The Planning Inspectorate

Appeal Decisions

Hearing opened on 26 November 2014

Site visit made on 17 December 2014

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 20 February 2015

Appeal A: APP/W0530/A/14/2221703
Land at 146 Cambridge Road, Wimpole, Cambridge SG8 5QB

- 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 R Crotty against the decision of South Cambridgeshire District Council.
- The application ref no S/0583/14/FL, dated 12 March 2014, was refused by notice dated 10 June 2014.
- The development is described on the planning application form as: 'Change of use of land to use as a residential caravan site for one gypsy family with two caravans, including one static caravan/mobile home, and erection of amenity building'.

Summary of Decision: The appeal is allowed and temporary planning permission is granted subject to conditions as set out below in the formal decision.

Appeal B: APP/W0530/C/14/2217841
Land at 146 Cambridge Road, Wimpole, Cambridge SG8 5QB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Ricky Crotty against an enforcement notice issued by South Cambridgeshire District Council.
- The Council's reference is PLAENF.1110.
- The notice was issued on 26 March 2014.
- The breach of planning control as alleged in the notice is:
  a) Without planning permission, the change in use of the affected land for the stationing and residential occupation of a twin-unit mobile home; and
  b) the carrying out of operational development upon the affected land by laying hard-core to form a hard-standing for the mobile home.
- The requirements of the notice are:
  i) Cease the unauthorised use of the affected land for the stationing and residential occupation of mobile homes or caravans.
  ii) Remove all mobile homes or caravans from the affected land together with any associated domestic paraphernalia.
  iii) Remove all hard-standings, hard-core and other arisings from the affected land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the 1990 Act as amended.

Summary of Decision: Appeal B does not fall to be determined. The enforcement notice is corrected and upheld but does not have effect by reason of the provisions of section 180 of the 1990 Act as amended.

Procedural matters

1. The Hearing was in session for two days, closing on 17 December 2014. The second day's proceedings were conducted at the appeal site.

2. On the final day of the Hearing the Appellant submitted a completed unilateral undertaking made by Lucy Girling in the role of sole owner of the site. This secures financial contributions to the Council in the event that full (rather than temporary) planning permission is granted on Appeal A towards the provision of open space and indoor community facilities and the maintenance thereof, together with a monitoring fee, totalling £5012.74. Further written representations of the Council and Ms Wood of Carter Jonas, a planning consultant acting on behalf of local residents, regarding the effectiveness and implications of this undertaking were invited post-Hearing.

3. I also sought the views of the above parties and the Appellant regarding the relevance to Appeal A of paragraphs 012 to 023 of the planning obligations section of the DCLG's Planning Practice Guidance (PPG), which were added on 28 November 2014. I have taken into account all representations received by the relevant deadline in relation to these matters.

4. My attention has been drawn to differences between the unilateral undertaking and the ownership certificates which accompanied Appeal A and the subject planning application. Whereas the undertaking indicates that Ms Girling is the sole owner of the appeal site, the certificates attribute that role to Mr Crotty, the Appellant. The Appeal B form also names Mr Crotty as an owner of the land, as does a planning application he made for commercial development on the appeal site in July 2013 (ref S/1676/13/FL). It would not be possible for all these documents to be correct unless a formal change in ownership took place between July and December 2014.

5. The Appellant has advised post-Hearing that ownership of the land was transferred from Mr Crotty to Ms Girling on 3 April 2014. The Land Registry documentation he supplies for the site confirms Ms Girling's acquisition of the site on that date but not Mr Crotty's previous ownership. If the Appellant's assertion regarding the latter is accepted at face value, the two planning applications referred to above declared ownership correctly but the two appeals did not.

6. This has no implications for the validity of Appeal B as, having been an occupier of the site at the time the enforcement notice was issued, Mr Crotty enjoys *locus standi*. Implications for the validity of Appeal A could be more serious, were it not for the fact that Ms Girling is the Appellant's partner, resides with him on the appeal site and signed the unilateral undertaking. It is therefore reasonable to assume that she has been involved throughout the appeal process and has not been disadvantaged by Mr Crotty's failure to serve formal notice on her.

7. Given the absence of substantiating documentation regarding Mr Crotty's claimed period of ownership, I have also considered the possibility that other parties held an interest in the land at the time of the planning application now the subject of Appeal A. However, whilst this might call into question the validity of the application when it was made, it was nonetheless accepted and determined by the Council and the ownership situation other than that claimed by the Appellant has not been contested. Moreover, it is now clear that

Ms Girling owned the site by the time of the Council's decision and the subsequent appeal. Accordingly, I do not declare Appeal A invalid and it remains before me to determine.

8. An initial appeal against the enforcement notice on ground (a) was declared ineligible by the Inspectorate, by reason of the fact that the enforcement notice was issued within eight weeks of a planning application for the same development (the refusal of which is now the subject of Appeal A) being made. It does not therefore fall to be determined. Nonetheless, I am mindful that the declaration of ground (a) ineligibility denies the Appellant the opportunity to seek planning permission on appeal for the hardstandings, hardcore and 'other arisings' targeted by requirement iii) of the enforcement notice unless these are held to have been subject to the Appeal A planning application.

9. In this regard, the main parties agreed at the Hearing that the planning application should be interpreted as seeking permission for hardstandings and hardcore incidental to the primary development (and currently on site) and that this should be reflected in the Appeal A description of development. Additionally, the Council confirmed that the term 'other arisings' used in the notice was intended to refer to materials and debris arising from compliance with the requirements. It follows that these need not be referred to in the Appeal A description.

10. It was further agreed that the description should refer to a *material* change of use, that being the act of development as defined by statute, and that gypsy status and numbers of caravans/mobile homes should be omitted from the description and would be more properly specified in conditions if planning permission is granted. Accordingly, I have determined Appeal A on the basis of the following revised description: '*The material change of use of land to use as a residential caravan site, the laying of hardsurfacing and the erection of an amenity building*'. I am satisfied that this is not prejudicial to the interests of any party.

11. By the time of the Hearing, an amenity block had been provided on the appeal site. However, this is not subject to the enforcement notice. Nor is it the building for which planning permission is sought pursuant to Appeal A, being materially different in design, construction and location. I have therefore determined Appeal A on the basis of the proposed amenity building shown on the application plans, rather than the existing amenity block currently on site. It is a matter for the Council whether it considers it expedient to pursue enforcement action against the existing block, irrespective of the outcome of these appeals.

The enforcement notice

12. The wording of the alleged breach of planning control at section 3 of the enforcement notice and the requirements at section 5 must be amended to ensure consistency with the revised description of the Appeal A development, with the exception of reference to the amenity building. Moreover, the phrase 'Without planning permission' should apply to both elements of the allegation, rather than just clause a).

13. As mentioned above, the Council explained at the Hearing that the term 'other arisings' in requirement iii) of the notice refers to materials and debris arising

from compliance with the requirements. Requirement iii) will be amended accordingly in the interests of clarity.

14. Inconsistency between the allegation and requirement iii) also needs to be resolved: the former refers to 'the laying of hard-core to form a hard-standing for the mobile home' whilst the latter seeks the removal of 'all' hard-standings and hard-core from the land. As with the description of development for Appeal A, I will use the term 'laying of hardsurfacing' in place of references to hard-core and hard-standings. No injustice to any party results from any of these corrections to the notice.

The section 78 appeal – Appeal A

15. The appeal site is currently occupied by the Appellant and his family. At the Hearing, Mr Crotty confirmed that he wishes to remain on the site for the foreseeable future. It was also confirmed that the permission being sought is for a single gypsy/traveller pitch that would accommodate no more than two caravans, only one of which could be a static mobile home. This accords with the situation on site at present.

