Department for Communities and Local Government

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Our Refs: APP/C3620/A/12/2169062, 2169066 and 2169068; APP/C3620/C/12/2172090, 2172094, 2172095, 2172099, 2172104, 2172106, 2172116 and 2172145

10 April 2013

Dear Sir,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 and 174
APPEALS BY MR ROY AMER, MS SUSAN KING, MR SIMON DOHERTY, MRS ROSE DOHERTY and MR CHARLIE DOHERTY
LAND AT THE GLADE, OAKVIEW, YEW TREE and WOOD LODGE, RIVER LANE, LEATHERHEAD, SURREY, KT22 0AY
COUNCIL'S REFs: MO/2011/0512/PLA, MO/2011/0520/PLA, MO/2011/0521/PLA, and 2012/026/ENF

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Antony Fussey JP BSc(Hons) DipTP MRTPI, who held a public local inquiry which sat for 4 days between 12 and 15 June 2012 into your clients' appeals against refusal of planning permission and the service of enforcement notices by Mole Valley District Council (the Council) relating to the following proposals:

   Appeal A: against a refusal by the Council to grant planning permission for the permanent use of the land at The Glade as a Gypsy and Traveller caravan site comprising a single pitch to accommodate a mobile home, a touring caravan and related paddocks. Retention of utility building, shed, hard surfacing, entrance gates and pillars, water feature, fencing, cesspit, oil tank, earth bank and external lights. Proposed erection of stable block and associated landscaping.

   Appeal B: against a refusal by the Council to grant planning permission for the permanent use of the land at Oakview as a Gypsy and Traveller caravan site comprising a single pitch to accommodate a mobile home, a touring caravan and related paddock. Retention of hard surfacing, fencing, cesspit and oil tank. Proposed erection of utility building, stable block, hard surfacing, external lights and associated landscaping.

   Appeal C: against a refusal by the Council to grant planning permission for the permanent use of the land at Yew Tree comprising two pitches to accommodate: (3a) a mobile home, touring caravan and related paddock. Retention of hard

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surfacing, fencing, cesspit, oil tank and stable block. Proposed erection of utility building, hard surfacing, external lights and associated landscaping; (3b): a mobile home, two touring caravans and related paddock. Retention of shed, shrine, Wendy house, cesspit, oil tank, fencing and hard surfacing. Proposed erection of utility building, stable block, hard surfacing, external lights and associated landscaping.

Appeals D, E, F and G: against an enforcement notice served by the Council on 22 February 2012 alleging change of use without planning permission of land adjoining River Lane from an agricultural use to a mixed use comprising agriculture, and use as a Gypsy and Traveller caravan site; and requiring cessation of the use of the land as a Gypsy and Traveller caravan site and removal from the land all caravans, vehicles and equipment and accessories associated therewith within 6 months. Appeal D (at The Glade) falls to be considered under the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (the 1990 Act). However, with regard to appeals E-G, as the prescribed fees have not been paid within the specified period, the deemed applications for planning permission sought under ground (a) do not fall to be considered. Those appeals have therefore been considered only in respect of the section 174(2)(g) grounds.

Appeals H, I, J and K against enforcement notices served by the Council on 22 February 2012 alleging the laying of hardcore (appeals H-J)/ all hard surfaces (Appeal K), the erection of fences over 1m in height, the erection of structures on the land and installation of cesspit(s) located underground; and requiring reinstatement of the land to its former condition within 6 months. These appeals were made on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 1990 Act.

2. On 3 February 2012, appeals A-C were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990, because they involve proposals for significant development in the Green Belt. The other appeals were recovered by a Direction dated 3 April 2012 because they are most efficiently and effectively decided with appeals A-C.

Inspector's recommendation and summary of the decision

3. The Inspector, whose report (IR) is enclosed with this letter, recommended:

Appeals A-C: that the appeals be dismissed.

Appeals D-G: that the enforcement notice be varied by substituting the plan attached at page 44 of the IR and appeal D be allowed under ground (a), the varied enforcement notice quashed and planning permission granted on the deemed application for a temporary period subject to conditions.

Appeals H-K: that the appeals be allowed under ground (a), the enforcement notices quashed and conditional planning permissions granted for a temporary period on the deemed applications.

The Secretary of State agrees with the Inspector that the deemed applications for planning permission in respect of appeals E-G do not fall to be considered and, for the

reasons given below, he has decided to dismiss appeals A-C. All references to paragraph numbers, unless otherwise stated, are to the IR.

Procedural Matters

4. The application for costs (IR8) made by your clients at the Inquiry is the subject of a decision letter being issued separately by the Secretary of State.

5. The Secretary of State has noted the reasons for the submission of a revised plan for that attached to the enforcement notice the subject of appeals D-G (IR6, IR163-164 and map appended at page 44 of IR). He is satisfied that no prejudice has been caused to any party by this course of action and has determined appeals D-G on this basis.

Matters arising after the close of the inquiry

6. Following the close of the Inquiry, the Secretary of State received representations from MD and PB Taylor dated 20 June 2012, and from Sir Paul Beresford MP dated 5 July 2012 and 17 September 2012. The Secretary of State has taken account of all these representations in his consideration of the appeals before him, but is satisfied that they do not raise matters which would require him to refer back to parties prior to reaching his decision. Copies of the representations may be obtained on written request to the address at the foot of the first page of this letter.

7. Following the close of the inquiry, the Regional Strategy for the South East (Revocation) Order 2013 came into force on 25 March 2013 and has partially revoked the South East Plan ("the RS"). The Secretary of State considers that RS Policy NRM6 which remains extant is not relevant to his decisions on these appeals. Given the reasons for the basis of the decision as set out in the remainder of this letter, the Secretary of State does not consider that the partial revocation of the RS raises any matters that would require him to refer back to parties for further representations prior to reaching his decision.

Policy considerations

8. In deciding the section 78 appeals and the deemed planning applications, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the *South East Plan - Regional Strategy for the South East of England 2009* (RS), the *Mole Valley LDF Core Strategy* (CS) (2009), and saved policies of the *Mole Valley Local Plan* (LP) (2000). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR28-29 (except those that mention the RS).

9. Other material considerations which the Secretary of State has taken account of include: the National Planning Policy Framework (the "Framework") and its Technical Guidance; Planning Policy for Traveller Sites (PPTS); and Circular 11/1995: *Use of Conditions in Planning Permission*.

Main issues

10. The Secretary of State considers that the main issues in relation to the appeals are those listed by the Inspector at IR160-162.

The Appeals on Ground (c)

11. For the reasons given at IR165-166, the Secretary of State agrees with the Inspector at IR167 that the condition to remove the fencing has been breached; and he therefore dismisses the appeals under ground (c) of section 174(2) of the 1990 Act.

Appeals A-C and the Appeals on Ground (a)

The Harm Caused

12. For the reasons given at IR169-174, the Secretary of State agrees with the Inspector's conclusion at IR175 that the existing and proposed developments would considerably harm the character and appearance of the surroundings; and that they would conflict with the development plan, with the core principle in the Framework of recognising the intrinsic beauty and character of the countryside, and with advice in the PPTS. He has therefore gone on to consider, in accordance with policy H of the PPTS, whether this harm, together with the substantial harm by reason of inappropriateness, is clearly outweighed by the material considerations advanced, so as to amount to the very special circumstances needed to justify the development.

The Need for Sites, including failure of policy

13. For the reasons given at IR176, the Secretary of State agrees with the Inspector that the level of need is substantial. He notes in particular the Council's failure to carry out any assessment of the number of pitches needed in its area and the immediate need of the five families involved, The Secretary of State therefore gives significant weight to the need for sites. Furthermore, for the reasons given at IR177, including the Council's failure to progress with the identification of sites through the LDF process, the Secretary of State agrees with the Inspector that there has been a material failure of policy; and he gives this significant weight.

Alternative Sites

14. The Secretary of State acknowledges the efforts of the appellants to find alternative sites themselves (IR179), and agrees with the Inspector (IR 179-184) that the search conducted by the Council was too restricted (IR179) and took account of the appellants' aspirations rather than their reasonable needs (IR183). He also acknowledges the reasons for discounting the alternative site at Randalls Road (IR185), but concludes with the Inspector at IR187 that there are currently no identified alternative sites in the District for Travellers in general. The Secretary of State agrees with the Inspector that this lack has significant weight (IR187).

Other Matters Raised by Third Parties

15. The Secretary of State agrees with the Inspector (IR188) that the Cremation Act 1902 does not appear to affect these appeals and (IR189) that a planning decision cannot be used either to enforce or to override a private agreement. He also agrees with the

Inspector that a condition, if enforced, would adequately address the highway safety concerns (IR190-191).

Personal circumstances

16. For the reasons given at IR193, the Secretary of State agrees with the Inspector that the harm from inappropriateness is substantial by definition and that the harm caused to the openness of the Green Belt and to the character and appearance of the surroundings is considerable and breaches the development plan. Like the Inspector, the Secretary of State has then gone on to consider whether these matters are outweighed by other material considerations but, in so doing, he has taken the opposite view to that expressed by the Inspector at IR197 with regard to personal circumstances only becoming relevant if a temporary planning permission is being considered. He considers that the personal circumstances of those who would benefit from any planning permission, including the needs of their children, are relevant to the consideration of both permanent and temporary consents.

17. The Secretary of State agrees with the Inspector's analysis of personal circumstances at IR198-204, including agreeing that the appellants fall within the definition of Gypsies and Travellers in Annex 1 to the PPTS; and he considers it appropriate to apply this analysis to the consideration of both permanent and temporary consents. The Secretary of State acknowledges that the occupants of the appeal sites have built up strong community ties and agrees with the Inspector (IR199-200) that, although this has been strengthened during periods of consciously unlawful occupation, the measure of integration which the occupiers have achieved merits some weight. The Secretary of State also agrees that Roy Amer Jr's educational needs should be given significant weight (IR202); that the health benefits for all the residents of living on the site should have some weight (IR203); and that the fact that the occupiers form an extended family who provide mutual support should be given material weight (IR204).

Conclusions on permanent consent

18. Following careful consideration of all the matters considered at IR198-204 in relation to assessing the justification for permanent consent, the Secretary of State agrees with the Inspector that the very special circumstances needed to justify the development do not exist in respect of appeals A-C or the ground (a) appeals, and therefore agrees (IR195) that permanent planning permission should not be granted.

19. In coming to this conclusion, the Secretary of State acknowledges that the eviction of all the occupiers would interfere with their home and family life and the peaceful enjoyment of their property, which are protected by Article 8 and Article 1 of the First Protocol of the European Convention on Human Rights, and he has taken account of the rights and best interests of the children involved as primary considerations. Like the Inspector (IR196), he has gone on to weigh this against the wider public interest, including the need to protect the Green Belt and the countryside from harm; and he agrees that dismissing the appeals against refusal of permanent planning permission would strike an appropriate and fair balance.

Scope for a temporary permission

20. For the reasons given at IR205-206, the Secretary of State agrees with the Inspector that there is now a realistic likelihood that an alternative site could be available at the

end of a reasonable temporary period. He notes that no 5 year supply of sites can be demonstrated by the Council, and considers that such an absence should be given significant weight in deciding whether to grant permission, including on a temporary basis.

21. Nevertheless, for the reasons given at IR208-211, the Secretary of State agrees with the Inspector that temporary permission should not be granted for the developments proposed in appeals A-C. Instead, and for the reasons given at IR212, the Secretary of State agrees with the Inspector that allowing the appeals on ground (a) of section 174(2) of the Town and Country Planning Act 1990 (and granting deemed planning consent) would reduce the identified harm to a level that would be clearly outweighed by the combined material considerations advanced. He considers that the very special circumstances needed to justify this inappropriate development in the Green Belt would then exist, in accordance with national policy and the development plan. Furthermore, the Secretary of State agrees with the Inspector that such a deemed temporary permission would not have a disproportionate effect on the occupiers in terms of Article 8 and Article 1 of the First Protocol of the ECHR. The Secretary of State also agrees with the Inspector that, for the reasons given at IR214, a temporary period of three years would be appropriate.

Conditions

22. Having considered the Inspector's comments at IR215-217, the Secretary of State is satisfied that the conditions which he proposes are reasonable necessary and comply with the provisions of Circular 11/95.

Appeals on Grounds (f) and (g)

23. For the reasons given at IR218, the Secretary of State agrees with the Inspector that the appeals on ground (f) should be dismissed.

24. The Secretary of State also agrees with the Inspector that, for the reasons given at IR219-221, the appeals on ground (g) should also be dismissed and appropriate conditions imposed in the proposed ground (a) deemed temporary planning consents.

Overall Conclusions

25. The Secretary of State agrees with the Inspector that the proposals for permanent gypsy sites (appeals A-C) would result in substantial harm to the Green Belt, its openness and the encroachment into the countryside, together with substantial harm by reason of inappropriateness; and that these are not clearly outweighed by other material considerations so as to amount to the very special circumstances needed to justify granting permanent consents. Nevertheless, he concludes that, as there is a realistic likelihood that an alternative permanent site could be made available by the end of a reasonable temporary period, and subject to the imposition of conditions, the very special circumstances needed to justify this inappropriate development in the Green Belt exist on a time-limited basis - to enable all five families to remain on the site for a further period of three years from the date of this decision. The Secretary of State is satisfied that granting deemed planning consents on this basis (appeals D and H-K) would strike an appropriate and proportionate balance between the rights of the appellants and impacts on the wider community and would therefore be consistent with the occupiers' rights under Article 8 and Article 1 of the First Protocol of the

ECHR. As the condition to remove the fencing has been breached; the Secretary of State dismisses the appeals under ground (c) of section 174(2).

Formal Decision

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations and issues the following decisions:

    Appeals A-C: that the appeals be dismissed.

    Appeals D-G: that the enforcement notice be varied by substituting the plan attached at page 44 of the IR and appeal D be allowed under ground (a), the varied enforcement notice quashed and planning permission granted on the application deemed to have been made in respect of Appeal D for a temporary period subject to the conditions listed at **Annex A(1)** of this letter.

    Appeals H-K: that the appeals be allowed under ground (a), the enforcement notices be quashed and conditional planning permissions be granted for a temporary period on the applications deemed to have been made in respect of Appeals H-K, subject to conditions listed at **Annex A(2)** of this letter.

27. 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.

28. 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

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

30. A copy of this letter has been sent to Mole Valley District Council. A notification letter/email has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak
Authorised by Secretary of State to sign in that behalf

Annex A

Conditions

1. Appeal D

1) The use hereby permitted shall be carried on only by the following: Mr Roy and Mrs Margaret Amer; Mrs Rose Doherty; Mr Charlie and Mrs Melissa Doherty; Mr & Mrs Simon and Sarah Doherty, and Mr Simon Doherty and Ms Susan King, and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

2) When the site ceases to be occupied those named in condition 1 above, or at the end of 3 years from the date of this decision, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place.

3) The site shall not be occupied by any persons other than Gypsies and Travellers as defined in Annex 1 to "Planning Policy for Traveller Sites" published by the Department for Communities and Local Government in March 2012.

4) No more than 11 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 5 shall be static caravans or mobile homes) shall be stationed on the site at any time.

5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:
   i) within 3 months of the date of this decision, schemes for:
      a) a site development scheme, including the layout of the site; the siting and types of caravans and mobile homes, together with the colour of mobile homes; areas of hard surfacing; fencing and other means of enclosure; means of foul and surface water drainage; any areas to be used for commercial purposes; external lighting on the boundary of and within the site; details of existing fencing, means of enclosure, drainage systems and hard surfacing to be removed; tree, hedge and shrub planting and where appropriate earth mounding, including details of species, plant sizes and proposed numbers and densities
      b) the provision of visibility splays and means of reducing the speed of traffic leaving the site, at each of the accesses on to River Lane
      c) the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use, or the site is occupied by those permitted to do so, as appropriate
      d) a flood evacuation plan for the site
      e) details of all existing and proposed buildings, and of any alterations to existing buildings

shall have been submitted for the written approval of the local planning authority. Each scheme shall include a timetable for its implementation.

ii) within 11 months of the date of this decision each scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

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

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

6) When the works and any changes to the existing development, including the colouring of mobile homes, approved under condition 5 i) above have been implemented in accordance with the approved timetable, they shall be thereafter retained until removed in accordance with conditions 2 and 5 above. No other items falling within the categories in condition 5 i) above shall be installed or placed within the site unless approved as part of the site development scheme. Following their creation, the approved visibility splays shall be thereafter maintained free of any object or planting higher than 1 metre above the level of the adjacent carriageway of River Lane.

7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other means of enclosure shall be constructed, and no areas of hard surfacing installed, other than as approved under condition 5 i) above.

8) No buildings shall be erected or placed on the site, and no existing buildings shall be altered, except as approved under condition 5 i) above.

9) No commercial activities shall take place on the land except on the area(s) approved under condition 5 i) above and in accordance with details of maximum heights, which shall be included in the site development scheme.

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

11) Any paddock areas approved under condition 5 i) above shall only be used for purposes of agriculture.

12) The internal floor levels of each mobile home shall be set at least 300mm above local ground level, and shall be thereafter maintained.

