



Department for
Communities and
Local Government

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Our Refs: APP/P0240/A/12/2179237

27th August 2013

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR M KIELY
LAND AT MILE TREE ROAD, HEATH AND REACH, LEIGHTON BUZZARD
APPLICATION REF: CB/11/03821/FULL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, James Ellis LLB (Hons) Solicitor, who held a public local inquiry on the 18 December 2012, between 19 and 21 March 2013 and on the 3 May 2013 into your client's appeal against the refusal by Central Bedfordshire Council (the Council) to grant planning permission for the use of land for the stationing of caravans for 6 no. family gypsy pitches with utility/day room buildings, and hard standing ancillary to that use.
2. On 18 July 2012 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 because it involves proposals for significant development in the Green Belt.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission be granted for a temporary period of 4 years. For the reasons given below, the Secretary of State partially agrees with the Inspector's conclusions and recommendations. 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. The Secretary of State is aware that, for reasons of precision, the description of development given in the header of the Inspector's report differs from the description given on the application form (IR4). He notes that the description used in the header was agreed by both parties (IR4) and he is satisfied that no interests have been prejudiced by this matter.
5. The Secretary of State has taken account of the fact that the appellant requested that a proposed layout plan submitted with the application be replaced by an amended version and that the amended plan be considered as part of the appeal (IR5). Like the Inspector, the Secretary of State is satisfied that no interests have been prejudiced by this change (IR111) and he has based his decision on the amended plan.
6. The Secretary of State notes that at the Inquiry the Council sought to challenge the validity of the planning application (IR6). Having considered the Inspector's comments regarding this at IR6 - IR14 and at IR112 -113, he agrees with the Inspector that Mr McDonagh has not suffered prejudice through the appellant's failure to complete the correct Ownership Certificate and serve notice on him. In common with the Inspector, the Secretary of State concludes that there is no good reason why the appeal should not be entertained and a decision thereon issued (IR113).

Policy considerations

7. 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.
8. The Secretary of State agrees with the Inspector that the development plan comprises the saved policies of the South Bedfordshire Local Plan Review (2004) (LP) (IR20). He notes that whilst the development plan does not contain any specific policies relating to gypsy and traveller sites, it does contain policies which can be used for assessing gypsy and traveller site applications (IR20). He also notes that the Council did not refer to any LP policies in its reasons for refusal, nor did it seek reliance on the policies in support of its case at Inquiry (IR20).
9. Like the Inspector (IR21), the Secretary of State has also taken into account the Luton and Southern Central Bedfordshire Core Strategy (November 2010) as amended (CS). Whilst he is aware that the CS has been withdrawn from examination, he has also taken into account that in August 2011 the Council Executive approved the CS for the purposes of development management (IR21). Whilst he recognises that the CS does not have formal Development Plan Document status, he considers it to be a material consideration that can be afforded a little weight. The Secretary of State notes that the CS does not contain any specific policies relating to gypsy and traveller sites, but that it does contain general policies which could be applied (IR21).

10. The Secretary of State has also had regard to the Central Bedfordshire Development Strategy, which is due to be adopted at the beginning of 2014 (IR22) and The Draft Gypsy and Traveller Local Plan (DGTLP) (February 2013), which was approved by full Council on 18 April 2013 (IR23). Neither document has yet reached the stage where it carries significant weight.
11. Other material considerations that the Secretary of State has taken into account include The National Planning Policy Framework (the Framework); Technical Guidance to the National Planning Policy Framework; and Planning Policy for Traveller Sites (PPTS).

Main issues

12. The Secretary of State agrees with the Inspector that the main issues in this case are those identified by him at IR114.

Gypsy and Traveller Status

13. For the reasons given at IR115-116, the Secretary of State agrees with the Inspector that the intended occupiers of the appeal site fall within the definition of “gypsies and travellers” as set out in paragraph 1 of Annex 1 to the PPTS.

Green Belt – inappropriateness, openness, and reasons for inclusion

14. Like the Inspector and main parties, the Secretary of State considers that the proposal would be inappropriate development in the Green Belt (114). For the reasons given at IR117 - 121, he agrees with the Inspector that the proposal would have a significant adverse impact on openness (IR120) and that moderate weight should be attributed to harm arising from encroachment (IR121). For the reasons given at IR122, he also agrees with the Inspector that limited weight should be afforded to the Council's argument concerning urban regeneration.

Effect of the proposal on the character and appearance of the area

15. The Secretary of State has carefully considered the Inspector's assessment of the effect of the proposal on the character and appearance of the area (IR123 - IR127). He agrees with the Inspector, for the reasons given at IR123-124, that the development would, inevitably, bring about a material adverse change in the character of the area. He agrees with the Inspector that the proposal would be well screened and that it would only be clearly visible from the site's access (IR125). In conclusion on this matter, the Secretary of State agrees with the Inspector's view that moderate weight should be afforded to the scheme's adverse impact on the character of the area and limited weight should be afforded to the development's negative impact on the appearance of the area (IR127).

Other harm identified by the Council – peaceful and integrated co-existence

16. The Secretary of State has carefully considered the Inspector's comments about the site's planning history (IR24 – 25) and the Council's contention that

the actions of the intended occupiers in entering the site on a Bank Holiday weekend and setting about developing it has caused serious damage to any prospect of peaceful and integrated co-existence (IR88). For the reasons given by the Inspector (IR128), the Secretary of State shares his view that the previous actions of the intended occupiers, in themselves, are not sufficient to demonstrate that there would not be peaceful and integrated co-existence and he agrees that the Council's contention should be afforded little weight in his decision. Nonetheless, the Secretary of State wishes to make clear that he considers that those actions do nothing to support the appellant's case.

Other considerations – need for gypsy/traveller sites (and their likely locations)

17. The Secretary of State has taken account of the Inspector's comments at IR129 – 134 including his view that the appellant's criticisms of the GTAA Update are well founded (IR130) and that, notwithstanding whether the figures used in the GTAA are correct, there is evidence that the identified need will not be met within the envisaged period (IR132). In addition, for the reasons given by the Inspector at IR133, the Secretary of State considers that the Council has accepted the principle that some future gypsy and traveller site provision is likely to be in the Green Belt and that the likelihood that some future provision will take place in the Green Belt carries weight in favour of the proposal. In conclusion on this matter, he agrees with the Inspector that the need for gypsy and traveller sites should be given considerable weight in this case (R134).

Other considerations – alternative sites

18. The Secretary of State agrees with the Inspector, for the reasons he gives at IR135, that the site at Greenacres should not be considered an available and lawful accommodation option and that significant weight should be afforded to the lack of alternative sites (IR135).

Other considerations – failure of policy

19. The Secretary of State agrees with the Inspector that the Council does not have an adopted policy based on an assessment of need to provide pitches and that the current backlog of need suggests that there has been an historic failure of policy (IR136). He sees no reason to disagree with the Inspector's view (IR136) that the failure of policy is set to continue and that the evidence indicates that the Council will be unable to meet a 5 year land supply of deliverable sites. He agrees with the Inspector that, for the reasons given at IR136, significant weight should be afforded to failure of policy.

Personal circumstances

20. The Secretary of State has carefully considered the Inspector's remarks (IR137 – 140) about the personal circumstances of the intended occupants, and the information set out at IR27 and IR58 – 63. He has given particular consideration to the best interests of the children, which he considers to be a primary consideration, and he has also had regard to the information submitted by the appellants on this matter (in particular documents 15 – 20). He agrees with the Inspector that a planning permission for the proposal would provide the

intended occupiers with a stable and lawful base (IR137), which would enable them to have regular access to medical care (IR138), and would also enable members of the Sweeney family and the appellant to reside together (IR137). The Secretary of State has also taken account of the fact that 8 of the children who it is intended will occupy the site are of school/nursery age (IR139) and he considers that a settled base would make access to education and continuity of education easier for those children. For the reasons given at IR137-140, he agrees with the Inspector that, overall, significant weight should be afforded to the proposed occupants' personal circumstances (IR140).

Other matters raised by third parties

21. Having considered the Inspector's comments about the additional concerns raised by third parties (IR141-143), the Secretary of the State agrees with the Inspector that they should be afforded limited weight in his decision (IR143).

Conditions

22. The Secretary of State has considered the conditions set out at Annex A of the IR and the Inspector's comments at IR153-155. Given his conclusion below, to grant temporary permission, the Secretary of State considers that condition 1 is not required and he has deleted it. He is satisfied that the remaining conditions proposed by the Inspector at Annex A are reasonable, necessary and comply with the provisions of national policy as set out in Circular 11/95.

Overall Balancing Exercise

23. In considering the matters weighing against the development, like the Inspector (IR144), the Secretary of State affords substantial weight to the harm arising by reason of inappropriateness. He further agrees with the Inspector (IR144) that the proposal would result in significant harm to the Green Belt in terms of its impact on openness and moderate harm because of encroachment. In addition, the Secretary of the State agrees that the proposal would result in moderate harm to the character of the area and limited harm to its appearance (IR144).
24. Turning to the factors weighing in support of the scheme, like the Inspector (IR146), the Secretary of State has attached considerable weight to the need for gypsy and traveller sites. As indicated above, he has also given significant weight both to the lack of alternative sites and to the failure of policy. In addition, the Secretary of State has concluded that the personal circumstances of the intended occupants, when taking the best interests of the children as a primary consideration, should also be afforded significant weight.
25. The Secretary of State has weighed these matters very carefully but, in common with the Inspector (IR147), he finds that the material considerations in favour of the proposal, when added together, would not clearly outweigh the harm that would be caused by the proposal. He agrees with the Inspector that very special circumstances do not exist to justify the proposal and that the proposal is therefore contrary to guidance in the NPPF and PPTS. In these circumstances he considers that permanent planning permission should not be granted.

26. The Secretary of State has gone on to consider whether temporary permission would be an appropriate response and has considered the Inspector's analysis at IR148-152 in this regard. The Secretary of State recognises that paragraph 25 of the PPTS applies a policy presumption to treat the lack of an up-to-date five year supply of deliverable sites as a significant material consideration when considering granting a temporary permission. Paragraph 28 goes on to state that this applies where the underlying application for temporary planning permission was made after 25 March 2013. Given the Inspector's advice (IR134) that there is a significant immediate need for sites, the Secretary of State considers that, in this particular case, this policy presumption should be afforded significant weight.
27. The Secretary of State shares the Inspector's view that, if a temporary permission was to be granted, it would cause harm to the Green Belt and to the character of the area, but it would be for a limited period of time (IR150). Like the Inspector, he considers unmet need to weigh heavily in favour of the proposal, but he does not consider it to be sufficient on its own to overcome the identified harm, even if only for a temporary period (IR150). However, he agrees with the Inspector, that when the need is combined with the lack of alternative sites and the personal circumstances of the intended occupiers, particularly those related to the varied needs of the children, and when giving significant weight to the policy presumption within the PPTS, it would be appropriate to grant a personal and temporary permission (IR150).
28. In considering the question of temporary permission, the Secretary of State has had regard to paragraph 110 of Circular 11/95 which states that temporary permission may be justified where it is expected that planning circumstances will change in a particular way at the end of the temporary period. He has given careful consideration to the views of the Council and the appellant and to the Inspector's analysis of the appropriate time period for a temporary consent (IR151). The Secretary of State has also had regard to IR23 (which states that the DGTLP is to be the subject of a 6 week statutory consultation period prior to intended submission to the Secretary of State in October 2013) and to appendix 12 of the appellant's proof of evidence (which indicates that the DGTLP is expected to be adopted by the Council in July 2014). Taking all these matters into account, including the appellant's criticisms of the DGTLP, its likely progress to adoption and the provision of pitches thereafter, the Secretary of State is satisfied that it is reasonable to expect planning circumstances to have changed for the intended site occupants by 31 January 2016.
29. The Secretary of State has considered the Inspector's remarks at IR152 and agrees that Article 8 of the European Convention on Human Rights and the United Nations Convention on the Rights of the Child are engaged and that, in planning decisions such as the one before him, the children's best interests are of primary importance. The Secretary of State has taken account of the Inspector's view (IR152) that a grant of temporary permission for 4 years would be proportionate taking into account matters of public and private interest. However, as set out above, the Secretary of State considers that planning circumstances are likely to change more quickly and, in light of this, he

considers that a temporary consent until 31 Jan 2016 provides a proportionate response to the circumstances of this case.

Formal Decision

30. Accordingly, for the reasons given above, the Secretary of State partially agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the use of land for the stationing of caravans for 6 no. family gypsy pitches with utility/day room buildings, and hard standing ancillary to that use in accordance with application number CB/11/03821/FULL, dated 14 October 2011 subject to the conditions listed in Annex A to this letter.
31. 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.
32. 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.

