The Planning Inspectorate

Appeal Decisions

Inquiry opened on 30 April 2013
Site visit made on 2 April 2014

by John Murray LLB, Dip.Plan.Env, DMS, Solicitor

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

Decision date: 10 June 2014

Appeal A: APP/B3030/C/12/2186072
Land known as Green Park, off Tolney Lane, Newark, Nottinghamshire, NG24 1DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Steve Coates against an enforcement notice issued by Newark & Sherwood District Council.
- The notice was issued on 16 October 2012.
- The breach of planning control as alleged in the notice is without planning permission the material change of use from agricultural land to an unauthorised residential caravan site.
- The requirements of the notice are:
  (1) Remove from the land all the residential caravans and ancillary structures;
  (2) Remove from the land all hardcore brought onto it;
  (3) Take down the associated walls and remove all the waste materials from the land;
  (4) Restore the land to its condition before the breach took place by levelling the ground and reseeding it with grass;
  (5) Cease the use of the land as a residential caravan site.
- The period for compliance with the requirements is 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

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

Appeal B: APP/B3030/C/12/2186073
Land known as Green Park, off Tolney Lane, Newark, Nottinghamshire, NG24 1DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr S Lee against the enforcement notice referred to in appeal A.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: No need to determine the appeal as the enforcement notice is quashed.

Appeal C: APP/B3030/C/12/2186074
Land known as Green Park, off Tolney Lane, Newark, Nottinghamshire, NG24 1DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr A Smith against the enforcement notice referred to in appeal A.
- The details of the notice are the same as per appeal A.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: No need to determine the appeal as the enforcement notice is quashed.

Appeal D: APP/B3030/A/12/2186071
Land adjacent to Hirams Paddock, Tolney Lane, Newark, Nottinghamshire, NG24 1DA

- 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 Steven Coates against the decision of Newark & Sherwood District Council.
- The application Ref 12/00562/FUL, dated 29 March 2012, was refused by notice dated 12 October 2012.
- The development proposed is change of use from paddock to residential caravan site.

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

Application for costs

1. At the inquiry applications for costs were made by Newark & Sherwood District Council against Mr Steve Coates, Mr S Lee and Mr A Smith and vice versa. Those applications are the subject of a separate Decision.

Procedural matters

2. Though the address stated on the enforcement notice differed to that in the planning application, each appeal relates to the same site.

3. The inquiry sat for a total of 8 days. It opened on 30 April 2013 and continued initially for 2 days up to 1 May 2013. Following an adjournment, it resumed on 17 September 2013 and sat for 4 days until 20 September 2013. Finally the inquiry resumed on 2 April 2014 and closed on 3 April 2014[1].

4. Given that the enforcement appeals related to grounds (a) and (g) only, it was agreed that the Council should present its evidence first. All evidence was given on oath.

[1] The length of the adjournment from September 2013 to April 2014 was due, in part, to my need for surgery.

Preliminary matter

5. In a letter to the Planning Inspectorate dated 25 April 2013, the Council challenged the validity of the section 78 appeal (appeal D), on the basis that the 2 owners of the access to the appeal site had not been served with notice of the application or appeal. At my request, counsel for the local planning authority (lpa) provided a written note[2] of her argument that this must invalidate the appeal. Counsel for the appellant's written response was provided under cover of an e-mail from the appellant's agent to the Planning Inspectorate dated 16 September 2013[3].

6. I note that Article 11 of the Town and Country Planning (Development Management Procedure) Order 2010 (the DMPO) requires an applicant for planning permission to give notice of the application to any other owners of the land and Article 12 requires him to certify that this has been done. Article 29 indicates the period within which the lpa should give notice of its decision and Article 29(3) provides that an application is a "valid application" if, among other things, a certificate has been given under Article 12. Article 10 indicates when the lpa should acknowledge an application and also when it should notify the applicant that it considers the application invalid. Article 10(6)(b) states that an application is invalid if it is not within the terms of Article 29(3). Article 32(1) provides that Articles 11 and 12 also apply to appeals. I also note section 327A of the 1990, which states that a lpa must not entertain an application which fails to comply with the requirements of the Act, or provisions made under it, concerning the form or manner in which the application is made.

7. The appellant's agent acknowledged in evidence that, when the appeal form was lodged, he did not serve notice on all the owners of the appeal site access. However, following advice given by the Planning Inspectorate in another appeal Ref APP/G5180/A/11/2154680[4] (which was endorsed in the Secretary of State's decision on that appeal), he subsequently served them and provided them with an opportunity to comment.

8. In relation to both the application and the appeal, the appellant did not fail to provide certificates under Article 12 and therefore neither the application nor the appeal are invalid by virtue of Articles 10(6)(b) or 29(3) alone. However, the certificates were inaccurate and my attention is drawn to section 65(6) of the 1990 Act, which provides that a person commits an offence if he knowingly or recklessly provides a certificate which contains a false or misleading statement. That is a separate matter, but providing an inaccurate certificate, whether deliberately, recklessly, or otherwise, arguably brings section 327A of the 1990 Act into play and the Council draws my attention to *R (on the application of Pridmore) v Salisbury DC [2004] EWHC 2511*, which indicated that such a matter could not be remedied by giving notice retrospectively. Nevertheless, notwithstanding the terms of section 327A and the judgement in *Pridmore*, the court would retain discretion as to whether or not to quash a grant of planning permission.

[2] Inquiry document 2.
[3] Inquiry document 25.
[4] See inquiry document 4.

9. No prejudice to any party has been shown. I am told that, as well as living on the adjacent site, 2 of the relevant owners, Mr Dean Gray and Mr Robert Winter, are related to some of the appellants in these appeals. Indeed Mr Winter was present at the inquiry and gave evidence that he was well aware of the section 78 appeal and had "no problem with it." I note another Inspector's refusal to determine another appeal Ref APP/D0515/A/11/2161557[5] where not all the owners had been served. However, she was not satisfied that the owners were aware of the application or that they could not have been prejudiced.

10. Furthermore, in this case, I must consider the deemed application for permission for the same development under appeal A in any event. I asked the Council to indicate whether, if the section 78 appeal were invalid, that would have any practical consequences. The only point made was that the scope for imposing conditions is more restricted on a deemed application and, during the course of a long adjournment, my attention was drawn to *Richmond Upon Thames Borough Council v Secretary of State for the Environment [1972] EG 1555*[6] and *Runnymede Borough Council v Secretary of State for the Environment, Transport and the Regions [2001] PLCR 24 p.386*[7]. However, through an e-mail to the parties dated 12 November 2013, I indicated my preliminary view that sections 72, 177(1) and (3) of the 1990 Act together enable me to grant a conditional permission on the deemed application, whereas the *Richmond* case concerned different provisions under the 1968 Act and the judge in *Runnymede* declined to make a definitive decision on the point under the 1990 Act. Whilst I indicated in the e-mail of 12 November 2013 that I remained open to submissions on the point, no further submissions were made.

11. Whether or not my reference in the e-mail of 12 November 2013 to the case of *Wheatcroft v Secretary of State for the Environment [1982] JPL p.37* was strictly relevant to a deemed application on an enforcement appeal, I remain content that I can attach conditions to any permission granted on the deemed application, provided the resulting development still constitutes all or part of the matters specified in the notice as constituting a breach of planning control. The breach alleged in the notice does not differ in any material way from the development described in the planning application. The debate over the validity of the planning application and section 78 appeal is therefore somewhat academic and, in all the circumstances described above, including the Secretary of State's approach to previous cases, I am not persuaded that I should refuse to entertain appeal D.

Main Issues

12. In relation to appeal A (ground (a)) and appeal D, the main issues are:
    (i) the extent to which the occupiers of the development would be at risk from flooding, having regard to the demand on existing evacuation arrangements, and whether the development would increase the risk of flooding elsewhere;
    (ii) the effect of the development on the character and appearance of the countryside;
    (iii) the provision of and need for gypsy and traveller sites in the area;

[5] Inquiry document 3.
[6] Inquiry document 48.
[7] Inquiry document 49.

(iv) the personal needs and circumstances of the appellants and their families and alternative accommodation options.

All of these factors must be considered in the context of Articles 6, 8 and 14 of the European Convention on Human Rights (ECHR); the Equality Act 2010; and the Housing Act 2004.

13. In relation to ground (g) of appeals A – C, the main issue is whether the specified period of 6 months is a reasonable period for compliance with the enforcement notice.

