APPENDIX 7

Communities and Local Government

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28th February 2011

Mr Philip Brown
Philip Brown Associates
74 Park Road
Rugby
Warwickshire
CV21 2QX

Our Ref: APP/C3430/A/10/2127110

Your Ref: 10/111

Dear Mr Brown,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR WILLIAM LEE & OTHERS
AT NEW ACRE STABLES, WOLVERHAMPTON ROAD, PENKRIDGE, STAFFORDSHIRE
APPLICATION: REF 09/00809/FUL

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Susan Heywood BSc(Hons) MCD MRTPI, who held a public local inquiry between 14 and 16 September 2010 into your clients' appeal against the decision of South Staffordshire Council (the Council) to refuse planning permission for a change of use of land to use as a residential caravan site, including the stationing of 23 caravans, erection of two amenity blocks, laying of hardstanding and improvement of access at New Acre Stables, Wolverhampton Road, Penkridge, Staffordshire in accordance with application number 09/00809/FUL, dated 29 October 2009

2. On 23 September 2010, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990. The reason the appeal was recovered is because it involves significant development in the Green Belt.

Inspector's Recommendation and Summary of the Decision

3. The Inspector recommended that the appeal be allowed and permanent planning permission be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated,

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and partially agrees with her recommendations. He has decided to grant a temporary and personal permission until 31 December 2014 for a total of 7 pitches. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. An application for costs was made by your clients against South Staffordshire Council and this is the subject of a separate decision letter (IR1).

5. The Secretary of State has taken into account the amendments to the application set out by the Inspector at IR3 – 4 and, like her, he considers that the acceptance of the amended plan would not prejudice any party and he has considered the appeal on the basis of the amended plan and amended application description.

6. The Secretary of State has had regard to the fact that the Environment Agency is satisfied that the foul drainage proposals are acceptable, and has withdrawn its former objection to the development (IR6). Like the Inspector, he is also satisfied that there is no evidence to suggest that the impact of noise would cause significant harm to the living conditions of future occupiers of the site (IR7).

Matters Arising after the Close of the Inquiry

7. Regional Strategies (RSs), including the RS for the West Midlands (WMRS), were revoked by the Secretary of State on 6 July 2010, and so the Inspector did not consider the WMRS at the Inquiry. However, that revocation was quashed by the judgement of the Court on 10 November 2010 in *Cala Homes (South) Limited v Secretary of State for Communities and Local Government* [2010] EWHC 2866 (Admin). Accordingly, the WMRS is part of the development plan and is material to this case. Given this, the Secretary of State wrote on 30 November 2010 to the main parties and interested third parties who appeared at the inquiry, inviting representations on the effect relevant policies of the WMRS should have on the determination of this appeal. The responses received were circulated to the same parties under cover of letters dated 22 December 2010 and 20 January 2011. A list of all responses received from parties is set out at Annex A to this letter. The Secretary of State has taken account of all these responses in his consideration of the appeal before him. As the responses were circulated to all the main parties, he does not consider it necessary to summarise the responses here or attach them to this letter. Copies of the correspondence can be obtained upon written request.

8. Following the judgement of the Court on 10 November 2010, the Secretary of State has made clear that it is the Government's intention to revoke RSs, and the provisions of the Localism Bill which is now before Parliament reflect this intention. Whilst he has taken this matter into account in determining this case he gives it limited weight at this stage of the parliamentary process.

9. The Secretary of State has also taken account of the representation received from Mr C Stonehouse dated 6 October 2010. As this did not raise any new matters that would affect his decision, he has not considered it necessary to circulate it to all parties. Copies of this representation can be made available upon written request.

Policy Considerations

10. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

11. In this case, the development plan comprises the WMRS and saved policies of both the Staffordshire and Stoke-on-Trent Structure Plan (SP) and the South Staffordshire Local Plan (LP). The Secretary of State considers that the development plan policies most relevant to the appeal are WMRS policy CF5 and those set out by the Inspector at IR14 and IR15.

12. The Secretary of State has also had regard to the South Staffordshire Core Strategy (CS) as an emerging development plan document (IR16 – 17). However, as this document is still in draft form and has yet to be submitted to the Secretary of State, the weight to be attached to it is limited. The Secretary of State has also taken account of the fact that Policy H4 (which is to be renumbered as H6) of the emerging CS was endorsed by the Council for development control purposes on 5 October 2010 (as set out in the Council's letter of 2 December 2010).

13. Having had regard to the same letter from the Council, the Secretary of State has taken account of the WMRS Phase 3 Revision Options Consultation Document. However, as this document is at an early stage, he has accorded limited weight to its policies. He has also taken account of the Interim Regional Policy Statement on gypsy and traveller site provision that was submitted to the Secretary of State in March 2010.

14. Other material considerations which the Secretary of State has taken into account include Planning Policy Statement (PPS) 1: *Delivering Sustainable Development*; PPG2: *Green Belts*; PPS3: *Housing*; PPS7: *Sustainable Development in Rural Areas*; and PPS23: *Planning and Pollution Control*; Circular 11/95: *Use of Conditions in Planning Permission*. The Secretary of State has also taken account of the Supplementary Planning Guidance (SPG) documents listed at IR18 – 19 and the Southern Staffordshire and Northern Warwickshire Gypsy and Traveller Accommodation Assessment (GTAA) final report February 2008 (IR20).

15. The Secretary of State has taken account of Circular 1/2006: *Planning for Gypsy and Traveller Caravan Sites* as a material consideration in his determination of this case. However, he has also taken account of his announcement on 29 August 2010 of his intention to revoke it as he considers it to be flawed and he has given less weight to the Circular.

Main Issues

16. The Secretary of State considers that the main issues in this case are those listed by the Inspector at IR93.

Impact on Green Belt, Openness and Purposes

17. The Secretary of State agrees with the Inspector and the main parties that the proposal constitutes inappropriate development in the Green Belt (IR93) and, in line with the advice in paragraph 3.2 of PPG2, he has attached substantial weight to the harm that would be caused to the Green Belt (IR94). For the reasons given at IR95 – 96, he agrees with the Inspector at IR97 that the significant harm to the openness of the Green Belt and the moderate harm caused by conflict with one of the purposes of including land in the Green Belt add to the substantial harm by reason of inappropriateness.

Character and Appearance / Landscape Character

18. The Secretary of State agrees with the Inspector, for the reasons she gives at IR98, that the Village Design Guide and the Planning for Landscape Change SPG documents attract significant weight in this appeal. He agrees with the Inspector's reasoning and conclusions with regard to the effect of the proposal on the character and appearance and on the landscape character of the area, as set out at IR99 – 106.

19. Like the Inspector, he concludes that the development would add to the blurring of the southern edge of the village and therefore conflict to an extent with the aims of the Village Design Guide SPG and SP policy D4 (IR104). The Secretary of State shares the Inspector's view that the proposal would cause a limited amount of harm to the landscape character of the surroundings and to the appearance of the area and considers that, for this reason, it would conflict to an extent with the Planning for Landscape Change SPG, LP policies BE26 and LS1 and, in part, with SP policy NC2 (IR104). He agrees that the context of the site would limit the harm caused by these factors and the potential for landscaping would further reduce it (IR104). In the light of the conditions set out at Annex B, he also concludes that the development would comply with LP Policy LS10.

20. In conclusion, like the Inspector, the Secretary of State considers that a limited amount of weight attaches to the conflict with the Village Design SPG and the harm that would be caused to the landscape character and the appearance of the surrounding area (IR106).

Other Planning Matters

21. The Secretary of State agrees with the Inspector's assessment of other planning matters, as set out at IR107 – 110. He agrees that consideration of these matters indicates that they would not cause any harm, albeit that they are not positive benefits to be weighed in favour of the development (IR110).

Other Considerations

Need for gypsy sites

22. The Secretary of State has given careful consideration to the Inspector's analysis at IR111 – 114, and her conclusion that the GTAA provides a good indication of the level of need for gypsy sites in the District (IR113). He has also given careful consideration to the points made in the Council's representations dated 2 December 2010 and 17 January 2011. The Council invites the Secretary of State to rely on the level of need set out in both the Interim Regional Policy Statement

and policy H4 (see paragraph 12 above). However, as neither policy sits within an adopted part of the development plan and he considers it uncertain that the regional re-distribution which would give rise to the reduction of need from 32 to 30 pitches in South Staffordshire (2007-2012) will be finally agreed, the Secretary of State prefers to rely on the figure of 32 pitches as set out in the GTAA. The Secretary of State agrees with the Council's assessment that, set against the need identified in the GTAA, there is currently an unmet need for 8 pitches to be provided by 2012 (IR112).

23. The Secretary of State concludes that the outstanding need for 8 pitches by 2012 will not be met through South Staffordshire's Development Plan system. Like the Inspector (IR117), the Secretary of State attributes significant weight in the appeal's favour both to the failure of the development plan to meet the need identified in the GTAA, and to the actual unmet need for 8 pitches. He further agrees that the provision of a 9th pitch by 2012 would not cause harm in terms of an over-provision of gypsy sites in the District (IR119).

The accommodation needs of the appellants and their alternative accommodation options

24. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR120 – 124 with regard to the accommodation needs of the appellants and their alternative accommodation options. Like the Council and the Inspector, he accepts that all those to occupy the site are gypsies for planning purposes and have a need for a pitch on a gypsy site (IR120). He also agrees that the evidence does not suggest that there are any other sites for any of the appellants to go to if planning permission is refused for this site (IR123). Like the Inspector, the Secretary of State considers that the appellants' personal need for a settled site (in so far as it relates to 7 pitches) and the lack of available alternative sites both attract significant weight in favour of this appeal (IR124).

Education and Health Needs

25. The Secretary of State agrees with the Inspector's reasoning and conclusions, as set out at IR125 – 128, with respect to the education and health needs of the appellants. He considers that educational need lends a moderate amount of weight in favour of the appeal as far as it relates to Jamie and Diane Jones and William and Joanne Lee and their dependants (IR125). He agrees with the Inspector that health issues attract a moderate amount of weight in favour of the development for all but the Lee family (IR127), for whom the matter attracts a significant amount of weight in favour of the development (IR128).

Whether the harm is clearly outweighed by other considerations

26. The Secretary of State has had regard to national policy in PPG2: *Green Belts* as summarised by the Inspector at IR129. The Secretary of State has concluded that the appeal proposal would cause substantial harm to the Green Belt by reason of inappropriateness, significant harm to Green Belt openness and moderate harm to one of the purposes of including land within the Green Belt (paragraph 17 above). Furthermore, he has concluded that conflict with the Village Design Guide SPG and the harm that would be caused to the landscape character and appearance of the surrounding area also attracts a limited amount of weight against the development (paragraph 20 above).

