The Planning Inspectorate

Appeal Decisions

Inquiry held on 25 & 26 April 2012 and 25 May 2012
Site visit made on 26 April 2012

by N P Freeman BA(Hons) Dip TP MRTPI DMS

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

Decision date: 9 July 2012

Appeal A: APP/P1940/C/11/2164949
Land between Langlebury Lane and Old House Lane, Langlebury Lane, Langlebury, Herts, WD4 9AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr Jimmy Cash against an enforcement notice issued by Three Rivers District Council.
- The Council's reference is 10/0439/COMP.
- The notice was issued on 28 October 2011.
- The breach of planning control as alleged in the notice is "Without planning permission, the material change of use of the Land from agricultural land to a mixed use of land for the stationing of caravans and mobile homes for the purposes of residential occupation and for the storage of building materials and other miscellaneous items present on the Land other than in connection with its permitted agricultural use."
- The requirements of the notice are:
  i. Stop using any part of the Land for the stationing of a caravan or mobile home for the purposes of residential occupation;
  ii. Remove all the caravans and mobile homes from the Land and remove any associated domestic equipment/chattels from the Land;
  iii. Remove from the Land the fencing shown on the attached plan (including the fence posts, concrete base panels and the gates marked "A", "B" and "C" on the attached plan but excluding the gates at the entrance to the Land, marked D;
  iv. Stop using any part of the Land for the storage of building materials and other miscellaneous items not required in connection with the permitted agricultural use of the Land;
  v. Remove all the building materials and miscellaneous items from the Land not required in connection with the permitted agricultural use of the Land.
- The period for compliance with the requirements is six months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: APP/P1940/A/11/2160486
Land between Langlebury Lane and Old House Lane, Langlebury Lane, Langlebury, Herts, WD4 9AA

- 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 Jimmy Cash against the decision of Three Rivers District Council.
- The application Ref. No. 11/0725/FUL, dated 5 April 2011, validated on 20 June 2011, was refused by notice dated 19 August 2011.

- The development proposed is the use of land for the stationing of caravans for residential purposes for 2 no. gypsy pitches together with the formation of additional hard standing and utility/day room ancillary to that use.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Application for costs

1. At the Inquiry an application for costs was made by the appellant against Three Rivers District Council. This application is the subject of a separate Decision.

Procedural matters

2. The Council conceded at the inquiry that some of the fencing alleged as part of the breach in the enforcement notice and the subject of requirement (iii) is 'permitted development' and hence does not require planning permission. A revised version of the notice was put forward with an amended plan showing only the length of fence along the frontage of the site (between points 'A' and 'B' on the amended plan) to be targeted. The wording of requirement (iii) is also adjusted as a consequence. For the appellant, no objection was raised to the substitution of this revised form of the notice and as it cuts down the alleged breach I consider that no injustice would be caused to either principal party in substituting this instead. However, whether this is necessary is dependent upon the outcome of the ground (c) appeal.

3. There is a site container on the land which the appellant intends to keep and re-site as shown on the proposed plan[1]. It is currently used for domestic storage. The wording of the allegation and the requirements of the notice do not refer in terms to a site container although there is reference to miscellaneous items and domestic equipment and chattels which could encompass the site container given its present use. However, the Council made it clear that the container had been on the land for some time having been brought there by a former landowner and it was accepted that, due to the passage of time, this could remain if the appeals succeeded. However, if this is the outcome the Council wish to see the imposition of a condition preventing the stationing of any further containers.

4. There was also a point that most if not all of the building materials that were on the land were deposited by the former landowner (Mr Frost) and have now been removed. This was the situation I observed when I visited the site. Nevertheless, there is no ground (b) appeal – that what has taken place has not occurred as a matter of fact – and, from the evidence before me it seems likely that the removal has taken place after the notice was served. This being so it would not be appropriate to remove this matter from the allegation or requirements. There was no suggestion that the appellant or the co-occupants of the site wished to store building materials and so if the notice were upheld it does not present an issue in this respect. If Appeal A succeeds on ground (a) I will not include reference to the storage of these materials or other miscellaneous items as the appellant made it clear that this was not intended.

[1] Drg.No. 10_381_003

5. I am aware that the site is subject to a Tree Preservation Order[2] and there is an issue over the felling of some trees covered by this order. However, it was made clear at the inquiry by the appellant that he had not felled any trees himself and that if trees had been removed this was attributable to the previous owner or another. The Council could not clarify whether any action was being taken on this matter but it would need to be pursued under separate legislation and is not something before me for consideration or determination.

Background

6. The appeal site is located on part of a parcel of land bounded by Old House Lane to the south, Langlebury Lane to the east and the M25 motorway - in a cutting – to the west. It has an area of about 0.45 hectares and is roughly rectangular in shape with access via a gateway at the south-eastern corner onto Old House Lane close to the junction with Langlebury Lane. It is enclosed by timber close-boarded fencing and surrounded by the trees covered by the TPO which form a woodland backdrop. There is a belt of maturing trees along the Old House Lane frontage with the boundary fence set back some distance behind these trees and a ditch course.

7. The land lies with the Metropolitan Green Belt (GB) and is about 1.5km from the village of Hunton Bridge – at the junction of Langlebury Lane and the A41 Watford Road to the north-east. Beyond that further to the north-east is the more substantial settlement of Abbots Langley which contains a considerable range of shops, services and schools.

8. In the south-western corner of the appeal site there is a sizeable timber-clad building which I understand was erected in connection with the former agricultural use of the land and pre-existed the occupation of the land by the appellant. It is also agreed that much of the shingle surfaced hardstanding that exists was also in existence prior to the purchase of the land by the appellant but that this has been extended to a limited extent on the northern side of the site.

9. There are currently two mobile homes and one touring caravan on the land as well as the site container. The southernmost mobile home (No.1) is occupied by the appellant, his wife (Nan) and two children (Elizabeth and Jimmy Jnr). The northernmost (No.2) by the appellant's uncle, a Mr Keith Nash, and the touring caravan by the appellant's brother, Miles Cash, his wife (Leanne) and their young baby. The intention is that all should continue to reside there and the proposed application plan (s78 appeal) shows 2 mobile homes (No.2 repositioned) and two touring caravans. It is also intended to erect a utility/day room in the north-western corner of the site. There is an existing foul drainage collection tank (either cess pit or septic tank) but the proposal is to replace this with a package treatment plant draining to a soakaway in the north-eastern corner. The access arrangements and surfacing are intended to remain as they are.

Ground (c) – s174 appeal

10. The matter to consider under this ground is now only the length of fence along the site frontage which faces Old House Lane – as shown between points 'A' and 'B' on the substituted notice plan. The claim for the appellant is that this fence, which exceeds 1m in height but not 2m, is 'permitted development' by

[2] TPO 325 – Woodland Order dated 17 March 1994

virtue of Class A.1(b) of Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order (GPDO) 1995. For the Council it is argued that the appropriate part of Class A to apply is A.1(a) on the basis that the fence in question has been erected adjacent to a highway. There is no dispute that Old House Lane is a public highway; the issue is whether the fence is adjacent to it in the accepted legal sense.

11. In closing submissions the Council provided an extract[3] from the Encyclopaedia of Planning Law and Practice (EPLP) which provides a commentary on Class A of the GPDO along with some extracts from "Development Control Practice" (DCP) which comment on this matter with reference to various appeal decisions. On the latter, the submissions draw conclusions based on the findings in certain cases. For the appellant an objection was raised to the introduction of this evidence at the closing submissions stage in that it had not been put to either the appellant's or the Council's planning witness. It was also argued that each case is fact sensitive and the decisions pull in different directions.