2. Appeals H-K

1) The use hereby permitted shall be carried on only by the following: Mr Roy and Mrs Margaret Amer; Mrs Rose Doherty; Mr Charlie and Mrs Melissa Doherty; Mr & Mrs Simon and Sarah Doherty, and Mr Simon Doherty and Ms Susan King, and their resident dependants, and shall be for a limited period being the period of 3 years

from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

2) When the site ceases to be occupied those named in condition 1 above, or at the end of 3 years from the date of this decision, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place.

3) The site shall not be occupied by any persons other than Gypsies and Travellers as defined in Annex 1 to “Planning Policy for Traveller Sites” published by the Department for Communities and Local Government in March 2012.

4) All structures, hardcore and other hard surfacing, fencing and other means of enclosure shall be removed from the land within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:

i) within 3 months of the date of this decision
   a) a site development scheme, including the layout of the site; areas of hard surfacing; fencing and other means of enclosure; means of foul and surface water drainage; details of existing fencing, means of enclosure, drainage systems and hard surfacing to be removed;
   b) the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use, or the site is occupied by those permitted to do so, as appropriate
   shall have been submitted for the written approval of the local planning authority. Each scheme shall include a timetable for its implementation.

ii) within 11 months of the date of this decision each scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State

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

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

5) When the works and any changes to the existing development approved under condition 4 i) above have been implemented in accordance with the approved timetable, they shall be thereafter retained until removed in accordance with conditions 2 and 4 above. No other items falling within the categories in condition 4 i) above shall be installed or placed within the site unless approved as part of the site development scheme.

6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other means of enclosure shall be constructed, and no areas of hard surfacing installed, other than as approved under condition 4 i) above.

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Antony Fussey JP BSc(Hons) DipTP MRTPI

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

Date: 6 August 2012

TOWN AND COUNTRY PLANNING ACT 1990

MOLE VALLEY DISTRICT COUNCIL

APPEALS BY

MR ROY AMER, MS SUSAN KING, MR SIMON DOHERTY, MRS ROSE DOHERTY AND MR CHARLIE DOHERTY

Inquiry opened on 12 June 2012

River Lane, Leatherhead, Surrey, KT22 0AY

Appeal Refs: APP/C3620/A/12/2169062, 2169066 and 2169068; APP/C3620/C/12/2172090, 2172094, 2172095, 2172099, 2172104, 2172106, 2172116 and 2172145

Appeal A: APP/C3620/A/12/2169062
The Glade, River Lane, Leatherhead, Surrey, KT22 0AY

- 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 Roy Amer against the decision of Mole Valley District Council.
- The application Ref MO/2011/0512/PLA, dated 18 April 2011, was refused by notice dated 13 December 2011.[1]
- The development proposed is permanent use of the land as a Gypsy and Traveller caravan site comprising a single pitch to accommodate a mobile home, a touring caravan and related paddocks. Retention of utility building, shed, hard surfacing, entrance gates and pillars, water feature, fencing, cesspit, oil tank, earth bank and external lights. Proposed erection of stable block and associated landscaping.

Summary of Recommendation: The appeal be dismissed.

Appeal B: APP/C3620/A/12/2169066
Oakview, River Lane, Leatherhead, Surrey, KT22 0AY

- 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 Ms Susan King and Mr Simon Doherty against the decision of Mole Valley District Council.
- The application Ref MO/2011/0520/PLA, dated 18 April 2011, was refused by notice dated 13 December 2011.
- The development proposed is permanent use of the land as a Gypsy and Traveller caravan site comprising a single pitch to accommodate a mobile home, a touring caravan and related paddock. Retention of hard surfacing, fencing, cesspit and oil tank. Proposed erection of utility building, stable block, hard surfacing, external lights and associated landscaping.

Summary of Recommendation: The appeal be dismissed.

Appeal C: APP/C3620/A/12/2169068
Yew Tree[2], River Lane, Leatherhead, Surrey, KT22 0AY

- 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 Mrs Rose Doherty against the decision of Mole Valley District Council.
- The application Ref MO/2011/0521/PLA, dated 18 April 2011, was refused by notice dated 13 December 2011.
- The development proposed is permanent use of the land as a Gypsy and Traveller caravan site comprising two pitches to accommodate: (3a) a mobile home, touring caravan and related paddock. Retention of hard surfacing, fencing, cesspit, oil tank and stable block. Proposed erection of utility building, hard surfacing, external lights and associated landscaping; (3b): a mobile home, two touring caravans and related paddock. Retention of shed, shrine, Wendy house, cesspit, oil tank, fencing and hard surfacing. Proposed erection of utility building, stable block, hard surfacing, external lights and associated landscaping.

Summary of Recommendation: The appeal be dismissed.

[1] The reasons for refusal of each application are set out in Schedule A, attached to this Report
[2] This application concerns 2 plots: Yew Tree (as in the application address) and Wood Lodge

Appeal D: APP/C3620/C/12/2172090

Appeal E: APP/C3620/C/12/2172094

Appeal F: APP/C3620/C/12/2172095

Appeal G: APP/C3620/C/12/2172099

Land adjoining River Lane, Leatherhead, Surrey, KT22 0AY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr R Amer (appeal D), Mrs S Doherty (appeal E), Ms R Doherty (appeal F), and Mr C Doherty (appeal G) against an enforcement notice issued by Mole Valley District Council.
- The Council's reference is 2012/026/ENF.
- The notice was issued on 22 February 2012.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from an agricultural use to a mixed use comprising agriculture, and use as a Gypsy and Traveller caravan site.
- The requirements of the notice are
  (i) To cease the use of the land as a Gypsy and Traveller caravan site
  (ii) To remove from the land all caravans, vehicles and equipment and accessories associated therewith.
- The period for compliance with the requirements is 6 months.
- Appeal D is proceeding on the grounds set out in section 174(2)(a) and (g) of the 1990 Act, and appeals E-G on that in section 174(2) (g). Since the prescribed fees have not been paid within the specified period, the deemed applications for planning permission in respect of appeals E-G do not fall to be considered.

Summary of Recommendations: The enforcement notice be varied, the appeals be allowed, the enforcement notice be quashed, and planning permission be granted on the deemed application.

Appeal H: APP/C3620/C/12/2172104

Appeal I: APP/C3620/C/12/2172106

Appeal J: APP/C3620/C/12/2172116

Appeal K: APP/C3620/C/12/2172145

Wood Lodge (appeal H), Yew Tree (appeal I), Oakview (appeal J) and The Glade (appeal K), River Lane, Leatherhead, Surrey, KT22 0AY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr C Doherty (appeal H), Ms R Doherty (appeal I), Mr S Doherty (appeal J) and Mr R Amer (appeal K) against enforcement notices issued by Mole Valley District Council.
- The Council's reference is 2012/026/ENF.
- The notices were issued on 22 February 2012.
- The breach of planning control as alleged in each notice is without planning permission, the laying of hardcore (appeals H-J) / the laying of hard surfacing (appeal K), the erection of fences over 1 metre in height, the erection of structures on the land and installation of cesspit(s) located underground.
- The requirements of each notice are to remove from the land
  (i) all the hardcore (appeals H-J) / all the hard surfaces (appeal K)
  (ii) all the fencing over 1 metre in height or reduce it to 1 metre or less in height
  (iii) all the structures from above the ground and cesspit(s) located underground
  (iv) all resultant debris
  and to reinstate the land to its former condition.
- The period for compliance with the requirements is 6 months.

- The appeals are proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 1990 Act.

Summary of Recommendations: The appeals be allowed, the enforcement notices quashed, and planning permission be granted on the deemed applications.

Procedural Matters

1. The inquiry sat for 4 days, on 12 – 15 June 2012, inclusive.

2. Appeals A – C were recovered by the Secretary of State for his own determination by a Direction dated 3 February 2012, as they involve proposals for significant development in the Green Belt. The other appeals were recovered by a Direction dated 3 April 2012, as they are most efficiently and effectively decided with the recovered appeals against refusal of planning permission.

3. As well as the grounds set out above, appeals H-K were also originally made on ground (d). However, this ground was withdrawn by email on 21 May 2012 [33][3].

4. Initially the description of each of the 3 applications was "permanent use of land as a gypsy and traveller caravan site" but on 22 June 2011 the applicants asked for the descriptions to be amended to those set out in the headings above.

5. The appellants intended to provide a unilateral undertaking under section 106 of the Act whereby they would pay to the Council contributions to infrastructure costs and affordable housing if planning permission is granted. However one of the registered owners of the site cannot be contacted, being out of the country. The appellants therefore provided bonds to the Council, which agreed to refund them in full if no permission is granted, to refund them in part if a temporary one is granted, and to refund the affordable housing contribution if it is not spent on a public Gypsy and Traveller site within 5 years. The Council has now signed agreements with each of the 4 landowners involved to this effect, and has confirmed that the matters which caused reasons for refusal 3 and 4 have been resolved [13].

6. At the Inquiry the Council invited the substitution of a revised plan [Plan E] for that attached to the enforcement notice the subject of appeals D-G. This invitation followed the acceptance by both the Council and the appellants that an enforcement notice served in 2003 remained extant in respect of land outside the sites of appeals A-C and H-K. As a result of this request, the appellants did not pursue the indication of an additional appeal, on ground (b), made in opening submissions.

7. The parties provided no signed Statement of Common Ground, but submissions and questions at the Inquiry referred to a draft [12].

8. At the Inquiry an application for costs was made by the appellants against Mole Valley District Council. This application is the subject of a separate Report.

[3] References in square brackets are to particular appeal documents, etc. For example, [3:6.26] refers to paragraph 6.26 of Mr Cunnane's proof.

The Site and Surroundings

9. The appeals concern all or part of some 1.2ha to the south-west of Randalls Road (A245) at its junction with River Lane, about 1.5km north-west of Leatherhead town centre, in an open gap between Leatherhead and Fetcham. River Lane forms the appeal site's northern boundary. It is a narrow and poorly surfaced road, a "byway open to all traffic" [30]. It continues from the site to a footbridge over the river Mole, passing 2 pairs of semi-detached houses and land used by a riding club, all on its northern side. The lane is part of the "Wild Walk by the River Mole" footpath system [4: 1]. A sports field with a clubhouse is on the northern side of the lane, opposite the site. Leatherhead crematorium, in extensive wooded grounds is immediately south of the site.

10. The site consists of 4 large parcels, in separate ownerships, all accessed from River Lane through tall conifer hedging along its edge. Each plot contains extensive surfacing, together with at least one area of paddock. "The Glade" has its own access, which passes between 1.5m high solid fences and through tall metal gates between brick posts. Beyond paddocks in the plot, there is then an extensive tarmac area. West of The Glade, the other 3 parcels ("Oakview" next to the lane, then "Wood Lodge" and, furthest from the lane, "Yew Tree"), share another access, lined with solid fences, off the lane. Apart from small grassed areas in the western parts of each of these plots, their surfaces are largely formed of hardcore.

11. To the south-west of these 3 plots, and running down to the river, is a large unkempt area used for occasional horse grazing. The original "change of use" enforcement notice [plan D] includes this land, but the Council now seeks a variation [plan E] to exclude it. The eastern part of this area, which I was told is owned by the Connors family, is the site of overgrown vacant plots which can be subject to flooding. Mr Amer owns the land to their west.

12. The layouts within plans A-C appear intended to show existing features which it is proposed to retain, and also buildings which the appellants wish to add. However there are some significant variations between these layouts and what exists, in terms of such matters as the extents of paddocks and surfacing, and the siting of mobile homes, caravans and entrances to individual plots. Moreover the sizes, designs and positions of some existing buildings do not accord with those on the application plans.

13. In total I saw 2 mobile homes and 8 touring caravans of various sizes. On The Glade were a large brick dayroom incorporating a kitchen and bathroom, and a smaller building. Oakview had a laundry building and a portable toilet. On Wood Lodge were a shed, portable toilet and a building with loose boxes (some used for storage) with an attached tackroom. Yew Tree had a large wooden building used as a dayroom / playroom, a separate laundry building and a caravan which appeared to contain toilet facilities.

14. There is a significant amount of fencing on the site; that along plot boundaries and next to the rear paddocks is of solid panels between concrete posts, up to 2m high; other fencing is of the post-and-rail type. There is a separate fenced and gated compound in the north-eastern part of The Glade; this contains stables and a separate open-fronted store. I saw a significant amount of building material stored in the compound and 3 trucks parked there.

15. [Photos 1] include aerial images of the site from 2009; I saw that the plots were generally laid out as shown, except that the numbers and locations of mobile homes and touring caravans differ. Mr Johnston's letter [2] describes the photographs in detail. [Photos 2 and 3] are both from 1999; the second shows some surfacing serving parking bays for the sports field.

Planning History

16. The planning history of the appellants' land is set out in [3: 3.1-14]. In 2003 the Council became aware that land had been purchased (from the owners of the crematorium) with the intention of creating a Gypsy and Traveller site. Mr Amer confirmed in chief that the families had clubbed together and paid just over £50,000 for the land after seeing a sale board. He said that at that time part of The Glade had a scalping surface, used for car parking by the sports club [photo 3]. Several families occupied the total area that August in breach of an injunction. This was not renewed. In October a retrospective application for 9 plots, including land to the west of the current appeal site, was submitted.

17. Planning permission was refused in December 2003. On 17 November 2004, after a public inquiry, the Secretary of State dismissed an appeal against that decision and subsequent enforcement notices [14]. The scheme he determined had been reduced to 7 plots. He found the development to be inappropriate and inconsistent with Green Belt policy, and to breach the development plan. As well as harm arising from being inappropriate, there would be very substantial harm to the Green Belt's openness and rural character. He found that a combination of factors including unmet need for pitches, the lack of an up-to-date assessment of that need, health problems, educational needs, the consequences of roadside living and the circumstances of the extended and individual families, did not clearly outweigh the identified harm. He therefore found that no very special circumstances existed.

18. He found that a temporary permission, to enable the occupants to search for an alternative site or the children to continue their education, would not overcome the planning objections, and so would be inappropriate. However he extended the enforcement notices' compliance periods to 12 months (to 17 November 2005) to enable a search and for the school year to be completed. Committal proceedings in respect of a breach of the 2003 injunction were adjourned on the occupants' undertaking that they would comply with the notices.

19. However this did not happen, and on 22 November 2005 Mr Amer applied for permission to continue using a reduced area for 4 plots and to retain fencing and surfacing; the application was refused in December. A public inquiry into a subsequent appeal closed in April 2007. The officers' report into the current applications gives details of attempted committal proceedings and direct action and of associated legal action during this period [10: pages 3, 4].

20. On 3 May 2007 the appointed Inspector allowed the appeal [4: 2] and granted temporary permission for a period of 4 years, subject to conditions including a restriction of the use to named persons and a requirement that the use ceases and the site be cleared at the end of the period. It was clarified at that Inquiry that Mr Amer sought a 3 year permission. The Inspector found the site to be a significant intrusion of harmful urban-style development into pleasant countryside, but that harm would be less were the development more compact.

21. He found significant harm to the area's character and appearance and the Green Belt's objectives and openness, with a significant intrusion into the countryside, eroding the rural gap between Leatherhead and Fetcham. He took account of personal circumstances advanced and of the impact of the inevitable eviction if the appeal were dismissed. The general and personal unmet need for pitches had substantial weight but, from the Council's information, he considered that its LDF and DPD process would find suitable and available alternative sites within some 4 years if the appeal site were rejected as an option, with allocations becoming known around 2010 [4: 2.23,29]. He found that circumstances had altered since the 2004 decision.

22. The parties confirmed to me their agreement that the enforcement notices upheld in 2004 remained extant in relation to the land outside the site approved in 2007 (the current appeal site). They further agreed that the Council could prosecute if there were any breach of these extant notices.

23. In compliance with a condition, details of the site layout were submitted to and approved by the Council [15]. It told me that the approved layout had not been fully implemented. It also confirmed that some of the individuals named in condition 2 had not lived on the site, but had been replaced by those currently living on Wood Lodge. It also appears that Mr Amer's storage of materials breaches condition 5. However the Council confirmed that it had not sought to enforce against these various breaches.

24. Despite the information given to the Inspector in 2007, the Council's Site Allocations DPD has not progressed; the officers' report [10; pages 4-6, 26, 27] explains the circumstances. However, as the temporary permission would expire in May 2011, a document to examine alternative sites was prepared outside the (slipped) LDF process [26, 27]. It addressed the suitability and availability of 41 sites in the north of the District, primarily based on the schools attended [26 page 10] and concluded that there were no appropriate alternatives. The Council's Executive noted this conclusion on 14 December 2010 [32]. As no alternative sites had been found, the Council's officers recommended approval of the applications subject to appeals A-C [10].

25. The Council's Development Control Committee rejected that recommendation and refused permission for the 3 applications on 7 December 2011. It authorised the service of enforcement notices on 1 February 2012 after considering a report on the enforcement history, the various options open to it, and matters of the occupiers' human rights and other obligations [6: A24].

Planning Policy

26. National policy relating to the Green Belt and to Gypsy and Traveller sites is found in the National Planning Policy Framework (NPPF) and the Planning Policy for Traveller Sites (PPTS). The Regional Spatial Strategy (RSS), the South-East Plan [5.42-58], requires Local Plans to provide for Gypsy and Traveller sites, but sets no numerical targets.