Right to challenge the decision

33. 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.
34. A copy of this letter has been sent to Central Bedfordshire Council and to other interested parties.

Yours faithfully

Christine Symes

Authorised by Secretary of State to sign in that behalf

Conditions

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites 2012.
- 2) The residential occupation of the land hereby permitted shall be carried on by Michael and Frances Kiely, Thomas Sweeney, Nora Sweeney, Patrick and Priscilla Sweeney, James and Priscilla Sweeney, Martin and Maria Sweeney, Noreen Sweeney and Ben Crowley, and their resident dependants, and shall be for a limited period being up to 31 January 2016 or the period during which the land is occupied by them, whichever is the shorter.
- 3) When the land ceases to be occupied by Michael and Frances Kiely, Thomas Sweeney, Nora Sweeney, Patrick and Priscilla Sweeney, James and Priscilla Sweeney, Martin and Maria Sweeney, Noreen Sweeney and Ben Crowley and their resident dependants or after 31 January 2016, whichever shall first occur, the use hereby permitted shall cease and all mobile homes, static and touring caravans, portable structures, materials and equipment brought on to the land, shall be removed from the land within one month of the cessation date.
- 4) No development shall take place until details of a scheme to restore the land to its condition before the development takes place (including the removal of buildings) has been submitted to and approved in writing by the local planning authority. The details shall include a timescale for the carrying out of the scheme after cessation of the use hereby permitted pursuant to condition 3 above. The restoration works shall be carried out in accordance with the approved details including the approved timescale.
- 5) There shall be no more than the six pitches hereby approved on the site and no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan or mobile home) shall be stationed on each one of the six pitches at any time.
- 6) No commercial activities shall take place on the land, including the storage of materials.
- 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.
- 8) No development shall commence until a scheme for the landscaping of the site (to include: details of all tree, hedge and shrub planting; details of species, plant sizes and proposed numbers and densities; and a programme for the carrying out of the works) has been submitted to and approved in writing by the local planning authority. The approved landscaping scheme shall be carried out on accordance with the approved programme of works. Any trees or shrubs planted in accordance with this condition which are removed, uprooted, destroyed, die, or become seriously damaged or defective during the lifetime of this permission shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.
- 9) No development shall commence until a scheme for the foul and surface water drainage of the site (including a programme for the future management and maintenance of the scheme) has been submitted to and approved in writing by

the local planning authority. The site shall not be occupied for residential purposes until drainage works have been completed in accordance with the approved scheme. Thereafter, the approved drainage scheme shall be managed and maintained in accordance with the approved programme for the lifetime of this permission.

- 10) No development shall commence until a scheme for storage and collection of waste from the site has been submitted to and approved in writing by the local planning authority. The site shall not be occupied for residential purposes until the approved scheme has been implemented. Thereafter, the approved scheme shall be retained for the lifetime of this permission.
- 11) No development shall commence until a scheme for the surfacing of the vehicular access serving the site (for a distance of 15.0m into the site, measured from the near side of the carriageway) and surface water drainage from the vehicular access has been submitted to and approved in writing by the local planning authority. The site shall not be occupied for residential purposes until works have been completed in accordance with the approved scheme.
- 12) No external lighting shall take place on the site otherwise than in accordance with a scheme the details of which shall have previously been submitted to and approved in writing by the local planning authority. Following its implementation, any approved scheme shall be retained for the lifetime of this permission.
- 13) The development hereby permitted shall not be occupied for residential purposes until visibility splays have been provided at the junction of the access with the public highway. The minimum dimensions to provide the required splay lines shall be 2.4m measured along the centre line of the proposed access from its junction with the channel of the public highway and 215m measured from the centre line of the proposed access along the line of the channel of the public highway. The required vision splays shall, at all times thereafter, on land under the control of the appellant, be retained and kept free of any obstruction exceeding 0.9m in height above the nearside channel of the highway.
- 14) Any gates to be provided at the access to the site shall open away from the highway and be set back a distance of at least 15.0m from the nearside edge of the carriageway of the adjoining highway.
- 15) The access to the site shall have a minimum width of 5.5m, kerb radii of 6m and shall be located in the position shown on drawing number 11_474_001_A.
- 16) Except as insofar as it would be inconsistent with these conditions, the development hereby permitted shall be carried out in accordance with the following approved plans: drawings numbered 1056/2 (date stamped 9 December 2011 by the Council) and 11_474_001_A.



Report to the Secretary of State for Communities and Local Government

by James Ellis LLB (Hons) Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 18 June 2013

TOWN AND COUNTRY PLANNING ACT 1990

CENTRAL BEDFORDSHIRE COUNCIL

APPEAL BY MR M KIELY

Inquiry held on 18 December 2012, 19-21 March 2013, and 3 May 2013

Land at Mile Tree Road, Heath and Reach, Leighton Buzzard

File Ref: APP/P0240/A/12/2179237

File Ref: APP/P0240/A/12/2179237

Land at Mile Tree Road, Heath and Reach, Leighton Buzzard

- 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 M Kiely against the decision of Central Bedfordshire Council.
- The application Ref CB/11/03821/FULL, dated 14 October 2011, was refused by notice dated 6 January 2012.
- The development proposed is the use of land for the stationing of caravans for 6 no. family gypsy pitches with utility/day room buildings, and hard standing ancillary to that use.

Summary of Recommendation: The appeal be allowed, and planning permission granted for a 4 year period subject to conditions

Procedural Matters

1. The appeal was recovered for decision by the Secretary of State for Communities and Local Government ("the Secretary of State") by letter dated 18 July 2012 because the appeal involves a proposal for significant development in the Green Belt. The Inquiry was held on 18 December 2012, 19-21 March 2013, and 3 May 2013. The site visit took place on 18 December 2012.

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

'1 The site lies within the South Bedfordshire Green Belt and the proposal would therefore conflict with national guidance in Planning Policy Guidance Note 2 "Green Belts" whereby within the Green Belt permission will not be granted except in very special circumstances for development for purposes other than agriculture and forestry, mineral working, small scale facilities for outdoor sport and recreation or other uses appropriate to a rural area which preserve the openness of the Green Belt. In the opinion of the local planning authority, and having particular regard to the lack of information relating to the proposed occupiers of the site, no very special circumstances have been established in this case.

2 The development, including in particular any modifications to the existing access and to any proposed visibility splays required in order to provide a satisfactory access to the site, would be harmful to the character and appearance of the Green Belt and therefore contrary to the provisions of Planning Policy Guidance Note 2 "Green Belts" '.

3. The appeal site falls within a Mineral Safeguarding Area for the purposes of a joint Minerals and Waste Core Strategy Plan¹ (published by the Council and other Bedfordshire authorities) which has been submitted to the Secretary of State for examination. At the Inquiry the Council confirmed that it would not be objecting to the proposal on the basis that the appeal site is within the Mineral Safeguarding Area. This was because the policies of the plan were not at a sufficiently advanced stage at the time the planning application was made.
4. The description shown at the bullet header above differs from that given on the application form. However, for precision, the description shown above was agreed by both parties at the Inquiry. The description given on the application

¹ Appeal doc. 4 - appendices 1 to 5 refer.

form was: *'Proposed six mobile homes: six touring caravans: six car parking spaces and six facility units / 2wcs 1 bathroom and one kitchen work area each. Access drive-ins with UI exempted materials crushed concrete and other building materials and road planings'.*

5. At the Inquiry, the appellant requested that plan 1056/1A (showing a proposed layout and which had been submitted with the application) be replaced by plan 11_474_001_A² (an amended version of plan 11_474_001 which had been submitted with the appeal). Plan 11_474_001_A shows a limited change to the layout as shown on plan 1056/1A, proposed landscaping, and hedgerow that would be removed/replaced as a result of creating appropriate visibility splays at the access to the appeal site. The Council had no objection to the replacement plan. I shall refer to the appellant's request in my conclusions.
6. At the Inquiry, the Council sought to challenge the validity of the planning application on the basis that Ownership Certificate A attached to it (stating that the appellant was the sole freehold owner of the appeal site) was incorrect in that land registration documents revealed that the appellant was a freehold co-owner with John McDonagh. Reference was made to section 327A of the Town and Country Planning Act 1990³ ("the Act") and the Town and Country Planning (Development Management Procedure) (England) Order 2010 ("the Order") which set out strict requirements that the correct certificate in respect of land ownership must accompany a planning application. Mention was also made of section 65 of the Act which refers to notice of applications for planning permission. The Council contends that Ownership Certificate B should have been completed, citing Mr McDonagh as an owner and that due notice of the application should have been given him.
7. The purpose of giving notice to other landowners prior to submission of an application is to ensure that all parties with an interest in the land are aware of what is proposed and have an adequate period in which to make their observations known, prior to the local planning authority's decision. The Council argues that Mr McDonagh could be prejudiced by the appellant's failure to serve notice upon him and that, having regard to the statutory requirements, the appeal cannot be entertained in any event because of the failure to provide an accurate certificate. In support of its argument, the Council seeks reliance upon the case of ***R. (on the application of Pridmore) v Salisbury DC [2004] EWCH 2511 (Admin)***⁴ (where the Court quashed a decision of the local planning authority to grant planning permission), and a previous appeal decision⁵.

² Appeal plan A

³ Section 327A of the Act refers to 'Applications: compliance with requirements', and states that:

'(1) this section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to - :

(a) the form or manner in which the application must be made;
 (b) the form or content of any document or other matter which accompanies the application.
 (2) The local planning authority must not entertain such an application if it fails to comply with the requirement'.

⁴ Appeal doc. 34.

⁵ Appeal doc. 8.

8. On the other hand, the appellant contends that the Council's approach is misconceived and consideration should be given to the more recent and relevant case of **R. (on the application of O'Brien) v West Lancashire BC [2012] EWCH 2376 (Admin)**⁶. The appellant's arguments are summarised in paragraphs 9 to 13 below.
9. Thomas Sweeney (an intended occupier of the site who was present at the Inquiry) purchased the site some time between 2001 and 2003. He then sold it to the appellant and Mr McDonagh after becoming involved with a gypsy site near Basildon. Mr Sweeney's family ultimately failed to get planning permission for the Basildon site and had to leave it. Mr Sweeney then bought back Mr McDonagh's interest in the appeal site. Mr McDonagh has sworn affidavits⁷ in which he confirms that he bought the land with the appellant in December 2007, but subsequently sold his share to Mr Sweeney. He is still the title holder because the sale has not been registered. He declares that he is fully aware of the application and the appeal. The appellant contends that it is clearly implicit that Mr McDonagh has no concerns about either.
10. The facts in **O'Brien** are remarkably similar. Mr O'Brien applied for judicial review of a decision of the local planning authority to grant planning permission to a Mr Hill, who was executor of his late sister-in-law, to build 3 new homes in the garden of her property. Part of the garden had previously been transferred to Mr Hill's sister-in-law from a third party, but had not been registered. Mr O'Brien contended that because of non-registration, the third party still owned the land in question and that Mr Hill had failed to give notice of the application to all owners of the property before the application was made. Mr O'Brien argued that the grant of planning permission could not stand in such circumstances.
11. The application for judicial review was refused. The Court held that the decision in **Pridmore** did not purport to lay down any general principle and nor did it depart from the approach in **Main v Swansea City Council (1985) 49 P. & C.R. 26**⁸ concerning the consequences of non-compliance with the notification and certification requirements of section 65 of the Act or the Order. It was clear from **Main** that the Court had discretion as to whether to quash a grant of permission in the event of non-compliance. Despite the more onerous wording of section 327A of the Act, the Court was satisfied that it retained its discretion and the approach set out in **Main** was correct.
12. The Court was satisfied that Mr Hill's failure to serve the third party with notice of the application was a mistake. The reality was that the third party had disposed of its interest in part of the garden to Mr Hill's sister-in-law. Although that was ineffective to transfer legal title due to non-registration, it was no doubt effective as a matter of equity. It was significant that the third party had confirmed that it did not consider itself to have been prejudiced as a result of not being notified of the application. It had no objections to the planning application. The Court found that it was not a case where it was appropriate to exercise its discretion to quash the permission. The case was therefore distinguished from **Pridmore**.

⁶ Appeal doc. 35.

⁷ Appeal docs. 9 and 10.

⁸ Appeal doc. 36.

