



Department for
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Our Ref: APP/R0660/A/13/2198596

Your Ref: 12_450_ALLA2

11 November 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR JOHN ALLAN
LAND LYING TO THE NORTH WEST OF MOOR LANE, MOBBERLEY,
WILMSLOW, CHESHIRE SK9 6DN
APPLICATION REF: 12/4247M**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Frances Mahoney, BSc(Econ) DipTP, MRTPI, IHBC, who held an Inquiry which opened on 12 March 2014 into your client's appeal under s78 of the Town and Country Planning Act 1990 against the refusal by Cheshire East Council ("the Council") to grant planning permission for use of land for the stationing of caravans for residential purposes for 1 no gypsy pitch together with the formation of additional hardstanding utility/day room ancillary to that use (application reference 12/4247, dated 6 November 2012) at land lying to the North West of Moor Lane, Mobberley, Wilmslow, Cheshire.
2. On the 4 March 2014 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposal for significant development in the Green Belt (GB).

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal should be allowed and planning permission granted. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions and recommendation and dismisses the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Procedural matters

4. It is noted that at the Inquiry it was clarified that the proposed single pitch was for 2 caravans of which one would be static in nature, the other being a tourer, and a single day room along with associated hardstandings and landscaping (IR1).
5. On the 13 August 2014, following the High Court Judgment in the case of *Redhill Aerodrome Ltd vs. SSCLG and others* [2014] EWHC 2476 (Admin), the Secretary of State wrote to all parties to seek their views on the implications, if any, of the Judgment on their case. The Council replied on 5 September 2014 and you submitted representations on behalf of your clients dated 29 September 2014. Copies of the representations are not attached to this letter but will be provided on application to the address at the bottom of the first page of this letter or to PCC@communities.gsi.gov.uk.
6. On 9th October 2014, the Court of Appeal set aside the Judgment and Order of Patterson J dated 18 July 2014. As such, and given the parties responses on this matter, the Secretary of State does not consider it necessary to revert to the parties prior to reaching this decision.

Policy considerations

7. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the development plan comprises the saved policies of the Macclesfield Borough local Plan 2004 (LP), and in particular LP policy DC31 (Development Control – Gypsies) and GC1 (New Buildings in the Green Belt) and those policies set out at IR10; and the emerging Cheshire East Local Plan (Local Plan Strategy Submission Version (CS)) which attracts limited weight (IR13).
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); Planning Policy for Traveller Sites (PPTS); the Written Ministerial Statements of 1 July 2013 and 17 January 2014 and planning guidance issued on 6th March 2014. The Secretary of State has also had regard to the fact that on 14 September 2014 the Government published a consultation document: “Proposed changes to national planning policy and Planning Policy for Traveller Sites”. However, given that the proposals are subject to consultation, he has given little weight to them in the determination of this appeal.
10. The Secretary of State notes that it is not contested that the appellants are persons who share a protected characteristic for the purposes of the Equality Act 2010 (IR16).

Inspector's Conclusions

Main issues

11. The Secretary of State considers that the main issues are those identified by the Inspector at IR76.

Openness and purposes of the Green Belt

12. For the reasons given by the Inspector (IR77-IR79) the Secretary of State agrees that the proposed development would harm the openness of the Green Belt (IR77) and that the development constitutes inappropriate development in the Green Belt (IR80) conflicting with LP Policy GC1 and the Framework.

Other Considerations

General need for and provision of sites/Failure of policy

13. The Secretary of State notes the Council agree that substantial weight should be attached to the unmet need within the Borough (IR81). He has also had regard to the fact that the Council accept that they do not have a 5 year supply for gypsy and traveller accommodation (IR82) and that there is no clear evidence to indicate when provision will be made. Consequently he agrees with the Inspector that the lack of gypsy and traveller sites carries significant weight in support of the appeal proposal (IR82).
14. The Secretary of State has also had regard to the fact that the Council does not have an adopted policy based on the need to provide pitches and for the reasons given by the Inspector he agrees that this matter should be given significant weight in favour of the appeal (IR83).

Availability of alternatives

15. The Secretary of State has given careful consideration to this matter (IR84-IR87). He acknowledges that the Council has not promoted any alternative, suitable sites for the appellant and his family and that there was no evidence of any sites with vacancies in the Manchester/Salford area (IR84).
16. He notes that the appellant has the option to remain on his current pitch and that the family have access to health and education services and the children are settled although the Inspector indicates from the evidence that the lack of security of tenure leaves the appellant vulnerable to reverting the family to a life on the road or unauthorised occupation of an unknown site (IR85). The Secretary of State has also had regard to the fact that the family have lived at the Helsby site for 5 years. However, unlike the Inspector he considers on the balance of the evidence put to the inquiry, that given the appellants current occupation of a pitch at the Helsby site that less than considerable weight should be given to this matter (IR86).

Personal circumstances

17. The Secretary of State has given careful consideration to the personal needs and circumstances of the appellant and his family as set out in IR88-IR95 and has considered the best interests of the 3 children, ages 10 and 8, as a primary consideration. He notes that the children are settled at Helsby and are doing well at school (IR88). He has had regard to the limitations of the appellant's current site (IR88-IR90) and to the evidence on security of tenure. He has also had regard to the evidence put forward in support of the need to increase ease of access to the Manchester Royal Eye Hospital which the family visit on a regular basis in respect of their son serious eye condition (IR91-IR93). The Secretary of State agrees with the Inspector's analysis and conclusion that the proposed sites location closer to the Hospital is not an overwhelming positive factor in favour of the appeal (IR94). However, unlike the Inspector, the Secretary of State does not agree with the Inspector's overall conclusion on this matter. He does not consider the personal circumstances of this family to be so compelling to justify substantial weight in favour of the appeal (IR95).

Human rights

18. The Secretary of State agrees with the Inspector that the human rights of the occupants under Article 8 and Article 1 of the 1st Protocol of the ECHR need to be considered (IR96-IR100). In particular, the best interests of the children are a primary consideration (IR99). The Secretary of State disagrees with the Inspector's conclusion that dismissal of this appeal would automatically result in the family being made homeless and result in an interference with their home and private and family life in terms of the Appellants' rights under Article 8 of the European Convention on Human Rights. The Secretary of State considers that these rights are qualified and that it is his role as planning decision-taker to ensure that any interference with these rights is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality.

Other matters raised by the third parties

19. The Secretary of State has carefully considered all the matters raised at IR101-IR109. For the reasons given by the Inspector the Secretary of State agrees with her conclusions that there would be no adverse conflict with local plan policies.

The balance of considerations

20. The Secretary of State agrees with the Inspector in that there is harm to the Green Belt arising from inappropriate development and additional harm arises from the erosion of openness. He agrees with her conclusion that substantial weight should be given to the harm to the Green Belt. He further agrees that the very special circumstances needed to justify development that is harmful to the Green Belt, and any other harm, will not exist unless that harm is clearly outweighed by other considerations (IR110). He has also had regard to the Inspector's conclusion that no other harm was found (IR111).
21. In favour of the appeal the Secretary of State agrees that significant weight should be attributed to the level of general unmet need; the lack of a 5 year

land supply for gypsy and traveller accommodation; the limited progress in updating future need beyond 2016 within a reasonable timeframe; and the failure of policy to deliver identified provision is set to continue (IR112).

22. The Secretary of State agrees with the Inspector that the single issue of unmet demand for traveller sites is unlikely to justify inappropriate development in the Green Belt (IR114). However, with regard to the personal circumstances of the appellant and his family the Secretary of State does not consider that there is a compelling case for development of the appeal site. He does not agree that the evidence regarding uncertainty of security of tenure or the limitations of the appellant's current site justifies substantial weight in favour of the appeal (IR115).
23. Overall the Secretary of State agrees that the matters identified in favour of the appeal (IR117) all attract considerable to substantial weight in favour of the appeal with the exception of the specific personal circumstances of the appellant and his family, their human rights, when balanced against the wider public interest and the best interests of the children. In addition, the Secretary of State gives less weight to the fact that future pitches may be provided within the Green Belt as this is a matter more appropriately considered through the review of the Local Plan. He goes on to consider that these matters in favour of the appeal considered individually or in combination, do not clearly outweigh the harm that would be caused by the development by reason of inappropriateness and the harm to the openness of the Green Belt (IR118).
24. Turning to whether a temporary permission should be granted, the Secretary of State has had regard to the Inspector's remarks at IR118. The Secretary of State disagrees with the Inspector in IR117 on the harm he identifies is caused by the appeal development and the weight he apportions to each of the identified harms. He considers that weighing the harm against the matters in favour of the appeal and the imposition of conditions would not render the development acceptable even for a temporary period.
25. Like the Inspector, the Secretary of State considers that dismissing this appeal would not necessarily lead to interference with the human rights of the appellant and his family, paragraph 18 above. However, the harm caused to the Green Belt would be substantial and dismissal of the appeal is a proportionate and necessary measure which would not amount to a violation of the human rights of the Appellant's family.
26. In making his decision, the Secretary of State has had due regard to the requirements of the Public Sector Equality Duty, in particular the need to eliminate discrimination, advance equality of opportunity and foster good relations between those with protected characteristics and others. In this regard and in coming to his decision he has considered the following impacts on the protected group: the need for sites, the lack of an alternative site that is suitable, affordable and available, the failure of policy, human rights considerations and the best interests of the children.

