Balancing exercise carried out by the Committee not as clear as it might have been!!

Costs Decision

Inquiry held on 3 June 2008
Site visit made on 4 June 2008

by Claire Sherratt DipURP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
9 July 2008

Costs application in relation to Appeal Ref: APP/K2420/A/08/2065755
Land adjacent to Lodge Farm, Wood Road, Nailstone

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Joanna Squires for a full award of costs against Hinckley and Bosworth Borough Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for the change of use to residential caravan site for four gypsy families with eight [development proposed].

Summary of Decision: The application fails and no award of costs is made.

The Submissions for Joanna Squires

1. In support of the application reference is made to paragraph 7 of Annex 3 of Circular 8/93 which stipulates that the 'local planning authority should not prevent, inhibit or delay development which could reasonably be permitted in light of the development plan.

2. The approach of the Council was to misapply Policy T5 rather than accept that the design guidance referred to is satisfied. The analysis accompanying the conclusion that the access was unacceptable and therefore incompatible with Policy RA13 was flawed in that paragraph 1.29 of Htd was applied in a blanket and thoughtless fashion without any real analysis of the actual safety issues and the significance of the impact on highway safety. The reliance on an 'in principle' highway objection rather than an actual identified significant harm cannot be reasonable where there has to be a balance struck between highway considerations and the policy imperatives of Circular 01/2006. This failure to carry out a proper analysis is unreasonable.

3. The appellant also relies on paragraph 9 of Annex 3 of Circular 8/93. The local planning authority failed to carry out any balancing exercise and simply blindly followed the recommendation of the County Council without looking at the balance of the other material considerations to see if the highway issue was in fact overriding.

4. Such a balancing exercise was not carried out. This is clear as there was no assessment or conclusion drawn about either the significance of the actual harm to highway safety or the significance of the identified need for traveller sites in the Committee report. Mr Lennon's assessment is so flawed that if any consideration had been given to its robustness rather than a simple acceptance at face value then it is quite impossible that the local planning authority would have come to the conclusion that they did. The failure of the Council to make

such an assessment is further compounded by the Hospital Lane appeal decision that highlights the tensions between the Htd and Circular 01/2006.

The Response by Hinckley and Bosworth Borough Council

5. It must be shown that the local planning authority is guilty of unreasonable conduct and that it has caused the other party to incur unreasonable costs as a result. For reasons which are apparent in the closing submissions of the Council, the Council is a long way from acting unreasonably.

6. Paragraph 9 of annex 3 of the Circular emphasises the weight that the local planning authority needs to give to advice of consultees. The Council should therefore exercise caution if it is to disregard the advice of consultees too lightly. The Council received advice from a properly qualified professional and sought to ensure that that person came to the inquiry to defend that position.

7. Not only was the decision demonstrably balanced in the Committee report but the local planning authority accept that the proposal meets all the requirements of Circular 01/2006 and PPG13 with the exception of highway safety.

8. The design guidance applied by the highway authority was given significant weight by an Inspector in another appeal decision at 'Welland Buildings'. This suggests that the interpretation, reference and reliance on Htd is not unreasonable. Even if the views of the Inspector who determined the Hospital Lane decision are accepted, i.e. that there is tension between Htd and Circular 01/2006, Hospital lane is an unclassified Road and it doesn't therefore follow that the Policy applied to a proposed access onto a B classified road has the same effect. There would be no where else to go beyond an unclassified road.

9. The Council has not behaved unreasonably and if there are any shortcomings, the decision was not unreasonable.

Conclusions

10. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

11. I consider it is reasonable for the highway authority, as a consultee, to restrict its response to comments relating to highway considerations. It is the responsibility of the local planning authority, as the determining body, to carry out any necessary balancing exercise. Paragraph 9 of Circular 8/93 confirms that it is always the planning authority's sole responsibility to ensue that, if they adopt (the advice of consultees); their decision is based on a complete understanding of the consultee's advice or opinion.

12. I agree with the local authority that Htd should be read as a whole. Regrettably, since the document was revised the wording of Policy T5 is now somewhat unclear. However, it is clear from reading the document that there are areas of distinction between those situations when the standards in Part 3 are applicable and when other restrictions, over and above those standards, apply. This is one such case. I do not accept that the local authority applied

Policy T5 incorrectly. The Council also relied on other appeal decisions where Inspectors have referred to Htd as a whole and gave it significant weight. In such circumstances it is reasonable that they followed that approach.

13. I have considered whether the Council relied on an 'in principle' highway objection rather than any actual identified harm. The Council called a representative of the highway authority to provide expert evidence to support the reason for refusal. I agree with the views presented. I am satisfied that the approach of the Council's highways witness was not simply to tick boxes but that he also used his own experience and knowledge to reach the conclusion he did. Safety considerations are paramount. Whilst the balancing exercise carried out by the Council is not as clear as it might have been, I am satisfied that the Council adequately supported and explained its reason for refusal.

14. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated and I therefore conclude that an award of costs is not justified.

Formal Decision

15. I refuse the application for an award of costs.

Claire Sherratt
INSPECTOR

HAVE WE SENT A COPY TO THE BARRISTER?
- SHE THOUGHT WE WOULD LOSE!!

Appeal Decision

Inquiry held on 3 & 4 June 2008
Site visit made on 4 June 2008

by Claire Sherratt **DipURP MRTPI**

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

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Decision date:
9 July 2008

Appeal Ref: APP/K2420/A/08/2065755
Land adjacent to Lodge Farm, Wood Road, Nailstone, Leicestershire

- 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 Joanna Squires against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 07/01305/COU, dated 2 November 2007, was refused by notice dated 19 December 2007.
- The development proposed is change of use to residential caravan site for 4 gypsy families with 8 caravans, including construction of access, road, stables & hardstanding.

Application for costs

1. At the Inquiry an application for costs was made by Joanna Squires against Hinckley and Bosworth Borough Council. This application is the subject of a separate Decision.

Decision

2. I dismiss the appeal.

Main issues

3. I consider the main issues are:
   (a) the effect of the development on highway safety; and
   (b) whether there are other considerations, including the general need for gypsy sites and the needs of the families to which this appeal relates, that are sufficient to outweigh any identified harm.

Reasons

Highway Safety

4. The appeal site is situated to the east of Wood Road, a 'B' classified road. A new vehicular access would be created to provide access to four residential plots and a stable block. Each plot is intended to accommodate one static caravan and one touring caravan.

5. The appeal site is situated in open countryside where new residential development would normally be resisted in accordance with Policy NE5 of the Hinckley and Bosworth Local Plan (LP). As an exception to Policy NE5, LP Policy RES13 stipulates that planning permission will be granted for a gypsy caravan site where the proposal satisfies a number of criteria. It is common ground between the main parties that the criteria of this policy are met with the exception of criteria (d) which requires the proposal to have an acceptable

vehicular access and provision for parking and servicing; and (e) that it does not conflict with any other policies of the Local Plan.

6. The Council's case is that an acceptable vehicular access would not be provided and the proposal would therefore conflict with Policy RES13 (d). In addition, LP Policy T5 states that in considering proposals for new development and changes of uses which involve new accesses, the local planning authority will apply the highways design standards set out in the current edition of Leicestershire County Council's 'Highway Requirements for Development' (HRD). In my view, HRD referred to in Policy T5 is clearly a document incorporating design standards throughout. It is split into a number of parts but nevertheless clearly states that each part of the 'design standard ... should be read in conjunction with the other parts, which together form a complete guide to highway requirements related to development within the County'.

7. The HRD document has since been replaced by another document produced by Leicestershire County Council 'Highways, Transport and Development' (Htd). It was accepted by the appellant's witness that the reference to HRD in Policy T5 should simply be replaced by Htd. Htd was adopted as County Council Policy with effect from 1 January 2008 following some consultation. It is an interim version produced to ensure that Htd reflects latest national guidance, particularly PPS3, Manual for Streets (MfS) as well as PPG13. Part 1 is entitled 'Introduction' whilst Part 3 is entitled 'Design Guidance'.

8. A lot of inquiry time focused on whether all of Htd is relevant to the application of Policy T5 or simply Part 3 'Design Guidance'. In other appeal decisions that I have been referred to within the county, Inspectors appear to have considered the document as a whole. However, I am not familiar with the precise wording of the development plan policies relevant to those decisions outside Hinckley and Bosworth and whether they refer specifically to the HRD or Htd documents in a similar way to Policy T5.

9. There is no doubt in my mind that the Htd document should be read as a whole since Part 3 is cross referenced to Part 1 and visa-versa. Furthermore, the restrictions onto A and B classified roads referred to within the revised document is not unlike the general presumption against the construction of new accesses onto A and B classified roads and against the intensification in use of existing accesses that was contained in the original HRD document.

10. Part 1 of Htd contains 'policies'. Section IN5 sets out the access to the road network policy. Htd does not however form part of the development plan and can only be afforded weight as a material consideration. Paragraph 1.29 confirms that LCC will normally apply restrictions on new accesses for vehicles onto A and B classified roads which, among other considerations, have a speed limit above 40 mph or where measured speeds are in excess of 40 mph; roads without street lighting and roads where there is an existing problem with road safety. Elsewhere, on A and B classified roads, paragraph 1.30 confirms that accesses will not normally be restricted as long as its layout complies with the guidance set out in Part 3.

11. The appeal site is in a location where restrictions would normally apply. The proposal would not therefore be in accordance with policies contained in IN5 of

Htd irrespective of the ability to provide satisfactory visibility splays. This must be so, as the restrictions to be applied can not simply be to provide an access in accordance with the design guidance contained in Part 3 as this is the requirement that new accesses 'elsewhere' on A and B classified roads should meet. Whilst I accept that the visibility requirements set out in part 3 could be met, restrictions over and above the design guidance must therefore be applicable in this instance.

12. Guidance in Annex B of PPG13 relating to accesses to trunk roads stipulates that access will be most severely restricted in the case of motorways. The highest standard and most strategic routes on the core network will be subject to restrictions on access almost as stringent as those applying on motorways; and the remainder of the network will be subject to a less restrictive approach to connections, subject to consultations with the local authorities concerned. PPG13 contains examples i.e. in the case of motorways; access will be limited to junctions with other main roads, service areas, airports etc.

13. In relation to local roads, Annex B of PPG13 states that local authorities should apply the same principles applicable to trunk roads when formulating their own policy on local roads. I have been referred a recent appeal decision, by the Council, for a dwelling that would use an existing access onto an A classified road (ref: APP/F2415/A/07/2041635 – LPA Document 3). In this case, paragraph 1.29 of Htd would also apply. The Inspector finds no conflict between the County Council's guidance and PPG13 in terms of safety considerations and accords Htd significant weight. It seems to me that Htd applies a similar restrictive approach dependant on the nature of the road. I agree that it is not at odds with the advice in PPG13.

14. Whilst the capacity of the road could accommodate the additional development and adequate visibility could be achieved, unlike many of the surrounding local roads, there is no weight restriction along Wood Lane. It therefore provides part of an unrestricted network between junction 22 of the M1, via the A511 to the A447 used by HGVs as well as other traffic. I do not consider that it would cater mainly for local traffic and drivers who are familiar with the road. There are not a number of existing accesses periodically located along the road that may serve to warn drivers that there is every likelihood that vehicles may be turning. I would not expect a residential access to be signposted in any way. All in all, I consider it is a road where a residential access would be most unexpected by other road users. The nature of the road, together with the lack of street lighting would contribute to the hazard that I consider a residential access would present in this location. Furthermore, from what I saw, Wood Road presents very limited opportunities, if any, for future occupiers to go anywhere on foot. The pedestrian use of Wood Road would be extremely dangerous even during hours of daylight.

15. I acknowledge that there is an existing access to Lodge Farm that has some commercial use. This in itself would not justify a further access. The Council's highway witness described a situation that he had observed on site involving a vehicle having to swerve to miss another vehicle that had slowed down to turn into the farm access. The access to Lodge Farm may well be substandard, but this incident nevertheless serves to support the Council's reasoning and my

view that other drivers will not readily be expecting vehicles to be slowing down to turn.