16. Mr Crotty has also claimed gypsy status for the purposes of applying planning policy. The validity of this claim will be explored later. Nonetheless, he also made clear his preference that any permission pursuant to Appeal A should allow for occupation of the pitch by any gypsies or travellers as defined in Annex 1 of the DCLG publication *Planning policy for traveller sites* (PPTS), rather than being personal to the Appellant and his family alone. Whilst Mr Crotty seeks a full planning permission, he would accept a temporary, time-limited permission if need be. I have determined the appeal on this basis.

17. I am mindful that an established use certificate was granted in 1975 for the use of the appeal site for the operation of a building and engineering business (ref no S/0310/75/EU). Section 57(4) of the 1990 Act as amended provides for the reversion of the use of a site to its previous lawful use where an enforcement notice has been issued in respect of a subsequent unlawful use, as in this case. No case has been made to the effect that the lawful use rights thus established have been lost. Accordingly, they would seem to provide the Appellant with a fallback position which, necessarily, is a material consideration for the purposes of my decision on Appeal A.

18. However, having said this, a fallback position only carries significant weight if there is a reasonable possibility that it would be implemented in the event that an alternative use or development for which permission is sought is not allowed to go ahead and that it would be less desirable than that for which permission is sought (*Coln Park LLP v SSCLG & Cotswold DC* [2011] EWHC 2282 (Admin)). Nothing before me suggests that there is anything more than a theoretical possibility that a building/engineering business might occupy this site should Appeal A fail. Nor has any substantial case been made to the effect that such a use would be any more harmful to interests of acknowledged importance, such as visual or residential amenity, than the current development. Accordingly, I am not minded to give the lawful fallback position significant weight in determining Appeal A.

Main issues

19. In the light of the above, the main issues in determining Appeal A are:
    - the effect of the development on the character and appearance of the surrounding countryside;
    - its effect on highway safety;
    - its implications for objectives of sustainable development;
    - its implications for the adequacy of local infrastructure, with particular reference to open space and indoor community facilities;
    - the adequacy of the site in terms of the health and safety of its occupants, with particular reference to land contamination; and
    - whether any other material considerations weigh in favour of the appeal scheme, such as the level of need for gypsy and traveller sites, the status of the Appellant and his family for the purposes of applying gypsy and traveller policy and guidance, their personal circumstances and the availability of alternative accommodation.

Planning policy

20. The development plan for the area in which the appeal site is located includes the Council's Local Development Framework Core Strategy Development Plan Document 2007 (CS) and Development Control Policies Development Plan Document 2007 (DCP), together with certain policies of the South Cambridgeshire Local Plan 2004 (LP) which have been saved following a Direction made by the Secretary of State. Reference has also been made in the appeal documentation and at the Hearing to draft policies contained within the emerging Local Plan 2011-2031 (ELP), submitted to the Inspectorate for public examination in March 2014.

21. Paragraph 215 of the National Planning Policy Framework (NPPF) records that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. Paragraph 216 adds that decision-takers may give weight to relevant policies in emerging plans, subject to certain specific considerations. National guidance contained in the PPTS is also relevant.

22. I find no significant conflict with the NPPF or PPTS in respect of the development plan policies cited in this case and, accordingly, will give them full weight insofar as they are relevant to the appeal scheme. The public examination of the ELP, although underway, has yet to be concluded. Moreover, the Council confirms that its policies are subject to a significant number of objections. I therefore attribute only limited weight to it.

23. Reference is also made to the Council's Supplementary Planning Documents (SPDs) *Open Space in New Developments* (adopted in 2009) and *District Design Guidance* (adopted in 2010) and a Community Facilities Assessment published in September 2009.

Reasoning

24. The appeal site is located in the countryside, close to the villages of Arrington and Wimpole. It is approximately 0.11 hectares in area and is served by a spur road, to which it has a frontage of some 70 metres, leading from the main A603 Cambridge Road. However, it extends back from the public highway verge by only 10 metres, such that it is long and narrow in shape. The spur

also serves a substantial group of dwellings on the opposite side of the road to the site, such that the latter is sandwiched between built development to the south-east and a substantial swathe of agricultural land to the north-west.

25. The appeal site itself is essentially divided into two distinct areas. The gated access opens into a hardsurfaced parking and manoeuvring area. At the south-western end of this is a long-established single–storey building of utilitarian appearance which, on the limited evidence before me, seems formerly to have been associated with the site's previous lawful use as a builders'/engineers' yard. It is now used by the Appellant for keeping dogs and horses and storing work-related equipment and domestic paraphernalia.

26. The gates and gate piers, although prominent in the street scene, are subject to neither the planning application nor the enforcement notice, so are not before me to consider. The remainder of the site comprises a gated compound separated from the parking area by a low wall, within which is a static mobile home, paving areas, a small garden laid to lawn and an amenity block. As previously mentioned, the latter is not subject to either appeal, permission having been sought for an alternative amenity building by means of Appeal A.

Character and appearance

27. Although cited by the Council and others, national and development plan policies such as CS Policy ST/7, DCP policy DP/7 and draft ELP Policies S/6, S/7 and S/11, which militate against new housing in the countryside outside defined settlements, do not apply to gypsy and traveller sites. Policy H of the PPTS advises that local planning authorities (LPAs) should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan, but does not expressly prohibit it.

28. The appeal site is not within or adjacent to a built up area as defined by the development plan. However, it immediately abuts a substantial enclave of residential development. Although the Wimpole Hall historic park and gardens and various listed buildings are nearby, none is so close to the appeal site that its setting is affected significantly by the subject development. Nor is the wider landscape subject to a particular protective designation. Accordingly, I find no conflict with DCP Policies CH/1or CH/4 or draft ELP Policy NH/14. Nonetheless, the immediate surroundings include an attractive grouping of built development of considerable character and, by reason of the open fields on the north-west side of the spur road, a resolutely rural sense of place prevails.

29. Hardsurfacing in the south-western part of the site has no discernible impact on this, despite being visible through the access when the gates are open. The material used is non-domestic in character and appearance, in contrast to the paving slabs laid to the north-east, and reads as a feature originally ancillary to the former commercial building on the site. I do not therefore consider there to be a sound case for its removal. However, the prevailing sense of place has been compromised by the introduction of the substantial static mobile home on the 'agricultural' side of the road, despite the established presence of the former building/engineering yard structure.

30. This is clearly visible from the spur road both through and over the top of the site's front boundary treatment and is viewed within the wider landscape in tandem with the undeveloped agricultural land to the north-west. It therefore

reads as an undesirable encroachment of domestic development beyond the established residential enclave and detracts from the character and appearance of the locality. This encroachment is less apparent in longer distance views across the agricultural field from the A603, from where items on the appeal site are subsumed to a degree by the backdrop of the adjacent residential development. Nonetheless, such views still contribute to an overall impression of incongruity. Such impacts would be exacerbated by the addition of the amenity building proposed as part of the Appeal A scheme, the likely impact of which is signalled by the current amenity block on the site.

31. Solid boundary treatments such as boarded gates and fencing, whilst providing partial screening, are themselves intrusive in visual terms. Having said this, the prominence of what lies beyond them is such that the degree of enclosure is not so effective as to isolate the site from the rest of the community in contravention of the guidance found in paragraph 24d) of the PPTS. Additional planting could only soften the appearance of the development to a limited extent and, by its very nature, could not be relied upon as permanent mitigation. I have noted the reports of some local residents that extensive tree felling and vegetation clearance have taken place on the site, but have seen nothing to support the assertion that the development has remedied unsightly dereliction or untidiness.

32. However, I am mindful that site clearance of this kind would not have required the Council's consent in this case. Moreover, national planning policy does not stipulate that gypsy and traveller sites are unacceptable in principle in rural settings (Policy C of the PPTS refers). Accordingly, there is no presumption that such sites in the countryside should be hidden from view. This tempers the weight I attach to the visual incongruity of the mobile home, amenity building and other items on the site in comparison with nearby dwellings and open land. Nor can this small site be said to dominate the hamlet in contravention of paragraphs 12 and 23 of the PPTS.