Reasons

Main issue (i) - Flooding

14. The appeal site lies at the south western end of Tolney Lane. It has a history of flooding, being directly affected during February 1977, November 2000, and November 2012 flood events. Indeed, the majority of the site is within Flood Zone 3(b) (the functional floodplain) and the remainder is in Flood Zone 3(a), so there is a high probability of flooding. Furthermore, parts of Tolney Lane itself, the only access to the site, are within Flood Zones 3(a) and (b). In fact, low points on that access road are liable to flood before the appeal site itself, such that the escape route from the site may be cut off, even if the site has not flooded.

15. In terms of the Flood Risk and Coastal Change section of the Planning Practice Guidance (PPG), caravan sites intended for permanent residential use are classified as "highly vulnerable" development. The PPG, along with the National Planning Policy Framework (the Framework), indicates that such development should not be allowed. It is common ground between the parties that this is not a case where the Sequential and Exceptions Tests should be applied before determining whether the development is acceptable in policy terms. I note that in comparable circumstances in another appeal Ref APP/Y2003/A/12/2184070[8] concerning a site in Flood Zone 3(a), the Inspector considered it reasonable to follow a similar approach to that set out in the Sequential and Exception Tests in assessing whether the proposal made appropriate provision in relation to flood risk. However, I do not find that approach particularly helpful in this case. This development is clearly contrary to national policy. I must weigh other considerations against that factor, but I need not do so in accordance with tests which do not strictly apply.

16. This development is also contrary to Policy DM5(9) of the Newark and Sherwood Local Development Framework Allocations and Development Management Development Plan Document (DMDPD), adopted July 2013. This provides that development in Flood Zones 2 and 3 will only be considered where it constitutes "appropriate development" and the Sequential and Exception Tests are satisfied. Whilst "appropriate development" is not defined in this policy, I am content that highly vulnerable development, in terms of the PPG, cannot be regarded as appropriate for the purposes of Policy DM5(9) and the Sequential and Exception Tests do not fall to be considered. Furthermore, although this is included within the "Plan-making" section of the document, Planning Policy for Traveller Sites (PPTS) indicates that local planning

[8] Inquiry document 54.

authorities' policies should not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans.

17. The Framework and the PPG also indicate that, in a case such as this, a site specific flood risk assessment (FRA) should be provided with an application. Indeed Core Policy 5 of the Newark and Sherwood Core Strategy Development Plan Document (CS), adopted March 2011, also requires this. It is common ground that the 2 FRA's submitted with the application the subject of appeal D were inadequate. For the Environment Agency (EA), Mr Andrews pointed out that the submitted FRAs did not: analyse the flood risk from the adjacent Old Trent Dyke; identify mitigation measures to take account of works undertaken on site; or analyse the hazards associated with the access and egress route, with input from the emergency services. I still do not have a document which constitutes a FRA approved by the EA and that is an additional breach of the requirements of the Framework, PPG and CS. However, during the course of this inquiry, I have heard a considerable amount of expert evidence on behalf of the appellants and the EA regarding flood risks and it falls to me to consider the risks on that basis.

18. A significant number of caravan sites have been granted permission or become lawful on Tolney Lane over the years, such that there are around 256 authorised pitches[9]. In response to flooding that occurred on Tolney Lane in 2000, the Tolney Lane Flooding Action Plan (TLFAP) was prepared and subsequently reviewed in December 2012[10], after further significant flooding. However, the Council stresses that this was not written as an acceptable mitigation procedure for future development along Tolney Lane; it is an emergency planning document intended to safeguard existing residents. The EA strongly endorses that view. The local authority and the emergency services are under considerable pressure when flooding occurs and evacuation is a major operation. Indeed, guidance issued by the Nottingham and Nottinghamshire Local Resilience Forum on 2 December 2012 sates that "New developments in flood risk areas **must not** increase the burden on emergency services"[11] and Nottinghamshire Police objected to this development on grounds of safety and an "unsustainable demand on resources"[12].

19. The TLFAP aims to provide guidance to Council staff and a co-ordinated approach, to ensure evacuation of caravans "in plenty of time." The following extracts are of particular significance and the sections in bold type are as they appear in the original document:

    "Environment Agency and District Council action levels for the River Trent are:

    - *At Colwick 3.6m – Flood Alert for the River Trent in Nottinghamshire. Flooding is possible.*
    - *At Colwick 4.0m – An operational message to Tolney Lane Caravan Parks and serves as a Standby Alert. Flooding is not expected at this stage but could occur if river levels are predicted to rise. This message is issued to professional partners and caravan site owner.*

[9] Mrs Lockwood's proof, paragraph 7.15.
[10] Lisa Lancaster's appendix 2.
[11] Lisa Lancaster's appendix 5.
[12] Lisa Lancaster's appendix 3.

- *At Colwick 4.5m or Farndon 2.1m – This is the level when the Flood Warning is issued to Tolney Lane Caravan Parks and flooding is expected to happen. Warning issued to professional partners, media and public.* ***Contact should be made with the Gypsy and Traveller Liaison Officer (employed by NAVO).***

- *At Colwick 4.675m stage, Newark and Sherwood District Council officers or the police should visit and issue warnings to the Tolney Lane community, advising them to evacuate to the Newark Lorry Park.*

- *At Colwick* ***4.8m, a full evacuation to the Newark Lorry Park of Tolney Lane residents who are at risk of flooding must be underway. The police should be requested to provide officers to assist with the movement of residents and prevention of local disputes. CCTV cameras should be used to monitor the situation. A slave monitor can be set up in the district Emergency Control Room to provide coverage of the evacuation and flood levels."***[13]

20. Under the TLFAP, against a background of prior warnings, advice to residents to evacuate when river level reaches 4.675m measured at the Colwick gauge and full evacuation, with the assistance of the police, when the level is 4.8m, is considered sufficient to ensure evacuation of caravans "in plenty of time." For the Council, Mrs Lancaster acknowledged that, when an evacuation was implemented in November 2012, aspects of the process went very well. Nevertheless, although the appellants' evidence that they did evacuate on that occasion is unchallenged, despite a Flood Warning, some Tolney Lane residents did not start to evacuate until they had been advised to do so in person. Furthermore, some were not comfortable about having to leave in the dark. Others, for example at The Burrows and some of the other static caravan sites, did not evacuate and officers had to be sent down to check on their welfare and provide additional sandbags. On 23 December 2012, although water levels did not ultimately reach the November 2012 levels, the police delivered leaflets advising residents that they should be prepared to evacuate over the next 2 days, but most said that they would not do so, because it was Christmas.

21. Having regard to this experience and the fact that the implementation of an evacuation plan requires human intervention and the application of limited and stretched resources, the Council is of the view that an evacuation plan should not be relied upon to make the appeal development safe. Mrs Lancaster stressed that, whatever plan was in place, it would not absolve the Council of responsibility to check that sites have actually been evacuated. The situation is made more difficult by the transient nature of traveller communities and the consequent challenges of recruiting volunteer flood wardens and establishing reliable lines of communication.

22. It is notable that, the Council has recently granted planning permission for caravan sites along Tolney Lane. For example, at Sandhills Sconce[14], permission was granted on 20 September 2011 for a maximum of 12 pitches, with up to 2 caravans per pitch and permission was granted on 15 August 2012

[13] In this decision, my use of the expressions "Flood Alert", "Standby Alert" and "Flood Warning" relate to the action levels in the TLFAP set out above.
[14] Inquiry document 6.

for up to 25 pitches, with no more than 1 caravan per pitch, at Hoes Farm[15]. In both those cases, a condition was attached to the permission, "to safeguard residents against flood risk", in the following terms:

"Within 2 months of the date of this permission, a flood warning and evacuation plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include provisions for and confirmation of agreement to sign up to the Environment Agency's Flood Warning Service for early warning of potential flood events, details of how information would be disseminated and how residents would be evacuated shall be implemented upon approval."

23. In both cases, the EA and Council officers had recommended refusal because of the risk to eventual occupiers from flooding. In both cases, the decisions were made on the basis that the site was in Flood Zone 2, but the access was in Flood Zone 3. The evidence before me is that in relation to both Hoes Farm and Sandhills Sconce, flood waning and evacuation plans have not been submitted and no enforcement action has been taken. However, I do accept Mrs Lockwood's evidence that enforcement of the above condition might not be a straightforward matter.

24. It is also of note that, when it refused planning permission for the appeal site and took enforcement action in respect of it, the Council was considering the possibility of compulsorily purchasing sites at Church View and Land North of Rope Walk, Tolney Lane, for use as gypsy and traveller sites, notwithstanding the risk of flooding[16]. However, the Council is not now considering compulsory purchase[17] and I also note that, on 18 February 2013, planning permission was refused on appeal for a touring caravan site on the former abattoir site on Tolney Lane[18], even though the Inspector was aware that the Council had recently granted permissions. These factors and the overall history of use of land on Tolney Lane are part of the background against which the appellants have occupied the site. Nevertheless, I must assess the particular merits of this development.