12. I agree that the introduction of the DCP extract at the closing submissions stage was not helpful and if reliance was to be placed on appeal decisions that were said to be comparable this should have been put to the witnesses for their comment. Nevertheless, I accept based on the variety of decisions on this matter there is no hard and fast rule as to what amounts to being 'adjacent' to the highway and that the facts of each case must be the primary determining factors when reaching a finding on this matter. There is however some general principles which flow from case law as set out in the EPLP. It is also worth noting the comment on 'adjacency' in the DCP extract[4] which states "All that is clear is that a wall or fence does not actually have to touch the edge of a highway, and may be some distance back provided it is close enough to have the perceived function of forming a boundary between a highway and a property".

13. The position established through the courts is that the word "adjacent" in Class A of Part 2 of Schedule 2 of the GPDO 1995 does not mean that the fence has to be abutting or touching the highway. The leading case which establishes this authority is *Simmonds v SSE and Rochdale MDC [1981] JPL 509*. The circumstances in that case were that the fence was set back from the site boundary and pavement by just over 1m. The other cases to which the Council draw my attention reach the same conclusion. I also accept that the word highway, although not defined in the GPDO, is not just the metalled carriageway or back edge of a footway/pavement. I take it to be the adopted highway which can include both footways and verges of some depth and not just the road itself over which vehicular traffic passes. The cases the Council refer to support this view.

14. Notwithstanding these findings, the Council have not presented me with a definitive plan which shows the extent of the adopted highway. I was asked to accept that this included the whole of the verge – which is heavily planted with trees and the ditch course – going right up to where the fence has been erected. This may be the case but it has not been shown conclusively to be so. It may be that none, some or the entire verge is part of the adopted highway and this has a significant bearing on whether the fence is 'adjacent'.

[3] Section 3B-2070.1
[4] Page 123-001 under heading "Adjacent to a highway"

15. I took a measurement from the gate post at the eastern end of the fence to the carriageway edge (no footway or pavement). This measured 7.5m and the distance increases moving westwards where the verge widens. Another factor to bear in mind is the extent of the tree cover within the verge which acts as an intervening obstruction between the road edge and the fence. The DCP cases referred to by the Council cite this as a material point in determining this matter. The extent of obstruction in this case is substantial.

16. Concluding on this matter, I do not consider that it has been shown that the fence has been erected adjacent to a highway used by vehicular traffic. I reach this conclusion in the absence of any plan showing the extent of the adopted highway and having regard to the width and planted nature of the verge between the fence and the road edge. This being the case, the fence would be permitted development under Class A.1(b) of the GPDO and there would be success on the ground (c) appeal. However, I note that the fence is not specified in terms in the allegation only the requirements. It could potentially be considered as a "miscellaneous item" but this is not clear. In the light of the Council's concessions and my conclusion that the fence facing Old House Lane is likely to be permitted development, I consider that the appropriate course of action would be to vary the notice to delete Requirement (iii) of the notice in its entirety.

Ground (a) - Appeal A and Appeal B

17. Although there are some differences between the nature of the deemed planning application under Appeal A and the proposal to be considered in respect of Appeal B, the substance of development is the same. Where there are differences I will address these but essentially the use proposed is a gypsy site for 4 caravans (2 static, 2 tourers) for those named in paragraph 9 above.

Main Issues

18. It is common ground that the appellant and those residing with him on the appeal site enjoy gypsy status and therefore the planning policy regime applying to persons of such status is engaged. For the appellant, it is accepted that the development is inappropriate development in the GB which is by definition harmful[5]. The recently introduced guidance for gypsies and traveller development is 'Planning policy for traveller sites' (PPTS) which took effect on 27 March 2012. Paragraph 14 of Policy E states that traveller sites (temporary or permanent) in the GB are inappropriate development.

19. Given this agreed context I consider that the main issues to address are as follows:

    1) The effect on the openness and character of the GB and its visual amenities;

    2) Whether the appeal site is in a sustainable location;

    3) Whether the harm by reason of inappropriateness and any other harm which may be found in terms of Issues 1) and 2) is clearly outweighed by other material considerations. These are:

[5] The National Planning Policy Framework (NPPF) took effect on 27 March 2012 and replaced Planning Policy Guidance (PPG) 2: Green Belts (now cancelled) in terms of GB policy. Section 9 of the NPPF deals with protecting the GB and paragraph 87 carries forward the previous guidance in PPG2 that inappropriate development is, by definition, harmful to the GB

a. The general need for and supply of gypsy sites in the area;

b. The accommodation needs of the appellant, his family and other occupiers of the site and their personal circumstances.

Planning policy

20. As explained above the national policy of significance to this case is found in the NPPF and PPTS both of which were in force at the time of the inquiry and have been referred to by the parties in evidence and submissions. I will come back to relevant sections of both guidance documents below. However I will address a few general points here.

21. Firstly, paragraph 14 of the NPPF states that there is a presumption in favour of sustainable development which should be seen as the "golden thread" running through both plan-making and decision-taking. The appellant's barrister questioned the Council's introduction of arguments surrounding sustainability on the basis of correspondence between the parties and the understanding that this would not be raised as a ground for objection. This led to a request for an adjournment to a later date in order for rebuttal evidence to be submitted for the appellant. This was acceded to and I will deal with the implications of this in the separate Costs Decision.

22. I acknowledge that that the reasons for issuing the enforcement notice and refusing planning permission do not specifically refer to sustainability. However, I take the view that even in these circumstances and assuming that the Council's planning witness had not gone into detail about matters of sustainability, I would still have been obliged to address this issue given that Government considers that it is the golden thread running through the planning system. To ignore it would be perverse and fly in the face of the new national guidance that has only recently emerged to guide decision makers.

23. Secondly, Section 9 (Protecting Green Belt land) of the NPPF provides the guidance on development in the GB and much of this is carried forward from the now withdrawn PPG 2. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open (para. 79) and the five purposes of the GB (para. 80) remain the same.

24. Thirdly, in terms of the PPTS, the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life while respecting the interests of the settled community (para. 3). Paragraph 4 sets out a series of bullet points which are intended to help to achieve this aim. The thrust of the advice is for local planning authorities to assess need and make timely provision for it. This is intended, amongst other things, to increase the provision of lawful sites, reduce the number of unauthorised encampments making enforcement action more effective, reduce tensions between the settled and traveller communities and providing travellers with better access to education, health, welfare and employment infrastructure. Other bullet points refer to the need to protect the Green Belt from inappropriate development and the local environment in general.

25. At this present time Regional Spatial Strategy (RSS) – in this case for the East of England - remains in force. Whilst the Government intends to revoke RSS and has now introduced the power to do so under s109 of the Localism Act 2011, the orders to revoke it have not yet been laid before Parliament but are

pending the outcome of environmental assessments which are considering the implications of doing so. Consequently, the RSS remains part of the development plan and is still a material consideration.

26. Following on from the Panel Report of December 2008 into the single issue review of Planning for Gypsy and Traveller Accommodation in the East of England, the RSS was revised in July 2009 in this respect. The published revision[6] to Policy H3 – Provision for Gypsies and Traveller - sets a new overall pitch target of 1,237 pitches for the East of England between 2006-2011 with a tabular breakdown for each local planning authority. The entry for Three Rivers DC shows existing authorised pitches at 2006 as 11 and the minimum additional pitch requirement for the period 2006-11 as 15, giving a total of 26 by 2011. I will return to these figures below when considering the need and supply issue.