33. Nonetheless, taking all of this into account, I conclude that the appeal development, as existing and as proposed, still causes substantial harm to the character and appearance of the surrounding area and that this exceeds what might be regarded as reasonably necessary as part and parcel of permanent gypsy and traveller provision. The scheme therefore conflicts with DCP policies DP/1, DP/2 and DP/3, draft ELP policies HQ/1, NH/2 and S/2 and the NPPF. This in itself weighs strongly against the granting of a permanent permission. However, I further conclude that harm within the context of this issue is not so extreme as to be unacceptable on a short-term temporary basis in circumstances where other considerations weigh substantially in favour of the scheme.

Highway safety

34. The Council's fourth reason for refusing planning permission cites Mr Crotty's perceived failure to demonstrate by way of a suitable transport statement that the continued use of the land at No 146 as a single gypsy pitch would not result in harm to highway safety by reason of the level of traffic movements to and from the site and the use of the access thereto. Whilst I appreciate that this stance arose in part from a lack of clarity regarding some aspects of the Appellant's on-site activity, I nonetheless find it surprising in relation to such a small scale scheme in such a quiet location.

35. The spur road that serves the site terminates in a dead end. It is built and maintained to a high standard, with a vehicular carriageway wide enough to enable cars travelling in opposite directions to pass each other without giving way, even where there are vehicles parked at the kerbside. There is a pedestrian footway on one side for much of its length and, towards the south-western end, on both sides. A 30 mph speed limit applies.

36. Indeed, the roadway is of ample standard to cater safely for the low level of traffic generated by the relatively few residential properties it serves. Many of these are concentrated in Wimbridge Close, a cul-de-sac which joins the spur road immediately opposite the access to the appeal site. Consequently, drivers leaving the cul-de-sac have a very clear view of anyone leaving the appeal site at the same time and *vice versa*.

37. Nothing before me suggests that the appeal site currently generates vehicle movements significantly beyond the level that would ordinarily be associated with a single dwellinghouse or is likely to do so if it remains in its current use. The Appellant is not seeking planning permission for any business activity on the site beyond the parking of his own vehicle used for work purposes and the storage of work-related equipment which he takes with him.

38. Such limited business use is essentially *de minimis* and does not trigger a mixed use of the land. In any event, it could be restricted by condition to something akin to its present nature and scale. The Appellant has one employee, who visits the site for work-related purposes on occasion to collect/drop off Mr Crotty and/or equipment. However, this is likely to make very little difference overall to the volume or type of traffic using the road. I therefore find no reasonable justification for the submission of a transport statement in this case.

39. Concern has also been expressed as to whether there is sufficient space within the appeal site to enable a vehicle to be turned such that it could leave in forward gear. Nonetheless, I found it readily apparent from perusal of the submitted layout plan and my inspection of the site itself that a family car or a vehicle of similar size could be easily manoeuvred within its confines, leaving plenty of on-site parking space to spare.

40. The Appellant is willing to accept a restriction on vehicles kept on the site of 3.5 tonnes in weight. Whilst a vehicle of this maximum size would be more difficult to manoeuvre within the site's confines, I foresee no significant threat to highway safety should it prove necessary to reverse onto or off the public highway in such a quite traffic environment. Nor do I foresee a likelihood of vehicles being displaced onto the public highway. Even if this were to occur, ample kerbside space is available and the road is wide enough to accommodate parked vehicles without resulting in obstruction.

41. With regard to sightlines, the highway authority has recommended visibility splays of 2.4 metres in depth and 43 metres in length on either side of the site access, in accordance with the standard requirement prescribed by national guidance in *Manual for Streets 1 & 2*. However, the same guidance promotes flexibility in applying such standards where conditions indicate that this would be appropriate. Splays of the above dimensions would require the removal of a substantial length of existing vegetation which currently softens the appearance of the site frontage.

42. Whilst replacement planting could take place along the back edge of the splays, this would take a while to establish. In the meantime, visual detriment arising from the development would be exacerbated. In any event I found existing visibility at the access, whilst not optimal, to be adequate, bearing in mind the small scale of the accommodation and the low traffic levels on the public highway. I am also mindful that, for the most part, the splays recommended by the highway authority would occupy land within its control in any event.

43. I therefore conclude that highway safety is not compromised significantly by the appeal scheme, such that there is no serious conflict with DCP Policy DP/3, national guidance in *Manual for Streets 1 & 2* or the provisions of the NPPF or PPTS insofar as they are relevant to this issue. Nor is there a valid case for imposing a condition securing visibility splays on either a permanent or temporary planning permission.

Sustainable development

44. Current national guidance in Policy H of the PPTS encourages local planning authorities to strictly limit new traveller site development in open countryside that is away from existing settlements. Additionally, Policy B thereof seeks to ensure that traveller sites are sustainable economically, socially and environmentally and tailors the advice on sustainable development set out in paragraph 7 of the NPPF to the needs of the travelling community.

45. Concepts of sustainability fall to be applied more flexibly to gypsy and traveller proposals than to more conventional residential development, in relation to which there is a firm policy presumption against countryside locations. Moreover, paragraph 29 of the NPPF recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Although the appeal site does not lie within or adjacent to a 'settlement' for the purposes of the development plan, the enclave it abuts is, nonetheless, a sizeable cluster of residential development and, thus, a settlement in broader terms.

46. This being so, I do not consider that the appeal site can reasonably be regarded as being in 'open countryside away from existing settlements' for the purposes of applying the PPTS. Indeed, I find nothing in current national or local policy to suggest that locations such as this should be precluded in principle from consideration as potential locations for gypsy and traveller accommodation.

47. Whilst bus services are accessible within easy walking distance of the appeal site, these are infrequent during the week and do not run at all on Sundays. It is therefore likely that occupiers of the site would rely primarily on the private car to access facilities required for day-to-day living, as is Mr Crotty and Ms Girling's current practice. I give little credence to the Appellant's argument that such dependence should be disregarded on the basis that residents of the nearby defined settlement of Wimpole, which has very few facilities but where infill housing is acceptable in principle, are similarly reliant on private transport.

48. More pertinent is the greater leeway provided for in national policy regarding the location of gypsy and traveller sites and the fact that, in this case, trips by car to nearby villages and towns with the necessary facilities would be relatively short. Moreover, these would be limited in number by the fact that the scheme concerns only a single gypsy pitch. I must also bear in mind that, overall, an additional settled site has the potential to reduce the number of

gypsies and travellers on the road and the vehicular activity associated with them. I do not therefore consider the appeal proposal to be unsustainable in locational terms alone.

49. Economic advantages of the scheme are restricted to the limited extent to which the occupiers of the gypsy pitch would contribute to the local economy. The social role of sustainable development is met in part by the opportunity presented for integration with the local community and the advantages of the location in terms of access for the family to education and health facilities. I have seen no cogent evidence to the effect that a single gypsy pitch would place significant additional pressure on medical facilities in the area or compromise the availability of school places.

50. Nonetheless, these modest attributes of the appeal development are countered to a degree by the visual harm caused by the development, as already identified, which does not fulfil the environmental role set out in national guidance. I therefore conclude that, overall, granting a permanent permission in this case would give rise to substantial conflict with objectives of sustainable development inherent in DCP Policy DP/1, the PPTS and the NPPF. However, such harm would be tempered if the development was only temporary.

Local infrastructure

51. One of the stated reasons for issuing enforcement notice is the absence of any measures associated with the provision or improvement of infrastructure which would be necessary to make the development acceptable in planning terms. In the Council's view, this could be addressed through a planning obligation that would secure financial contributions towards off-site public open space and indoor community facilities. A request for a contribution of £69.50 towards household waste receptacles was withdrawn at the Hearing on the basis that the Appellant was living on the appeal site and had been supplied with these items already.