27. In terms of the factors weighing in favour of the appeal, the Secretary of State has attributed significant weight both to the failure of the development plan to meet the need identified in the GTAA and to the actual unmet need for 8 pitches (paragraph 23 above). He has also attributed significant weight both to the lack of available alternative sites and, in respect of 7 pitches, to the appellants' personal need for a settled base (paragraph 24 above). In respect of the medical needs of the appellants, as set out at paragraph 25 above, the Secretary of State has concluded that significant weight attaches to the needs of the Lee family, and that moderate weight attaches to the needs of the other appellants. With regard to education, he has attributed moderate weight to a limited number of the appellants and their dependants (paragraph 25 above).

28. For the reasons given at IR133, the Secretary of State agrees with the Inspector that dismissal of the appeal would have a disproportionate effect upon the rights of the occupants under Article 8 of the European Convention on Human Rights and that this also attracts a significant amount of weight in favour of the appeal. Like the Inspector (IR135), the Secretary of State has had due regard to the Race Relations Act 1976.

Conditions

29. The Secretary of State has considered the proposed conditions and the Inspector's comments, as set out at IR87 – 88 and Annex A to the IR. The Secretary of State has amended the proposed conditions to reflect his decision, set out below, to award a temporary personal consent for a reduced number of pitches. Subject to those amendments, he is satisfied that the conditions are reasonable and necessary and meet the tests of Circular 11/95.

Overall Conclusions

30. With regard to the case for granting permanent planning permission, the Secretary of State has given very careful consideration to the Inspector's overall conclusions at IR134. Whilst he does not differ from the Inspector in relation to the harm which the scheme would cause or the matters weighing in favour of the appeal, he does not share the Inspector's view of the planning balance. He considers that the permanent harm to the Green Belt by reason of inappropriateness and the additional Green Belt harm identified, which would be caused by the proposed 9 pitches, is not clearly outweighed by the factors weighing in favour of the appeal, which he has summarised in paragraph 27 above. He disagrees with the Inspector's conclusion at IR134 that very special circumstances exist in this case to justify the development on a permanent basis and he has gone on to consider whether a temporary consent would be justified.

31. The Secretary of State has given careful consideration to the Inspector's reasoning, at IR139 – 143, with regard to whether the development should be approved for a temporary period. Like the Inspector (IR141), he has had regard to the advice in Circular 1/06 that temporary permission may be justified where it is expected that the planning circumstances will change at the end of the period of temporary permission. The Secretary of State has considered the Inspector's comments on the likely timescale for adoption of the Site Allocations DPD and her expectation that sites would become available on the ground from late 2013 (IR142). Allowing for some slippage in this timescale, he considers that it would

be appropriate to consider granting a temporary consent until 31 December 2014. Having had regard to the Inspector's comments at IR142-143, he is satisfied that planning circumstances are likely to have changed by the end of that period. In line with the provisions of circular 1/2006, the Secretary of State attaches substantial weight to South Staffordshire's unmet need for 8 pitches in considering temporary permission in this case.

32. In view of PPG2's presumption against inappropriate development, in considering temporary permission, the Secretary of State continues to attach substantial weight to the harm to the Green Belt. However, he considers that the actual harm to the Green Belt, the conflict with the Village Design Guide, and the harm that would be caused to the landscape character and the appearance of the surrounding areas would all be less if the development were time limited. The Secretary of State has summarised the matters he has weighed in favour of the development at paragraph 27 above. Having had particular regard to evidence document 28, to IR76, IR121 and his conclusions at paragraph 24 above, the Secretary of State does not consider that other considerations clearly outweigh the harm in relation to 2 of the 4 pitches sought by the Jones family as there is no current need for pitches to accommodate the younger children. However, in relation to the remaining 7 pitches for which permission is sought, the Secretary of State is satisfied that, bearing in mind the appellants' personal need for a settled base, the lack of available alternative sites for them to move to, and their personal circumstances, other considerations do clearly outweigh the harm and he concludes that very special circumstances exist to justify the development on a personal basis until 31 December 2014.

Formal Decision

33. Accordingly, for the reasons given above, the Secretary of State hereby partially allows your clients' appeal and grants temporary planning permission for 7 pitches, subject to conditions. The permission is granted for a period up to 31 December 2014, and is given on a personal basis to the appellants named at condition 11 of Annex B to this letter and their resident dependants, for a change of use of land to use as a residential caravan site, including the stationing of 19 caravans, erection of two amenity blocks, laying of hardstanding and improvement of access at New Acre Stables, Wolverhampton Road, Penkridge, Staffordshire in accordance with application number 09/00809/FUL, dated 29 October 2009, subject to the conditions set out in the schedule at Annex B to this letter.

34. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

35. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

36. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

37. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

38. A copy of this letter has been sent to South Staffordshire Council and all other parties who appeared at the Inquiry. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours sincerely,

Christine Symes
Authorised by Secretary of State to sign in that behalf

ANNEX A – LIST OF CORRESPONDENCE RECEIVED

In response to the Secretary of State's letters of 30 November and 21 December 2010:

Name	Date
Tom Cannon, South Staffs Council	2 December 2010
Tom Cannon, South Staffs Council	17 January 2011

ANNEX B – SCHEDULE OF CONDITIONS

1) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.

2) No more than 2 amenity blocks may be constructed and, prior to their construction, details of the external materials shall be submitted to and approved in writing by the local planning authority. The blocks shall be erected in accordance with the approved details.

3) No more than three commercial vehicles shall be kept on the combined area of 2 of the pitches for use by the occupiers of the caravans hereby permitted.

4) On each of the remaining pitches, no more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted.

5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

6) No commercial activities shall take place on the land, including the external storage of materials.

7) No more than 19 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 13 shall be static caravans or mobile homes) shall be stationed on the site at any time.

8) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (vi) below:

   i) within 3 months of the date of this decision, a scheme specifying the site layout and proposed occupants for the 7 pitches hereby permitted shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation. The development hereby permitted shall be carried out in accordance with the approved site layout.

   ii) within 3 months of the date of this decision, a scheme specifying the condition of land before the development took place and the works necessary to restore the land to that condition (or some other state as agreed with the local planning authority), and the time period within which the restoration works must be undertaken shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.

   iii) within 3 months of the date of this decision a scheme for: the means of foul and surface water drainage of the site; proposed and existing external lighting on the boundary of and within the site; resurfacing and maintenance of the existing access 6 metres from the rear of the carriageway edge and provision of highway corner radii; landscaping and boundary treatment; parking and turning areas (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.

   iv) If, within 11 months of the date of this decision, the schemes set out at paragraphs 8i - iii above have not been approved by the local planning authority or, if the local planning authority refuse to approve the schemes, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

v) if an appeal is made in pursuance of (iv) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.

vi) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

9) At the same time as the site development scheme required by condition 8 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of two years of the proposed planting commencing at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

10) The use hereby permitted shall be for a limited period being the period from the date of this decision until 31 December 2014. At the end of this period the use hereby permitted shall cease, all materials and equipment brought on to the land in connection with the use shall be removed, and the land restored to its former condition in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

11) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants:

Layton Follows

Harry & Serena Coupe

Jamie & Diana Jones

Magda Jones

William & Joanne Lee

Gemima Lee

Steven Lee

Linda Lee

Jimmy George Lee

Billy Joe Lee

Dean Hadjioannou

Mary & Lucy Smith

12) When the land ceases to be occupied by those named in condition 11 above, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Report to the Secretary of State for Communities and Local Government

by Susan Heywood BSc(Hons) MCD MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

The Planning Inspectorate
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☎ GTN 1371 8000

Date: 27 October 2010

TOWN AND COUNTRY PLANNING ACT 1990

SOUTH STAFFORDSHIRE COUNCIL

APPEAL BY MR WILLIAM LEE & OTHERS

Inquiry held on 14, 15 and 16 September 2010

New Acre Stables, Wolverhampton Road, Penkridge, Staffordshire

File Ref: APP/C3430/A/10/2127110

File Ref: APP/C3430/A/10/2127110
New Acre Stables, Wolverhampton Road, Penkridge, Staffordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr William Lee & Others against the decision of South Staffordshire Council.
- The application Ref 09/00809/FUL, dated 29 October 2009, was refused by notice dated 29 January 2010.
- The development proposed is a change of use of land to use as a residential caravan site, including the stationing of 23 caravans, erection of two amenity blocks, laying of hardstanding and improvement of access.

Summary of Recommendation: The appeal be allowed.

Procedural Matters

1. At the inquiry an application for costs was made by Mr Lee & Others against South Staffordshire Council. This application is the subject of a separate Report.

2. By letter of 23 September 2010 the Secretary of State recovered this appeal for his determination on the grounds that it involves proposals for significant development in the Green Belt. The inquiry sat on 14, 15 and 16 September 2010 and a site inspection took place on 14 September.

3. The application was amended to refer to the stationing of 23 caravans. This was the basis on which the Council considered the application and is also the basis on which the appeal is assessed. I have altered the description of development in the bullet points above to reflect this.

4. An amended plan (split into two parts annotated as 'site layout plan' and 'site location plan B') (Document 2) was provided at the inquiry. This indicates the proposed positioning of caravans, two amenity buildings and gravel hardstanding. This plan differs from that considered by the Council, only in relation to the subdivision between the pitches. I consider that the acceptance of the plan would not prejudice any party and I have considered the appeal on this basis.