27. The development plan also includes certain 'saved' policies from the Three Rivers Local Plan (LP) 2006-2011 and the Council's Core Strategy (CS), adopted on 17 October 2011. Policy GB1 (saved) of the LP, is generally consistent with national policy guidance limiting the nature of development that will be permitted in the GB, other than in very special circumstances, and requiring changes of use of land to not conflict with the purposes of including land in the GB and its openness. Policy CP11 of the CS carries forward these aims with a general presumption against inappropriate development in the GB. Policy CP1 of the CS is an overarching policy on sustainable development, with a number of criteria listed to achieve this policy, and Policy CP5 of the same addresses gypsy and traveller provision with criteria to be applied, including avoiding an adverse impact on the openness of the GB.

Reasons

Issue (1) – Effect on the GB

28. It is accepted that the development being inappropriate development in the GB is harmful. Having regard to paragraph 88 of the NPPF, substantial weight should be given to any harm to the GB. It is argued for the appellant that the land, although not coming within the definition of previously-developed land, as this excludes agricultural buildings[7], was in an untidy and derelict condition. Therefore, based on sub-paragraph a) of paragraph 24 of PPTS weight should be attached to this in considering the impact on the GB. I have not been provided with photographs showing the condition of the site prior to the appellant's occupation but it is clear from the terms of the enforcement notice that the Council considered it expedient to take action against the storage of building materials. However this was not a lawful activity and so its removal cannot be seen as a genuine benefit or something that could not have been achieved without the appellant's use being introduced.

29. The development that has taken place has occupied land that was previously undeveloped or used in connection with agriculture. Notwithstanding the hard surfacing that pre-existed, it has led to the erosion of openness due to the presence of the caravans and associated domestic paraphernalia and the proposed utility/day room would add to the loss of openness. The presence of the barn on the frontage in itself has an impact on openness but it was built for

[6] "Accommodation for Gypsies and Travellers and Travelling Showpeople in the East of England" – July 2009
[7] NPPF - Annex 2 – Glossary – p.55

a lawful purpose and the development that has taken place is an addition to, and not in lieu of, it. For these reasons, there has also been an encroachment of development into the countryside which is at odds with one of the purposes of the GB as set out in paragraph 80 of the NPPF. In these respects, it is not a matter of whether the development can be seen but its physical presence.

30. In terms of visual impact, I accept the appellant's argument that the development is relatively well-screened from public view due to extent of the enclosing tree cover surrounding it and the position of the caravans behind the barn. There are views into the site from the access point on Old House Lane but the vegetation along this frontage and the fencing behind reduces the impact considerably and there are only fleeting glimpses of the development when travelling along this road. There is little or no visual impact when viewing from Langlebury Lane due the screening effect of the woodland. The appellant has also offered to add some additional low level screen planting to further limit any visual impact from Old House Lane. Overall, although within the countryside, I consider this is a relatively discrete location which does not have an intrusive presence.

31. I have taken account of the conflicting views about whether the site is in open countryside. Paragraph 23 of PPTS says traveller sites in open countryside away from existing settlements or outside areas allocated in the development plan should be strictly limited. The Council argue that the presence of trees around the development does not mean that it is not in open countryside and that this test has to be read with the phrase "away from existing settlements and outside areas allocated in the development plan". For the appellant it is asserted that the enclosing presence of the woodland means that it is not in "open" countryside.

32. I do not consider that this piece of guidance is clear cut on the point and there is a level of ambiguity as "open countryside" is not defined. Nevertheless, I am more inclined to the appellant's submission on this point on the basis that if it were meant to apply to all countryside that is away from existing settlements and not allocated for development then it begs the question as to why the word "open" was added in. It suggests to me that a distinction is being made between open countryside and that which is not. On this basis, I accept the contention for the appellant that, due to the presence of the surrounding woodland, which is protected by a TPO, it is not open countryside such as an area of open fields broken by limited amounts of vegetation and hedgerows.

33. As the site is within the GB this finding does not assist the appellant greatly but I do not consider that the first sentence of paragraph 23 is engaged. As to the second sentence it is common ground that, although within a rural area, the development would not dominate the nearest settled community and would avoid placing undue pressure on local infrastructure.

34. My conclusion on this issue is that in addition to the harm to the GB by reason of inappropriateness there is also significant harm caused due to the loss of openness and the encroachment of development into the GB. Substantial weight is to be afforded to this combined level of harm given the terms of paragraph 88 of the NPPF. For these reasons, there is also conflict with criterion (2) of Policy GB1 of the LP and criterion b) of Policy CP5 and Policy CP11 of the CS.

Issue 2) - Sustainability

35. Paragraph 7 of the NPPF states that there are three dimensions to sustainable development: economic, social and environmental. This paragraph then goes on to expand on the aspects of each dimension. It is evident therefore then when considering development it is not just a matter of building a strong and competitive economy or supplying housing to meet required needs or protecting the environment but a balance between each of these roles. Hence when considering sustainability it needs to be looked at in the round and not just on the basis of distance to services and facilities. However this is one factor that should be assessed in terms of environmental impact.

36. More detailed guidance on the application of sustainability principles as they relate to gypsy and traveller sites can be found at paragraph 11 of the PPTS. This sets out 8 factors that should be incorporated into planning policies. Whilst they are not strictly related to decision-taking they are a clear indication of those matters which the Government considers important in achieving the aim of ensuring that development is sustainable, economically, socially and environmentally. I will therefore deal with each in turn.

37. Sub-paragraph a) seeks the promotion of peaceful and integrated co-existence between the site and the local community. The Council raise no objection to the 'peaceful' objective and it seems to me that this relatively small encampment which is not close to any other dwelling and is well-screened by trees would meet this. I am mindful of the objections of some local residents and the petitions submitted opposing the development but given the geographic characteristics and the distances to the nearest dwellings I see no reason why material harm should be caused in terms of disturbance from the use. The appellant is agreeable to a condition precluding any commercial use of the site and this would help in this respect.

38. In terms of an integrated co-existence, this was a matter of dispute between the parties. The Council maintain that integrated applies in the physical sense in that the development needs to be closely related to or within an existing settlement. For the appellant, it is claimed that this is wrong and that integration is about how the travellers integrate in a social sense with the local community, by their children attending schools and by connections with local clubs, shops and services. I am inclined to favour the latter interpretation which goes beyond any physical relationship. I reach this finding having regard to Policy C - paragraph 12 of the PPTS which indicates that sites in rural or semi-rural settings may be permissible subject to scale. This being the case it is plain that gypsy sites may be permitted in locations which are some distance from settlements and not within or adjacent to them.

39. Applying this approach I consider that there is already some evidence of the occupiers of the site integrating with the local community. The appellant's daughter is attending a reception class at a local school (Tanners Wood JMI School) in Abbots Langley where her teacher says she has settled into the class and has made good progress in her social skills. The appellant and his brother both emphasised their desire for their children to attend local schools so as to receive a formal education and develop relationships with other children. The appellant and his brother also carry out some of their work (principally landscaping work) in the local area which is another example of integration in both an economic and social sense.