52. In its submissions on the appeals the Council sought to justify these payments with reference to the tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. This records that a planning obligation may only constitute a reason for granting planning permission if it is (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. However, the CIL Regulations only apply to appeals involving 'chargeable development'.

53. Section 209(1) of the Planning Act 2008 defines such development as 'anything done by way of or for the purpose of the creation of a new building' or 'anything done to or in respect of an existing building'. Regulation 6 of the CIL Regulations further excludes from this definition various specific types of building, including those into which people do not normally go. However, I am mindful that the only 'building' subject to Appeal A is the proposed amenity building. The primary element of this development is, by contrast, a change of use of land.

54. This being so, I am inclined to the view that, taken as a whole, the appeal scheme is more properly assessed against paragraph 204 of the NPPF. The tests set out therein are essentially identical to those contained in Regulation

122 which, at first glance, might suggest that any distinction between the two is a mere technicality of little consequence. However, I am mindful that paragraph 204 does not have the same statutory force as Regulation 122.

55. DCP Policy SF/10 states that 'all residential developments' will be required to contribute towards outdoor playing space and informal open space. DCP Policy DP/4 advises that planning permission will only be granted where suitable arrangements have been made for 'the improvement or provision of infrastructure necessary to make the scheme acceptable in planning terms' and that contributions may also be required towards the future maintenance and upkeep of facilities. The supporting text to the latter policy goes on to identify public open space and community facilities as items for which contributions may be necessary. The Council has presented, as part of its submissions on the appeal, a detailed justification for the infrastructure payments sought. This is rooted in the above policies.

56. The Appellant initially argued that such payments were not justified in relation to a single gypsy pitch. However, the wording of the relevant policies is such that I see no reason why they should not in principle apply to development of that kind where it is intended to be permanent. In any event, on the second day of the Hearing the Appellant submitted a completed unilateral undertaking which purports to provide for the full amounts requested by the Council and is not conditional on my endorsement of the provisions it contains.

57. Assessing the undertaking against the relevant tests, as referred to above, I find that, having regard to the justification supplied by the Council, it satisfies all three in circumstances where any permission to be granted pursuant to the appeals is to be permanent. In such a context, there is no reason why the implications of a single gypsy pitch for infrastructure should be any different to those associated with a single dwellinghouse. Nonetheless, notwithstanding this, I find the format of the undertaking to be flawed.

58. Crucially, the 'trigger' for payments to be made to the Council is given therein as 'the commencement of development'. This is defined as the date on which the use of the land as a residential caravan site commenced. The landowner also covenants not to commence development until such time as the Council has received the contributions. However, the use/development in question has already commenced. I therefore consider that the undertaking is not fit for purpose, could not be effective and is susceptible to legal challenge.

59. The Appellant's contention that the development would not have been 'commenced' until conditions attached to any planning permission granted for it had been complied is wrong in law and conflates the different concepts of commencing a development and implementing a planning permission. In any event, any conditions attached to such a permission would need to reflect its retrospective nature and would be worded such that the permission would automatically be implemented as soon as it was granted.

60. I conclude that, in the absence of an effective mechanism for securing the relevant payments, the Appeal A scheme fails to make any provision for infrastructure improvements. It follows that the granting of a permanent planning permission would be contrary to DCP Policies DP/3, DP/4, SF/10, and SF/11, draft ELP Policies SC/4, SC/6 and SC/7, the objectives of the Council's Open Space SPD and Community Facilities Assessment and the relevant provisions of the NPPF. It would also make it difficult for the Council to resist

similar schemes which made no provision for infrastructure such that, cumulatively, substantial harm could accrue in terms of excessive pressure on existing local facilities.

61. Irrespective of this, I must also have regard to the revisions to the PPG's section on planning obligations made on 28 November 2014. In considering these, I have taken into account the comments of the parties concerning the relevance of these changes to the case in hand. Having done so, I find no reason why gypsy and traveller pitches should be regarded as exempt from the effects of this guidance.

62. Paragraph 012 of the planning obligations section of the PPG now states unequivocally that there are specific circumstances where tariff style planning obligations, such as that submitted in this case, should not be sought from small scale and self-build development. Specifically, contributions should not be sought from developments of 10 units or less with a maximum combined gross floorspace of no more than 1000 square metres. The appeal proposal falls well below this threshold.

63. Although paragraph 012 permits LPAs to choose a lower threshold in designated rural areas, it is apparent from paragraph 017 that the relevant designations do not apply to the appeal site. Additionally, paragraph 020 makes it clear that for sites which fall below the threshold, planning obligations should not be sought to pooled funding 'pots' intended to fund the provision of general infrastructure in the wider area. LPAs can only seek obligations for site specific infrastructure to make a site acceptable in planning terms, or contributions to fund measures with the purpose of facilitating development that would otherwise be unable to proceed because of regulatory or EU Directive requirements. Such circumstances do not apply in this case.

64. The Council contends that no weight can be given to these changes to the PPG at the present time, as the guidance is subject to Judicial Review, and that, accordingly, financial contributions should still be sought in this case. Indeed, there is currently uncertainty within the wider planning and legal community as to the weight that may be attached to this revised guidance, given that it appears in the PPG rather than the NPPF and it has been suggested by some that LPAs may choose to ignore the additional national guidance if a robust development plan policy is in conflict therewith.

65. I accept the Appellant's point that the Judicial Review should not in itself affect the weight to be attached to the guidance until the case has been decided. Nonetheless, I am mindful that the Council's infrastructure-related demands are underpinned not only by sound justification but by adopted local policies which have been through the public examination process and are not in conflict with the NPPF. Although the government's aspirations in assisting small-scale development are clear from the revised PPG this is, nonetheless, national guidance rather than policy.

66. If precedence were to be given to the development plan and the NPPF over the PPG changes, in the absence of reliable advice or a decision by the Courts to the contrary, the Appellant's provisions towards infrastructure would not be sufficient to justify the granting of a permanent planning permission for the Appeal A scheme, by reasons of the shortcomings of the unilateral undertaking and irrespective of the extent of compliance with the relevant tests. However,

the terms of the appeal are such that I must also consider the possibility of granting a temporary planning permission.

67. The Council advises that it does not seek contributions of this kind where a temporary permission is granted, on the basis that the demands on infrastructure will also be temporary. It also points out that, in any event, there is no local policy provision to seek any reduced form of payment. Notwithstanding this, I have given thought to whether the relevant policies might be interpreted legitimately as facilitating reduced payments proportionate to the duration of a temporary permission. However, if this approach were to be followed, it would involve contributions being calculated on a yearly rate based on the likely lifespan of a 'permanent' development.

68. In my experience, it is commonplace in such circumstances to require the payment for each year of the temporary period of something in the region of $1/80^{th}$ of the amount due for a permanent permission. In this case, contributions of this magnitude would amount to only £62.66 per year. In my view, the very small sum that would consequently be associated with the two year permission the Appellant is prepared to accept could not be held 'necessary to make the development acceptable in planning terms', as its effect on local infrastructure would be negligible. Any obligation to that effect would therefore fail one of the paragraph 204 tests.

69. This being so, I further conclude that the absence of an effective planning obligation in this case does not equate to inadequate provision for infrastructure in the context of a temporary two year planning permission. Accordingly, allowing Appeal A on that basis would not give rise to significant harm or conflict significantly with the existing development plan, its emerging successor or the NPPF insofar as they relate to this issue. Moreover, the recent changes to the PPG would then have no bearing on the case.

Land contamination

70. One of the reasons given for issuing the enforcement notice, albeit not for refusing planning permission, was that the former established use of the affected land as a building/engineering yard is likely to have resulted in land contamination. The absence of a detailed scheme requiring the investigation, recording and remediation of any contamination is cited by the Council as preventing it from properly assuring the appropriateness of residential use. The clear implication is that, in the Council's view, continued residential occupancy of the site in the absence of such measures has adverse implications for the health and safety of the occupiers.