Overall conclusion

27. The Secretary of State disagrees with the Inspector's overall conclusions. He considers that the proposal is inappropriate development in the Green Belt and he attributes substantial weight to this harm. He considers that the harm arising from the development would not be clearly outweighed by other considerations, and he considers that the very special circumstances necessary for the granting of either a permanent or a temporary planning permission do not exist.

Formal decision

28. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses the appeal, and refuses planning permission for APP/R0660/A/13/2198596.

Conditions

29. The Secretary of State has considered the proposed schedule of conditions set out by the Inspector at the end of his report. He is satisfied that these conditions are necessary and relevant to the proposed development and meet the policy tests of the planning guidance – Use of Conditions and paragraph 206 of the Framework. However, he does not consider that they would overcome his reasons for dismissing the appeal.

Right to challenge the decision

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged.

31. A copy of this letter has been sent to Cheshire East Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R. Watson', is enclosed in a thin black rectangular box.

Richard Watson

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Frances Mahoney DipTP MRTPI IHBC

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

Date: 9 July 2014

TOWN & COUNTRY PLANNING ACT 1990

CHESHIRE EAST COUNCIL

APPEAL BY MR JOHN ALLAN

Inquiry held on 12 & 13 March 2014

Land lying to the north west of Moor Lane, Mobberley, Wilmslow, Cheshire SK9 6DN

File Ref: APP/R0660/A/13/2198596

File Ref: APP/R0660/A/13/2198596**Land lying to the north west of Moor Lane, Mobberley, Wilmslow, Cheshire SK9 6DN**

- 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 John Allan against the decision of Cheshire East Council.
- The application Ref 12/4247M, dated 6 November 2012, was refused by notice dated 24 January 2013.
- The development proposed is the use of land for the stationing of caravans for residential purposes for 1 no gypsy pitch together with the formation of additional hardstanding and utility/day room ancillary to that use.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

CONTENTS

	Page
Preliminary matter	2
The Site, Surroundings and Planning History	2
Planning Policy	3
Matters not in dispute	4
The case for the Appellant	5
The case for the Council	10
Summary of the verbal representations from interested persons who appeared at the Inquiry	12
Written representations from interested persons	14
Conditions	15
Inspector's conclusions	16
<i>Main issues</i>	16
<i>Openness and purposes of the Green Belt</i>	16
<i>Other considerations</i>	17
<i>General need for and provision of site/ Failure of Policy</i>	17
<i>Availability of alternatives</i>	17
<i>Personal circumstances</i>	18
<i>Human Rights</i>	19
<i>Best interests of the children</i>	20
<i>Other matters raised by third parties</i>	20
<i>Character and appearance</i>	20
<i>Highways</i>	21
<i>Ecology</i>	21
<i>Drainage</i>	21
<i>Living conditions</i>	22
Inspector's overall conclusion and balance	22
Recommendation	24
Annex A – Schedule of Recommended conditions	25
Appearances	29
Documents	29

Preliminary Matter

1. During the determination of the planning application there was some confusion for local residents as to the meaning of the term 'pitch', the appeal proposal being for permanent planning permission for a single gypsy pitch. At the Inquiry it was clarified that the proposed single pitch was for 2 caravans of which one would be static in nature, the other being a tourer, and a single day room along with associated hardstandings and landscaping¹. Application plan, 'Proposed Site' (dwg no 11_450_003 A) clearly shows this arrangement. The Council confirmed that they had considered the proposal on this basis.

The Site, Surroundings and Planning History

2. Moor Lane stretches from the suburban built up area of Wilmslow to the open countryside to the west. Along its length the character of the road changes from a residential street bounded by close knit dwellings to a single track country lane bounded by field hedgerows and trees. From its junction with Cumber Lane frontage buildings become more sporadic. The verdency of the surroundings increases as the open countryside takes over as the dominant characterising landscape. However, the immediate environs of Moor Lane does include some commercial uses including 'Ned Yates Garden Centre'; a peat farm; a small kitchen/bedroom/furniture manufacturing and fitting business; and Horticon Ltd., a landscape contractor's depot. All of these businesses are served by Moor Lane as a country lane. Moor Lane finally terminates in the Lindow Court Park caravan site, a permanent established location of predominantly mobile homes, some 50 in number.
3. The appeal site forms part of a larger rectangular shaped piece of overgrown land owned by the appellant and his wider family. An existing gated access from Moor Lane serves the site. To the north is woodland, whilst to the west is overgrown, uncultivated land. To the east and immediately neighbouring the appeal site is the Peat Farm, including a group of buildings some of which are now used by the kitchen/furniture design/manufacturing company. Opposite the appeal site access is the Foxholme Stables, which includes a residency (bungalow) as well as stabling and associated land.
4. The appeal site itself lies behind an existing substantial earth bund which is overgrown, including bushes and some small tree growth. Views into the appeal site are restricted by the extent and height of the bund². The appeal site includes some existing hardstandings. Two small sheds and an old caravan stand close to the eastern boundary of the wider site³. The site in the past has been used for the growing of Christmas Trees and as a landscape contractor's yard. It is evident from the condition of the land that such uses ceased some time ago. It remains unoccupied and overgrown.

¹ This mix of caravan type can be secured by means of a planning condition were planning permission to be granted.

² Lies outside of the red lined appeal site.

³ Lies outside of the red lined appeal site.

5. The wider surroundings of the appeal site are characterised by a gently undulating open landscape, punctuated by sporadic buildings and residencies and divided by field hedgerows and trees which add to this pastoral countryside setting.
6. The appeal site and its environs fall within the Greater Manchester Green Belt.

Planning Policy

7. Following the revocation of the North West of England Regional Spatial Strategy in May 2013 the Council has relied upon the relevant saved policies of the development plan which consists of **the Macclesfield Borough Local Plan 2004 (LP)**.
8. **LP policy DC31** (Development Control – Gypsies) is a criterion based policy setting out features and elements which need to be in place for planning permission to be granted for a gypsy caravan site. These include accessibility to shops, schools and essential services; compliance with other policies of the LP; access to the site being an adequate width and visibility; adequate parking; development not being prominent from public vantage points; retention of mature trees and hedgerows; protection of residential amenity; protection of landscapes and habitats of designated importance; and sympathetic design of buildings.
9. **LP policy GC1** (New Buildings in the Green Belt) sets out that approval will not be given for the construction of new buildings in the Green Belt unless it is for one of the following purposes: agriculture and forestry; essential facilities for outdoor sport and outdoor recreation, cemeteries and other uses that preserve the openness of the Green Belt and do not conflict with the purposes of including land in it; limited extension of existing dwellings; the replacement of existing dwellings; limited infilling within identified settlements; limited affordable housing for local community needs; and development within major developed sites.
10. The Council rely on the two above policies. However, the following policies also have some relevance albeit that the Council do not consider there to be any conflict with their terms in this instance:
 - **LP policy NE11** – Protection and enhancement of nature conservation interests
 - **LP policy BE1** – Design principles for new development
 - **LP policy DC1** – High quality design for new build
 - **LP policy DC3** – Protection of the amenities of nearby residential properties
 - **LP policy DC6** – Safe and convenient access for vehicles, special needs groups and pedestrians
 - **LP policy DC8** – Requirements to provide and maintain landscape schemes for new development
11. A new local plan is in preparation, the Cheshire East Local Plan, variously described as the Local Plan Strategy Submission Version (CS). This was consulted upon towards the end of 2013. It was hoped that the CS would be submitted for Examination in May 2014 with a possibility of hearings opening in

Summer 2014. Adoption would be some time afterwards. It is intended to identify specific sites for gypsy and traveller accommodation that are suitable, available and deliverable as part of a Local Plan Site Allocations document (LPSAD) in 2015. The site selection work is on-going. The Council confirmed that the proffered timetable may be subject to slippage.

12. It is highly desirable that local planning authorities should have an up-to-date plan in place. The Council are working towards achieving this goal and have committed considerable resources to moving their CS forward.
13. Nonetheless, in such circumstances, the emerging CS attracts limited weight in the consideration of this appeal proposal.
14. Along with the National Planning Policy Framework (the Framework), the Planning Policy for Traveller Sites (PPTS) March 2012 is also relevant
15. Accordingly the Council rely upon the relevant saved policies of the LP and national guidance in their opposition of this proposal.