27. The appeal site and surrounding land, including the crematorium and the sports field, are within the Metropolitan Green Belt. Its extent in the vicinity is shown on the Mole Valley LDF Proposals Map [G] and more diagrammatically on the Core Strategy key diagram [H].

28. The Mole Valley LDF Core Strategy was adopted in 2009. Texts of the relevant policies are found in [7]. Policy CS1's spatial strategy directs development to main built-up areas; that in the countryside is considered in the light of then extant national and regional policy, including on Green Belts. Policy CS5 sets criteria for allocating Traveller sites, and considering applications for them, to meet needs identified in the RSS. These include there being no unacceptable impact on the area's character. The policy's sequential approach for site identification would explore sites within existing settlements before those in the Green Belt or countryside. The Council's agreement (para 5 above) addresses policies CS4 and CS17 on affordable housing and infrastructure contributions.

29. The Mole Valley Local Plan was adopted in 2000. Policies ENV22 and 23 have been "saved" [8]. ENV22 sets general development control criteria, including being appropriate to the site in terms of form and appearance, and respecting the character and appearance of the locality. Policy ENV23 normally requires development to respect its setting. The texts of the policies are in [9].

30. The Council's previous Local Development Scheme envisaged a Land Allocations DPD being adopted by the end of 2011 [10: page 5]. The current scheme [4:3] estimates publication at the end of 2013 or early 2014, and adoption in December 2014. The Council said that the 11 Surrey districts are co-operating to produce evidence to inform the DPD, and have agreed the methodology to arrive at needs for Traveller sites [25]. It is hoped that the survey will be completed by autumn 2012. It was agreed that 12 to 18 months may be needed after the DPD's adoption for sites to become available [12].

Agreed Facts

31. The main parties agreed that the appeals involve inappropriate development in the Green Belt [12] and therefore, in terms of the NPPF and the development plan, cause substantial harm to it.

32. The parties agreed that the appellants and site occupants are "Gypsies" as defined in the PPTS [12]. There was the same finding in the previous 2 appeals [4: 2.3]. Statements from an occupant of each plot are [16-19]. These, together with oral evidence, show that the adult males are involved in gardening, tree surgery groundworks, landscaping and odd jobs. They travel to find work, using touring caravans, and can be away for 2 to 4 months a year. Areas of travel for work include Surrey, south London, Reading, Watford, Oxford, Manchester, Scotland and South Wales. The families all attend traditional gypsy fairs such as Appleby, for up to a week; Mr Amer in particular sells horses there.

33. The parties agreed that the District has an immediate unmet need for Gypsy and Traveller sites, and no available alternative there or in Surrey [3: 6.16; 12]. It was also accepted that this location is a sustainable one for a Traveller site.

Details of Site Occupants[4]

34. Susan King, a Romany Gypsy, and Simon Doherty, an Irish Traveller, live at Oakview with their 4 children, aged 3 to 13. Simon is Margaret Amer's brother.

[4] From statements [16-19], medical and educational details [20] and oral evidence

The two oldest children attend a gypsy school, Gypsy Skills, near Therfield School, Leatherhead. It is either full or part-time alternative education supplied by Surrey Youth Support Service [20] and the only school of its type in Surrey. They now attend on one day a week, but this will increase to 4 days. Simon (10) is at Leatherhead Trinity School and will then go to Therfield; Francis (3) will start in September. He is waiting for a tonsil operation. The family's registered doctor is at Chessington, where Susan's mother lives.

35. Rose Doherty lives at Yew Tree with 9 of her children, aged between 9 and 21. Her father Ned (75) lives in his own caravan; he has bad health, and strokes have affected him badly. Patrick (9) is at Leatherhead Trinity; he is dyslexic and needs extra help. The next 4 oldest children attend Gypsy Skills; Angela (14) is there full-time. Also in Rose's caravan are her daughter Elizabeth, with her 2 children, aged 7 and 4. Barney (7) has cystic fibrosis and brain damage and is treated at Epsom hospital every 2 months; he visits the doctor every week. The machine he uses needs an electricity supply; it would not work if he was on the road. Rose has bowel problems, visiting Epsom hospital monthly and her doctor fortnightly; she is waiting for 2 operations. Rose Jr (16) attends hospital with leg problems, while Ned Jr (18) must attend hospital for the rest of his life for an arm injury. The site families are inter-related; Margaret Amer is her sister-in-law and Simon Doherty her brother-in-law. She and the children attend the local Catholic church; she feels this is important to the family.

36. Sarah Doherty and her husband Simon (Rose's son) live at Wood Lodge with their 2 children. She is a Romany Gypsy and he is an Irish Traveller. He is not accepted by her parents, on the Salvation Place site near Leatherhead. The only available place for Hughie (4) is at Dornay School at Leatherhead. Delilah Rose (2) has just started at Leatherhead Trinity children's' centre. Simon's brother Charlie and his wife Melissa also live on the plot; their 2 children, aged 3 and 2 are both on the waiting list for Leatherhead Trinity School. None of those on the plot have health problems, but are registered with local doctors.

37. Roy Amer lives at The Glade with his wife Margaret and their children Lizzie (8) and Roy Jr (5). He is a Romany Gypsy and his wife an Irish Traveller. Before moving here they were doubling up on his mother's pitch at Claygate, about 7 miles away, or his brother's at Watford. Both children go to Leatherhead Trinity School, where Roy gets extra help. They are registered with a doctor in Claygate but have no health issues.

The Case for Mole Valley District Council

Harm Caused

38. The appellants need to establish material considerations which clearly outweigh the harm to the Green Belt and any other harm, as the NPPF requires. This requires a value judgement[5]. Harm by reason of inappropriateness is substantial. The Inspector in 2007 also found substantial or significant harm to openness (which Green Belt designation is intended to protect) and the area's rural character and appearance [4: 2.10-13]. There has been no material

[5] S Bucks DC v Porter no.2 [2004] 1WLR 1953, para 38, and R (O'Connor) v SSCLG [2012] EWHC 942 (Admin) para 27. Both are in [36].

change to the site since then. The development and its urbanising features still encroach into the countryside, despite landscaping, etc, following the temporary permission, so conflicting with one of the aims of the Green Belt.

39. As the Inspector found, the adverse impact cannot be mitigated; landscaping. would be ineffective for at least half the year. PPTS also advises that sites should not be enclosed with so much hard landscaping, walls and fences that the impression is given that a site and its occupants are deliberately isolated from the rest of the community. The existing development's harm has persisted for some 9 years. It, and that from the proposed additions, will continue to be substantial. Other considerations do not clearly outweigh the harm.

Policy

40. Policy on Traveller sites in the countryside has changed. Circular 1/2006 said that they were acceptable in principle in rural areas where not subject to special planning constraints. However PPTS advises that new sites in the open countryside away from existing settlements or development plan allocations should be strictly limited.

Need for Sites

41. The Council accepts that there is a national, regional and District-wide need for new Gypsy caravan pitches and that unmet need has significant weight. Despite criticisms, the appellants provided no estimate of their own; the only assessment provided is Mr Cunnane's of 7-13 pitches [3: 6.12-15]. This figure derives from the Council's evidence presented as part of the Partial Review of Gypsy and Traveller Sites, of 7 additional pitches in 2011-2016 and a further 9 for 2016-2026. Since then, one pitch has been constructed on each of the 3 public sites, and planning permission has been granted for 2 private pitches.

42. It is agreed that provision for this site's occupants would be additional to the residual figure, and Mr Cunnane's estimate also takes account of an unauthorised encampment and of doubling-up on public sites. He conceded that this is a substantial level of need for one district, and also agreed that regard can be had to the figure of 25 in the Panel's unpublished report. The occupiers' need for accommodation is not disputed but, despite there being more of them than in 2007, the site is still significantly larger than their numbers warrant. The Inspector in 2007 considered that their then needs could be met on only one of the plots, but recognised the costs implications involved.

Alternative Sites

43. The Council cannot point to another permitted site in or outside Mole Valley available for the appellants; it accepts that significant weight should be given to the lack of alternative sites. However, *Chapman*[6] noted the need to demonstrate why an alternative might not be suitable or affordable. These appellants are not obliged to show there is no alternative site before very special circumstances can be said to exist, but they have had 4 years to search at a time when Circular 1/2006 said that rural locations without special constraints were appropriate.

[6] Chapman v United Kingdom [6: B1] para 112

44. Before Mr Amer's oral evidence, there was no indication that the occupiers had sought any alternative site, and the impression was that they could not afford one, although there was no information about their means. However it became evident that they had been seeking land about the size of the appeal site or larger. While local authorities need to identify and provide sites, private provision in appropriate locations is also encouraged. The appellants have shown no inability, as opposed to unwillingness, to find a more acceptable site.

45. Production of a Site Allocations DPD stalled after 2007. Following the last decision, the occupiers' then immediate needs were met. However there was no failure to follow policy, as there was no determination of pitch requirements by the regional planning body, which would then have produced allocations. Moreover if there was a failure of policy, this did not reduce harm caused, or make the occupiers' circumstances more compelling, although Mr Cunnane conceded that any such failure would be a material consideration.

46. The Council's 2010 search for alternatives was based on a site broadly as large as the existing one: "*the search included a requirement that it should be in the region of 1.2ha*" [27: 5.15] and be within the Ashstead, Fetcham, Bookham and Leatherhead areas [27: 6.7] but it does not follow that a smaller one elsewhere would be unacceptable to them. Some 41 possible sites, including the appeal site, were identified in the area on Plan I. 15 were smaller than 1.2ha. 5 sites were considered to be suitable, but none were available. They could have been appropriate for compulsory purchase but the Council considered that this would be disproportionate. However this does not mean that the appeal site is the best of those identified.

47. The Inspector in 2007, while accepting that some 80% of Mole Valley's rural area is in the Green Belt, found that any potential site would be in an area of constraint [4: 2.21] - but not all constraints are equal. Mr Green accepted that a site search could begin in the southern part of Mole Valley outside the Green Belt. An alternative would not inevitably be in the Green Belt, although Mr Cunnane agreed that it probably would be, so a location in the Green Belt is not in principle "a knock-out blow".

Personal Circumstances

48. The appellants' occupation was unlawful until May 2007. It became lawful for 4 years, then became unlawful again. The Council does not suggest that no weight should be given to length of occupation, but its original illegality should temper this issue. *Chapman* endorses the view that unlawfulness of occupation diminishes the weight given to reliance on any long period.

49. The Inspector in 2007 addressed the then occupants' personal circumstances and recognised the support from some members of the local community [4.2 24-26], which are still material considerations. However before Mr Green's proof was received, there was no substantial evidence on the occupiers' current situation. Even then, documentary evidence on health and education was not provided until the second day of the Inquiry. The head teacher of some of the children was called, but provided no proof. The Council had no real opportunity to respond to such evidence, but does accept that personal circumstances are worthy of significant weight and that the impact of 21 children being on the road would be substantial.

50. The needs are deserving of sympathy, but neither they nor the other matters relied on clearly outweigh the harm caused to the Green Belt's openness and the area's character and appearance. Dismissing the appeals would not be a disproportionate interference with the occupiers' Convention rights. It is untrue that decisions of the European Court of Human Rights, such as *Chapman*, are binding in UK law; the principles are [35: ax B1-2; 36]. However the Council does not suggest that the Secretary of State departs from those in *Chapman*.

51. It is incorrect to say that the Council had a statutory obligation to carry out an Equality Impact Assessment (EIA) when exercising its duties under the Equality Act 2010 [35: ax C1-3].

52. Criticisms that it failed to carry out welfare assessments before enforcement action are misplaced; Circular 18/94 refers to proceedings under the Criminal Justice and Public Order Act, so is irrelevant here [35: ax A1-6]. *Kerrier* [6: A2] held that details previously before a Council meant that its committee was fully informed of all the considerations. This is true here: members considering enforcement action in February 2012 were expressly referred back [6: A24] to the comprehensive officers' report of December 2011, detailing the personal circumstances, as supplied to the Council [10]. The situation, with its rights of appeal, differs from the peremptory eviction action addressed by Circular 18/94.

Temporary Permission and Ground (g)

53. Members were expressly referred to Circular 1/06's guidance on temporary permissions [10: page 31]. They were not aware of all the personal circumstances now advanced. The duration of harm would be less if there were a temporary permission, but the proposal for 4 years is still substantial and the identified harm would not be clearly outweighed.

54. Moreover, national guidance has changed. Circular 1/06 advised local authorities to consider a temporary permission where there is a reasonable expectation that new sites would come forward at the end of the DPD process. In these circumstances, substantial weight should be given to unmet need. The PPTS advises that a lack of a deliverable 5 year supply should be a significant material consideration when considering applications for temporary permission – but that this only applies where applications are made 12 months after the policy comes into force. There is therefore currently no national policy presumption that significant weight is given to unmet need and, when it does apply, it will only relate to applications for temporary permission [3: 6.18-20].

55. The applications were for permanent, not temporary, permissions. Having received Counsel's opinion (which was not provided to the Inquiry) and bearing in mind advice in paragraph 109 of Circular 11/95, the Council felt that its only option was to refuse permission.

56. 6 months is enough for the appellants to find alternative accommodation and move to it. Consequences of eviction have substantial weight; if the Secretary of State considers that a longer period is needed, he can extend the notices' compliance periods under ground (g). This would be preferable to a temporary permission – which however should be shorter than the suggested 4 years. (This point was made in closing submissions, but in cross-examination Mr Cunnane said that a 4 year temporary permission could be acceptable). Sites

identified in the DPD would emerge before adoption; permission could be sought in parallel with the process, rather than wait for adoption.

57. Whether temporary or permanent, harmful development outside the built-up areas conflicts with Core Strategy policy CS1(3). The proposals also conflict with policy CS5(e) and (2) and Local Plan policy ENV22 (1) and (3).

Grounds (c) and (f)

58. The existing fencing is unlawful for 3 reasons. It breaches condition 3 of the temporary permission[7] [4: 2]. Moreover it is an incidental part of a current unlawful use and can be enforced against. In addition, as a byway open to all traffic [30], River Lane is a public highway, so fencing adjacent to it does not benefit from permitted development rights if over 1 metre high.

The Case for the Appellants

59. The appellants are concerned about the appropriateness of the Secretary of State's call-in in the context of equality of treatment between Gypsy site proposals and other similar development proposals in the Green Belt, both in this area and generally.

60. New national policy must be read and applied in conjunction with existing statutes and case law, including the Human Rights Act and the European Convention on Human Rights. It is relevant that the stated purpose of the PPTS replacing Circular 1/06 is to rectify the Circular's failure to deliver sufficient sites to meet the need for them.

61. Cllr Aboud, who led the motion to refuse planning permission, was wrong to say "gypsies should be given no special consideration in the planning context different from the settled population". His view was based on an MP's letter, sent before the PPTS, and he also misquoted the PPTS. In fact, the PPTS seeks to address the current inequality of approach between housing allocations for the travelling community compared with those for the settled population.

62. He failed twice to overturn the EIA [26], which was not impeached at the Inquiry and which formed the basis of the officers' report. Following a detailed search incorporating the EIA's criteria and consideration of its results by other committees, when the lack of alternative sites was noted [31, 32], the officers recommended approval for a permanent site [10]. The councillors had no reasonable grounds to take a contrary decision.

63. The appeals involve inappropriate development in the Green Belt, so there is substantial harm by reason of inappropriateness under the NPPF and PPTS [5.124]. Additional weight must be added because of impact on openness and conflict with the purpose of the Green Belt to avoid encroachment on the countryside. There are public views of the site from Randalls Road and River Lane, especially at the access points; at the most, there is some harm to the area's character, but this is not significant especially on the context of existing development nearby. Gypsy sites are not intended to be hidden from view, but

[7] "… at the end of 4 years … the use hereby permitted shall cease, all materials and equipment brought on to the land in connection with the use shall be removed, and the land restored to its former condition."

a landscaping condition can mitigate the impact. There is enough room for substantial planting to largely eliminate longer distance views from River Lane. The site will then comply with Local Plan policies ENV22 and 23 [5.61-66].

64. There is no claim that the other policies cited by the Council do not conform with the NPPF except for Local Plan policy ENV23, in that one of its criteria relates to the impact on the Green Belt's rural amenities of development conspicuous from it. It therefore has limited weight.

65. The previous Inspector found very special circumstances [4: 2.29] to justify a temporary permission. These still exist and are set out below.

Unmet Need

66. The exact figures are in dispute but the parties agree that there is a national, regional and local need for sites [12]. The South East Plan, published in 2009, required provisions to meet the full range of housing needs, including for Gypsies and Travellers. However the appellants accept that the Plan is to be abolished and that it should have no weight in these appeals.

67. The East Surrey Gypsy Traveller Needs Assessment was produced in 2007, after the last appeal. Unhelpfully, it does not break down figures for the 4 Districts covered. It does not include movements to or from conventional housing, so underestimates the need. However, despite its flaws, it estimates a need of 36 additional pitches in 2006-11 over the 4 Districts, being a current shortfall of 22, plus 14 from household formation. A further 21 would be required in 2011-16 [6: A27]. This need is significant over the 4 Districts but 2 of them have few sites, so there is little concealed need there, unlike Mole Valley.