71. However, the nature of its previous use does not automatically signal the presence of contaminants and I have seen nothing to support the assertions of some that contamination is known to exist. Moreover, I note that the Council's Contaminated Land Officer, in commenting on the planning application, was content that such matters could be dealt with by means of a condition attached to a grant of planning permission. The wording suggested at that time is such that she does not seem to have realised that residential occupancy of the site was already taking place. Nonetheless, I am satisfied that, such use now having been ongoing for the best part of a year, ground disturbance already having occurred and no cogent evidence of specific health risks having been presented, a condition remains a suitable way of addressing this issue.

Consequently, it should not preclude a retrospective grant of planning permission.

72. Having said this, the period for complying with such a condition should be short and provide for prompt cessation of the use if it is not complied with. It is also important that further ground disturbance, such as that associated with the provision of the alternative amenity building for which permission is sought, should not occur until remediation has been implemented or is found to be unnecessary. I conclude that, with a measure to that effect in place, a further limited spell of living on site prior to any necessary remediation need not have adverse implications in terms of health and safety sufficient to, in themselves, justify dismissing the appeal. Accordingly, I find that the relevant objectives of DCP Policy DP/1, draft ELP Policy SC/12 and the NPPF could be adequately addressed.

Other material considerations

73. I turn now to consider whether there are other material considerations that might weigh in favour of the appeal scheme. I find there to be four main factors to address in this regard: the level of general need for gypsy and traveller pitch provision in the area, the status of the Appellant and his family for the purposes of applying gypsy and traveller policy and guidance, their personal circumstances and the availability of alternative accommodation.

The level of need for gypsy and traveller pitches

74. The Council's initial stance in written submissions on the appeal was that there is an over-supply of traveller sites in the District in terms of the level of need that exists at the present time. It had nonetheless conceded that there remained an unmet need for additional pitches in the longer term. However, by the time of the Hearing it had revised its position in the light of recent appeal decisions that had addressed the question of gypsy and traveller need in the District.

75. A gypsy and traveller accommodation needs assessment (GTANA) was carried out in 2011. Based on this and having regard to need arising from temporary permissions the Council had estimated that an additional 65 permanent pitches were needed in the period 2011 to 2016 and a further 20 pitches for the period to 2031. Since 2011, 105 pitches had been approved, which the Council has suggested points to an excess in supply against its 2011-2031 target. However, some of my fellow Inspectors have noted that the 2011 GTANA does not take account of hidden gypsy and traveller households, both in bricks and mortar accommodation and doubling up or overcrowded on private sites. They also point out that it is a desktop study without the benefit of primary research or consultation with the gypsy community and its advisors, as recommended by national guidance.

76. Moreover, the use of an annual 4% addition to supply through turnover of sites introduces double counting. Turnover does not increase the accommodation stock. The GTANA model assumes that in-migration and out-migration cancel each other out and that there would be no net movement between caravans and bricks and mortar. However, this must mean that 4% of gypsy households die each year or that households move around within the District. If the latter, then the turnover associated with this should be discounted. If the former, then the death rate would exceed the projected household creation

rate of 3.6%. The model is therefore erroneous. I endorse my colleagues' criticisms of the GTANA which, quite clearly, is far from robust and has serious weaknesses.

77. The Council confirmed at the Hearing that it now accepts these criticisms and that it has not, after all, identified a supply of specific deliverable sites sufficient to provide five years' worth of sites against its locally set targets, as required by paragraph 9 of the PPTS. Concerns in this regard are reinforced by the fact that, on the Council's own evidence, there is a continuing flow of applications for gypsy sites, a waiting list of about 50 for the two sites it owns and no vacant pitches available for occupancy by Romany gypsies at the present time. No one has challenged effectively the Appellant's evidence that the only gypsy/traveller allocation in the development plan, at Chesterton Fen (by means of saved LP Policy CNF6) has been exhausted.

78. Ms Wood, on behalf of local residents, promoted the argument that there is a marked shortage of gypsy and traveller sites in neighbouring North Hertfordshire and a lack of policy provision to address this. She contended that, consequently, North Hertfordshire District Council is likely to be more open to the provision of temporary sites pending the adoption of a new Local Plan allocation or criteria based policies designed to address its shortfall.

79. I have no reason to question Ms Wood's assessment of North Hertfordshire's supply position, which is substantiated to some degree by the supporting documentation she has supplied. However, there is no obligation on the Appellant to seek planning permission for a gypsy pitch outside South Cambridgeshire, irrespective of the extent of his historic links to the area. Indeed, it would make little sense to dismiss Appeal A on the basis that he had not done so. More pertinent is the requirement in the PPTS that each individual local planning authority should meet the demand in its District for gypsy and traveller sites within its own boundaries. I therefore give very little weight to Ms Wood's argument in that regard.

80. Draft ELP Policy H/19 advises that provision will be made for 85 permanent gypsy pitches between 2011 and 2031 and that, as permissions exceed the identified need, no new allocations are proposed. However, this is also based on the flawed 2011 GTANA. In any event, as previously indicated, the public examination of the ELP, although underway, has yet to be concluded. Moreover, the Council confirms that Policy H/19 is subject to a significant number of objections. Little weight can therefore be attached to it. At the Hearing the Appellant estimated that, assuming the adoption later this year of a Local Plan that makes adequate provision for gypsies and travellers and factoring in the time required to secure the delivery of any sites thus allocated, a period of two years is likely to elapse before alternative accommodation to which the Appellant could relocate is likely to be available in South Cambridgeshire. I concur.

81. I conclude that the current shortage of provision for gypsies and travellers thus identified does not assist the Appellant's case for a grant of permanent planning permission, as longer term need should be addressed through the development plan process in due course. However, the time likely to pass before sites are delivered, in tandem with existing demand, carries substantial weight in favour of a temporary planning permission for a site for general gypsy and traveller occupation, irrespective of whether the Appellant and his

family remain *in situ*. Nonetheless, I will now move on to consider whether there are reasons why Mr Crotty himself should continue to occupy this site which might add further weight to his case.

Gypsy/traveller status

82. The PPTS specifies that, for the purposes of that policy, 'gypsies and travellers' means: 'Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently…'. The Appellant maintains that he complies with this definition, but the Council and others contend to the contrary.

83. Mr Crotty advises that he is a Romany gypsy by birth, but lived with his parents in a house in Willowside Way, Royston, Hertfordshire until he was 16 years old, having first travelled by caravan two years earlier. He then toured the country to make a living from lopping, topping and felling trees, travelling as far afield as Newcastle and Brighton. For some of this time he accompanied his uncle and also lived at the latter's gypsy pitch in Harston, Cambridgeshire. Although occasional short spells were spent living in his partner's flat in Royston, he did not otherwise occupy bricks and mortar. This lifestyle continued until the beginning of March 2014, when Mr Crotty settled with his family in the mobile home on the appeal site.

84. Shortly after moving onto the site, Mr Crotty advised Council officers that he worked as a tree surgeon and did not travel away for a living. However, I am mindful that at that particular point he was settled in the static mobile home and, on his evidence, did not bring a touring caravan onto the site that would enable him to travel until July 2014. At the Hearing, he claimed to have since used it to travel away for work purposes on occasion. His long-term intention is to continue travelling for work but retain the appeal site as his settled base.

85. The Council points out that the Appellant gave the Willowside Way property as his address for a planning application he made for commercial development on the appeal site in July 2013 (ref no S/1676/13/FL). The same address also appears on the internet for a company known as Greenlands, which the Appellant acknowledges as his business. However, at the Hearing Mr Crotty advised that the property had been occupied in recent years only by his mother until a fire rendered it uninhabitable a few months ago. He had used it solely as a postal address and has since arranged for his post to be diverted to the appeal site. I give little credence to the suggestion that his seeking planning permission for a commercial development in itself undermines the Appellant's claims to a nomadic habit of life.