13. In this case, Mr McDonagh was fully aware of both the application and the appeal. He has not expressed at any time that he is prejudiced by the inaccurate certificate. Although there has been no effective transfer of legal title due to non-registration, the sale to Mr Sweeney is no doubt effective as a matter of equity. There is no good reason not to entertain the appeal and the decision maker may reasonably, in the circumstances, exercise his discretion to decide the appeal.
14. I shall again refer to the validity of the application in this case in my conclusions.
15. Prior to the Inquiry, the Council submitted a proof of evidence from Victoria Davies⁹, a Principal Planning Officer, together with its appendices. However, before the Inquiry sat on the 19 March 2013, following an adjournment from 18 December 2012, an updated version of the proof¹⁰ was submitted, principally to deal with the Council's latest position with regard to the need for gypsy/traveller sites and relevant policy. Whilst the text of the updated version of Mrs Davies' proof supersedes that of her original proof, the appendices attached to the original proof have been relevant to my deliberations.

The Site and Surroundings

16. The appeal site is located in the South Bedfordshire Green Belt and is on the south eastern side of Mile Tree Road to the north east of Leighton Buzzard within the parish of Heath and Reach. The eastern edge of Leighton Buzzard (as defined by Vandyke Upper School) is about 1100m from the site, with the town centre approximately 2.7km away. The main part of the village of Heath and Reach is about 2km to the north west of the site, although there are a few residential properties on the eastern side of Mile Tree Road, some distance to the north of the appeal site. The appearance of land to the north of the site suggests that it may have been used for mineral working in the past.
17. The site itself is broadly triangular in shape and covers about 1.25ha. Boundaries on all three sides of it are demarcated by mature mixed deciduous hedgerows of about 3m in height. The site is largely level and is generally grassed. It contains wooden post and rail fencing of about 1m in height which marks out the access and the proposed pitches of the scheme that was originally submitted. The fencing is permitted development. The site is accessed directly from Mile Tree Road by a field gate.
18. Mile Tree Road lies immediately beyond the appeal site's north western boundary. On the opposite side of the road is part of the track of the Leighton Buzzard Narrow Gauge Railway line. Beyond the railway line is an industrial site which is currently used for the storage and distribution of roof tiles. A public bridleway (BW9) runs alongside the north eastern boundary of the site through an area planted with trees. The land surrounding the north eastern and south eastern boundaries of the site is generally agricultural with some areas of tree planting. The planting demarcates the border of a strategic minerals site included in the joint Minerals and Waste Core Strategy Plan.

⁹ Appeal doc. 4.

¹⁰ Appeal doc. 33.

Planning Policy

National Guidance

19. Current Government guidance that is relevant to this appeal includes the National Planning Policy Framework (“the NPPF”) and the Planning Policy for Traveller Sites (“the PPTS”). Planning Policy Guidance Note 2: Green Belts, as referred to in the Council’s reasons for refusal, was replaced by the NPPF when it came into force in March 2012.

Development Plan

20. Following the abolition of the Regional Spatial Strategy for the East of England (“the RSS”), the development plan for the area is the South Bedfordshire Local Plan Review, adopted in 2004. This contains policies which can be used for assessing gypsy and traveller site applications but does not contain any specific policies relating to gypsy and traveller sites. The Council did not refer to Local Plan policies in its reasons for refusal, nor did it seek reliance on the policies in support of its case at Inquiry.

Luton and Southern Central Bedfordshire Core Strategy - (November 2010) as amended

21. The Core Strategy was approved for development management purposes by the Council’s Executive in 2011. It does not contain any specific policies relating to gypsy and traveller sites but contains general policies which could be applied. The Council did not refer to Core Strategy policies in its reasons for refusal.

Central Bedfordshire Development Strategy: pre-submission version January 2013¹¹.

22. Consultation on the Central Bedfordshire Development Strategy took place in the early part of 2013. It is intended that the document be submitted to the Secretary of State for examination later in the year. The document contains Policy 33 which is entitled ‘Gypsy and Traveller and Travelling Showpeople Provision’. The policy sets out that provision will be made for accommodation in accordance with identified need and set out in a Gypsy and Traveller Local Plan.

Draft Gypsy and Traveller Local Plan¹²

23. Some progress has been made on a Gypsy and Traveller Local Plan. At a meeting of full Council held on 18 April 2013, the Council resolved to approve a draft Gypsy and Traveller Local Plan pre-submission version (“the DGTLP”) which seeks to provide 157 pitches on 7 sites for gypsies and travellers up to 2031. The DGTLP is to be the subject of a 6 week statutory consultation period prior to intended submission to the Secretary of State in October 2013.

Planning History

24. In October 2011, the Council received notification that a section of hedgerow had been removed from the appeal site and that hardcore had been tipped on the site and partly levelled. Following contact with the appellant, the Council then

¹¹ Appeal doc. 33 – appendix A.

¹² Appeal doc. 24.

served a Temporary Stop Notice requiring the owner/occupier of the site to cease construction of hard standings. A High Court Injunction was granted to the Council on 24 October 2011 precluding the bringing of caravan/mobile homes onto the site or the undertaking of any development.

25. The Council issued an Enforcement Notice on 1 November 2011 requiring the taking up and the removal of the hardcore from both hard standings, and the reinstatement of the site by the laying of top soil and re-seeding with grass. An appeal was made against the Enforcement Notice. This was dismissed in appeal decision Ref: APP/PO240/C/11/2164961 dated 4 April 2012¹³ ("the previous appeal decision"). Following expiry of the periods for compliance with the requirements of the Enforcement Notice, the Council took direct action to take up and remove the hard core forming the hard standings and the vehicular access way from the site. The site had not been re-instated at the time of my site visit.

The Proposal

26. The proposal is to provide 6 pitches for gypsy/traveller families. It is intended that each pitch would contain one mobile home, one touring caravan, and a utility/day room. Each pitch would also have an area of hard standing which would join a communal area of hard standing over which the occupiers of the site would have vehicular access to their pitches from the access to the site. Some existing hedgerow fronting Mile Tree Road would be removed or trimmed in order to provide the required visibility splay at the access. A landscaping scheme would provide for replacement and additional native hedge and tree planting.
27. The intended occupiers of the proposed pitches are:
- 1) The appellant - Michael Kiely, his wife Frances, and two of their children – Michael aged 15 and Noel aged 9.
 - 2) Thomas Sweeney and his mother, Nora. Thomas, his brothers, and his sister are family friends of the appellant and travel with him.
 - 3) Patrick Sweeney (a brother of Thomas), his wife Priscilla and their four children – Lisa Marie aged 6, Patrick aged 5, Charlotte aged 2, and Bridget who is less than 1 year old.
 - 4) James Sweeney (a brother of Thomas), his wife Priscilla, and their two daughters – Crystal who is aged 3 and Polly Anna aged 1.
 - 5) Martin Sweeney (a brother of Thomas), his wife Maria, and their four children – Jimmy aged 13, Caroline aged 11, Martin aged 6 and Maria aged 2. At the time of the Inquiry, Mrs Sweeney was expecting another child.
 - 6) Noreen Sweeney (Thomas' sister) and her partner Ben Crowley. At the close of the Inquiry, Noreen had recently had her first child.

¹³ Appeal doc. 4 - appendix 8.

Agreed Facts

28. The parties have not agreed a Statement of Common Ground, although a draft document was submitted¹⁴. However, the parties agree that the proposal is inappropriate development in the Green Belt. It is clear from the evidence that the parties also agree that: local, regional and national need; and personal circumstances are other material considerations that can be considered in determining the appeal.

The Case for the Appellant

Gypsy/traveller status

29. The gypsy status of the proposed occupiers is not relevant unless the decision maker finds it necessary to consider personal circumstances when determining the appeal. The application is for the development of land to allow residential occupation by those that fall within the definition of 'gypsies and travellers'¹⁵. However, should it be necessary to consider personal circumstances, the appellant and four members of the Sweeney family have given oral evidence. Oral evidence from Noreen Sweeney could not be given as she has recently had a baby. She has, however, provided a signed witness statement¹⁶.
30. The appellant is an Irish Traveller and has known and travelled with the Sweeney family for many years. He has travelled all his life and has never had a pitch with planning permission. Mr Kiely's father lives in a house in Manchester following a bad accident which happened to Mr Kiely's brother. Sometimes the appellant pulls up on the driveway of his father's house and stops there, say for 2 or 3 weeks at a time. When he and his family are not at his father's house, they just travel around and stop on the side of the road before being moved on. Recently, they have been to Poole, and around Bournemouth in Dorset. Mr Kiely could not live in a house. It is not an option. He travels around to find work and earns money doing trades like landscaping, building and handyman work. The appellant and his family travel to fairs such as Appleby and Epsom, and they go as a family to see other family members.
31. Thomas, James, Martin, Patrick and Noreen Sweeney are also Irish Travellers. They used to live on a site in London with their mother Nora. However, that site was closed down in 2001, leaving the family homeless. The family have not had a site with permission since then, although they bought a site near Basildon which failed to get permission. The family had to move on after Basildon Council took enforcement action. During the summer of 2012, the family travelled as a group around Brighton, Hove, Worthing, Bournemouth, Coventry and Brackley, often pulling onto Council owned fields and parks. They would manage to stay for a couple of days before being moved on.

¹⁴ Appeal doc. 6.

¹⁵ Paragraph 1 of Annex 1 to the PPTS states that for the purposes of that document "gypsies and travellers" means: '*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such*'.

¹⁶ Appeal doc. 20.

32. When oral evidence was given by members of the family in March 2013, Thomas, Martin, Patrick, Noreen and their families were staying at a site called Springfield Farm in Bedfordshire where they stay off and on when the McCarthy family (who own the site) are away travelling. The Sweeney family have to move off the site when the McCarthy family return. There is not enough room on the site for both families. James and his family were pulled up at his mother-in law's house in Hounslow where they would be staying for a few days. Members of the Sweeney family travel to get work and they visit fairs like Stow-on-the-Wold, Kent, and Barnet in London. Thomas works as a landscape gardener, Patrick as a builder/labourer, James as a builder, and Martin as a ground worker. Ben Crowley also travels to find work and works as a gardener/odd job man.
33. All the witnesses describe travelling for work. They were credible and consistent. There is no good reason not to accept the evidence given and no good reason to find that the witnesses do not fall within the "gypsies and travellers" definition. If her brothers are found to be within the definition, a reasonable inference can be drawn from her written evidence, and from the credible and consistent evidence of her brothers, that Noreen also falls within the definition. In summary, all of the proposed site residents fall within the definition of "gypsies and travellers" in the PPTS.

Inappropriate development in the Green Belt

34. The appellant accepts that the proposal would be inappropriate development in the Green Belt and that substantial harm would result from this.

Effect of the proposal on the openness of the Green Belt

35. The most important attribute of Green Belts is their openness. Impact on openness is directly related to the quantum of development. The application is for a 6 pitch site. Therefore, some¹⁷ weight should be attributed to the proposal's impact on the openness of the Green Belt. The appeal site is somewhat smaller than the 3 sites identified in the DGTLP that are within the Green Belt¹⁸. Its impact on openness will therefore be less.

Effect of the proposal on the purposes of including land in the Green Belt

36. The appellant accepts that some additional harm would arise as a result of conflict with one of the purposes of including land in the Green Belt, namely encroachment. The harm from encroachment would be to a lesser degree than that for the Green Belt sites identified in the DGTLP because the appeal site is smaller than them.

Effect of the proposal on the character and appearance of the area

37. Harm to character and appearance should be assessed in the context of the entire surroundings of the proposal. The Council has only assessed impact in the context of land to the east of Mile Tree Road claiming that the road forms a natural boundary. This is contrived as the land to the west of the road is

¹⁷ The appellant used a scale for attributing weight, in decreasing order, as follows: substantial, considerable, significant, some, modest, limited, and little or no.

¹⁸ The 3 sites are Land west of Barton Le Clay, Land east of Watling Street and south of Dunstable, and Land east of the M1 –Tingrith.

occupied by extensive industrial development which is the dominant feature of the surrounding countryside. The intrinsic countryside has been lost due to the presence of the industrial development, the adjacent narrow gauge railway, and nearby residential development. None of these features are referred to in the Council's assessment of the character and appearance of the area. There would therefore only be a limited impact on character.

