

09 December 2010

Green Planning Solutions LLP
Unit D Lunesdale
Upton Magna Business Park
Upton Magna
Shrewsbury
SY4 4TT

Our Ref: APP/K0425/A/09/2117340/NWF
& APP/K0425/C/09/2115651/NWF
Your Ref: 09/245/MURP2

Dear Sirs,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 174 and 78
APPEALS BY MR PATRICK HANRAHAN
LAND AT HEMLEY HILL, UPPER ICKNIELD WAY, SAUNDERTON, BUCKS.
COUNCIL'S REFs: 09/00116/CU and 09/05790/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Alan Upward BA (Hons) MCD MRTPI, who held a public local inquiry on 13-16 July 2010 and 16 August 2010 into your client's appeals against decisions of Wycombe District Council ("the Council"):

Appeal A: against an enforcement notice served by the Council on 2 September 2009 alleging a material change of use of the land to use as a gypsy and traveller caravan site and associated enabling development including the erection of fences and the laying of hard surfaces to facilitate that use; and requiring restoration of the land to its previous condition as pasture land within 6 months; and

Appeal B: against a refusal by the Council to grant planning permission for a change of use to include the stationing of caravans for 9 no. gypsy pitches with utility/day room buildings and hard standing ancillary to that use.

2. On 22 September 2010, the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation

3. The Inspector recommended:

Appeal A: that the enforcement notice be varied, that the appeal be dismissed and the notice upheld in varied form;

Appeal B: that the appeal be dismissed.

The Secretary of State agrees with the Inspector's recommendations and has decided to uphold the enforcement notice in modified form and to refuse planning permission. 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. Although the Inspector identified certain discrepancies between the various submitted plans (IR3-4), the Secretary of State is satisfied that the matter was discussed at the Inquiry and that there are no unresolved issues.

Matters arising after the close of the inquiry

5. Since the close of the Inquiry, the Secretary of State has received written representations related to the proposals from David Lidington MP; Joseph G Jones; and the Hemley Hill Action Group. The Secretary of State has carefully considered these representations. However, he does not consider that they raise issues which need to be referred back to parties before he proceeds to a decision. Copies of these representations may be obtained by written request to the address above.
6. Regional Strategies, including the South East Plan, had been revoked by the Secretary of State on 6 July 2010, and so the Inspector did not consider that Plan at the Inquiry the IR (IR13). However, following the decision in the Courts on 10 November 2010 on *The Queen on the application of Cala Homes (South) Limited v Secretary of State for Communities and Local Government (C/8474/2010)*, the South East Plan has been reinstated, and is therefore part of the development plan. Notwithstanding this, the Secretary of State has clearly stated his intention to revoke all the Regional Strategies, including the South East Plan; and has stated that the revocation will be enacted by way of the Localism Bill. The Secretary of State has taken these matters into account in determining this appeal, but does not consider it necessary to refer back to the parties before reaching his decision. This is because, as the partial review of the South East Plan to address the regional need for gypsy and traveller caravan sites remains incomplete, policy H7 (requiring provision to be made in Local Development Documents) does not form a part of the Development Plan.
7. The Secretary of State has taken account of ODPM Circular 01/2006: *Planning for Gypsy and Traveller Caravan Sites* as a material consideration in his determination of these cases. In reaching his decisions, 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 gives less weight to the Circular. However, he is satisfied that the announcement does not raise any matters which would affect his decisions or require him to refer back to parties for further representations prior to reaching his decisions.

Policy considerations

8. In deciding these appeals, 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. In this case, in addition to the South

East Plan (see paragraph 6 above), the development plan for the area comprises the saved policies of the Wycombe District Local Plan (2004) and the adopted Wycombe Development Framework Core Strategy to 2026 (2008) (IR13). The Secretary of State agrees with the Inspector that the policies in those plans of greatest relevance to the determination of these appeals are those described at IR14-19.

9. Other material considerations which the Secretary of State has taken into account include: Planning Policy Statement (PPS) 1: *Delivering Sustainable Development*; PPS3: *Housing*; PPS7: *Sustainable Development in Rural Areas*; and Circular 11/95: *Planning Conditions*.
10. He has also had regard to the Thames Valley Gypsy and Traveller Accommodation Assessment for 2006-11 and the Council's approval in March 2010 of "*Sites for Gypsies, Travellers and Travelling Show people in Wycombe*" (IR20). This document is intended to identify needs in the context of the preparation of the Council's *Development Management* DPD, but the Secretary of State gives it little weight as the DPD is at an early stage and not currently timetabled for adoption until May 2014 (IR20).