40. Sub-paragraph b) concerns the promotion of access to appropriate health services. The families occupying the site are registered at Habourfield Surgery in Kings Langley which is about 3.6km from the appeal site. I accept that this is not close and is likely to be reached by car rather than any other mode of transport, especially by someone who is ill. The appellant's uncle, Keith Nash, has emphysema, and needs to have a regular supply of oxygen. This is supplied by nurses who visit the site to assist Mr Nash. Again this will necessitate a number of car trips and the nearest hospital is about 7km away in Watford.

41. I conclude that the site is not particularly conveniently located in terms of access to health services and this is at odds with criterion c) of Policy CP5 of the CS which requires sites to be in or near existing settlements with access by foot and or public transport to local services, including shops, schools and healthcare. Nevertheless, the journey distances to the doctors and a hospital are not great and those residing in the locality would be making similar journeys to access health facilities. I also consider that the requirement to be in or near a settlement does not accord with the PPTS which indicates that locations in rural areas may be permissible.

42. I will also deal at this point with access to other services and public transport, although these are not referred to specifically in paragraph 11 of the PPTS. Hunton Bridge is about 1.5km away and there are two public houses there and a primary school (St Paul's C of E). There are also bus stops on the A41 at this point and 3 bus services[8] provide a regular service between Kings Langley and Watford on Mondays to Saturdays with some services on Sundays as well. I consider that the walking distance to the bus stop is a reasonable one[9].

43. The Council argue that the footpaths along Langlebury Lane do not run for the entire length to Hunton Bridge. I observed that there appears to be a pavement for most, if not all, of the length and in some places on both sides of the road. The path on the southern side appears to deviate southwards from the road line as it approaches Hunton Bridge but still provides a defined route for pedestrians. If there are any breaks these appear to be short. I accept that the route is unlit but consider that it is a relatively safe link for pedestrians to use during daylight hours and this would enable the bus services to towns with a wide range of services to be accessed on foot on a day-to-day basis.

44. The core of the village of Abbots Langley, where a significant number of shops and services are to be found is about 3.8km away. I do not consider this is easily reachable on foot. There may be a bus service that links from Hunton Bridge to the village but I have not been provided with the details. In these circumstances I would expect most if not all journeys to be conducted by private vehicle. Kings Langley is a larger settlement with more services about 3.3km distant. Again access by walking all the way is unlikely but the frequent bus services from Hunton Bridge would enable a dual mode journey by bus/foot. The Council argue that the nearest secondary school is about 4.8km away in Kings Langley but any child living over 2 miles (3.2km) from the school would be entitled to collection/dropping off by the school bus.

[8] Timetables provided for the appellant – 500/501 Aylesbury – Watford/Borehamwood; 550 Woodall Farm/Hemel Hempstead – Borehamwood; 319 Chipperfield – North Watford

[9] Although PPG13 has now been withdrawn the guideline for a reasonable walking distance described therein was 2km and no fresh guidance has been produced to suggest that this was misconceived

45. I accept that the appeal site is not close to services and that journeys mainly by private vehicle are likely to be generated on a day-to-day basis. However I do not consider that the distances are excessive and the opportunity of having a settled base in this location would provide a positive advantage in terms of continuity compared to an alternative roadside existence. There are also opportunities to make use of the local bus network to access services and walking or cycling to some is a reasonable proposition. The Council argue that the appeal site does not have the advantages of the Bedmond and Sarratt traveller sites which are located in village settings and which weighed in favour when appeals for these developments were allowed. I accept that the appeal site does not enjoy their level of accessibility to services but this is only one aspect to be considered when looking at sustainability in the round.

46. Sub-paragraph c) seeks to ensure that children can attend school on a regular basis. This is already the case with Elizabeth – the only child occupying the site who is currently of school age. The school she attends is in Abbots Langley but St Paul's is closer to the appeal site and within walking distance. This provides the opportunity for children occupying the site to attend primary school on a regular basis and a school bus could give access to the nearest secondary school in Kings Langley.

47. Sub-paragraph d) seeks the provision of settled bases which reduce the need for long-distance travelling and possible environmental damage caused by unauthorised encampments. The Council argue that the brothers, who work together, travel the country for work and so the appeal site is not in a location which would reduce long-distance travelling. Evidence given by the brothers at the inquiry was that it was difficult to get work in the local area and that they travel away to places such as Plymouth, Scotland, Holland and Belgium and could be away for months at a time. They also travel away as an extended family unit to traveller fairs (Appleby and Stow). The work split was said to be about 60/40 in favour of jobs outside the local area with a job in Watford being cited as recent work in the area.

48. There is clearly a tension between reducing long-distance travelling and the requirement that travellers are persons of a nomadic habit of life[10]. In order to continue to enjoy traveller status, unless travelling has ceased for the reasons given, nomadism is to be expected and this can be over a wide ranging area. This will almost inevitably lead to some travelling away with a touring caravan in order to conduct work over some distance. This can hardly be held against the appellant or his brother as that is actually what is expected to fulfil traveller status.

49. The extended family has strong local ties with Hertfordshire and so wishing to reside in this area has advantages in providing a settled base close to other family members. From the evidence before me it is not a case of all work being conducted at great distance away with 40%, a significant element, being carried out in the local area from the appeal site. A settled base on the appeal site would enable this work to be continued without travelling long distances and would also address the possible environmental damage that could be caused by the alternative of an unauthorised encampment.

50. The Council accepted that there was no conflict with the matters referred to in sub-paragraphs e), f) and g) so these do not need addressing. Sub-paragraph

[10] Paragraph 1 of Annex 1: Glossary of PPTS provides the full definition of "gypsies and travellers"

h) seeks to enable travellers to live and work from the same location thereby omitting many travel to work journeys. This has already been covered, for the most part, under d) above. I do not consider that it is a requirement that all work is conducted from the residential base or that commercial activity should take place there. Indeed in many instances this would not be acceptable as it could cause detriment in terms of living conditions of residents or highway safety. What it suggests to me is that some work in the local area should be accomplished from the settled base. For the reasons given above this would be the case.

51. Bringing these points together, I find that the appeal site meets a number of factors that are to be considered when assessing sustainability. It is not in a location with direct and easy access to services and facilities and its continued use would entail car journeys over fairly modest distances on a day-to-day basis. However, there is a reasonable opportunity to take advantage of the public transport services in the locality and it is certainly not in a remote or isolated location. Moreover, there are the wider benefits of providing a settled base close to the broader family within an area where a significant amount work is conducted and the opportunity for the appellant's daughter to continue her education in a local school where she is settled. There is some tension with criterion l) of Policy CP1 of the CS to locate development in accessible locations and also the point about the conflict with criterion c) of Policy CP5 of the CS which I have addressed above. However I find that the overall thrust of the guidance on sustainable development in the NPPF and PPTS is met.

Issue 3) – Other considerations

a. Need for and supply of gypsy sites

52. The PPTS provides the new national policy guidance for considering matters of need and supply of traveller sites with the emphasis on an assessment being carried out at the local level. Paragraph 6c) – Policy A states that when assembling the evidence base local planning authorities should use robust evidence to establish accommodation needs to inform the preparation of local plans and make planning decisions. Pitch targets should be set which address accommodation needs and collaboration with neighbouring planning authorities is promoted (para. 8). Local plans should identify and update annually, a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set targets and specific, developable sites or broad locations for growth for up to 10 years and possibly 15 years are to be identified (para. 9a) and b)). Joint development plans and cross-authority working is encouraged (para. 9c).