38. The Council has not provided evidence relating to the visual impact of the proposal. There are only limited long distance views of the site, and the only close public views are from Mile Tree Road, immediately adjacent to the site and from the footpath running alongside the hedgerow to the north of the site. The views from Mile Tree Road would be significantly limited by the existing hedgerow and proposed planting. Views from the footpath would also be limited as the extensive hedgerow and undergrowth provides almost a complete screen. Further landscaping would increase the depth of screening and the access onto the site would be redesigned to limit views into the site. The proposal would therefore have no detrimental impact on the appearance of the locale.
39. The Council has a specific concern over the harm that would be caused by the significant removal of hedgerow to facilitate new visibility splays. However, a proper analysis of the plans reveals limited removal and, where there is removal, replacement and thickening of hedgerow is proposed. It is claimed that the hedgerow to be removed is 'important' hedgerow as defined under the Hedgerow Regulations 1997¹⁹. The Regulations do not preclude the removal of such hedgerow. Prior consent can be obtained from the local planning authority.
40. To be covered by the Regulations the hedgerow must have existed for 30 years or more and satisfy at least one criteria listed in Part II of Schedule 1. The Council rely on criterion 5(a) of Part II - that the hedgerow is recorded in a document held at the relevant date in a Record Office as an integral part of a field system pre-dating the Inclosure Acts. However, in cross examination, the Council's planning witness accepted that the plan upon which it relied²⁰ was not conclusive in the following respects: it could not be concluded that there was a hedge on the identified boundary; if there was a hedgerow it did not appear to be an integral part of a field system (field systems being clearly visible in the area around Heath and Reach, but not around the appeal site); and on the evidence available it could not be concluded that the hedgerow to be removed as part of the access arrangements, albeit that it would be replaced and enhanced, fell to be considered as 'important' hedgerow under the Regulations.
41. The removal of a limited length of hedgerow does not fall under the Hedgerow Regulations, does not require consent, and does not cause harm to the locale. In any event the removed hedgerow would be replaced and enhanced.
42. The previous appeal decision is of limited relevance. It was only concerned with hard standings and there were no other considerations to weigh against harm. The proposal is for other development and live evidence concerning it has been tested by cross examination.

¹⁹ Appeal doc 4 - appendix 17.

²⁰ Appeal doc 4 - appendix 18.

Need for gypsy/traveller sites

43. It is recognised that there is a national and regional need for the provision of sites. At local level, the initial approach of the Council was that it had met need in its area. However, following publication of a Gypsy, Traveller and Showperson Accommodation Assessment update²¹ ("the GTAA Update") in February 2013, a revised position was put forward. This is that need and an identified backlog will be met by way of the 7 sites put forward in the DGTLP.
44. There are a number of flawed assumptions in the Council's approach to the DGTLP²². The Council approaches need on the basis that the GTAA Update is robust and accurate. Until the last day of the Inquiry, it asserted a current backlog of immediate need of 38 pitches, a further 33 pitches to be provided to 2018 (with 6 coming back into use), a further 31 to 2023, 36 to 2028 and 25 to 2031. It was working towards providing 65 pitches by 2018 which is to ignore the immediate backlog that should have already been provided. However, on the last day of the Inquiry the Council confirmed that it had granted ad hoc 'windfall' planning permissions for 12 gypsy/traveller pitches in March/April 2013²³ ("the recent permissions").
45. The Council's figures are based on the assertion that the GTAA Update is correct. However, the GTAA Update is flawed and significantly underestimates need for a variety of reasons²⁴. An alternative analysis of need based on the GTAA Update²⁵ was prepared on behalf of the appellant during the course of the Inquiry, but prior to information about the recent permissions being received. This demonstrates a clear underestimation of need to 2031 of 97 pitches and assessed immediate need at 52 pitches. Whichever way one considers the current level of immediate need and the need going forward, there is clearly a significant level of need for further pitch provision, which only increases on proper analysis. The Council accepts that there is an immediate need and a need going forward. There is a difference between the parties over the robustness of the Council's figures.
46. Even if the Council's figures are assumed to be correct, it is likely that the identified need will not be met within the envisaged period. It has been clearly stated²⁶ that the site allocations in the DGTLP would provide 44 pitches to 2018 and a further 22 to 2023, giving a total of 66 pitches by 2023, which is only one additional pitch over the previously declared need to 2018 of 65 pitches.
47. It is quite likely that the DGTLP will be found to be unsound. No evidence has been provided to explain the decision making process that has resulted in the choice of 7 sites going forward of the 30 or so assessed. It is clear that the decision making process was not based on those sites that ranked the most highly and no proper justification has been put forward for not including the appeal site and the significant number of sites where there were extant applications, despite an initial call for sites being largely unsuccessful.

²¹ Appeal doc. 33 - appendix H.

²² Appeal doc. 32 – para. 30 refers.

²³ Appeal doc. 25 refers.

²⁴ Appeal doc. 32 – para. 33 refers.

²⁵ Appeal doc. 22.

²⁶ Appeal doc. 13 – Minutes of the meeting – pages 13 and 14

48. In summary, there is a clear and accepted significant immediate need for further permanent pitches, and a significant need going forward. The appellant submits that the assessment of that need significantly underestimates the actual position. Substantial weight should be given to the immediate unmet need locally, regionally and nationally.
49. The Council has referred to the recent permissions which will provide 12 pitches. However paragraph 48 of the NPPF states that local planning authorities may make an allowance for such sites in the 5 year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. There is no such compelling evidence before the Inquiry.

Alternative sites

50. There are currently no alternative sites in the Council's area that are available to the appellant or other intended occupiers. The Council places a flawed reliance on an undefined number of pitches at Greenacres²⁷, a privately owned site. No proper inquiries have been made to determine whether the pitches are actually vacant and, if so, what the owner intends for the pitches, which are subject to a personal condition. There are not enough pitches to accommodate all of the proposed site occupiers and there is no evidence as to why the pitches are vacant. There is also no evidence from the owner as to his willingness to accommodate the proposed site residents or, indeed, have his personal permission changed. The Greenacres site does not present a practical or lawful alternative accommodation option.
51. Alternative sites must be available, affordable, acceptable and suitable. To be available, the pitch must have planning permission, be vacant and be actually available to a proposed occupier as opposed to 'unoccupied' on a visual inspection by an officer. The pitches at Greenacres are not available. The Council accepts that there are no other available alternative pitches within its area or known to it elsewhere.
52. The proposed occupiers are all presently occupying land unlawfully. Their present accommodation does not present a lawful and acceptable solution in either the short or long term. A refusal of permission would leave them without a lawful home, and with little prospect of being able to secure one for some years. This must carry significant weight in favour of allowing the appeal.

Failure of policy

53. Historically, the Council has failed to meet the requirements of *Circular 01/2006*, now replaced by PPTS. It does not have an adopted policy based on a robust and accurate assessment of need. Indeed, the GTAA Update states that there was a backlog of 38 pitches, confirming the historical failure of policy. The GTAA Update is an underestimation of need going forward beyond 2020 and there can be no confidence that the site allocations process relied on by the Council will meet real need.

²⁷ Oral evidence of Victoria Davies.

54. Further, the Council will not be complying with the PPTS requirement to demonstrate a 5 year land supply of deliverable sites²⁸. There is no certainty that the sites identified in the DGTLP will be delivered. A number of them have constraints that may preclude delivery. The Secretary of State has as recently as April 2013²⁹ given significant weight in favour of granting permission, where such a failing exists. The lack of a 5 year supply is prayed in aid as a material consideration both in terms of a permanent and a temporary permission.
55. The Secretary of State has accepted that failure of policy is a legitimate material consideration that can add weight in favour of allowing an appeal³⁰. Further the Secretary of State has agreed with an Inspector (in an appeal relating to a site in the Council's area) that 'the lack of an existing or emerging policy to ensure the allocation of sites, and the Council's reliance on windfall applications, add further significant weight in favour of a proposal'³¹. The situation has not materially changed. There is no existing policy that ensures the allocation of sites and the emerging policy is based on a flawed assessment of need. The DGTLP will not provide the number of pitches sought by the Council within the required period.
56. There has been a clearly established on-going failure of policy in the Council's area and a very likely future failure of policy. This adds significant weight in favour of allowing the appeal.

Likely location of gypsy/traveller Sites

57. There is a significant probability that new gypsy/traveller sites in the Council's area will be in the Green Belt. Indeed, 3 of the sites identified in the DGTLP are in the Green Belt, and 2 of these will remain in the Green Belt. The other, Land west Barton Le Clay, will become an island in the Green Belt. All the sites the subjects of the recent permissions are in the Green Belt. This is a significant material consideration in considering any windfall site in the Green Belt³².

Personal circumstances

58. The personal circumstances of the proposed occupiers are a material consideration that should be given substantial weight if the decision maker finds that any harm identified is not clearly outweighed by other material considerations. In such circumstances, a personal condition would be appropriate. The relevant personal circumstances are a need for a stable home, health needs and educational needs. None of these have to be exceptional in their own right, or when considered cumulatively.
59. The proposed occupiers clearly have a need for a lawful, stable, permanent base. None of them has a lawful pitch at the present time. Members of the Sweeney family have been doubling up on a temporary basis on Springfield Farm when the owners of that site have been away travelling. The current accommodation position of all the proposed occupiers is deeply unsatisfactory. It has long been

²⁸ The PPTS – para. 9.

²⁹ Appeal doc 27.

³⁰ Appeal doc. 5 – appendices B5 and B6, and appeal doc 27.

³¹ Appeal doc. 5 - appendix B13.

³² Appeal doc. 5 – appendix B7 refers.

accepted that the social and health problems inherent in the gypsy community stem from a lack of accommodation.

60. There would be 13 children living on the appeal site, 8 of whom are of school/nursery age and one of the proposed occupiers is currently pregnant. The children of Thomas Sweeney live in Aylesbury with their mother and the appeal site would provide him with a stable base to facilitate access visits. Some of the children have had limited education but none have had any prolonged or consistent access to schools, one of the principal aims of PPTS. Access to education facilities is extremely difficult from unlawful and uncertain accommodation. The appeal site, if only on a temporary basis, would provide essential continuity and stability.
61. There is no requirement to show that educational needs are unusual or exceptional. In any event, the needs of even a satisfactory achieving gypsy/traveller child can be considered unusual in the circumstances of a current lack of a lawful stable base and in the context of a significant lack of alternative accommodation. The Secretary of State has previously given weight to the educational needs of children who are not of school age and to the needs of unborn children³³. Educational needs must be met and it is not reasonable to argue that those needs do not have to be met from the appeal site when no other acceptable, available and suitable site can be identified.
62. In terms of health care, one proposed occupier suffers from depression and needs medication. Another suffered health problems during her pregnancy. Other proposed occupiers do not presently have health issues, but all would like regular access to a doctor's surgery. Access to health services has to be easier and more secure from a stable base. It would be wrong to limit the weight to be given to the medical needs of those individuals who do not have needs equating to serious illness or to adopt the approach of the Council of exceptional requirements. It should not be the case that weight is only given to the health needs of gypsy/traveller families when they become ill.
63. Another circumstance in favour of the proposal is that a number of proposed occupiers come from an extended family (the Sweeney family) which travels together with Mr Kiely.

Whether the harm by reason of inappropriateness to the Green Belt and any other harm, if found, would be clearly outweighed by other considerations in favour of the proposal so as to amount to very special circumstances

64. It is the Appellant's case that any harm that has been identified, including substantial harm to the Green Belt arising from inappropriateness is clearly outweighed by the other material considerations relied on in favour of the proposal so as to amount to very special circumstances. A grant of permanent planning permission should be forthcoming.

Temporary planning permission

65. If the decision maker disagrees with the appellant that a permanent grant of planning permission should be given, it is submitted that the lesser harm caused

³³ Appeal doc. 5 – appendix B5 refers.

by a temporary permission would be outweighed by the same considerations such that a temporary permission ought to be forthcoming. The balancing exercise to be carried out when considering a temporary permission is clearly different to that of a permanent permission, the harm being of a lesser degree.

66. The Council has sought to assert that it will meet the need that is identified to 2018. No indication has been given as to how the immediate backlog is going to be addressed other than by incorporating the backlog into the need going forward which is unsatisfactory. Material has been provided that the Council is not likely to meet its own estimation of need over the next 10 years.
67. The evidence of the Council is that it will provide at least 44 pitches by 2018. The DGTLP, assuming it is found to be sound, will not be adopted until 2014 and it is commonly accepted by the Secretary of State that following adoption a further 12 to 18 months is necessary for the actual provision of sites. It is known that a number of the identified sites in the DGTLP have planning constraints such as noise, odour, impact on heritage assets etc³⁴. The Council's timetable with regard to availability is therefore clearly overoptimistic.
68. A period of 5 years would therefore be appropriate and realistic for a temporary permission, rather than the Council's overoptimistic suggestion of 2 years. In the event of a permanent permission not being granted, a temporary permission would be appropriate. This would allow the Council to move forward with the site provision now commenced and would provide temporary accommodation for the families and the significant number of children who are currently without a lawful base. A refusal of permission cannot be in the best interests of the children intended to live on the site. This weighs in favour of temporary permission.