86. Mr Crotty is now 24 years old, which places the beginning of his nomadic lifestyle in or around 2006. It therefore spans a period of about eight years which, although a relatively short time, in fact accounts for most of his adult life. Moreover, I am inclined to regard his time at the appeal site as a continuation of that nomadic lifestyle by reason of the trips away he has made since July 2014. Having regard to the above, if I were to take Mr Crotty's version of events at face value I would be satisfied on the balance of probabilities that, despite his relatively short time on the road, he nonetheless meets the definition of a gypsy or traveller for the purposes of applying the PPTS.

87. Having said this, I am mindful that there is no documentation before me to support Mr Crotty's claims with regard to his nomadic lifestyle and refutation of arguments to the contrary. Moreover, several local residents and the local Parish Council have questioned the veracity of Mr Crotty's claims in that regard. These comments are also unsupported by documentation. Nonetheless, I am not inclined to dismiss such comments lightly and therefore turn to consider the weight that might be attributable to them.

88. A number of objectors assert that Mr Crotty has held a reasonably high profile in Royston in recent times, as an amateur boxer amongst other things, and advise that local press reports and the electoral register have listed his address as Willowside Way. However, a travelling lifestyle does not preclude Mr Crotty from returning to the town he grew up in on a regular basis. Moreover, it seems that he would have been highly likely to do so in circumstances where his young family was resident there. His mother's property having functioned, on the Appellant's account, as a postal address for him, it seems likely that it would have fulfilled a similar role for electoral purposes, irrespective of whether Mr Crotty was actually in residence.

89. Local residents recall seeing Mr Crotty arriving at or leaving the appeal site almost on a daily basis since he has been living there and, having regard to what the Appellant said at the Hearing, I have no reason to question this perception. Rather than travelling away from Wimpole for two weeks a month, my understanding from the evidence before me is that Mr Crotty's touring caravan had been absent from the site only twice since July 2014, for a maximum period of about two weeks. This in itself does not undermine his policy status as a gypsy, provided that he has ceased more extensive travelling on grounds of educational or health needs. In this regard I am mindful that the Appellant's daughter attends school and one son requires regular hospital attendance due to a serious illness, which I will return to later.

90. Having regard to the above, I find that there is a feasible explanation for all the various factors which, in the perception of some local residents, render the Appellant's claims less than credible. I am also mindful that the evidence presented by objectors in this regard is, like the Appellant's, unsupported by any of the documentation before me. This being so, there is insufficient reason for me not to accept at face value Mr Crotty's claims regarding his gypsy status for the purposes of the PPTS and the development plan.

91. The question of gypsy and traveller status is more easily resolved in relation to the Appellant's partner, Ms Girling, or their three children. On Mr Crotty's own evidence, Ms Girling grew up in bricks and mortar, occupied a rented flat in Royston for some years until the end of 2013 and then lived with her mother for a couple of months before moving to the appeal site. The children have always resided with their mother. Nonetheless, all clearly form part of a family unit with the Appellant, of whom they are dependents. This being so, provided Mr Crotty fulfils the relevant PPTS definition, his partner and children are entitled to occupy a gypsy and traveller site with him.

92. Nonetheless, I acknowledge that Mr Crotty's case in this regard is not well presented and far from conclusive. Therefore, whilst I now turn to address the specific gypsy and traveller-related needs of the Appellant and his family, with reference to the availability of alternative accommodation and their personal circumstances, I do so with caution. It remains within the Council's remit to

pursue enforcement action against Mr Crotty regarding non-compliance with any planning permission that may be granted for gypsy and traveller occupation of this site, should more cogent evidence come to light which contradicts more convincingly his claims regarding a nomadic lifestyle.

Alternative accommodation

93. At the Hearing, the Appellant stated that neither he nor his partner owns any property other than the appeal site. The address in Royston where Mr Crotty grew up belonged to his mother, from whom he is currently estranged. In any event, the property was fire damaged and is now uninhabitable. Ms Girling's accommodation in Royston, occupied with the children until the end of 2013, was rented. Although she then lived with her mother for a short while, this was not practical on a long term basis. In the absence of cogent evidence to the contrary, I have no reason to question Mr Crotty's version of events.

94. There is nothing of substance before me to the effect that the Appellant has carried out a comprehensive search for suitable accommodation of any kind elsewhere. Moreover, the family is not on any waiting list for any established gypsy and traveller site, Council-owned or otherwise. However, as already indicated, the waiting lists for local public sites are long and no party knows of any pitches presently available elsewhere in South Cambridgeshire that would be acceptable for Romany gypsies. The suggestion by some local residents that Mr Crotty's Irish surname calls into question his Romany status and thus his claimed lack of access to sites occupied by Irish travellers is merely unsubstantiated speculation and carries no weight.

95. There is no obligation on the Appellant in cases of this kind to search further afield or, indeed, to demonstrate the non-availability of alternative sites. Rather, it is the Council's responsibility to make provision for these within its boundaries, which it has been unable to do. In the absence of any cogent evidence to the contrary, I conclude on the balance of probabilities that no alternative accommodation appropriate to Mr Crotty's gypsy status is likely to be available to the family at the present time. This carries substantial weight for the purposes of considering a non-personal permission for occupation of the appeal site by gypsies and travellers.

96. The Council has suggested that the fact that the Appellant sought planning permission for a commercial development on the appeal site in July 2013 implies that his desire to use it as a caravan pitch was less than pressing. However, I am mindful that, on the evidence before me, he was at that time content to live a travelling lifestyle. Moreover, he could have used any income from the sale or commercial development of the site to finance the purchase of another plot of land where he could then seek permission to reside.

97. Having said this, even accepting his version of events at face value, the weight I attach to Mr Crotty's stated aversion to living in bricks and mortar is tempered to a degree by the fact that he spent his childhood in a conventional dwelling and is still only 24. This suggests that a rented house or flat may not be out of the question as a short term solution for the family should the appeal be dismissed. Nonetheless, I have insufficient reason to question Mr Crotty's assertion that, in adulthood, he has embraced his gypsy heritage and has a reasonable entitlement to continue living in a caravan or mobile home. That entitlement applies by extension to Ms Girling and the children, as the family wish to live together as a single household.

Personal circumstances

98. The Appellant advises that his desire to continue living on the appeal site stems for the most part from aspirations for his children: Mia (6), Leonard (2) and Stephen (1). This being so, I am mindful of the finding in the case of *Jane Stevens v SSCLG & Guildford BC* [2013] EWHC 792 (Admin) to the effect that, where gypsy families include children, rights under Article 8 of the European Convention on Human Rights have to be interpreted in the light of international law. *ZH (Tanzania) v SSHD* [2011] UKSC 4 establishes that the 'best interests' of children should be a primary consideration, reflecting Article 3(1) of the United Nations Convention on the Rights of the Child.

99. Mia already attends school in nearby Orwell and Leonard pre-school in Wimpole. Leonard also requires regular hospital attendance in Cambridge due to ongoing recovery from a serious illness. A travelling lifestyle is not conducive to the health or educational needs of small children. Moreover, there are obvious advantages for the family as a whole in being registered with a GP reasonably close at hand, which is more difficult to ensure in the absence of a settled base. Remaining on the appeal site for even a limited period would allow the family maintain their independence and enhance their quality of life.

100. I am mindful that the children were living in Royston before moving to the appeal site and, indeed, that Mia started school there. Relocation to Wimpole has not therefore resolved a previously unsettled lifestyle that placed them at a disadvantage. Nonetheless, it is pertinent that if Mr Crotty wishes to pursue a lifestyle commensurate with his gypsy heritage (which, on the limited evidence before me, it seems that he is entitled to do), the only way to do so and keep the family together in the absence of a settled pitch would be to take to the road, to the detriment of the children's needs. Accepting Mr Crotty's gypsy status at face value, all these matters carry substantial weight.