16. An appeal decision (Reference APP/T2405/A/06/2022962) is cited on behalf of the appellant. In this case the Inspector allowed a gypsy site with a sub-standard access onto an unclassified road. The Inspector noted some tension between Htd and Circular 01/2006. Whilst I agree that there is some tension in so far as there appears to be restrictions applicable to accesses on all unlit roads, I consider the nature of the B classified road and its role of routeing traffic through the county can be differentiated from that case. Notwithstanding the traffic flows on this road, I consider it is more likely to cater for local traffic and there are a number of accesses along it. Whilst there is a general acceptance in Circular 01/2006 that rural gypsy sites will be acceptable in principle, that is not to say that matters such as the safety of the access should not be duly considered. Indeed PPG13 confirms that 'whatever the type of access, safety considerations will be paramount. A further appeal decision cited in support of the appellant's case refers to a gypsy site at the Paddock, Higham on the Hill (reference APP/K2420/A/06/2006830) which involved an access onto an A classified road. However, I note that there is a 'good kilometre of substantial and continuous ribbon development which terminates only one narrow field short of the appeal site' which 'has a significant urbanising effect on this stretch of the A5 road'. It has a speed restriction of 50mph. I consider this case can be clearly differentiated from the appeal before me due to the presence of a number of accesses in close proximity to it and the urbanising effect of the development in that location.

17. The Council has granted planning permission for an employment use (B1, B2, and B8), Country Park and landscaping on a former colliery site nearby. Access would be off Wood Road and it is likely to generate significant traffic. Some 4700 turning movements are predicted which is well in excess of the 40 or so per day vehicle movements likely to be associated with the proposed use. No highway objections were raised to this proposal. However visibility splays in excess of that associated with the residential proposal before me would be provided together with significant new infrastructure including a roundabout and junction improvements on the highway network. I would expect the access to this development to be readily apparent, signposted and obvious to drivers given the significance of the development. In any event, I must determine the appeal before me on its own merits.

18. To conclude on the first issue I consider that the proposed development would unacceptably prejudice highway safety and would conflict with LP Policy RES13, PPG13 and Htd in this regard.

Other Considerations

19. I accept that there is an identified need for further gypsy site provision in the area as identified in the Gypsy and Traveller Accommodation Assessment (GTAA) carried out on behalf of Leicester, Leicestershire and Rutland. The GTAA found a need to provide a net additional 26 pitches in Hinckley and Bosworth between 2006-2011, some of which I accept represents an immediate need; with a further pitch provision necessary in 2011-2016. The

identification and provision of sites is still someway off. The proposed site would therefore satisfy some of that immediate need.

20. It is accepted that the 4 families that intend to occupy the appeal site should the appeal be successful do not currently have a permanent site on which to reside since having to leave a tolerated gypsy site at Almond Way which they occupied for some 15 years, in 2002. Local alternative accommodation is essential to the continued education of 4 children and would ensure the enrolment of the appellant's daughter in Nailstone Primary School. The appeal site would accommodate the appellant's horses.

21. These, particularly the clear and immediate need for gypsy sites, the personal needs of the families for a permanent site and the continuity of education for 5 children, are important material consideration weighing in favour of the development. In my view the proposed access onto Wood Road would clearly compromise the safety of future occupiers of the site and other users of the road. Safety is paramount. Whilst there is a clear need for further sites to be provided now, this together with the other considerations I have referred to, would not justify the provision of a gypsy site where the safety of the occupiers of those pitches and the safety of other road users would be so significantly compromised both on a permanent basis, as sought, or for only a temporary period until alternative provision is made.

22. The Parish Council and local residents have raised additional concerns about the number of gypsy sites in the area generally. Having seen these sites, I do not consider they are in such close proximity to the appeal site that the proposal would result in an over concentration or be out of scale with nearby settlements. Furthermore, I am mindful that the appellants have moved from another site in the local area, near to Bagworth.

23. For the reasons given above I conclude that the appeal should fail.

Claire Sherratt
INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Harriet Townsend	Instructed by Hinckley and Bosworth Borough Council.
She called	
Mr M Lennon (Highways Witness)	For Leicestershire County Council, County Hall, Glenfield, Leics.
Ms C Horton (Planning Witness)	Planning Officer for Hinckley and Bosworth Borough Council.

FOR THE APPELLANT:

Bridget Forster	Instructed by Philip Brown Associates.
She called	
Jeremy P. Hurlstone BSc(Hons) CMILT, MIHT (Highways Witness)	Of The Hurlstone Partnership, Seven Oaks Farm, Crew Green, Shrewsbury SY5 9AS
Mr Philip Brown BA(Hons) MRTPI (Planning Witness)	Of Philip Brown Associates Ltd; 74 Park Road, Rugby, Warwickshire CV21 2QX

INTERESTED PERSONS:

Mrs A. McCarthy-Young	Vice Chairman of Nailstone Parish Council

CORE DOCUMENTS

CD1	Copy of Appeal Notification Letter & list of persons notified.
CD2	Suggested Conditions.
CD3	Statement of Common Ground.
CD4	Highways Requirement for Development
CD5	Written Statement of Mrs McCarthy-Young.
CD6	Closing submissions for Hinckley & Bosworth Borough Council.
CD7	Closing submissions for the appellant.

LOCAL PLANNING AUTHORITY DOCUMENTS

LPA1	Planning Permission relating to former Nailstone Colliery Site (South West Industrial Properties)
LPA2	Unilateral Planning Obligation relating to above planning permission.
LPA3	Appeal Decision reference APP/F2415/A/07/2041635 (Welland Buildings).
LPA4	Plan indicating weight restricted routes in area.
LPA5	Traffic Accident Records.
LPA6	Planning History relevant to Lodge Farm.
LPA7	Planning Permission for transit site (Mr Smith).
LPA8	Part 3 'Design Guidance' of Htd.

LPA9 Response of highway authority in relation to proposal at Lodge Farm.

