



Planning Appeal Decision

Inquiry held on 25 November 2004

Site Visit held on 25 November 2004

by **Lucy Drake** BSc MSc MRTPI

an Inspector appointed by the First Secretary of State

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Date

15 DEC 2004

Appeal Ref: APP/U2235/A/04/1142318

Land at The Former Pear Orchard, Symonds Lane, Yalding, Kent, ME18 6HA

- 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 L Draper against the decision of Maidstone Borough Council.
- The application (Council's ref: MA/03/1756), dated 10 August 2003, was refused by notice dated 22 November 2003.
- The development proposed is the change of use to residential and the stationing of one mobile home for a gypsy.

Summary of Decision: The appeal is dismissed.

Procedural matters

1. At the inquiry an application was made on behalf of Maidstone Borough Council for an award of costs against Mr Draper. This is the subject of a separate Decision.

The main issues

2. The main issues in this case are:
 - (a) Whether the appellant comes within the statutory definition of a gypsy.
 - (b) Whether the development would harm the character and appearance of the area, bearing in mind planning policies for the countryside.
 - (c) Whether the development would increase the number of people exposed to an unacceptable flood risk.
 - (d) Whether the use of the access to Symonds Lane would increase highway dangers.
 - (e) If the development is not in accordance with the development plan or causes any other harm, whether there are material considerations which outweigh these factors, having particular regard to the need for gypsy sites in the area and the appellant's personal and family circumstances.

Planning policy

3. The development plan consists of the Kent Structure Plan 1996 and the Maidstone Borough-Wide Local Plan 2000. The appeal site is within the countryside where the overall aim of development plan policies is to strictly control development. Structure Plan Policy RS1 requires all development in the countryside to be well designed, appropriate to its location and preserve and, as far as possible, enhance the character, amenity and functioning of the countryside, among other matters. Policy H8 indicates that where there is an identified need, the local planning authority will make provision for gypsies in local plans and through development control; provision should be consistent with the plan's other policies. Policy NR5 indicates that residential development will not normally be permitted on land at risk from river flooding unless the risk is satisfactorily alleviated.
4. In the local plan, policy ENV28 seeks to protect the character and appearance of the countryside and says that planning permission will not be given for development which harms the character and appearance of the area or the amenities of the surrounding occupiers. Development will be confined to the listed categories, which includes exceptions indicated by policies elsewhere in the plan. One such policy is H36 which indicates that planning permission for gypsy sites is dependent on 3 criteria being met. These are (1) that the resident has a nomadic way of life and travels for the purpose of making a livelihood (2) that the site should be satisfactorily screened by natural features and (3) that the development will not lead to an undue concentration of such developments which would adversely affect the character or amenity of the countryside or area. Policy ENV50 states that within flood plains or in areas at risk of flooding, new development will not be permitted unless it can be demonstrated that compensating storage can be provided.
5. I have also had regard to government policy especially Circular 1/94 *Gypsy Sites and Planning*, Planning Policy Guidance (PPG) 25 *Development and Flood Risk* and Planning Policy Statement (PPS) 7 *Sustainable Development in Rural Areas*.

Background

6. The appeal site comprises a plot of land, approximately 26m wide and 65m in depth, with a driveway connecting it to Symonds Lane, some 75m to the south. The final few metres of the driveway, where it joins Symonds Lane, is not in the ownership of the appellant but it was not disputed that he had rights of access over it.
7. The site lies immediately to the east of land which was the subject of two appeals in 2001 (APP/U2235/A/01/1056272 and 1056273), which also sought planning permission for residential use by gypsy families. Both of these appeals were dismissed although the sites are still being used for this purpose. This land is referred to as the Coates and Coster sites (the names of the appellants).
8. In September 2000 the Council had served an enforcement notice covering all three sites, and additional land to the east and west which formed the original pear orchard, alleging an unauthorised change of use to a mixed use for the purposes of stationing residential caravans and a tarmac contractor's business. No appeal was submitted and the notice took effect in October 2000.
9. In August 2002 the Council served an enforcement notice in respect of the creation of a hardstanding and roadway around the enlarged access area for both the Coates and Coster

sites and the current appeal site access. No appeal was submitted and the notice took effect in September 2002.