Human rights

69. If the balance on the planning merits does not fall in favour of permission, then a second stage assessment must be carried out; is it proportionate to refuse permission after having regard to human rights? There is a clear obligation on decision makers to ensure that any decision made by a state body accords with the Human Rights Act 1998 and Article 8 of the European Convention on Human Rights. Incorporated into the obligation under Article 8 are the obligations under the United Nations Convention on the Rights of the Child, in this case specifically Article 3³⁵. This obligation has existed for a number of years but was crystallised upon the publication of **AZ v SSCLG and South Gloucestershire Council [2012] EWHC 3660 (Admin)**³⁶. The duty on a decision maker is engaged immediately when the decision maker becomes aware that a decision they have made or will make, is impacting or will impact on the rights of a child. This is an ongoing duty to be kept under review.
70. The Article 8 rights of the proposed occupiers are clearly engaged as the appeal decision will impact on the ability of those individuals to use land as their home in circumstances where there is no lawful alternative accommodation. Any decision to refuse permission must be proportionate.

³⁴ Detailed in the site allocations set out in the DGTLP.

³⁵ Appeal doc. 30.

³⁶ Appeal doc. 28.

71. The Council has referred to the case of ***Stevens v SSCLG and Guildford Borough Council [2013] EWHC 792 (Admin)***³⁷ but little weight should be given to that case as no mention is made of **AZ** which sets out the correct approach and refers to the two stage process.
72. In the assessment of proportionality, there is an explicit requirement to treat the needs of the children who will live on the site as a primary consideration and to take account as a primary consideration those needs which amount to a requirement to safeguard and promote the well-being of children as required by section 11(1) of the Children's Act. There may be cases where the harm caused by a development is not outweighed by the other material considerations relied on where the planning balance does not fall in favour of grant of planning permission but, in the particular circumstances pertaining to the welfare of children affected by the decision, it would be disproportionate to refuse either permanent or temporary permission.
73. The Article 8 rights of the proposed occupiers would be infringed by dismissal of the appeal. In order to maintain refusal it must be determined that such action is proportionate. It is clearly in the best interests of the children who would be occupying the site to have a lawful home and consistent and regular access to education and healthcare facilities. It cannot be in the best interests of children to deny them such facilities which would be a consequence of dismissing the appeal. In this context, reference should be made to the judgement of Lord Kerr in ***ZH (Tanzania) v SSHD [2011] UKSC 4***³⁸.
74. There is an immediate need for at least 38 pitches (less the 12 provided by the recent permissions) which will not be addressed for some time and no alternative accommodation in the meantime. The children will remain effectively homeless. This is a factor which in the assessment of proportionality must rank higher than any other. Where the best interests of a child clearly favour a certain course, in this case at least a temporary permission, that course should be followed unless countervailing reasons of considerable force displace them. No such reasons have been relied on to outweigh the need of a child to go to school.
75. The Council has referred to the children not currently living on the site, not having special needs and not having educational ties connected to the site. The welfare and wellbeing of the currently homeless children can only be safeguarded by the grant of permanent permission or, in the alternative, a temporary permission for a period that should give certainty of alternative suitable and lawful accommodation being secured by the Council through its recently commenced DGTL process. That should be for a period of 5 years.

The Case for the Council

Gypsy/traveller status

76. A number of intended occupiers of the proposal have given evidence about gypsy/traveller status. They were cross-examined by the Council's advocate. The Council will leave it to the Secretary of State, as advised by the Inspector, to determine whether or not the intended occupiers have gypsy/traveller status.

³⁷ Appeal doc. 26.

³⁸ Appeal doc. 29 – para. 46.

Inappropriate development in the Green Belt

77. Both the NPPF and the PPTS state that inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances³⁹. Paragraph 88 of the NPPF states that when considering any planning application decision makers should ensure that substantial weight is given to any harm to the Green Belt. Paragraph 14 of the PPTS says that traveller sites (temporary or permanent) are inappropriate development. Sites such as the appeal site should only be released for development through the plan making process. Ad hoc permissions in the Green Belt should not be granted.

Effect of the proposal on the openness of the Green Belt

78. The construction of amenity buildings on the appeal site, together with the stationing of mobile homes and touring caravans, the parking of cars, and domestic paraphernalia associated with the proposal would have a seriously detrimental impact on the openness of the Green Belt. The site already contains heavy wooden post and rail fencing. This is permitted development but causes some, albeit limited, harm to openness. The introduction of buildings and caravans to the site would have a significantly greater adverse impact.

Effect of the proposal on the purposes of including land in the Green Belt

79. One of the purposes of Green Belt designation is to safeguard the countryside from encroachment⁴⁰. The introduction of development into the countryside is therefore contrary to the purposes of the Green Belt. Outside the built up area of Leighton Buzzard the majority of the built development is located on the western side of Mile Tree Road. The introduction of the proposal on the eastern side of the road would result in urbanising development that would clearly be an encroachment of the countryside.
80. The Luton and South Bedfordshire Core Strategy and the emerging Central Bedfordshire Core Strategy pre-submission document both include the East of Leighton Linlade Strategic Site Specific Allocation⁴¹. The allocation of this site would bring the boundary of the Green Belt to about 100 metres to the south of the appeal site. The suggested revision of the Green Belt means that it is vital that land close to the boundary of the Green Belt maintains a strong rural character. The proposal would be isolated development within the Green Belt, the protection of which is important in containing built development and preventing encroachment.
81. The Green Belt should encourage the recycling of derelict and other urban land to assist in urban regeneration⁴². Allowing the use of a greenfield Green Belt site for development would be contrary to this purpose of the Green Belt. This purpose is to ensure that all land outside the Green Belt, particularly in urban areas, is used to its maximum potential before Green Belt sites are released. The proposal could be accommodated on land outside the Green Belt and there is no overriding need for the site to be located where proposed.

³⁹ The NPPF – para. 87, and the PPTS – para. 14.

⁴⁰ The NPPF – para. 80.

⁴¹ Appeal doc. 4 – appendix 10.

⁴² The NPPF – para. 80 refers.

Effect of the proposal on the character and appearance of the area

82. The land to the east of Mile Tree Road is mainly agricultural land or open countryside characterised by large areas of land laid to grass with some mature trees and hedgerows bounding fields. The introduction of the proposal would have an adverse impact on the character of the immediate and wider area. The Inspector who determined the previous appeal relating to the site found that the development before him, fencing and hard surfacing, was visually intrusive to the character and appearance of the countryside, the land on the east side of the road being otherwise fairly flat and very open⁴³.
83. The South Bedfordshire Council Landscape Character Assessment ("the LCA") includes the appeal site within character area 8A – Toddington - Hockcliffe Clay Hills⁴⁴. The key sensitivities of this area, its Landscape Strategy, and its landscape management and development considerations as referred to in the LCA have been set out in evidence⁴⁵.
84. The proposal would negatively change the character of the area introducing an isolated urbanising site within the Green Belt and an otherwise rural area. The proposal would also have an adverse impact on the enclosure of the field by removing part of the existing hedgerow to provide visibility splays. The landscape plan⁴⁶ shows the introduction of tree planting on the site which would appear incongruous in an area with limited areas of tree planting. The character of the road would be adversely affected because the site would require a minimum access of 5.5m and would need to be hard surfaced for the first 15m giving the access an urban appearance.
85. The caravans and amenity buildings on the site would have a significant adverse impact on the character of the area by reason of their urban character and encroachment into the countryside. The introduction of lighting on the site would also have an adverse impact on the character and appearance of the area. Mile Tree Road in the vicinity of the site does not have street lighting. Lighting could be controlled by condition but the level of lighting required for the site to be used safely during hours of darkness would inevitably be visible outside the site and have an adverse impact on the character of the area. Harm from such lighting is readily apparent from the industrial site on the opposite side of the road. As the appeal site is within a large unlit area, its impact would be more significant.
86. Existing hedgerows at the site would need to be trimmed, lowered or removed to achieve required visibility splays. This would have an adverse impact on the character and appearance of the Green Belt⁴⁷. The hedgerows are identified in the LCA as important features. The hedgerows are also 'important' hedgerows within the criteria of the Hedgerow Regulations 1997. Such hedgerows cannot be removed except with consent from the local authority in the form of a Hedgerow Removal Notice. The hedgerow which forms the road frontage to the site dates from 1841 or just after as a result of the parliamentary enclosure of former common fields in the Heath and Reach Parish. It is indicated as a new boundary

⁴³ Appeal doc. 4 – para. 5 of appendix 8 refers.

⁴⁴ Appeal doc. 4 – appendix 9.

⁴⁵ Appeal doc. 33 – paras. 6.8 to 6.10.

⁴⁶ Appeal plan A.

⁴⁷ Appeal doc. 4 – appendix 19.

on the Inclosure Map dated 1841⁴⁸ and thus predates the General Inclosure Act 1845, satisfying an archaeological/historical criterion listed in Part II of Schedule 1 of the Regulations.

87. The provision of the visibility splays would result in the loss of a significant proportion of the existing hedgerow which is important. The loss would have an adverse effect on the integrity of the hedgerow. The historical importance of the hedgerow along with its contribution to character and appearance of the Green Belt and wider countryside should be given significant weight and its loss should be resisted.

Peaceful and integrated co-existence

88. The PPTS, at paragraph 11, requires decision makers to take into account the need to promote peaceful and integrated co-existence between the site and the local community. The intended occupiers entered the site on a Bank Holiday weekend and set about developing it, resulting in the Council obtaining an injunction and taking enforcement action. This has caused serious damage to any prospect of peaceful and integrated co-existence.

Need for gypsy/traveller sites

89. The Housing Act 2004 required local housing authorities to include gypsies and travellers in their accommodation assessments. The data collected was also intended to inform the Development Plan process, including the now revoked RSS. The Council's predecessor authorities together with other Bedfordshire authorities commissioned a Gypsy and Traveller Accommodation Assessment ("the GTAA") to cover the period April 2006 to March 2011. This identified a need for an additional 34-40 pitches in South Bedfordshire and 17-19 in Mid Bedfordshire for the period 2006-2011. However, a Revision to the RSS in respect of Accommodation for Gypsies and Travellers and Travelling Showpeople in the East of England was adopted in 2009. This specified a minimum of 80 pitches for Central Bedfordshire. Revised Policy H3 of the RSS also required a 3% annual compound increase between 2011 and 2021.
90. Following the Secretary of State's announcement made on 27 May 2010 concerning the abolition of RSSs, the Council started to review pitch need based on the GTAA. In November 2010, 26 pitches were allocated in a north Gypsy and Traveller Development Plan Document to the end of 2015. This was based on a GTAA figure of 20 pitches between 2006 and the end of 2010 for the former Mid Bedfordshire District Council area and an extra 10 pitches to the end of 2015 using a 3% compound growth rate, less 4 pitches that had already been provided. The situation in the south of the area, the former South Bedfordshire District Area, was considered in January 2011. Here, following the GTAA, 37 pitches were allocated to 2010, a further 18 to the end of 2015 again using a 3% compound growth rate, less 32 pitches that had already been provided, leaving a total of 23. The Council's Executive agreed that the remaining sites could be provided through planning applications rather than the allocation of sites.
91. In April 2012, the Council's Sustainable Communities Overview and Scrutiny Committee approved the pitch numbers and a site assessment methodology⁴⁹.

⁴⁸ Appeal doc. 4 - appendix 18.

The report set out a pitch requirement for the whole of the Council's area. The pitch need to 2011 was 57, a further 28 between 2011 and 2016 based on a 3% compound growth rate, 33 between 2016 and 2021, 28 between 2021 and 2026, and 45 between 2026 and 2031. This gave a total of 201 pitches. When 75 permanent pitches (the subject of planning permissions granted between 2006 and November 2012) were subtracted from this, and 4 pitches lost at the Council's Timberlands site added, this left an overall need to 2031 of 130 pitches.

92. However, in preparation for the DGTLP, the Council commissioned the GTAA Update to refer to need up to the end of 2031 so as to tie in with the timescale of the Central Bedfordshire Development Strategy – pre-submission version. The GTAA Update highlights that there are a small number of unauthorised pitches, temporary consents and waiting lists for Council run sites which contribute to the general level of need in the area. The site at Timberlands is being refurbished and will provide 6 pitches when re-opened. The need between 2013 and 2018 was calculated as 38 pitches for current need plus 33 pitches as a result of family formation (based on a 2.5% compound growth rate) less the 6 pitches at Timberland.
93. The GTAA Update was amended in February 2013 after further investigations into persons on the waiting list for Council run sites were undertaken. These showed that some persons were registered more than once and the number of sites required for persons on the waiting list was reduced accordingly. This reduced the overall need (to 2031) to 157 pitches as follows: (2013-2018) - 65 pitches; (2019-2023) - 31 pitches; (2024-2028) - 36 pitches, and; (2029-2031) - 25 pitches. The figures in the GTAA Update were accepted at a meeting of full Council held on 18 April 2013⁵⁰. The Council accepts that the updated figures demonstrate that there is a general unmet need for sites.
94. The recent permissions provide a total of 12 pitches, thus reducing the identified need. A further 3 applications remain to be determined and could provide another 4 pitches. The granting of the permissions illustrates the usefulness of 'windfall' sites in meeting need and there is support for this approach in the NPPF⁵¹. Historically, the Council has been able to rely on 'windfall' sites helping meet the need for gypsy and traveller pitches and there is no reason why it should not continue to do so.