PLANS

PLANS A1-A4 Application Plans

The Planning Inspectorate

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16 APR 2007

Ahsan Guafoor
Hinckley and Bosworth Borough Council
District Secretary
Council Offices
Argents Mead
HINCKLEY
Leicestershire
LE10 1BZ

DEVELOPMENT SERVICES
16 APR 2007
RECEIVED

Your Ref: 05/01073/cou

Our Ref: APP/K2420/C/06/2006790
Further appeal references at foot of letter

Date: 13 April 2007

Dear Sir

Town and Country Planning Act 1990
Appeals by Mr J Winter and Mr J Winter & Mr H Winter
Site at The Paddock, Watling Street, Higham On The Hill and The Paddock, Watling Street, Higham-on-the-hill, Nuneaton

I enclose a copy of our Inspector's decision on the above appeals.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

Quality Assurance Unit
The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Tel: 0117 372 8252
Fax: 0117 372 8139
E-mail: complaints@pins.gsi.gov.uk

Yours sincerely

pp Naomi Hallett

INVESTOR IN PEOPLE
POSITIVE ABOUT DISABLED PEOPLE

EDL1 (BPR)

Further appeal references:- APP/K2420/A/06/2006830

You can now use the Internet to submit and view documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -
http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp
You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the 'search' button

RECEIVED
13 APR 2007

Dear Sir

Town and Country Planning Act 1990
Appeals by Mr J Winter and Mr J Winter & Mr R Winter
Sites at The Paddock, Warling Street, Higham On The Hill and The Paddock, Warling Street, Higham-on-the-hill, Nuneaton

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Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
Fax: 0117 372 8139
E-mail: complaints@pins.gsi.gov.uk

Yours sincerely

pp Naomi Hallett

The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions and advertisement appeals.). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" – In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land -other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this – see Further Information).

"How much is it likely to cost me?" - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Contacting us

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The Parliamentary Ombudsman
Office of the Parliamentary
Commissioner for Administration
Millbank Tower, Millbank
London, SW1P 4QP

Helpline: 0845 0154033
Website: www.ombudsman.org.uk
E-mail:
phso.enquiries@ombudsman.org.uk

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Further information

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: www.courtservice.gov.uk

Council on tribunals

If you have any comments on appeal procedures you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: http://www.council-on-tribunals.gov.uk/. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

Our Complaints Procedures

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

When investigating a complaint we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. Minor slips and errors may be corrected under the terms of the Planning & Compulsory Purchase Act 2004 but we cannot amend or change in any way the substance of an Inspector's decision.

Who checks our work?

The Government has said that 99% of our decisions should be free from error and has set up an independent body called the Advisory Panel on Standards (APOS) to report on our performance. APOS regularly examines the way we deal with complaints and we must satisfy it that our procedures are fair, thorough and prompt.

Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"If you cannot change a decision, what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds whether these views justify refusing planning permission.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. It can investigate and has discretionary powers to take action if a condition is being ignored.

Further information

Every year we publish a Business and Corporate Plan which sets out our plans for the following years, how much work we expect to deal with and how we plan to meet the targets which Ministers set for us. At the end of each financial year we publish our Annual Report and Accounts, which reports on our performance against these targets and how we have spent the funds the Government gives us for our work. You can view these and obtain further information by visiting our website (see 'Contacting us'). You can also get booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or on the ODPM website - www.odpm.gov.uk/

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Appeal Decisions

Inquiry opened on 4 July 2006

by Karl P Moxon BA (Hons) MRTPI Solicitor & Notary Public

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

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Date 13th April 2007

Appeal Ref: APP/K2420/A/06/2006830
The Paddock, Watling Street, Higham on the Hill, Leicestershire CV11 6BQ

- This 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 Messrs J & H Winter against a decision of Hinckley & Bosworth Borough Council.
- The application (referenced 05/01073/COU, and dated 3 October 2005) was refused by notice dated 30 November 2005.
- The development proposed is the change of use of the land to use as a residential caravan site for two gypsy families with a total of four caravans.

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

Appeal Ref: APP/K2420/C/06/2006790
The Paddock, Watling Street, Higham on the Hill, Leicestershire CV11 6BQ

- This appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeal is made by Mr J Winter against an enforcement notice issued by Hinckley & Bosworth Borough Council.
- The Council's reference is 05/00235/UNUSE.
- The notice was issued on 19 December 2005.
- The breaches of planning control as alleged in the notice are without planning permission
  - the change of use of the land to use as a site for the stationing of caravans and/or mobile homes for the purposes of human habitation;
  - the stationing of portable buildings; and
  - the conversion of outbuildings to laundry / utility / toilet / shower facilities in connection with the alleged use.
- The requirements of the notice are to
  - cease the use of the land as a site for the stationing of caravans and/or mobile homes and portable buildings for the purposes of human habitation;
  - remove all caravans / mobile homes and portable buildings from the land;
  - remove all motor vehicles and equipment from the land other than those which are ancillary to the agricultural use of the land;
  - remove from the land all hard standing and hard core materials laid by the occupiers of the site;
  - remove the foul drainage system installed, and reinstate the land to its condition prior to the installation of the system;
  - remove all light fittings and columns that were installed by the current occupiers; and
  - cease the use of the outbuildings as laundry / utility / toilet and shower rooms.
- The period for compliance with the requirements is six months.

- The appeal is proceeding on the grounds set out in sections 174(2)(a) (f) and (g) of the Act. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

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

Procedural Matters

1. The inquiry sat for six days: 4 July and 20 & 23 October 2006, and 20, 21 & 22 February 2007. An accompanied inspection of the land and its surroundings was made during the afternoon of the final sitting day.

2. On 18 July 2006 the Highways Agency (who had both opposed the development at application stage, and notified the Secretary of State of their wish to appear at the inquiry) were made a statutory party to the proceedings in accordance with Rules 6(6) and 11(1)(h) of The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002.

3. In these decisions the expressions "the appeal site" and "the site" mean the land shown edged red on the application plan dated 5 October 2005 and referenced with SLA Number LA078220, and hence in connection with the enforcement appeal refer only to the part of the land shown on the notice plan which corresponds thereto.