53. In determining applications and decision-taking, paragraph 22 of PPTS sets out the considerations that apply. These include the existing level of local provision and need for sites and the availability (or lack) of alternative accommodation for the applicants. Paragraph 25 explains that if a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. However, paragraph 28 indicates that this only applies to applications for temporary planning permission made 12 months after the PPTS comes into force. This would not be until March 2013 although the overall thrust of the national guidance is that a five year supply of permanent traveller sites to meet predicted need should be provided.

54. At the local level, the Council are at present embarking on the preparation of Gypsy and Traveller Allocations Development Plan Document (DPD) but this is at the early stages with consultation on preferred sites scheduled to take place in the autumn of 2012, with an expectation that an examination will take place in Spring 2013 and adoption by the end of 2013. My understanding is that no detail of potential sites has been published at this time. The need figures that will be used to inform the level of provision are those contained in Policy H3 of the RSS which have emerged from the single issue review and revision to the RSS in 2009.

55. There were claims for the appellant that the RSS figures are out-of-date having been based on a Gypsy and Traveller Accommodation Assessment (GTAA) published in 2005. However, the appellant's planning witness says in his proof that although the GTAA is not fully compliant with the later advice on carrying these out it is broadly sound. It seems to me that given the age of the GTAA there must be doubts about whether the RSS figures accurately reflect the present need situation. Nevertheless, there is no suggestion that the Council are considering commissioning a new GTAA at this time and I am therefore left with the figures in Policy H3 as being the best, if not the only, available assessment of need. I therefore turn to these.

56. The figures for Three Rivers DC are 11 pitches in existence in 2006. The Council say these were made up of 9 pitches at the Oaklands, Bedmond Road, Abbots Langley and 2 pitches at Fir Trees, Dawes Lane, Sarratt. However it is asserted for the appellant that the latter (occupied by Sally Chapman and her family) only comprises one pitch with 2 caravans. I find that there is substance to this claim in that the appeal decision relating to this site and deemed planning permission, dated 2 December 2005, contains a condition that there should be no more than 2 caravans of which only one shall be a static caravan which is indicative of a single pitch. So the starting point in 2006 may have been a total of 10 pitches rather than 11.

57. Turning to provision between 2006-11 the figure given is 15 pitches. I have been provided with an extract from the panel report into the single issue review dated December 2008 which sets out the rationale for arriving at this figure. The panel found that the predicted local need was actually for 10 new pitches but that in order to support the concept of spreading the distribution more evenly across South and West Hertfordshire, in line with an objective in the GTAA, this should be increased to 15, as suggested in the current policy requirement. This is the figure that was adopted in Policy H3. It is worth adding that beneath the table at Policy H3 there is a footnote which indicates that beyond 2011 provision should be made for an annual 3% compound increase in residential pitch provision distributed in the same proportion to the total regional requirement for 2006-11 with pitch requirement for 2011 being the starting point. For Three Rivers the calculated figure applying this methodology is 13 additional pitches between 2011-21.

58. The Council have provided an assessment of where they say the 15 pitches to 2011 have been provided. For the appellant these claims are questioned primarily on the basis of the number of additional pitches that can be properly and realistically accommodated on the Oaklands, Bedmond Road site for which planning permission for up to 24 caravans was permitted (variation of conditions) in 2009.

59. There are also claims that Oaklands is primarily a transit site with only 4 permanent pitches but I have no corroborative evidence to back this up. I was asked to visit this site but the owner was unwilling for me to do so if I was accompanied by representatives of the Council and the appellant. I considered it would have been inappropriate for me to visit unaccompanied. I therefore did not go on to this site although I was able view it partially at a distance from the bridge over the M25 motorway. From this position I could see that there were a number of caravans occupying the site for much of its area. However it was not possible to see whether it was full to capacity or whether there was scope to add more caravans.

60. The appellant's side drew attention to a site plan for Oaklands that accompanied one of the appeals (s78) decided in 2003 which shows 4 pitches and 8 caravans. However this only covered a part of the whole site and the planning permission granted includes Condition iii) referring to no more than 18 caravans, which Mr Green accepted would normally equate to 9 pitches. This is consistent with the figure used to calculate the existing provision in 2006 and I see no reason to go behind this.

61. I turn then to how many pitches have actually been permitted at Oaklands in addition to the existing 9. The planning permission granted in 2009 removed Conditions 2 and 3 of the earlier permission granted on appeal. Two new conditions were imposed limiting the number of caravans to 24 and requiring the submission of a 'site management plan' within two months of the date of the decision. I have been provided with a plan entitled "Site Management Plan" which shows 24 caravans with a parking space for each. There is no date on this plan but the same plan is attached to the Site Licence for 24 caravans at Oaklands dated 5 November 2009. I have also been provided with a different layout plan (Drawing No. 1038/1A dated 4 February 2010) which shows 24 mobile homes with a "possible touring caravan" alongside each. I am not sure of the status of the latter plan but the suggestion that Oaklands can accommodate up to 48 caravans (24 mobile or static units and 24 tourers) would be at odds with the planning condition imposed on the 2009 permission and the terms of the site licence, which both impose a restriction of 24.

62. I am also mindful of the Design and Access Statement submitted by the agent for Oaklands (Mr P Brown) dated 2 June 2009 which suggests that the development would enable 24 pitches to be provided for 24 caravans resulting in an increase of 15 pitches over the 9 that existed meeting the RSS requirement for 2006-2011. Whilst this is what is implied it is still a matter of reaching a finding on what can realistically and lawfully be provided having regard to the site constraints and the planning permission/site licence.

63. Dealing with the Design and Access Statement I consider that equating the number of pitches with caravans is out-of-step with the normal approach that a pitch should normally be capable of accommodating both a static caravan as a permanent base and a touring caravan as well for travelling away or for dependants to reside in. This is consistent with the appeal decision on Oaklands which applies the same 2:1 ratio of a maximum of 18 caravans of which no more than 9 shall be static ones. My understanding is that no extra land was added between the appeal decision and the 2009 permission and I therefore find that it is highly questionable that the addition of 6 caravans (from 18 to 24) has led to the creation of 24 pitches by re-organisation, or 20 pitches the figure claimed by the Council. I have noted the correspondence

between the Council and another agent (Mr Griffiths) in April 2010 which refers to 20 pitches. However there does not appear to be any sound basis for arriving at this figure.

64. For the appellant my attention was drawn to the CLG Good Practice Guide "Designing Gypsy and Traveller Sites" – May 2008. This indicates sites should provide land per household (i.e. the pitch) which is suitable for a mobile home, touring caravan and a utility building together with space for parking[11]. A distance of 6m between caravans in separate occupation is required to meet fire regulations[12] and this is a requirement of the site licence for Oaklands. The Site Management Plan shows this separation distance but makes no allowance for the expected need to accommodate a touring caravan on each pitch. The later layout plan (1038/1A) does show a place for possible touring vans but this would create a situation where caravans in separate occupation were within 6m of one another at odds with Good Practice Guide and the site licence.

65. Consequently, from what is before me I have grave doubts about the Council's claims that Oaklands actually provides a total of 20 pitches in the normally accepted sense of a traveller pitch. The fact that 24 caravans can be stationed there does not in my view equate to 20 pitches. Indeed the analysis I have undertaken suggests that the actual number of pitches available is likely to be much less and probably in the region of 12 pitches based on the increase of 6 caravans permitted.