5. The planning application was refused for the following reasons:

   i. The site is within the Green Belt and the proposed development is not considered to be appropriate development as set out in Planning Policy Guidance Note 2 and the adopted Local Plan. The development is therefore harmful to the Green Belt, contrary to policy GB1 of the adopted Local Plan.

   ii. The Local Planning Authority has considered the reasons advanced, but does not consider that these reasons constitute the very special circumstances required to justify inappropriate development in the Green Belt.

   iii. The development due to the number of caravans which are proposed and their rather stark and utilitarian appearance would provide an unnecessary visual intrusion into the Green Belt and would be prejudicial to the openness, character and amenity of this part of the Green Belt, contrary to

the policies set out in PPG2 (Green Belts), policy D5B of the Staffordshire and Stoke on Trent Structure Plan and policy BE26 of the adopted Local Plan.

iv. The development due to the number of caravans which are proposed and their rather stark and utilitarian appearance would provide an incongruous and visually intrusive form of development on the edge of the village harming the open and undeveloped character of the area. The development would therefore have a detrimental impact on the landscape character of the area contrary to policies T17[1], D4 and NC2 of the Staffordshire and Stoke on Trent Structure Plan and policies LS1 and LS10 of the adopted Local Plan and advice contained in PPG2.

v. The proposed method of disposing of foul waste from the site is unacceptable and poses an unacceptable risk of contamination to the underlying controlled waters contrary to advice contained in PPS23 and policy BE28 of the adopted local plan. (See paragraph 5 below)

6. The Environment Agency had originally objected to the application as there was no evidence that Circular 03/1999: *Planning requirement in respect of the use of non-mains sewerage incorporating septic tanks in new development* (Circular 3/99) had been complied with. Following further information from the appellants, the Environment Agency is satisfied that the foul drainage proposals are acceptable. They have withdrawn their objection to the development (Document 5), subject to the imposition of conditions which are assessed in the Conditions section below. As such, reason for refusal (v) above was not pursued at the inquiry.

7. No party had raised the issue of the impact of noise on the site occupants from the west coast main railway line or the A449. I raised this matter in a note prior to the inquiry, in order to seek the parties' views. Having visited the site, I am satisfied that the impact of noise would not be such that I would have required further evidence in relation to this point. There is no evidence to suggest that noise from either of these sources would cause significant harm to the living conditions of future occupiers of the site.

Statement of Common Ground (Document 3)

8. The Statement of Common Ground (SOCG) comprises: site description; relevant development plan and national policies; planning history of the site; reasons for refusal and agreed matters[2].

The Site and Surroundings

9. The site is located in the West Midlands Green Belt. It comprises 0.45 hectare of land bounded to its west by the west coast main line, which sits within a cutting, and by the A449 Wolverhampton Road to its east. To the north is a disused railway line while a small area of vacant land, which I heard is occasionally used

[1] The Council confirmed that policy T17 was included in error and is not a relevant consideration in this appeal.
[2] The Council stated that they did not agree with paragraph 4.4 of the SOCG which relates to the impact of the development on the amenities of nearby occupiers, although this was not a matter pursued by them in relation to this appeal.

by Railtrack, lies to the south. To the west, on the opposite side of the railway line, lie open fields. To the east, on the opposite side of the A449, are fields (immediately opposite the site), and dwellings to the south of Lynehill Lane. Trees and a mature hedge lie along much of the eastern boundary with Wolverhampton Road, although there are some gaps in the hedge, particularly towards the southern end of the site. Access to the site is via a junction onto Wolverhampton Road.

10. The site lies approximately 100 metres south of the village of Penkridge. The parties agree that Penkridge contains a full range of services and facilities. The boundary of Penkridge as defined in the South Staffordshire Local Plan proposals map (Document 31, Appendix 8) runs along the disused railway line to the north of the site. On the eastern side of the A449, the built development of Penkridge extends up to the disused railway. On the western side of the road, and to the north of the appeal site, lies an open playing field which separates the dwellings within the village from the disused railway line.

11. There are currently 10 caravans located on the site, 4 of which are mobile homes. Post and rail fencing separates the plots and hardcore has been laid over a large part of the site.

Planning Policy

12. Relevant Government guidance is referred to in the SOCG and comprises: Planning Policy Statement (PPS) 1: *Delivering Sustainable Development*, Planning Policy Guidance Note (PPG) 2: *Green Belts*, PPS3: *Housing*, PPS7: *Sustainable Development in Rural Areas*, PPS23: *Planning and Pollution Control*, Circular 3/99, ODPM Circular 01/2006*: Planning for Gypsy and Traveller Caravan Sites* (Circular 1/06) and the Secretary of State's letter dated 6 July 2010 to Chief Planning Officers (Document 31, Appendix 2).

13. The development plan includes the saved policies of the Staffordshire and Stoke-on-Trent Structure Plan 1996-2011 (SP) adopted 10 May 2001 and amended on 5 February 2002 and the South Staffordshire Local Plan (LP) adopted 1996. The following is a summary of the relevant policies referred to in the SOCG or by the parties in their evidence to the inquiry.

Staffordshire and Stoke-on-Trent Structure Plan (Document 33)

14. There are no saved policies relating to the consideration of gypsy and traveller developments. Policy D4 seeks to protect the countryside for its own sake. Policy D5B advises that inappropriate development within the Green Belt will not be approved except in very special circumstances. Policy NC2 requires that development contributes to the regeneration, restoration, enhancement, maintenance or active conservation of the landscape. It advises that development will be assessed having regard to (amongst other things) the extent to which it would cause unacceptable visual harm and introduce incongruous landscape elements.

South Staffordshire Local Plan (Document 34)

15. There are no saved policies relating to the consideration of gypsy and traveller developments. Policy GB1 advises that inappropriate development in the Green Belt will not accord with the Plan. Policy BE26 states that development should be sympathetic with the appearance and character of the surrounding area. Policy

LS1 states that permission will not normally be granted for development which would destroy or damage the landscape character of the District. Policy LS10 seeks to ensure that landscape features are conserved and that new native planting is provided. Policy BE28 seeks to ensure the protection of ground water resources.

Emerging Local Development Framework

16. At the inquiry the Council estimated that its Core Strategy (CS) is likely to be adopted early in 2012 (submission to Secretary of State in May 2011, Examination in the autumn of 2011), with the Site Allocations Development Plan Document (DPD) adopted early in 2013 (submission to Secretary of State in summer of 2012, Examination in autumn of 2012).[3]

17. The CS will contain policy H6 (previously entitled policy H4) 'Gypsies, Travellers and Travelling Showpeople' (Document 7). Prior to the adoption of the CS, policy H6 is to be adopted by the Council and used as a means to assess planning applications for gypsy sites. However, very little weight can be given to this policy at present, given the very early stage it has reached in its formal adoption process.

Other Relevant Guidance and Documents

Supplementary Planning Guidance (SPG) to the Staffordshire and Stoke-on-Trent Structure Plan: *Planning for Landscape Change* (adopted May 2001) (Document 10 & 31, Appendix 3)

18. This document provides guidance on the conservation, enhancement and regeneration of the rural landscape within the plan area. The area within which the appeal site is located is identified as falling within the 'Ancient Clay Farmlands' Character Area. This SPG describes the visual character of the area as one of mixed arable and pastoral farmland with a medium to large scale landscape. The SPG identifies a general decline in village character and landcover elements as having the potential for long-term irreversible erosion of the landscape character. It also states that the landscape is locally very sensitive to the impacts of development and land use change.

The South Staffordshire Council *Village Design Guide* SPG (adopted September 2009) (Document 11)

19. This document summarises the design context for the village of Penkridge. It states that the "village is dominated by its tightly enclosed landscape setting" and that together with the linear transport routes, "these create strong, impermeable edges to the settlement's boundaries, and a distinctively inward looking built form". The SPG advises that two of its key development design principles are "enhancing the village entrances, creating clear points of arrival at the junctions with the countryside", and "strengthening the Green Belt edge, maintaining a clear and abrupt edge to the village's built form".

[3] The timetable set out in the Local Development Scheme (Doc 35) as amended (by hand) has been superseded. The timescale given verbally also differs from that in the SOCG (Doc 3).

Southern Staffordshire and Northern Warwickshire Gypsy and Traveller Accommodation Assessment (GTAA) final report February 2008 (Document 8)

20. The GTAA identifies a need for 32 pitches to be provided in South Staffordshire during the period 2007-2012, 15 to 2016, 17 to 2021 and 15 to 2026 (79 in total). It also sets out the need within the wider study area for a combined total of 317 pitches to 2026.

Planning History

21. The appeal site was briefly used as a gypsy site in 1990. An application to regularise the use was refused by the Council and enforcement notices served. The subsequent appeals were dismissed in 1991 (Document 31, Appendix 7). The current site occupants moved onto the site in September 2009 and a High Court Injunction was obtained by the Council in November 2009 (Document 31, Appendix 12). No further operational development has taken place since the Injunction was issued.

The Proposals

22. The development is as outlined in the bullet points in the heading to this report, and as amended by paragraph 3 above, i.e. to involve the stationing of 23 caravans. Each pitch would be separated by hedgerow / tree planting, apart from pitches 1 & 2 and 8 & 9 which would be joined to form larger pitches.

23. The intended site occupants are as set out in the Council's delegated report (Document 32, 2nd & 3rd page), apart from Gilbert and Siobhan Smith and family, who no longer intend to live on the site. The proposal seeks 9 pitches as follows: Follows family (includes Harry and Serena Coupe) – 2 pitches (4 caravans); Jones family – 4 pitches (8 caravans); Lee family – 2 pitches (9 caravans); Mary and Lucy Smith – 1 pitch (2 caravans).

Other Agreed Facts

24. It is agreed between the parties that the appellants are gypsies as defined in paragraph 15 of Circular 1/06 (Document 32, 2nd page). The parties also agree that the proposal constitutes inappropriate development in the Green Belt and that it is for the appellants to demonstrate whether very special circumstances exist to justify the development.

THE CASE FOR THE APPELLANTS *(Taken principally from Closing Submissions, Document 25, supplemented by Proof of Evidence, Document 28 and verbal evidence to the inquiry)*

The material points are:

Letter from the Planning Inspectorate (PINS) in relation to the intention to replace Circular 1/06 *(Document 27) (the following is a summary of the points made, the full content of the submissions can be found in the Closing Submissions, Document 25, paragraphs 2.1.1 to 2.1.9)*

25. An issue is taken with a letter from PINS to the parties sent prior to the opening of the inquiry. The letter drew attention to the advice by the Secretary of State relating to the intention to revoke Circular 1/06. It stated that the Inspector would raise the matter at the inquiry.

26. It is submitted that the letter raises concern in regard to Article 6 of the European Convention on Human Rights (ECHR). The letter is inappropriate and improper as it requires the Inspector to invite public discussion on the weight to be given to Circular 1/06. The letter appears to put pressure on the Inspector to consider the Secretary of State's political agenda in regard to direction of policy, rather than determining the case on established principles, policy and procedure.

27. In the Alconbury judgement[4] the Court took the view that since there were clear procedural rules, the safeguard against any breach of Article 6 could be dealt with by the judicial review process. However, there is no procedural template for this letter. The legal position is clear; Circular 1/06 should be accorded its normal weight as the most up-to date unrevised national gypsy guidance. There is currently nothing to replace it. In the past where national or local policy has been in the process of being reviewed but no replacement has been published, full weight has been given to the current document.