The Section 78 Appeal, Ground (a) of the Section 174 Appeal and The Deemed Planning Application

The Main Issues and their Planning Policy Context

4. In the light of subsequent guidance in ODPM Circular 01/2006 (Planning for Gypsy and Traveller Caravan Sites), the Council have withdrawn their sustainability objection to the continued use of the appeal site as a gypsy caravan site (the proposal). So too have the Highways Agency.

5. With that in mind and taking into account all I have seen, heard and read about these appeals, I consider the main issues on which my decision on their planning merits will turn to be whether the proposal would have a significantly adverse effect on either

   - the character and appearance of the area, or
   - the safe and free flow of traffic in the vicinity of the appeal site's entrance; and if so
   - whether the ensuing harm would be outweighed by other material considerations.

6. The most relevant to those issues of the several policies in the adopted Hinckley & Bosworth Local Plan to which my attention has been drawn is, I believe, Policy RES 13. It states:

   Gypsy Caravan Sites

   As an exception to Policy NE 5 (Development in the Countryside) planning permission will be granted for a gypsy caravan site where the proposal satisfies all of the following criteria:

a. *it is located within a reasonable distance of local services and facilities - e.g. shops, hospitals and schools;*

b. *it would not have an adverse effect on the amenities of neighbours;*

c. *it would not have an adverse effect on the character or appearance of the countryside;*

d. *it has acceptable vehicular access, and provision for parking and servicing;*

e. *it incorporates substantial peripheral landscaping; and*

f. *it does not conflict with any other policies of the local plan.*

7. I shall refer to other development plan policies which might affect the outcome of the main issues as and when appropriate.

The First Issue - Character and Appearance

Policy Considerations

8. Although the adopted Local Plan predates Circular 01/2006, Policy RES 13 anticipates the latter's paragraph 54 by providing that gypsy caravan sites are acceptable in principle in rural areas. Its criterion (c) is, nevertheless, in my view too restrictively worded: the correct test is not whether a given proposal would have any adverse effect on the character or appearance of the area of which it forms part, but whether it would do so to such an extent as to render it unacceptable.

9. Criterion (e) of the Policy makes landscaping obligatory. In my view this also goes too far, because it is by no means beyond the realms of possibility that in some locations a gypsy caravan site would not need to be landscaped at all.

10. It is therefore on the basis of Policy RES 13 as seen in the light of these considerations that I shall approach the first main issue.

Assessment

11. The appeal site is located on the north side of the A5 Hinckley to Tamworth trunk road, about two and a half kilometres west of the former's designated settlement limit. Between the two, the land to the south of the road is mainly open farmland; on its northern side, however, and west of an intervening belt of similar farmland, there lies a good kilometre of substantial and continuous ribbon development which terminates only one narrow field short of the appeal site.

12. Amongst other things that ribbon contains traditional, two-storey, semi-detached dwellings, the offices and works of an industrial valve company, an HGV repair depot, a substantial residential mobile home park and a sizeable area of caravan storage. It thus has a significant urbanising effect on this stretch of the A5 road.

13. In those circumstances this proposal would give rise merely to a minor extension of the existing developed form of the area, and for that reason would I believe not be out of character with it.

14. The Council's pre-inquiry submissions on the appearance part of this issue proceeded from the assumption that the appeal site "cannot be assimilated into the landscape due to the

intrusive nature of caravans." They nevertheless conceded during the course of the inquiry that the proper approach would be to determine whether the appeal site could be successfully assimilated into its surroundings. I note that to that end paragraph 4 of Annex C to Circular 01/2006 points out that "landscaping and planting with appropriate trees and shrubs can help sites blend into their surroundings, give structure and privacy, and maintain visual amenity."

15. The operational part of the appeal site is a rectangular, hard surfaced compound measuring about 30 x 40 metres. It lies some 80 metres north of the A5 road, at the end of an access track which runs just inside the site's eastern boundary. In addition to some pre-existing, single storey stable or kennel buildings, the compound now houses the appellants' four touring caravans, and also serves as both a general amenity and vehicular parking and turning area. It is lit by four lamp posts.

16. The compound is landlocked on its eastern and northern sides; public views of it are thus limited to those available from the A5 road to the site's south, and from Nuneaton Lane to its west. As just mentioned, the former is at a distance of some 80 metres; the latter is about 150 metres away. From these vantage points the compound's existing landscaping permits clear views of the tops of the caravans and lamp posts, and filtered views of its lower parts.

17. I accept of course that the caravans do not need to be completely hidden. I nevertheless consider that their current visual impact, and hence the overall appearance of the compound, would be appreciably improved by the implementation of a comprehensive and sympathetically designed landscaping scheme. Removing the lamp posts would also be visually beneficial: not only because it would dispose of a to my mind somewhat incongruous feature given that the compound is set well back from the A5 road and has open land on its three other sides, but also because their substitution by low-level lighting would help reduce night-time light pollution.

18. Highway safety considerations may affect the long-term appearance of the appeal site's road frontage. For present purposes, it will however suffice to record first that neither of the two mature oak trees in the vicinity would need to be removed, and secondly that such improvements as may be necessary to the site's access would not significantly increase its present, in my opinion acceptable degree of visual intrusion. Matters of this nature do not, therefore, materially influence the outcome of this issue.

19. For these reasons my conclusion on the first main issue is that subject to the imposition of appropriate conditions this proposal would not have a materially adverse effect on the character and appearance of the area. It would in consequence also comply with Criteria (c) and (e) of Policy RES 13, and furthermore satisfy the relevant aims and objectives of Local Plan Policies BE 1 (The Design and Siting of Development) and NE 10 (Local Landscape Improvement Areas).

The Second Issue - Highway Safety

Preliminary Matters

20. Discussions outside the inquiry led to the appellants and the Highways Agency (the Agency) reaching agreement on a number of matters about which their prior, written submissions had differed. These included that

- advice on the design of trunk road junctions is to be found in the Agency's publications TA 22/81 and TD 41/95, and in DTLR Circular 04/2001. The first and third of these documents are advisory only; the provisions of the second are, on the other hand, mandatory;
- the appellants' second speed survey was conducted in accordance with the guidance in TA 22/81. Its results can therefore be taken as the starting point for assessing the safety of the site's access on to the A5;
- the distances at which vehicles turning either right or left into the appeal site from the A5 can be seen by both following and oncoming vehicles are satisfactory; and
- for the purposes of junction design, the relevant minor road distance should be measured from kerb line of the major road.