10. In March 2003 a further enforcement notice was served against the creation of the roadway which is now the access drive in this appeal, and in July another enforcement notice against the creation of a hardstanding in the northern part of the appeal site. Appeals against both these notices were dismissed in September 2003 (APP/U2235/C/03/1114611 & 1121540) although the periods for compliance were extended in each case. Both periods have now expired without compliance.
11. The Council has obtained an injunction in connection with the outstanding enforcement notices and the unauthorised change of use of the Coates and Coster sites and the current appeal site.
12. The rear part of the site has been residentially occupied by the appellant and his family since July 2003. At the date of the inquiry it contained a standard single-unit mobile home, a touring caravan, a large wooden 'utility' shed containing a kitchen, dining and living area, a smaller wooden shed containing laundry facilities (washer, tumble dryer, toilet and shower) and two 'Luton top' van bodies used for storage. The family use the utility shed for cooking and eating in and as an additional living room, the two girls sleep in the tourer and Mr and Mrs Draper and their son sleep in the mobile home, which has two bedrooms.
13. The site, including the driveway, is enclosed by dark-stained, close-boarded fencing, less than 2m in height. Although the laying out of the hardstanding and driveway were not formally part of the application, an authorisation of the use would reasonably lead to the expectation that the driveway and hardstanding would remain, although not necessarily in the exact form that I saw.
14. The application was only for the change of use of the land and the stationing of the single mobile home. But at the inquiry Mr Draper made clear that he would need to keep the tourer and utility room, and preferably the toilet in the smaller shed. Separate sleeping accommodation for the girls and boys and a separate toilet are a common feature of gypsy lifestyle, as is some form of utility room. Realistically the impact of development has to be assessed as comprising the scale and approximate form of what I saw on site.

Reasons for the decision

(a) *Whether the appellant comes within the statutory definition of a gypsy.*

15. The appellant was born and brought up on the Council's gypsy site at Water Lane, Kinswood, Maidstone. When he was 17 he married and moved to his father-in-law's gypsy caravan site at Whitstable where he stayed for 11-12 years. He was based at that site, working either on his own or with other family members, tree cutting, landscape gardening and paving. In 1997 the Whitstable site was sold and the family moved to a private woodyard, next to the Council's Water Lane site. They stayed here for about six years, acting as unofficial security, continuing to travel about 6-8 weeks a year in the school summer holidays, but for the rest of the year finding work within the local area and very rarely staying away. This pattern of activity continued after they moved to the appeal site in July 2003. The appellant has never lived in a house.
16. During the summer he travels with his immediate family and a varied group of others to locations mainly in southern England. They pick up work wherever they can, hoping to

make enough to live on and generally staying on unauthorised sites: lay-byes or wherever they can find to stop. The travelling is more of a holiday and to maintain the traditional habits than to make money. The family also attend most of the traditional gypsy fairs in May/June and Sept/October, but just on a social basis, only staying away a night or two.

17. The statutory definition of a gypsy is found in section 24(8) of the Caravan Sites and Control of Development Act 1960, namely persons of a nomadic habit of life, whatever their race or origin. Various court judgements have qualified the way that definition is to be interpreted. I have had particular regard to the approach set out by Auld L J in paragraph 57 of the judgement in *Wrexham County Borough v National Assembly For Wales, Michael Berry and Florence Berry* (Court of Appeal 19 June 2003). The judgement in *R v South Hams District Council, ex p. Gibb* 1995 QB138 CA indicated that the purpose of travelling is a relevant consideration as *nomadic habit of life* involves purposive activities, including work. In my view, the appellant's limited annual travelling and essentially local pattern of work does not amount to a nomadic habit of life sufficient to come within the statutory definition. But there is no clear intention to give up his gypsy way of life and given his background I consider that the appellant has not yet lost his gypsy status. Thus the advice in Circular 1/94 is applicable and there is no conflict with policy H36 criterion 1.