68. The bi-annual count is generally agreed to underestimate need [5.135], but the last 5 showed between 3 and 11 caravans on unauthorised sites in Mole Valley. There were 10, all "tolerated" in July 2011, the last available count [6: A28].

69. The Council breaches the PPTS by not having a robust evidence base to assess needs. It has not properly assessed the unmet need in Mole Valley. The appellants put forward no alternative calculations but Mr Cunnane's estimate of up to 13 does not address concealed households, overcrowding or doubling-up, so is an underestimate. Even on the basis of 13, the need is "substantial" or "considerable". In any event it is highly unlikely that even the estimated need to 2011 will be met. Moreover in Brentwood an unmet need of 15 pitches was a factor justifying a permanent site in the Green Belt [6: B13].

Failure of Policy

70. *Langton and McGill v SSCLG* [6: B5] found that a local authority's failure to comply with national and regional policy to meet identified needs is a material consideration. The Council has a poor record of providing Travellers' sites, and Mr Cunnane conceded a list of failures. Continued and prolonged failure of policy is a material consideration; he conceded that this has significant weight.

71. The Council provided no public sites when it had a duty to do so under the 1968 Act. 3 received planning permission (one close to River Lane), but when the duty was repealed it pursued none of them; instead it shed its obligations. It did not assess need as Circular 1/94 required, relying instead on sub-regional

figures. It produced no DPD, so failed to comply with Circular 1/2006, and created no sites within the Circular's deadline of February 2011. The previous Inspector granted temporary permission because of the Council's failure to pursue the DPD by 2007, despite the clear and immediate need [4: 2.17]. However the Council also failed to advance the DPD beyond the date of 2009 promised to him; the further slippage to 2014, as now advised, is outrageous.

72. Moreover the Council's record and the difficulties of the November 2011 search [27] cast doubts on that date. Mr Green conceded that 2014 is feasible, but only if the Council acts expeditiously, and without the obstruction by members experienced elsewhere. However there is still no adopted policy based on an accurate assessment of need, and no identified 5 year supply of available sites, as PPTS requires, if necessary in co-operation with other local authorities.

73. The Council has only agreed the survey methodology [25]. The DPD will be delayed until after the survey – which should be carried out in both winter and summer to take account of travelling patterns. Nothing is likely to change in relation to the DPD during the 10 months left of the PPTS's 12 month period; there will still be no 5 year supply. Finally, although the Council accepts that there is a substantial need in Mole Valley, there are no plans for a district-wide assessment under the 2004 Housing Act; the 2007 study did not comply with it.

74. Recent appeal decisions at Guildford [6: B7] and St Albans [6: B8] show that failure of policy to meet a need had considerable or significant weight in favour of those appeals as a separate material consideration. The same is true here.

Alternative Sites

75. Alternative sites must be suitable, available and affordable, as *Smith* shows [6: B6]. Following the last Inquiry the Council had a clear obligation to identify this site or an alternative. It knows that the previous Inspector would not rule this site out as potentially being found suitable through the DPD process. The temporary permission for 4 years came about because of the Council's undertaking to prepare a DPD within this timescale. However none has been produced; instead the Council gambled that Circular 1/06 would be withdrawn.

76. Mr Amer and Ms King have been on the waiting list for a pitch at Claygate for about 12 years; there are no vacancies. The Council searched for sites [27] using an EIA [26] which complied with the duty to have regard to matters of equality, endorsed in *Baker* [6: B3]. It was a robust assessment, properly carried out by officers. Mr Cunnane did not question its finding that it would not be proportionate for the appellants to relocate outside the north of Mole Valley.

77. Mr Amer confirmed in chief and cross-examination that he would move if the Council found him a better site, provided it was not too far away for the children to travel. However he also said that he would move if necessary, despite it being hard for them. He had looked for alternative sites for 4 years, including by advertising in free newspapers and regular visits to local estate agents, but wanted enough land for the families and horses. However it is too expensive; land about the same size as the existing site would be big enough to build 6 houses. In response to Cllr Aboud, Mr Amer confirmed that he would move on to a smaller pitch of a size similar to those on public sites if one was offered.

78. *S Cambridgeshire DC v SSCLG* and Brown[8] shows that there is no burden on appellants to show that they had adequately searched for alternative sites. The Council is in a better position to find any, but it found none suitable, including any which could be compulsorily purchased. Mr Cunnane agreed that the appeal site was the most suitable of those identified. The Council conceded that the lack of alternatives has significant weight (the appellants describe it as "substantial"). The officers' recommendation to approve the applications [10] recognised that the appellants should remain on this site.

79. The search did not exclude sites of less than 1.2ha: Cllr Aboud was wrong to complain that it did, as Mr Cunnane agreed. The previous Inspector was indeed concerned about the site's size, but felt it was impractical to address it in a temporary period. Cllr Aboud had no evidence to justify disagreeing with the EIA that any relocation should be in the north of Mole Valley. However it is almost impossible for the Council to dispute the EIA without a revised study.

80. The Council's search identified no alternative sites, and there is little likelihood of any being found in the future. Policy preference, in the absence of other constraints, is that the first search is outside the Green Belt. It would involve the far south of Mole Valley, but this is an impractical location to meet all the general need, as it is far from main centres. As 80% of the undeveloped part of Mole Valley is in the Green Belt, it is likely that any identified site would also be in the Green Belt; this has significant weight. Moreover general and personal need differs. Given the EIA's indication that this extended family should be in the north of Mole Valley, closer to Leatherhead, then any alternative for them would be likely to be in that part of the Green Belt.

81. As in *Butler* [6: B4], *Smith* [6: B6], *Jones* [6: B9], and recent appeal decisions [6: B13, 14], the lack of available, suitable, acceptable and affordable alternative sites has considerable or substantial weight.

Personal Circumstances[9]

82. The (unquestioned) Gypsy status is only relevant if personal circumstances need to be taken into account. Despite Cllr Aboud's views, *Chapman* [6: B1] says that special consideration must be given to Gypsies' needs and different lifestyle. These impact on rights under Article 8 of the European Convention on Human Rights. PPTS's aim to ensure fair and equal treatment for Travellers while facilitating their traditional nomadic lifestyle mirrors *Chapman's* wording.

83. The clear personal needs of the occupiers have considerable weight. The Council failed to consider them, contrary to *Great Portland*[10] and *Kerrier* [6: B2] the last of which says that Circular 18/94 applies to enforcement action. The Council conceded that the EIA is a material consideration pointing to a search in the northern part of Mole Valley [26]. This sets out the length of occupation, integration into the community of north Leatherhead, the educational and health needs, the need to be together for mutual support, and the mixed ethnicity.

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[8] [2007] EWHC 2117 (Admin) – transcript not provided
[9] Statements from an occupant of each plot are [16-19] were supplemented by oral evidence
[10] Westminster Council v Great Portland Estates Plc [1985] AC 661: transcript not provided

84. Existing access to doctors and hospitals from a settled site is a clear advantage compared to roadside living or doubling up. The Secretary of State recently recognized this even when the families are in good health [6: B7]. The health needs of Barney Doherty are considerable, those of Rose and Ned (Snr) Doherty are significant, and some weight is given to the health needs of the others.

85. Leatherhead Trinity School's head teacher says that 4 of the site's children are currently in her school and another is due to start after summer. The school is in north Leatherhead but not all of the children attending are local – some travel from Ashtead and Dorking. Some use taxis. The parents from the site are always engaged with the school. The children are well-liked, well-behaved and have good attendance records. They are totally integrated with settled children, many of whose parents signed the petition supporting the appeals.

86. Like 30% of the children at the school, Patrick Doherty has special educational needs; he is entitled to 16 hours a week support. He is likely to continue needing support at secondary school after next year, which will be at Westhill, Leatherhead. Children are bussed to there. Roy Amer's needs are more severe, being in the first percentile of children with speech and language difficulties. He is in a special unit for such children, outside the mainstream school. The infant unit, which is one of only 4 in Surrey, has only 3 places a year. Her unit is over-subscribed, and she would be surprised if any of the others has any spare places. A fixed base is critical for him to be able to travel to school, where he is intended to be for the next 6 years. His needs are complex and there is serious concern if he were to be on the road and then attend normal mainstream schools. His Statement says that he should go to this particular school.

87. Of the 21 children on site, 14 are of school age. Permanent permission would enable easier access to settled and effective education. The impact on the education of Gypsy children who are evicted is far more than when children from the settled community move house - they inevitably have adequate stock of available accommodation. Some of the children here have special needs, and some attend a special local school for Gypsy children. However the Secretary of State recently [6: B27] gave weight to this matter even when there were no special needs. The educational needs of the children have significant weight.

88. There are close relationships with the local community, and groups visit for meals. These friendships mean a lot, especially to the children. Mr Amer allows the sports club to park vehicles and leave machinery on his land. There have been difficulties over mail deliveries, with confusion between the plot numbers and numbers of the houses on River Lane, but the site occupants try to use plot names now. Even so he still needs to take wrongly-delivered mail to the nearby houses. With reference to traffic speeds on River Lane, a postman used to travel very fast. A condition requiring a "sleeping policeman" to be installed to slow down vehicles emerging from the site will be acceptable.

89. Mr Green confirmed that a typical pitch on a Travellers' site occupies some 500m^2, although this is larger than those on public pitches such as Salvation Place [photos 1]. The large size of the plots here will give plenty of room for more caravans as the children grow up, without the need for the Council to identify more sites and to extend into the Green Belt. An extract from the applications' Design and Access Statement explains this [10: page 6]. Mr Amer

confirmed that 7 or 8 more caravans could fit on to his plot. The large plots also enable horses to be kept; he keeps some on the site and told me that he needs his large surfaced area to manoeuvre horse boxes. He also has a field nearby but has given up keeping them on his land to the west as, despite notifying the police several times, his fences keep getting cut and the horses escape. Other people's horses have also escaped on to his land. The Dohertys also have horses [10: page 7].

90. Extended family living is part of the Gypsy way of life which *Chapman* says should be facilitated. This extended unit gives mutual support and for example make joint school runs. Rose's sons live next to her because they are worried about her. The families here are inter-related Romany Gypsies and Irish Travellers; this is unusual and means that they, and especially the children, are unlikely to be accepted on many public sites. Mr Amer said he would feel uncomfortable on any site in Surrey because of this, as none are mixed. The extended family has some weight.

91. The length of occupation, some 9 years, is a material consideration of some weight – roots have been put down and there are community links, including with a local church and the sports club. Over this period, caravans have become part of the character of the area, rather than an intrusion.

92. While there is no duty on the Council to investigate personal circumstances at application stage, it failed to make appropriate welfare and personal inquiries and to consider the appropriate human rights, humanitarian and expediency tests before authorising enforcement action. This breaches advice in Circulars 18/94 (paras 9-13) and 10/97 (annex 2 para 2.18)

93. The previous Inspector found [4: 2.30] interference with home and family life – important for Article 8 – which is relevant to both adults and children [5.194-5]. The Council agreed that failure of the DPD process directly impacts on the right to a home [6.24]. The enforcement action, which would cause the loss of homes, is not proportionate under Article 8 or Article 1 of the First Protocol, in the light of the Council's failures of policy. The discrimination between the settled and travelling populations in terms of equality of treatment in planning matters breaches Article 14. The previous Inspector found eviction would be disproportionate to the harm caused to the public interest by retaining the site for a limited period. It would be even less proportionate now, given the Council's failure to find any alternative. Moreover Cllr Aboud admitted that members did not consider Human Rights implications when refusing permission.

Conclusion on a Permanent Permission

94. A balance needs to be struck. The Council referred to *S. Bucks v Porter* [36], although this was not raised during the Inquiry. However the circumstances differ as that case, and the recent St Albans appeal [6: B8], involved occupation which never had been lawful. Moreover, there, health matters alone were considered sufficient to override restrictions on development in the Green Belt; more significant material considerations are involved in these appeals.

95. In combination, the general material considerations applying to any Gypsy family clearly outweigh the combined harm, so very special circumstances exist. Adding personal circumstances to the balance, would clearly and substantially

outweigh the harm. The Council's continued inability to find any alternative site for these families justifies doubts that it will ever do so. There is no real likelihood that it would find one, even if 5 years is allowed. Moreover Circular 11/95, which advises against one temporary permission following another, and natural justice, indicate that any permission should be permanent. Indeed, the clear intention of governments since 1994 has been permanent provision, especially by Gypsies themselves. Paragraph 4 of PPTS continues this theme.

96. In *Smith v Doncaster* [6: B6] substantial unmet need, personal need and lack of alternative sites were held to be sufficient to outweigh harm to the Green Belt. There was a similar finding in [6: B9] with a recognition that alternative sites would be likely to be in the Green Belt. The same points arise in these appeals.

97. Members had no proper justification for disagreeing with their officers' assessment and recommendation. Permanent permission should be granted.

Temporary Permission and Ground (g)

98. Consideration of a temporary permission should have been paramount, given the slippage in producing a DPD. This is now advised in PPTS paragraph 25. Cllr Aboud conceded that, as well as matters of Human Rights, the Council failed to consider a temporary consent; there would have been no appeal had it granted a decent period, even though the appellants really want permanent consent. Otherwise they will have to go through the misery and expense of facing eviction at the end on any further period.

99. The argument that the Council was not entitled to consider granting a temporary permission was based on advice by an unnamed Counsel, which was not submitted to the Inquiry or even seen by Mr Cunnane. All the appeal decisions cited by Mr Green which received temporary permission were actually submitted on a permanent basis. The Council did not therefore properly consider the possibility of a condition to enable the development to be allowed.

100. It is common sense that a temporary permission will cause less harm than a permanent one, as most recently seen in *O' Connor* [36]. Circular 11/95 advises that a temporary permission's period should be long enough for circumstances to materially change. This would normally be when additional sites become available following a Site Allocations DPD. Experience shows the minimum period between a DPD's commencement and adoption is 3 years. This one's adoption, originally promised in 2011, has now changed to December 2014. There is real concern about the realism of even this estimate. Moreover it will take 12-18 months from adoption to make identified sites available.

101. The PPTS's new temporary provisions will come into effect in less than 12 months, but in principle they can be applied now, as there is no likelihood that the situation will change in the remaining 10 months.

102. A temporary permission's minimum period, assuming that circumstances will actually change by giving the Council time to make sufficient alternative sites available, is 4 years. *Langton* [6: B5], *Smith* [6: B6] and recent appeal decisions [6: B9, B11, B13] endorse this principle. The Council argued that an application could be submitted during the DPD process when sites had been identified, but before adoption. However this would risk refusal on grounds of

prematurity, as prejudicing the outcome of a significant proportion of the allocation process.

103. The compliance period in the enforcement notices is too short – only 6 weeks after refusing permission, the Council gave the appellants only 6 months to vacate. This would place all the families back on the roadside, in conflict with the humanitarian duty in *Kerrier*.

104. The appellants would prefer a temporary permission to an extended compliance period. In any event 2 years is the longest period Mr Green has encountered; this would be too short for the DPD process to near completion. In any event the period for the second enforcement notice should be 2 months longer than for the first, to give time for works to be carried out after occupation ceases.

Grounds (c) and (f)

105. The fencing is a means of enclosure, less than 2 metres high, and so benefits from permitted development rights. There is no evidence that River Lane is a highway; it appears more as a private way with public rights over it. However, this is a matter of fact and degree. Even if it were found to be a highway, the fences attacked by the notice are not adjacent to it.

106. If the appeal does not succeed on ground (c), the breach of planning control could be resolved under ground (f) by reducing the fences to 1 metre in height.

The Cases for Interested Persons

107. ***Cllr Aboud*** [21] represents the nearby Fetcham West ward. He had not predetermined the matter and declared no interest but led the opposition to the officers' recommendation to grant permission. This was because NPPF Green Belt policies, as well as Core Strategy policies CS1 and CS5, would be breached. This last includes a visual impact test, so is more restrictive than policy HSG11, extant in 2007. "Impact" includes that on local residents and the crematorium. The policy is up-to-date and was subject to examination and public consultation. Local Plan policies ENV22 and 23 are also breached. At the meeting the vote was 9 to refuse and 6 to approve, with 4 abstentions.

108. The size of the site and the dominance of large surfaced areas produce a significant intrusion into the Green Belt. The caravans and other features accentuate the site's visual prominence when seen from the north and the lane. The overall effect is of a significant block of urban development which greatly harms the area's visual appearance and detracts from its rural nature. It erodes the rural gap between Leatherhead and Fetcham.

109. At the 2007 Inquiry both parties accepted that the development was inappropriate in the Green Belt. It is therefore harmful, especially because of loss of openness and encroachment of development, with its many urban features. The subsequent addition of more buildings and surfacing has exacerbated the situation. The additional pitches envisaged to house the site's children would intensify the number of caravans and worsen these problems. This would also fly in the face of the 2007 decision. The agent has not set out the very special circumstances which the NPPF requires to be shown.

110. He raised the EIA's flaws and objected to the criteria of the Council's search for alternative sites; the Inspector in 2007 did not say that it should be limited to the northern part of Mole Valley or be of this size. He actually said that the existing site is too big and could be reduced, while still providing 4 plots [4: 2.12]. Mr Amer's evidence was that 6 or 7 pitches could fit into his plot alone.