21. In the vicinity of the appeal site, the A5

- has a single carriageway of even, ten-metre width, running lanes of 3.65 metres each and a 1.8 metre or so wide footway on its northern side;
- is subject to a 50 mph speed limit;
- is designated an all-purpose, core trunk road;
- serves as an abnormal loads' route;
- forms an important, strategic link between the M42 and M6 (Toll) motorways to the west, and the M69 and M1 motorways to the east; and
- carries an average annual daily traffic flow of around 19,000 vehicles.

22. Less than two hundred metres west of the appeal site is a roundabout-controlled junction between the A5 and a minor road, known as Higham Lane to the south and Nuneaton Lane to the north.

The Approach to this Issue

23. Paragraph 9 of Circular 04/2001 advocates a graduated approach to the principle of new or intensified accesses on to trunk roads: the more important is the trunk road to the strategic network, the more stringent should be the controls imposed on, amongst other things, the design and consequential safety of accesses on to it. In this case, the parties are in broad agreement that the relevant stretch of the A5 ranks about half way, or perhaps a little above half way, up that scale. Given its form and functions as set out above, I find no reason to disagree with that assessment.

24. Paragraph 9 also states that where access is permitted and regardless of the status of the trunk road, developers must ensure that their proposal complies in all respects with the relevant Agency design standards. In similar vein paragraph 2.10 of TD 41/95 states that where use of an access on to a trunk road would be materially increased (which, the appellants accept, would be the case with this proposal) its design requires careful consideration.

25. Against that background I am firmly of the view that a favourable outcome of this issue could be countenanced only if the junction between the appeal site and the A5 would neither compromise safety nor set an undesirable precedent for future, unsuitable trunk road accesses elsewhere. Strict adherence to the Agency's standards will therefore be necessary.

26. Assessment of the issue will turn on three factors: the requisite minor (or X) and major (or Y) road distances for the access, and in the light thereof whether the latter can in practice be achieved.

The X-Distance

27. Guidance on minor road distances is set out in paragraph 2.21 of TD41/95. Put briefly, this is that

- the normal X-distance for accesses on to trunk roads is 4.5 metres;
- for lightly used accesses, this may however be reduced to 2.4 metres; and
- where in the case of lightly used accesses the site conditions are particularly difficult, the distance may be further reduced to 2.0 metres as a Relaxation Within Standard.

28. The Agency have acknowledged from the outset that the appeal site's access would qualify as lightly used. In cross-examination they also accepted that the protected oak tree and the hedgerow which at an X-distance of 2.4 metres would restrict westward visibility to an in their view unacceptably low 118 metres do constitute a particular difficulty.

29. Having seen the situation on the ground, I consider that removing the oak tree would take the proposal out of conformity with Policy NE 10. I therefore agree that applying the Relaxation would be appropriate in this case, and in consequence conclude that a 2.0 metre X-distance would comply with the standards in paragraph 2.21.

The Y-Distance in Principle

30. The argument here is whether a junction's Y-distance as ascertained from a correctly conducted speed survey has to be the same in both directions. In support of their assertion that it must, the main provisions on which the Agency rely are

- paragraph 3.4 of TA22/81, which - after explaining that speed survey measurements should be taken at both ends of the proposed scheme so that the traffic approaching from both directions is covered - goes on to state that *if different values are obtained, the higher speed value should be used in the design process*;
- that nowhere in all of the relevant guidance is there any authority for the appellants' assertion that different Y-distances may be applied to the same access; and
- that paragraph 2.22 of TD41/95 states that Relaxations on Y-distances are not available.

31. Paragraph 3.4 is part of the section of TA22/81 which deals with the explanation of its terms and concepts; it is headed "Speeds (improvement of alignment and junctions)". The appellants submit that the sentence quoted in the first above bullet refers only to the design of alignment improvement schemes, and hence is not helpful in determining junction design. Nowhere within the paragraph do I however find any support, either express or

implied, for that construction. To my mind, therefore, the sentence raises at least a prima facie presumption in favour of the Agency's stance on this sub-issue.

32. The second above bullet is without doubt factually correct. It could nevertheless equally be argued that nowhere in all of the guidance is there any authority to gainsay the appellants' assertion that different Y-distances may be applied to the same access. Similar considerations apply to the third above bullet: if the principle of applying different Y-distances to the same junction is accepted, the distances required will without question be those found in Table 2/1of TD41/95, which forms part of paragraph 2.22; no suggestion of applying a Relaxion would therefore arise. For these reasons neither of these latter points in my opinion materially advances the Agency's case under this head.

33. In support of their position the appellants rely on paragraph 2.17 of TD 41/95, which (in so far as is relevant here) states that *visibility splays shall be provided to enable emerging drivers using the direct access* [to the trunk road] *to have adequate visibility in each direction to see oncoming traffic in sufficient time to make their manoeuvre safely without influencing the major road traffic speed.* I concur with the appellants' submission that because it uses the words "in each direction", this sentence tends to support findings first that the safe operation of a junction will be ensured if a Y-distance in accordance with Table 2/1 of TD41/95 as determined by the part of the speed survey relevant to each of its two arms is achieved; and secondly and in consequence that different Y-distances within one and the same junction are acceptable in principle.

34. The crucial question now, therefore, is which of my views on paragraph 3.4 of TA22/81 and paragraph 2.17 of TD 41/95 should prevail. The answer, I consider, is (as the appellants suggest) to be found by applying a purposive test. TD 41/95 stresses that the overriding aim of its provisions is safety; and from that it must follow that (as the Agency conceded at the inquiry), a junction with Y-distances of different lengths would meet that aim provided it were demonstrably safe. And this final criterion would, of course, by definition be satisfied if those distances were as determined from Table 2/1.