28. There is clear appearance of bias by the Secretary of State against policy 1/06, a policy subject to full consultation, brought in part to reflect the case of *Chapman v UK [2001]* and to facilitate the gypsy way of life and a policy at present valid and not replaced.

29. The Inspector declined to state at the beginning of the inquiry what weight was to be given to the Circular. There is concern that the bias against the Circular will affect the exercise undertaken by the Inspector. There is also concern that the intervention of the Secretary of State has had a detrimental effect on the fairness of the proceedings. This has substantially prejudiced the appellants' case.

Green Belt

30. It is conceded that there is harm to the Green Belt by way of inappropriateness and substantial weight must be attributed to the harm in accordance with PPG2.[5] The development will also cause a small reduction in openness. Due to the nature of the site and its boundaries the development will only cause limited harm to one of the purposes of including land in the Green Belt; that of safeguarding the countryside from encroachment. [6]

31. However the harm referred to above has to be considered in the light of the fact that the Council conceded that by 2013 they would have identified sufficient gypsy sites to meet need and that those sites will inevitably be in the Green Belt. Thus, the above harm will apply to any gypsy site in South Staffordshire District as 80% of the District is Green Belt.

32. The advantages of this Green Belt location are: not in AONB or SSSI; no highway objection (Document 18); no flooding issues; highly sustainable site well situated on the outskirts of the market town; self contained site not capable of further expansion or encouragement for over concentration of sites; capable of significant landscaping.

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[4] *R v Secretary of State for Environment, Transport and the Regions, ex p Holding and Barnes [2001]*
[5] Document 28 paragraph 5.1
[6] Document 28 paragraph 5.6 and 5.7

Landscape Character and Visual Impact[7]

33. Any gypsy site in the countryside is likely to have some adverse visual impact. The Secretary of State has, in the past, accepted that sites are likely to be located in rural areas and that this impacts upon the assessment of countryside harm, even in Green Belts.[8] The development should also be considered in light of paragraph 54 of Circular 1/06.

34. The Planning for Landscape Change SPG (Document 10, 31, Appendix 3) covers such a wide geographical area that it cannot apply to every site. The SPG describes the landscape as having a very rural feel, with small winding country lanes and large red brick farms. This is not the context of the appeal site. The site is contained by urban features and there is urban development nearby. The proposed development would be separated from the village by an open space to the north. It would not therefore detract from the edge of the village.[9]

35. All sites in the District would attract the same arguments as to landscaping since nearly the entire District is covered by a landscaping designation. The SPGs (Documents 10, 31 & 11) do not comply with up to date requirements in PPS7. All sites in the District would not comply with emerging policy H6, criteria 10 (a) and 11 (Document 7) because of Green Belt and landscaping objections. This site complies with all the other criteria in that policy.

36. The evidence shows that the site has been unused since 1991. There is no evidence that it was used for agriculture or grazing. Rubbish was moved off the site when the appellants moved onto the land.[10] Land to the south of the site is periodically used as a railway depot. In this context, the development will not have an unacceptable effect on the landscape character or appearance of the countryside.

Need for gypsy sites

37. It is necessary to consider the extent to which revocation of Regional Strategies (RS) has impacted on the issue of need. The relevant procedural and policy framework, none of which has been revoked, is as follows: The Town and Country Planning Acts; The Planning and Compensation Act 2004; Housing Act 2004; PPS3; Circular 1/06; Human Rights Act; European Convention on Human Rights Articles 6, 14 and 8 and Article 1 of Protocol 1.

38. It remains the duty of the Council to assess need and identify sites to meet that need; these are now statutory obligations under the Housing Act 2004 and the Planning and Compensation Act 2004 as well as requirements under PPS3 and Circular 1/06. In his guidance letter following the revocation of RS, the Secretary of State made it clear that requirements under PPS3 and the Housing Act remain and that the revocation is not a signal for local authorities to stop making plans for their area (Document 31, Appendix 2).

39. The Council say there is a need for 8 pitches up to 2012 (Document 9) It is accepted that the GTAA (Document 8) is the starting point, but unauthorised

[7] Document 28 paragraphs 5.8 – 5.11
[8] Document 28 Appendix 1
[9] Verbal evidence given by Mr Brown
[10] Mr Jones' verbal evidence

developments should also be taken into account, in accordance with the transitional arrangements in Circular 1/06 (paragraph 41 (c) and 43). Taking into account the existing unauthorised developments in the District and the sites with temporary consent, the minimum current need is at least 28.[11] Matters such as doubling up and overcrowding, the extent of household formations, the hidden need in housing etc. would all increase that need.

40. The RS allocated need between the Districts in the Region. There is now no mechanism for another Local Authority to meet the need of those on unauthorised developments in this District or those on sites with a temporary permission. The revocation of RS has created a vacuum in regard to the assessment of need in the short term. The Inspector is invited to make an assessment of need based on the current figures, to identify what the current minimum requirement is to 2011-12.

41. The Council have done nothing about the site allocations DPD despite the key aim of PPS3 and Circular 1/06 to identify sites within a 5 year period to address need. Circular 1/06 aims to increase significantly the number of gypsy and traveller sites in order to address under provision within 3-5 years, i.e. by February 2011. The site allocations DPD will not come forward until at least 2013 if ever. There must be a serious possibility that if one of the existing planning appeals grants a permanent consent the Council will say that they have met their need and a site allocations DPD is not necessary, at least for need up to 2012.

42. Substantial weight should be given to the unmet need. The Council has offered no solution as to how need should be addressed in the interim until 2013.

Failure of the Council to provide for gypsy sites

43. The Council's failure to address the need has to be put into the context of their previous failure to meet the needs of gypsies. They did not comply with The Caravan Sites Act 1968; no public site was ever provided; they were not designated; they failed to comply with the requirements of Circular 1/94; there was no assessment of need or search for sites. In addition, the Council has never granted planning permission for a gypsy site. They have often rejected their own officer's recommendations for approval. The officer conceded that this had occurred on four occasions. The failure of policy and failure of the Council to meet the needs of gypsies in the District weighs in favour of the development.[12]

Availability of Alternative Sites

44. Paragraph 49 of Circular 1/06 does not preclude the possibility of permission being granted for sites within the Green Belt, at least as a last resort. There is no requirement on the appellant to prove that no alternative sites are available.[13]

45. This is a rural authority where there is little available open land within existing settlements. What land there is is subject to competition from higher value land uses. It is therefore highly likely that gypsy sites will be located outside of settlements. 80% of land in the District is in the Green Belt. Thus it is likely that any new gypsy site in the District will be in the Green Belt.

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[11] Verbal evidence based on Document 9
[12] Document 28 paragraphs 5.34 – 5.39
[13] *South Cambridgeshire v SSCLG & Brown [2008]*

46. Jamie Jones indicated that he had been searching for a site for about 11 years before buying plots on this site. He had looked at estate agents in the local area, on the internet and by making verbal enquiries. Before hearing about the appeal site, he had been unsuccessful in finding an alternative site as many landowners were not interested once they knew that he was a gypsy. [14]

47. The appeal site has been in the ownership of the Lee and Smith families for many years. William and Joanne Lee and their dependent children have previously tried living in a house, but found this very stressful. [15] Both the Jones and the Lee families were previously living on a private gypsy site in Willenhall. The Jones family moved from that site as it was too small for their needs. The Lee family were required to move due to Steven's health problems, a matter returned to below.

48. Layton Follows and Harry and Serena Coupe had no settled site before moving onto the appeal site. Mary Smith and her daughter Lucy have not moved onto the site, but currently lead an itinerant lifestyle with no permanent base on which to stop.

49. Alternative sites must be appropriate, suitable available and affordable. No such site exits. It is submitted that there is a substantial shortage of lawful gypsy sites in South Staffordshire. If the appellants are required to leave this site, they will be forced back to a roadside existence. Substantial weight should be given to the absence of alternative sites. The fact that no suitable alternative accommodation is available engages Article 8 of the ECHR.[16]

Personal Circumstances of the Appellants

50. Material considerations personal to the applicants are to be considered.[17] This is an inter-related family, both by family church and travelling ties.

Educational requirements[18]

51. There are four school age children currently living on the site. They are settled in the local schools and have been for some time. There are gaps in their education due to periods spent travelling, when they had no permanent settled site. The girls in particular were subjected to bullying when they first attended school, but the schools and the children have worked hard to integrate and the children have now made friends (Document 15). The children's literacy skills are now improving. Continuity of education for the children is important and would be very difficult to provide if they were forced back into a roadside existence.[19]

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[14] Verbal evidence of Jamie Jones
[15] Verbal evidence of William and Joanne Lee
[16] *UK v Chapman [2001]* paragraph 103
[17] *Westminster Council v Great Portland Estates PLC [1985] AC 661; R v Kerrier DC ex p Catherine Uzell & Others QBD [1995]* (Document 21)
[18] See *R (oao Coyle & Ors) v SSCLG & Basildon DC [2008] EWHC 2878* (paragraphs 33 and 34), also *South Buckinghamshire DC v SSTLR & Porter CoA [2003] EWCA Civ 687* (paragraph 31)
[19] Verbal evidence on behalf of Appellants from Caroline Escott an advisory teacher employed by Wolverhampton County Council but working with gypsy children in Staffordshire on behalf of Staffordshire County Council

Health issues

52. Gemima Lee and her son, Steven James Lee, are chronically ill. Steven suffers from psychosis and his personal problems mean that it is difficult for the Lee family to be accommodated on public sites and any private site would need the toleration of other occupiers. Steven is on medication and his doctor visits the site 4 or 5 times a week. The other families on the site are tolerant and supportive of his needs. He is only allowed to leave hospital due to the support of his extended family (Document 14). William, Joanne and Jimmy George Lee, Serena Coupe and Layton Follows also have health problems which require medication or are currently being investigated.[20]

53. The families' needs are considerable and exceptional. As the appeal site is their only opportunity of a settled site, their need for access to specialized health-care and to a GP are matters which should carry substantial weight.

Sustainability

54. This is clearly a sustainable site. Circular 1/06 advises that sustainability should not be considered just in relation to access to transport and facilities. Substantial weight should be given to the issue of social inclusion; the families have become included in the local community and there is local support for them to remain on this site (Document 13).

Human Rights, Equality, Race Relations

55. Since Article 8 of the ECHR is engaged in this case, the question arises in relation to proportionality in returning the appellants to the road (contrary to paragraph 12 (i) of Circular 1/06).[21] The failure of the Council to facilitate the gypsy way of life amounts to a breach of the appellants' Human Rights under Article 8 and Article 14 of the ECHR and a breach of Section 2 of the Race Relations Act as amended. A breach of Article 8 by this Council led to a financial award of £75,000 being made to the parents of some of the residents now on site (Document 17).

56. The Council's witness accepted that there has been an unequal approach to gypsy housing needs when compared to the settled population. The Council have a five year supply of land to meet the needs of the settled population but have failed to meet the land requirements for the travelling population. It is contended that the Council have discriminated against gypsies by not carrying out a DPD within the required time frame. This breaches the Race Relations Act as amended and is a material consideration which must be added to the balancing exercise.[22] Significant weight should be given to the issue of discrimination.

57. The Council were under an obligation to investigate the families' circumstances before issuing the Injunction, this failure reflects on the question of proportionality and there is an obligation to take this into account.

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[20] Document 28 paragraph 5.41-4.42 and verbal evidence given by William and Joanne Lee and Jamie Jones
[21] *Chapman v UK [2001]*
[22] *Baker v SSCLG & Bromley [2007] EWHC 2370 [2008] EWCA Civ 141*

Overall Balance

58. Cumulatively, the material considerations in favour of this development clearly outweigh the harm and constitute the very special circumstances necessary to justify this inappropriate development in the Green Belt.

59. It is submitted that even without consideration of the Human Rights or personal circumstances of the appellants, the material considerations outweigh the harm in this case. If this is not accepted, it is necessary to look at the Human Rights and personal circumstances separately for each family. If planning permission is granted for only some of the families, this must form part of the consideration for the remaining families in regard to Green Belt harm.

Temporary planning permission

60. If a permanent permission is not forthcoming, the balancing exercise must be done a second time having regard to a temporary permission. This consideration must take into account the substantial weight to be given to unmet need[23] and the fact that the harm would not be permanent and therefore less weight should be attached to it. If a temporary period is considered it should be at least 4 years to allow for the site allocations DPD to be prepared and a site to become available.

The Case for South Staffordshire Council

61. This is one in a series of appeals in which gypsies have sought permission for sites in the Green Belt within South Staffordshire Council. The latest appeal decision (Poolhouse Barn) was issued only a short time ago by this Inspector (Document 12).

Green Belt

62. The appellants concede that the development is inappropriate in PPG2 terms. Policy dictates that substantial weight should be attached to this harm.

Impact on Openess

63. Keeping land permanently open is the fundamental aim of PPG2 and openness is the most important attribute of the Green Belt. This development would be very extensive; 9 pitches, 2 amenity buildings, 23 caravans together with hardstanding and paraphernalia associated with domestic occupation of the site. This amount of development will have a considerable impact on openness. In the Poolhouse Barn decision (Document 12 paragraph 5) it was concluded that 4 pitches stationing 8 caravans and 1 utility room would cause "significant" harm to the openness of the Green Belt. Following through the logic of that decision, it must follow that the harm to openness in this case can only be described as very significant.

Encroachment

64. The appellants agree that there would be encroachment into the countryside. Unlike in the Poolhouse Barn case, the entirety of the development in this case would jut out into the countryside from what is presently a well defined (and

[23] Paragraphs 45 and 46 Circular 1/06

adopted) settlement boundary (Document 31, Appendix 8) in the form of ribbon development. The harm in terms of encroachment was found to be "moderate" in the Poolhouse Barn case. Here it can only reasonably be described as significant harm in terms of encroachment.

Character and appearance of the countryside / landscape character

65. In judging the level of harm to the character and appearance of the countryside, and in particular the harm to landscape character, considerable weight must be given to the evidence of Mr Baugh-Jones (Document 30). He is the only qualified landscape planner from whom evidence was heard.

66. The appellants asserted that the Council had acted contrary to paragraph 53 of Circular 1/06 in using local landscape designations in themselves to refuse planning permission. This is not the case, the evidence looks at the reasoning behind the landscape designations, the policy objectives set out in the landscape policies, and whether this proposal would harm those objectives and cause harm to the landscape character. The Circular has some relevant guidance on how landscape impact should feed into the overall planning balance when deciding whether or not to grant permission, but it does not affect the task of a landscape planner in evaluating the degree of harm.

67. Paragraph 54 of Circular 1/06 states that sites on the outskirts of built up areas "may" be appropriate, not that they will always be appropriate. This is a matter to be decided on the specifics of each case. It is necessary to look at how a site relates to a settlement boundary and what impact it will have on the relationship between the settlement and the countryside surrounding it.

68. In this case significant weight must be attached to the South Staffordshire Village Design Guide; recently adopted SPG which has been through consultation. This document sets out certain design principles, including enhancing village entrances and strengthening the Green Belt edge (Document 11). The proposal would result in a finger of ribbon development stretching out into the countryside from what is at present a well defined settlement boundary. It would seriously harm the objectives in the SPG.

69. The appellants' reliance on paragraph 55 of Circular 1/06, that the land was untidy or derelict before occupied by them, is not borne out by the evidence. The photograph (Document 6) does not support this assertion and there is no evidence that the site had been used for fly tipping to any great extent.

70. Harm to landscape is not necessarily about views, and the Planning for Landscape Change SPG (Documents 10 & 31, Appendix 3) recognizes that the landscape character is "locally very sensitive to the impacts of development". In this case the harm will be great. Very substantial weight should be attached this harm.

Need for gypsy sites

71. It is not disputed that there remains a general need for gypsy sites as at this moment. That need may have decreased as a result of permissions granted, but it remains (Document 9). The best evidence as to the level of need is the GTAA (Document 8). This is only two years old and is therefore a fairly recent assessment which assesses need going well into the future to 2026. It was

conducted by respected academics and based on methodology that was subject to scrutiny and discussion.

72. There is no policy or any other backing for assessing need by reference to the number of unauthorized sites in the District or by reference to the number of applications being made in the District. This indicates the level of demand but not need. Each unauthorised development cannot equal need, otherwise need would be infinite. The level of need can only be assessed in a structured way.

73. There are a number of other appeals and applications currently in progress and if all of these are approved / allowed, the general level of need as indicated by the GTAA would have been significantly exceeded (Document 9).[24]

74. The appellants argued that a review of the GTAA will be due in 2012. It is clear from the Government's responses to questions on the revocation of RS that Local Authorities are responsible for assessing need. It implies that there is no obligation for Local Authorities to review the GTAA. The Council may decide not to do this, so it cannot be assumed that any future assessment will be in the form of a GTAA and that it will show more need.

75. The remaining need resulting from the GTAA is currently for 8 pitches. Therefore, if substantial weight is to be given to this, then it can only be attached to general need to the extent that the appellants seek 8 pitches or less. Here the application is for 9 pitches. The general need cannot be prayed in aid in respect of the 9th pitch.

Personal Need

76. There is no current personal need for 2 of the 9 pitches applied for. Mr Jones owns 4 pitches, and currently needs only 2 to accommodate the caravans he currently needs (1 pitch for himself, his wife and his three younger children, and 1 pitch for his older daughter Magda). He may have a need for the other two pitches when his children grow (4-5 years from now), but no weight should be attached to that personal need now. This, together with the point on general need, means that for 2 pitches there is no personal need and for 1 of those pitches there is also no general need.

77. The weight to be attached to the educational and health needs of those on site is limited for three reasons. Firstly, not all of the proposed occupiers have such needs. Secondly, the needs identified are those which would be satisfied from any settled site. Thirdly, the educational and health needs of the persons on site (with the exception of Steven Lee) are not materially different from the needs of most gypsy families. The Council accepts that some weight must be attached to personal needs (because clearly being moved off the site will undermine educational and health care that everyone is entitled to) but that weight is by no means exceptional in this case.

[24] The Secretary of State may wish to note that I conducted an informal hearing into a development for 6 gypsy pitches elsewhere within the District (Appeal ref: APP/C3430/A/10/2127121) on 21 September 2010. That appeal is currently adjourned in order to allow the appellant and Environment Agency to produce an agreed statement on flooding matters.

78. In terms of the availability of alternative sites, the Council had suggested that there may be plots available on the Oak Tree Caravan Site within the District, although they accept the appellants' evidence that these plots are not available to them.[25]

Overall Balance

79. The harm must be balanced against the other considerations. This is not easy, especially when the lives and perfectly reasonable needs, including cultural needs, of individuals conflict with fundamental objectives of our planning system. The Council's judgment was and remains that the substantial harm by reason of inappropriateness, the very significant harm caused by encroachment and the very substantial harm that will be caused to the character and appearance of the countryside, particularly to the landscape and its relationship with the settlement edge is not outweighed by the general need for gypsy site provision or by the personal needs of the appellants.

Human Rights

80. Rejecting this appeal holds out the very real prospect of interference with the appellants' Article 8 rights. This is however a qualified right, and interference is permissible where it is proportionate to the public benefit sought to be secured. In this case, it is proportionate to interfere with the appellants' Article 8 rights in order to secure the very real public benefit of avoiding the substantial harm identified above.

Temporary permission

81. A temporary permission does not arise for consideration in this case. A temporary permission would be appropriate where the harm is such that a permanent permission cannot be justified, but there is an unmet need and there is some prospect that that need will be provided for at the end of the temporary period.

82. In this case, given that the unmet need is for only 8 pitches, it is wholly unrealistic to grant a temporary permission in the expectation that at the end of the temporary period there will be an allocated site for these families to move to. The reality is that those 8 pitches are likely to be provided through the appeals process given the number of outstanding appeals and applications pending. If a temporary permission were to be granted here, there will either be no additional pitches at the end of the temporary period (because the need as identified by the GTAA will have been met) or if there are pitches made available this will be to meet need arising post 2012. Granting temporary planning permission now could lead to a greater number of temporary planning permissions than the identified unmet need.

Interested parties supporting the development

83. Letters of support from nearby residents and local business owners were submitted to the inquiry (Document 13). These relate to the Jones family in particular, although two of the letters more generally refer to the other occupiers of the site. Ms Suzanna Matthews appeared at the inquiry in support of the

[25] Document 29 (paragraph 4.18) and Mr Cannon's verbal evidence

Jones family. The material points from these representations are that they are friendly, welcoming, hardworking, kind and compassionate; the children have settled well in the schools and have made friends; they are good members of the community.