Additional matters

101. I have considered all the other matters raised, including those provisions of the PPG not specifically referred to previously. I have noted the granting of planning permission on appeal for gypsy and traveller pitches at Willingham (ref nos APP/W0530/A/12/2184929, 2185676 & 2186665). However, each scheme falls to be assessed primarily on its own merits and, in any event, I do not know enough about the circumstances pertaining to those particular cases to draw comparisons with the appeal before me. They have therefore carried little weight for the purposes of my decision, aside from the insight they provide into the level of gypsy and traveller need in the District.

102. For similar reasons, fears of precedent regarding the implications that a grant of planning permission in this case might have for the development of nearby land have not influenced my findings. The same applies to Ms Girling's apparent aspirations to build a house on the appeal site in due course, as evidenced by her Facebook page. The policy considerations relevant to such a proposal are quite different to those that apply to a gypsy and traveller site. Although referred to on behalf of local residents, I find there to be no significant conflict between the subject development and draft ELP Policies S/2 (Local Plan objectives) or H/22 (the design of gypsy and

traveller sites). There is no policy requirement to safeguard the site for employment purposes, despite its previous use.

103. I also acknowledge that there is no cogent evidence of flood risk or any detriment to the living conditions of neighbouring residents associated with the principle of the subject use. With regard to the latter, I have noted the objections of some local residents to the behaviour of the site's current occupants. However, such matters fall to be assessed under other legislation outside the remit of planning and, for the purposes of my decision on Appeal A, it is important to distinguish the personal behaviour of particular individuals from the use of the site in planning terms.

104. The welfare of horses and dogs kept on the site or any nuisance caused or threat posed by the latter fall to be pursued, if necessary, by other means. Nor am I able to take into account the perceived effect of the subject development on property values. Neither these nor any other matters are of such significance as to outweigh the considerations that have led to my conclusions on the main issues.

Analysis

105. I find that substantial harm to the character and appearance of the countryside would be caused by the appeal scheme in the event that the existing land use and proposed amenity building were allowed to remain indefinitely by reason of a permanent planning permission. The realisation of sustainable development objectives would be similarly compromised and harm associated therewith would carry similar weight. The same applies to implications for the adequacy of local infrastructure if the relevance of recent changes to the PPG in this regard is seen to be tempered for the reasons suggested by the Council.

106. Considerations such as highway safety and land contamination, whilst not weighing against the appeal scheme as neither gives rise to discernible harm, would not add to the balance in favour of it. The same applies to other 'absence of harm' issues cited by the Appellant and others. I conclude that, on balance, the harm I have identified as arising from a permanent permission would not, in its totality, be outweighed by the immediate need for gypsy and traveller pitch provision in the District, even taking into account the particular requirements of the Appellant's family in terms of their personal circumstances and lack of suitable alternative accommodation.

107. I am mindful that it may transpire in due course that, after all, the changes to the PPG have full effect and thus essentially fetter the way in which the provisions of the CIL Regulations, NPPF and the development plan should be applied, in which case non-compliance with the latter in this regard would have no bearing on the case. Nonetheless, even if this were so, I find that harm to character and appearance and sustainability alone would outweigh the planning advantages of a permanent permission. Accordingly, tempering the weight to be attached to the PPG changes in circumstances where their effect remains less than clear does not give rise to injustice.

108. However, the restriction of the development's presence on the appeal site to a period of only two years, by which time alternative gypsy and traveller pitches are likely to be available in the local area, would limit the harm associated with a permanent permission considerably and, in relation to

infrastructure, eliminate it. In this context, interpretation of the effect of the PPG changes is irrelevant and gypsy and traveller need alone would clearly outweigh the far more limited harm associated with a two year temporary permission. This would be the case irrespective of whether the specific circumstances of the Appellant's family are taken into account, such that a condition limiting implementation of the permission to Mr Crotty and his family would be unnecessary.

109. Article 8 of the European Convention on Human Rights (ECHR) affords the right to respect for private and family life. Both a refusal to grant a permanent planning permission and the granting of a time limited permission would interfere with the family's Article 8 rights. However, I am satisfied that, as a suitable and reasonably local alternative site would in all probability be available for them to relocate to in two years' time, they would not be made homeless at that point. The refusal of a permanent permission and the granting of a temporary one are both therefore proportionate in the terms of the ECHR.

110. This being so, I consider there to be sound justification in this particular case for departing from the existing development plan and its emerging successor, in accordance with national guidance, and granting a retrospective planning permission subject to a two year time limit. In such circumstances a planning obligation relating to infrastructure provision is unnecessary and there is no need to explore further the flaws I perceive in the unilateral undertaking submitted by the Appellant.

Conditions

111. I have considered the conditions suggested by the parties and discussed at the Hearing, having regard to the advice in the PPG. In some cases I have edited the suggested wording to reflect that advice.

112. In view of the level of long-term harm to the character and appearance of the area and the achievement of sustainability objectives that would otherwise arise and as, on the evidence before me, I expect gypsy and traveller sites to be delivered through the development plan process in the next two years sufficient to meet local need, the planning permission should be limited to a temporary period of that duration. The site should be cleared at the end of this period except for hardsurfacing within the south-western part of the site which, being non-domestic in character, is not incongruous.

113. As use of the land as a residential caravan site has already begun, there is no need to impose a statutory time limit on commencement of the permission. A condition listing the approved drawings is required in order to facilitate applications for minor material amendments to that element of the scheme yet to be implemented, namely the erection of the amenity building. Residential occupancy must be limited to gypsies and travellers to reflect the fact that planning permission is justified in this case by an unmet need for gypsy/traveller pitches. However, the general immediate need for pitches is so significant that personal restriction of use to the Appellant and his dependants cannot be justified.

114. In the interests of residential and visual amenity and highway safety, restrictions must be placed on the number of pitches and caravans, the extent of commercial activity and the size and number of commercial

vehicles kept at the site. However, highway safety would not be compromised unduly by existing visibility at the access and a condition to secure the maintenance of existing splays is unnecessary, given the extent to which these would take in land already under the control of the highway authority. Existing parking and manoeuvring space within the site is also adequate and, given the width of the road and the availability of ample kerbside space, a condition to secure its retention is unnecessary.

115. In the interests of the health and safety of the occupiers of the site, conditions requiring the investigation, recording and, if necessary, remediation of the site are required. As the site is already occupied, the principal condition to this end must require the cessation of residential use and associated clearance of the site in the event of non-compliance and including reference to the appeal process.

116. Although the Council has recommended a condition along these lines, the retrospective nature of the development calls for a more complex solution and I have therefore amended the suggested wording accordingly, which now spans three conditions. I have also curtailed the deadlines for the submission of appeals against non-determination set out in the Council's condition so that they are tighter than those prescribed by statute, given the high priority merited by health and safety.

117. Any external lighting erected at the site should be subject to the Council's prior approval, in the interests of visual amenity. However, additional landscaping and the approval of boundary treatments are not necessary in the context of a two year temporary permission, given the adequacy of existing fencing and the time that new planting comprising appropriate species would take to establish an effective screen. Although connection to a main sewerage system has not been shown to be feasible, nothing of substance suggests that existing foul or surface water disposal arrangements at the site are inadequate and, accordingly, no condition is required in relation thereto.

118. The County Council's senior archaeologist has confirmed that, not withstanding the views of some local residents, archaeological investigation of the site would not be appropriate. Nor is there any cogent evidence before me sufficient to justify any form of ecological or arboricultural survey or related safeguards.

Conclusions

119. For the reasons given above I conclude that Appeal A should be allowed and temporary planning permission granted pursuant thereto. In these circumstances, there is no need to determine Appeal B. The enforcement notice will therefore be corrected and upheld but will cease to have effect by reason of the provisions of section 180 of the 1990 Act as amended.