Matters not in Dispute⁴

16. In relation to the planning considerations it is not disputed that:
 - The appeal site lies within the Greater Manchester Green Belt;
 - The material change of use and utility/ day room are inappropriate development which is, by definition, harmful to the Green Belt and should not be approved other than in very special circumstances⁵;
 - Substantial weight should be attached to any harm to the Green Belt⁶;
 - Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations⁷;
 - Mr Allan and his family are Gypsies for the purposes of the definition in Annex 1 of the PPTS;
 - There is a significant unmet need for gypsy and traveller accommodation both within the region and within the Borough, the Council being unable to identify a five year supply of such sites/land. This carries substantial weight;
 - The appeal site lies some 3.5 km from Wilmslow with the nearest bus stop being some 1 km away where a regular service to the surrounding towns and villages can be picked up;
 - In terms of its location, the appeal site is readily accessible to nearby services and facilities as well as public transport links;
 - The proposal would meet the sustainable objectives of the PPTS;

⁴ Source Statement of Common Ground Doc 1 and proofs of evidence.

⁵ Paragraph 87 of the Framework

⁶ Paragraph 88 of the Framework

⁷ Paragraph 88 of the Framework

- Caravans are already present as features in the landscape (Lindow Court Park);
- The existing hardstanding does not detract from the openness of the Green Belt in this location to any material degree;
- Were a temporary permission to be granted it should be for 5 years;
- The general thrust of the relevant policies of the LP is consistent with the objectives, aims and principles of the Framework; and
- The main parties agree that the appeal proposal is acceptable in terms of its impact on:
 - highway safety;
 - character and appearance of the area;
 - ecology; and
 - living conditions of existing neighbouring residents and the future residents of the proposed pitch.

The Case for the Appellant

17. The appeal proposal amounts to inappropriate development in the Green Belt. Therefore other considerations sufficient to outweigh the harm by virtue of inappropriateness, and any other harm so that very special circumstances exist, are needed. Substantial weight should be given to such harm⁸.
18. The most important attribute of Green Belts is their openness. Impact on openness is directly related to the quantum of development and not to the visibility of the site. Therefore, openness is best described as the absence of development.
19. The proposal for a single pitch is of minimal scale and the existing hardstanding reduces the actual impact on openness. As an encroachment into the Green Belt⁹ the resultant harm would be limited. Overall only limited weight can be ascribed to its affect.
20. The Council's concern centres solely on any harm to the Green Belt caused by inappropriateness. However, third parties consider harm also results in the following topic areas which the appellant addresses below.

Character

21. In respect of the character of the area, whilst woodland and agricultural land are obvious in the landscape, residential and commercial development can be found along Moor Lane. With a substantial caravan site at the dead end of Moor Lane, one would expect to see caravans in the landscape. The use is not unduly out of character in the locality¹⁰. The proposal has been designed to respond to local

⁸ Paragraph 88 of the Framework

⁹ One of the purposes of including land in the Green Belt

¹⁰ Officer's report to planning committee

character¹¹. A certain degree of change in the character of the area is inevitable. However, change does not automatically equate to harm. The proposal would not materially harm the character of the area given the number and type of development along Moor Lane and the surrounding area.

Appearance

22. Views of the appeal site from public vantage points are extremely limited due to the extent of existing and proposed boundary landscaping¹². Further landscaping would decrease views further. However, gypsy sites are not intended to be hidden from view. A balance must be struck. Any views from Moor Lane would be fleeting and through existing hedges and trees. Consequently, there would be no detrimental impact on the appearance of the surrounding area.

Ecology

23. The Ecology Survey (protected species survey report) concluded that the proposal could be permitted without causing material harm to habitats or protected species subject to conditions. The nature conservation officer concluded that the proposal is unlikely to have an adverse impact on protected species and no significant ecological issues are therefore anticipated¹³. No evidence has been submitted by third parties to cause these conclusions to be questioned. Therefore, it is reasonable to conclude that the proposal can be permitted without causing material harm to habitats or protected species.

Highways

24. The existing lane is used by commercial vehicles, horse riders, ramblers and those travelling to the mobile home park at the end of the road (50 or so pitches). Moor Lane is narrow in places and not suitable for large amounts of traffic. The evidence of third parties is anecdotal, lacking any firm data relating to traffic counts, speed data or occurrences of accidents.
25. Paragraph 32 of the Framework sets out that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. The Council, as highway authority, consider that this proposal as a single pitch does not raise any significant highway safety concerns¹⁴.

Living conditions

26. Third party claims that the proposal would have a grossly adverse impact upon the quality of life of residents is unfounded. The appeal site lies adjacent to commercial uses with the nearest dwelling being across the lane with an intervening hedgerow and bund. In such circumstances, there would be no impact on any existing residents.

¹¹ Paragraph 58 of the Framework

¹² Officer's report to planning committee

¹³ Officer's report to planning committee

¹⁴ Officer's report to planning committee

Material considerations

27. Given the appellant accepts the harm caused by the appeal proposal due to inappropriateness he must rely upon other material considerations which clearly outweigh that harm such that very special circumstances exist.

Need

28. The Council accept there is a significant immediate need for gypsy and traveller accommodation and substantial weight in favour of the appeal should therefore be attached. The Council accepted in cross-examination that there is a significant discrepancy between the need identified in the 2007 GTAA¹⁵ and that of the emerging up dated GTAA document¹⁶.

29. There is also some doubt as to the robust nature of the methodology used in the collecting and interpretation of the data. As a result, the appellant contends that the 2007 GTAA and the emerging GTAA do not take into account inward migration flows measured against 'turnover' and thereby underestimates the number of pitches needed¹⁷.

30. Caution should be shown in accepting the, as yet, unpublished GTAA data in these circumstances. Nonetheless, there is an accepted significant immediate unmet need for further permanent pitches and a significant need going forward. The Council agrees that substantial weight should be given to the immediate unmet need locally.

Alternative sites

31. There are currently no alternative sites in the Borough that are available to the appellant or any other gypsy and traveller. This is a point accepted by the Council. No evidence was submitted in relation to third party claims that pitches were available in other local authority areas¹⁸. The lack of any alternative site for any gypsy and traveller family in the Borough must carry significant weight in favour of allowing the appeal.

Failure of policy

32. The Council do not have an adopted policy that is based on an accurate assessment of need in the Borough. They cannot show a five year supply of deliverable sites. This is a matter of considerable weight in favour of the appeal¹⁹.

33. The historical policy approach has clearly failed to address the need for permanent gypsy site provision and the emerging future policy is unlikely to

¹⁵ Additional 37 to 54 permanent residential pitches between 2006 and 2016.

¹⁶ Additional 69 permanent residential pitches between 2013 and 2028

¹⁷ See paragraphs 92-106 of Green proof and paragraph 29-38 of Appellant closing

¹⁸ Alternative pitches must be available, affordable, acceptable and suitable. To be available the pitch must as at the date of the decision have planning permission, be vacant and be actually available to a proposed occupier – (Administrative Court (Angela Smith v Doncaster MBC (2007) EWHC 1034 (Admin))

¹⁹ APP/Y3615/A/10/2131590 (S of S) (Green proof appendix B5 para 21), APP/B1930/A/11/2153741 (S of S) (Green proof appendix B6 para 17) & APP/C3620/A/12/2169062 (S of S) (Green proof appendix B7 para 13)

appropriately respond being based on a GTAA which is less than robust. The failure of policy to deliver identified provision is set to continue. Significant weight should be afforded to the failure of policy in this regard²⁰.

Five year supply

34. The Council has accepted they can not identify a 5 year supply of sites. Given the likely underestimation of the new GTAA it seems likely that the Council may not be planning to allocate enough sites to meet a five year land supply in the future. Significant weight should be given to the lack of supply both in considering a permanent consent and in considering a temporary consent²¹.
35. The Council has no firm timetable to address the identified shortfall in sites. The recent 'call for sites' only yielded two possible sites which have yet to be tested. The LPSAD promoted adoption date of early 2016 is unrealistic and slippage in the earlier stages will push this date back further. Should a permanent permission not be considered to be justified then a 5 year temporary permission should be permitted. This would allow the Council to move forward with site provision and provide a temporary solution for the family. The needs of the children are a primary concern and their best interests can only be safeguarded by a temporary permission at the very least.

Likely location of gypsy sites in the Borough

36. Some 50% of the Borough is subject to significant constraint being Green Belt, National Park or built up urban area. The Council accept that some pitches will need to be located in the Green Belt²². Some weight should be given to this material consideration in favour of the appeal²³.

Personal circumstances

37. These only need to be considered if there is a departure from policy and/or other harm and that the other material considerations are insufficient to outweigh the identified harm. In such circumstances a personal condition would be appropriate. The relevant elements of the personal circumstances are a personal need for a suitable home, health needs and educational needs.
38. The appellant and his family have a gypsy and traveller heritage. He has lived his life on gypsy sites in Skipton and Helsby. He travels to find work and attends gypsy and traveller fairs when the health of his son allows. There is no dispute that the appellant falls within the definition of a gypsy and traveller as set out in the PPTS.
39. The appellant and his family currently occupy (rent) a lawful pitch on a private site, which is full, but have no security of tenure. The appellant could be asked to leave the pitch with only one weeks notice should one of the relatives of the

²⁰ APP/P0240/A/12/2179237 (S of S) (Green proof B9 para 19)

²¹ APP/C3620/A/12/2169062 (S of S) (Green proof appendix B7 para 20)

²² Mr Wakefield conceded this point in cross-examination

²³ APP/P0240/A/12/2179237 (S of S)(Green proof B9 para 17) & APP/P0119/C/07/2037529 (Green proof appendix 10)

- owner require the pitch²⁴. The pitch is only large enough to accommodate a touring caravan in which the family of 5 live. There is a shed with a washing machine, sink and shower but the cramped nature of the pitch does not allow a reasonable standard of accommodation for a family with children.
40. In addition, their pitch is some 33 miles by road from the Manchester Eye Hospital (the Hospital) where their eldest son²⁵ attends. He has significant health issues requiring regular GP and hospital appointments²⁶. He can require emergency specialist treatment on occasions. It is important to the appellant and his wife that they have a safe stable home where their son can have ready access to the level of care he needs.
41. The appeal site is only some 13 miles from the Hospital. This was one of the deciding factors in choosing the appeal site. It would offer a home location more easily accessible to the Hospital to respond to the needs of the appellant's son. In addition, a secure stable base would provide ease of access to health services for all family members. The edge of settlement location would also provide ready accessibility for the appellant to seek work more locally, particularly when he needs to be close to home to attend hospital appointments. He does not have resources to seek another site elsewhere, the appeal site having been purchased with the help of other wider family members, recognising the particular needs of the children and the long term benefits the appeal site offers to their well-being.
42. The reduced journey time to the Hospital would also increase the amount of time available to the family, including the children, for other activities.
43. The appellant's 3 children currently all attend school. His eldest child receives considerable support due to his condition. This would continue should the proposed move be allowed. Whilst the children are all getting on well at their present school, a permanent secure base would provide greater security for the long term schooling of the children²⁷. This is a material consideration of significant weight.
44. The improvement in living conditions for the family that moving to the appeal site would represent (having a static caravan with separate bedroom and living space and an adequate utility/day room) would be a significant advantage in health terms. The health needs of the family, in combination should be given significant weight. It is in the best interests of the children to be able to live on a site where they can enjoy an appropriate standard of amenity and living conditions. The appeal site offers considerable advantages to the family whilst presenting no harm to material considerations.
45. The appellant considers that any harm is clearly outweighed by the material considerations relied upon. However, should this not be considered to be the case then it is submitted that the lesser harm caused by a temporary permission is outweighed by the same material considerations such that a temporary permission ought to be forthcoming.

²⁴ The family has lived at Helsby for 5 years but the threat of eviction is a real fear for the appellant.

²⁵ Age 10 years

²⁶ Witness Statement Doc 13

²⁷ Witness Statement Doc 13 & appellant's closing Doc 19

46. The outright dismissal of this appeal would represent a breach of Article 8 European Court of Human Rights in that the decision would impact upon the ability of the appellant and his family to use land as their home in circumstances where there is no alternative lawful accommodation. In addition, the obligation under Article 3 of the United Nations Convention of the Rights of the Child to treat the needs of the children who would live on the site as primary consideration would be engaged. The welfare and wellbeing of the appellant's children can only be safeguarded by the grant of a permanent or in the alternative a temporary planning permission. This is a weighty matter in the consideration of this appeal.

The Case for the Council

47. The findings of the Cheshire Partnership Area Gypsy and Traveller Accommodation and Related Services Assessment (GTAA) were published in May 2007. The study looked at the position on authorised sites, together with evidence of unauthorised developments and encampments. It also carried out consultation with key stakeholders in order to estimate concealed households, household formation and potential movement from bricks and mortar housing. The study set out an estimated need in Cheshire East for an additional 37 to 54 permanent residential pitches between 2006 and 2016. A replacement GTAA, at the time of the Inquiry, was nearing completion. Whilst the emerging GTAA had not yet been published, the headline figure of anticipated need for pitches of 69 between 2013 and 2028 was included in the emerging CS policy²⁸. Whilst the GTAA has yet to be tested as a robust evidence base through the examination process, the Council accepted that the identified need would not be less than 69²⁹. On this basis the Council accept there is an identified need for additional gypsy and traveller sites across the Borough.
48. The LPSAD is not anticipated to be in place (allowing for some slippage) within the next 4 years. The Council accept that substantial weight should be attached to unmet need and significant weight to the lack of alternative accommodation³⁰.
49. Full planning permission was refused by the Council on the basis that the proposal represented an inappropriate form of development in the Green Belt. It would result in a loss of openness and an encroachment into the countryside. At that stage no very special circumstances were considered to exist in this case to justify the development in the Green Belt. Therefore, the proposal was found to be contrary to LP policies GC1³¹ and DC31.
50. The Council recognised that there were existing structures on the site (sheds and caravan and some limited hardstanding), but considered that the proposed utility/day room and the new area of hardstanding would increase the permanence of site structures. The caravans and utility/day room would be larger than those existing structures on site and spread across the width of the site. Cumulatively the impact of the proposed caravans, parking of vehicles and domestic paraphernalia would reduce the openness of the Green Belt in this

²⁸ CS Policy SC 7 (Doc 14)

²⁹ Mr Wakefield in cross-examination

³⁰ Mr Wakefield in cross-examination

³¹ In so far as it relates to the erection of the utility/day room the Council conceding that it does not apply to the change of use of land to a gypsy and traveller site

- location. This would conflict with the most important attribute of Green Belts to safeguard the countryside from encroachment.
51. The loss of openness and encroachment weighs against the proposal and should be added to the harm through inappropriateness.
 52. The northern half of the Borough includes a considerable amount of Green Belt, but there still remains such undesignated areas of countryside, outside of development boundaries. It is within such areas that planning permission has been granted in recent years. Any alteration to the Green Belt boundary to accommodate a gypsy site should be done through the plan making process and not in response to a planning application. It is not accepted that future gypsy sites to be identified in the LPSAD will need to be in the Green Belt, although the Council did accept this could not be ruled out³². Neither LP policy nor emerging CS policy states gypsy and traveller sites are precluded from the Green Belt.
 53. The Council accept there are no alternative sites available in the Borough for gypsy and travellers.
 54. The Council does not seek to rely on any further harm, in this case, other than that to the Green Belt.
 55. At the time the planning application was determined, the Council had limited evidence of the appellant and his family's personal circumstances (Doc 5). They considered the evidence vague and gave it limited weight. Further evidence has now been submitted as part of the appeal process (appellant's proof of evidence and Doc 13). In evidence in chief Mr Wakefield confirmed the new medical information provided, as well as that relating to the inadequacies of the appellant's existing site, did not change his view as to the weight which should be attributed to these circumstances.
 56. The appellant pays weekly rent on his current pitch. He has not been given notice to leave and there is no evidence this is likely. The appellant, even from his current site, has managed to get his son to the Hospital for all of his appointments. The emergency appointments referred to resulted in his son being seen the next day. The catchment area of the Hospital is likely to be considerably beyond where the appellant currently lives. Many other patients may have similar or more arduous journeys than he does. At off-peak times from his existing home pitch the journey takes about 45-60 minutes. In peak times this can take up to 90 minutes by car. No evidence has been produced that the appeal site would offer a quicker commute to the Hospital than that existing. Traffic conditions have not been tested. GP services are readily available to the family and they are registered with one in Helsby. The children are settled at school. The personal needs of the appellant and his family are being met and there is no evidence that such circumstances are about to change.
 57. The Council is mindful that taking into account the European Convention on Human Rights, emphasis should be placed on the special and vulnerable position of gypsies as a minority racial group. Therefore, special consideration should be given to the needs of gypsies and their lifestyle. The Council attribute particular weight to the personal circumstances of gypsies, including those relating to

³² Mr Wakefield in cross-examination.

health and educational needs of children, recognising they have a duty to safeguard and promote the welfare of children, their best interests being a primary consideration³³. They regard these elements as being 'very special circumstances' when weighing into the balance of a decision.