111. The search deviated from what the Inspector said, so was flawed. Although the actual residential use is smaller and excludes the paddocks, a specific search requirement was that an alternative site should be around 1.2ha [27: 5.15]. Members were clearly told that the search was on this basis; officers told him that the appellants would expect "like for like" size. The search did not look at all sizes; some in the built-up area were indeed smaller, but the remaining 26 were all over 1.2ha.

112. The EIA's wording was a prop to justify a search in the northern part of Mole Valley; he objected to it in meetings with officers. He saw no reports saying that an alternative site must be there for educational or health reasons. He could not attend the Scrutiny Committee which considered the EIA [31], but objected to the Executive's Chairman that the Committee did not question the officers about the search criteria and that its Chairman confirmed that (Cllr Aboud's) points had not been taken on board. The Executive noted the EIA's contents [32]; while there was no specific rejection, it was not approved.

113. There is no need for the occupants to be on this site for mutual support; Mr Amer said that he was on a site at Chessington with his mother before moving here. Problems of incompatibility with unrelated Romany Gypsies [27: 6.36-7] are not overriding – the settled community may not get along with neighbours.

114. The Crematorium Act 1902 (sic) is still relevant. New crematoria must be at least 182 metres from the nearest house – does this development break the law by being so close? If not, it should still be within the spirit of the law.

115. Surrey County Council objected to the 2004 appeal because of substandard visibility on to River Lane. The appropriate guidance has not changed since then, but no highways objection is now raised. This is strange, especially as the desire of 14 children to continue living on the site shows that the number of pitches could substantially increase in the future. This would significantly increase traffic on River Lane, prejudicing the safety of all its legitimate users.

116. The new PPTS strengthens protection for Green Belts, open countryside and local amenities. Ministers are determined that planning decisions should not give special consideration, and should not be seen to give special status, to Travellers over the settled community[11]. The site is unauthorised; perception of special treatment for some groups in former guidance undermined fair play and harmed community cohesion. The government recognises that past planning policy for Travellers resulted in unfairness. It wants to see fair play by ensuring that the new policy is consistent with that on housing for settled communities.

[11] In cross-examination on the contents of this sentence, Cllr Aboud was unable to point to this reference in the PPTS, despite an adjournment for him to search. He then said that the wording was based on a letter from an unnamed Member of Parliament, of August 2011, before the publication of the PPTS. He refused to submit the letter in evidence but did not wish to resile from the statement in question.

117. It is understood that there are actually 11 children in school. He does not doubt that they are doing well, but Mrs Walsh said that most of the children could be sent to any school. They should be treated the same as settled children.

118. His submissions to committee did not address a temporary permission. PPTS clearly says that a temporary site would still be inappropriate in the Green Belt. Allowing a further 4 years would contravene this advice. It would be unfair both to settled residents and to the site occupiers – all should have the Sword of Damocles lifted from their lives. Moreover, Mr Amer's agreement that he would accept any offer of a site of the same size as a public pitch throws a different light on the question of a temporary permission. It would be appropriate to look for a smaller site, and to the south of the recent search area.

119. ***Mr Langley*** represents the Mole Valley District of the Surrey branch of the CPRE, who have objected to each application and appeal since the unauthorised occupation in 2003, to protect the Green Belt from inappropriate development [22]. He amplified points made in a letter of representation in [2].

120. The need to find permanent sites for Gypsies and Travellers is accepted, but previous inquiries have concluded that this site erodes openness and harms Green Belt objectives and the area's character and appearance. In principle, alternative sites should be outside the Green Belt, but the CPRE is pragmatic on this point. It does not know where the sites considered by the Council were. However, others in need of land do not build unlawful dwellings.

121. The pitches are very large and cover a similar area to the 10 at Salvation Place. The appellants' request for an alternative site of this size can only be met in the Green Belt in this part of Mole Valley; if the appeals are allowed, others will be attracted to occupy unauthorised sites. The fact that the appellants have been on site since the unauthorised occupation in 2003 is no reason for them to receive permanent permission. They have shown disrespect for the law by constructing buildings in breach of a covenant; their recent applications show they want more.

122. The site is much closer to the crematorium than the 182 metres within which the Crematorium Act (sic) precludes any form of occupation. He understood the distance was to avoid health risks – which would affect the many children there if of the site's use continued.

123. Planning controls should apply to everyone - and no other section of the community would be allowed here. The CPRE would not object to a further temporary permission until a suitable site is found elsewhere.

124. ***Mr Carr*** [23] is Chairman of the Leatherhead Residents' Association, but did not speak on their behalf, as members' opinions on the matter are divided. Reference was made [10: pages 15, 30, 31] to a letter from solicitors instructed by the Association, but it strongly denies any such instruction[12].

125. He is a former District and County Councillor. At that time the area suffered from short-term incursions and he used to visit them and nearby householders

[12] The officers' report [10: page 15] actually states that the solicitors were acting on behalf of 6 residents of River Lane. It does not refer to the Leatherhead Residents Association

to discuss local sensitivities. The travellers moved off, generally causing no trouble and leaving clean sites. He has helped the appellants, and become a friend. They have been well-received by the settled community, which has a distinctive inter-dependent sprit. Most of the letters of support sent to the Council were from Leatherhead, but many opposing were from further away.

126. The site residents have had no co-operation from the Council, although they have paid their council tax since moving on. The Council would not report their presence to the Post Office for them to be issued with a postcode; they were not registered to vote despite applying, and bins are not regularly emptied. The situation has improved recently, and Council officers are helpful. However the police have not always been helpful over the cutting of fences. One resident from the other side of the river was caught cutting them, but more recently the police have refused to co-operate on the grounds that the site is illegal.

127. Reference was made to possible vacancies on a site at Epsom. This was occupied by an (allegedly) vicious family, who still control it. It is currently being renovated, but no-one will move there because of threats from the family.

128. Mole Valley is significantly short of sites, and had a policy of providing small ones to minimise problems between Romany Gypsies and Irish Travellers. A family were on an unauthorised site nearby for nearly 12 years, well accepted by the local community and with children in school; the Council released a site in Mickleham, the family happily moved, and are still there. Apart from a private site in the far south, all those in Mole Valley are in the Green Belt.

129. The view towards the river from the public highway is pleasant, but the Local Plan does not consider it worthy of special protection. The Green Belt's importance in the vicinity is questioned; an area is designated for reserve housing further along Randalls Road, the existing waste transfer station to the north is being enlarged, and developments have been allowed to the east.

130. At the committee meeting which refused the application there was no discussion on human rights or the residents' personal circumstances; most of the debate was an attack on the officers' recommendation. There was no discussion of alternative sites or the possibility of a temporary permission. At the February 2012 meeting, the main discussion was about the compliance period.

131. ***Mrs Moore*** [24] runs a community shop in Leatherhead and also knows some of the appellants and their children through Trinity School. She has known of their situation since 2004 and they have become friends. They have worked hard to integrate into the local Leatherhead community and have a significant number of friends. They interact well with parts of the settled community and work with mothers and families on courses and projects at the shop. They support those in difficulties in practical ways. They co-operate with Leatherhead Youth Football Club, their nearest neighbours. The children are not isolated at school and participate well; some of the young people go to a local youth café.

132. It is wrong to evict them when they have nowhere to go; they have no resources, there are no sites, and families on existing ones are already doubling up. It is necessary to address the inadequate provision of Traveller sites in Mole

Valley. The Council seems unwilling to address the occupiers' needs, although the officers' recommendation was positive.

133. Waiting lists for sites are long; Ms King was on one for 12 years and at one stage was 75th on it. The families pooled their resources to buy the site as their best hope, and out of a desire to have education for their children. The continuing uncertainty since then has been very stressful for them. Gypsy and Traveller children are at a huge disadvantage, but these are attending school and achieving, and getting the support they need. Relationships are good and trust has been built up. It would be detrimental to move the children.

134. 80% of Mole Valley is in the Green Belt, the current authorised Gypsy sites are in the Green Belt and any new ones are likely to be there. In any event the Council can re-designate Green Belt if necessary. It would be a waste of resources to evict these families, then have to provide another site. Leatherhead can only benefit from these families receiving planning permission.

Written Representations

135. The officers' report [10: pages 10-17] details extensive correspondence, including petitions, both supporting and opposing the applications. 38 letters or emails of support, together with a petition with 212 signatures, and 12 of objection, were sent in response to the appeals [2]. Some referred back to the earlier correspondence. Many of the points made are the same as those in the cases of the main parties which I report above. I set out additional points.

136. Solicitors acting for the crematorium's owners enclose objections to the original applications. They endorse the Council's views on the Green Belt, and object to the visual impact of caravans, structures, hardcore and fencing on a prominent site. Caravans are supposed to be transient, but there is no evidence that these would be. These urbanising features are seen through sporadic tree cover and degrade the landscape; landscaping cannot resolve them. The Council's reasons for pausing the DPD process are supported, and allowing the appeals would be premature until the process is completed. Previously, access details were considered unsuitable, and the Council objected on road safety grounds. There is no reason why the position should be assessed differently now.

137. Significant and regular disturbance from loud music, shouting, other noise, vehicle emissions and bonfires causes loss of amenity to the crematorium's visitors, and their right to a peaceful and undisturbed visit. It is inappropriate to consider a permanent gypsy site so close to a long-established crematorium. The 1902 Crematorium Act (sic) says that crematoria should be located away from the nearest dwellings; by implication a residential use so close to the crematorium should be considered unacceptable and contrary to legislation.

138. The land was sold subject to specific covenants, including one that there should be no buildings or structures of any kind, and no construction works, except that there may be up to 6 buildings, of specified dimensions and positions, for agricultural use only. This covenant has been breached: the crematorium takes this seriously and the situation is under review by its legal advisors.

139. The Fetcham Residents Association represents about 70% of the 3,000 households in Fetcham. The sites, some 400m from Fetcham, affect its residents especially those on River Lane, and also Cobham Road shops, the

nearest ones to the site. The inappropriate Green Belt development will be an incentive for any Gypsies or Travellers from anywhere in the country to buy large fields in Mole Valley and establish permanent residence when their children are in local schools and they register with local doctors. Mole Valley will be seen as a soft touch.

140. The nearest legal site at Salvation Place, Fetcham, has 10 pitches on the same area as the proposed 4, which are therefore several times larger than necessary. Its residents have no guarantee that their children will have space to live at Salvation Place. The appellants want a site at least as large the existing one, so it is no surprise that the Council cannot find one in the north of Mole Valley. Permanent consent will give an incentive for those on legal sites to purchase large areas in Mole Valley.

141. While the families need to be kept together and to have good access to healthcare, and the children need good education, these benefits are not limited to the Leatherhead area. The Council's search should not have been restricted to the north of Mole Valley; the south has equally good health and educational facilities. Proximity to the crematorium puts the children's health at risk.

142. Many local residents condemn the illegality of the occupation, and do not support the breaking of planning, or any other, laws. The appellants have already broken covenants by erecting buildings; more are planned. They should not expect to be rewarded for breaking laws, justified only by the fact that it has already been done to give a home to the offenders. The Association would not object to a temporary planning permission until a suitable site is found.

143. A letter of objection from Mr Johnston includes criticisms of the Council's search report as follows:

a) The search was outside the DPD process; residents have been denied the protections of that process. There is no basis for saying that it must include a site of 1.2ha in the north of Mole Valley to meet the appellants' needs. The DPD would not be able to avoid making allocations on the basis that compulsory acquisition would be "disproportionate" as [27] does. The report is designed to produce permanent permission on the basis that no alternative has been found.

b) No Council Committees challenged the report. It implies that the DPD did not progress because of the new government's pronouncements, but the Council knew by May 2009 that the DPD would not be adopted by the end of 2011. The reason for delay was because the Council failed to get its act together.

c) Limiting the search to the north of Mole Valley wrongly assumes that the only alternative would be itinerant lifestyle with consequent effects on education and that only doctors near Leatherhead can provide the necessary care.

d) Public pitches are significantly smaller than those at River Lane, and their residents do not have the possibility of housing expanded families; the search should not have been for such large plots. Sites only marginally smaller than 1.2ha were rejected because they were not large enough.

e) The new large pitches recommended by the report could then be allowed to expand and meet future DPD requirements at no cost to the Council, but avoiding due process.

f) The search report does not mention the possibility of a temporary permission until the adoption of a DPD, as envisaged by the previous Inspector.

144. Additional points made by him and other private individuals were:
a) The use began without planning permission in an aggressive and calculated occupation in defiance of a court injunction. Since then the occupiers have used every means to circumvent planning laws and delay the process; both the government and Council are dragging their heels.
b) None of the very special circumstances now claimed existed when the site was first occupied.
c) The conditions of the temporary permission are regularly broken. There have been more caravans than permitted - there have been dozens, which only moved off once the appeals began. One of the families named in a condition never lived there; they had a permanent site elsewhere, and misled the Inspector. Buildings have been erected without permission.
d) Others have to abide by the planning regulations; the Council should not be inconsistent. Anyone else wishing to develop this land would have been refused. It is a fact of life that if land is not available or affordable in one area, people must go elsewhere.
e) The settled community have no right to develop their gardens to provide homes for their children despite lack of affordable housing for them.
f) This will be a precedent for eroding the Green Belt throughout the country.
g) It is only time before there is pressure to develop the land down to the river; the Council could not resist if "special circumstances" are again claimed.
h) The site is very visible in its rural context, especially when trees are bare.
i) The site is affected by the floodplain
j) It is impossible to sell nearby properties because of the site's proximity.
k) Horses regularly get into nearby gardens because of insecure fencing; the appellants' dogs chase cars on the lane.
l) The site occupiers use addresses of nearby houses as a company address and to register vehicles. They still use the house numbers, despite being given names for the plots, and mail goes astray. Bailiffs call at the houses because of the addresses used by the site occupiers.
m) Traffic from the site worsens the lane's surface. There are more drivers on the site since at the last appeal. The sports club car park opposite the appeal site, and the use of the site by the club for parking, increases traffic.
n) Entrances from the site into the lane are dangerous – it is impossible to see when pulling out, and there have been accidents and near-misses. The Traveller boys drive their van at speed down the lane to the river.
o) Visibility at the accesses on to the lane was held to be inadequate in 2004 but since then the leylandii planted to screen the site have become mature and reduce visibility to virtually zero.
p) The lane is well used by walkers and cyclists, including children going to Therfield School. They are at risk from the use of these accesses.
q) A report from a County Council highways officer for the 2004 appeal [with Mr & Mrs Wood's letter at 2] is still relevant. It says that the lane is a public highway and recommends visibility at each access of 2 x 45m; this was the County Council's only highway safety objection.
r) Caravans and mobile homes being delivered block the lane. A tree fell from the site and also blocked the lane; the occupiers did nothing to remove it.

145. A letter from the Catholic Church of Our Lady and St Peter said that many site residents are members of the church and are widely accepted in Leatherhead. One from Mrs Walsh in her capacity as head teacher summarises the points she

made at the Inquiry. The head of the school's children's centre says that support of education is rare from Traveller families, but those on this site are very supportive. Many of their children have used the centre to access Early Years Education. All its staff are trained in the needs of Traveller families, and a specific member of staff engages and supports them. This support would not necessarily be available elsewhere.

146. The national charity Friends, Families and Travellers makes general points that between about a fifth and a quarter of the 100,000 Gypsies and Travellers in caravans in the country have no authorised sites. This represents a population of up to 25,000 people who are constantly being evicted at an estimated annual cost of £18 million. The group have the poorest life outcomes of any minority ethnic group on the country in terms of life expectancy, perinatal mortality and education. Objections on the basis of loss of house values are unjustified.

147. Additional points made by private individuals supporting the appeals were:
a) The residents are of good character, cause no trouble and are good neighbours. They desire to integrate into the community.
b) 5 children from the site attend a local boxing club – this helps their integration.
c) A permanent planning permission would end years of uncertainty.
d) The site is always clean and tidy and the homes spotless.
e) Public costs related to this site are already high; eviction would increase them, and be a waste of money.
f) The main opposition is from Fetcham Residents Association, but Fetcham is on the other side of the river. The site cannot be seen from there, and there is little linkage between the two areas.
g) The main trees on the site have been retained, and efforts have been made to make the site pleasant while retaining privacy.
h) The Council is inconsistent; it has approved a golf course in the Green Belt.
i) The residents bought the land in good faith, for somewhere to settle.
j) Retrospective applications are often approved.

Conditions

148. Suggested conditions promoted by the Council are based on those in the officers' report [10: pages 35-37]. They are similar to those proposed by the appellants [34] and referred to in [5.223-8]. A number of others, and modifications of those suggested, were discussed and agreed at the Inquiry.

149. The parties recognised that a standard condition requires details of a site development scheme to be submitted, and the approved details, including remedial works, to be implemented. It was accepted that this could replace the suggestion relating to a landscaping scheme. However layout, landscaping and surfacing should be included in the details, and it is envisaged that there could be planting in the paddocks as well as on the pitches themselves. As the layouts on the submitted application plans may not be acceptable, such a condition should specifically exclude their provisions. The suggestion requiring adherence to the submitted plans would not therefore be needed.