(b) Whether the development would harm the character and appearance of the area, bearing in mind planning policies for the countryside.

18. Setting aside the presence of the unauthorised development on the appeal site and at the Coster and Coates's sites the area has a predominantly rural and undeveloped character. Apart from the group of houses about 250m to the south west and an authorised gypsy site there is very little other built development along the roughly 1km length of Symonds Lane. The area generally is characterised by fields and orchards, high hedges alongside the roads and scattered residential development, including farm buildings.
19. The wide opening in the hedge at the appeal site access, which also serves the Coster and Coates's sites and the remaining part of the pear orchard to the east, allows views of the driveways, fences, caravans and sheds on the three sites and creates the impression of a significant amount of development, seriously at odds with its pre-existing appearance and the character of its surroundings. The straight driveway flanked by close boarded fencing leading up to the main part of the appeal site, within which one can see the upper parts of the pale coloured mobile home and touring caravan and the utility shed appear as incongruous and urbanising features within what was previously an orchard. While the development can only be seen from a short stretch of Symonds Lane, and in the summer months probably only from the site entrance, it is clearly noticeable as a discordant an urbanising element. Additional tree planting might, in time, lessen the visibility of the structures on the main part of the site. But the need to maintain access, and provide adequate visibility from the site entrance (see below) would mean that the site is very unlikely to ever be satisfactorily screened by natural features, the second criterion of Local Plan Policy H36.
20. Even if the Coster and Coates' sites were returned to their pre-existing condition and Mr Draper's development were the only one allowed to remain I consider that the development would have a materially harmful effect upon the character and appearance of Symonds Lane and would be contrary to policies in the Structure Plan and Local Plan which seek to protect the countryside, even where a use may otherwise be permitted.

(c) Whether the development would increase the number of people exposed to an unacceptable flood risk.

21. The appeal site is within the 1-in-100 year flood plain identified by the Environment Agency (EA). This flood plain covers a large area of surrounding countryside, including many small settlements. The EA objected to the applications and gave evidence at the inquiry. Serious flooding in the vicinity of Yalding occurred in 1960, 1963, 1968 and 2000/1. The available evidence indicates that the appeal site did not flood during any of these events, but that the access roads to it were flooded to varying degrees. During the flooding event of October 2000, Symonds Lane was impassable. The video shown at the Inquiry indicated fast flowing water travelling along Symonds Lane close to the houses some 250m to the south west.
22. The appeal site is near to the confluence of 3 tributaries of the river Medway (the Beult, the Teise and the Lesser Teise), which results in a variety of possible causes and types of flood in the area. The EA's undisputed evidence at the Inquiry was that the 1960/63 floods were about a 1-in-70 year event; that 1968 was a 1-in-60 year flood and the flooding around Yalding in late 2000 was a 1-in-70 year event. The EA estimates that a 1-in-100 year flood would result in water about 1m deep in Symonds Lane where it crosses the stream, some 200 metres to the south east. There was agreement between the principal parties that as the appeal site is at a slightly higher level than Symonds Lane that the site itself is unlikely to flood in a 1-in-100 year event, and if did so the water would only be shallow. But the estimated 1-in-100 year flood level is not necessarily the highest waters could reach in an extreme event.
23. PPG 25, paragraph 21 says that in view of the apparently increased frequency and severity of river flooding in recent years, particularly since 1998, the Government is looking for a step change in the responsiveness of the land-use planning system to the issues of flood-risk management as they affect the development process. The Government considers that the objectives of sustainable development require that action through the planning system to manage development and flood risk should be based on the precautionary principle.
24. The PPG sets out a sequential, risk based approach to development and flooding. The Environment Agency considers that the site should be regarded as falling within category 3b) of Table 1 in the PPG. These are high risk areas where the annual probability of flooding from rivers is 1% or greater and which are undeveloped or sparsely developed. The PPG advises that these areas are not suitable for residential and other development unless a particular location is essential. General purpose housing should not normally be permitted and caravan and camping sites should generally not be located in these areas. However, given the slightly elevated nature of the site, the consultants appointed by the appellant consider it falls within category 2: low to medium risk suitable for most development.
25. Both ends of Symonds Lane are at 11.0m AOD, which is between 1.5 and 2.5m lower than the appeal site. The Lees Road and Benover Road at either end flood frequently. Access to the appeal site is only from these lower-lying junctions. The Parish Council representative noted that over the past 5 years, parts of The Lees have flooded more than 20 times. From the appeal site it would be impossible to assess how deep or fast flowing water might be further down Symonds Lane. While the Environment Agency and the Yalding Flood Action Group try to give a minimum of two hours warning of an impending flood, this is not always possible. Individual property owners would have to decide whether to vacate their land without knowing the likely depth, consequences or duration of the flood. Occupiers of caravans have no upper floor to which to move in the event of a flood.