58. The best interests of the children in this case are served by having a settled base with suitable access to health and education services. These interests are being met by their existing home site. There is no substantial evidence that the security of their existing home is at risk. Therefore, treating the best interests of the child as being a material consideration of such weight that no other material consideration is given more weight, the appellant has still not shown the necessary very special circumstances to justify a grant of planning permission in this instance.
59. In respect of a permanent permission³⁴ substantial weight is given to the harm to the Green Belt. Only limited weight is afforded to the appellant's personal circumstances. Significant weight is given to the Borough wide need for this gypsy accommodation; the lack of alternative sites available; and the failure of policy to address the identified need. The Council is mindful of the terms of the Ministerial Statement on Planning and Travellers (July 2013) which sets out that the single issue of unmet demand, whether for traveller sites or for conventional housing, is unlikely to outweigh harm to Green Belt and other harm to constitute the 'very special circumstances' justifying inappropriate development in the Green Belt. Therefore, the Council conclude that the significant need within the Borough for gypsy and traveller pitch provision does not outweigh the identified harm to the Green Belt arising from the proposal, nor considers that very special circumstances exist to weigh in favour of allowing the appeal.
60. In respect of a temporary planning permission, the Council confirmed they did not go beyond considering the planning application for a permanent permission. Mr Wakefield, in cross-examination, accepted this was a further step they should have taken. Nonetheless, they consider the same harms as identified above would still exist. In addition, a temporary permission would not provide a settled base for the family in the medium to long term, there being disruption once the permission expires. Whilst the Council accepted that the matters put forward by the appellant weigh more heavily in favour of the development than when considering a permanent permission³⁵, they still do not outweigh the substantial harm to the Green Belt arising from the proposal, even to justify a temporary permission.

Summary of the verbal representations from interested persons who appeared at the Inquiry

61. **Cllr Christopher Dodson, Chairman Wilmslow Town Council.** The appeal proposal amounts to inappropriate development in the Green Belt. The unmet need for gypsy and traveller accommodation in the Borough does not outweigh that harm. In addition, Moor Lane is a single track dead-end road with no pavement, used by large commercial vehicles, including the transportation of containers, visiting the Horticon Horticultural business site. In addition, with 50

³³ Children Acts 2004

³⁴ The appellant applied for permanent planning permission

³⁵ Mr Wakefield in cross-examination

mobile homes on the Lindow Court Park, the bespoke kitchen maker, the bungalow and stables and the two farm houses served off Moor Lane considerable levels of traffic already use the country lane. The bends and high roadside hedges obscure visibility. This is not a low speed road and is also used by horses, ramblers and walkers. With 3 children potentially living on the appeal site this gives cause for concern regarding their safety when using the lane.

62. **Cllr Gary Barton, Ward member Wilmslow West & Chorley, Cheshire East Council**³⁶. He agreed with the points made by Cllr Dodson in relation to access to the site and the suitability of Moor Lane taking into account the existing levels of traffic using the road. However, there is a more fundamental objection to the proposal. It is clear from the consultation process undertaken as part of the production of the CS that Wilmslow residents place a high value on the Green Belt. Development should only be permissible where there are exceptional circumstances that can only be resolved by building on Green Belt land. The focus of the concern for the considerable number of local residents who objected is that the appeal site lies within the Green Belt. The Council rightly refused permission in line with national and local planning policy. No 'special circumstances' have been presented to override policy. There is no real evidence to suggest that the specific location of the appeal site is in anyway uniquely suited to the appellant's situation. Nor is there any clear evidence of why the applicant's needs would only be met by building in the Green Belt. There are no exceptional circumstances in this case and no demonstrable benefit to the local community to justify a breach in planning policy.
63. **Mr Evans – local resident**³⁷. Mr Evans, similarly, was opposed to development in the Green Belt in principle alleging there were no very special circumstances in this case. The submitted environmental study is flawed as no survey work was undertaken at night. It is a difficult site to survey due to its overgrown nature. As it is surrounded by countryside and a peat bog it is reasonable to conclude it must be populated by wildlife. Therefore, he questions the outcomes of the ecological study. His was also concerned this might turn into another Dale Farm site.
64. **Mr Ansell – local resident**. Green belt excites a degree of passion from local residents being protective of its designation. 37,000 responses have been received relating to the consultation on the CS specifically on the topic of Green Belt. The Council's failure to meet the established need for gypsy and traveller accommodation is acknowledged as is the likelihood of slippage in the finalising of the CS and the LPSAD. Whilst the Council has been tardy so far, the process is now underway. The CS procedure should be allowed to progress as the Council are now determined to meet their obligations. The identified tardiness should not be used to justify the need for the gypsy and traveller sites.
65. There is no urgent need to re-house the appellant and his family. The children still benefit from access to health and education facilities where they currently live. A 30 mile commute to the Manchester Eye Hospital is reasonable. Families in the settled community, similarly, may have to undertake a similar journey. There are 3 gypsy and traveller sites in Manchester closer to the Hospital,

³⁶ Doc 9

³⁷ Doc 7

although Mr Ansell had no information if they were full or had waiting lists. The appellant's personal circumstances do not amount to very special circumstances.

66. The immediate locality is a pleasant safe family area which is not suited to a gypsy and traveller site. The proposal would cause disturbance to residents and an unwarranted precedent for similar development.

67. **Mr Bagguley – local resident.** Like the parties above Mr Bagguley was opposed to development in the Green Belt in principle and had concerns regarding the suitability of Moor Lane as access. There is sufficient brown field land available to accommodate such sites. The CS promotes allocations for housing and commercial land. As yet none are included for gypsy and traveller sites. Provision is being proffered by the Council, but it has yet to go through the process of examination. Further, on ecological grounds the proposal should fail.

Written Representations from interested persons ³⁸

68. Over 500 letters of representation were received at the time the planning application was considered by the Council³⁹. Further letters were then received in relation to this appeal. The following is a list of the essence of the concerns raised:

- Inappropriate development in the Green Belt;
- Loss of openness;
- No very special circumstances;
- Out of character with the area;
- Unsustainable location;
- Poor public transport links;
- Brownfield sites should be considered first;
- Risk of flooding;
- Not a site promoted by the Council as a gypsy site;
- Seeking to justify a specific and identified need for a traveller site should be done through the plan-making process and not via a planning application;
- Noise and disturbance to quiet area;
- Impact on nature conservation (including peat bog);
- Housing previously rejected in the area;
- Day room unnecessary given facilities in the mobile home;
- Proposal vague and incomplete;
- Could result in a business running a caravan site for other gypsy families;

³⁸ Both at the application and appeal stage

³⁹ Officer's report to planning committee

- Permission could lead to further development;
- Highway safety concerns due to single track nature of Moor Lane;
- Pressure on existing schools;
- Drainage concerns;
- No provision for waste storage/collection;
- No parking provision;
- Impact upon network of bridleways;
- Impact on property values;
- Already a caravan site close by (Lindow Court Park);
- Japanese Knotweed exists on the site;
- Existing trees would be at risk;
- Ecological survey inadequate;
- Personal circumstances not evidenced; and
- Other traveller sites closer to Manchester Eye Hospital

Conditions

69. Conditions in the event that the appeal is allowed, are included in this report at Annex A. Any temporary permission should be restricted to 5 years, along with a condition relating to the reinstatement of the appeal site once the temporary period has passed so as not to diminish the character and appearance of the countryside. In the cases of both temporary and permanent permissions the personal circumstances of the appellant and his family have weighed heavily in the balance of this appeal over and above the overall unmet need for gypsy and traveller accommodation. Therefore, a personal permission in this instance is appropriate. As a personal condition would be imposed it would not be necessary to also impose a Gypsy-occupancy condition.
70. As the submitted plans show specifically the type of caravans proposed to be stationed on the site, a condition restricting the type of caravan should be imposed to limit the visual impact. Details of the external finishes of the utility/day room building, along with hardsurfacing materials should be agreed for similar reasons.
71. I am aware the appellant wishes to carry out further soft landscaping (planting) on the site. In the interests of visual amenity it is reasonable and necessary to impose a condition to this effect. Japanese Knotweed has colonised part of the site, so appropriate ongoing measures should be established to eradicate this highly invasive plant. A condition relating to the protection of nesting birds is also justified in the interest of amenity as well as biodiversity.
72. A condition requiring that the site layout plan and utility/day room plan be implemented should also be imposed to safeguard the satisfactory development of the site.

73. The parking of larger commercial type vehicles or the use of the site for commercial activities will not be permitted so as to safeguard the character and appearance of the area.
74. Limitations on external lighting are necessary to minimise visual impacts and the character of the countryside as is the control of walls, fences and gates. To avoid unsightly bin storage, a condition requiring such details to be agreed should be imposed. Notwithstanding the reference on the site plan to a means of foul drainage (no details of the size or efficiency of such an installation have been provided), a scheme for the provision of foul water drainage is a necessary prerequisite to minimise pollution and in the interests of general amenity. For the same reason details of surface water drainage and the connection to mains electricity are also required.