Alternative sites

95. The Council is aware of vacancies on Greenfields, a privately owned site, which might provide accommodation for the intended occupiers of the appeal site. Other than this, the Council is not aware of any alternative suitable sites.

Failure of policy

96. This is not accepted. In recent years the Council has made significant progress towards meeting the need for sites and is willing to take difficult decisions regarding the correct location for gypsy/traveller sites. The past performance of

⁴⁹ Minutes of the Committee meeting and the relevant report are attached to the Council's Statement of Case – appeal doc.3.

⁵⁰ Appeal doc. 24 – Minutes of the meeting refer.

⁵¹ The NPPF – para. 48 refers.

the Council in recent years should give comfort that its future performance will be equally as beneficial in continuing to provide sites. The Council has recently published the DGTLP with allocated site provision. This should ensure that sufficient sites will be provided to the end of 2031. It is likely that further 'windfall' sites will assist in meeting need.

Likely location of gypsy/traveller sites

97. The Council accepts that the future provision of sites will include sites in the Green Belt.

Personal circumstances

98. The intended occupiers of the proposal failed to provide details of their personal circumstances until the Inquiry. The proposed occupiers are not settled on the appeal site. Refusal of permission would not result in uprooting them from their homes. While the site would provide a settled base, none of the children are in schools in the area and nor have they established the type of connections they might have had if they had already been on the site. The families are not suffering from illnesses and do not have special needs. On analysis, the personal circumstances do not justify a grant of planning permission.

Whether the harm by reason of inappropriateness to the Green Belt and any other harm, if found, would be clearly outweighed by other considerations in favour of the proposal so as to amount to very special circumstances

99. It is the Council's case that the harm that has been identified, namely substantial harm to the Green Belt arising from inappropriateness, a seriously detrimental impact to the openness of the Green Belt, conflict with the reasons for including land within Green Belt, and significant harm to the character and appearance of the Green Belt outweigh the other material considerations relied on by the appellant. There are no very special circumstances in this case and a permanent grant of planning permission should not be forthcoming.

Temporary planning permission

100. *Circular 11/95: The Use of Conditions in Planning Permissions* ("Circular 11/95"), at paragraph 109, states that that it is undesirable to impose a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent. The proposed utility buildings would have foundations and are clearly intended to be permanent. A temporary consent which would result in the buildings having to be removed at the end of a specified period is considered, at best, undesirable, and, at worst, unreasonable. If a temporary consent were to be granted the harm to openness would still exist even if only for a temporary period of time. Also, if a temporary consent were granted it is unlikely that the site would be developed to a high standard with appropriate landscaping, as the occupants would not have any security that they would stay. There would be harm to the character and appearance of the Green Belt whether the consent granted was permanent or temporary.
101. If the Secretary of State is minded to grant a temporary permission, this should be for a period of 2 years because at the end of that time, the DGTLP will have progressed to a considerable extent and pitches on allocated sites should start coming forward.

Human rights

102. A proper approach to the rights of children and their interests has recently been established in **Stevens**⁵². The case makes a distinction between the weight ascribed to a consideration by policy and the relative weight that can be given to it by a decision maker after consideration of the wider case. It is clear that whilst in policy terms the best interests of a child is a primary (but not a determinative) consideration, the relative weight to be given to this consideration after an examination of the individual circumstances and consideration of all material considerations may alter. In this case the individual circumstances and the consideration of all material considerations should lead to a determination that the serious harm renders the scheme unacceptable and that no other factors outweigh this harm.
103. The rights of the children who are intended occupiers of the site have already been referred to. The Council is well aware of the human rights of all the intended occupiers of the site but considers that the substantial harm from Green Belt inappropriateness and other harm arising from the proposal are such that it would be proportionate to refuse planning permission on both a permanent and a temporary basis.

Interested Parties – Summaries of Points Made

Cllr Mark Versallion

104. Cllr Versallion is the Council's Ward Member for Heath and Reach, and is the Executive Member for Children's Services. He says that the Council has approved gypsy/traveller sites which have gone towards meeting need, and would be allocating sites in the DGTLP. However, applications must be considered in a controlled way. The planning process is subject to public scrutiny and must be operated fairly, both legally and morally. The way in which some decisions are made can cause frustration and applicants should not be seen to buck the system and get away with it. Development should be planned so that accommodation meets need.
105. As far as the Green Belt is concerned, brownfield sites should be considered first and applications for ad hoc sites should be resisted. They should only be allowed if there are very special circumstances. This has not been demonstrated here. Generally the public observe regulations but in this case the Council had to take the extreme measure of obtaining an injunction to prevent the site being occupied without planning permission. Enforcement action was also taken. The actions of the appellant demonstrate why the public can feel frustration. This is reflected in correspondence. The Council's arguments in respect of the appeal are supported. There is no need to repeat them.

Mrs Tina Kavanagh

106. Mrs Kavanagh is a local resident. She says that there was support for the Council's stance at a local meeting. There was much concern over the unlawful development that had taken place. The Council has a strategy to decide where pitches should go and it would be unfair if development, such as the proposal, should take place outside this. A line has to be drawn in the sand. A lot of

⁵² Appeal doc. 26.

people own Green Belt land but are not allowed to build there. The need for traveller sites is accepted and the plight of the intended occupiers is noted, but there is also a need for houses. To allow the appeal would therefore be very unfair. If a temporary permission was to be granted, there would still be harm to the Green Belt and the intended occupiers would have to spend money on the site without knowing if they could stay there.

Mr Terry Ellis

107. Mr Ellis is a member of Heath and Reach Parish Council but spoke in the capacity of a local resident. He says that there have been three days of debate and a lot has learnt about the travellers' lifestyles, which has to be balanced against harm to the Green Belt. However, in this case, there has been a failure to comply with the Court Order. Reinstatement has not taken place. There is no reason to believe that any conditions attached to a planning permission would be complied with, particularly as there would be costs associated with implementing conditions, for example landscaping. The quantum of development is important. Reference has been made to 'doubling up' on existing sites and that could take place on the appeal site which would further harm the Green Belt.

Written Representations

108. Heath and Reach Parish Council object to the proposal. Reference is made to works on the site taking place without planning permission, inappropriate development in the Green Belt, a badger set on the site, bats roosting on the site, the proposal deterring use of the bridleway to the north-east of the site, and highway safety relating to the access. Further written representations also mention highway safety with regard to the road network in the vicinity of the appeal site, the proximity of the site to a planned expansion of the Vandyke Upper Academy, sustainability, and possible expansion of the proposal.

Conditions

109. A list of suggested conditions and reasons for them was submitted by the Council and attached to its Statement of Case⁵³. The conditions were discussed at the Inquiry and the principle of them was accepted by the appellant. However, reference was made by the appellant to a number of conditions which did not follow the standard wording of conditions usually attached to permissions for gypsy/traveller sites and mention was also made that some conditions were applicable to a site where residential occupation has already taken place, which is not the case with the proposal.
110. Conditions appropriate to a temporary permission were also discussed. In addition, the appellant suggested a condition limiting the weight of vehicles on the site so as to protect the amenities of the area. It was accepted by the Council that consequential amendments to the wording of the suggested conditions should be made and that additional conditions be added to restrict the weight of vehicles, and cover the possibility of a temporary permission being granted.

⁵³ Appeal doc. 3 – final 4 pages.

Inspector's Conclusions

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

Procedural Matters

111. I am satisfied that if plan 11_474_ 001_A was to be accepted as an amendment to the scheme, no persons would be prejudiced by this. Given the lack of prejudice and the nature of the changes introduced by the plan (which seek to overcome concerns raised by the Council), I conclude that it would be reasonable and appropriate for the appellant's request (that the plan be accepted as an amendment) to be allowed. [5]
112. It is clear from the evidence that an incorrect Ownership Certificate was lodged with the application. Section 327A of the Act and the Order do set out strict requirements that a correct certificate in respect of land ownership must accompany an application. However, there is case law (**Main, Pridmore and O'Brien**) that the Courts have discretion as to whether to quash a grant of planning permission in the event of non-compliance.
113. To my mind, the facts in the appeal case are similar to those in **O'Brien** where the Court exercised its discretion and the claimant failed in his challenge to have a grant of planning permission quashed. As in the case of **O'Brien**, the sale of Mr McDonagh's interest in the appeal site to Mr Sweeney is no doubt effective as matter of equity (albeit that Mr McDonagh is still registered as an owner of the site). It is also clear from the affidavit evidence that Mr McDonagh has not suffered prejudice through the appellant's failure to complete the correct Ownership Certificate and serve notice on him. I therefore conclude that there is no good reason why the appeal should not be entertained and a decision thereon made by the Secretary of State. [6-13]

Main Issues

114. The parties both acknowledge that the proposal would be inappropriate development in the Green Belt and I agree. The main issues in this case are therefore:
- i) whether the intended occupiers of the proposal have gypsy/traveller status within the definition set out within paragraph 1 of Annex A to the PPTS;
 - ii) the effect of the development on the openness of the Green Belt and on the purposes of including land within it;
 - iii) the effect of the development on the character and appearance of the area;
 - iv) whether the harm to the Green Belt by reason of inappropriateness, and any other harm if found, would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the proposal; and
 - (v) whether a grant of temporary planning permission would be appropriate, in the event that a permanent grant would not be.
- I shall also refer to the human rights of the intended occupiers, should the need arise.

Gypsy/traveller status

115. Details of the intended occupiers have previously been set out. All the intended occupiers are Irish Travellers and cogent evidence was produced about their travelling and business activities. It is clear that the appellant and members of the Sweeney family have been travelling for many years. The appellant has never lived on an authorised site with planning permission. Members of the Sweeney family have not lived on one since 2001, when they had to leave a site in London. All of the intended occupiers were occupying unauthorised sites at the time of the Inquiry. They travel to find work and have occupations which are consistent with those of persons who travel for economic purposes. The intended occupiers also travel during the summer months to visit traditional fairs and family members, a strong indicator that they are members of the travelling community.

116. From consideration of all the evidence before me, I conclude that the intended occupiers of the proposal (including Noreen Sweeney who did not give oral evidence at the Inquiry) fall within the definition of “gypsies and travellers” as set out in paragraph 1 of Annex 1 to the PPTS. [27 & 29-33]

Green Belt –inappropriateness, openness, and reasons for inclusion

117. Both the NPPF and the PPTS state that inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Paragraph 88 of the NPPF states that when considering any planning application decision makers should ensure that substantial weight is given to any harm to the Green Belt.

118. The NPPF, at paragraph 79, states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence. Some fencing has already been erected on the appeal site (as permitted development) and this reduced its openness. However, from what I saw on my site visit, this has been to a limited extent.

119. The documentation submitted with the scheme indicates that each of the six pitches would benefit from a utility/day room. Provision would be made on each pitch for a mobile home/static caravan and a touring caravan. New hard standing would be constructed on a good proportion of the appeal site. Inevitably, the proposal would result in the stationing of vehicles and the keeping of domestic paraphernalia on the site.