26. Even if the appellant and his family made an initial decision to stay on site during a period of flooding, they may subsequently change their mind or find they have a need to leave the site for a variety of reasons. Assessing the flood from the slightly higher level of the site and its immediate surroundings they might well be tempted to drive along Symonds Lane and come across unexpectedly deep or fast flowing water, thereby endangering themselves and risking the vehicle becoming stranded, blocking the road for others and requiring help from the emergency services. The site is several hundred metres from any dwelling and were it not for the presence of the appellant and his family, and the adjoining unauthorised gypsy sites, there would be no need for the emergency services to come to this central part of the Lane to check on their safety or to undertake a rescue.
27. I therefore consider that residents of the appeal site would be at risk when evacuating their site once flooding was occurring; or in their desire to reach their home if absent from it. In the event of a flood in excess of the predicted '1 in 100 year' level the site itself is likely to be submerged. In my view, these risks cannot be set aside because the appellant asserts a willingness to accept such risks for himself and his family. In the unpredictable events of a flood, the actions of individuals may have unintended consequences for others. Given the few dwellings in this central part Symonds Lane, the appellant's family would potentially place greater demands on, and increase the risks to, members of emergency and other public services in ensuring the safety and well-being of residents, including assisting with evacuation during flood events.
28. The residential occupation of the appeal sites would increase the numbers of people at unacceptable risk from flooding. There would be both direct and indirect consequential risks to them and others, contrary to national objectives expressed in PPG 25. I have taken into account appeal decisions for sites nearby where the flood risk was considered acceptable, but none of these are so directly comparable as to justify me from taking a different view on this site. In any case I place greater weight on the conclusions of my colleague in the appeals on the adjoining sites in 2001.

(d) Whether the use of the access to Symonds Lane would increase highway dangers.

29. Symonds Lane is of single track width for most of its length, including its central stretch where it passes the appeal site. It provides a cut-through between Lees Road and Benover Road, avoiding Yalding village. Although for most of the day it was said to be little used, local residents reported that during the morning and evening rush-hours and at weekends and holiday periods when Yalding becomes congested, and when the main road through the village is flooded, it is much busier. Speed checks undertaken by the Council, from a small sample, showed an average speed for vehicles passing the site, in both directions, of 27mph, which suggest an 85% speed of 30-33mph.
30. The high hedges on either side of the appeal site access significantly restrict views of the access from approaching vehicles, and vice versa. The width of the access is in large part a result of the unauthorised hardstanding and the remaining hedges are not within the ownership of the appellant. Visibility from the central point of the enlarged access was measured by the Council as around 30m to the east and 20m to the west at a set back of 2m. From a point in line with the centre of the appeal site driveway, visibility to the east would be considerably less, although that to the west somewhat greater. From whichever point is chosen, however, the visibility in both directions is well below the government advice contained on p.58 of Places, Streets and Movement which requires 70m in both directions

where there is a known major road speed of 50 kph (31mph) and 40m at a known speed of 40kph (25mph).