25. The appellants acknowledge that the safety of the residents of this site is dependent on their being able to evacuate to a place of refuge in a timely and safe manner[19]. In his first proof of evidence, the appellants' flooding expert, Mr Walton, stated that, given the effectiveness of the TLFAP, the appellants would be at no greater risk than the other residents of authorised pitches on Tolney Lane. He took the view that the TLFAP had the capacity to accommodate the residents of these 10 pitches, but he also recommended that they subscribe to the EA's Floodline flood warning service, under which they would receive mobile phone alerts, and that they prepare their own flood emergency plan. This would ensure that they are not wholly reliant on the TLFAP. His evidence was initially based on the assumption that the residents would evacuate on receipt of a Flood Warning, which is issued when the river level reaches 4.5m at the Colwick gauge.

[15] Inquiry document 5.
[16] See inquiry document 19.
[17] See inquiry document 27.
[18] Appeal Ref APP/B3030/A/12/2180106 – see Julia Lockwood's appendix 3.
[19] See paragraph 3.7 of Mr Walton's first proof of evidence.

26. However, on the second day of the Inquiry, it was put to Mrs Lancaster in cross examination that the appellants would be willing to evacuate on the Standby Alert, which is issued when the river level is at 4.0m measured at the Colwick gauge. She was asked how many Standby Alerts had been issued in the previous year, but she was unable to say. After the first long adjournment of some 20 weeks and, when giving evidence in chief on the fourth day of the inquiry, Mr Walton said that, when the first warnings are issued, based on EA and Met Office records, a view can be taken on whether water levels are likely to continue to rise. However, he added that it is an imprecise science and a precautionary approach therefore suggests that it would be appropriate to evacuate on the Standby Alert. He said that this could be specified in a site specific flood evacuation plan, which would necessitate residents being signed up to the EA flood warning system.

27. Mr Walton added that an analysis of EA records of measurements at the Colwick gauge from 1965 to May 2013 indicated that levels reached 4.0m on 27 occasions. On the basis of those historical records, a Standby Alert would be issued roughly once every other year. Looking at the 27 occasions when a Standby Alert would have been justified, this would have escalated to the Flood Warning stage on 11 occasions. Mr Walton gave further evidence on this during the fifth day of the inquiry and whilst the Council did not object to this evidence being admitted, it was based on a highly technical analysis of substantial data and the Council and EA needed time to digest that evidence and consider a response. This necessitated a long adjournment, during which I directed that a further Statement of Common Ground on flooding matters be submitted, if matters could be agreed. Alternatively, Mr Walton should submit a supplementary proof of evidence, setting out the substance of his new oral evidence and Mr Andrews should submit a supplementary proof in response.

28. When Steven Coates, Jacqueline Smith and Edward Biddle gave evidence on the fifth day, they all confirmed that: they would be prepared to act as "flood wardens"; they had signed up to the EA flood warning service and that the other appeal site residents had signed up, or agreed to do so; and the residents had all agreed to evacuate the site on receipt of a Standby Alert. Indeed, Mr Coates also referred to leaving at the "first alert", which would in fact be the Flood Alert, referred to in the TLFAP.

29. In his supplementary proof of evidence[20], Mr Andrews said that he did not object to Mr Walton's calculation methodology. However, he said that the Standby Alert is not issued to the general public, but only to professional partners to allow them to begin their preparations for a potential flood event. In fact, the TLFAP indicates that the Standby Alert is issued to "professional partners and caravan site owner*[sic]*". The appellants point out that Steven Coates, Jacqueline Smith, Edward Biddle, and others, are caravan site owners in any event, so they would receive the Standby Alert, irrespective of their status as flood wardens. I shall return to this matter, but, although Mr Andrews did not speak to his supplementary proof when the inquiry resumed in April of this year, and so was not cross examined on it, I have no reason to doubt that the Standby Alert is only issued to professional partners and caravan site owners. Mrs Lancaster was not specifically asked about this

[20] Inquiry document 45.

and there is no evidence before me to the effect that flood wardens are also party to the Standby Alert.

30. In any event, on the basis of the Flood Alert being the trigger, and having regard to the impact of climate change, Mr Andrews estimated the potential number of evacuations as 11 in 4 years, or just fewer than 3 per year. When he gave further oral evidence on day 7 of the inquiry, Mr Walton accepted that figure. He also accepted that events would not be evenly spread, so in any given year, evacuation could be required more or less frequently than 3 times per year.

31. Under cross examination, Mr Andrews said that, based on his experience, a Standby Alert would give somewhere between 12 hours and 3 days warning of a flood event. Mrs Lancaster confirmed this in cross examination and Mr Walton did not dissent from that view. It was also common ground that the Flood Warning, which is issued to professional partners, the media and public, would normally give around 8 to 12 hours notice of a flood event.

32. As indicated, the TLFAP is designed to ensure evacuation of caravans "in plenty of time" and commencement of the process at the Flood Warning stage was deemed sufficient for that purpose. However, I accept that this plan was not intended to cater for further caravan site development along Tolney Lane. Furthermore, from the Flood Warning stage onwards, significant input is required from the Council and emergency services. Their limited resources are subject to intense demand at times of flooding and I accept that those demands should not be unnecessarily increased to any significant degree.

33. Clearly, this development is contrary to local and national policies concerning flood risk, such that it should not normally be allowed and I will have to weigh other considerations against that. For now, I simply note that, if I can be confident that the residents of the appeal site would evacuate before any significant input is required from the Council or emergency services, then this development need not give rise to an additional burden and the residents are likely to be reasonably safe.

34. In theory, evacuation on either the Standby Alert or Flood Alert could achieve that. However, leaving aside the complication that the Standby Alert is not available to all members of the public who sign up to the EA's flood warning service, the evidence is that the Standby Alert might only provide 12 hours warning of a flood and the science of this is imprecise. The appellants say that they all have touring caravans and are used to moving at short notice; they can hitch them up and leave within 30 minutes. For a number of reasons, that is over-simplistic. A Standby Alert might be issued in the early hours of the morning. Some residents, adults or children, could be away from the site when the Standby Alert is issued. There are children among the occupants, including one with serious medical issues, as well as the elderly infirm. There could be problems with one or more vehicles. Factors such as these could delay an evacuation. There could still be sufficient time for residents to leave before the site or access floods. Nevertheless, in the context of the TLFAP, such a delay could easily mean that an extra burden could be placed on the Council and emergency services to ensure that the site is indeed evacuated, along with all the others on Tolney Lane. Furthermore, the appeal site is arguably the most at risk, given that it is at the far end of Toney Lane and, unless they leave

early, its occupants could be at the back of the queue of those trying to evacuate.

35. Mr Walton described evacuation on the Standby Alert as a "precautionary approach." This is a fair description, given his unchallenged evidence that, out of the 27 occasions between 1965 and 2013 when a Standby Alert would have been justified, only 11 instances would have escalated to the Flood Warning stage. However, I consider that, in the circumstances of this case, even greater precaution would be appropriate. In principle, if the residents were required to evacuate on the Flood Alert, which is the first standard alert available to all those who sign up to the EA's flood warning service, then that would minimise the risk to the residents[21]. It would also minimise the risk of any significant additional burden falling upon the Council and emergency services, other than the need to check that this site has in fact been evacuated when visiting other sites on Tolney Lane, including the adjacent lawful Hirams Paddock site, as required by the TLFAP. I note the point in Mr Andrews' supplementary proof[22]that the EA has no legal duty to provide flood warnings. However, whilst Mr Andrews was not put forward for cross examination on that proof, I heard nothing to indicate that the EA is likely to discontinue its flood warning service within the next 5 years or so.

36. I have also considered the possibility that an evacuation from the appeal site following a Flood Alert could cause concern among other Tolney Lane residents, with consequent demands on the Council for information and advice. However, I accept the appellants' evidence that frequent movements of caravans along Tolney Lane are common place and unlikely to cause an issue.

37. During the discussion of conditions and in the appellants' closing submissions, it was made clear that the appellants would be prepared to evacuate at the Flood Alert stage. I will consider this further, including the practicalities and whether such an arrangement might justify permanent or temporary permissions, when I look at the overall balance and the scope for conditions.