120. Clearly, the proposal would result in harm to the openness of the Green Belt. The Council considers that the proposal would have a seriously detrimental impact on openness, whereas the appellant considers that the proposal would cause ‘some’ harm to openness. Given that the appeal site has been kept free of development, apart from the fencing, and having regard to the nature and scale of the proposal, it is my view that the proposal would have a significant adverse impact on openness. [35 & 78]

121. The Council contends that the proposal would result in encroachment of the countryside and this is accepted by the appellant. I appreciate that the boundary of the Green Belt may change and become closer to the appeal site as a result of the East of Leighton Linlade Strategic Site Specific Allocation. After

taking account of this, and having regard to the extent of the proposed encroachment, I consider that moderate weight should be attributed to harm arising from encroachment. [36 & 79-80]

122. The Council maintains that the proposal could be accommodated on land outside the Green Belt and that, accordingly, the proposal conflicts with the Green Belt purpose of assisting urban regeneration by encouraging the recycling of derelict and the urban land. However, from the DGTLP and the recent permissions, it is clear that the Council accepts that some gypsy/traveller sites will be located in the Green Belt. Accordingly, I give limited weight to the Council's argument concerning urban regeneration. [81 & 97]

Effect of the proposal on the character and appearance of the area

123. To my mind, land on the eastern side of Mile Tree Road (including the appeal site) has a very different character to that on the western side, with the road forming a distinct boundary between the two areas. The land on the western side of the road has an urban feel to it with extensive industrial development behind a railway track. On the other hand, land on the eastern side of the road is generally characterised by open countryside.
124. I consider that additional planting to be put in place under a landscaping scheme would not look out of place as there are already areas of planting in the vicinity of the site. The proposal would, however, introduce a domestic form of development into an area of countryside that has a largely undeveloped character, albeit that there are some houses on the eastern side of Mile Tree Road and there may, historically, have been mineral working on land to the north of the appeal site. In my view, the scheme would result in an anomalous extension of the urban features of the development on the western side of the road into the eastern side. This would, inevitably, bring about a material adverse change in the character of the area.
125. As I saw on my site visit, the proposal would not be readily discernible from distant viewpoints. From the public bridleway to the north of the appeal site, the proposal would be well screened by existing vegetation and further planting which would take place as a result of a landscaping scheme. Again, the existing hedgerow along the site's frontage would provide good screening. Some hedgerow would be lost because of the need to provide an adequate visibility splay. However, there would be thickening or replacement where this would occur. The proposal would only be clearly visible from the site's access. I note the Council's concern over lighting but existing screening, additional planting and a condition controlling lighting could ensure that lighting would not be visually intrusive.
126. The Council contends that the hedgerow fronting the road is an 'important' hedgerow for the purposes of the Hedgerow Regulations 1997 and is concerned about the effect of the proposal on it. However, following the cross examination of the Council's planning witness, I am not convinced that the hedgerow is 'important' [40]. Moreover, only a proportion of the hedgerow would be removed and there would be strengthening and or replacement of hedgerow in any event. I therefore give little weight to the Council's point.
127. In considering this issue, I have had regard to the previous appeal decision. However, I am mindful that the proposal before me is for a different form of

development to that which was before the previous Inspector and that the scheme before me includes landscaping. I therefore give limited weight to the previous appeal decision. Overall, given the scale and nature of the proposal, I give moderate weight to its adverse impact on the character of the area. As the proposal would only be readily seen from the site's access, I give limited weight to its negative impact on the appearance of the area. [37-42 & 82-87]

Other harm identified by the Council - peaceful and integrated co-existence

128. I can appreciate the Council's concern over the activities of the intended occupiers which led to the obtaining of the injunction and enforcement action being taken. However, in my view, the previous actions of the intended occupiers are not, in themselves, sufficient to demonstrate that if planning permission were granted there would not be peaceful and integrated co-existence between the site and the local community. The scale of the proposal and the location of the appeal site are suggestive to me that peaceful and integrated co-existence could be promoted, notwithstanding the previous planning history. I therefore give little weight to the Council's contention. [16, 24-25, 26 & 88]

Other considerations - need for gypsy/traveller sites (and their likely location)

129. It is accepted that there is a national and regional need for sites. The Council's assessment of local need for gypsy/traveller sites is set out in the GTAA Update. This refers to a current backlog of 38 pitches, a further 33 pitches to be provided to 2018 (with 6 coming back into use), a further 31 pitches to 2023, 36 to 2028 and 25 to 2031. Thus, the Council is working towards providing 65 pitches to 2018, and 157 over the entire period to the end of 2031. However, the recent permissions provide a total of 12 permanent pitches, thus reducing the current backlog and requirements over the period to 2031.
130. The appellant raised a number of criticisms of the GTAA Update and prepared an alternative analysis of need. This suggests an underestimation of need over the entire period of 97 pitches, with immediate need being 52 pitches and the need to 2018 being 99 pitches. These latter figures need to be adjusted to 40 and 87 respectively to take account of the recent permissions. In my view, all of the criticisms of the GTAA Update made by the appellant are well founded. For example, I note that the GTAA Update has used a compound growth figure of 2.5% whereas, in my experience, it is generally accepted practice to use a rate of 3%. I consider it likely that need over the given period will be far more than that identified by the Council and could even be as high as that suggested by the appellant.
131. In terms of meeting need, the Council (at a meeting held on 18 April 2013) approved the DGTLP for publication and submission to the Secretary of State. The DGTLP identifies 7 sites that are intended to provide 157 pitches to meet gypsy/traveller needs until the end of 2031. Having regard to the recent permissions and those which were granted between 2006 and 2011, I think that it is possible that some further 'windfall sites' will come forward during the period to the end of 2031. However, there is no detailed evidence before me to persuade me that such sites have consistently become available in the local area and will continue to provide a reliable source of supply.
132. The appellant has levelled a number of criticisms against the DGTLP and its ability to deliver sites. He believes that upon examination it will be found to be

unsound. However, putting that argument to one side, even if the figures in the GTAA are assumed to be correct (which I consider not to be the case), there is evidence that the identified need will not be met within the envisaged period. Minutes of a meeting of the Council's Executive held on 18 March 2013 indicate that site allocations will provide 44 pitches to 2018 and a further 22 to 2023, giving a total of 66 pitches by 2023. However, the requirement to 2018 is 65 and that to 2023 is 86, leaving shortfalls even after the pitches provided by recent permissions have been taken into the equation.

133. I consider it appropriate to consider the likely location of future sites in the context of need and provision, rather than as a separate issue. Of the 7 sites suggested in the DGTLP, 3 are in the Green Belt like the appeal site. All of the sites that have recently been permitted are in the Green Belt. It is therefore clear that the Council has accepted the principle that some future gypsy/traveller site provision is likely to be in the Green Belt. The appellant has sought to show that the appeal site compares favourably with the Green Belt sites in the DGTLP. However, I give little weight to this argument because I have a wealth of information about the appeal site and relatively little about the DGTLP sites which will be tested through the examination process in due course. Nevertheless, the likelihood of some future provision being in the Green Belt carries weight in favour of the proposal.
134. Overall, from the evidence, it seems to me that the Council has underestimated need by a material extent and that even if the recent permissions are taken into account, there is a significant immediate need for further permanent pitches which is not likely to be met for a number of years. There is also need going forward and it is likely that some future need will be met by sites in the Green Belt. After taking all evidence on need into account, I therefore give considerable weight to it in this case. [43-49, 57, 89-94 & 97]

Other considerations – alternative sites

135. All the intended occupiers of the proposal are currently occupying land unlawfully. Other than the reference to pitches at Greenacres being vacant, the Council accepts that there are currently no alternative sites that are available. It is established law that alternative sites should be available, affordable, acceptable and suitable. The site at Greenacres is privately owned and is the subject of a personal occupancy condition. It is not known whether or not the owner of Greenacres would be willing to accommodate the intended occupiers on his site or have his personal condition changed. In any event, the vacancies at Greenacres could not accommodate all the intended occupiers who travel together as a group. I do not therefore consider the site at Greenacres to be an available and lawful accommodation option. I accord significant weight to the lack of alternative sites. [50-52 & 95]

Other considerations – failure of policy

136. At the present time, the Council does not have an adopted policy based on an assessment of need to provide pitches. The backlog of 38 pitches (now 26) identified in the GTAA Update suggests to me that there has been an historic failure of policy albeit that planning permissions for sites have, in the past, been granted by the Council. The Council has recently moved matters forward by resolving to publish the DGTLP. However, given the underestimation of need as

set out in the GTAA Update, I think that there is a likelihood that the site allocations process as currently set out in the DGTLP will not meet the real need over the intended lifetime of the document. This suggests that the Council's failure of policy is set to continue. In this context, the evidence relating to the provision of sites to the end of 2018 indicates that the Council will not be able to meet a 5 year land supply of deliverable sites as required by the PPTS. I therefore give significant weight to failure of policy in favour of allowing the appeal. [53-56 & 96]

Personal circumstances

137. The relevant personal circumstances in this case (if they need to be taken into account) are a need for a stable home, health needs and educational needs. None of the intended occupiers has a permanent or lawful pitch at the present time; in effect, they can be considered to be homeless. A planning permission for the proposal would provide the intended occupiers (including 13 children at present, and a pregnant woman) with a stable and lawful base, at least for a number of years in the event that a temporary grant of permission was to be given. In this context, the proposal would enable members of the Sweeney family – an extended family, and the appellant (who travels with them) to reside together.
138. One of the intended occupiers suffers from depression and needs medication, and another suffered health problems during her pregnancy. Other proposed occupiers do not currently have health problems but a stable base would enable the proposed occupiers to have regular access to a doctor's surgery and proper medical care.
139. Of the children who would be living on the site, 8 are of school/nursery age. Thus far, none of the children has had any prolonged or consistent access to schools, a principal aim of the PPTS. A planning permission for the proposal, if only on a temporary basis, would provide the children with essential continuity and stability in terms of their education. Occupation of the appeal site would also enable Thomas Sweeney to have regular access to his children in Aylesbury.
140. Taken as a whole, particularly having regard to the needs (educational, health, social and welfare) of the children who would be occupying the appeal site, I give significant weight to personal circumstances in this particular case. [58-63 & 98]

Other matters raised by third parties

141. The intended occupiers have undertaken development in the past without planning permission. However, that is not, in itself a bar to planning permission being granted in respect of a subsequent application. If there was any future failure to comply with conditions attached to a permission, then it would be open to the Council to take further enforcement action. Planning permission may be granted for sites in the Green Belt that are not allocated in any planning policy document. Each application must be considered on its own individual merits, taking into account Green Belt harm (if any) and all other material considerations. The number of any caravans to be stationed on the appeal site could be controlled by way of planning condition.
142. There is no detailed evidence before me to substantiate the likely presence of a badger sett and/or bats roosting on the appeal site. The appeal site is well

screened from the bridleway which runs to the north east of it. Having regard to this, I see no reason why the proposal would deter use of the bridleway. The proposed visibility splays should ensure that vehicles can enter and leave the site without causing harm to highway safety. From what I saw on my site visit, the nature of the road network in the vicinity of the appeal site is such that the additional traffic movements that would be generated by the proposal would not compromise highway safety. There is no evidence to explain how the proposal would impact upon a planned expansion of Vandyke Upper Academy.

143. The site appeal site is about 1100m from the eastern edge of Leighton Buzzard and about 2.7km from the town centre where there is a wide range of facilities. On my site visit, I saw that Miletree Road in the vicinity of the appeal site is not an ideal pedestrian route. Nevertheless, given its location in relation to Leighton Buzzard, and taking account of the factors detailed in paragraph 11 of the PPTS, I find that the proposed use of the appeal site as a gypsy/traveller site would be acceptable in terms of sustainability. Expansion of the proposal would require planning permission and any application would be dealt with on its merits. Overall, I therefore give limited weight to the additional points raised by interested parties. [104-108]

Conclusions on a permanent permission

144. I must attach substantial weight to the harm to the Green Belt by reason of the proposal's inappropriateness. I also consider that the proposal would result in significant harm to the Green Belt in terms of its impact on openness and moderate harm to the Green Belt because of encroachment, the latter being a reason for including land in the Green Belt. In addition, it is my view that the proposal would result in moderate harm to the character of the area and limited harm to its appearance. [117, 120, 121 & 127]
145. Nevertheless, to be weighed against these factors are a number of considerations in favour of the proposal. I am mindful here that I have concluded that the intended occupiers of the site have gypsy/traveller status. General considerations, therefore, are: the need for additional gypsy sites, that the shortage is unlikely to be addressed for a number of years until the DGTLP delivers pitches, and the likely location of some future sites in the Green Belt; the lack of alternative sites; and the failure of policy.
146. I have attached considerable weight to need. However, this is tempered in relation to a grant of permanent permission by the fact that this site as a permanent contributor to meeting need should form part of a wider process of site evaluation that the Council is likely to have to embark on in order to meet the current shortfall of provision over the DGTLP period. I give significant weight to each of the other general considerations. The personal circumstances of the intended occupiers also weigh in favour of the proposal. Here, particular consideration has been given to what would be in the best interests of the children. I have again attributed significant weight to this factor. [116, 130-132, 134, 135, 136 & 140]
147. In my judgement, however, all the material considerations in favour of the proposal when added together (even taking into account personal circumstances, after having regard to the best interests of the children) would not clearly outweigh the harm that I consider would be caused by the proposal. I therefore find that very special circumstances to justify the proposal do not exist and the

proposal is therefore contrary to guidance in the NPPF and the PPTS. Consequently, I conclude that a permanent planning permission should not be granted. I now need to consider a temporary planning permission.