150. It would be appropriate for a condition to ensure that any approved paddocks are only used for agricultural purposes. The Council and the appellants' planning witness agreed the suggested condition to remove permitted

development rights for such matters as fencing and external lighting; this should be other than as approved as part of the scheme. The appellants' advocate objected, however, as there would be no permitted development rights for buildings and structures on a caravan site. Nevertheless it was agreed that some control over other matters was needed.

151. It was agreed that a personal permission would be appropriate if personal circumstances were relevant to the decision and that such a condition could properly be imposed on a permanent permission, even where buildings are involved. With regard to the numbers of caravans, the appellants' Rule 6 statement said that permission was sought for a total of 4 static and 5 touring caravans – the fifth was to recognise the numbers living on Yew Tree. However there was no dispute that there could be 2 mobile homes on Wood Lodge, to recognise the existence of 2 families there; the number now sought is 5 statics and 6 tourers.

152. Control of the location of the caravans would meet part of the aims of suggested condition 9, which is designed to reduce flood risk. The appellants agreed that stipulation of floor heights of mobile homes would not cause a problem.

153. The appellants suggested that a successful ground (a) appeal against the second enforcement notice could have a condition enabling control of the details of the structures being retained.

154. It was accepted that Mr Amer's materials storage yard would breach a suggested condition preventing commercial use, but that the Council has not enforced the existing condition he is breaching. He agreed that, if this were critical to the decision, he would cease the use. Otherwise any area for commercial use could be included in the site layout scheme, which could also control the height of stored materials. The Council does not believe that commercial use would be appropriate if a permission were permanent.

155. The parties recognised that the danger of the accesses on to River Lane should be addressed by a condition requiring the submission and implementation of means of physically slowing emerging traffic and of providing adequate visibility. This could be included in the site development scheme.

156. The Council suggested that a condition could ensure that outbuildings and utility buildings were ancillary to the caravans, and not be used for sleeping. The appellants did not resist this, but considered that planning permission would be necessary for such use in any event.

157. The appellants agreed that a condition to control the colour of the mobile homes could be appropriate if light colours were to cause a material effect.

158. In relation to the period of any temporary consent, the appellants suggested a period of 4 years, to tie in with the DPD process and with what Mr Cunnane said was realistic. However the Council suggested a shorter period, as site provision could be parallel with the process, rather than wait for its completion.

Inspector's Conclusions

159. Figures in parentheses ( ) refer to paragraphs in the first part of this Report.

160. In my view, the main considerations upon which the decisions should be based in respect of the s78 appeals and the s174 ground (a) appeals are
- the harm to the Green Belt by reason of inappropriateness and any other harm
- whether the harm to the Green Belt arising from being inappropriate, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances needed to justify the development.

161. The main consideration upon which the decisions should be based in respect of the s174 ground (c) appeals is whether the existing fencing represents a breach of planning control. That in respect of the ground (f) appeals is whether lesser steps would resolve any such breach.

162. That upon which the decisions should be based in respect of the s174 ground (g) appeals is whether the compliance period specified in the notices is reasonable.

The First Enforcement Notice

163. The Council included the entirety of the land down to the river in this notice to prevent any use as a Gypsy and Traveller site. It believed that the planning permission granted on appeal in 2007 superseded the provisions of the enforcement notice confirmed on appeal in 2004. The parties now agree that the 2004 notice remains extant on that part of the land not subject to the 2007 permission (22). Accordingly the Council's request (6) to restrict the area covered by the current notice to the 4 plots the subject of these appeals will not inhibit prosecution for any breach of the extant 2004 notice.

164. I recommend that the Secretary of State accedes to this request and substitutes the plan appended to this report for the one attached to the enforcement notice the subject of appeals D-G.

The Appeals on Ground (c)

165. The appeal on this ground can be conveniently addressed at this stage. It relates only to the fencing. The requirements of the 2007 permission (58) clearly included its removal; as it has not been removed, the condition has been breached. Section 171A(b) of the Act says that failure to comply with a condition is a breach of planning control. Moreover even if fencing can be erected under permitted development rights, that on the appeal site has clearly been erected as part and parcel of the unauthorised development and so in itself is unauthorised. A Council can legitimately require the undoing of any works incidental to a breach of control, even if there would be no breach had those works been carried out independently.

166. Even leaving these points aside, it is clear to me from information supplied by the County Council that, as a matter of fact and degree, River Lane is properly regarded as a "highway" used by vehicular traffic (9). The solid fence panels which bound both sides of The Glade's splayed access appear to be part of the boundary to the highway. Moreover those on both sides of the joint access way to the other three plots approach so close to the highway boundary that the

nearest panels and their supporting posts are clearly adjacent to it. Finally, there is a post and rail fence on Oakview's highway boundary. All these lengths of fencing are over a metre high (sometimes approaching 2m), so are not permitted development under Class A of Part 2 of the Town and Country Planning (General Permitted Development) Order 1995. Moreover, under Articles 3(4) and (5) of the Order, such rights do not apply to development in breach of a condition or in connection with an unlawful use.

167. For these reasons I recommend that the appeals under ground (c) are dismissed.

Appeals A – C and the Appeals on Ground (a)

168. The parties agreed that the policies cited by the Council accord with the NPPF (63-4). I have no reason to take a different view. The appellants took issue with one criterion on Local Plan policy ENV23 (64) but as this appears to relate to development outside the Green Belt but visible from it, the criterion has no relevance to these appeals and the policy has full weight in relation to them.

<u>The Harm Caused</u>

169. It is common ground that the inappropriateness of the appeal developments causes substantial harm to the Green Belt (31, 63). This "harm by definition" would be the same for any Traveller site in the 80% of the undeveloped part of the District which is in the Green Belt. Paragraph 4 of PPTS seeks to protect the Green Belt from inappropriate development in the context of Traveller sites.

170. The presence of the development also harms the openness of the Green Belt, as the previous Inspector found (21); the appellants agree that this is additional weight against the appeals, as is the encroachment on the countryside (63). This harm will increase with the additional level of development envisaged in the applications. I agree with the previous Inspector that the size of the plots, which disperse the development over a wider area, compounds this harm (20). He considered that it could be reduced if the buildings and caravans were concentrated into a smaller area, but that this would be too costly in the context of a temporary permission.

171. However, the appellants have done nothing to address this point in the applications involved in appeals A–C, as 4 large plots are still proposed. Moreover Mr Amer clearly wishes to retain a commercial compound, which further reduces openness. I consider that the harm to openness involved in appeals A–C will be considerable. It would, however, be possible under the ground (a) appeals to impose conditions requiring a site development scheme which would concentrate the development into only part of the site. This would reduce the harm to the Green Belt's openness, but it would still be considerable.

172. I agree that the site is a prominent one, close to the main road, from where it can be seen from a higher level through trees and hedging, even when they are in leaf. There would be little screening effect at other times of the year. This situation is the same in views from further down River Lane, promoted as a recreational route (9), where the fringing vegetation is deciduous. That on the River Lane frontage of the plots consists of leylandii; this does provide screening except at the access points, from where there are clear views into the plots.

173. Currently, the various features on the site, such as the light-coloured caravans and mobile homes, together with the buildings, commercial compound, gates and pillars, long lengths of solid fencing, and the extensive surfaced areas, produce an urbanised appearance. This significantly harms the visual amenity of what the previous Inspector recognised as an area of pleasant countryside (20). I do not agree with the appellants (63) that the presence of other nearby development mitigates this harm, as the site is not seen in close relationship to it. The additional development envisaged in the 3 applications would only increase this harm. Moreover if, as discussed below, some of the conifer hedging is removed to provide visibility, items on the site would be even more prominent from River Lane.

174. Traveller sites may not need to be completely screened in the countryside, but the existing and proposed developments would so intrude into it that substantial mitigation by landscaping would be required. There would not be enough room on the proposed layouts for this to be possible. A more compact development could be produced through the ground (a) appeals which, together with removing much of the hard surfacing and solid fencing, could free up enough land for significant landscaping. Even so, it would take many years for this to become effective enough to adequately mitigate the development's impact.

175. The existing and proposed developments would considerably harm the character and appearance of the surroundings. They would conflict with the development plan, with the NPPF's core principle of recognising the intrinsic beauty and character of the countryside, and with advice in the PPTS. The encroachment on the countryside would also conflict with one of the aims of the Green Belt. The appeal developments would not respect the character and appearance of the locality, so breaching policies CS5, ENV22 and 23 (28, 29). It is necessary to balance this harm, together with the substantial harm by reason of inappropriateness, with the material considerations advanced, in accordance with policy H of the PPTS.

The Need for Sites

176. The Council recognises the national, regional and local need for sites (41). It has not carried out any assessment of the number of pitches needed in its area, either currently or in the future. The maximum figure of 13 advanced by Mr Cunnane (41) has no allowance for important components of need such as concealed households, overcrowding and doubling-up, and I agree with the appellants that it is likely to be an underestimate (69). The Council conceded that regard could be had to the figure of 25 (42). Even 13 would to my mind be a significant level of need. A component of this general need is the appellants' personal requirements, which the parties agreed involved 5 families and is immediate. I agree with the Council's acceptance that the level of need is substantial (42). In my view it has significant weight.

Failure of Policy

177. Irrespective of the reasons given for it, the Council has failed to progress with the identification of sites through the LDF process. It has not even begun initial survey work. The 4 year timescale for the adoption of a Site Allocations DPD which it gave to the previous Inspector (21) caused him to give different weight to the Secretary of State's findings in 2004 (17). However the process has

slipped, and the Council's estimated adoption is now December 2014 (30). The Council's past record makes the appellants sceptical about this date, but even if it is realistic, there is still a material failure of policy. The Council agreed this failure is a material consideration (45). In my view it has significant weight.

Alternative Sites

178. The Council agreed that there are no alternative sites currently available for the appellants in Surrey as a whole (43). There are no vacancies on its public sites, and long waiting lists for them (76, 133). It is commendable that it carried out a search for alternatives, outside the LDF process, specifically to meet the needs of the occupiers of the appeal site (24); however it found none. This finding was a significant factor in the officers' recommendation to approve the applications. As the Council agreed (43), the lack of identified alternative sites has significant weight.

179. The appellants have made some efforts to find alternatives themselves (77), although there is no requirement for them to do so (78); the Council is better placed. It restricted its search to only a section of the northern part of the District (24, 46). The EIA's reference to "the northern part" seems to have been narrowly interpreted to mean close proximity to existing schools. I agree with the appellants that in terms of their personal circumstances, especially of the children, a site in the far south of Mole Valley would be inappropriate. The most persuasive evidence that an alternative should be near Leatherhead related to Roy Amer's educational needs – but even then, pupils travel to the school from as far away as Dorking, well outside the search area (85). I conclude that the Council's area of search was too restricted.

180. The previous Inspector found the existing site too large (20). Nevertheless the Council's search [27] used it "*as a benchmark so that a comparison can easily be made between the existing site and other sites that may be considered as a suitable and available alternative*". Neither the locational or size criteria derive from the 2007 decision. Some of the 41 sites examined in the search were smaller than 1.2ha (46). 9 of the 10 found in built-up areas were smaller, but even one of 0.97ha was said to be "*not of sufficient size to accommodate the families at River Lane Gypsy Site*". The search results did not record the areas of all the sites but, where size was given, 6 were smaller than 1.2ha - and size was stated as a reason for their unsuitability, even in one case of 0.95ha.

181. The existing plots include at least one paddock, and one reason given for the site's size was a wish to keep horses (89). However there was no evidence why it is essential to keep horses next to the residential parts of the site. In my experience Travellers can keep their horses some distance away from where they live – and Mr Amer told me that he keeps some of his on other land (89). In any event I do not see why land used for horse keeping should be counted in the size of the plot.

182. The main argument was that the plots need to be large, so that the children could eventually live there (89). However this assumes both that the children will want to adopt a nomadic Traveller lifestyle and that, if they did, they would want to live on the same site as their parents, rather than independently or with their in-laws. The argument falters even more when it is realised that many of the children are young; I do not believe that Mr Amer's large plot is needed now

in preparation for his children aged 8 and 5. Rose Doherty has older children, but the oldest on Oakview and Wood Lodge are 13 and 4 respectively. In most cases any need to house the appellants' children will be well into the long term.

183. I conclude that there is no convincing argument why these families need a site anything as large as 1.2ha. Indeed Mr Amer confirmed that he would accept a plot of the same size as on a public pitch (77). Even on Mr Green's view that existing public plots are smaller than the national average (88), a site for these families could be much smaller than the existing one. It follows that the Council's search, based on the size of the existing site, was unrealistic and took account of the appellants' aspirations rather than their reasonable needs.

184. In my view the search's conclusions that there are no appropriate alternatives (24) are unsustainable and can have very little weight. It may well be that a search based on more realistic criteria in terms of location and size may find smaller sites with less visual impact. The appellants agreed that in terms of general need, sites may be found outside the Green Belt in the south of the District, although I accept that these would be inappropriate for them.

185. Indeed, perhaps the closest of the sites investigated, a reserve housing site of 2.9ha on the northern side of Randalls Road [27: site 25], is outside the Green Belt, and so would accord with the search criteria of policy CS5. It is discounted because of its potential residential value and because the owners (the County Council) would not willingly release it to relocate the 4 pitches. However these comments are not surprising if based on a use of potential housing land for purposes which would include substantial areas of paddock and a dispersed type of development. There is no indication of the owners' views on the possible release for a site of a more realistic size.

186. However, as far as these families are concerned, I accept that it is possible – but not inevitable – that an alternative site will be in the Green Belt. There will then be harm by reason of inappropriateness, as on the present site. However this does not mean that any alternative site in the Green Belt would be equally unacceptable; it may not necessarily be as harmful to the Green Belt's openness or visual amenity as the appeal site.

187. Nevertheless, despite the deficiencies of the Council's search, there are currently no identified alternative sites in the District for Travellers in general, let alone for this family. In my view this lack has significant weight.

Other Matters Raised by Third Parties

188. The Cremation Act 1902 does not preclude residential uses close to crematoria. The objectors' belief (114, 122, 137) that it does is a misreading of section 5[13]. It seems to me that this is designed to prevent possible distress to people living or travelling close to crematoria, but has provision for owners, etc, to agree to a location there – presumably if they would feel no distress. The Act does not appear to address health effects, nor to control new residential uses. This is a matter of law, but this Act does not appear to me to affect these appeals.

[13] "No crematorium shall be constructed nearer to any dwelling house than two hundred yards, except with the consent, in writing, of the owner, lessee, and occupier of such house, nor within fifty yards of any public highway"

189. The owners of the crematorium complain that the existing and proposed buildings breach a covenant to which the appellants agreed when they bought the land (138). However a planning decision cannot be used to enforce such a private agreement, but neither would a planning permission override it.

190. Some third parties raise the issue of highway safety (115, 144). I share their concern that the highway authority, which objected at the Inquiry in 2004 had no observations on the applications and believes that visibility at the accesses on to River Lane is adequate. However the conifers on the highway boundary almost completely block visibility for emerging traffic from the joint access to the Doherty's 3 plots. Visibility at the splayed entrance to The Glade is better.

191. I saw myself 2 vehicles emerge from the joint access at speed with no attempt to slow down, or look for traffic or pedestrians on the lane. This reckless driving bore out what local objectors say (144). However the appellants would accept a condition requiring the installation of means of physically slowing traffic and of securing visibility. Such means may involve closing the existing joint access and creating a link to The Glade's entrance, or installing a "sleeping policeman" and removing some or all of the hedge. I consider that that a condition, if enforced, would adequately address this problem.

192. It is clear that some horses from the site have escaped and entered nearby properties (144). However on at least some occasions this appears to have been caused by deliberate criminal damage by people from outside the site (89, 126), although it is of concern that the police are reported as refusing to take action because they believe the site to be illegal.

Conclusions on a Permanent Permission

193. The harm from inappropriateness is substantial by definition. I also consider that the harm caused to the openness of the Green Belt and to the character and appearance of the surroundings, whether from the existing level of development or the totality of that proposed in the applications, is considerable and breaches the development plan (28, 29). Set against this, the level of unmet need and the failure of policy to meet it have significant weight. The absence of any identified alternative sites also has weight, but this is reduced because of the deficiencies of the Council's search. In the balancing exercise, I do not consider that these material considerations go anywhere near to clearly outweighing the identified harm. Moreover appeals A–C do not address previous criticisms of the impact on openness and visual amenity. In my view, the very special circumstances needed to justify the development do not exist in respect of those appeals.

194. Some of the suggested conditions could require changes to the submitted layout to reduce the proposals' impact, but significant development, not adequately mitigated, would still occur within each of the defined plots. The appeals on ground (a), however, would enable conditions to be imposed to enable a layout to be considered in the context of the entire site. This could produce a more concentrated development, reducing the level of harm to openness and visual amenity. However the question about the existence of alternative sites following a more realistic search remains, and on balance I do not consider that the material considerations are still strong enough to clearly outweigh the albeit reduced harm which could be involved in the ground (a) appeals.

195. In the light of the above, I do not recommend that a permanent planning permission be granted in respect of any of the appeals.