66. Given this conclusion I consider the Council's claim that Oaklands has provided 11 extra pitches towards the RSS requirement of 15 for the period 2006-2011 is not clearly made out. Simply saying it does is not convincing in the absence of evidence from the Council to show that 20 separate units of occupation or pitches have actually been provided on the ground. The Council could have gathered such information and presented it to the inquiry but they have not done so. Indeed their witness had no idea how many resident families were living on the site[13]. It may be that more than 3 extra pitches have been added but the likelihood is that the additional pitches still fall significantly below the 11 claimed to have been added.

67. The Council also rely on the provision of 4 new pitches that have been granted permission to meet the 15 pitch requirement. These are 3 pitches at 59 Toms Lane, Kings Langley and 1 pitch at The Paddock, South Oxhey. These however were only permitted on a temporary basis and cannot therefore be seen as permanent contributions towards the need figure and the permission for The Paddock would appear to have expired on 15 June 2012. Such permissions may be renewed but there is no guarantee of this happening. In this respect my attention was drawn to the views of other Inspectors commenting on this matter in their appeal decisions[14]. I tend to agree that it is unwise to accept that sites which only benefit from temporary permission should count towards the additional requirement for permanent pitches.

68. Bringing these findings together, I consider that the Council's claim that the total of 15 pitches needed to satisfy the RSS have been provided is not substantiated. I say this on the basis of unconvincing reliance on provision at

[11] Para. 4.4
[12] Para. 4.47
[13] In cross-examination – Mr Lane did not know whether there were 9, 10 or 20 resident families
[14] Apps B14 and B16 – Mr Green – (B14) para 21 APP/C3430/A/10/2119907; (B16) para 26 of Appeal Decision APP/X0605/A/08/2074958,

Oaklands and dependence on pitches which only benefit or benefited from temporary planning permission. Additionally, the figure of 15 arises from a GTAA which was carried out some years ago and there has been no recent needs assessment to reach a robust figure as is required by the PPTS. I appreciate the Council are in the process of undertaking such work as a part of the DPD process but it has not happened as yet. A further point is that the RSS figure of 15 pitches only goes up to 2011 and there is now a need to be making provision for the 13 additional pitches between 2011-2021 (see para. 57 above). I have taken account of the latest gypsy count (July 2011) which only records 2 unauthorised and 'not tolerated' caravans in the District but it is generally accepted that such counts are not necessarily an accurate record of need.

69. Concluding on this issue, I consider that there is likely to be a level of general unmet need as assessed against the RSS figures, which seeks to make satisfactory provision as part of a wider strategy for travellers in Hertfordshire and the wider East of England region. Given the constraints of the Green Belt that apply to Three Rivers DC it is unlikely that new sites will be permitted until the Allocations DPD is finalised. I am mindful that as part of this process, as explained in paragraph 5.104 of the CS, the release of up to 1% of the designated Green Belt is being considered to provide allocations for new development. However this will be sought to contribute towards all development needs, especially new housing development. Moreover, whilst it may offer up new sites they will only emerge at the end the DPD process, which at its earliest will not be before the end of 2013.

b. Accommodation needs of the appellant and family and their personal circumstances

70. The appellant moved to the appeal site about 1½ years ago having purchased the land from Mr Frost for about £50,000. He and the current occupying members of his family were previously residing on a public site at Ver Meadows, Redbourn. Jimmy Cash says that they had to leave this site due to bullying by other occupants, which included theft of property. This is corroborated by Hertfordshire Gypsy Liaison Officer (Charlie Sherfield) in a letter dated 30 March 2012 which refers to "persistent intimidation and threats by other residents of the site". Both Jimmy and Miles Cash also referred to overcrowding with "doubling up" on the family pitch at Redbourn, which I understand their father occupies. They say that Miles and his wife and Mr Keith Nash, their uncle, were required to leave ('evicted') by the Council. The brothers said they travel together as a group along with their uncle who they support given his health condition.

71. The wider family have strong associations with Hertfordshire having occupied sites in the County for over forty years[15]. Attempts have been made to find pitches on other public sites in Hertfordshire but there are presently no vacancies and a waiting list of over 90 families[16]. Jimmy Cash said he had been looking to buy land for over a year before purchasing the appeal site but to no avail. This included a site opposite the football pitch in King's Langley. Prior to going to Ver Meadows the group had stopped where they could and after leaving there, before coming to the appeal site, had pulled off onto the Rugby Club at Harpenden.

[15] Source: Herts Gypsy Liaison Officer letter 30/03/12
[16] Source: Herts Gypsy Liaison Officer letter 30/03/12

72. The Council suggested that the extra pitch at Toms Lane, Kings Langley that benefits from temporary planning permission granted on appeal in 2009 may not have been occupied. It is argued that this could provide a suitable local base, especially as it was owned by the brothers' uncle – a Mr John Wall-Cash. The appellant said this was not possible as it was needed for Mr Wall-Cash's daughter. A letter provided from him dated 10 January 2011 bears this out stating that the site is for temporary use for his immediate family only with no space for other persons.

73. The Council also referred to the potential of finding a pitch on the Oaklands site but Jimmy Cash said this was a family owned and run site occupied by English gypsies (Watsons). Even if a pitch were available he said that he would not be welcome there being an Irish gypsy. Notwithstanding this claim, there is nothing before me which demonstrates that there is vacant pitch available on that site.

74. Based on these findings it is evident that those occupying the appeal site have strong family associations with the Hertfordshire area. The brothers work together and Jimmy looks to support his younger brother Miles along with their uncle who has a serious health problem which requires medication. There are no pitches available on public sites in the County which could meet their need and a long waiting list. As a group they cannot return to Ver Meadows as the pitch they were occupying could not legally accommodate all of them. There is no evidence to show that pitches are available on private sites in the area and there does not appear to be any spare capacity at the wider family site in Toms Lane.

75. The information about searches for other sites is limited. However, given the constraints of the Green Belt which covers the majority on land in Three Rivers DC outside the urban areas, I consider that it is reasonable to conclude that it is unlikely that a suitable site could be found outside defined settlements given the policy conflicts. Land in urban areas would be costly to acquire even if it were available and suitable and this would be likely to make it an unrealistic alternative. Moreover, the needs of the appellant and those living with him are immediate and the likely option, having regard to my findings above, would be the unauthorised occupation of another piece of land or a roadside encampment both of which are unsatisfactory, especially the latter given the presence of children and Mr Nash's health.

76. In terms of personal circumstances, I accept that in theory Mr Nash could be visited by nurses for treatment or have access to a doctor and a hospital if he was living elsewhere. However, to be registered he would need to have a permanent address and a fixed abode to which the nurses could visit. Being forced to move from the appeal site would break the present links he relies on in terms of health with little prospect of an alternative fixed base being found for the foreseeable future. I consider that this would be seriously prejudicial to his health and this carries considerable weight. No other significant health issues are raised.

77. As regards education, a letter from Elizabeth Cash's class teacher (Mrs Paula Smiton) at Tanners Wood JMI School refers to her settling into the reception class and making good progress. The teacher says that she would benefit from continuing her education at this school where she is happy and learning well. It is not argued that Elizabeth has any special educational needs and she is only at the beginning of her education which could be met from another school.

Nevertheless, she is clearly benefiting from the continuity of the education she is presently receiving and the alternative could well be a roadside existence without access to a school, at least for a period of time. This would be detrimental to her education which her parents strongly desire that she receives.