Conclusions on a temporary planning permission

148. *Circular 11/95*, at paragraph 110, states that a temporary permission may be justified when it is expected that the planning circumstances will change in a particular way at the end of the temporary period. From the evidence, I think it is likely that planning circumstances within the Council's area will change over the next few years as the DGTLP progresses towards adoption and sites are then brought forward to meet need.
149. The Council referred to paragraph 109 of *Circular 11/95* and to the permanent nature of the proposed utility/day room buildings. However, there is no detailed information before me to demonstrate that it would be unreasonable to require the demolition of the buildings at the end of a temporary period. Indeed, in my experience, the granting of temporary planning permissions for gypsy/traveller sites with the type of utility/day room buildings proposed is not uncommon. The nature of the buildings is not such as to lead to the withholding of a temporary grant of planning permission.
150. I am aware that paragraph 14 of the PPTS says that traveller sites (temporary or permanent) are inappropriate development within the Green Belt. If a temporary permission was to be granted, there would, of course, be harm to the Green Belt and to the character of the area, albeit for a limited period of time. On the other hand, I am mindful of the current level of unmet need for gypsy/traveller sites (where the Council cannot demonstrate an up-to-date 5 year land supply). Unmet need weighs heavily in favour of the proposal but, in my view, it is not sufficient on its own to overcome the identified harm, even if only for a temporary period. However, when need is combined with the lack of alternative sites and the personal circumstances of the intended occupiers, particularly those relating to the varied needs of the children (after recognizing their best interests), I conclude that it would be appropriate to grant a personal and temporary planning permission.
151. The 2 year period suggested by the Council would be unrealistic given the nature of the criticisms levelled against the DGTLP by the appellant and the time lapse that is likely to occur between the adoption of policy and pitches coming on stream. However, after considering the evidence, the 5 year period suggested by the appellant appears to be excessive. After taking account of the criticisms of the DGTLP made by the appellant and having regard to its likely progress and the provision of pitches thereafter, I consider that a period of 4 years would be reasonable. [65-68 & 100-101]
152. In arriving at my conclusion, I appreciate that a grant of temporary planning permission would result in an interference with the rights of the intended occupiers and their families in respect of private and family life and their home, and that Article 8 of the European Convention on Human Rights is engaged. I am aware that incorporated into the decision maker's obligations under Article 8 are the obligations under the United Nations Convention on the Rights of the Child, including Article 3. The needs of the children who would be on the site is a primary consideration and the Children's Act 2004 requires that in discharging their functions decision makers must have regard to safeguarding and promoting

the welfare and well-being of children. However, I consider that a grant of temporary planning permission for 4 years would be proportionate after taking into account the conflicting matters of public and private interests so that there is no violation of human rights. [65-68 & 100-101]

Conditions

153. The conditions that I recommend are set out in the attached Annex A. Generally, the conditions suggested by the parties and discussed at the Inquiry are reasonable and necessary and meet the requirements of *Circular 11/95*.
154. I have added wording to a suggested personal occupancy condition so as to also refer to a temporary period of occupancy. The condition also requires the removal from the site of static caravans etc. following the cessation of use. A further condition requires the submission of a restoration scheme. A condition restricting the weight of vehicles has been included. A condition requiring the removal of caravans and other items in the event that details of drainage, landscaping, the surfacing of the access, the storage and collection of waste, and lighting were not submitted within 3 months of the decision etc. has been recast into a number of conditions requiring the submission and approval of details before the commencement of development, and the subsequent implementation of those details.
155. With regard to landscaping, I have required that the scheme be carried out in accordance with a programme to be approved by the Council so as to ensure that work takes place in a planting season. The condition also refers to replacement planting as suggested by the Council. A condition relating to drainage refers to future management and maintenance as suggested by the Council. The Council suggested a condition requiring submission of a schedule detailing the proposed means of maintaining the visibility splays. However, I consider that such a condition is not necessary since the condition concerning the provision of the splays requires their future retention and their being kept free of obstructions. For the sake of clarity, I have amended a suggested condition relating to the location of the access so as to refer to drawing number 11_474_001_A. In the interests of good planning I have added a condition requiring the development to be carried out in accordance with the approved plans. The plans show the locations of caravans within the 6 pitches as referred to on the Council's suggested condition on caravan numbers. [109-110]

Recommendation

156. I recommend that: the Secretary of State entertains the appeal; drawing number 11_474_001_A be accepted as an amendment to the scheme; the appeal be allowed; and conditional planning permission be granted for a temporary period of 4 years.

James Ellis

Inspector

Annex A

Recommended conditions in the event that planning permission is granted

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites 2012.
- 3) The residential occupation of the land hereby permitted shall be carried on by Michael and Frances Kiely, Thomas Sweeney, Nora Sweeney, Patrick and Priscilla Sweeney, James and Priscilla Sweeney, Martin and Maria Sweeney, Noreen Sweeney and Ben Crowley, and their resident dependants, and shall be for a limited period being the period of four years from the date of this decision or the period during which the land is occupied by them, whichever is the shorter.
- 4) When the land ceases to be occupied by Michael and Frances Kiely, Thomas Sweeney, Nora Sweeney, Patrick and Priscilla Sweeney, James and Priscilla Sweeney, Martin and Maria Sweeney, Noreen Sweeney and Ben Crowley and their resident dependants or at the end of four years from the date of this decision, whichever shall first occur, the use hereby permitted shall cease and all mobile homes, static and touring caravans, portable structures, materials and equipment brought on to the land, shall be removed from the land within one month of the cessation date.
- 5) No development shall take place until details of a scheme to restore the land to its condition before the development takes place (including the removal of buildings) has been submitted to and approved in writing by the local planning authority. The details shall include a timescale for the carrying out of the scheme after cessation of the use hereby permitted pursuant to condition 4) above. The restoration works shall be carried out in accordance with the approved details including the approved timescale.
- 6) There shall be no more than the six pitches hereby approved on the site and no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan or mobile home) shall be stationed on each one of the six pitches at any time.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.
- 9) No development shall commence until a scheme for the landscaping of the site (to include: details of all tree, hedge and shrub planting; details of species, plant sizes and proposed numbers and densities; and a programme for the carrying out of the works) has been submitted to and approved in writing by the local planning authority. The approved landscaping scheme shall be carried out on accordance with the approved programme of works. Any trees or shrubs planted in accordance with this condition which are removed, uprooted, destroyed, die, or become seriously damaged or defective during the lifetime of this permission shall

- be replaced by trees or shrubs of similar size and species to those originally required to be planted.
- 10) No development shall commence until a scheme for the foul and surface water drainage of the site (including a programme for the future management and maintenance of the scheme) has been submitted to and approved in writing by the local planning authority. The site shall not be occupied for residential purposes until drainage works have been completed in accordance with the approved scheme. Thereafter, the approved drainage scheme shall be managed and maintained in accordance with the approved programme for the lifetime of this permission.
 - 11) No development shall commence until a scheme for storage and collection of waste from the site has been submitted to and approved in writing by the local planning authority. The site shall not be occupied for residential purposes until the approved scheme has been implemented. Thereafter, the approved scheme shall be retained for the lifetime of this permission.
 - 12) No development shall commence until a scheme for the surfacing of the vehicular access serving the site (for a distance of 15.0m into the site, measured from the near side of the carriageway) and surface water drainage from the vehicular access has been submitted to and approved in writing by the local planning authority. The site shall not be occupied for residential purposes until works have been completed in accordance with the approved scheme.
 - 13) No external lighting shall take place on the site otherwise than in accordance with a scheme the details of which shall have previously been submitted to and approved in writing by the local planning authority. Following its implementation, any approved scheme shall be retained for the lifetime of this permission.
 - 14) The development hereby permitted shall not be occupied for residential purposes until visibility splays have been provided at the junction of the access with the public highway. The minimum dimensions to provide the required splay lines shall be 2.4m measured along the centre line of the proposed access from its junction with the channel of the public highway and 215m measured from the centre line of the proposed access along the line of the channel of the public highway. The required vision splays shall, at all times thereafter, on land under the control of the appellant, be retained and kept free of any obstruction exceeding 0.9m in height above the nearside channel of the highway.
 - 15) Any gates to be provided at the access to the site shall open away from the highway and be set back a distance of at least 15.0m from the nearside edge of the carriageway of the adjoining highway.
 - 16) The access to the site shall have a minimum width of 5.5m, kerb radii of 6m and shall be located in the position shown on drawing number 11_474_001_A.
 - 17) Except as insofar as it would be inconsistent with these conditions, the development hereby permitted shall be carried out in accordance with the following approved plans: drawings numbered 1056/2 (date stamped 9 December 2011 by the Council) and 11_474_001_A.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Saira Kabir Sheikh	Of Counsel, instructed by the Solicitor to Central Bedfordshire Council
She called	
Victoria Davies BA (Hons), MRTPI	Principal Planning Officer, Central Bedfordshire Council

FOR THE APPELLANT:

Michael Rudd	Of Counsel, instructed by Matthew Green, Green Planning Solutions LLP
He called	
Thomas Sweeney	Intended occupier of the site
Michael Kiely	Appellant
Patrick Sweeney	Intended occupier of the site
James Sweeney	Intended occupier of the site
Martin Sweeney	Intended occupier of the site
Matthew Green BA	Partner, Green Planning Solutions LLP

INTERESTED PERSONS:

Cllr Mark Versallion	Member, Central Bedfordshire Council
Tina Kavanagh	Local resident
Terry Ellis	Local resident

DOCUMENTS SUBMITTED BEFORE THE INQUIRY

- 1 Council's notification letter and list of persons notified
- 2 Letters received in response to notification letter
- 3 Council's Statement of Case with suggested conditions attached
- 4 Proof of evidence of Victoria Davies and appendices
- 5 Proof of evidence of Matthew Green and appendices (including draft witness statements of intended occupiers)
- 6 Draft Statement of Common Ground

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 7 Appellant's appearances and time estimates
- 8 Appeal decision Ref: APP/D0515/A/11/2161557 – submitted by the Council
- 9 Copy affidavit dated 17 December 2012 sworn by John McDonagh
- 10 Copy letter dated 18 March 2013 from Thompson and Cooke, Solicitors to Green Planning Solutions together with affidavit dated 18 March 2013 sworn by John McDonagh
- 11 Opening statement on behalf of the Council
- 12 Copy letter dated 18 February 2018 from the Council to the Planning Inspectorate
- 13 Minutes of a meeting of the Council's Sustainable Communities Overview and

- Scrutiny Committee held on 28 February 2013, together with information distributed at that meeting
- 14 Minutes of a meeting of the Council's Executive held on 18 March 2013, together with a report from the Executive Member for Sustainable Communities – Strategic Planning and Economic Development, and the Council's Draft Gypsy and Traveller Local Plan
- 15 Witness statement of Thomas Sweeney dated 20 March 2013
- 16 Witness statement of Michael Kiely dated 20 March 2013
- 17 Witness statement of Patrick Sweeney dated 20 March 2013
- 18 Witness statement of James Sweeney dated 20 March 2013
- 19 Witness statement of Martin Sweeney dated 20 March 2013
- 20 Witness statement of Noreen Sweeney dated 20 March 2013
- 21 Appellant's comparison of the appeal site with allocated sites
- 22 Appellant's assessment of need for sites
- 23 Council's letter dated 15 April 2013 concerning adjournment of Inquiry
- 24 Minutes of a meeting of full Council held on 18 April 2013 together with a recommendation from the Executive, and the Draft Gypsy and Traveller Local Plan – pre-submission
- 25 List of gypsy/traveller applications determined in March/April 2013
- 26 ***Stevens v SSCLG and Guildford Borough Council [2013] EWHC 792 (Admin)*** – submitted by the Council
- 27 Secretary of state appeal decision Refs: APP/C3620/A/12/2169062, 2169066 and 2169086; APP/C3620/C/12/2172090, 2172094, 2172095, 2172099, 2172104, 2172106, 2172116 and 2172145 – submitted by the appellant
- 28 ***AZ v SSCLG and South Gloucestershire Council [2012] EWHC 3660 (Admin)*** – submitted by the appellant
- 29 ***ZH (Tanzania) v SSHD [2011] UKSC 4*** – submitted by the appellant
- 30 Extract from the United Nations Convention on the Rights of the Child
- 31 Closing submissions on behalf of the Council
- 32 Closing submissions on behalf of the appellant

DOCUMENTS SUBMITTED WHEN THE INQUIRY WAS NOT SITTING and AFTER THE INQUIRY HAD CLOSED

- 33 Updated proof of evidence of Victoria Davies, and appendices
- 34 ***R. (on the application of Pridmore) v Salisbury DC [2004] EWCH 2511 (Admin)*** – submitted by the Council
- 35 ***R. (on the application of O'Brien) v West Lancashire BC [2012] EWCH 2376 (Admin)*** – submitted by the appellant
- 36 ***Main v Swansea City Council (1985) 49 P.& C.R. 26*** – submitted by the appellant

PLANS

- A Drawing number 11_474_001_A , submitted by the appellant



Department for Communities and Local Government

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.