



## Appeal Decisions

Inquiry opened on 28 October 2003  
Site visit made on 20 November 2003

by **Martin Joyce DipTP MRTPI**

an Inspector appointed by the First Secretary of State

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Date **23 JAN 2004**

### Appeal A: APP/Q3630/C/02/1102030

Walnut Tree Farm, Almers Road, Lyne, Surrey

- 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 Mrs K O'Brien against an enforcement notice issued by the Runnymede Borough Council.
- The Council's reference is 01E00057A.
- The notice (Notice A) was issued on 25 September 2002.
- The breach of planning control as alleged in the notice is, without planning permission, the erection on the said land or premises of a brick built toilet and shower block in the approximate position marked in green on the plan attached to the notice.
- The requirements of the notice are to:
  - (a) Demolish the brick built toilet and shower block situate on the said land or premises.
  - (b) Remove from the said land or premises all materials and debris connected with or resulting from the demolition of the brick built toilet and shower block.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in Section 174(2)(c) of the 1990 Act. The deemed application for planning permission also falls to be considered.

**Summary of Decision: The appeal is withdrawn.**

### Appeal B: APP/Q3630/C/02/1103640

Walnut Tree Farm, Almers Road, Lyne, Surrey

- 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 Mrs K O'Brien against an enforcement notice issued by the Runnymede Borough Council.
- The Council's reference is 01E00057.
- The notice (Notice B) was issued on 4 November 2002.
- The breach of planning control as alleged in the notice is, without planning permission, change of use of the said land or premises to a mixed use for agriculture and the storage and/or siting of mobile homes and/or touring caravans for residential purposes and the parking and/or storage of associated vehicles.
- The requirements of the notice are to:
  - (a) Cease the use of the said land or premises for siting and/or storage of mobile homes and/or touring caravans for residential purposes and the parking and/or storage of associated vehicles.
  - (b) Remove from the said land or premises all mobile homes and/or touring caravans sited and/or stored for residential purposes together with all associated vehicles parked and/or stored and all materials, equipment and services connected with or ancillary to the storage and/or siting of the mobile homes and/or touring caravans.
- The period for compliance with the requirements is three months.

- The appeal is proceeding on the grounds set out in Section 174(2)(a) and (d) of the 1990 Act. The deemed application for planning permission also falls to be considered.

**Summary of Decision: The appeal is allowed subject to the notice being corrected in the terms set out in the Formal Decision below.**

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**Appeal C: APP/Q3630/C/03/1118321**

**Walnut Tree Farm, Almners Road, Lyne, Surrey**

- 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 Mrs K O'Brien against an enforcement notice issued by the Runnymede Borough Council.
- The Council's reference is 03E00073.
- The notice (Notice C) was issued on 24 April 2003.
- The breach of planning control as alleged in the notice is, without planning permission, the laying of hardcore to form a hardstanding on the said land or premises.
- The requirements of the notice are to:
  - (a) Remove the hardcore from the said land or premises.
  - (b) Reinstate that part of the said land or premises upon which the hardcore hardstanding has been laid to the condition which existed previously.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (d) and (f) of the 1990 Act. The deemed application for planning permission also falls to be considered.

**Summary of Decision: The appeal is allowed subject to the notice being corrected in the terms set out in the Formal Decision below.**

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**Procedural and Other Preliminary Matters**

1. The Inquiry sat for three days on 28 and 29 October and 21 November 2003. I undertook an inspection of the site and the surrounding area, including two nearby residential gypsy caravan sites, on 20 November 2003.
2. During the course of the Inquiry the appellant's agent confirmed in writing that the appeal against Notice A was withdrawn. I shall, therefore, take no further action on that appeal.
3. In relation to Appeal C, against Notice C, the appellant withdrew grounds (d) and (f) on the understanding that the Council was willing to amend the plan attached to the notice so as to show more accurately the area where hardcore had been laid within the four year period preceding the date of issue of the notice. I am satisfied that such a correction to the notice can be made without causing injustice to either party, and I shall use my powers of correction accordingly. Consequently I shall only consider Appeal C against Notice C on ground (a).
4. During the course of the Inquiry I raised the question of whether the notices could or should be combined into a single notice in the interests of greater clarity and ease of enforcement in the event of the appeals being unsuccessful. However, whilst no objection was raised by either party to such correction or variation I have come to the conclusion that the combination of the two notices that remain before me is not possible in this case. This is because the operational development that is the subject of Notice C took place after the date of issue of Notice B, thus it could not form part of a corrected notice that would need to be

dated according to the earlier alleged breach of planning control, that is the material change of use of the land and premises.