Main issues

Harm to the Green Belt and protection of the countryside

11. For the reasons given at IR151, the Secretary of State agrees with the Inspector that inappropriate development should not be approved in the Green Belt except in very special circumstances, and that that sets the framework within which to consider subsidiary issues as the basis for an overall assessment of the balance. He agrees with the Inspector (IR152) that harm by reason of inappropriateness attracts substantial weight in its own right and that, for the reasons given at IR153, the harm to openness caused by the appeals proposals adds substantial weight to the harm by reason of inappropriateness.
12. The Secretary of State also agrees with the Inspector (IR 154) that the impact of the development upon the visual qualities of the Green Belt and the effects upon the Chilterns Area of Outstanding Natural Beauty (AONB) amount in this case to the same thing and that the conservation of the natural beauty of the landscape and countryside should be given great weight. Taking that into account, the Secretary of State agrees with the Inspector's conclusion at IR 164 that, for the reasons given at IR155-163, the development has already caused clear harm to the scenic beauty and rural character of the AONB landscape, that the harm would be increased by the fuller development of the land being proposed, and that there would be little prospect of mitigation in the short to medium term. He also agrees with the Inspector that, for the reasons given at IR165-166, this harm conflicts with both the objectives of AONB designation and with the related development plan policies; and that its impact on the Ridgeway Path adds further weight to the harm arising from the appeals development.

Residential amenity

13. For the reasons given at IR173-176, the Secretary of State agrees with the Inspector's conclusion at IR177 that the appeals development has resulted in material harm with regard to residential amenity and that that is in conflict with the

development plan, thereby adding some weight to the objections to the development. However, he also agrees with the Inspector at IR178 that the protection of individual householders' rights over parts of the appeals site is a legal matter between individual owners rather than a planning consideration.

Unmet need and scope for providing alternative sites

14. Having considered the arguments set out by the Inspector at IR179-185, the Secretary of State takes the view that there is no reliable indicator of currently unmet need in the area. However, he agrees with the Inspector (IR183) that there is a personal need for accommodation by the 9 families occupying the appeals site and (IR184) that the timetable for dealing with need issues within Wycombe has been established by the DPD process (see paragraphs 8 and 10 above). He also agrees (IR185) that the Inspector's conclusion that there is currently a need for further gypsy sites within the wider local area is a consideration which weighs in favour of the appeals.
15. Turning to the scope for providing alternative sites, the Secretary of State agrees with the Inspector's conclusion at IR193 that, for the reasons given at IR186-192, there are no immediately available sites as alternatives either in Wycombe or neighbouring districts and only limited prospects of sites coming forward in the short term. He also therefore agrees with the Inspector that this is an issue which weighs materially in support of the appeals.

Personal circumstances

16. For the reasons given at IR194-196, the Secretary of State agrees with the Inspector's conclusion at IR197 that the personal circumstances of the 9 occupying families are separately a matter of significant weight and that, were they to be the determining factor in the grant of a permanent or temporary permission, such a permission should be made subject of a condition limiting occupation to named individuals.

Human Rights considerations

17. For the reasons given at IR203-204, the Secretary of State agrees with the Inspector that, although failure of the appeals would amount to a significant interference with the rights of the occupiers under Article 8 of the European Convention on Human Rights to respect for their private and family life and their home, refusal of planning permission would be proportionate. In coming to this conclusion, the Secretary of State has taken account of the limited reasons advanced for the unauthorised occupation of the appeals site, as well as the possibility that the interference with Article 8 Rights could be taken into account in relation to the period for compliance with the requirements of the enforcement notice (see paragraph 25 below).

Other matters

18. For the reasons given at IR198-199, the Secretary of State agrees with the Inspector at IR200 that the matters referred to in those paragraphs do not add to the weight of other considerations in the balance.

19. Furthermore, for the reasons given at IR201-202, the Secretary of State agrees with the Inspector that, in handling this case, the Council had had proper regard to the duty under the 1976 Race Relations Act.