78. Concluding on this issue, there is no evident or immediate solution to the appellant and his co-occupiers needs for accommodation in the local area. They have strong family associations with the local area but there does not appear to be any suitable alternative accommodation on existing public or private pitches. The personal heath needs of Mr Nash are considerable and there are more general needs in terms of Elizabeth Cash's education.

Conclusions on Ground (a) - Appeal A and Appeal B

79. Having reached these findings on the main issues it is now necessary to carry out the required balancing exercise. Both the NPPF and PPTS state that inappropriate development in the GB is harmful and should not be approved expect in very special circumstances[17]. There is harm on this basis and also significant harm caused due to the loss of openness and the encroachment of development into the GB. Substantial weight is to be afforded to this combined level of harm[18]. I find that the overall thrust of the guidance on sustainable development in the NPPF and PPTS is met. Accordingly, I conclude this is a neutral factor in the overall balance.

80. Set against the harm, I consider that the general need situation weighs heavily in favour at least in the short to medium term. For the reasons given above I am not convinced that the identified need set down in the RSS has been met up to 2011 and this date has now passed with the more sites to be found up to 2021. The Council have not done so as yet nor has an up-to-date needs assessment been carried out as advocated in the PPTS with the most recent evidence base being a GTAA published over 10 years ago. Other appeal decisions I have read concerning gypsy sites in the Three Rivers area reinforce my view that the Council has failed to keep pace with the requirement to assess need and make provision, as advocated in the now withdrawn Circular 01/06 and the new PPTS. For the appellant, this is argued as amounting to a failure to adhere to government policy. Whilst I would necessarily go that far, given the more recent progress of granting planning permission on some sites, I consider that there remains a lack of clear evidence that the need situation has been addressed.

81. I have taken account of the fact that the Council is intending to bring forward an Allocations DPD which will seek to make provision for the need revealed on identified sites. However, this is at best a document that is unlikely to be adopted until the end of 2013 and this to me seems an optimistic estimate given the early stages reached so far and the process necessary to get to adoption. Even when sites have been identified there will then be a time lag before the land is acquired and planning permissions are obtained. This I would expect to take in the order of 6 to 12 months meaning that any realistic provision, even allowing for the release of parts of the GB, would be unlikely to be available for occupation until the beginning of 2015.

[17] NPPF para. 87; PPTS para. 14
[18] NPPF para 88

82. As well as the general need situation, I consider that the personal accommodation needs of the appellant and those co-occupying the appeal site are considerable with little realistic lawful alternative to which they could move. The Council stress that their policies for gypsy sites could deliver a suitable site but their track record is not a good one with most planning permissions having come forward on appeal. The current gypsy and traveller policy (CP5 of the CS) does not rule out sites coming forward other than those arising from the Allocations DPD but the inclusion of the criterion that seeks to avoid harm to the openness of the GB, in line with national advice, to my mind makes it unlikely that such sites will come forward with planning permission in advance of the DPD.

83. The health needs of one of the occupiers (Mr Nash) are significant and, in the absence of any obvious short term alternative location, I conclude there is a strong possibility he could end up living on an unauthorised encampment, which would likely to be detrimental to his health.

84. Drawing these points together, I consider that the factors weighing in favour are not so great as to warrant the granting of a permanent planning permission at this time. The Council are embarking on a site search exercise which will inform the Allocations DPD. It is possible that this will identify sites for pitches in other locations which may be outside the GB or in parts of the GB which are more acceptable for release on a permanent basis. I accept that this is not proven and the Council faces considerable constraints given the extent of the GB. Nevertheless, at this present moment in time the exercise has not been carried out and therefore hard and fast conclusions cannot be drawn.

85. Notwithstanding this finding, I consider that in the light of the thrust of the PPTS, which reinforces the importance of having a 5 year supply of deliverable sites, which does not exist at present in the Three Rivers DC area, that there is clear support for the grant of a temporary planning permission. I accept that during the 12 months transition period the terms of paragraph 25 of the PPTS are not engaged. However, the spirit of the advice, and that which preceded it in Circular 01/06, is that in the absence of a 5 year supply and with an Allocations DPD some way off, consideration should be given to granting a temporary permission.

86. I have had regard to the human rights of the appellant and those residing on the appeal site especially those under Article 8 and Article 1 of the 1st Protocol of the European Convention on Human Rights (ECHR). These are respectively the right to respect for private and family life, which includes the home, and the protection of property. Upholding the enforcement notice would represent an infringement of these rights. Moreover in this case the families in question, with young children, and Mr Nash who is in ailing health, would be likely to be forced onto unauthorised sites or roadside encampments, given the seeming lack of lawful alternatives.

87. These rights are not absolute but those which are circumscribed by the public interest, which has been held to include environmental considerations. In this case, having regard to my conclusions above and the particular circumstances, I find that upholding the notice would be a disproportionate measure having regard to the human rights of the appellant and the family members residing with him. A proportionate measure in this case, which I consider strikes the appropriate balance between the human rights of the appellant and his family and the public interest, would be to grant a temporary planning permission.

This would enable them to enjoy a settled home base for a reasonable period of time but would also give the Council the opportunity of reviewing the situation at the end of the period subject to the progress on the Allocations DPD.

88. As regards the appropriate period it was submitted for the appellant that this should be 5 years on the basis of experience of the time it takes to deliver sites once site allocation has taken place through the DPD process. I have already indicated that I accept that there will inevitably be some time lag but based on my reasoning at paragraph 81 above sites could be available by the beginning of 2015. I therefore consider that an appropriate temporary period would be 3 years which would allow the use to continue until the middle of 2015, building in some leeway.

89. I find that very special circumstances exist in that the other considerations in this case clearly outweigh the cumulative harm to the extent that warrants the grant of a temporary planning permission for 3 years. Such an outcome is therefore consistent with the tests for development within GB set out in the NPPF[19] and the PPTS[20] and the requirements of saved Policy GB1 of the LP. I also consider that these other considerations outweigh the conflict – adverse impact on the openness of the GB – set down in criterion b) of Policy CP5 of the CS.

90. I have taken account of all other matters raised, including those of local residents and petitioners, most of which have been addressed above. In terms of highway safety I note that the Highway Authority (Hertfordshire CC) raised no objection subject to the provision of a vision splay of 2.4m x 90m being provided to the west of the access onto Old House Lane. I observed, as suggested in the highway authority's consultation response, that this would require the removal of at least one smallish tree in the verge and possibly some more of the small trees along the verge close to the road edge. However the vast majority of the screening vegetation along the frontage would be unaffected. Visibility to the east of the access to the Langlebury Lane junction is satisfactory. Consequently, I am satisfied that with the imposition of a suitable condition the access arrangements would be acceptable in terms of highway safety. None of the other matters raised alter the overall conclusions I have reached.

91. I therefore intend to allow the ground (a) appeal on Appeal A and Appeal B and grant conditional planning permissions. I will now address the conditions that should be imposed, which will differ slightly given the fact that the deemed application on Appeal A, which flows from the wording of the enforcement notice, is not the same as the description of the development for Appeal B.

Conditions

92. I will impose conditions limiting the use to three year temporary permission and a restriction on the number of caravans that can be sited on the land to 4 of which no more than 2 should be static caravans. The latter condition is necessary to ensure that the number of caravans does not grow in the interests of protecting the GB. I also consider that as the personal circumstances of the appellant and those residing with him have been material factors which have

[19] NPPF – para. 88
[20] PPTS – para. 14

influenced my decision that a personal condition should be imposed limiting the occupation to the named occupiers and their dependants. This can be combined with the temporary period condition. On this basis, it is not necessary to add the standard condition limiting occupation to those with gypsy status. A land restoration condition is also needed linked to the period of occupation.

