity. (Local Inquiry Resumed to sit for 2 days).	14/04/2005 Swansley Room 10.00am

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/0466/04/F	Mr & Mrs North Clopton Lodge, The Cinques Gamlingay Appeal against condition 2 of permission - personal occupancy condition and removal thereafter (Local Inquiry)	10/05/2005 Confirmed
S/0246/04/RM	Cofton Ltd., Peter Stroude, George Wimpey East Anglia, Kings Oak Homes Ltd Phase 2, Home Farm Longstanton Erection of 200 dwellings and ancillary works (Local Inquiry)	19/07/2005 Confirmed
S/0629/04/F	Mr and Mrs Noyes 22 North Brook End Steeple Morden Extension (Informal Hearing)	04/10/2005 Confirmed

S/0628/04/LB	Mr and Mrs Noyes 22 North Brook End Steeple Morden Internal and external alterations including conversion of bathroom to utility room and two ground floor bedrooms (Informal Hearing)	04/10/2005 Confirmed
S/1109/04/F	Beaugrove Ltd. Crail, High Street Croydon Erection of two houses following demolition of existing house (Informal Hearing)	11/10/2005 Confirmed
S/0592/04/F	R W S Arnold Bennell Farm, West Street (Comberton) Toft Erection of B1 offices (Informal Hearing)	09/11/2005 Confirmed
S/2062/04/F	R W S Arnold Bennell Farm, West Street (Comberton) Toft Erection of B1 offices (Informal Hearing)	09/11/2005 Confirmed
S/0761/04/F	B Gemmil, A Sheridan, E Sheridan & K Sheridan Plots 1-11 Victoria View, off Orchard Drive Offered/Accepted Smithy Fen Cottenham Use of land for gypsy caravan site, (11 pitches) part retrospective (Local Inquiry to sit for 8 days)	10/01/2006
S/1569/04/F	Mr M Hegerty land off Victoria View, Smithy Fen Offered/Accepted Cottenham Siting of 4 gypsy caravans (Local Inquiry to sit for 8 days)	10/01/2006
S/1589/04/F	M Quilligan Land off Water Lane, Smithy Fen Offered/Accepted Cottenham Siting of 2 gypsy caravans (Local Inquiry to sit for 8 days)	10/01/2006