5. I also discussed, during the course of the Inquiry, in relation to Notice B, the question of the planning unit. It was agreed that the plan attached to the notice should show a wider area in this respect. I am satisfied that such a correction can be made without causing injustice as there is no dispute that the wider area of land is in the sole control of the appellant. I shall, therefore, correct Notice B accordingly using the powers available to me.
6. Evidence to the Inquiry was taken on oath. Witnesses as to matters of fact were excluded from the Inquiry during the evidence and cross-examination of preceding witnesses on such matters.

#### The Appeal Site and the Surrounding Area

7. The appeal site, as defined through the correction to Notice B aimed at showing the planning unit, comprises an irregularly-shaped area of land to the west of a small enclave of development around Almnors Priory and Almnors Farm. An access road, of about 160m in length, runs west from Almnors Road to the appeal site, passing to the north of Almnors Farmhouse and The Cottage. This road also serves an existing gypsy caravan site known as Little Almnors, which adjoins the eastern boundary of the appeal site.
8. The easternmost part of the appeal site contains a large barn with an attached stable yard, sited on the southern side of the access road. Within the barn, on its northern side, is a self-contained single-storey residential unit comprising two bedrooms, a living room, a kitchen, a utility room/third bedroom, a shower room, and a bathroom/toilet. The unit has windows and a doorway on the northern and western elevations of the barn. To the south of this unit, within the western part of the barn, is a single toilet, accessible through an external door. The remainder of the barn is used principally for storage purposes, and for the stationing of a touring caravan occupied by one of the residents of the appeal site, Mr Heath. At the time of my inspection I saw that ten motor-homes and a single touring caravan were stored, as well as a number of pieces of living room furniture wrapped in polythene, principally upholstered chairs and settees, which appeared to be new. A forklift truck and a quad-bike were also parked within the barn.
9. The majority of the stables sited around three sides of the yard to the east of the barn were empty at the time of my inspection. Those that were being used contained a variety of stored items including motorcycles, car and motorcycle parts, building materials and other items of a domestic nature. There was no evidence of any recent use for the stabling of horses or other livestock.
10. To the west of the barn, the remainder of the appeal site is roughly the shape of an inverted-L, and the area used for the stationing of caravans is of a similar shape around the northern and eastern boundaries of this area. This latter strip of land, which has been surfaced mainly with either gravel or compacted hardcore, is approximately 25m in width and 175m in length along its eastern edge, and about 40m in width and 150m in length along its northern side. An earth mound of between 1m and 2m in height, and up to about 8m in width has recently been constructed along the southern edge of the latter area. The remainder of the appeal site consists of flat fields used principally for horse grazing.

11. The majority of the caravans are serviced with electricity and water from boxes and taps located at various points along the boundaries of the hardstanding. Wooden sheds are sited adjacent to some of the caravans, and there is a brick-built toilet and shower block in the north-eastern part of the site; this structure is the subject of Notice A. At the time of my inspection approximately 34 caravans used for residential purposes were stationed on the site, including that inside the barn and another caravan situated on a surfaced area to the south of it. In the south-eastern corner of the southern leg of the hardstanding is a stable block, beyond which I saw a small touring caravan and three vehicles. The occupants of this caravan were not listed on the document submitted to indicate the identity of those present on the site on the date of my inspection.
12. The appeal site lies generally in an area of open countryside and Metropolitan Green Belt (MGB) land bounded by Lyne Crossing Road, to the north, and Almnors Road, to the east and south. Sporadic residential development borders sections of these roads, and there are a number of other uses in the general locality, including riding stables, nursery gardens and farms. To the north of the appeal site, on the southern side of Lyne Crossing Road, is Elm Park gypsy caravan site, owned by Surrey County Council and managed by the Borough Council. It contains 15 double-pitches, although a further double-pitch is in the process of being constructed. To the north of Lyne Crossing Road is a double-track railway line, a large sewage treatment plant and, beyond, the intersection of the M3 and M25 motorways. A further local authority gypsy caravan site lies to the west, north of the M3 motorway and east of Lyne Road. This is known as The Paddocks, and contains 15 double pitches.