196. Dismissing all the appeals would inevitably lead to the eviction of all the occupiers, who would have no alternative home. This would interfere with their home and family life and the peaceful enjoyment of their property, which are protected by Article 8 and Article 1 of the First Protocol of the European Convention on Human Rights. However this must be weighed against the wider public interest, which includes the need to protect the Green Belt and the countryside from harm. In my view this legitimate aim can only be adequately safeguarded by the refusal of any permanent permission. On balance, I consider that the dismissal of the appeals on this basis, and the consequent interference, would not have a disproportionate effect on the occupiers, but would strike an appropriate fair balance. Moreover, as *Chapman* indicates, such interference is less serious when the occupation is unlawful (48).

Personal Circumstances

197. The parties agreed that personal circumstances become relevant if a temporary planning permission is being considered. They do not need to be considered in the context of a permanent permission, which would benefit Travellers without distinction. The appellants cite various decisions (84, 87, 96) where such matters have justified allowing appeals. However they are not a blanket indication that this will always be the case; such matters need to be considered in each site's individual context.

198. The two previous appeal decisions accepted that the families on the site fell within the then current definition of "Gypsies and Travellers" (32). From the information given about travel and working patterns, it appears to me that this is still the case. No party disputed the continuing status, and the Secretary of State is invited to agree to it.

199. It is commendable that the site occupiers have built up strong community ties (145), and have achieved a significant level of integration (88). The amount of support and friendship which they have received from many members of the settled community (125, 131, 145, 147) is in my experience almost unique. Nevertheless these roots have been strengthened during periods of consciously unlawful occupation and in my view this reduces the weight which should be accorded to these benefits.

200. As well as support, there is significant local opposition (107+, 139, 143, 144), not only to the visual impact of the site. PPTS recognises that special consideration is given to Travellers because of the persistent failure of the planning system to allocate sufficient land to meet their housing needs in comparison with the settled community (82). Even so, there is a perception of different treatment, where no-one else would be permitted to develop in the Green Belt (116, 144). This perception is reinforced by the considerable concern about the breaches of planning control on this site (142), including the initial defiance of an injunction (16) and the failure to abide both by many of the conditions imposed on the temporary permission (23, 144), and by a covenant which affects the site (121). These, and other actions by the site occupiers, have clearly reduced community cohesion. Nevertheless the measure of integration which the occupiers have achieved merits some weight.

201. There is some force in the objectors' arguments that some of the personal circumstances now advanced did not apply when the development began or at the time of the last Inquiry (144). However it is appropriate that the current position is taken into account.

202. The appellants' figure of 21 children on the site includes young adults, but there are about a dozen at school. They are clearly valued and supported by their schools, with good levels of integration and attendance and are progressing well (85). There are clear benefits of a settled education for Traveller children, which have some weight. Patrick Doherty has special needs (35), but Roy Amer Jr's situation is the more serious (37). He clearly benefits greatly from attendance at Leatherhead Trinity's special unit and would suffer greatly if he could no longer attend (88). His educational needs should have significant weight. The Council accepted that the impact of all the children being on the roadside would be substantial (49).

203. There are similarly benefits where Travellers are able to have settled health care. Many of those on the site are in good health but some, especially on Yew Tree, have particular issues which would benefit from a settled address. Barney Doherty has significant problems (35), but I note that he has only arrived on the site relatively recently. There was no evidence of whether his stay with his grandmother is intended to be long-term, and I note that the letter about him from his consultant [20] gives his address as being in Harrow. Nevertheless the health benefits for all residents of living on the site should have some weight.

204. The occupiers form an extended family who provide mutual support (90), and the argument that they should ideally stay together has force. They are of mixed Romany Gypsy and Irish Traveller ethnicity (34-7). I accept that this is unusual and that they may not be accepted on some (but, in my experience, not all) public sites. Sarah Doherty said that her family at Salvation Place would not accept them there (36), although I note that those signing the petition of support [2] include residents of all the plots there. In any event, the lack of vacancies for this family on public sites (33) makes this point academic in the short term. This extended family's characteristics should have material weight.

<u>The Possibility of a Temporary Permission</u>

205. I share the appellants' concern about the Council's failure to progress the DPD timetable given in 2007 (21), which could identify alternative sites. There may be some justification for the scepticism about the currently proposed adoption date (95), but the required survey work is due this year (30); the appellants accepted that the date is achievable if the process is robustly pursued (72).

206. The Council initiated a search outside the DPD process over a matter of months in 2010 (24). I see no reason why a new search with more realistic parameters could not be undertaken in a similarly short time. Sites identified could then be considered as part of the DPD process, and I agree with the Council that applications on them could be submitted before a DPD is adopted. It seems to me that there is now a realistic likelihood that an alternative site could be available at the end of a reasonable temporary period.

207. Circular 11/95 advises that a second temporary permission should not normally be granted, but may be justified where, for example, an anticipated re-

development has been postponed. It seems to me that a situation where a promised DPD timetable has slipped and an interim search for alternative sites was defective – with neither fault laid at the appellant's door – is broadly analogous to that described in the Circular. In these circumstances a further temporary permission could in principle be granted, even though the circumstances do not accord with PPTS's advice on temporary applications (54). However, even at the end of PPTS's 12 month period, it is clear that there will be no 5 year's supply of sites (73). In my view the principles of this advice can be applied now to these appeals (102)

208. When considering whether a temporary permission would be justified here, the necessary balancing exercise is different. The harm which I have identified will clearly have less impact if it exists for a temporary period than if the site becomes permanent (53, 100). However this is partly outweighed by the fact that development has already been present since 2003. Even a temporary permission would lengthen the period over which harm is caused, although this would be less than if the permission were permanent. The weight given to the personal circumstances advanced would also be added to the balance.

209. I consider that the harm to the openness and visual amenity of the Green Belt resulting from the dispersed and intensified development envisaged in appeals A-C, and the consequent breach of the development plan, would be severe. It would still not be outweighed even if it remained for only a temporary period. I recommend that no temporary permission is granted for the developments proposed in appeals A-C.

210. The Council believes that such a permission would not be legally possible as the applications specifically sought consent for permanent use. However the Counsel's advice to this effect (55) was not provided at the Inquiry, nor had the Council's witness seen it (99).

211. Circular 11/95 advises that conditions can be imposed to modify a permitted development to make it acceptable. However it also says that "*a condition modifying the development cannot be imposed if it would make the development permitted substantially different from that comprised in the application*" and also that "*a temporary permission will normally only be appropriate either where the applicant proposes temporary development or where a trial run is needed …"*. It seems to me that the 3 applications essentially sought continued use as a Traveller's site. The appellants' statement that they would not have appealed had a further temporary period been granted (98) shows that permanence was not fundamental to them, and so a temporary permission would not be substantially different from the developments applied for. This is a matter of law but in my view, if the Secretary of State does not accept my recommendation on this point, he would have the power to allow appeals A-C for a temporary period.

212. There was no dispute that a temporary permission can be granted if the ground (a) appeals are allowed. As described above, there is scope for the existing development to be more concentrated and in a less intrusive location. It need not be based on some works continuing to exist in each of the plots in appeals A-C. In my view, taking account of the length of time that harm has already persisted, such measures would now be justified, even in the context of a temporary permission. They would reduce the identified harm to a level that I

consider would be clearly outweighed by the combined material considerations advanced. The very special circumstances needed to justify this inappropriate development in the Green Belt would then in my view exist, in accordance with national policy and the development plan. I recommend that the appeals on ground (a) are allowed and that temporary planning permissions are granted.

213. I consider that to grant such a temporary permission, which could eventually produce interference with homes and property by requiring the occupiers to relocate, would not have a disproportionate effect on them in terms of Article 8 and Article 1 of the First Protocol. It would strike an appropriate fair balance with the harm caused.

214. The appellants sought a period of 4 years, as it would take up to 18 months for a site allocated in an adopted DPD to become available (30). I agree with the Council that in practice work on pursuing an identified site could begin before adoption (158), and consider that a 3 year period would be appropriate. This would also encourage the Council to avoid further delay in the DPD process. I recommend accordingly.

Conditions

215. I endorse in principle the conditions agreed or promoted by the parties, as set out above (148 et seq). I agree that Mr Amer's commercial yard would be unacceptable on the site on a permanent basis, but note that policy F of PPTS envisages commercial use on Traveller sites where appropriate. I agree that the yard can be part of a required site development scheme. I do not endorse the suggested control of buildings on the site to avoid use for sleeping (156). I agree with the appellants that such use would require planning permission in any event, but also have doubts that the Council would be able to detect a breach of such a condition to enforce it. This would therefore fail one of the tests in Circular 11/95.

216. The conditions I recommend are in the attached Schedule B. Should the Secretary of State not agree with my recommendations on appeals A-C and decide to grant planning permission, I set out in Schedule C the conditions which would be appropriate in such an eventuality.

217. The appellants have not abided by conditions in the past (23, 144), but robust enforcement by the Council should ensure that this does not occur again.

The Appeals on Ground (f)

218. These appeals need only be considered if no planning permissions are granted. They relate only to the fences which the second notice requires to be removed; the appellants promote the lesser step of requiring them to be reduced in height to no more than 1 metre. However as the breach of planning control consists of the presence of all fences in breach of a condition and also as an integral part of an unlawful development, reduction in height would not resolve the breach. I recommend that the appeals on this ground are dismissed.

The Appeals on Ground (g)

219. These appeals also need only be considered if no planning permissions are granted. Given the acknowledged lack of any vacancies on public sites and the

Council's inability to find any alternatives, it seems patently obvious that 6 months would not be long enough for the appellants to do so. This period could only result in roadside living or unauthorised encampments elsewhere.

220. The Council accepts that the consequences of eviction have substantial weight (56) and suggests that the compliance period could be extended if necessary. A more appropriate compliance period would approach the 3 years I recommend for a temporary permission, to take account of likely progress on the DPD. However I note that even a period of 2 years would be unusual (104). In any event I agree with the appellants that the second notice should have a longer compliance period than the first, to permit the site to be cleared after occupation ceases. The suggestion of a 2 month gap is reasonable.

221. Allowing the ground (g) appeals with a longer compliance period would have the advantage that the enforcement notices would remain extant, and that occupation beyond their compliance periods would then be illegal. However it would then not be possible to impose any conditions; I consider that it would be preferable to have enforceable controls on the site, by means of allowing the ground (a) appeals for a temporary period.

Recommendation

Appeals A - C:

222. I recommend that the appeals be dismissed.

Appeals D - G:

223. I recommend that the enforcement notice be varied as described in paragraphs 163 and 164 above by substituting the plan attached to this report for that attached to the notice, that appeal D be allowed under ground (a), the varied enforcement notice quashed and planning permission be granted on the deemed application subject to the conditions on the attached schedule.

Appeals H - K:

224. I recommend that the appeals be allowed under ground (a), the enforcement notices be quashed, and that conditional planning permissions be granted on the deemed applications.

Antony Fussey

INSPECTOR

Schedule A: Reasons for Refusal (Appeals A – C)

Reasons identical in each decision

1. The site is situated within the Metropolitan Green Belt and the proposal is inappropriate development harmful to the Green Belt, in conflict with policy CS1 of the Mole Valley Core Strategy and Government advice contained in Planning Policy Guidance Note 2 “Green Belts”.

2. The Local Planning Authority considers that the stationing of Gypsy and Traveller caravans on this site for residential purposes is tantamount to the provision of further dwellings in this rural area, to the detriment of its openness and character. Furthermore, the associated existing structures, hardcore and fencing are visually intrusive in the public view. It is not considered that there are sufficient very special circumstances to outweigh the harm caused by inappropriateness and any other harm. The proposal is therefore in conflict with Government Guidance contained in PPG2 “Green Belts” and Draft Planning Policy Statement “Planning for Traveller Sites” (Consultation: April 2011), policies CS1 and CS5 of the Mole Valley Core Strategy and policies ENV22 and ENV23 of the Mole Valley Local Plan.

3. In the absence of a completed legal agreement, under Section 106 of the Town and Country Planning Act 1990, the proposal fails to provide an infrastructure contribution in accordance with the Council's adopted Code of Practice for Planning Obligations and Infrastructure Provision February 2008 and is therefore contrary to Mole Valley Core Strategy policy CS17.

4. In the absence of a completed legal agreement, under Section 106 of the Town and Country Planning Act 1990, the proposal fails to provide a contribution towards the provision of affordable housing in accordance with the Council's adopted Supplementary Planning Document “Affordable Housing” and is therefore contrary to Mole Valley Core Strategy policy CS4.

Schedule B: Recommended Conditions

1. Appeal D

1) The use hereby permitted shall be carried on only by the following: Mr Roy and Mrs Margaret Amer; Mrs Rose Doherty; Mr Charlie and Mrs Melissa Doherty; Mr & Mrs Simon and Sarah Doherty, and Mr Simon Doherty and Ms Susan King, and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

2) When the site ceases to be occupied those named in condition 1 above, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place.

3) The site shall not be occupied by any persons other than Gypsies and Travellers as defined in Annex 1 to "Planning Policy for Traveller Sites" published by the Department for Communities and Local Government in March 2012.

4) No more than 11 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 5 shall be static caravans or mobile homes) shall be stationed on the site at any time.

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

   i) within 3 months of the date of this decision, schemes for:

      a) a site development scheme, including the layout of the site; the siting and types of caravans and mobile homes, together with the colour of mobile homes; areas of hard surfacing; fencing and other means of enclosure; means of foul and surface water drainage; any areas to be used for commercial purposes; external lighting on the boundary of and within the site; details of existing fencing, means of enclosure, drainage systems and hard surfacing to be removed; tree, hedge and shrub planting and where appropriate earth mounding, including details of species, plant sizes and proposed numbers and densities

      b) the provision of visibility splays and means of reducing the speed of traffic leaving the site, at each of the accesses on to River Lane

      c) the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use, or the site is occupied by those permitted to do so, as appropriate

      d) a flood evacuation plan for the site

      e) details of all existing and proposed buildings, and of any alterations to existing buildings

shall have been submitted for the written approval of the local planning authority. Each scheme shall include a timetable for its implementation.

ii) within 11 months of the date of this decision each scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

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

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

6) When the works and any changes to the existing development, including the colouring of mobile homes, approved under condition 5 i) above have been implemented in accordance with the approved timetable, they shall be thereafter retained until removed in accordance with conditions 2 and 5 above. No other items falling within the categories in condition 5 i) above shall be installed or placed within the site unless approved as part of the site development scheme. Following their creation, the approved visibility splays shall be thereafter maintained free of any object or planting higher than 1 metre above the level of the adjacent carriageway of River Lane.

7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other means of enclosure shall be constructed, and no areas of hard surfacing installed, other than as approved under condition 5 i) above.

8) No buildings shall be erected or placed on the site, and no existing buildings shall be altered, except as approved under condition 5 i) above.

9) No commercial activities shall take place on the land except on the area(s) approved under condition 5 i) above and in accordance with details of maximum heights, which shall be included in the site development scheme.

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

11) Any paddock areas approved under condition 5 i) above shall only be used for purposes of agriculture.

12) The internal floor levels of each mobile home shall be set at least 300mm above local ground level, and shall be thereafter maintained.

2. Appeals H-K

1) Condition 1 as under Appeal D
2) Condition 2 as under Appeal D
3) Condition 3 as under Appeal D
4) All structures, hardcore and other hard surfacing, fencing and other means of enclosure shall be removed from the land within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:

i) within 3 months of the date of this decision

a) a site development scheme, including the layout of the site; areas of hard surfacing; fencing and other means of enclosure; means of foul and surface water drainage; details of existing fencing, means of enclosure, drainage systems and hard surfacing to be removed;

b) the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use, or the site is occupied by those permitted to do so, as appropriate

shall have been submitted for the written approval of the local planning authority. Each scheme shall include a timetable for its implementation.

ii) within 11 months of the date of this decision each scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State

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

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

5) When the works and any changes to the existing development approved under condition 4 i) above have been implemented in accordance with the approved timetable, they shall be thereafter retained until removed in accordance with conditions 2 and 4 above. No other items falling within the categories in condition 4 i) above shall be installed or placed within the site unless approved as part of the site development scheme.

6) Condition 7 under Appeal D; last line to refer to condition 4 i)

Schedule C: Recommended conditions should the Secretary of State be minded to allow Appeals A-C

Appeal A.

1) The use hereby permitted shall be carried on only by Mr Roy and Mrs Margaret Amer and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

2) Condition 2 as under Appeal D

3) Condition 3 as under Appeal D

4) No more than 2 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 the site at any time.

5) Condition 5 as under Appeal D, with the preamble: This permission shall not relate to the details shown on the approved plan.

6)-12) Conditions 6-12 as under Appeal D

13) The timber cladding on the stable block hereby approved shall be stained a dark brown or black colour, which shall not thereafter be altered.

Appeal B.

1) The use hereby permitted shall be carried on only by Mr Simon Doherty and Ms Susan King and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
2) Condition 2 as under Appeal D
3) Condition 3 as under Appeal D
4) No more than 2 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 the site at any time.
5) Condition 5 as under Appeal D, with the preamble: This permission shall not relate to the details shown on the approved plan.

6)-12) Conditions 6-12 as under Appeal D

13) The timber cladding on the stable block hereby approved shall be stained a dark brown or black colour, which shall not thereafter be altered.
14) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the utility building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Appeal C.