93. The Council request a condition requiring the submission of further details. I consider that this is reasonable and necessary to control the nature of the use in the interests of amenity and will include the model form for situations where the development has already taken place. For the appellant it was suggested that for the s78 appeal details of the internal site layout are not necessary as they are shown on the application plan (Dwg. No. 10_381_003). I agree that this is so and will impose a separate condition specifying the approved plans. Details of landscaping should also be included, which negates the need for a separate condition requiring these details. Additionally, although the submitted layout plan shows a proposed package treatment plant and soakaway, I consider that fuller details of the foul drainage arrangements should be provided to ensure that they are environmentally acceptable.

94. The Council has recommended that a condition be imposed restricting the erection of sheds other amenity/utility buildings, containers and structures on the land. However, it was accepted at the inquiry that there were no 'permitted development' rights for the erection of buildings on gypsy sites. It was agreed that the existing container could remain as it pre-existed the appellant's occupation[21] and that all that was needed was a limitation to no more than one container being sited on the land. This I consider is reasonable to protect the visual amenities and openness of the GB and necessary as the siting of such containers could be interpreted as a use of land rather than the erection of a building. Conditions restricting the size of vehicles brought to the site and any commercial activities are also necessary to protect the openness and amenities of the GB. A condition relating to the provision of a visibility splay at the access is needed in the interests of highway safety.

95. In terms of the utility/day room it is reasonable and necessary to require details of the external facing materials to ensure that it is in keeping with the surroundings. This condition will only be imposed in respect of the permission on Appeal B as it is not part of deemed application flowing from the described breach being considered on Appeal A.

Overall Conclusions

Appeal A

96. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The notice will be varied to delete Requirement (iii)[22] and then quashed. Grounds (f) and (g) do not therefore need to be addressed.

Appeal B

97. For the reasons given above I conclude that the appeal should be allowed and planning permission will be granted.

[21] See para. 3 above
[22] See para. 2 above

Formal Decisions:

Appeal A: APP/P1940/C/11/2164949

98. Having regard to the powers conveyed by s176(1) of the Act, the enforcement notice is varied by the deletion of Requirement (iii) in its entirety. The appeal is allowed, the enforcement notice, as varied, is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the material change of use of the land from agricultural land to a mixed use of the land for the stationing of caravans and mobile homes for the purposes of residential occupation on land between Langlebury Lane and Old House Lane, Langlebury Lane, Langlebury, Herts, WD4 9AA as shown on the plan attached to the notice, subject to the following conditions:

    1) The use hereby permitted shall be carried on only by Mr Jimmy and Mrs Nan Cash, Mr Miles and Mrs Leanne Cash and Mr Keith Nash 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 premises cease to be occupied by 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) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended, (of which no more than 2 shall be a static caravan) shall be stationed on the site at any time.

    4) 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 a scheme giving details of the foul water drainage arrangements, external lighting, parking and amenity areas, tree, hedge and shrub planting (including details of species, plant sizes and proposed numbers and densities) (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation;

        ii) within 11 months of the date of this decision the site development 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) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

5) No more than one site container, for use only in connection with the residential use hereby permitted, shall be stationed on the site at any one time.

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

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

8) Within 1 month of the date of this decision a visibility splay on the west side of the access onto Old House Lane between a point 2.4m along the centre line of the access measured from the edge of the carriageway and a point 90m along the edge of the carriageway measured from the intersection of the centre line of the access shall have been provided. The area contained within this splay shall be cleared of any obstruction and retained as such thereafter.

Appeal B: APP/P1940/A/11/2160486

99. The appeal is allowed and planning permission is granted for the use of land for the stationing of caravans for residential purposes for 2 no. gypsy pitches together with the formation of additional hard standing and utility/day room ancillary to that use on land between Langlebury Lane and Old House Lane, Langlebury Lane, Langlebury, Herts, WD4 9AA in accordance with the terms of the application, Ref. No. 11/0725/FUL, dated 5 April 2011, subject to the conditions listed above in respect of Appeal A (APP/P1940/C/11/2164949) and the following additional conditions:

9) No work shall commence on the erection of utility/day room until samples of the materials to be used in the construction of the external surfaces of the building have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

10) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos. 10_381_001A, 10_381_003 and 10_381_004.

N P Freeman

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Masters of Counsel

He called:

Mr Jimmy Cash	The appellant
Mr Miles Cash	The appellant's brother
Mr Matthew Green	Partner in Green Planning Solutions LLP

FOR THE LOCAL PLANNING AUTHORITY:

Robert A Jameson LLB	Solicitor, Jameson & Hill

He called:

Mr David Lane BSc(Hons) DipTP, MRTPI, FRSA	Principal of DLA Town Planning Ltd

INTERESTED PERSONS:

Mrs Jacqueline Creed	Chairman of the Chandlers Cross Residents' Association
Mr Ron Creed	On behalf of Sarratt Parish Council

DOCUMENTS SUBMITTED AT THE INQUIRY

General Documents

GD 1 Statement of Common Ground

Appellant's Documents

AD 1 Signed version of Jimmy Cash's Witness Statement
AD 2 Signed version of Miles Cash's Witness Statement
AD 3 Letter dated 30 March 2012 from Charlie Sherfield – Gypsy Liaison Officer with Hertfordshire CC
AD 4 Letter from Gypsy and Traveller Empowerment (GATE) Hertfordshire – undated
AD 5 Letter from Mrs P Smiton, Class Teacher, Tanners Wood JMI – undated
AD 6 Letter dated 10 January 2011 from Mr J Cash of 59 Toms Lane, Kings Langley
AD 7 Letter from Lilyane and Gordon Weston – local residents - undated
AD 8 Letter from Mr J Disley, Purple Horse Sales Hire, Old House Lane – undated
AD 9 CLG Good Practice Guide – "Designing Gypsy and Traveller Sites"

AD 10 E-mail correspondence between the appellant's agent and the Council regarding sustainability evidence
AD 11 Additional proof of evidence on sustainability – Mr Green
AD 12 Closing submissions, including transcripts of 2 judgments - (1) Cala Homes and (2) Taylor & others v SSCLG & North Warwickshire BC
AD 13 Costs Application

Council's Documents

CD 1 Opening submissions
CD 2 Folder containing written representations received by the Council regarding the appeal site
CD 3 Revised version of the Enforcement Notice
CD 4 Site layout plans for appeal APP/P1940/C/02/1103517 – Oaklands (was Midway), Bedmond Road
CD 5 Drg. No. 1038/1A, Site Management Plan and covering letter dated 2 June 2009 from Mr P Brown to the Council – Oaklands
CD 6 Site Licence dated 5 November 2009 – Oaklands
CD 7 East of England RSS single issue review – Panel Report – December 2008
CD 8 Extract from Core Strategy concerning potential release of Green Belt land
CD 9 Enforcement/Injunction Committee Report dated 6 April 2011 regarding the appeal site and associated minutes
CD 10 Closing submissions

Third Party Documents

TP 1 Mrs J Creed's Statement on behalf of Chandlers Cross Resident's Association
TP2 Points of Information from Sarratt Parish Council supplied by Mr R Creed