31. These recommended distances do not take account of the width of the road. On a narrow road with no verges, as here, there is virtually no room for a passing vehicle to swerve out of the way to avoid an emerging vehicle. Drivers using Symonds Lane would not expect to meet vehicles emerging from the site access and would get next to no warning of them doing so, and vice versa. The removal of more of the hedge, to improve visibility, assuming permission could be obtained from the owner, would make the appeal site far more open to view and harmful to the character and appearance of the area. While vehicular use of the access may not be great, I agree with my colleague in the 2001 appeal that the sightlines available for emerging vehicles are seriously inadequate. I conclude that the authorisation of the development would unacceptably increase highway dangers on this part of Symonds Lane for both the appellant and his family, and other road users.

(e) If the development is not in accordance with the development plan or causes any other harm, whether there are material considerations which outweigh these factors, having particular regard to the need for gypsy sites in the area and the appellant's personal and family circumstances.

32. Having concluded that the development would be contrary to policies in the development plan which seek to protect the character and appearance of the countryside and restrict residential development in areas at risk of flooding, and that the development would have a harmful effect upon the rural character and appearance of this part of Symonds Lane, and unacceptably increase the number of people at risk during times of flood and highway dangers at the site entrance, I nonetheless have to consider where there are other factors which, in this case outweigh the harm caused in these ways.

The need for gypsy sites

33. Circular 1/94 emphasises the importance of adequate gypsy site provision in development plans through appropriate locational and/or criteria based policies. The importance of planning authorities assessing the need for gypsy accommodation in their areas was drawn to the attention of Councils in letters from the then DETR in May 1998 and November 1999. PPG 12 *Development Plans* (paragraph 4.14) refers to Circular 1/94 and states that development plans should make a quantitative assessment of the amount of accommodation required. PPG 3 *Housing* states that assessments of housing need should underpin local plan policies. Assessments should include the needs of specific groups, including travellers. Despite this consistent advice over the past 10 years, the Council has not undertaken any proper assessment of the accommodation needs of gypsies or travellers. At the Inquiry, the Council indicated that a housing needs study, including specific consideration of the needs of gypsies, was to be undertaken jointly with an adjoining borough. Tenders had been invited from consultants and the work was planned to be completed in the first half of 2005.
34. The bi-annual Count figures show that the two Council-run sites in Maidstone Borough have been full to excess of their official capacity for at least the last 3 years. The numbers of caravans on unauthorised sites has fluctuated between 17 and 20 for the last two years, but it is not clear whether these are the same caravans and families appearing at each count. The fact that some planning permissions and appeals have been granted during that period

suggests that they are not, and despite those approvals there is still an unmet need for further sites.

35. Mr Kenrick submitted a list of 19 named families/sites within Maidstone Borough which he was aware of, who were either applying for planning permission or appealing against the refusal of planning permission or seeking a site after an appeal had been dismissed. 14 of these families, despite being on unauthorised sites, had not been included in the January or July 2004 Counts. The appellant's evidence that there are generally no vacancies on, and waiting lists for, pitches on Council owned or managed sites in Kent was not disputed.
36. In the absence of the necessary detailed study, I cannot come to any firm conclusion as to the level of need for sites within Maidstone Borough, but the evidence is indicative of a significant and continuing, if as yet unquantified, need.