1) The use hereby permitted shall be carried on only by Mr Simon and Mrs Sarah Doherty and Mr Charlie and Mrs Melissa Doherty (pitch 3a) and Mrs Rose Doherty (pitch 3b) and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
2) Condition 2 as under Appeal D
3) Condition 3 as under Appeal D
4) No more than the following numbers of caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time. Pitch 3a: 4 caravans (of which no more than 2 shall be static caravans or mobile homes). Pitch 3b: 3 caravans (of which no more than one shall be a static caravan or mobile home)
5) Condition 5 as under Appeal D, with the preamble: This permission shall not relate to the details shown on the approved plan.

6)-12) Conditions 6-12 as under Appeal D

13) The timber cladding on the stable blocks hereby approved shall be stained a dark brown or black colour, which shall not thereafter be altered.
14) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the utility buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

The Planning Inspectorate

Plan

by Antony Fussey JP BSc(Hons) DipTP MRTPI

Land at: River Lane, Leatherhead, Surrey, KT22 0AY

References: APP/C3620/A/12/2169062, 2169066 and 2169068; APP/C3620/C/12/2172090, 2172094, 2172095, 2172099, 2172104, 2172106, 2172116 and 2172145

Scale: 1:2500

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Green	Of Counsel. Instructed by the Solicitor to Mole Valley District Council.
He called	
Mr J C Cunnane BSc(Hons) DipTP MRTPI MIPI	Senior Partner, Cunnane Town Planning LLP

FOR THE APPELLANTS:

Mr A Masters	Of Counsel. Instructed by Green Planning Solutions LLP
He called	
Mr M Green	Partner, Green Planning Solutions LLP
Ms S King	Appellant
Mrs R Doherty	Appellant
Mrs S Doherty	Appellant
Mr R Amer	Appellant
Mrs A Walsh	Head teacher, Leatherhead Trinity School and Children's Centre

INTERESTED PERSONS:

Cllr E P Aboud	Councillor for Fetcham West ward
Mr C Langley	CPRE Surrey branch
Mrs J Moore	Resident of Cobham
Mr H Carr	Resident of Leatherhead

APPEAL DOCUMENTS

1 Council's letters of notification of the appeals and the Inquiry arrangements
2 Letters of representation received following these notifications
3 Mr Cunnane's proof of evidence
4 Appendices to Mr Cunnane's proof
5 Mr Green's proof of evidence
6 Appendices to Mr Green's proof (2 volumes)
7 Mole Valley LDF adopted Core Strategy
8 List of current Local Plan policies, following adoption of Core Strategy
9 Extract from Mole Valley Local Plan
10 Officers' report to MVDC Development Control Committee, 7 December 2011, and minutes of meeting
11 Council's opening statement
12 Draft Statement of Common Ground
13 Agreement between the Council and the appellants, dated 27 June 2012, and the Council's confirmation in relation to reasons for refusal 3 and 4
14 Appeal decision APP/C3620/A/04/1136911 etc, and application plans
15 Documents relating to discharge of conditions following the 2007 appeal decision
16 Ms King's statement

17 Mrs R Doherty‘s statement
18 Mrs S Doherty‘s statement
19 Mr Amer‘s statement
20 Supporting documents relating to site occupants’ health and educational issues
21 Cllr Aboud‘s statement
22 Mr Langley‘s statement
23 Mr Carr‘s statement
24 Mrs Moore’s statement
25 “Preparing Travellers’ Accommodation Assessments: the Surrey Approach”. April 2012.
26 Equality Impact Assessment, November 2010
27 Annex A to doc 26: Assessment of Alternative Site Provision
28 Appeal decision APP/C3620/C/10/2139604,etc, relating to Brook Willow Farm
29 Submitted plan, officers’ report and planning permission (dated 20 March 1990), relating to sports clubhouse
30 Details of status of River Lane, supplied by Surrey County Council
31 Minutes of MVDC Scrutiny Committee 7 December 2010
32 Minutes of MVDC Executive Committee 14 December 2010
33 Withdrawal of appeal on ground (d)
34 Suggested conditions – from the appellants’ Rule 6 statement
35 The Council's written closing submissions
36 Bundle of case law referred to in the Council's closing submissions
37 The appellants’ written closing submissions, which were supplemented orally

PLANS

A Application plans: appeal A
B Application plans: appeal B
C Application plans: appeal C
D Plan attached to enforcement notice in appeals D-G
E Council's requested replacement plan
F Plans attached to enforcement notices in appeals H-K
G Mole Valley adopted Local Development Framework proposals map
H Core Strategy key diagram
I Area of search for alternative sites
J Application plan relating to 2007 appeal decision

PHOTOGRAPHS

1 Aerial photographs of appeal site 2003 and 2009, together with one of Salvation Place, supplied by an objector
2 Aerial photograph of 2 April 1999, submitted by the Council
3 Aerial photograph of 25 July 1999 and certificate of authenticity, submitted by the appellants

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.

The Planning Inspectorate

Costs Report to the Secretary of State for Communities and Local Government

by Antony Fussey JP BSc(Hons) DipTP MRTPI

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

Date: 6 August 2012

TOWN AND COUNTRY PLANNING ACT 1990

MOLE VALLEY DISTRICT COUNCIL

APPEALS BY

MR ROY AMER, MS SUSAN KING, MR SIMON DOHERTY, MRS ROSE DOHERTY AND MR CHARLIE DOHERTY

Inquiry opened on 12 June 2012

River Lane, Leatherhead, Surrey, KT22 0AY

Appeal Refs: APP/C3620/A/12/2169062, 2169066 and 2169068; APP/C3620/C/12/2172090, 2172094, 2172095, 2172099, 2172104, 2172106, 2172116 and 2172145

File Refs: APP/C3620/A/12/2169062, 2169066 and 2169068; APP/C3620/C/12/2172090, 2172094, 2172095, 2172099, 2172104, 2172106, 2172116 and 2172145
River Lane, Leatherhead, Surrey, KT22 0AY

- The application is made under the Town and Country Planning Act 1990, sections 78, 174 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Roy Amer, Ms Susan King, Mr Simon Doherty, Mrs Rose Doherty and Mr Charlie Doherty for a partial or full award of costs against Mole Valley District Council.
- The inquiry was in connection with appeals against 3 refusals of planning permission for the permanent use of the land as a Gypsy and Traveller caravan site and the retention of specified buildings and works, and against 2 enforcement notices requiring the use of the land to cease and various specified items to be removed.
- The inquiry sat for 4 days on 12 – 15 June 2012, inclusive.

Summary of Recommendation: The application for a partial award of costs be granted.

1. The written application for costs appears briefly at the end of the appellants' closing submissions [37][1], and refers to points previously made in them. It says that the application is for a full and/or partial award. The Council's response was made verbally; it also referred to points made in closing submissions [35].

The Submissions for the Applicants

2. The Council acted unreasonably in terms of paragraph B15 of Circular 03/2009. The development could clearly be permitted "*having regard to the development plan, national policy statements and any other material considerations*".

3. The Council failed to produce evidence to show clearly why it could not be permitted, and none to substantiate its reasons for refusal. There was no respectable basis for its stance. There is therefore a breach of paragraph B16.

4. The officers' report [10] was long and comprehensive. Its advice includes that from the EIA; this was required to be carried out by the Equality Act 2010 and sets out the appellants' circumstances and educational and health needs. It found that it would not be proportionate to move them outside the north of the District. The Council did not seek to impeach it and had no reasonable grounds to disagree with the extensive search for an alternative site, derived from it. This found that any new site would be likely to be in the Green Belt, and that the existing one is better than the others identified.

5. It is not sufficient just to assert that councillors are entitled to reject the officers' recommendation. The Circular requires that, "*if officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects*". There was no detailed justification for such a rejection, and no reasonable planning grounds to take a decision contrary to the professional advice. As well as rejecting the recommendation, the Council failed to adequately consider relevant advice – in this case the EIA – and gave no

[1] References in [] are to appeal documents, listed at the end of my main Report. Those in () are to paragraphs in the Report.

"clear and rational explanation of the position taken". This breaches paragraph B23.

6. The Council accepts that the only issue is the weight to be given to the various matters in the balancing exercise; this is the central issue of the costs application. There is no evidence in planning terms to justify the rejection of its officers' professional recommendation. In these circumstances, paragraph B20 is breached.

7. Given the slippage of 5 years beyond the time promised in 2007 to prepare a DPD, the possibility of a temporary permission should have been paramount, and could have allowed the development to proceed. However Cllr Aboud and Mr Carr confirmed that this was not discussed at the committee (118, 130). The belief that a temporary permission could not be granted was derived from a Counsel's opinion, but this was not provided to the Inquiry - or even to its own witness.

8. The Council did not even suggest a temporary condition at the Inquiry despite the clear indication in Mr Cunnane's evidence that this could be appropriate. This shows that the Council had not properly considered the possibility of imposing relevant conditions. This failure further breaches paragraphs B25 and B29.

9. The Council relied on Cllr Aboud's evidence but did not choose to call him as a witness. Paragraph 11 of his statement - that no special consideration should be given to Gypsies' needs over those of the settled population - can be interpreted as being consistent with PPTS. However PPTS was not published until after the decision. His understanding of what was government policy, communicated to the Committee, varied from what PPTS actually says. His view at the time was based on a letter from an MP, which he refused to put in evidence; he would not even name its author. He agreed that *Chapman* contradicted this understanding; at the Inquiry he sat for 20 minutes looking through PPTS, but still could not explain how his understanding and the MP's letter accorded with it.

10. Cllr Aboud also confirmed that matters of human rights or proportionality were not discussed by members when considering refusing the application, despite being drawn to their attention [10 page 32]. In fact the Council carried out no welfare or personal enquiries when it decided to take enforcement action only 6 weeks after the refusal. This breaches advice in Circulars 18/94 and 10/97, and case law in *Kerrier* and *Chapman*. Indeed, the enforcement report did not refer to such matters at all.

11. As a result of the Council's unreasonable behaviour, the appellants incurred unnecessary expense in pursuing the appeals.

The Response by Mole Valley District Council

12. The EIA usefully identified the personal circumstances involved, but there was no statutory duty to undertake one. It assessed the impact of moving the occupiers, and the Council accepted its recommendation that an alternative site should be about 1.2ha in size, be in the north of Mole Valley and sought for on the basis of a single extended household,. The weight given to the EIA and to the results of the subsequent search was a matter for members, and it was perfectly proper for them to take issue with the search parameters.

13. The appellants' advocate agreed that the issue is one of planning judgement about the Green Belt balancing exercise. The evidence before the Council showed that this balance did not clearly lie with the appellants. Members exercised a planning judgement, and balanced the harm to the Green Belt with that to the occupiers; it was for them to assess what weight to give to the various factors. The fact that they did not accept that the site had to be in the search area does not go against the planning judgement; members just gave less weight to this matter than their officers did. The weight they gave showed that the development should not go ahead, so there was no breach of paragraph B15.

14. There was a single question – whether other considerations outweighed the harm caused. Mr Cunnane's substantial professional evidence endorsed members' view that they did not; there was no breach of paragraph B16. He shows that members had reasonable planning grounds to attribute different weights to the various material considerations than their officers did. Accordingly, the decision contrary to their advice did not breach paragraph B20.

15. "*Consideration*" is not the same as "*endorsement*". The Council took account of professional advice in the form of the officers' report and the EIA. Cllr Aboud's evidence shows that he paid great attention to it, so it was clearly "considered", as paragraph B23 requires. The criticism of his statement is misplaced; despite the MP's letter, it is not inconsistent with the "fair and equal treatment" promoted by PPTS's paragraph 3. Cllr Aboud wants equality of treatment.

16. The possibility of a temporary permission was before members – the officers' report referred to it and also advised members of the guidance in Circular 1/06 [10: page 31]. The fact that it was not specifically discussed did not mean that it was not considered. On the information before members, they were entitled to agree with their officers that a temporary permission could not be granted when the applications specifically sought permanent use. Accordingly it was reasonable to refuse permission, as no condition could make the developments acceptable. There was therefore no breach of paragraphs B25 or B29.

17. Circular 18/94 is directed specifically to situations where a council is seeking to evict peremptorily, which is not the case here. While *Kerrier* says that it is equally applicable to decisions on enforcement action, it also says that precise steps will depend on the circumstances of a particular case. Here, the appellants were originally represented by a planning consultant with a long experience of this type of development. He provided details of relevant circumstances; they were set out in the officers' report [10]; the report on enforcement action [6: A23] expressly referred back to that report, in paragraphs 1.1 and 7.3. There was no reason to believe that any information had been held back by the appellants, and no reason to ask for more. The additional circumstances now advanced had not been disclosed until well into the appeal process.

18. For the above reasons, there is no basis for an award.

Conclusions

19. Circular 03/2009 advises that, irrespective of the outcome of the application, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

20. The appellants clearly accept (63) that there is harm to the Green Belt by reason of inappropriateness, impact on openness and on visual amenity. Against these they advance certain material considerations, to which varying amounts of weight need to be given, in order to assess whether they clearly outweigh the identified harm so as to amount to the very special circumstances necessary to justify the development. Both parties agreed that a balancing exercise is involved. It is not in my view unreasonable for different people to attribute different weights to the various factors in carrying out that exercise; these may legitimately produce different outcomes.

21. In this case there was a comprehensive and well-written report from the Council's officers, which weighed the various considerations and, on balance, recommended approval of the 3 applications. However, by a close vote (107) members did not accept the recommendation. Mr Cunnane provided substantial planning evidence to justify the different amounts of weight given by the members to the various considerations. Cllr Aboud, while perhaps surprisingly appearing as a third party rather than a Council witness, amplified his evidence.

22. I am not persuaded that the interpretation of government policy, apparently conveyed to Cllr Aboud through a MP's letter not provided to the Inquiry, and which did not completely accord with the subsequent PPTS, directly led to the eventual decision. Of more import was the questioning of the parameters of the search for alternative sites. I have endorsed the concerns expressed (184) and I do not consider that it was unreasonable for members to give less weight to the results of the search than did the officers.

23. In my opinion, Mr Cunnane and Cllr Aboud substantiated the Council's decision and its view that the development should not be permitted. In my opinion they demonstrated that there was a respectable basis for disagreeing with the officers' recommendation. This indicates that the Council did not act unreasonably in terms of paragraphs B15, B16 or B20.

24. Circular 10/97 says that "*the personal circumstances, including such matters as health, housing needs and welfare, of persons suspected of acting in breach of planning control must be taken into account when deciding whether to take enforcement action*". It refers back to *Kerrier*, which in turn cites Circular 18/94 on the type of information to be taken into account.

25. There is no requirement for a specific investigation before enforcement action is considered. In this case, the committee report advising on enforcement action expressly referred members back to the report on the applications, which set out the personal circumstances provided by the appellants, and supplemented by the education authority [10: pages 8-10]. I do not consider that the Council acted unreasonably by resolving to take enforcement action in the light of this information, rather than carrying out a separate investigation.

26. In the light of the above, I do not consider that the Council's actions warrant a full award of costs.

27. The officers' report did address the possibility of granting a temporary planning permission, but recommended against it on the basis of a Counsel's opinion. However members were considering the application in the context of a failure of policy to provide any sites, and a delay in the DPD process to well beyond the

date promised to the previous Inspector. At the meeting, Cllr Aboud alerted members to the deficiencies in the parameters of the search for alternatives, and it seems to me that this produced the rejection of the officers' recommendation.

28. Despite this, the applications were not adjourned for a more realistic search to be carried out. Moreover the continuing delay in the DPD process clearly meant that no alternative site would be identified through it in the near future. The personal circumstances – as notified by the appellants' agent – were clearly known by the members, who would have been aware of, for example, the number of children whose education would be disrupted by a roadside existence.

29. In these circumstances, members should have been particularly alert to the possibility of a temporary permission, but Cllr Aboud's evidence was that this matter was not even discussed. I would have expected at least some discussion of this important point. Instead, some 6 weeks later, enforcement action was authorised with a wholly unrealistic compliance period.

30. The argument that a temporary permission would not be legally possible when the applications sought permanent use was based on advice in a Counsel's opinion. However this was not provided to the Inquiry, preventing the Secretary of State or the appellants from considering it. It was not even shown to the Council's witness – and in his evidence he clearly did not rule out a temporary permission. At the Inquiry, the Council's advocate did not seek to pursue this argument – nor indeed were there significant efforts to argue against a temporary permission.

31. These points lead me to the view that, when rejecting the recommendation before them, members did not adequately consider the possibility of imposing an appropriate condition. This was unreasonable in terms of paragraphs B23, B25 and B29.

32. As set out in my report, on balance I consider that even a temporary permission would have been inappropriate because of the continuing impact of dispersed development on the 3 application sites (209). However, the Council clearly did not consider this possibility – which, as the appellants say, may have avoided the appeals. Despite my views on the planning merits of the applications, the Council may have felt able to grant temporary permissions for them, perhaps with conditions requiring significant changes to the layouts. Failure to adequately consider such a step was unreasonable. It involved the appellants in unnecessary expense in addressing this point at the Inquiry.

33. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 3/2009, has been demonstrated in relation to the failure to adequately consider the possibility of granting temporary planning permissions in respect of the 3 applications. I therefore conclude that a partial award of costs is justified in respect of this matter only.

Recommendation

34. I recommend that the application for a partial award of costs be granted.

Antony Fussey

INSPECTOR