35. On this sub-issue, I in consequence conclude accordingly.

The Y-Distance in Practice

36. The agreed speed survey determined that the 85th percentile dry weather speed for vehicles approaching the appeal site from the east is 79 kph, and the like for vehicles approaching from the west is 64 kph. To ascertain their wet weather speed, on which junction design is based, paragraph 3.4 of TA 22/81 advises that for (as here) an all purpose single carriageway 4 kph should be deducted. The speeds to be read into Table 2/1 of TD 41/95 are hence 75 and 60 kph.

37. When Table 2/1 does not give the surveyed speed, the next highest Table speed should be used. On that basis, the Y-distances applicable to the appeal site's access would be 160 metres to the east, and 90 metres to the west. But because the 60 kph which determines the latter figure is both at the very top of its section of the Table and derives from a higher actual figure, the appellants consider that a more appropriate safety margin would be achieved if in this case the next highest Table distance - i.e. 120 metres - were used.

38. At an X-distance of 2.0 metres, the appeal site's existing access affords a Y-distance to the east well in excess of the requisite 160 metres; to the west, at least 125 metres is available.

Neither of these distances relies on removing what would be obstacles to eastward and westward visibility at an X-distance of 2.4 metres, namely an electricity feeder box and a protected oak tree and part of the hedgerow respectively. As it now stands, therefore, the access meets the relevant criteria in Table 2/1.

39. There is, nevertheless, a further potential problem. Agreed evidence shows (a) that the width and length of the existing access need to be increased so that two car and caravan outfits would have sufficient room both to pass each other and to stand clear of the carriageway while their drivers were opening or closing the access gate, and (b) that giving effect to such an improvement would necessitate the access being moved slightly westward so as not to impinge on third party land. The parties also agree, however, that so doing would not reduce either of the currently available Y-distances; indeed, westward visibility might even be slightly improved.

Other Highways Matters and Overall Conclusion

40. A width and length improvement scheme along the lines just described would require the electricity supply pole which now stands in the mouth of the appeal site's access to be resited. No difficulties in either obtaining the necessary consents, or actually undertaking the work involved, are however envisaged.

41. My overall conclusions on the second main issue in consequence are

- that the existing geometry of the appeal site's access conforms to a strict application of the Agency's visibility standards;
- that giving effect to necessary improvements to the access's width and length would not detract from that position; and therefore
- that this proposal would not have an adverse effect on the safe and free flow of traffic in the vicinity of the appeal site's entrance.

42. There is no argument but that the operational part of the appeal site affords adequate space for the parking and servicing of vehicles. The proposal therefore satisfies both Criterion (d) of Policy RES 13 and the similar provisions in Local Plan Policy T5 (Highway Design and Vehicle Parking Standards). It must, furthermore, also follow that allowing these appeals on the strength of the above conclusions would not set an undesirable precedent for future, unsuitable trunk road accesses elsewhere.

43. Finally in connection with this issue I cite two other factors which lend additional support to my third and final conclusion. First (and as already noted), a westward Y-distance of only 90 metres would have met the relevant provision in Table 2/1 of TD 41/95; considerable comfort can therefore be drawn from the fact that the available visibility not only meets but actually exceeds the next highest Table figure. Secondly, there were no even minor accidents attributable to the appeal site's or any other nearby access in the five years prior to the submission of the Agency's written evidence. That period would have included close on a year of the appellants' use of the site.

Other Land Use Matters

44. At application stage the Environment Agency objected to this proposal on drainage grounds. Subsequent investigations have however revealed that there is a conveniently

located public sewer to which the appeal site could be connected. A condition to that effect would therefore dispose of the Environment Agency's objection, as well as ensuring that in so far as it needs to the proposal would meet the aims and objectives of Local Plan Policy NE 14 (Protection of Surface Waters and Groundwater Quality).

45. Although the Council have not expressly said so, the absence of any relevant reference in their evidence indicates that, despite the contrary allegation in the enforcement notice, they now acknowledge that the appellants have not erected any portable buildings on the site.

46. In summary on Policy RES 13, this proposal would meet

- criterion (a), because there is no objection to it on sustainability grounds;
- criterion (b), because the same has never been alleged;
- criteria (c) and (e), because of my conclusions on the first main issue;
- criterion (d), because of my conclusions on the second main issue; and
- criterion (f), because the proposal would not conflict with any other policy (namely Policies BE 1, NE 5, NE 10, NE 14 and T 5) of the Local Plan to which my attention has been directed.

47. No policies elsewhere in the development plan raise additional material considerations. The proposal therefore accords with the development plan. And from that it follows that the third main issue - including in particular the substantial body of evidence presented to the inquiry which dealt with whether there is a general need for more gypsy caravan sites at regional and/or local levels and whether or not the appellants have a personal need for such a site - does not need to be considered.

Conditions

48. I have already indicated that in the event of these appeals succeeding conditions would be necessary to ensure that the site would be appropriately landscaped, that the existing lamp posts would be replaced with a less intrusive form of lighting, that the length and width of the site's access would be appropriately upgraded, and that the site would be connected to a public sewer. Because the appellants already occupy the site, those conditions would need both to specify a time limit within which schemes for the necessary works would have to be submitted for the Council's approval, and to provide a meaningful sanction in default. I accept the agreed suggestions that because the Highways Agency would have to carry out a safety audit of the appellants' access upgrade scheme before the same could be formally submitted to the Council an appropriate period for the submission of all necessary schemes would be three months, and that (as is usual in such cases) the appropriate default sanction should be that the planning permission would cease.

49. Further conditions which were discussed at the inquiry and found to be necessary are as follows:

- that the site should be occupied only by qualifying gypsies
    - because Policy RES 13 would otherwise not apply to the development, with the effect that it would fall foul of Local Plan Policy NE5;

- that the number of permitted caravans should be limited to four, of which not more than two should be static caravans or mobile homes;
- that no commercial activities or associated materials' storage should be permitted;
- that no commercial vehicle exceeding 3.5 tonnes unladen weight should be permitted;
- that save in so far as might be required in order to implement the approved landscaping scheme, none of the site's existing hedgerows should be removed; and
- that following its implementation the approved landscaping should be maintained for a period of five years
    - because it is on the common assumption that such would be the case that these matters have not formed part of my assessment of the first main issue; and
- that in relation to a permission pursuant to the deemed planning application, no development should be allowed to take place outside what in these decisions is referred to as "the appeal site"
    - because that is the extent of the proposal before me.