Personal circumstances

(i) The family's need for a site and alternative accommodation options

37. The appellant's family consists of himself, his wife, their daughters Clare (18), Leanne (13) and son Levi (8). He had originally bought the appeal site in 2002 as grazing land for his horses, but never used it as such. When he received a letter from the owners of the woodyard in May 2003 saying that they needed the space for their expanding business and were concerned about the health and safety aspects of the family remaining on that site he began to look for an alternative. He had applied for a pitch on the Council's Water Lane site several years before, and as far as he knew he was still on the waiting list, but he would not now want to move on to it as he had fallen out with some of his family living there. Neither would he consider applying to the Council's Stilebridge site which had a history of poor management, violence and bad conditions. He had not applied for any other Council sites. Investigations by the Council suggested that the family's name did not appear on any gypsy site waiting list.
38. He had asked around estate agents and been told that land with planning permission for gypsy use would cost £60-70,000. This figure was unachievable for him. He could perhaps afford £10-15,000, given a bit of time, which seemed to be the going rate for a plot without planning permission. He had not approached the Council to ask about the chances of getting planning permission before moving onto the appeal site. Nor had he approached them about any other site. But after a few weeks of looking around decided to move his family to the appeal site.
39. Mr Draper had been served with an enforcement notice for the laying out of the driveway, in March 2003, and for the hardstanding in July 2003 and was made aware of the Council's objections to those developments before he moved onto the site. On purchasing the site he should have made enquiries as to any outstanding enforcement notices and it would be surprising if his relatives, the Costers and Coates on the adjoining sites, had not told him of their failure to obtain planning permission for their continued occupation, even on a temporary or seasonal basis.
40. The family's move onto this site, after only a few weeks of active search, seems to me to be a case of solving their immediate problem, of being asked to leave the woodyard, but given its planning history, and that of adjoining land they should have been aware that the likelihood that they would be able to stay here permanently was small.

41. The appellant and his family have a clear need for a gypsy site. No member of the family had ever lived in a house and they did not wish to do so. If they had to leave this site they did not know what they would do, but they did not want to try and live 'on the road'.
42. Given their ethnic and cultural background it would be unreasonable to expect them to move into bricks and mortar for any more than a temporary period. I do not under-estimate the difficulties of finding and/or securing a site suitable or authorised for gypsy use. There are a number of other families in the same situation in the area. Even if Mr Draper were to apply for a Council-owned site in Maidstone Borough or other parts of Kent it could be several years before he was offered a pitch. But there is no evidence that he has actively searched for alternative accommodation, apart from the period of a few weeks before he moved onto this site. While Maidstone's Local Plan gypsy policy is not based on a quantitative assessment of need, neither is it so restrictive as to effectively prevent any suitable site being found. The Council has granted planning permission for new sites and others have been granted by planning inspectors on appeal.
43. It may take some time for the family to secure an alternative, authorised site, in a more suitable location but I do not consider that the likelihood of them being able to do so to be so slight as to be unrealistic. I nonetheless have to give the family's lack of choice as to alternatives in the short term some considerable weight.

(ii) Educational needs

44. Clare had completed her education by the time they moved to the site. Leanne had attended school regularly up to then, but they had difficulty in getting her into any local school until January 2004 when she started at Mascalls secondary school. She is reported to have settled in very well and is making good progress. She is currently choosing her option subjects for GCSE and the headteacher would very much support the family's case for remaining at their current address at least until she has completed her education.
45. Levi had not been happy at any of the previous schools he had attended and was known to be a "school refuser". He obtained a place at Laddingford St Mary's C of E Primary School in September 2003 where he was said to have settled well. He was unable to read or write when he joined the school and was placed on the Special Needs Register at School Action Plus. This meant that his needs were considerable and required not just additional support from within the school, such as a highly differentiated curriculum and class assistant help, but also from external agencies. He was said to have made excellent progress over the past year although he still needs a lot of additional support. The headteacher writes that if he were to leave now it would disrupt not just his progress but his motivation and commitment and harm his future educational attainment.
46. If the family were required to leave the site, at short notice and with no immediately identifiable suitable alternative accommodation, this is likely to disrupt the continuity of education for Leanne and Levi. The degree of disruption would depend on whether they would be able to continue to attend their current schools and, if not, the time it might take for them to find places at another school and settle in. Both children's needs are important and I appreciate especially the benefits of Leanne being able to achieve a smooth transition and stability within years 10 and 11 and for Levi to continue to receive the type of support he has been given over the past year in an environment he feels happy.