Inspector's conclusions

75. I have reached the following conclusions based on the evidence given at the Inquiry, the written representations made and my inspection of the site and its surroundings. The numbers in square brackets [] denote earlier paragraphs in this report.

Main issues

76. As already established the appeal site lies within the Green Belt. PPTS establishes that traveller sites in the Green Belt are inappropriate development, which is, by definition, harmful. The parties are in agreement on this point. Therefore, the main issues are:
- The effect of the proposal on the openness and purposes of the Green Belt; and
 - Whether the harm arising by reason of inappropriateness and any other harm would be clearly outweighed by other considerations, including the general need for and provision of sites, the availability of alternatives, and the personal circumstances of the appellant and his family, so as to amount to the very special circumstances necessary to justify the development.

Openness and purposes of the Green Belt

77. The introduction of a static caravan, tourer, utility/day room, hardstandings and associated domestic paraphernalia would harm the openness of the Green Belt. The existing hardstanding, sheds and caravan on the appeal site have already reduced the openness of the Green Belt, in that urbanising features exist where once they did not. It is reasonable to suppose that the previous commercial uses/activities of the site also affected the Green Belt. However, no evidence has been submitted in relation to the lawful nature of the previous uses and therefore, the weight given to off-setting the harm caused by the appeal proposal against any previous use or development is significantly reduced in these circumstances⁴⁰.

⁴⁰ The appellant has not tried to claim the appeal site is previously developed land in this context.

78. Whilst the reduction in openness, or lack of development, would be limited in scale and would be restricted to the central part of the appeal site in the context of a much larger site, it would nevertheless add to the harm by virtue of inappropriateness.
79. However, given the concentration of the proposal in the centre of the appeal site, tucked in behind an existing frontage bund; its relationship with the neighbouring agricultural and commercial units; and taking into account the extent of the existing hardstandings, and the established wider boundary landscaping, the proposal would not encroach into the countryside [2, 3, 4, 19]. Therefore, the purposes of the Green Belt would not be compromised in this instance.
80. Nonetheless, the proposal is inappropriate development in the Green Belt which would reduce its openness. It is therefore by definition harmful and contrary to LP policies GC1 and national policy.

Other considerations

General need for and provision of sites/Failure of Policy

81. National policy recognises that there is a need to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply. The Council acknowledge through the 2007 GTAA as well as the head-line figure of the more recent GTAA, included within the emerging CS, that there is a significant unmet need for pitches both over the next 5 years and into the future [47]. The identified need, as the appellant suggests, may need some re-appraisal [28, 29]. However, it is through the CS examination process that such data and the methodology of its collection and interpretation will be considered [47]. The unpublished nature of the more recent GTAA makes analysis more problematic. Nonetheless, the Council acknowledge that substantial weight should be attached to the unmet need within the Borough [48].
82. They also accept that they do not have a 5 year land supply for gypsy and traveller accommodation in the Borough [47]. With no surety of when this situation may be remedied, taking into account slippage in the production of the LPSAD, and the actual date for the physical provision of the required pitches being some way into the future, a date unspecified by the Council, the lack of gypsy and traveller sites carries significant weight in support of the appeal proposal [11, 48].
83. At the present time the Council does not have an adopted policy based on an assessment of need to provide pitches [32]. The Council is responding to this deficiency within its preparation for the LPSAD. However, this does not overcome what in essence is a material failure of policy, particularly taking into account the possible shortcomings of the emerging GTAA in respect of calculating need and any backlog and the lack of a 5 year land supply [32, 47]. For the time being the Council's failure is set to continue. Therefore, significant weight should be given to this aspect of the proposal in favour of allowing the appeal.

Availability of alternatives

84. In the face of the outstanding need for pitches, the Council has not promoted any alternative, suitable sites for the appellant and his family [53]. Sites closer to

the Hospital within the Manchester/Salford area were referred to by the third parties [65]. However, there was no evidence that there were any vacancies on these sites and the appellant was concerned that as English Romany gypsies they may not be welcome.

85. The appellant has the option to remain on his current pitch where his family have access to health and education services and the children are settled [39]. However, the lack of security of tenure of the pitch gives pause to consider the outcome, were the owner of the site to need the pitch for his family members at short notice. With only one weeks notice required, this leaves the appellant vulnerable to reverting the family to a life on the road or unauthorised occupation of an unknown site⁴¹, there being no authorised alternative sites to move to.
86. Whilst the family have lived at Helsby for 5 years, the uncertainty of their tenure has been hanging over them, not knowing from week to week when they may be asked to leave. The appellant was unable to produce a written tenancy agreement to prove the brevity of his notice period. However, in the gypsy community agreements mainly rely upon the shake of a hand. No evidence was produced to refute the appellant's witness statement (Doc 13) or his oral evidence in this regard⁴². It should therefore be afforded considerable weight.
87. The possibility of eviction from their current home pitch is real and undermines any sense of security for the family, particularly taking into account their education and health needs. What alternative the appellant does have⁴³ would not provide the settled base required to facilitate easy access to schooling and health facilities and would represent an interference with their home and family life.

Personal circumstances

88. The 3 children are aged 10 and 8 years old⁴⁴. The whole family lives in a touring caravan, their existing pitch being too small to accommodate a static caravan [39]. The pitch is cramped and does not provide amenity space for the children to play out. In addition, the touring caravan has limitations in respect of the space available for the children to do homework⁴⁵ and have their own private space. The appellant's children are settled at Helsby and are doing well at school, including his son who has special educational needs [43]. Mr and Mrs Allan are committed to ensuring their children have a good education. Their son would be moving onto high school in September, so this would be a good time to move, anticipating the change for him⁴⁶.
89. As the children grow, with 2 boys and a girl, the existing space will come under pressure and may affect the capacity of the children to undertake school work in an appropriate setting [43, 44].

⁴¹ There is an injunction on the appeal site to prevent the appellant moving onto it. It does not present a lawful alternative.

⁴² Mr Allan was a credible witness and was open and truthful about his situation.

⁴³ The only credible alternative available to the appellant is to move onto the road. He does not have the resources to purchase more land [41]

⁴⁴ Witness statement Doc 13

⁴⁵ They currently use their bunks (source cross examination of Mr Allan)

⁴⁶ Mr Allan – evidence in chief

90. The existing touring caravan on a small pitch does not represent an appropriate long term form of accommodation for the family [39]. This, along with the insecurity in their tenure of the pitch, weighs in favour of the proposal [39].
91. The appellant is looking to increase ease of access to the Hospital which the family regularly visit for his son who has a serious eye condition [40]. A 33-35 mile commute by car which, at peak times, can take in the order of 90 minutes is not ideal [56]. With congestion around the M6 being common, the worry of missing appointments is a concern. A reduction in the time spent sitting in the car for the whole family would be a benefit [42].
92. The appeal site is only 13 miles from the Hospital [41]. However, no evidence was produced to show that the reduction in distance would actually reduce travel time⁴⁷. The appellant suggested it might reduce travel time by 30 minutes but he admitted he had not actually driven the route at varying times in the day. Anecdotal evidence was given by local residents that at peak times, traffic into Manchester is extremely heavy and they questioned whether there would be a significant reduction in travel time at all.
93. The appellant explained his son sometimes needs emergency appointments at the Hospital. However, in general these appointments are for the following day, having telephoned the Hospital⁴⁸ [40]. In these circumstances living closer to the Hospital would not make any difference in increasing response rates to what the appellant considers an emergency situation.
94. The existing home pitch has provided ready access to health facilities for the whole family and more particularly for the eldest son. The appeal site would similarly provide access to GP services as well as the Hospital. Its location closer to the Hospital is not an overwhelming positive factor as the evidence is such that there is no certainty that journey times would be reduced.
95. However, the lack of security for the family in the tenure of their pitch is a factor which could affect their access to health facilities. If they were given notice to quit the site, the lack of alternatives would push them into a situation where they may be unable to readily access health facilities, particularly for their son⁴⁹. This is a situation which, in the interests of the children, should be avoided and so affords substantial weight in the balance of this decision.

Human rights

96. The lack of security of tenure on the appellant's current site and the dismissal of this appeal would be likely to result in the family being homeless were the existing pitch owner to require the appellant to quit their existing pitch⁵⁰. This would result in an interference with their home and private and family life as set out in Article 8 of the European Convention on Human Rights. It is necessary to consider whether it would be proportionate to refuse planning permission in all the circumstances of the case.