120. Although the planning permission granted pursuant to Appeal A is only temporary, the prohibition contained in the upheld notice does not revive upon the coming to an end of the period of that permission. Rather, the effect of section 180 is to override the notice altogether (*Cresswell v Pearson* [1997] JPL 860).

Formal decisions

Appeal A: APP/W0530/A/14/2221703

121. The appeal is allowed and temporary planning permission is granted for the material change of use of land to use as a residential caravan site, the laying of hardsurfacing and the erection of an amenity building at 146 Cambridge Road, Wimpole, Cambridge SG8 5QB in accordance with the terms of the application, ref no S/0583/14/FL dated 12 March 2014, and the plans submitted with it, subject to the following conditions:

1) The planning permission hereby granted shall be for a limited period, being the period of two years from the date of this decision. At the end of this period the use hereby permitted shall cease and all mobile homes, caravans, buildings, structures, materials and equipment brought on to, or erected on the land or works undertaken to it in connection with the use, including the proposed amenity building hereby approved but excluding hardsurfacing to the south-west of the low wall between the existing mobile home and the site access, shall be removed. The land shall then be restored to its former condition with immediate effect (with the exception of the hardsurfacing to the south-west of the low wall between the existing mobile home and the site access) in accordance with a scheme of work which shall previously have been submitted to and approved in writing by the local planning authority.

2) The development hereby permitted shall be carried out in accordance with the following approved plans, subject to any departure therefrom required by other conditions attached to this permission: location plan at scale 1:1250, site layout plan at scale 1:500 and amenity building elevations, floor plan and section at scale 1:50.

3) The use hereby permitted shall cease and all mobile homes, caravans, buildings, structures, materials and equipment brought on to, or erected on the land or works undertaken to it in connection with the use, including the proposed amenity building hereby approved but excluding hardsurfacing to the south-west of the low wall between the existing mobile home and the site access, shall be removed within one month of the date of failure to meet any one of the requirements set out in (i) to (v) below.
   (i) Within three months of the date of this decision, a scheme for the investigation and recording of contamination on the site and the determination of remediation objectives through risk assessment shall be submitted for the written approval of the local planning authority. The said scheme shall include a timetable for the submission for the local planning authority's subsequent written approval of a remediation method statement (RMS), should this prove necessary, said RMS to address remediation objectives by setting out proposals for the removal, containment or otherwise rendering harmless any contamination found. Any RMS submitted in accordance with that timetable shall itself include a further timetable for the completion of the works it specifies, to be determined by the nature of those works, and for the submission for the local planning authority's approval of a verification report.
   (ii) Within six months of the date of this decision the scheme submitted pursuant to (i) above shall have been approved by the local

planning authority or, if the local planning authority refuses to approve the scheme or fails 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) Within three months of the date of the submission to the local planning authority of any RMS or any verification report pursuant thereto, the said submission shall have been approved by the local planning authority or, if the local planning authority refuses to approve it or fails 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.

(iv) If an appeal is made in pursuance of (ii) or (iii) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State.

(v) The investigation/recording scheme and RMS requirements, including the submission of any verification report that may be required, shall have been fully implemented in accordance with the details approved pursuant to (i) above and in accordance with all the approved timetables.

4) If, during remediation works, any contamination is identified that has not been considered in the remediation method statement, then remediation proposals for this material shall be submitted to and agreed in writing by the local planning authority and thereafter implemented in the approved form.

5) Works associated with the erection of the amenity building hereby approved shall not commence until such time as remediation approved pursuant to conditions 3) and 4) above has been implemented or it has been confirmed in writing by the local planning authority or the Secretary of State that such remediation is unnecessary.

6) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of DCLG publication *Planning policy for traveller sites* (March 2012) or in any subsequent Government policy or guidance re-enacting that definition with or without modification.

7) The site shall comprise a single gypsy and traveller pitch. No more than two caravans at any one time, being caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, only one of which may be a static mobile home, shall be stationed on the site at any one time.

8) No more than one commercial vehicle, which shall be solely for the user of the residential occupiers of the site and shall be under 3.5 tonnes in weight, shall be stationed, parked or stored on this site. No commercial use shall take place on the site at any time. Non-domestic storage shall be limited to equipment associated with Mr Ricky Crotty's business and shall take place only for as long as he is resident on the site. Any such storage shall take place only within the confines of the lawful buildings and caravans on the land.

9) No external lighting shall be installed on the site unless details have first been submitted to and approved in writing by the local planning authority, including hours of use and intensity and direction of illumination. The installation shall take place as approved.

Appeal B: APP/W0530/C/14/2217841

122. It is directed that the enforcement notice be corrected by:
    (i) the deletion of the wording of section 3 in its entirety, with the exception of the heading, and the substitution therefor of the words 'Without planning permission, the material change of use of the land to use as a residential caravan site, together with the laying of hardsurfacing.';
    (ii) in requirement i) in section 5, the deletion of the words 'for the stationing and residential occupation of mobile homes or caravans' and the substitution therefor of ' as a residential caravan site'; and
    (iii) in requirement iii), the deletion of the words 'hard-standings, hard-core other arisings' and the substitution therefor of the words 'hardsurfacing and all materials and debris arising from compliance with these requirements'.

123. Subject to these corrections the enforcement notice is upheld. The appeal against it does not fall to be determined in the light of my decision on Appeal A.

Alan Woolnough

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr P Brown BA(Hons) MRTPI	Philip Brown Associates
Mr R Crotty	Appellant

FOR THE DISTRICT COUNCIL:

Mr J Koch DipTP MRTPI	Development Control Team Leader (West), South Cambridgeshire District Council
Mr J Fisher	Section 106 Officer, South Cambridgeshire District Council
Mr J Finney	Development Management Engineer, Cambridgeshire County Council
Ms V Keppey HNC.CivEng	Development Management Engineer, Cambridgeshire County Council

INTERESTED PERSONS:

Ms K Wood BA(Hons) MRTPI	Carter Jonas LLP, representing a group of local residents
Cllr S Gwynn	Local resident and Parish Councillor
Ms L Protheroe	Local resident
Dr M Tarbit	Local resident
Cllr A Van De Weyer	Councillor, South Cambridgeshire District Council
Mr T Williams	Local resident

Cllr Gwynn and Ms Protheroe only participated in that part of the Hearing held at the appeal site

DOCUMENTS SUBMITTED OR SUPPLIED AT THE HEARING

1 Caravan counts for January and July 2014, supplied by the District Council
2 Appeal decision ref no APP/W0530/A/13/2208768, submitted by the District Council
3 Draft Policy HDS6 of the North Hertfordshire District Council Preferred Options Consultation Paper, submitted by Ms Wood
4 North Hertfordshire District Council Gypsy, Traveller and Showperson Accommodation Assessment Update (July 2014), submitted by Ms Wood
5 Extracts from Cambridgeshire County Council's RECAP Waste Management Guide Supplementary Planning Document (February 2012), supplied by the District Council
6 Transport Statement guidance, submitted by the County Council

7 District Council report on planning obligations policy, dated 5 November 2009, submitted by the District Council
8 Draft contamination condition, submitted by the District Council
9 Final statement by Ms Wood on behalf of local residents, dated 16 December 2014, submitted by Ms Wood
10 Completed unilateral undertaking dated 16 December 2014, submitted by the Appellant

PLANS

A Plan attached to the Appeal B enforcement notice
B.1 to B.3 Appeal A application plans comprising location plan at scale 1:1250, site layout plan at scale 1:500 and amenity building elevations, floor plan and section at scale 1:50
C Drawing dated 8 July 2013 associated with planning application ref no S/1676/13/FL, submitted by the District Council

PHOTOGRAPHS SUBMITTED AT THE HEARING

1 to 4 Photographs of the appeal site and surroundings, submitted by the County Council