47. These educational needs weigh in favour of the family being able to stay within reasonable travelling distance of the two schools and add some weight to their continued occupation of the appeal site.

Human rights

48. There is a valid enforcement notice applying to this sites and adjoining parts of the orchard, including the Coates and Coster sites, which came into effect in October 2000 requiring, among other matters, the use of the land for the stationing of residential caravans to cease. The Council has obtained injunctions against the site owners and occupiers but has not pursued proceedings pending the outcome of this appeal. The Council gave no indication of what action it would take, or how quickly, if the appeals were to be dismissed. But I recognise that dismissal of the appeals would be likely to result in the Council pursuing prosecution, or other action for non-compliance with the enforcement notice, which would force the appellant and his family to move from his site. Because of the extant enforcement notice and lack of immediate alternatives, I recognise that dismissal of the appeal is likely to result in the appellant and his family losing their home, quite possibly without any immediately suitable alternative site being available, which would represent a serious interference of their rights under Article 8 of the European Convention on Human Rights - respect for a person's home, private and family life.
49. However, Article 8 is a qualified, not an absolute, right. An interference with an individual's rights may be justified if it is in the public interest. If it is found that the interference is in accordance with the law, has a legitimate aim and there is a pressing social need for it which goes no further than is necessary (i.e. it is proportionate), no violation will occur.
50. In this case a dismissal of the appeal and the return of the site to its pre-existing condition would be in accordance with the law. The legitimate aims pursued would be the protection of the undeveloped, rural character and appearance of the area, the precautionary principle with regard to development in areas prone to flooding and the objectives of planning policy in this respect; and public safety in terms of highway dangers at the site access and the additional risks created by the residential occupation of the site during times of flood. The latter two I consider significant also in terms of the particular and specific risks they pose to the health and safety of the appellant and his family.
51. At the inquiry the option of a temporary planning permission until July 2007 was raised on behalf of the appellants. This would allow time for the Council to have completed their needs assessment for gypsy sites and made some firm proposals, Leanne would have finished her GCSEs and Levi would have completed primary school. But this would extend the family's occupation of the site to four years, including three more winters when the risks of flooding are greatest, and only put off the urgent need for the family to look for an alternative site in a more suitable location which does not have as much harm on the character and appearance of its surroundings or pose such a danger to themselves and others from the highway access and consequences of flooding. I do not consider that the objective of the measure can be achieved by means which are less interfering of the family's rights.
52. In my view, the objections to continued residential use of the site are serious ones and cannot be overcome by granting temporary planning permission or by the imposition of conditions. The public interest can be safeguarded only by dismissal of the appeal. I conclude that dismissal of the appeal is necessary in a democratic society in furtherance of the legitimate aims stated and would be proportionate in the circumstances. I therefore do

not consider that dismissal of the appeal would result in a violation of the family's rights under Article 8 of the Convention.

Conclusions

53. The shortage of suitable and available alternative gypsy accommodation in the locality in the area generally and this family in particular, the consequences for the family were the appeal to be dismissed and the potential disruption to the children's education I consider to be matters of considerable importance. In weighing them against the undoubted harm that would be caused by allowing the appeal value judgements have to be made as to the relative weight to be given to needs and outcomes which pull in opposite directions. However, ultimately, I consider that the degree of harm to the character and appearance of the area and the need to protect both public and private interests (including this of the appellant and his family) from the harm arising from the seriously inadequate road access onto a narrow lane in an area at high risk of flooding should outweigh the public and private benefits of allowing the appeal and granting planning permission, for even a temporary period.
54. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Formal Decision

55. I dismiss the appeal.

L M Drake

INSPECTOR