50. Other conditions put forward by the Council, for example to make the planning permission personal to the appellants and their dependants, or to make it time-limited, would, on the other hand, clearly not be required.

Conclusion and Decisions

51. For all of the above reasons I have formed the view that these appeals should be allowed subject to the conditions indicated. I therefore conclude, and make my decisions, accordingly.

Grounds (f) and (g) of the Section 174 Appeal

52. Given the success of Ground (a), these aspects of the appeal against the enforcement notice do not need to be considered.

Formal Decisions

Appeal Ref: APP/K2420/A/06/2006830

53. I hereby allow the appeal and grant planning permission for the change of use of The Paddock, Watling Street, Higham on the Hill, Leicestershire CV11 6BQ to use as a residential caravan site in accordance with the terms of the application (referenced 05/01073/COU, and dated 3 October 2005), and the plans submitted therewith, subject to the following conditions:

    1) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.

    2) Not more than four caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which not more than two shall be static caravans or mobile homes) shall at any time be stationed on the site.

3) No commercial activities or storage of materials shall take place, and no vehicle over 3.5 tonnes unladen weight shall be stationed, parked or stored, on the site.

4) Otherwise than may be required to implement the planting scheme referred to in Condition 5 below, none of the site's existing hedgerows shall be cut back or removed without the prior written approval of the local planning authority.

5) The use hereby permitted shall cease, and all caravans, structures, equipment and materials brought on to the site for the purposes of such use shall be removed within twenty eight days of the failure to meet any one of the requirements set out in a) to d) below:

a) within three months of the date of this decision written schemes (which shall include timetables for their implementation) for

- tree, hedge and shrub planting (including details of species, plant sizes and proposed numbers and densities) on the boundaries of the site;

- the substitution of the site's existing lamp posts by a system of low-level lighting;

- improving the length and width of the site's existing access; and

- the foul and surface water drainage of the site

(hereafter collectively referred to as "the site development scheme") shall have been submitted for the approval of the local planning authority;

b) within eleven months of the date of this decision the site development scheme shall have been approved in writing by the local planning authority or, if the local planning authority refuse to approve the site development scheme or fail to give a decision thereon within the prescribed period, an appeal shall have been made to and accepted as validly made by the Secretary of State;

c) if an appeal is made pursuant to b) above, that appeal shall have been finally determined, and the site development scheme shall have been approved, by the Secretary of State; and

d) the approved scheme shall have been carried out and completed in accordance with the timetables set out therein.

6) Any trees, hedges or shrubs comprised in the site development scheme approved in accordance with Condition 5 above which within a period of five years from the completion of the scheme's implementation die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority give written approval to any variation.

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54. I hereby allow the appeal, and direct that the enforcement notice be quashed. I also grant planning permission on the application deemed to have been made under section 177(5) of the Act for the development already carried out (namely the use as a residential caravan site of the land and buildings at The Paddock, Watling Street, Higham on the Hill, Leicestershire CV11 6BQ as shown on the plan attached to the notice), subject to the same conditions as are set out above in connection with Appeal Ref: APP/K2420/A/06/2006830, and subject also to the following additional condition:

7) The use hereby permitted shall not be carried on otherwise than on the part of the land which corresponds to the land shown edged red on the plan which formed part of the application referenced 05/01073/COU, and is dated 5 October 2005 and referenced with SLA Number LA078220.

K P Moxon

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr A Masters	of Counsel, instructed by Philip Brown Associates.
He called:	
Mr H Winter	One of the appellants.
Mrs D Winter	Wife of Mr H Winter.
Mr P Brown BA(Hons) MRTPI	Principal, Philip Brown Associates, Chartered Town Planners & Development Consultants, 74 Park Road, Rugby, Warwickshire CV21 2QX.
Mr M Baker BSc CEng MICE FCIT FILT Eur Ing	Director, Mark Baker Consulting Limited, Traffic Engineers & Transport Planners, 32 Montpelier Court, Station Road, Montpelier, Bristol BS6 5EA.

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Gasztowicz	of Counsel, instructed by the Principal Legal Officer, Hinckley & Bosworth Borough Council.
He called:	
Mr A Ghafoor BSc(Hons) MA MRTPI	Senior Planning Enforcement Officer, Hinckley & Bosworth Borough Council.

FOR THE HIGHWAYS AGENCY:

Mr J Maurici	of Counsel, instructed by The Highways Agency.
He called:	
Mr R Jaffier BSc DipMgt	Network Strategy Manager, West Midlands Team, The Highways Agency.

DOCUMENTS SUBMITTED AT THE INQUIRY

By the Appellants

Document 1	Travellers' Count of Nuneaton & Bedworth BC, dated 19 July 2005.

Document 2	Extract from Draft East Midlands Regional Plan (RSS 8).
Document 3	Letter of Mr J Smith, dated 18 October 2006.
Document 4	Extract from Residential Roads and Footpaths (DB 32).

By the Council

Document 5	Manuscript note of site visit 3 October 2005.
Document 6	Travellers' Count of Nuneaton & Bedworth BC, dated 19 July 2006.
Documents 7.1-7.2	Count for July 2006 of Gypsy and Traveller Sites in Hinckley & Bosworth BC area, as printed on 19 and 20 October 2006.
Document 8	Copy Appeal Decisions - APP/K2420/C/05/2003650 and APP/K2420/A/05/1187887.
Documents 9.1-9.2	Copy site licences for Basin Bridge Lane, Higham on the Hill and Barleston Road, Bagworth ("Costalot").
Document 10	Copy Standard Site Licence Conditions.
Document 11	Count for January 2007 of Gypsy and Traveller Sites in Hinckley & Bosworth BC area.

By The Highways Agency

Document 12	Copy Highways Agency Speed Survey Conversion.

PLANS

Plans 1.1-1.2	Application plans:- plan dated 5 October 2005 and referenced with SLA Number LA078220; unnumbered plan showing the appeal site as then proposed.
Plan 2	Enforcement notice plan.