⁴⁷ Mr Allan in cross examination

⁴⁸ Mr Allan in cross examination

⁴⁹ Injunction point –footnote 41 above

⁵⁰ Mr Allan - Inspector's questions

97. That interference must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8, particularly the economic well-being of the country (which includes the preservation of the environment) [46]. The only harm identified is to the Green Belt and this could not be overcome by planning conditions.
98. The need to maintain a gypsy lifestyle is an important factor in the decision making process. Those gypsies without an authorised site face difficulties in endeavouring to continue their traditional way of life within the law. There is no site currently available within the Borough and that lack of alternatives makes any interference with the appellant's private and family rights more serious [46]. Whilst the appellant remains on a lawful site, its suitability to meet the needs of his growing family and the insecurity of tenure with which they live week on week needs to be taken into account [39]. Harm caused to the wider public interests would be limited to that in relation to the impact on the Green Belt.

Best interests of the children

99. The 'best interests of the child' is a primary consideration⁵¹. It is, however, not the only consideration. It does not mean that identifying their best interests would lead inexorably to a decision in conformity with those interests⁵². The important thing is to consider the interests of the child first. In this case achieving a safe and secure home base in which the children can thrive, both in terms of their overall health and educational needs, is a primary consideration. The move to the appeal site would certainly greatly improve the living conditions of the children, improving upon their existing living environment. It would also present greater opportunities to more successfully extend their education outside of the school setting.
100. As already touched upon above [91-94], access to health facilities would not be greatly improved. However, the consequences of being forced to quit the family's existing home pitch, without a credible pitch alternative being available, are weighty matters [95] in the balance of the best interests of the children. This, along with the improvement in their living conditions and potential to enhance their education, does weigh heavily as a primary consideration in the balance of the decision.

Other matters raised by third parties

Character and appearance

101. The surrounding countryside is generally pastoral in character, although along Moor Lane it is punctuated by commercial uses and some residencies. In addition, with the presence of Lindow Court Park caravan site, caravans are not uncommon features in the landscape [16,21].
102. The mature frontage hedgerow and bund colonised by ruderals, both serve to significantly restrict public views into the appeal site. From Moor Lane only oblique views from the access and glimpsed longer views through the hedgerow

⁵¹ Article 3(1) of the United Nations Convention on the Rights of the Child

⁵² AZ v SSCLG and South Gloucestershire District Council [2012] EWHC 3660(Admin) – Green proof Appendix B3

would be achievable. The site's location, next to the existing commercial buildings, the extent of the existing landscaping and its potential for enhancement, and the familiarity of caravans in the immediate landscape, would be sympathetic to the character of the local environment. The design of the proposed utility/day room, subject to a condition relating to its external material/finishes would not materially harm the character and appearance of the countryside. In this way the terms of LP policies BE1, DC1 and DC8 would not be compromised.

Highways

103. Moor Lane, in the vicinity of the appeal site is rural in nature lacking lighting or pavements. It is not busy, but I observed traffic travelling at some speed as well as large lorries and towing vehicles using the lane. However, I also saw local residents walking their dogs and riding horses along the road. This assures me that, whilst anyone walking or cycling into Wilmslow would need to be cautious, pedestrians, cyclists and horse riders are not uncommon, unexpected users of the road. Moor Lane as a country lane is not unusual in this respect and I do not consider it to be any different from other rural roads in the locality.

104. The existence of the commercial uses along Moor Lane; the large caravan park at its dead-end; and the existing access to the appeal site, leads me to the conclusion that the impact of the proposed single pitch on traffic flows along the lane would be minimal [24,25].

105. In this way highway safety for pedestrians and drivers would not be prejudiced by the introduction of the proposed use in accordance with LP policies DC6 and DC31.

Ecology

106. The Protected Species Survey⁵³ concludes that there is no particular valuable habitat on site. Mature trees within the wider site are valuable for invertebrates, birds and bats, but there was no evidence of water voles, badgers or reptiles. In general the potential of the site is regarded as normal and representative of the habitats and the local area. The proposed site would be within the central area of the wider site where hardstandings already exist and the land has been actively used for commercial purposes in the past. There has been no challenge to the conclusions or collective data of the survey report [23]. On this basis the proposal would not adversely affect nature conservation interests in accordance with LP policy NE11.

Drainage

107. Concern was expressed by local residents relating to surface water runoff and the means of foul drainage of the proposed site [68]. The submitted plan and application form indicates a package treatment plant for foul drainage. There is no reason to think this would not be appropriate in this location. Nonetheless, details of the means of both foul and surface water drainage can be dealt with by means of a condition requiring the approval of the proposed drainage schemes.

⁵³ Green proof appendix A6

Living conditions

108. The closest residential neighbour to the appeal site is Foxholme Stables on the other side of the lane beyond the frontage bund and hedge. At that distance and with these intervening features the living conditions of residents would not be unacceptably harmed by the introduction of the proposed use [26, 16, 66].
109. The appeal site also lies adjacent to the peat farm and the kitchen manufacturer/fitter. These uses, no doubt, generate some noise and disturbance in this otherwise quiet countryside setting. In this context it is reasonable to conclude that the proposed single pitch would not generate any more noise or impact on residents living conditions more so than any other residency along Moor Lane. For this reason the terms of LP policies DC3, DC1 and DC31 would be met.

Inspector's overall conclusion and balance

110. There is definitional harm to the Green Belt arising from inappropriate development. Additional harm arises from erosion to openness which is an essential characteristic of Green Belts. Substantial weight should be given to any harm to the Green Belt. The very special circumstances needed to justify development that is harmful to the Green Belt, and any other harm, will not exist unless that harm is clearly outweighed by other considerations.
111. No other harm has been found.
112. However, on the other side of the balance are other considerations, those being the level of general unmet need [81]; the lack of a 5 year land supply for gypsy and traveller accommodation [82]; the limited progress in up dating future need beyond 2016 within a reasonable timeframe; and the failure of policy [83] to deliver identified provision is set to continue which all weigh in support of the appeal proposal. Significant weight should be attributed to all of these factors, acknowledged by the Council, as they will remain unmet for some considerable time [48].
113. In addition, the Council accept that they cannot rule out the location of future pitches in the Green Belt [36, 52]. As no alternative sites have been suggested by any party either in or outside of the Green Belt which it is certain would be suitable and available to the appellant, it is reasonable to assess the appeal site as to its general suitability as a gypsy and traveller pitch. The terms of the relevant LP policies, in particular LP policy DC31 [8], have been examined above [101-109 inclusive] in relation to the performance of the appeal site against their criteria. Notwithstanding the location of the appeal site within the Green Belt, the appeal site performs well. This is a positive factor in favour of the proposal. Other than the harm to openness it is accepted there is no other material harm which would result from the proposed use of the appeal site [54, 111].
114. The Minister has been clear in his statement that the single issue of unmet demand for traveller sites is unlikely to justify inappropriate development in the Green Belt⁵⁴ [59]. That notwithstanding, unmet need is not the only issue in this case.

⁵⁴ DCLG Written Ministerial Statement – Planning and Travellers – 17 January 2014

115. Given the personal circumstances of Mr Allan and his family, substantial weight should be attached to the uncertainty in which they live in terms of the security of tenure on their existing site, along with the cramped living conditions which they currently experience [39, 44, 88, 89, 90]. The lack of alternative provision of pitches, should they be required to leave their existing home site, would have major consequences for the health of the family as a whole and the education of the children [40, 41, 43, 44, 89, 95, 100]. This would be an interference with their human rights in this eventuality and would not be in the best interests of the children. Substantial weight should be attached to these circumstances [46, 100].

116. Notwithstanding any harm to the Green Belt, the otherwise accepted suitability of the appeal site to accommodate a gypsy and traveller pitch [101-109 inclusive] should be given significant weight in the balance of this decision.

117. Therefore, on one side of the balance is the substantial harm to the Green Belt caused by inappropriateness. Whilst on the other, weighing in favour of the proposal in combination are the following factors:

- Significant unmet need for pitches [81];
- The lack of a 5 year land supply for gypsy and traveller accommodation [82];
- Material failure of policy [83];
- Lack of surety of when these above factors may be resolved [82];
- The countryside has been safeguarded from encroachment [79];
- Lack of available, affordable, acceptable and suitable alternative pitches [31, 53, 84-87 inclusive];
- Acknowledgement that future pitches may be provided in the Green Belt [36, 52];
- The lack of material harm⁵⁵ resulting from the proposed change of use upon matters of acknowledged importance [101-109 inclusive];
- Specific personal circumstances of the appellant and his family [37-46 & 88-95];
- The family's human rights after being balanced against the wider public interest [96-98 inclusive]; and
- The best interests of the children⁵⁶ [99-100].