38. Turning to the question of whether the appeal development is likely to increase the risk of flooding elsewhere, there are 2 factors to consider, namely the impact of the solid walls which have been constructed and the raising of land levels. A significant number of solid stone walls and some close-boarded timber fences have been erected around the pitches and the site, including several which are perpendicular to the likely direction of flow of any flood waters, such that they would divert that flow. All of these walls and fences only affect a small proportion of the entire width of the floodplain, and Mr Walton's evidence[23] is that the velocities of flood waters are likely to be relatively low. However, Mr Andrews pointed out that there is no proper analysis in a FRA, including hydraulic modelling of the area with the structures in place. In any event, removal of those solid walls and close-boarded fences and perhaps replacement with post and rail fencing would address this point. Given the lack of clear evidence regarding the potential impact of the walls and the policy presumption against this development, it would be reasonable and necessary to require their removal.

[21] In saying this I have had regard to Mr Andrews' point that the information before me does not take account of the flood risk from the adjacent Old Trent Dyke. That risk is not factored into the TLFAP, which only relies on measurements at the Colwick gauge.
[22] See inquiry document 45, paragraph 25.
[23] See paragraph 3.41 of his proof.

39. In relation to ground levels, the original FRA produced by Rosamund Nicholson for the planning application included a Site Levels survey drawing 1636.A.2[24]. There are only 10 levels marked on that survey, and their locations are approximate. However, Mr Andrews referred to ground level information obtained in March 2010 by using a remote sensing method called light detection and ranging (LiDAR)[25]. This is accurate to +/-150mm and Mr Andrews said the results were in general agreement with drawing 1636.A.2.

40. By comparing the levels shown on drawing 1636.A.2 with a later survey drawing 002[26] and on the basis of his own inspection of the site, Mr Walton concluded that only the levels in Pitch 8 had been raised and only by approximately 200mm over an area of about 10m squared. Other pitches have been lowered, as top soil was removed before permeable hard core surfaces were laid. Mr Andrews said he had no reason to doubt that but, during the inquiry site visit, the levels of Pitch 8 were compared with the unaltered ground immediately to the southwest of its boundary fence. On that basis, Mr Walton agreed that Pitch 8 had been raised by more than he initially estimated, perhaps by some 300mm over the 10m squared area in the southern corner of that pitch and by up to around 500mm – 600mm towards the northwest of the pitch, where it meets a ditch.

41. Even on this basis, the amount of additional material brought onto the appeal site may not be significant in the context of the entire floodplain. However, if small changes are ignored, the cumulative impact could be significant over time. No level for level, volume for volume compensation is available, but the appellants acknowledge that a condition could require the ground level to be lowered. In his own evidence, Mr Andrews indicated[27] that drawing 1636.A.2 would be an important piece of evidence, should I be minded to dismiss the appeal and require land levels to be returned to those prior to the development taking place. Together with the comparison with adjoining land levels, it would be equally important in the context of a planning condition.

Conclusion on the first main issue

42. The appeal development is clearly contrary to local and national policy concerning flood risk. It may be possible, to manage that risk through conditions securing a site specific evacuation plan requiring evacuation on a Flood Alert, without placing significant additional burdens on existing evacuation arrangements. However, given the strong policy objection to this development, whether that would be reasonable or appropriate, on a permanent or temporary basis, will depend on the overall balance of other considerations. The evidence indicates that the development could increase the risk of flooding elsewhere, but that could be addressed by conditions requiring the removal of solid walls and fences and a reduction in the levels on Pitch 8.

Main issue (ii) – The character and appearance of the countryside

43. Whilst there are many other caravan sites on Tolney Lane and a scrap yard on the opposite site of the road to the appeal site, this development continues the piecemeal encroachment of development into the countryside to the south

[24] See Mr Walton's first proof, annex 5.
[25] Mr Andrews' first proof of evidence, appendix 7.
[26] Ibid, Annex 4 and inquiry document 1.
[27] See paragraph 3.22 of Mr Andrews' first proof.

west. Before this development, the site was a field or paddock and formed part of the open countryside, beyond the urban area. The appeal scheme therefore conflicts with Spatial Policy 3 of the CS which, among other things, indicates that development away from the main built up areas of villages, in the open countryside, will be strictly controlled and restricted to uses which require a rural setting, such as agriculture and forestry. A gypsy site does not necessarily require a rural setting.

44. However, paragraphs 12 and 23 of PPTS implicitly accept that gypsy and traveller sites may be located in rural areas, but that their scale should not dominate the nearest settled community. Under cross examination, Mrs Lockwood accepted this and took the view that Spatial Policy 3 does not actually rule out sites in the countryside and there would be times when circumstances outweighed the presumption against development.

45. In addition, Core Policy 5 of the CS lays down the criteria for considering sites for gypsies and travellers. Although it seeks to ensure accessibility to services and facilities and to maintain visual amenity, it does not preclude or otherwise specifically restrict gypsy and traveller sites in the countryside. Mrs Lockwood said that the Council recognises that sites are more likely to be in the countryside, but would want them to be in and around the urban area to make them sustainable. Leaving aside flood risk, the Council did not contest the sustainability of the site, in terms of its access to services and facilities. Indeed the site is within walking or cycling distance of the town, the railway station, schools and so on.

46. In any event, though some of the caravans on the site can be glimpsed from the A46 at some distance through gaps in the hedge, the site is not prominent in any significant views from public vantage points and the visual impact of the use is limited.

Conclusion on the second main issue

47. I conclude on this issue that the development causes some limited harm to the character and appearance of the countryside. To this extent, as well as breaching Spatial Policy 3 and the requirement in Core Policy 5 to maintain visual amenity, it is also in conflict with Core Policy 9 of the CS. This is a general policy, which seeks to protect and enhance the natural environment. That limited harm must nevertheless be viewed in the context of the implicit acceptance in PPTS that gypsy and traveller sites may be located in rural areas and the Council's acknowledgement of the likelihood of this. Some harm may frequently be inevitable.

Main issue (iii) – The provision of and need for gypsy and traveller sites

48. PPTS indicates that local planning authorities should make their own assessment of need for gypsy and traveller sites, using a robust evidence base. Furthermore, section 225 of the Housing Act 2004 requires local housing authorities to carry out an assessment of the accommodation needs of gypsies and travellers resorting to their district. In 2007, the Council completed a Gypsy and Traveller Accommodation Assessment (GTAA). Mrs Lockwood said that GTAA covered the period up to the end of 2012 and, as the Council is only now in the process of preparing a new GTAA, which should be finalised sometime in 2014, it is behind schedule. In due course however, that new

GTAA will inform a Gypsy and Traveller Development Plan Document (DPD), which will allocate sites.

49. The Council contends that there is an unmet need for 21 pitches up to 2012, with the future need yet to be identified. That figure is subject to considerable dispute for a number of reasons. Most significantly, the appellants point out that some of the sites, such as Hoes Farm, Sandhills Sconce and Hirams Paddock, which have been treated by the Council as contributing to the supply, are not subject to conditions restricting their use to occupation by gypsies and travellers. Accordingly, their availability for use by gypsies and travellers cannot be guaranteed. For these and other reasons, the appellants contend that the unmet need for the period up to 2012 is for as many as 72 pitches. Whatever, the correct figure, the Council concedes that there is a significant unmet historic need. I accept that, without needing to identify a precise figure, and note that there is no current allocations policy to meet that historic need.

50. Paragraph 9 of PPTS requires lpa's to identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The Council has not done this and indeed does not have the required robust evidence base to enable it to set targets. Bearing in mind the likely timescale for adoption of a gypsy and traveller site allocation DPD and then the time required for sites to come forward through the planning process, Mrs Lockwood accepted in cross examination on 18 September 2013 that it could be 5 years before alternative sites are deliverable.

51. Paragraph 25 of PPTS provides that if a lpa cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision, when considering applications for the grant of temporary planning permission. However, paragraph 28 states that this only applies to applications made 12 months after March 2012, when PPTS came into force. The policy came into force in March 2012. The application the subject of appeal D was made on 29 March 2012 and the deemed application the subject of appeal A was made when the appeal was lodged, namely on 12 October 2012. Accordingly, paragraph 25 of PPTS does not apply.

52. In closing, the Council drew my attention to *Central Bedfordshire v SSCLG & Michael Kiely CO/14561/2013*[28]. Although there is no judgement in that case, the Secretary of State consented to an order quashing his decision and the Consent Order records his acceptance that he *"erred in his decision letter dated 27 August 2013, in that…he placed reliance on paragraph 25 of the Planning Policy for Traveller Sites when giving significant weight to the absence of an up-to-date five-year supply of deliverable sites."* In that case, the application had been made in October 2011, so paragraph 25 of PPTS clearly did not apply. Nevertheless, in his decision letter, the Secretary of State said: *"Given the Inspector's advice…that there is a significant immediate need for sites, the Secretary of State considers that, in this particular case, this policy presumption should be afforded significant weight."*

53. I accept that, in these circumstances, paragraph 25 of PPTS does not require me, as a matter of Government policy, to regard the lack of a 5 year supply as

[28] Inquiry documents 59 to 61.

a significant material consideration. However, I do not accept that paragraph 28 of PPTS fetters my discretion in attributing weight to the absence of a 5 year supply as a material consideration, in the light of all the circumstances of this case. I shall return to this when I consider the overall balance.

Conclusion on the third main issue

54. I conclude on this main issue, that there is a significant, historic unmet need for gypsy and traveller sites in the district and that the Council cannot demonstrate an up-to-date 5 year supply of sites, or even quantify the future need.

Main issue (iv) – Personal circumstances and alternative accommodation

55. The Design and Access Statement submitted with the section 78 application provided some background information and asserted that the potential owners of each pitch were all members of the gypsy and traveller community, who already reside on Tolney Lane, but who wish to move because their current pitches are very cramped or because they are new family units. Some of the site occupants in this case, namely Steven Coates, Cherylanne Coates, Edward Biddle, Margaret Biddle and Amos Smith, were also the prospective occupiers in another appeal concerning a site at Collingham, Newark Ref 141757[29] (the Collingham appeal). In that appeal, it was not disputed that they were gypsies and travellers.

56. Neither the reasons for refusal in relation to the planning application the subject of appeal D nor the reasons for issuing the enforcement notice indicated any dispute over gypsy and traveller status. The Council's Statement of Case gave no indication that there was any issue over status but, in her proof, Mrs Lockwood stated that the onus was on the appellant to prove gypsy and traveller status for all the occupiers and the Council reserved its right to challenge that. That stance was reiterated by the Council in opening. In evidence Mrs Lockwood said that although gypsy and traveller status had been accepted in relation to the planning application, that had been an error, as the Council had only looked at ethnicity, rather than the correct land use definition under PPTS; the Council had given the applicants "the benefit of the doubt." It is notable that gypsy and traveller status was also accepted on very limited information in the Hoes Farm and Hirams Paddock applications.

57. Additional information in relation to status was provided in Dr Murdoch's first proof of evidence, but during the first 2 days of the inquiry, the Council indicated that it was still reserving its position in relation to status and repeated that the onus was on the appellants to prove gypsy and traveller status and on me to make the determination. As a result, the appellants decided that they needed to call 10 witnesses (1 for each pitch), rather than the 3 occupants as originally advised at the start of the inquiry. During the first long adjournment, Dr Murdoch provided a supplementary proof of evidence on the subject of gypsy and traveller status, appended to which were 10 proofs from the occupiers of the respective pitches[30]. Much of the information set out in those proofs was within Dr Murdoch's first proof[31], but

[29] See Dr Murdoch's appendix 1.
[30] In the case of Pitch 3, the proof was from Andrew Wilson of Hirams paddock, who is purchasing the pitch for his daughter Zadie, who is to occupy it on her forthcoming marriage to Joe Knowles.
[31] See Dr Murdoch's first proof paragraphs 14 -15 and 88 – 90.

they indicated that all the families involved are from ethnic Romany Gypsy backgrounds; that they have been born in and continue to live in caravans; and that members of each family have always travelled and still travel for an economic purpose, except now for the Biddle family, but that is due solely to the poor health of Mrs Biddle's mother.

58. On the third day of the inquiry, having seen the additional proofs of evidence, but before the occupiers gave oral evidence, Mrs Lockwood accepted in cross examination, that Mr Coates and Mr Gray, from Pitches 1 and 2 respectively, are gypsies and travellers within the PPTS definition. At the start of the fourth day, counsel for the local authority said that she had taken further instructions and the Council now conceded that each of the occupiers satisfied the definition of gypsies and travellers. Furthermore, she said she would not dispute that this concession was made on the basis of Dr Murdoch's first proof of evidence. During the inquiry, I was shown further written clarification from Mr Wilson and Mr Calladine of Pitches 3 and 5 respectively, regarding their travel for economic purposes. Having regard to all of the evidence provided, I am satisfied that all the relevant occupiers are gypsies and travellers, as defined in PPTS, as well as being Romany Gypsies.

59. The occupiers of the appeal site have been associated with Tolney Lane and the Newark area for a long time. Many have lived in caravans on other sites along Tolney Lane. A number have been to school locally and they have had children born in the area, who have also gone to local schools. As indicated in Dr Murdoch's first proof, reasons for occupying the appeal site include that existing sites on Tolney Lane are cramped, or that new family units need to be accommodated. *Chapman v UK [2001]* indicates that, when considering any requirement for individuals to leave their homes in the context of the rights under Article 8 of the ECHR, it will be highly relevant whether the home was established unlawfully. The appellants have occupied the appeal site unlawfully, but the relevance of that factor is diminished in this case by the fact that until recently, the Council has sanctioned the use of Tolney Lane for gypsy and traveller sites and even considered acquiring more sites on Tolney Lane for such use. Mrs Lockwood did not accept the appellants' account that, following the failure of the Collingham appeal, the Council advised them that Tolney Lane was a more suitable location, despite the flood risk. However, she did accept that they were advised that if residents were already on authorised Tolney Lane sites, they would be better to remain there. In all the circumstances, the appellants could be forgiven for thinking that Tolney Lane was the Council's preferred location for gypsy and traveller sites.

60. Although, at the moment, the children on the appeal site of secondary school age are generally home tutored, there are at least 10 children who attend a local primary school. The occupier of Pitch 1 explained in evidence that, while travelling, children often get behind with their schooling such that, by secondary school age, they can be subject to bullying. This is why the older children are often home-tutored. However, he said that his youngest daughter was going to the local primary school and he hoped she would stay on at school. If he had to leave the appeal site, unless he could find another pitch on Tolney Lane, he would have to take his daughter out of the local school. The importance of education for gypsy children in a changing world was also stressed in the statement from the occupier of Pitch 7, whose 3 youngest children also attend a local primary school.

61. Aside from educational needs, one child on the site has serious medical issues. He is blind in one eye and suffers from seizures. The family's pitch on a previous site on Tolney Lane was so cramped that he could not be stretchered from one caravan to the other when he had a seizure and he was at risk from traffic on the site. His mother explained the importance to his development and well-being of a safe and spacious site and the risks for him in living by the roadside, such that he would have to be watched constantly. Furthermore, not having a stable address used to cause problems in keeping up with correspondence from the hospital. In addition, an elderly lady on the site suffers from dementia and is easily disorientated.

62. The occupiers of Pitches 1, 7 and 8 share family ties with others on the appeal site and there are many family and friendship connections with people on different sites along Tolney Lane. Steven Coates of Pitch 1 has travelled with others from the site, such as Mr Knowles, Mr Gray and Mr Biddle. The oral evidence of Mr Coates was that all the people on the appeal site are friends. The oral evidence of Mrs Smith and Mr Biddle also indicated that the occupiers of the appeal site are in daily contact; they form a stable group and, in the words of Mr Biddle, they are "a close community and help each other."

63. The Council accepts that the occupiers of the appeal site have a need for pitches[32]. It also acknowledges the vulnerability of some of the occupants, but takes the view that this only increases the unsuitability of a site in Flood Zone 3.

64. A number of the occupiers have been seeking, without success, to identify suitable sites for gypsy and traveller pitches in the Newark area for sometime. For example, several of them were involved in the unsuccessful Collingham appeal. In her proof, Mrs Lockwood accepts that there are no reasonably available alternative sites[33]. She confirmed during cross examination that she was not aware of any such sites in the district or county. Though she suggested some sites on Tolney Lane may have vacancies, these would also be subject to flood risks. Furthermore, she acknowledged that the risks associated with living by the roadside would need to be weighed in the balance. Steven Coates, Edward Biddle and Jacqui Smith all referred to the possibility of living on the roadside and indeed were unable to identify any lawful sites to which they could go, without perhaps doubling up on pitches on other Tolney Lane sites.

65. In closing, the Council pointed out that, if the occupiers of the appeal site were evicted from it, the Council would have to comply with its duties under the Housing Acts and my attention was drawn to *Leanne Codona v Mid-Bedfordshire District Council [2004] EWCA Civ 925*[34]*.* That case specifically concerned a local housing authority's duty to secure suitable accommodation for homeless persons under the Housing Act 1996. It was held that, where the Council, as a matter of relative urgency, was required to find accommodation for an extended gypsy family occupying some 6 or 7 caravans, the offer of bed and breakfast accommodation, in bricks and mortar, discharged the duty. This was despite the family's aversion to conventional housing, but on the basis that they would only stay in that accommodation for a short time, because such

[32] See inquiry document 56, paragraph 37.
[33] Mrs Lockwood's paragraph 8.4.
[34] Inquiry document 57.

accommodation could become unsuitable if occupied for too long. Given its specific application to Housing Act duties and the provision of temporary accommodation, I do not find the *Codona* case especially helpful.

66. The appellants referred me to *Thomas Clarke v SSETR & Tunbridge Wells BC 9.1.01 CO 1844-2001 EWHC Admin 800*. Although I heard no specific evidence to the effect that the occupiers of the appeal site have a cultural aversion to bricks and mortar, there is no indication that any of them have ever lived in conventional housing and there is no specific offer of alternative accommodation for any of the occupants, nor any information on which to assess its suitability. In any event, whilst this does not in itself demand a grant of planning permission, the prospect of temporary, alternative bricks and mortar accommodation would not facilitate the traditional nomadic way of life of travellers in accordance with PPTS.

Conclusion on the fourth main issue

67. I conclude in relation to this main issue that the appellants and other occupants of the appeal site are gypsies and travellers as defined in PPTS and they are Romany Gypsies. They are a relatively cohesive group, with strong friendship and family connections. They have substantial, established connections with Tolney Lane and the Newark area. They have a need for gypsy and traveller pitches, but neither they, nor the Council have been able to identify any suitable alternative accommodation. There is a real risk that the occupants would have to live at the roadside if forced to leave the appeal site, or they might resort to doubling up on other Tolney Lane sites, still within a flood risk area. At least 10 children from the site attend a local school and their education would be seriously disrupted if they have to go on the road. In addition, the poor health of one child and one elderly adult mean that they would be particularly vulnerable if living at the roadside. All of these factors weigh in favour of the appeals.

The overall balance of considerations

68. In relation to the first main issue, although I am satisfied that the risk that this development will cause flooding elsewhere can be addressed by conditions, the risk to the occupiers of the appeal site from flooding is a very serious matter, having regard to national and development plan policy. Added to this is the limited harm I have found under the second main issue in relation to the impact on the character and appearance of the countryside and the resulting conflict with development plan policies, notwithstanding that the site is in an accessible location.

69. Nevertheless, the factors identified in my conclusions on the third and fourth main issues together weigh heavily in favour of the appeals. I have had particular regard to paragraphs 3 and 10 of PPTS, which make it clear that the Government's policy is to ensure fair and equal treatment for travellers, in a way that facilitates their traditional and nomadic way of life, while respecting the interests of the settled community. Local policies are required to achieve the same objective. Having regard to the European Court of Human Rights' judgement in *Chapman v UK [2001]*, this reflects the legal obligations imposed by Articles 8 and 14 of the European Convention on Human Rights (ECHR), which respectively recognise peoples' rights to respect for their private and family lives and their homes and freedom from discrimination. In relation to

ethnic Romany Gypsies, the duty to have due regard to the need to eliminate discrimination and advance equality of opportunity is now underpinned by sections 149 and 150 of the Equality Act 2010.

70. Generally, the CS and DMDPD have set out planning policy and allocations for the district up to 2026 and there is a 5 year supply of housing land to meet the needs of the settled community. By contrast, the pitch requirements for gypsies and travellers have only been identified up to 2012 and the Council has not met those requirements. It has not identified the future need and cannot demonstrate an up to date 5 year supply. It acknowledges that potential sites are more likely to be in the countryside than urban areas, but Mrs Lockwood said that the starting point is that countryside sites are likely to be in conflict with Spatial Policy 3 of the CS. Against that background, when asked if the Council's policies facilitate the traditional nomadic way of life of travellers, Mrs Lockwood's candid reply was "probably not."

71. In all these circumstances, the absence of a 5 year supply of deliverable sites for gypsies and travellers must carry weight, notwithstanding paragraph 28 of PPTS. Nevertheless, principally because of the serious flood risk, I am still not persuaded that all the material considerations justify a permanent permission. Refusal of a permanent permission would result in an interference with the occupants' rights to their private and family lives and homes under Article 8 of the ECHR. However, the section of the PPG concerning the use of planning conditions indicates that temporary permission may be appropriate where it is expected that the planning circumstances may change by the end of the relevant period. There is at least a realistic prospect of safer, more suitable sites being allocated through the development plan process and delivered, with planning permission, within the next 5 years[35]. If the risks can be effectively managed and minimised over a finite and temporary period then, in the very particular circumstances of this case, the material considerations identified as weighing in favour of the development would cumulatively indicate that permission should be granted for a temporary period, notwithstanding the national and local policy objections. This depends on the scope for appropriate and effective conditions, which is why simply extending the period for compliance with the notice would not be the way forward. I therefore turn to consider conditions now.

Conditions

72. Dealing first with matters relating to flood risk, the appellants proposed a condition requiring the submission of a draft "flood emergency plan" for approval by the Council and indeed they submitted an example draft[36]. The Council had concerns about the precision of elements in the draft plan and the fact that, on its face, it appeared to place responsibilities on the Council. Furthermore, the need for the submission and approval of a draft and, if the Council cannot approve any submitted draft, the need for the submission and final determination of an appeal, means that there could be a very significant delay before any enforceable plan is in place. This is unacceptable, given the level of risk to residents in the meantime and the likelihood that, in the absence of effective arrangements, occupation of the site could place demands on the Council and emergency services during any flood event.

[35] I.e. 5 years from September 2013, when evidence was given on the point.
[36] Inquiry document 46.

73. However, in the light of all the discussions during the inquiry, I am satisfied that the essential elements of an evacuation plan can be distilled and incorporated into a condition, which would have immediate binding effect. In summary, those elements are that: (i) all site residents must register with the EA's Floodline Warnings Direct Service; (ii) periodically, and on request, they must provide the Council with confirmation from the EA that they are signed up to that service; (iii) periodically, and on request, they must provide the Council with written details of the location or locations to which they could evacuate[37] as well as their telephone contact details; (iv) no less than three named individuals from among the site residents will act as "Flood Wardens"; (v) receipt of a Flood Alert will trigger an evacuation of the site; (vi) at least one of the Flood Wardens will contact the Council to confirm that the site has been evacuated; and (vii) none of the residents shall return to the site until the EA has confirmed that the alert is over.

74. Evacuation clearly cannot happen instantly on receipt a Flood Alert. To ensure precision, whilst remaining reasonable, I will require evacuation within 8 hours of a Flood Alert. This takes account of the possibility that alerts may be received at night, or in other difficult circumstances, whilst still representing a precautionary approach, given the evidence that a Flood Alert is likely to come up to 3 days before a flood. Steven Coates, Jacqueline Smith and Edward Biddle have agreed to be Flood Wardens in the first instance and, on their evidence, I am satisfied that this means at least one of them is likely to be in the area at any given time.

75. Other requirements suggested in the appellants' example draft flood emergency plan envisaged an enhanced role for the Flood Wardens, including training and even closer liaison with the Council. This may be desirable, and I am satisfied that the first 3 named Flood Wardens would engage with that process, as well as being prepared to raise awareness of flood issues among other Tolney Lane residents. However, I am not persuaded that is necessary to impose such an enhanced role in the context of my precautionary approach, over a temporary period, and the relevant requirements cannot be specified with precision at this point.

76. The evidence is that Flood Alerts and consequent evacuation would probably occur around 3 times per year, though this cannot be predicted with precision. Given the public safety and resource implications of this use, the fact that the alternative is that the use ceases with a real possibility that the residents would face a roadside existence, I consider this reasonable. The Council doubted whether the residents would be prepared to evacuate on a Flood Alert, or even a Standby Alert, and to support this made reference to the Flood Alert issued on 6 February 2014[38], following which the appellants and other occupiers remained on site. However, on that occasion, given that these appeals were still in progress, the appellants had the benefit of expert advice from Mr Walton. He looked at information on the EA's web site and advised them on that occasion that it would be safe to stay. That is not evidence of a careless approach and of course there was no enforceable requirement to evacuate on that occasion. Several of the appeal site residents have experience of evacuating during previous flood events.

[37] This is to ensure that additional demand is not placed on the Newark Lorry Park, to where evacuees are directed under the TLFAP.
[38] See paragraph 3 of Mr Walton's second supplementary proof (inquiry document 53).

77. Without these evacuation arrangements, residents' safety cannot be reasonably secured. Given the seriousness of the risk, I will require the use of the site to cease within 6 months of a failure to meet any of these evacuation requirements. Having regard to advice in the PPG, breaches of the requirements outlined would be capable of detection, without imposing any obligation on the Council to undertake time consuming checks, and there would be an effective sanction. The requirements would not place any significant burden on the Council, either in terms of monitoring compliance, or by way of increased responsibilities under the TLFAP.

78. For the Council, Mrs Lancaster spoke of the difficulties of dealing with transient communities, but accepted in cross examination that named contacts would be preferable. I heard evidence from the appellants regarding the cohesive nature of the group occupying the appeal site and their understanding and acceptance of the steps necessary to respond to a potential flood event. These factors are important in persuading me that an evacuation plan is workable, over a finite period, to safeguard the occupiers of the site, whilst minimising the burden on the Council. The requirement for all named residents to register with the EA's Floodline Warnings Direct service makes it extremely unlikely that the group as a whole would be unaware of a Flood Alert. Together with the personal circumstances outlined under the fourth main issue, these considerations exceptionally justify a personal condition, limiting the benefit of the permission to the existing named occupiers. Responsibilities under the evacuation condition can be linked to those named occupiers.

79. For the reasons already given in relation to flood risk, I will require the removal of the existing solid walls and close-boarded fences and replacement with post and rail fences only. This can reasonably be required within 3 months. Otherwise, in the interests of the visual amenities of the area, I will require the site to be laid out as per the Site Layout Plan received by the Council on 5 April 2012 in connection with the application the subject of appeal D. In this regard, during the site visit, it was noted that Pitch 7 has been subdivided with a fence. However, this is indicated on the Site Layout Plan and I am told that this pitch is shared by Mr and Mrs Coates and Peter Jones. In any event, given that the overall numbers of caravans on the site will be limited to 20 and the permission will be personal, this subdivision is not significant.

80. Again, for reasons already given in relation to flood risk, I will require the levels on Pitch 8 to be reduced. Having regard to the evidence and my site inspection, this can be specified with sufficient precision by reference to the adjacent land level and the Site Level drawing 1636.A.2, which was also submitted to the Council on 5 April 2012 in connection with the application the subject of appeal D. Having regard to discussions at the inquiry, I am satisfied that 3 months is a reasonable period for compliance with this condition.

81. Given that the special accommodation needs of the appellants and other occupiers of the site as gypsies is crucial to my decision, it is necessary to impose a condition restricting occupation to gypsies and travellers.

82. I have already indicated why a temporary period of 5 years[39] is reasonable and necessary in the circumstances of this case. Obviously, this still requires the occupiers to leave the appeal site at the end of the temporary period, but this

[39] I.e. 5 years calculated from September 2013, when evidence was given on the point.

is a proportionate response and interference with the residents' rights under Article 8 of the ECHR, given the legitimate objective of ensuring safety and avoiding undue additional burdens on the Council and emergency services. This temporary condition can be combined with the personal condition and, to safeguard the character and appearance of the area, will also require restoration of the site to its condition before the development took place.

83. The appellants propose that there should be no more than 20 caravans on the site and that these should all be tourers, rather than static caravans. It is necessary to impose restrictions to that effect to ensure ease of evacuation and to eliminate the possibility of static caravans floating around and causing a hazard in flood waters.

84. The appeal site access is taken through the adjacent lawful Hirams Paddock caravan site. To protect the living conditions of the occupiers of that site, as well as the character and appearance of this countryside location, it is necessary to prohibit commercial or industrial activities on the site, including the storage of materials. This is also necessary to facilitate easy evacuation and to eliminate the risk of materials being submerged or carried away in flood waters, with the consequent additional hazard.

85. To limit the visual impact of the development and highway activity and again to facilitate easy evacuation, it is necessary to restrict the size of vehicles parked or stored on the site to 3.5 tonnes.

86. During the inquiry, the appellants suggested I might consider a condition requiring the submission of a full site development scheme. I am not persuaded that this is necessary, having regard to other conditions imposed, but it is necessary to require the submission, approval and implementation of a scheme of restoration, including timescales. I am satisfied that submission can reasonably be required within 3 months, but to ensure that the condition is enforceable, I must provide for an appeal if the scheme is not approved by the Council and cessation of the use if the appeal fails. Given that this would not be a safety issue, I am satisfied that 18 months would be a reasonable period for cessation in this instance.

87. A number of suggested conditions were presented to me in writing during the inquiry, but these were the subject of considerable suggested amendments during discussions. In formulating the wording of my conditions, I have had regard to those suggestions, but also to the advice in the section of the PPG concerning the use of planning conditions. I am satisfied that all of the conditions imposed meet the tests set out in the PPG. Furthermore, notwithstanding those conditions, the development permitted on the deemed application under appeal A still falls within the matters specified in the enforcement notice as the breach of planning control.

The overall conclusion

88. Having regard to my conclusions on the main issues, the overall balance of considerations, the scope for conditions and all other matters raised, I conclude that appeal D should succeed and appeal A should succeed on ground (a), to the extent that temporary, personal planning permissions should be granted, subject to conditions. Accordingly, ground (g) does not fall to be considered under appeals A, B or C.

Decisions

Appeal A: APP/B3030/C/12/2186072

89. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the change of use of the land known as Green Park, off Tolney Lane, Newark, Nottinghamshire, NG24 1DA, as shown on the plan attached to the notice, from agricultural land to a residential caravan site subject to the conditions set out in the Schedule of Conditions hereto.

Appeal D: APP/B3030/A/12/2186071

90. The appeal is allowed and planning permission is granted for change of use from paddock to residential caravan site of land adjacent to Hirams Paddock, Tolney Lane, Newark, Nottinghamshire, NG24 1DA in accordance with the terms of the application, Ref 12/00562/FUL, dated 29 March 2012, subject to the conditions set out in the Schedule of Conditions hereto.

Appeals B and C: APP/B3030/C/12/2186073 and 2186074

91. No action is taken.

Schedule of conditions

1) The use hereby permitted shall be carried on only by the following and their resident dependants:
   - Steven and/or Cherylanne Coates
   - Adam and/or Florence Gray
   - Zadie Wilson (soon to be Knowles) and/or Joe Knowles
   - Danny and/or Marie Knowles
   - Richard and/or Theresa Calladine
   - Edward and/or Margaret Biddle
   - Steven and/or Toni Coates and Peter Jones
   - Amos and/or Jacqueline Smith
   - John and/or Kathy Hearne
   - Susie and/or Billy Wiltshire

   and shall be for a limited period being the period up to 30 September 2018, or the period during which the land is occupied by them, whichever is the shorter. When the land ceases to be occupied by those named in this condition 1, or on 30 September 2018, whichever shall first occur, the use hereby permitted shall cease and all caravans, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place in accordance with a scheme approved under condition 7 hereof.

2) No more than 20 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, of which none shall be a static caravan, shall be stationed on the site at any time.

3) No commercial or industrial activities shall take place on this site, including the storage of materials associated with a business.

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

5) Within 3 months of the date of this permission all of the solid walls and close-boarded fences erected on the site shall be demolished and the resultant debris removed from the site and those walls and fences will be replaced with post and rail fences, all in accordance with the plan showing the layout of the site received by the Council on 5 April 2012, but providing that where that plan indicates a "New wall" at the access to the site, that shall also be a post and rail fence.

6) Within 3 months of the date of this permission, the ground level within Pitch 8, which is identified on the plan showing the layout of the site received by the Council on 5 April 2012, shall be reduced so that, at the south-western boundary of Pitch 8, it corresponds with the unaltered ground level on the other side of that south-western boundary fence and so that in all other respects the ground level within Pitch 8 is no higher than the levels indicated for that area on the Site Levels drawing No 1636.A.2 received by the Council on 5 April 2012. All resultant materials shall be removed from the site.

7) The use hereby permitted shall cease and all caravans, equipment and materials brought onto the land for the purposes of such use shall be removed within 18 months of the date of the failure to meet any one of the requirements set out in (i) to (iv) below:

   (i) Within 3 months of the date of this decision a scheme for the restoration of the site 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 (hereafter referred to as the restoration scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for the implementation of its various parts;

   (ii) Within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State;

   (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State; and

   (iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

8) The use hereby permitted shall cease and all caravans, equipment and materials brought onto the land for the purposes of such use shall be removed within 6 months of the date of any failure to meet any one of the requirements set out in (i) to (vii) below:

   (i) Within 28 days of the date of this permission, each of the residents named in condition 1 hereof (hereafter referred to as the residents) shall (a) register with the Environment Agency's Floodline Warnings Direct Service (hereafter referred to as the Flood Warning Service (which expression shall include any replacement for that Service provided by the Environment Agency); and (b) provide the local

planning authority with confirmation from the Environment Agency that they have done so;

(ii) Each of the residents shall maintain their registration with the Flood Warning Service (or any replacement service) throughout the life of this permission and shall provide the local planning authority with further confirmation from the Environment Agency that they are registered within 28 days of each of the following: (a) the second, third and fourth anniversaries of the date of this permission; and (b) any written request from the local planning authority for such confirmation;

(iii) Each of the residents shall notify the local planning authority in writing of the locations to which they could evacuate in the event of a Flood Alert, together with their current telephone contact details within 28 days of each of the following: (a) the date of this permission; (b) the second, third and fourth anniversaries of the date of this permission; and (c) any written request from the local planning authority for such details;

(iv) Throughout the life of this permission, no less than 3 of the residents shall be nominated as Flood Wardens for the site. The first nominated Flood Wardens are Steven Coates of Pitch 1, Edward Biddle of Pitch 6 and Jacqueline Smith of Pitch 8, but the names and telephone numbers of the Flood Wardens shall be confirmed in writing to the local planning authority within 28 days of each of the following: (a) any change to the identity of any of the nominated Flood Wardens; (b) the second, third and fourth anniversaries of the date of this permission; and (c) any written request from the local planning authority for such details;

(v) Within 8 hours of a Flood Alert, this being the first alert issued through the Flood Warning Service, all of the residents will evacuate the site, bringing all caravans and vehicles with them;

(vi) Within 10 hours of a Flood Alert the Flood Wardens, or any one of them, will confirm to the local planning authority that all of the residents have evacuated the site; and

(vii) None of the residents shall return to the site until notice is issued through the Flood Warning Service that the Flood Alert is at an end and the all clear has been given.

J A Murray

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Saira Kabir Sheikh QC	Instructed by the Solicitor to Newark and Sherwood District Council
He/She called	
Timothy Andrews B.Eng. (Hons); C.Eng. MICE	Flood and Coastal Risk Management Technical Adviser in the Partnerships and Strategic Overview Team in the East Midlands Area of the Environment Agency
Lisa Lancaster	Business Manager for Community Safety, Newark and Sherwood District Council
Julia Lockwood BA (Hons) Dip TP MRTPI	Senior Planner, Newark and Sherwood District Council

FOR THE APPELLANT:

Alan Masters of counsel	Instructed by Murdoch Planning
He called	
Robert Winter	Occupier of 11 Hirams Paddock and part owner of the appeal site
Ian Walton BSc (Hons) MSc DIC MICE CEng	Technical Director, SLR Consulting Limited
Steven Coates	Occupier of Pitch 1 on the appeal site
Jacqueline Smith	Occupier of Pitch 8 on the appeal site
Edward Biddle	Occupier of Pitch 6 on the appeal site
Dr Angus Murdoch BA (Hons) MSC MA PhD MRTPI	Murdoch Planning

DOCUMENTS SUBMITTED DURING THE INQUIRY

1 A1 copy of the topographical survey, access and egress route drawing 002 from Annex 4 of Mr Walton's proof
2 Miss Sheikh's note regarding the validity of the section 78 appeal
3 Appeal decision APP/D0515/A/11/2161557 re land at Wisbech
4 Letter form the Planning Inspectorate to Dr Murdoch re certificates in APP/G5180/A/11/2154680
5 Planning permission Ref 12/00495/FUL dated 15 August 2012 and committee report re Hoes Farm, Tolney Lane
6 Planning permission Ref 12/01464/FULM dated 20 September 2011 and committee report re land off Sandhills Sconce, Tolney Lane
7 Planning permission Ref 01850831 dated 17 October 1985 re land at Castle View, Tolney Lane and accompanying agreement under S.52 of the Town and Country Planning Act 1971
8 Re land at Church View, Tolney Lane: Planning permission Ref FUL/941194 dated 30 November 1994; associated committee report; associated Caravan Site Licence; statement of Irene Briggs; planning permission Ref 1/-/77/910 dated 29 November 1977; certificate of lawfulness dated 18 March 1993

9 Appeal decision Ref APP/B3030/A/1085721 re land at Ropewalk Farm, Tolney Lane
10 Cabinet report dated 12 April 2012
11 Cabinet report dated 6 December 2012
12 Cabinet report dated 21 February 2013 and decision record
13 3 letters from third parties offering temporary accommodation in the event of a flood
14 Medial report concerning one occupier
15 Opening statement on behalf of the Council
16 Letter from the Environment Agency to the Council concerning Hoes Farm dated 8 June 2012
17 Letter from the Environment Agency to the Council concerning land off Sandhills Sconce (Hirams Paddock) dated 12 May 2011
18 Cabinet report dated 6 September 2012
19 Briefing note on allocation of land for provision of gypsy and traveller sites in Newark and Sherwood and consideration of the purchase of sites at Rope Walk and Church View
20 Appendix 9 to the Cabinet Report dated 6 September 2012 (Inquiry document 18 above)
21 Letter from the Council dated 13 December 2012 referred to in Appendix 10 to Miss Lockhart's proof
22 Statement of Common Ground (agreed but not signed by Appellants)
23 Council's costs application letters 25 April 2013 and 9 May 2013
24 Extracts from Newark & Sherwood Local Development Framework Allocations and Development Management DPD adopted July 2013
25 Appellants' costs application and response to suggestion that the S.78 appeal is invalid
26 Cabinet report dated 11 April 2013 referred to in the briefing note (Doc 19)
27 Economic Development Committee report re gypsy and traveller site provision 26 June 2013
28 Gypsy and Traveller Development Plan Document Issues Paper September 2013
29 Proposals Map extract
30 Aerial photograph
31 Minutes of Economic Development Committee 26 June 2013 (See Doc 27)
32 Secretary of State's decision and Inspector's report re appeals concerning Esbies Estate, Station Road, Sawbridgeworth, Hertfordshire
33 *R on the application of Massey v (1) Secretary of State for Communities and Local Government (2) South Shropshire District Council (3) Derbyshire Gypsy Liaison Group [2008] EWHC 3353 (Admin)*
34 Secretary of State's decision and Inspector's report re appeal concerning Marsh Farm, Sea Lane, Wrangle, Boston
35 Doncaster Metropolitan Borough Council planning permission Ref 13/00416/3FUL dated 26 July 20132 re land r/o caravan site, Lands End Road, Thorne, Doncaster
36 North Lincolnshire Council planning committee report Ref PA/2012/0456 dated 19 September 2012 re Mill Lane, Brigg (appeal decision pending)
37 Environment Agency consultation response dated 15.5.12 to application Ref PA/2012/0456 (Doc 36)
38 Appellants' draft Flood Emergency Plan for the appeal site
39 Draft supplementary proof of Ian Walton/draft supplementary Flood Risk Statement of Common Ground

40 *R V Kerrier District Council, ex p. Catherine Uzell & Others 91996) 71 P. & C. R. 566*
41 Environment Agency's consultation response to Doncaster application Ref 13/00416/3FUL re Lands End Road, Thorne, Doncaster (See Doc 35)
42 CD-ROM containing spread sheets of Environment Agency data and Ian Walton's analysis
43 Letter from Ian Walton enclosing CD-Rom (Doc 42) and extracts from spreadsheets
44 Ian Walton's supplementary proof of evidence
45 Supplementary proof of Timothy Andrews
46 Draft Flood Emergency Plan
47 Appellants' skeleton costs application
48 *Richmond Upon Thames Borough Council v Secretary of State for the Environment [1972] EG 1555*
49 *Runnymede Borough Council v Secretary of State for the Environment, Transport and the Regions [2001] PLCR 24 p.386*
50 Appellants' list of suggested conditions
51 Ian Walton's comments on Timothy Andrews' supplementary proof of evidence
52 Trent at Colwick Gauge record 1966 - 2013
53 Ian Walton's second supplementary proof of evidence
54 Appeal decision Ref APP/Y2003/A/12/2184070 re Mill Lane Caravan Site, Brigg
55 E-mails between Dr Murdoch and Julia Lockwood dated 10 October 2013
56 Closing submissions on behalf of the Council
57 *Leanne Codona v Mid-Bedfordshire District Council [2004] EWCA Civ 925*
58 Closing submissions on behalf of the Appellants
59 E-mail from Treasury Solicitor's department dated 12 March 2014 re *Central Bedfordshire v SSCLG & Michael Kiely CO/14561/2013*
60 Consent Order (unsigned) re *Central Bedfordshire v SSCLG & Michael Kiely CO/14561/2013*
61 Secretary of State's decision on appeal by Mr Kiely Ref APP/P0240/A/12/2179237
62 Appellants' written costs application