Overall balance

20. The Secretary of State agrees with the Inspector (IR205) that, in respect of granting permanent planning permission, the components of identifiable harm are considerable in respect of the harm to the Green Belt by reason both of inappropriateness and loss of openness and in respect of the adverse consequences for the AONB landscape. The very special circumstances to be weighed against that include the lack of availability of alternative sites, the personal circumstances of the occupiers of the appeals site and their right to respect for their private and family life and their home. The Secretary of State agrees with the Inspector that these very special circumstances are significant but that, whether viewed individually or collectively, they do not outweigh, let alone clearly outweigh, the combined harm arising from the development involved - which would be in conflict with both national and development plan policy.

Temporary planning permission

21. The Secretary of State has considered the Inspector's deliberations on the issue of developer contributions towards meeting the impact of the development on local services and facilities within the district at IR168-171. He agrees with the Inspector's conclusion at IR172 that the absence of any arrangements in this case to secure the specified financial contributions necessary, and the lack of circumstances which might justify setting the regime aside, add further significant weight (as a matter of "other harm") against the granting of a permanent planning permission. He has therefore gone on to consider the Inspector's comments at IR210-214.

22. The Secretary of State agrees with the Inspector (IR210) that it would be appropriate to grant permission for a temporary period of 2 years if the balance was tipped solely by the "other harm" accruing from the lack of financial contributions to provide time to enable the site occupiers to enter into appropriate financial arrangements for the provision of the infrastructure and then to apply for a permanent consent. However, in the absence of any evidence that this could be achieved, the Secretary of State does not consider that to be a realistic prospect.

23. The Secretary of State also agrees with the Inspector (IR211) that, if a temporary consent were to be granted for reasons other than the infrastructure issue, it would be appropriate to make it for a period of 5 years on the premise that sites would be brought forward in the DPD in 2014 with a further year for their implementation. However, he further agrees that, for the reasons given at IR212, the harm would be substantial without the necessary infrastructural improvements, while the capital costs involved make it unlikely that they would be undertaken for a temporary period. He also agrees with the Inspector (IR213) that, as there would be no direct link between the educational and healthcare needs of site residents and the suggested timescale of a temporary permission, that factor would not add to the weight of "other considerations".

24. Overall, therefore, the Secretary of State agrees with the Inspector (IR214) that the interference with the occupants' Article 8 rights would remain proportionate in dismissing an application for a temporary consent as the remaining harm caused by the use would still clearly not be outweighed by the benefits of the development.

Terms of enforcement notice (Appeal A)

25. For the reasons given at IR216-217, the Secretary of State agrees with the Inspector that the terms of the enforcement notice should be varied to require the unauthorised use of the site as a gypsy and traveller caravan site to cease. Further, for the reasons given at IR217, the Secretary of State agrees with the Inspector that the terms of the enforcement notice should be varied to remove the specific requirement for the restoration of the site "*as pasture land*". The Secretary of State also agrees with the Inspector that, for the reasons given at IR219, an extended period of 18 months would be a proportionate response to the appeal against ground (g) in Appeal A.

Conditions

26. The Secretary of State has considered the proposed conditions for both appeals and the Inspector's comments and modifications as set out at IR133-145 and the Annex A to the IR. He is satisfied that the conditions recommended in the Inspector's schedule are reasonable and necessary and meet the tests of Circular 11/95. However, he does not consider that these overcome his reasons for refusing the appeals.

Overall Conclusions

27. The Secretary of State concludes that the appeals proposals would cause very substantial harm to the Green Belt and its openness and to the natural beauty of the Chilterns AONB, as well as to the amenity of nearby residents. Against that, there are strong arguments in favour of the appeals proposals relating to the needs of the appellants, but the Secretary of State does not consider that these constitute very special circumstances of sufficient weight to justify granting permission, either on a permanent or a temporary basis. However, the Secretary of State considers that, while upholding the enforcement notice, extending the period for compliance to 18 months represents an appropriate and proportionate response.

Formal Decision

28. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby:

Appeal A: dismisses the appeal, refuses the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990, and upholds the enforcement notice varied as follows:

- (i) at section 5, insert an additional requirement before item (a) to read "*Cease the use of the land as a gypsy and traveller caravan site*"; and
- (ii) at section 5, delete the words "*as pasture land*" from requirement (c); and

(iii) at section 6, substitute “*18 months*” as the period for compliance.

Appeal B: dismisses the appeal.

Right to challenge the decision

29. 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.

30. A copy of this letter has been sent to Wycombe District Council and all parties who have requested it.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf