

REPORT OF THE HEAD OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications SECTION 2: Planning Appeals

In accordance with the provisions of Section 100D of the Local Government Act 1972, BACKGROUND PAPERS are the contents of the files whose registration numbers are quoted at the head of each report, but this does not include material which is confidential or exempt (as defined in Sections 100A and D of that Act, respectively).

1. PLANNING APPLICATIONS

This section also includes reports on applications for: approvals of reserved matters, listed building consent, work to trees in tree preservation orders and conservation areas, conservation area consent, hedgerows work, advertisement consent, notices for permitted development under the General Permitted Development Order 1995 (as amended) responses to County Matters and submissions to the IPC.

Reference	Item	Place	Ward	Page
CD9/2012/0003	1.1	Church Gresley	Swadlincote	1

When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

1. The issues of fact raised by the Head of Community and Planning Services' report or offered in explanation at the Committee meeting require further clarification by a demonstration of condition of site.
2. Further issues of principle, other than those specified in the report of the Head of Community and Planning Services, arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit.
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases.

Item 1.1

Reg. No. CD9/2012/0003/CD

Applicant:

DERBYSHIRE COUNTY COUNCIL
CORPORATE PROPERTY
CHATSWORTH HALL
CHESTERFIELD ROAD
MATLOCK

Agent:

MR GLEN OXLEY
DERBYSHIRE COUNTY COUNCIL
CORPORATE PROPERTY
CHATSWORTH HALL
CHESTERFIELD ROAD
MATLOCK

Proposal:

NEW BUILD INFANT AND NURSERY SCHOOL TO REPLACE THE EXISTING SCHOOL ON YORK ROAD, CHURCH GRESLEY. THE SCHOOL WITH PROVIDE FOR 270 PUPILS AGED 4+ TO 7 YEARS OLD (90 PUPILS PER YEAR GROUP) PLUS A NURSERY OF 52 PLACES. COUNTY COUNCIL APPLICATION NO CD9/0112/150 AT LAND AT SK2918 4692 PENNINE WAY SWADLINCOTE

Ward: Swadlincote

Valid Date: 01/02/2012

Reason for committee determination

The application is brought before the Committee at the discretion of the Head of Planning and Community Services, as it is a county consultation of significant local interest.

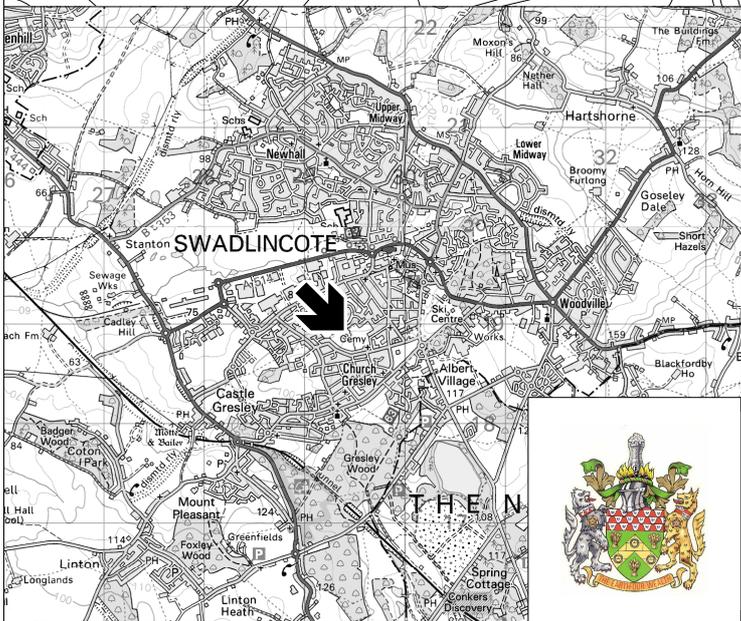
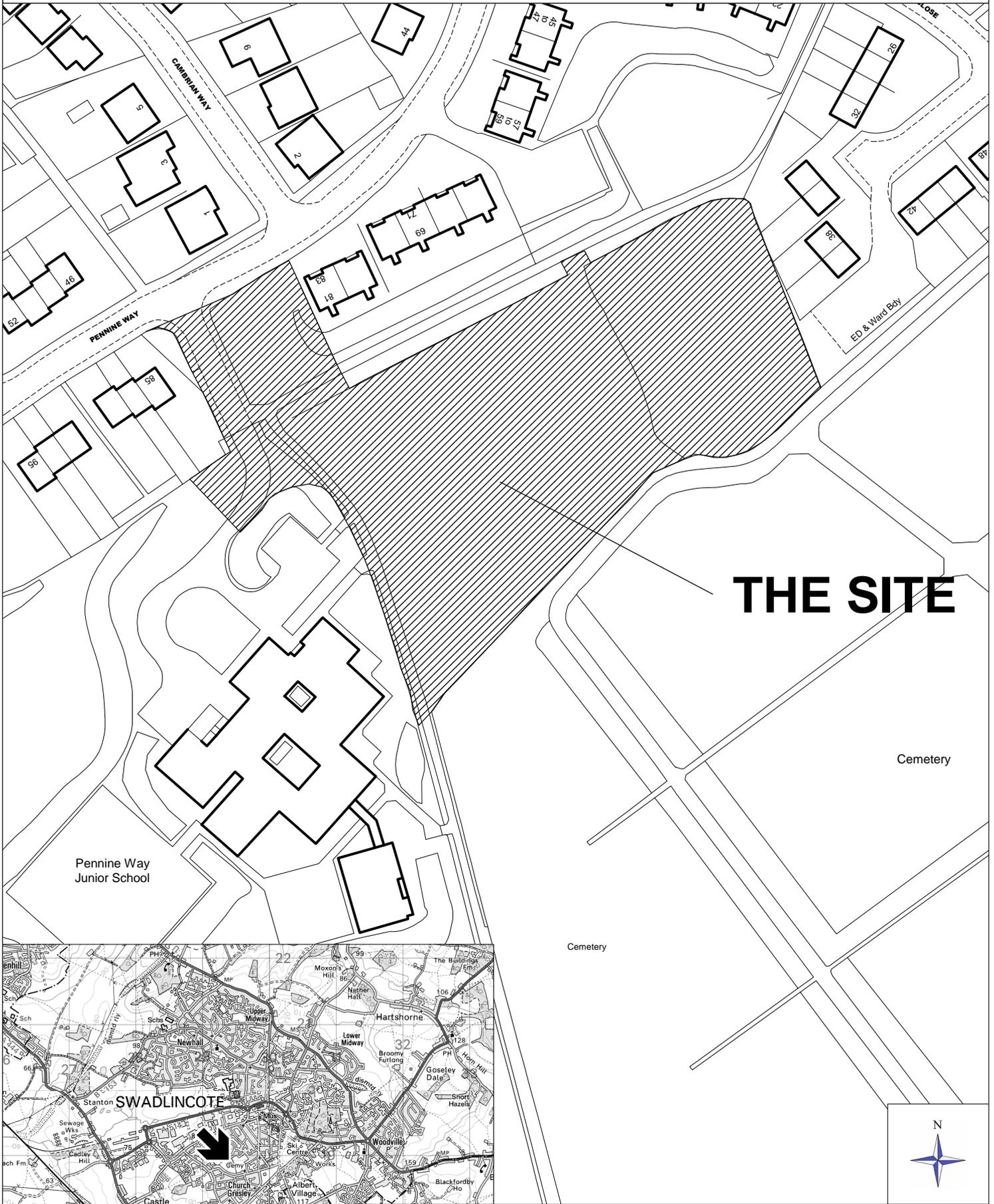
Site Description

The 7,340 square metre site is a wooded area to the north east of Pennine Way Junior school, to the rear of 61-83 (odds) Pennine Way and a cemetery bounds the site to the south east. The site slopes steeply to the south and existing footpaths 35 and 36 run along the northern and western boundaries.

Proposal

Planning permission is sought for a new infant and nursery school on land adjacent to Pennine Way Junior School. The school would provide for 270 pupils aged 4+ to 7 years old (90 pupils per year group) plus a nursery of 52 places. Access would be obtained off the junior school's access road. The proposed building would be a 'T' shaped with play areas adjacent to the north, south and eastern boundaries. Trees adjacent to these boundaries would be retained where possible. A car park is proposed immediately in front of the new school with 12 visitor spaces, 2 disabled spaces and a

CD9/2012/0003 - Land at Penine Way, Swadlincote DE11 9EY



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delivery space. South Derbyshire District Council own the piece of land (720 square metres) adjacent to Pennine Way on the corner with the access road. This is proposed for a 20 space staff car park and would be locked during the school day and overnight. Existing trees would be removed in order to facilitate the car park.

The proposed school would be split level with the north half of the building cut into the bank where there would be a 2 m high retaining wall. The proposed school is contemporary in design with mono pitched roofs with overhanging eaves, large expanses of glazing and a mix of cladding with sections of timber and coloured render.

Applicants' supporting information

Design and Access Statement

This outlines the benefits of a new school adjacent to the existing junior school in relation to use of recreational areas, liaison between staff and practical advantages for parents with children at both schools. The design is similar to that of the existing junior school.

Impact Assessment / Pennine Way Playing Fields Ecology Survey and updated survey and Phase 2 Survey Report

The loss of habitat and bird breeding area are identified within these reports. Loss of the broadleaved woodland habitat requires mitigation. Nesting birds are the only protected species identified on site. No protected species were found on the existing playing fields.

Habitat Creation and Management Method Statement

This report details the woodland creation on the existing Pennine Way Junior School site as mitigation for the loss on the new school site. Translocation of woodland herbs is proposed. New trees would be planted within the new school site and the provision of bird nesting boxes. Management of the retained trees, new grassland and the existing hedgerow on the cemetery boundary is detailed. A programme of work is outlined.

Reptile Survey Report

Five reptile surveys were carried out and no reptiles were found.

Travel Plan

Two separate pedestrian accesses from each of the existing footpaths on the northern and western boundaries are proposed for Year 1 and Year 2 and the nursery. Main gates would be opened at 8:45am. Travel smart weeks which encourage car sharing is detailed and encouraging walking by improving footpaths and dog foul cleaning. Ongoing monitoring, promotion and review would occur.

Tree Survey Report

29 individual trees and 2 groups were surveyed. All of trees are within the C (low quality or value) or R (remove) categories. 19 trees are proposed for retention if possible.

Planning History

There is no planning history

Responses to Consultations

Not applicable as County Consult

Responses to Publicity

Not applicable as County Consult

Development Plan Policies

The relevant policies are:

EMRP: 3, 12, 48

Local Plan: CF 1, EV10

National Guidance

PPS1, PPS9, PPG13

Planning Considerations

The main issues central to the determination of this application are:

- The principle of development
- Highways issues
- Ecology Issues

Planning Assessment

The proposed school, which is now favoured by the County Education Authority, would be in place of a school originally proposed on the allocated site within the Castleton Park residential development. Church Gresley is served primarily by three schools in terms of primary sector provision; Church Gresley Infant and Nursery School, Pennine Way Junior School and St George's CE (C) Primary School. When the major housing development commenced in Church Gresley some years ago it was envisaged that a new primary school would be needed and a site was reserved for that purpose. However, extensions have already been built at Pennine Way Junior School and St George's CE (C) Primary School and the County Education Authority now plans to replace Church Gresley Infant and Nursery School with a larger building on this proposed site.

The extensions and the proposed new school would continue to address the need to cater for additional pupils generated by the housing development. The proposed replacement school would provide the additional school places adjacent to the existing Junior School together with addressing the Authority's and the school's desire to replace the old school building which has detached temporary buildings and other significant 'suitability' issues relating to its current site and buildings.

The budget cost for the replacement Infant and Nursery School is £6.6m and it is understood that a significant financial contribution for the project will be sought via a Section 106 Agreement relating to the Castleton Park development from David Wilson Homes who were the principle developer.

The principle of a school on the site is considered acceptable as it is within the urban area and within walking distance of a large residential area. The loss of some trees is accepted as trees are retained adjacent to the main boundaries with the footpaths. The design and split level is welcomed as it would not be unduly dominant from the Pennine Way frontage and uses the contours of the site to limit it's impact on the existing residential properties on Pennine Way.

In relation to highway issues, the Highways Authority has yet to formally comment on the application, however, it is understood that they would have no objection to the proposed school.

Extensive surveys have been undertaken of the existing habitat and adequate mitigation involving a mix of woodland creation, translocation and new habitat on the new school site is proposed.

To conclude, the site appears as a logical 'extension' of the existing facilities on the adjacent land and would offer obvious synergies. The design is attractive, modern and functional and would compliment the adjacent buildings. Notwithstanding the official comments of the local highway authority, it is anticipated that the location of the school, whilst adding to the volume of traffic in the immediate vicinity and the obvious peaks in the day, would in turn relieve other parts of the area which this school would be replacing.

Recommendation

That the County Planning authority be advised that the Council has **No objection** with the following comments. The proposed school is considered acceptable in principle in this location and the use of Council land for the staff car park is acceptable. Whilst the loss of some trees and habitat is regrettable, it is acknowledged that trees have been retained on the boundaries where possible and adequate mitigation is proposed. The split level design is welcomed as it helps to reduce the building's impact on the residential amenity of existing Pennine Way properties and the visual amenity of the area.

2. PLANNING AND OTHER APPEALS

(References beginning with a 9 are planning appeal and references beginning with an E are an enforcement appeal)

Reference	Place	Ward	Result	Cttee/Delegated
E/2011/00022	Netherseal/Acresford	Seales	Dismissed	Delegated



Appeal Decision

Site visit made on 24 January 2012

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

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

Decision date: 17 February 2012

Appeal Ref: APP/F1040/C/11/2158251

The Caravan, Acresford Road, Netherseal, Nr Swadlincote, Derbyshire, DE12 8AP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr R Winson against an enforcement notice issued by South Derbyshire District Council.
- The Council's reference is E/2011/00022.
- The notice was issued on 19 July 2011.
- The breach of planning control as alleged in the notice is "Change of use of the Land from use for equestrian land to use for a residential gypsy caravan site, including the stationing of a caravan and portable toilet block, the erection of boundary fencing and hard surfacing without planning permission.
- The requirements of the notice are:
 - 1) Stop using any part of the Land for a gypsy site.
 - 2) Permanently remove the caravan and portable toilet block from the Land.
 - 3) Permanently remove the road planings/hardcore material from the Land.
 - 4) Reduce the height of the timber close-boarded fence to a height not exceeding 1m when measured from the natural ground level.
- The period for compliance with the requirements is 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: Subject to partial success on grounds (c) and (g), the appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Background

1. The notice relates to a field which is mainly down to grass bounded by Acresford Road to the north-west, the A444 road to the north-east and the Hooborough Brook, a tributary of the River Mease, to the south-east. Access to the land is derived from Acresford Road at the western end of the site via a concrete apron which slopes down into the site. This leads to a hardsurfaced area covered in road planings and aggregate on which a touring caravan was situated when I visited, close to the hedgeline along Acresford Road. There is a concrete slab just to the east of the caravan part of which is occupied by a 2 box stable building. This building is not the subject of the notice. It is also evident from the plans and photographs provided that there were a line timber buildings running parallel with this fence line, which have now been removed. There is a section of timber panel fencing running along the eastern side of the access apron.

2. The appellant, his wife and young daughter reside on the site and he claims to be a Romany gypsy being a member of the Winson family who I understand occupy a site of 8 pitches in Lichfield. The Council have not disputed the claimed gypsy status and on the basis of the information before me concerning ethnicity, family background and travelling habits for work (landscaping and garden maintenance) I am satisfied that the appellant is a gypsy, as defined in paragraph 15 of *Circular 01/2006 - Planning for Gypsy and Traveller Sites*¹. Consequently the planning regime applying to those with such status is engaged.

Ground (c)

3. The appellant's agent has explained that this ground is only being pursued in respect of the fence and hardsurfacing. Dealing with the latter, the argument is that some of the hardsurfacing on the site – effectively the concrete access apron and the concrete slab on which the stables are sited - benefit from previous planning permissions and consequently do not amount to a breach of planning control. The Council do not dispute this but argue that the actual wording of the requirement only relates to the area of ground covered by road planings and hardcore. They also add that if this is still considered to be unclear that a revised plan could be attached which illustrates the approximate area of the unauthorised hardsurfacing which is required to be removed.
4. I consider that given the potential ambiguity the wording of the breach should be corrected to be consistent with that of the related requirement and that a revised plan should be substituted, if the notice is upheld, to clarify the area of hardsurfacing that should be removed. I consider that this correction would cause no injustice to the appellant as it cuts down what might be thought to be necessary and makes it clear that the permitted concrete slabs can remain. Such a correction therefore complies with terms of s176(1)(a) of the Act.
5. As regards the fencing, there appears to be some disagreement about whether it had been reduced in height, as is now the case, when the notice was served. However, the Council have produced a photograph showing the nature of the fence when a Temporary Stop Notice was served on 22 June 2011. This was before the enforcement notice was served about a month later but it does show the pre-existing fence prior to the reduction in height. It is possible that the height reduction occurred before the enforcement notice was served but in any event it has now occurred and apart from a small section appears to accord with requirement 4) of the notice.
6. On the assumption that the fence had not been reduced in height when the enforcement notice was served it appears to have been taller than 1m but no more than 2m in height above ground level. The Council assert that it abuts the highway and being in excess of 1m (as it was at the time the notice was served) it is not 'permitted development' (PD) by virtue of Class A of Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order (GPDO) 1995. The agent refutes this claiming that the fence comes within the PD allowance.

¹ The Secretary of State intends to revoke C01/06, and has published a draft policy consultation document in which he explains that the current policy is not working and that a new approach is needed. Whilst the current Circular is yet to be revoked, the substance of the consultation document gives a clear indication of the Government's intended direction and is thus a material consideration. However, because the consultation may prompt amendments to the draft guidance and C01/06 remains in place at present, I have had significant regard to the latter in determining this appeal.

7. I observed that the majority of the fence abuts the concrete access apron within the site with a small splayed section angled away towards the hedge. The entire fence is set back a significant distance from the pavement edge running along the south side of Acresford Road. I have not been provided with any plan showing the extent of the adopted highway but consider, on the balance of probability, that the fence has not been constructed adjacent to the highway. On this basis, having regard to the wording of Class A, I consider that the height of the fence permissible under the PD limits in this position is up to 2m in height and not 1m as claimed by the Council.
8. Taking these points together, it appears to me that the fence shown in the Council's photograph of 22 June 2011 was within the PD limits set down in Class A. On the assumption that this was its nature when the notice was served I conclude it did not amount to a breach of planning control. Consequently there is success on ground (c) in this respect and I will modify the notice to delete reference to this aspect should it be upheld.

Ground (a)

Main Issues

9. I consider that these are as follows:
 - 1) The effect of the development on the environment in particular the character and appearance of the countryside and the integrity of the River Mease Special Area of Conservation (SAC);
 - 2) Whether the site is in a sustainable location;
 - 3) The impact on highway safety on Acresford Road and at its junction with the A444 road;
 - 4) The general need for and provision of gypsy sites in the area;
 - 5) The accommodation needs of the appellant and his family and their personal circumstances.
10. Having considered each of these issues I will then conduct the necessary balancing exercise to assess whether any harm that may be identified or conflict with development plan and national policies that arises is outweighed by other considerations, including human rights.

Reasons

1) - Effect on the environment

11. Dealing firstly with the general impact on the countryside, there is a mature hedge along the Acresford Road frontage, which screens direct views of the caravan and hardsurfacing. At most only glimpses of the development would be noticeable in passing. I viewed the site from other public vantage points on roads to the north but the caravan can only be seen over some distance in places and it does not appear as an intrusive feature alongside the permitted stable block and the backdrop of hedging. I was told that the appellant owns a larger caravan as well as the present touring van which is currently off site being serviced. However, subject to this being sited in a similar position to the present caravan, which could be controlled by condition, I am satisfied that no material harm to character or appearance of the countryside would arise.

12. The 'portaloo' was not on site when I visited but a new one is being sourced and this would be located next to the hedge, beside the caravan and stable block. Again a condition could be imposed to control its location and I do not consider it would represent a visual intrusion sited as intended.
13. The Council have referred to saved Environment Policy EV1 of the South Derbyshire Local Plan (LP) 1998 which concerns development in the countryside. They claim that the terms of this policy are breached as the development does not come within one of the permissible criteria listed in the policy. I will come to the impact on the SAC below but I find that the need for development to be essential to a rural based activity or unavoidable in the countryside does not sit easily with the advice gypsy site location in paragraphs 54 and 65 of C01/06, which postdates EV1. The Circular advice is that locations in or near existing settlements are to be preferred but sites in rural settings are acceptable in principle where they are not subject to special planning constraints. The appeal site does not come within a local or national landscape designation and given my assessment of physical impact above I do not find that the development, subject to appropriate conditions, would cause any material harm to the rural landscape in visual terms.
14. The Council have also cited saved Housing Policy H15 of the LP which deals specifically with gypsy caravan sites. This contains six criteria to be considered. I find the first to be inconsistent with the national advice in C01/06 which does not require an area to be frequented by gypsies – although I have no reason to suppose it is not. I will come to criteria (iii), (iv) and (vi) below but in terms of criteria (ii) and (v), I am satisfied that the development is satisfactorily located in relation to other development and is capable of sympathetic assimilation into its surroundings having regard to the existing screening and the potential to require the planting of additional landscaping.
15. Turning to the implications for the River Mease SAC, the Council assert that the site lies within the SAC. Although I have not been provided with a plan to confirm this it is not disputed. The legislative framework applying to a SAC, which is a protected European site of nature conservation importance, is set down in *The Conservation of Habitats and Species Regulations 2010* and *Circular 06/2005 – Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System*. The key test as the Council argue is set out in Regulation 61. This requires the competent authority to carry out an appropriate assessment of the implications of the development for the SAC's nature conservation interest if it is likely to have a significant effect either alone or in combination with other plans or projects. C06/05 sets out the steps to follow in a flow diagram.
16. The Council argue that insufficient evidence has been supplied by the appellant to show that the development will not have an adverse impact on the SAC. There is reference to high phosphate levels being recorded in the River Mease catchment and concern that the development could add to these, being close to the Hooborough Brook, a tributary of the River Mease. The agent argues that no compelling evidence has been produced by the Council to justify the concerns raised and that no polluting activities are proposed and foul drainage can be addressed either by a connection to a mains sewer or a sealed tank.
17. The proposal is not directly connected with the management of the SAC for nature conservation purposes so it is necessary under the terms of the legislation described above for the decision-taker to consider whether the

proposal would be likely to have a significant effect on the SAC. I am not aware of other projects or plans so can only make this assessment on the basis of the development alone. Paragraph 13 of C06/05 makes it clear that a decision on this and whether an appropriate assessment is needed should be made on a precautionary basis.

18. In this case I have only been provided with general comment about how foul drainage will be dealt with. There is also the issue of surface water run-off from the hardsurfaced areas where vehicles and the caravan are parked entering the ground water and possibly the Hooborough Brook. The origin of the base material is unknown and its contents have not been analysed to show that it is inert and would not harm the nature conservation interests of the SAC. The agent argues that pollution from the former use of the field by horses and their manure would have been far more likely to cause a pollution problem. However, it is not a matter of drawing a comparison with a former use but being certain that the development before me will not have an adverse effect the integrity of the SAC. This is a high test.
19. In the absence of any persuasive evidence and given the lack of precise detail of how the site drainage and possible ground pollution in the river catchment area will be handled, it has not been shown that the development would not be likely to have a significant effect on the SAC. This leads me to the view, applying the precautionary principle, that an appropriate assessment is necessary. It is not possible to carry out such an assessment in the absence of the required information. Paragraphs 20 and 21 of C06/05 make clear that it is not for the decision-taker to show that the proposal will cause harm to the SAC in order to refuse the application or appeal but to be certain or convinced that it would not. The agent argues that the test on planning issues is not "beyond reasonable doubt" but that is in fact the test to apply to an SAC based on the key authority on protected European nature conservation sites².
20. I have considered the agent's argument that conditions could be imposed regarding the details of drainage but they would not necessarily ensure that the integrity of the SAC would not be adversely affected. Compliance with conditions would be after the development has essentially been permitted either on a permanent or temporary basis and do not provide the necessary safeguards. The Council have explained that they have sought further information on the impact on the SAC, amongst other things, when a planning application (Ref. No. 9/2011/0511) was submitted for the gypsy site but as this was never received the application was not validated. Having regard to the statutory legislative framework I consider that such information should be provided before a planning permission is granted and not after the event in the form of a conditional requirement.
21. Concluding on this issue, I am satisfied that the development would not cause any material harm to the character and appearance of the countryside, subject to suitable conditions. Nevertheless, I do not consider that it has been shown that the development has not and would not have an adverse effect on the integrity of the SAC and this weighs heavily against the grant of planning permission given the legal tests applying to nature conservation sites of this importance. As such I consider that the development conflicts with criterion (iii) of Policy H15 of the LP which requires the development to be acceptable in environmental terms.

² Waddenzee judgment – European Court of Justice (ECJ) – Case C-127/02 – paragraph 21 of C06/05

2) - Sustainability

22. The Council argue that the appeal site is remote from local services and facilities being 1 mile from the nearest of these in Netherseal. I drove from the site into the centre of Netherseal which I recorded as being about 0.8 mile. This village contains a range of services including a shop/post office, 2 pubs and a primary school. There is also a pub (Cricketts Inn) close to the appeal site at the junction of Acresford Road and A444. I consider that these are relatively short distances to access basic day-to-day services. I am told that the nearest doctors' surgery is about 2 miles away but this would not be a service needed every week and it is still within a relatively short drive time.
23. I would expect the appellant and his family to make most trips by private vehicle but noted that the appeal site lies on the Ashby to Burton bus route within a short distance of a bus stop. I checked the displayed timetable which shows that buses run on an hourly basis through the day in both directions. This would enable access by public transport to Netherseal to get to the services and school and further afield to larger towns with more facilities.
24. For these reasons I consider that the site scores relatively highly in terms of distances from services and access to alternative transport modes to the private motor vehicle. I have also had regard to paragraph 64 of C01/06 which makes it clear that sustainability should not just be considered in these terms. Factors such as having a settled base and the wider benefits of having easier access to health services and schools should also be taken into account. Paragraph 54 of C01/06 also advises when considering the suitability of gypsy sites that a realistic approach should be followed when considering alternatives to accessing local services by car.
25. Overall, I find that the appeal site is in a relatively sustainable location for a site outside a settlement and is not remote from day-to-day services and facilities that need to be accessed. On this basis I conclude that criterion (iv) of Policy H15 is met.

3) - Highway safety

26. The Council raise no objection on this basis but a number of residents have objected on highway safety grounds. I was able to drive in and out of the site access, which has adequate turning space to exit in a forward gear. Although manoeuvring requires care due to the limited width and ramp down into the site I consider that it is manageable and the access benefits from planning permission. I also consider that visibility on egress is reasonable in both directions and not dangerous. There is a footway/pavement on the appeal site side of Acresford Road which would enable the appellant and family to walk safely to the nearest bus stop, the local pub and Netherseal.
27. I assessed the visibility at the junction of Acresford Road and the A444. Although the latter is a busy road with considerable traffic flows in both directions, I found there to be good visibility in both directions allowing vehicles to safely join the A444 or to cross over onto the Measham Road. The highway authority has not raised objection and this reassures me that the development, which would only generate a small number of extra vehicle movements, is not a cause for concern. I have also taken account of the advice in paragraph 66 of C01/06 that proposals should not be rejected if they would only give rise to modest additional daily movements which I find to be so.

28. My conclusion on this issue is that the development would be unlikely to give rise to any material harm to highway safety and none has been demonstrated since the use commenced. Hence, I am satisfied that criterion (vi) of Policy H15 is fulfilled.

4) - Need for and provision of gypsy sites

29. The Council assert that there is no unmet need for gypsy sites in the District in that 22 pitches have been provided to meet the requirement of 19 pitches between 2007-2012 set out in the East Midlands Regional Plan (Regional Strategy – RS).

30. The Government have not only made clear their intention to revoke RS but have now introduced the power to do so under s109 of the Localism Act 2011, which received royal assent on 15 November 2011. The orders to revoke have not yet been laid before Parliament but are pending the outcome of environmental assessments which are considering the implications of doing so. Although the RS, remains a material consideration, the weight I afford to it is diminished due to the intention to revoke it. Nevertheless I have not been presented with any more up-to-date figures on need and I therefore take the RS pitch requirement as being the best estimate at present.

31. The agent accepts the Council's claim that there is no shortage of sites in South Derbyshire but argues that the adequacy of provision is not a reason for dismissing the appeal as there is no upper limit. I agree that this is so but the absence of any demonstrable general need means that it is not a factor which weighs in favour of permitting the development. The agent also asserts that there is a significant pitch requirement in North-West Leicestershire, the adjacent district, but I do not have clear details of this and being a neighbouring authority I do not find that it provides a strong reason for permitting the development if harm is shown. Overall, my conclusion on this issue is that there is no evidence of general unmet need in the District.

5) – Personal accommodation needs and circumstances

32. The claim for the appellant is that the family site in Lichfield is overcrowded and that he has therefore sought an alternative by searching extensively for a suitable site. It is argued that no spaces are available on authorised sites. It is said that in the past the appellant has stayed on his parents' land, which I take to be the site in Lichfield, and also on his sister's land but these are no longer options due to the contravention of site licences. The Council contend that the Lichfield site is owned by Angie Wilson, believed to be the appellant's mother, and that 7 of the 8 pitches were vacant in August 2011. The agent claims that these pitches were only vacant in the summer and that they are re-occupied as winter bases when the occupants return from travelling.

33. I have no more details about the Lichfield site or any other family sites that might provide a base for the appellant. The evidence before me is not conclusive either way. It may be that there are difficulties occupying the Lichfield site and I appreciate that this would be the case if there is overcrowding. However, I am not persuaded that occupying this site with one touring van is out of the question, even if it is on a temporary basis.

34. There is reference to the appellant's baby daughter currently requiring hospital care and access to medical facilities. I have not been provided with the details but accept that having a settled base would help with accessing treatment.

However, the appeal site is not particularly close to a doctors' surgery or a hospital. No other specific health needs have been brought to my attention and there are no education needs at present given the age of the child.

35. My conclusion on this issue is that the personal circumstances of the appellant and his family and the seeming lack of a suitable pitch on any family site are factors which weigh in favour of permitting the development.

Conclusions on ground (a)

36. The development would not cause any harm to the rural landscape or in visual terms subject to the imposition of conditions. I have also concluded that the site is in a reasonably sustainable location and that there would be no material harm to highway safety from its limited usage. There is no evidence of demonstrable general need for gypsy sites in the area but some personal need which weighs in favour of granting planning permission. However, in the absence of evidence to show that the development would not adversely affect on the integrity of the SAC, and given the legislative framework that applies to European sites of nature conservation importance, I am led to conclude that planning permission must not be granted.
37. I have gone on to consider whether there is any justification for granting a temporary planning permission, having regard to paragraphs 45 and 46 of C01/06. However, I consider that the harm identified in this particular case is substantial and weighs against permitting the development even on a temporary basis.
38. I have had regard to the human rights of the appellant and his family under Article 8 and Article 1 of the 1st Protocol of the European Convention on Human Rights (ECHR). I accept that there would be some interference with these rights should the notice be upheld. However, the rights to respect for private and family life, property and possessions, as described in the relevant articles of the ECHR, are not absolute rights but those which are circumscribed by the public interest, which has been held to include environmental considerations. In these circumstances, having regard to my conclusions above, I consider that the level interference in this instance that would result from dismissing the appeal and upholding the notice would be proportionate and would not amount to a violation of the appellant's or his family's human rights.
39. I have borne in mind that the appellant could provide the information previously requested by the Council so that an appropriate assessment of the potential impact on the SAC could be carried out. This would then enable the Council to consider whether any adverse impact on its integrity would arise. I will come back to this below when considering the ground (g) arguments on the period for compliance.

Ground (f)

40. The agent's points on this ground have essentially been covered under ground (c) above. The reference in the notice to the fence will be deleted having regard to the success on ground (c). The wording of the notice will also be corrected and a plan substituted to make clear the area of hardsurfacing that is required to be removed – excluding the concrete slabs. With these changes in mind, I consider that the requirements of the notice would not be excessive.

Ground (g)

41. The general argument is that a period of 3 months is an insufficient period of time for the appellant to find alternative accommodation. I agree this is a relatively short period but there may be the option of returning to the family site in Lichfield even if this is a short term solution. However, given my comments above about the potential impact on the SAC, I consider it would be appropriate to extend the compliance period to 6 months. This would allow time for this to be investigated and the opportunity for a further planning application to be submitted and determined should the results prove favourable to the appellant. I say this as it is evident from my reasoning above that this is the only reason for finding against the appellant. I consider that this is a reasonable period of time for this process to be pursued and I do not consider it is justifiable to extend the compliance period to 12 months as requested. Hence there is success on this ground to this extent.

Overall conclusions

42. For the reasons given above and having taken account of all matters before me, including the representations of local residents and the Parish Council, I conclude that apart from the partial success on ground (c) and (g) the appeal should be dismissed. I shall uphold the enforcement notice with corrections and variations and the substitution of a revised plan and refuse to grant planning permission on the deemed application.

Formal Decision

43. The enforcement notice is corrected and varied as follows:

- a) at Section 3 by the deletion of the words "the erection of boundary fencing and hard surfacing without planning permission" and the substitution of the words "and hardsurfacing, namely the laying of an area of road planings and hardcore as shown in the approximate position hatched black on Plan A, without planning permission";
- b) by the substitution of Plan A, appended to this decision, for that attached to the notice as issued;
- c) at Section 5 of the notice by the addition of the words "as shown in the approximate position hatched black on Plan A" at the end of requirement (3);
- d) at Section 5 by the deletion of requirement (4) in its entirety;
- e) at Section 6 by the deletion of the word "Three" and the substitution of the word "Six".

44. Subject to these corrections and variations the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

N P Freeman

INSPECTOR



Plan A

This is the plan referred to in my decision dated: 17.02.2012

by **N P Freeman BA(Hons) DipTP MRTPI DMS**

Land at: The Caravan, Acresford Road, Netherseal, Nr Swadlincote, Derbyshire, DE12 8AP

Reference: APP/F1040/C/11/2158251

Not to Scale