Interested parties objecting to the development

84. Local residents Mr Stonehouse and Mr McPheat, appeared at the inquiry objecting to the development. The material points made are: no justification for inappropriate development in the Green Belt; previous appeal decision (Document 31, Appendix 7(2)); highway concerns; no services, sewers or footpaths to the site; noise from dogs barking; visual impact outside village boundary; landscaping difficult; unauthorised occupation of land; unfair on settled community; Human Rights of settled community; Government's localism agenda.

Written Representations

Leremy Lefroy MP (Document 36)

85. Mr Lefroy outlines his support for the Council's decision. He draws attention to the Secretary of State's announcements relating to strengthening the law on unauthorised development, the abolition of RS and the scrapping of nationally imposed caravan pitch targets and a shift to locally-led assessment and plans. He submits that these significant changes in government policy should be taken into account when considering this appeal.

Local residents objecting to the development (Document 37)

86. Concerns raised have been recorded above either in the case for the Council or those who spoke at the inquiry objecting to the development. Other material points made are: proximity to play area and residential properties; anti-social behaviour; number of additional children and impact on schools; proximity to railway – safety concerns; businesses run from the site; the proposal will deter people from shopping in Penkridge.

Conditions

87. A list of conditions (Document 19) was prepared and discussed at the inquiry. Should the Secretary of State be minded to grant planning permission, the Schedule of Conditions appended to this Report at Annex A comprises those conditions that I consider should be imposed. Further suggested conditions relating to temporary and personal planning permission are included should the Secretary of State disagree with my recommendation. The conditions comply with Circular 11/95 *The Use of Conditions in Planning Permissions* and one of the conditions is worded so as to deal with the fact that the development has already been partially implemented.

88. A condition is suggested to restrict the use of the site to gypsies and travellers only, in order to ensure that the site meets the needs of that population. A condition is suggested to ensure that the development is carried out in accordance with the submitted plans, for the avoidance of doubt and in the interests of proper planning. In order to protect the appearance of the area conditions are required to secure the submission of details of materials for the amenity blocks; restricting commercial vehicles and activities; restricting the number and type of caravans to be sited on the land; requiring submission of

lighting details, boundary treatments, landscaping and its maintenance. A condition is suggested to ensure the resurfacing and maintenance of the existing access and provision of corner radii, in the interests of highway safety. Drainage details should also be submitted to ensure that the site is properly drained in accordance with the Environment Agency's recommendations. It is not considered necessary to recommend a condition requiring the submission of a noise survey for the reasons outlined in paragraph 7.

Inspector's Conclusions

The numbers in square brackets [] refer to earlier paragraphs in the report on which my Conclusions are based.

Letter from the Planning Inspectorate (PINS) in relation to the intention to replace Circular 1/06. [25-29]

89. The letter from PINS advised the parties of the Secretary of State's announcement in relation to Circular 1/06 and that the Inspector would seek the parties' views on this. At the inquiry, both parties referred to this matter in their opening submissions. The Council put forward their view that the weight to be given to the Circular should be reduced given the Secretary of State's announcement. The appellants on the other hand, consider that the Circular should be given its full weight.

90. Reference has been made to the Alconbury judgement. In that case it was decided that since there were clear procedural rules within the planning system as a whole, the safeguard against any breach of Article 6 could be dealt with by the judicial review process. The appellants argue that the letter from PINS does not sit within a procedural framework. However, the letter is designed to ensure that all parties come to the inquiry prepared and ready to deal with the matter raised in the Secretary of State's announcement. It does not seek to imply weight one way or the other. Furthermore, the judicial review process still applies to this appeal.

91. Circular 1/06 is still extant and unrevised and there are no policies in the SP or LP which relate to gypsy development. As the most up to date guidance in relation to gypsy and traveller development, I have given due weight to the Circular. However, I have had regard to the Secretary of State's announcement as a material consideration in this appeal.

92. The appellants' advocate raised the issue of the Council's handling of the Injunction. I do not consider that this matter is directly relevant to the planning merits of this case and the appellants' professional planning witness stated in evidence that this was also his view. [57]

Main Considerations

93. The main parties agree that the proposal would constitute inappropriate development in the Green Belt and I concur [24]. The main considerations in this case are therefore as follows:

    i the impact of the development on the openness of the Green Belt and on the purposes of including land within it;

    ii. the impact of the development on the character and appearance of the surrounding countryside, including its landscape character;

    iii. whether the harm to the Green Belt by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Impact on Green Belt, Openness and Purposes

94. Policy GB1 of the South Staffordshire Local Plan advises that inappropriate development will not be in accordance with the Plan. Paragraph 3.2 of Planning PPG2 advises that inappropriate development is, by definition, harmful to the Green Belt and substantial weight will be attached to that harm. [15, 30, 62]

95. PPG2 advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the most important attribute of Green Belts is their openness. The development would introduce 23 caravans, 2 utility buildings and other features such as hardstandings, fencing and ancillary domestic features onto land which would otherwise have been undeveloped. The amount of development proposed would cause significant harm to the openness of the Green Belt. [30, 63]

96. PPG2 also sets out the five purposes of including land in the Green Belt. The parties agree that the development would only affect one of those purposes, that of safeguarding the countryside from encroachment. The appeal site is located beyond the settlement boundary of the village of Penkridge. I agree that due the intrusion that would be caused by the proposed development, it would conflict with the purpose of safeguarding the countryside from encroachment. However, the site is contained by urban features; the west coast main line, the A449 Wolverhampton Road and the disused railway line. In addition, the site is close to other development on the edge of the village, both within the settlement boundary and outside, to the south east of the site. This context means that the site does not appear to be part of the open countryside, rather it appears as a transitional area located between the village and the open countryside beyond. For this reason, the harm caused by the conflict with this purpose should only attract a moderate amount of weight against the development. [9, 10, 30, 64]

97. The significant harm to the openness of the Green Belt and the moderate harm caused by conflict with one of the purposes of including land in the Green Belt add to the substantial harm by reason of inappropriateness.

Character and appearance / Landscape Character

98. The appellants consider that neither of the SPG documents referred to below has been prepared in compliance with the guidance in PPS7 on local landscape designations (paragraphs 24 and 25). The Council conceded that this was the case. However, the Village Design Guide SPG is a recently adopted document which was subject to consultation. The Planning for Landscape Change SPG, although older, involved a comprehensive assessment of landscape character (paragraph 2.4, Document 10). I acknowledge that much of the District is covered by such designations; nevertheless these documents should be given a significant amount of weight in this appeal. [35, 68]

99. Two of the Development Design Principles identified in the Village Design Guide SPG are to create a clear point of arrival with the countryside and to strengthen the Green Belt edge. Notwithstanding the description of the village edge in the SPG, as being strong and impermeable, the appeal site is also seen in the context of the development to the south east. This comprises a number of properties alongside the A449 and beyond the settlement boundary. Whilst these other properties are intermittently located along the road and do not form a continuous ribbon of development, this context already results in a degree of blurring of the southern edge of the village. As such, the conflict with the SPG already exists

along this road and the development would simply continue the existing pattern of intermittent development beyond the settlement boundary. Thus, whilst the development would conflict with these aims of the SPG, the above context limits the harm which would be caused by this conflict and therefore the weight which should be attached to it. [19, 34, 65-68]

100. There are differing accounts from the parties in relation to the state of the land before the appellants moved onto it, but there is no dispute that it was previously open land. The introduction of caravans and other structures onto the land and the additional activity the use would create would give it a more urban character. In this respect the appeal development would undoubtedly harm the nature of the landscape provided by the appeal site. [36, 69]

101. Nevertheless, the appeal site has a smaller scale than much of the surrounding landscape, it is also narrower and more linear in nature. These characteristics, together with its containment between the railway and A449, lead me to the view that the site already has a less rural character than the surrounding landscape. In my judgement, these factors reduce the degree of harm that the development would cause to the character of the surrounding landscape and limit the conflict with the Planning for Landscape Change SPG. [34, 70]

102. The substantial vegetation along the disused railway ensures that there would be very limited views of the development from the north. There is a substantial boundary hedge / trees alongside the A449, particularly at the northern end of the site. This ensures that from the east only glimpses of the caravans and structures would be visible through the hedge at this end of the site. Further to the south, the hedge becomes sparser and the structures at this end of the site would therefore be more visible. The site layout indicates that hedgerow / tree planting is proposed along this part of the boundary and along the southern boundary of the site. In time, this planting would ensure that the development would not be unduly visually intrusive in views from the A449 and further east or from the south. [36, 70, 84]

103. The western boundary of the site is more open and the development would be visible from the open countryside to the west. When viewed from this direction the development would be more prominent. However it would be possible to provide supplementary planting along the western boundary in order to soften the visual impact of the development when viewed from the open land to the west.

104. In summary, the development would add to the blurring of the southern edge of the village and therefore conflict to an extent with the aims of the Village Design Guide SPG and SP policy D4. It would cause a limited amount of harm to the landscape character of the surroundings and to the appearance of the area. For this reason it would conflict to an extent with the Planning for Landscape Change SPG, LP policies BE26 and LS1 and in part with SP policy NC2. However, the context of the site would limit the harm caused by these factors and the potential for landscaping would further reduce it. Suitable conditions could ensure that the development would comply with LP policy LS10. [14]

105. I note that in the previous appeal decision in 1991, the Inspector concluded that a development of 20+ caravans would “detract very significantly from the appearance and rural character of the Green Belt at the approach to Penkridge”. However, that decision refers to the prominence of the appeal site from the south

and the likely ineffectiveness of additional planting. That decision was made over 19 years ago and it is likely that the existing boundary hedge has matured considerably in that time. I have come to the conclusion that the development would not be unduly prominent from the A449 for the reasons outlined above. In addition, I have had regard to the advice in paragraph 53 of Circular 1/06, which advises that local landscape designations should not be used in themselves to refuse planning permission. Furthermore, paragraph 54 advises that sites on the outskirts of built-up areas, or rural or semi-rural settings may be appropriate. [33, 67, 84]

106. Having regard to the above assessment, a limited amount of weight should be given to the conflict with the Village Design Guide SPG and the harm that would be caused to the landscape character and the appearance of the surrounding area.

Other planning matters

107. The main parties agree that the site is located within a sustainable location. There are also no other objections having regard to issues such as conflict with national designations (SSSI, AONB) or flooding issues. I have considered the impact of the proposal on local residents, but as the site is located well away from the nearest residential property, the development would not harm the living conditions of nearby occupiers. [32, 84, 86]

108. Local residents have raised concerns in relation to the impact on highway safety and in considering the previous appeal on the site in 1991 the Inspector found that the development would be harmful. However, at that time the A449 was a Trunk Road and the Department for Transport had raised concerns in relation to the increased use of the access. The road is no longer classified as a Trunk Road and as such, different considerations apply to the movement of traffic on the road now than at the time of the previous appeal. [32, 84, 86]

109. The County Council highway engineers are now satisfied that the development would not be harmful to highway safety. On the basis of the information submitted in relation to sight lines, and my own observations, I have no reason to consider that the access would not be safe. There is also no evidence to suggest that any harm would be caused by traffic slowing to allow vehicles to turn into the site. Accordingly, I am satisfied that the development would not cause harm to highway safety. [32, 84]

110. Consideration of the above matters indicates that they would not cause any harm. However, these are not positive benefits in favour of the development; they merely add no additional weight against it.

Other considerations

<u>Need for gypsy sites</u> [37-43, 71-75]

111. The Council acknowledges that there is a need for the provision of gypsy pitches in the District and accepts the assessment of need as demonstrated in the GTAA. The GTAA identifies a need for 32 pitches in South Staffordshire between 2007 and 2012 and a need for further pitches beyond 2012 and up to 2026. It also indicates a need for the provision of pitches in the wider study area of Southern Staffordshire and Northern Warwickshire.

112. The Council states that due to the number of pitches which have been provided on sites since 2007 (excluding temporary planning permissions), there is currently an unmet need for only 8 pitches to be provided by 2012. The appellants consider that the unmet need should include existing unauthorised developments, as these indicate that there are gypsies in need of a lawful site who have nowhere else to live. On this basis, they say that the level of need is at least for a further 28 pitches.

113. The Government's guidance document on the revocation of Regional Strategies advises that GTAAs form a good starting point for any review of levels of provision, although Council's are not bound by them. In a recent appeal decision (Appeal ref: APP/C3430/A/10/2122649) in this District, I indicated that I was satisfied that the figures in the GTAA and accepted by the Council, provide a good indication of the level of need in the District. I am still of the view that this is the case.

114. That is not to say that other factors (such as unauthorised developments) should not be taken into account in any comprehensive assessment of need. Indeed Circular 1/06 (paragraph 43) indicates that unauthorised developments should be taken into account in the assessment of whether there is a clear and immediate need for sites. It advises that LPAs should bring forward site allocations DPDs in such circumstances. Furthermore, there does appear to be a mismatch between the number of gypsies on sites on the ground and the level of identified need remaining in the District. That having been said, in the absence of more robust evidence on the matter, I do not consider that it is proper for individual appeal decisions to make ad hoc assessments of need on a wider basis.

115. The Council's current estimate for adoption of their Core Strategy is early 2012 with the site allocations DPD adopted in early 2013. The Council agreed that it is likely to be the end of 2013 before sites become available on the ground following the adoption of the site allocations DPD. Thus the remaining need currently identified in the GTAA to 2012 will not be met through the Development Plan system.

116. One of the aims of Circular 1/06 was to increase significantly the number of gypsy sites with planning permission over a period of 3-5 years from the date of the Circular ie. by 2011. It is clear that the Council cannot demonstrate a 5 year supply of deliverable sites for gypsies and travellers and that they will not be able to meet the aim of the Circular. [56]

117. The failure of the development plan to meet the need identified by the Council should be given significant weight in favour of the appeal especially as there is no dispute about the need for an additional 8 pitches within the District. Significant weight also needs to be given to that unmet need.

118. The current appeal seeks permission for the provision of 9 pitches and the Council argue that substantial weight cannot be given to the need for the additional pitch, so far as general levels of need in the District are concerned. The Council also raise concerns in relation to the number of other appeals and applications currently in progress in the District.

119. The GTAA identifies need up to 2026 for a wider geographical area than just South Staffordshire. The effect of the RS was to distribute pitches to individual Local Authorities and allocate them to time frames to ensure a rolling supply of pitches to meet the need into the future. In the absence of the RS, it is

inevitable that some overlap will occur and that pitch locations and numbers will not necessarily fit neatly within these defined time scales and Local Authority boundaries. As such, I do not consider that the provision of the additional pitch by 2012 would cause harm in terms of an over-provision of gypsy sites in the District. Similarly, little harm would occur to the overall strategy for the provision of sites within the wider geographical area to 2026, if further appeals and applications effectively 'use up' the remaining general need in South Staffordshire in the near future.

The accommodation needs of the appellants and their alternative accommodation options [44-49, 76]

120. Some of the existing site occupants appeared at the inquiry and some information was submitted about the other intended occupants of the pitches. Much of the information about the site occupants was given orally. The Council accept, and I have no reason to disagree, that all those to occupy the site are gypsies for planning purposes and have a need for a pitch on a gypsy site.

121. Jamie Jones currently owns 4 pitches on the site, on which it is proposed to site a total of 8 caravans. It was accepted at the inquiry that his need is currently only for 2 pitches. He indicated that he would require the additional 2 pitches once his younger children have grown and I sympathise with his wish to provide for his children's future in this manner. However, personal need can only currently be put forward in favour of 2 pitches for the Jones family. [23]

122. There is evidence that some of the site residents searched for alternative sites prior to settling on this site. Circular 1/06 advises that alternatives should be explored before Green Belt locations are considered. However, the Secretary of State will be aware of the judgement in *South Cambridgeshire v SSCLG & Brown [2008]* in which it was held that there is no requirement on the appellant to prove non-availability of alternative sites. Furthermore, a large proportion of the District is in the Green Belt, so even if there had been evidence of an extensive search for an alternative site by all of the appellants, there is a high probability that any alternative site in this District would also be in the Green Belt.

123. The evidence does not suggest that there are any other sites for any of the appellants to go to if planning permission is refused for this site. The Council had suggested that there may be plots available on the Oak Tree Caravan Site within the District, although they accepted the appellants' evidence that these plots were not available to them. The appellants indicated that any spare plots on that site were for members of the extended families already resident. The Secretary of State will be aware of the judgement of *Doncaster MBC v FSS & Angela Smith [2007]* where it was held that alternative accommodation has to be suitable, available, affordable and acceptable. On this basis and having regard to the evidence, very little weight should be given to the possible availability of an alternative site at Oak Tree.

124. The appellants' personal need for a settled site (in so far as it relates to 7 pitches) and the lack of available alternative sites should both be given significant weight in favour of this appeal.

Education and Health Needs

125. There are currently 4 school age children living on the site and they are settled in nearby schools. The educational needs of these families are no different to

that of other gypsy families and it is not essential for their needs to be met from this site. But the children are all attending the local schools within Penkridge and are apparently settled and happy there after having overcome some initial difficulties. In the absence of an alternative site for the families to move to it is likely that the continuity of the children's education would be disrupted if they are required to move off this site. Access to education would be much more difficult if the families had a roadside existence. A moderate amount of weight needs to be attached to this factor in favour of the appeal as far as it relates to Jamie and Diane Jones and William and Joanne Lee and their dependants. [51, 77]

126. With regard to health matters, a number of the appellants currently have health problems which are being treated or investigated. They need regular access to their GPs and to hospital care. There are also infants living on the site and one of the appellants is elderly (Mrs Smith, who is not currently living on the site). These individuals would clearly benefit from a settled site from which to access healthcare. In relation to the majority of the appellants, the health needs are not significantly different to those of many gypsy families and they do not need to be met from this site. However, there are no alternative sites for the families to move to. Access to healthcare is likely to be much more difficult if the appellants were required to revert to a roadside existence. [52, 53, 77]

127. Circular 1/06 advises that gypsies and travellers have the worst health and education status of any disadvantaged group in England. The health issues need to be given a moderate amount of weight in favour of the development for all but the Lee family whom I consider below.

128. Steven Lee's medical condition appears to be severe and he needs the constant attention of his family and the support of the other families on the site. His mother, Gemima, is the main carer, but she has her own chronic health problems. She finds Steven's care difficult to manage because of his condition and size, together with her own health issues. Steven's doctor regularly visits him on the appeal site and he is only allowed to be out of hospital due to the care and attention that he receives from his extended family. Joanne Lee, in particular provides a lot of help with his care. Steven's condition makes it difficult for the Lee family to live on a site with other families that they don't know. This was the reason they had to leave their former site in Willenhall. This matter should be given a significant amount of weight in favour of the development as far as it relates to the Lee family. [52, 53, 77]

Whether the harm is clearly outweighed by other considerations

129. PPG2 (paras. 3.1 and 3.2) sets out the general presumption against inappropriate development within the Green Belt. It states that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

130. I have concluded that the development would cause substantial harm by reason of inappropriateness. It would also cause significant harm to the openness of the Green Belt and moderate harm to one of the purposes of including land within it. The conflict with the Village Design Guide SPG and the harm that would be caused to the landscape character and the appearance of the

surrounding area should also be given a limited amount of weight against the development. [97, 106]

131. On the other hand, weighing in favour of the development is the significant weight which should be given to the general need for gypsy sites in the District. The personal need of the appellants for 7 pitches and the lack of available alternative sites should also both be given significant weight. In addition, the failure of the development plan to meet the identified need attracts significant weight in favour of the appeal. [116, 117, 124]

132. The medical needs of the appellants should be given a moderate amount of weight except in the case of the Lee family. For them, Steven's difficulties should be given a significant amount of weight in favour of the development. Finally, the educational needs of the Jones and Lee families attract a moderate amount of weight in favour of the development for those families. [125, 127, 128]

133. Dismissal of the appeal would, in all likelihood require the existing occupants to vacate the site (which for those currently resident has to be regarded as their home) without any certainty of suitable alternative accommodation being readily available. Mrs Smith and her daughter would be required to continue an itinerant lifestyle with no settled base. This would represent an interference with the home and family life of the appellants which in my view outweighs the harm which has been and would continue to be caused by the development in terms of its effect upon the public interest. Dismissal of the appeal would have a disproportionate effect upon the rights of the occupants under Article 8 of the ECHR and this also attracts a significant amount of weight in favour of the appeal. [37, 49, 55, 59, 80]

Overall conclusion

134. In conclusion, the harm by reason of inappropriateness and the additional harm identified, which would be caused by the proposed 9 pitches, is clearly outweighed by the totality of the other considerations outlined above. This is a case where the appellants have a clear need for a site and have no other sites on which they could reside. Many of the families have health issues and there are elderly and very young people either resident or proposed to be resident on the site. Some of the families also have further compelling personal circumstances. Dismissal of this appeal would ultimately result in their removal from the site, causing distress and hardship to many of the individuals. Such consequences would in my view, be disproportionate to the harm caused. In my judgement, having considered the case as a whole, very special circumstances do exist so as to justify this inappropriate development in the Green Belt. [58, 79]

Other matters raised

135. One of the interested parties appearing at the inquiry raised concerns in relation to the human rights implications for local residents if the appeal is allowed. Although it was not made clear which Article of the ECHR would be infringed in these circumstances, the rights and freedoms of local residents must be balanced against the effect of the development on the public interest. I have taken into account the residents' concerns. However, in the light of the conclusions on the matters addressed above I consider that if the appeal is allowed, its effect on local residents would be proportionate in the circumstances and would not result in an infringement of their rights. [84]

136. The Race Relations Act 1976 (RRA) places a duty on decision makers in respect of planning permission to consider race equality under section 71(1). The Secretary of State will be aware of the Court of Appeal judgement in *R (oao) Harris v London Borough of Haringey & ors [2010] EWCA Civ 703* where it was found that the decision maker must engage this duty where the issue of race equality is raised and to demonstrate due regard for the duty. I have given due weight to Circular 1/06 in this appeal and my assessment of the proposal and this recommendation has therefore had due regard to this duty. [56, 91]

Recommendation

137. I recommend that the appeal be allowed and planning permission granted subject to the conditions set out in Annex A.

138. If the Secretary of State is minded to disagree with my recommendation, I set out below some further considerations.

Temporary planning permission [60, 81, 82]

139. If the Secretary of State disagrees with my conclusions set out above and considers that very special circumstances do not exist in this case to justify the development on a permanent basis, it is necessary to consider whether the development should be approved for a temporary period.

140. A temporary permission would affect the weight which should be given to the identified harm. The weight given to the harm factors: inappropriateness; openness; conflict with one of the purposes of including land in the Green Belt; conflict with the Village Design Guide SPG and the harm that would be caused to the landscape character and the appearance of the surrounding area, would all be reduced as the development would be time limited.

141. The matters in favour of the development would be as set out in paragraphs 131-133 above. In addition, Circular 1/06 advises that substantial weight should be attached to the unmet need for gypsy sites in the District in considering whether temporary planning permission should be given. It advises that temporary planning permission may be justified where it is expected that the planning circumstances will change at the end of the period of temporary permission.

142. I have set out above the likely timescale for adoption of the Site Allocations DPD and sites becoming available on the ground as being late 2013. Having regard to this, planning permission should be granted for a temporary period of 4 years ie. to 2014 to allow for a small amount of further slippage in this timescale. The Council consider that this would take up the identified need going beyond 2012 and that they may end up with more temporary planning permissions than sites to be allocated in the DPD.

143. However, it should reasonably be expected that the Site Allocations DPD would identify sites going beyond 2012, given its likely adoption date. Therefore, at the end of the temporary planning permission, the planning circumstances should have changed and sites should have been allocated. As I have set out above, little harm would occur to the overall strategy for the provision of sites within the wider geographical area to 2026, if sites are approved now on a temporary basis, to meet an existing need. [119]

144. In these circumstances, I consider that the harm identified would be clearly outweighed by the other considerations in the short term, until the need can be met on sites allocated through the Site Allocations DPD. Very special circumstances would therefore exist to justify a grant of planning permission for a temporary period of 4 years.

Considerations if the Secretary of State disagrees with the above conclusions

145. If the Secretary of State considers that the other considerations do not outweigh the totality of the harm, either for a permanent or temporary period and that very special circumstances do not therefore exist, the following should be considered.

146. The appeal relates to 4 separate but inter-related families. The families indicated that they would wish to stay together, as they provide support to each other. However, in the judgement in *Moss v FSS & South Cambridge DC [2003] EWHC 2781* it was found that consideration should have been given to the possibility of allowing some of the appeals for those whose personal circumstances were the most compelling. [59]

147. In this case, the personal circumstances for the Jones and Lee families are the most compelling. In a consideration of their circumstances separately from the others, the harms would be as follows:

- Substantial - harm by inappropriateness
- Significant - loss of openness (although the impact would be reduced as there would be fewer caravans and other structures and less of the site would be covered by development).
- Limited - harm by reason of encroachment; harm to landscape character / visual harm / conflict with Village Design Guide SPG (this would be reduced further as there would be fewer caravans and other structures and less of the site would be covered by development).

148. The benefits in favour of the development for the Jones family would be as follows:

- Significant - general need; personal need (for 2 pitches); lack of alternative sites; ECHR considerations.
- Moderate – education; health.

149. The benefits in favour of the development for the Lee family would be as follows:

- Significant - general need; personal need (for 2 pitches); lack of alternative sites; ECHR considerations; health.
- Moderate – education.

150. A further consideration should also be given to granting planning permission for a temporary period for the Jones and Lee families if permanent planning permission is not accepted, in which case the harm factors would be reduced further.

151. If planning permission is considered on this basis, the Secretary of State may then wish to consider the extent of the additional harm which would be caused by the 6 caravans (on 3 pitches) proposed for the other families if the Jones and Lee families are themselves allowed to stay on the site (with 13 caravans on 4 pitches). Again, consideration should be given to granting both permanent and temporary planning permission for the others in such circumstances.

Susan Heywood

INSPECTOR

ANNEX A

Recommended conditions in the event that planning permission is granted

1) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.

2) The development hereby permitted shall be carried out in accordance with the amended plans annotated as 'Site Location Plan B' and 'Site Layout Plan' submitted on 16 September 2010.

3) Before the 2 amenity blocks are constructed, details of the external materials shall be submitted to and approved in writing by the local planning authority. The blocks shall be erected in accordance with the approved details.

4) On pitches 3-9 as shown on the plans identified in condition 2 above, no more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted.

5) No more than three commercial vehicles shall be kept on the combined area of pitches 1 and 2 as shown on the plans identified in condition 2 above for use by the occupiers of the caravans hereby permitted.

6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

7) No commercial activities shall take place on the land, including the external storage of materials.

8) No more than 23 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 15 shall be static caravans or mobile homes) shall be stationed on the site at any time.

9) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

   i) within 3 months of the date of this decision a scheme for: the means of foul and surface water drainage of the site; proposed and existing external lighting on the boundary of and within the site; resurfacing and maintenance of the existing access 6 metres from the rear of the carriageway edge and provision of highway corner radii; landscaping and boundary treatment; parking and turning areas (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.

   ii) if within 11 months of the date of this decision the site development scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

   iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.

iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

10) At the same time as the site development scheme required by condition 9 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of five years of the proposed planting commencing at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

If the Secretary of State is minded to grant planning permission for a temporary period:

11) The use hereby permitted shall be for a limited period being the period of 4 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all materials and equipment brought on to the land in connection with the use shall be removed, and the land restored to its former condition in accordance with a scheme previously submitted to and approved in writing by the local planning authority.

Conditions 1-10 would also need to be included in this situation. A clause would need to be added to condition 9, to require a scheme to be submitted specifying the condition of land before the development took place and the works necessary to restore the land to that condition, or some other state as agreed with the local planning authority, and the time period within which the restoration works must be undertaken.

If the Secretary of State is minded to grant planning permission for named persons only:

12) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: (names from Document 4)

13) When the premises cease to be occupied by those named in condition 12 above, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.

Conditions 1, 3, 6, 7, 9 & 10 would need to be included in this situation. A clause would need to be added to condition 9, to require a scheme to be submitted specifying the condition of land before the development took place and the works necessary to restore the land to that condition, or some other state as agreed with the local planning authority, and the time period within which the restoration works must be undertaken.

A further clause would need to be added to condition 9 to require the submission of details of siting of the caravans for those named persons.

Conditions 4/5 and 8 above, would need to be altered according to the number of pitches / caravans.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Satnam Choongh, of Counsel	Instructed by: Mr D Patterson Director of Legal and Licensing Services South Staffordshire Council
He called	Mr Baugh-Jones Landscape Planning Manager
	Mr Cannon Principal Planning Officer

FOR THE APPELLANT:

Alan Masters, of Counsel	Instructed by Mr P Brown Philip Brown Associates
He called	Caroline Escott Advisory Support Teacher On behalf of Staffordshire County Council
	Jamie Jones Appellant
	William Lee Appellant
	Joanne Lee Appellant
	Mr P Brown Philip Brown Associates

INTERESTED PERSONS OBJECTING TO THE DEVELOPMENT:

Mr McPheat
Mr Stonehouse

INTERESTED PERSONS SUPPORTING THE DEVELOPMENT:

Mrs Matthews

DOCUMENTS

1 Council's notice of inquiry and circulation list
2 Application plans including amended plans submitted to inquiry
3 Statement of Common Ground
4 List of proposed occupants, submitted by the appellants
5 Environment Agency response
6 Aerial photograph of the site, submitted by the Council
7 Draft policy H6 (previously H4), submitted by the Council
8 Southern Staffordshire and Northern Warwickshire GTAA
9 List of planning permissions / applications for gypsy sites, submitted by the Council
10 Planning for Landscape Change SPG Extracts, submitted by the Council
11 Village Design Guide SPG Extract, submitted by the Council
12 Appeal decision APP/C3430/A/10/2122649, submitted by the Council
13 Letters supporting the development, submitted by the appellants
14 Letter from NHS trust, submitted by the appellants
15 Letters from 3 of the appellants' children, submitted by the appellants
16 Letter from owner of Willenhall site, submitted by the appellants
17 Press cutting, submitted by the appellants
18 Joint statement on highway matters
19 List of suggested conditions, submitted by the Council
20 Suggested noise condition, submitted by the Council
21 R v Kerrier DC ex p Catherine Uzell & ors QBD [1995], submitted by the appellants
22 Wychavon v SSCLG & Butler [2008] EWCA Civ 692, submitted by the appellants
23 Hedges & Hedges v SSE & East Cambs [1996] EWHC Admin 239, submitted by the appellants
24 Council's closing submissions
25 Appellants' closing submissions
26 Costs application
27 PINS letter dated 9 September 2010
28 Proof of Evidence of Mr Brown, for the appellants
29 Proof of Evidence of Mr Cannon, for the Council
30 Proof of Evidence of Mr Baugh-Jones, for the Council
31 Appendices to Council's Proofs
32 Council's delegated report for the application
33 Staffordshire and Stoke-on-Trent Structure Plan extracts
34 South Staffordshire Local Plan extracts
35 Local Development Scheme (hand altered)
36 Letter from Jeremy Lefroy MP
37 Letters to PINS objecting to the development