118. These identified factors individually carry between considerable and substantial weight as identified in the relevant preceding paragraphs. However, in combination, and with particular reference to the substantial weight ascribed to the specific personal circumstances of the appellant and his family [115], taking into account their human rights and the best interest of the children⁵⁷, these amount to very special circumstances which outweigh the harm to the Green

⁵⁵ Notwithstanding the harm by reason of inappropriateness

⁵⁶ Rights of the child

⁵⁷ As a primary consideration

Belt. The substantial weight given to these factors is sufficient to justify a permanent, personal permission, even taking into account that the level of harm is greater than a temporary permission, the harm being short lived in the latter case.

Recommendation

119. Consequently, I recommend that the appeal be allowed and a personal permanent planning permission be granted subject to the relevant conditions identified in Annex A. In the event that the SOS disagrees with me and decides that there is not a case for a permanent permission he is obliged to decide whether a case exists for a temporary one. If he concludes that there is such a case then I recommend that the conditions identified as being relevant to a temporary permission in Annex A be attached.

Frances Mahoney

Inspector

Annex A – Schedule of recommended conditions

Conditions should the Secretary of State consider it appropriate to grant permanent planning permission

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Mr and Mrs John Allan.
- 3) When the land ceases to be occupied by those named in condition 2 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
- 4) The use hereby permitted shall be laid out in accordance with the approved Location Plan (dwg no 11_450_001 B), Proposed Site (dwg no 11_450_003 A) and Utility/Day Room (dwg no 11_450-004). The permitted layout shall be maintained as such.
- 5) No more than 2 caravans, of which only 1 shall be a static home, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the overall site at any time. This is in addition to the utility/day room building.
- 6) No development shall take place on the construction of the utility/day room hereby permitted, until details, including samples, of the external materials to be used have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) Before the first occupation of the site, mains electricity shall be connected and shall be maintained thereafter and no other means of generation of electricity shall be used.
- 8) No external lighting shall be installed on the site unless details of the position, height and type of lights have been submitted to and approved in writing by the local planning authority. The external lighting shall be installed and operated in accordance with the approved scheme and no other external lighting shall be installed or operated.
- 9) Before the first occupation of the site, full details of both hard and soft landscape works shall have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include the hardsurfacing materials for the driveway, caravan hardstandings, and parking and turning areas; details of location of any gates, walls or fences including their materials and finishes; plans identifying all proposed planting; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate, and an implementation programme; and a plan for the eradication of Japanese Knotweed. The approved hard landscaping works and plan/works relating to the eradication of the Japanese Knotweed shall be completed before the occupation of the first caravan. The approved soft landscaping scheme shall be

carried out in the first planting season following the written approval of the scheme.

- 10) If within a period of five years from the date of the planting out of the approved soft landscaping scheme, any of the trees, hedging or other plants used which are removed, uprooted or destroyed or dies, another plant of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.
- 11) Before the first occupation of the site, details of the arrangements for refuse storage shall be submitted to and approved in writing by the local planning authority. Any required bin storage facility shall be constructed and made available for use within 3 months of the date of the first occupation of the site and shall be retained thereafter.
- 12) Development of the permitted layout shall not begin until a scheme for the disposal of foul and surface water drainage has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved prior to the occupation of the first caravan hereby permitted. Once installed the agreed works shall be maintained as such.
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls or other means of enclosure other than those permitted by this permission shall be erected within or along the boundaries of the appeal site.
- 14) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 15) No commercial activities shall take place on the land, including the storage of plant, machinery and materials and the transfer or burning of material.
- 16) No development shall take place until a detailed survey to check for nesting birds prior to undertaking any works between 1st March and 31st August in any year has been carried out and submitted to the local planning authority. Where nests are found a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting should be confirmed by a suitably qualified person and a report submitted to and approved in writing by the local planning authority before any works involving the removal of any hedgerow, tree or shrub takes place.

Conditions should the Secretary of State consider it appropriate to grant temporary planning permission

- 1) The use hereby permitted shall be for a limited period being the period of 5 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its former condition in accordance with a scheme of work, including an implementation period previously submitted to and approved in writing by the local planning authority in accordance with Condition 2.
- 2) Before the first occupation of the site, details of a scheme of work to restore the land to its condition before the development took place (or as otherwise agreed in writing by the local planning authority) at the end of the period for

- which planning permission is granted for the use, and a timetable for its implementation have been submitted to and approved in writing by the local planning authority. The restoration works shall be carried out in accordance with the approved details and within any such timescale as specified.
- 3) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Mr and Mrs John Allan.
 - 4) When the land ceases to be occupied by those named in condition 2 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
 - 5) The use hereby permitted shall be laid out in accordance with the approved Location Plan (dwg no 11_450_001 B), Proposed Site (dwg no 11_450_003 A) and Utility/Day Room (dwg no 11_450-004). The permitted layout shall be maintained as such.
 - 6) No more than 2 caravans, of which only 1 shall be a static home, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the overall site at any time. This is in addition to the utility/day room building.
 - 7) No development shall take place on the construction of the utility/day room hereby permitted, until details, including samples, of the external materials to be used have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 8) Before the first occupation of the site, mains electricity shall be connected and shall be maintained thereafter and no other means of generation of electricity shall be used.
 - 9) No external lighting shall be installed on the site unless details of the position, height and type of lights have been submitted to and approved in writing by the local planning authority. The external lighting shall be installed and operated in accordance with the approved scheme and no other external lighting shall be installed or operated.
 - 10) Before the first occupation of the site, full details of both hard and soft landscape works shall have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include the hardsurfacing materials for the driveway, caravan hardstandings, and parking and turning areas; details of location of any gates, walls or fences including their materials and finishes; plans identifying all proposed planting; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate, and an implementation programme; and a plan for the eradication of Japanese Knotweed. The approved hard landscaping works and plan/works relating to the eradication of the Japanese Knotweed shall be completed before the occupation of the first caravan. The approved soft landscaping scheme shall be carried out in the first planting season following the written approval of the scheme.
 - 11) If within a period of five years from the date of the planting out of the approved soft landscaping scheme, any of the trees, hedging or other plants

used which are removed, uprooted or destroyed or dies, another plant of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.

- 12) Before the first occupation of the site, details of the arrangements for refuse storage shall be submitted to and approved in writing by the local planning authority. Any required bin storage facility shall be constructed and made available for use within 3 months of the date of the first occupation of the site and shall be retained thereafter.
- 13) Development of the permitted layout shall not begin until a scheme for the disposal of foul and surface water drainage has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved prior to the occupation of the first caravan hereby permitted. Once installed the agreed works shall be maintained as such.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls or other means of enclosure other than those permitted by this permission shall be erected within or along the boundaries of the appeal site.
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- 16) No commercial activities shall take place on the land, including the storage of plant, machinery and materials and the transfer or burning of materials.
- 17) No development shall take place until a detailed survey to check for nesting birds prior to undertaking any works between 1st March and 31st August in any year has been carried out and submitted to the local planning authority. Where nests are found a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting should be confirmed by a suitably qualified person and a report submitted to and approved in writing by the local planning authority before any works involving the removal of any hedgerow, tree or shrub takes place.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards of Counsel Instructed by the Head of Legal Services
Cheshire East Council

He called

Paul Wakefield BSc(Hons) Principal Planning Officer
MA MRTPI

FOR THE APPELLANT:

Matthew Green - acting as Director Green Planning Studio Ltd
advocate and expert witness

He called

John Allan Appellant

INTERESTED PERSONS:

Cllr Christopher Dodson Chairman Wilmslow Town Council

Cllr Gary Barton Ward member Wilmslow West & Chorley,
Cheshire East Council

C K Evans Local Resident

Nick Ansell Local Resident

Roger Bagguley Local Resident

DOCUMENTS

- 1 Statement of Common Ground
- 2 Location of appeal site in relation to motorways and train stations
- 3 Return train timetable from Helsby to Manchester
- 4 Travel distances from Hapsford and Wilmslow to central
Manchester (Manchester Eye Hospital)
- 5 Personal circumstances of appellant and his family
- 6 Extract from CS - Connectivity Map of Cheshire East
- 7 Mr Evans –Notes of objection
- 8 Call for sites document
- 9 Cllr Barton – Speaking notes
- 10 Extract from CS – Site CS 36 West of Upcast Lane, Wilmslow
- 11 Mr Bagguley – Retraction of the protection of the ecology point
- 12 Statement of Ms Clare and Chris Breceton – local residents
- 13 Witness statement of John Allan - appellant

- 14 Policy SC 7 of the Local Plan Strategy Submission Version March 2014
- 15 Suggested Conditions
- 16 Appeal decision APP/L3245/A/13/2196615
- 17 Court of Appeal approved judgement C1/2012/3236 dated 09/10/2013
- 18 Closing of the Council
- 19 Closing of the Appellant
- 20 Court of Appeal approved judgement C1/2012/2806 dated 9 October 2013



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.