#### **Planning History**

13. The appeal site has an extensive planning history. Enforcement notices issued in 1978, 1981 and 1989 required, amongst other things, the removal of single caravans or mobile homes sited on the land, following, in some cases, the refusal of planning permission for their retention in connection with the agricultural use of the land. The latter two notices were upheld following appeals, but none of the notices required the use of the land for the siting or stationing of caravans to cease. In 1990 a planning application for the change of use of half a barn with adjoining hardstanding to an agricultural contractor's depot and the retention of a mobile home in connection with specialised agricultural use was refused. The land and buildings were, at that time, and at the time of the 1989 enforcement notice, owned by Mr R P Willis. A 1993 planning application, by Mr Willis, for the change of use of the site from a redundant agricultural unit to an animal behaviour centre for the treatment of domestic and farm animals was withdrawn prior to determination. Finally, in 2000, an application was submitted for the retrospective change of use of part of the barn to residential use. That application was also withdrawn prior to determination but later that year a Certificate of Lawfulness was granted for the residential use of part of the barn.

#### **THE APPEAL ON GROUND (d) AGAINST NOTICE B**

14. Notice B is a "second-bite" notice, having regard to the provisions of Section 171B(4)(b), as it was issued following the withdrawal of an earlier notice, dated 25 September 2002, concerning the same allegation. Therefore the relevant date for the purposes of this ground of appeal is 25 September 1992.
15. The Council submitted that the burden of proof is upon the appellant to show, firstly, that the use enforced against began before 26 September 1992 and, secondly, that the unauthorised use has been continuous since that date, having regard to the judgement in

*Secretary of State for the Environment and Terry Holding v Thurrock Borough Council*, [2001] EWCA Civ 226. The appellant, however, has failed to substantiate her claims in this respect. In accordance with *Thurrock*, it is submitted that an enforcement notice cannot be appropriately served in respect of a use which had commenced as a result of an unauthorised change of use but which had ceased to be active before any accrued planning right had arisen. It follows that, where there are “fallow periods” of non-use within the relevant ten-year period, the necessary continuity of user will not have been established and the unauthorised use cannot become lawful by the passage of time. When these principles are applied to the evidence before the Inquiry they become fatal to this ground of appeal.

16. There is a history of Council officer visits to the appeal site. On 17 July 1993 the site was overgrown and vacant, similar in appearance to that shown in the 1992 aerial photograph. From 17 August to 24 November 1995 visits disclosed the presence of caravans and tourers but, by 2 February 1996, all had been removed. Caravans were next observed on 6 October 1997 but between 23 October and 19 December 1997 the site was again clear. Since July 2000, however, caravans have been present in large numbers. It is recognised that the appellant’s witnesses, and the statutory declarations made in support, claim that the caravans have “always” been on the appeal site. That claim, however, can only be reconciled with the Council’s evidence summarised above by reference to the fact that as the residents say that they each spent time travelling away from the site, they cannot be in a position to give evidence of continuous use throughout the relevant ten-year period. Moreover, the veil was lifted when Mrs Dolbel confirmed that Mr Willis, the owner of the appeal site until July 1993, did not use the land as it is now used, and this confirms the picture painted by the Council’s evidence. Therefore, the use alleged by Notice B was, at best, intermittent for a material part of the ten-year period, thus enforcement action could not have been taken in the “fallow periods”. The use had consequently not become lawful by the passage of time by 25 September 2002, and the appeal on this ground should fail.
17. For the appellant, it was submitted that the starting point in this matter is probably the May 1990 appeal decision which allowed the mobile home then on site to remain for a further year. By 1992, Mr Willis’ business was winding down whilst the Little Almnors caravan site came into existence. Since that date caravans have been habitually parked on the Walnut Tree Farm land, including within the barn and at the side of that building. It is accepted that there is some discrepancy between the evidence given by Mr Heath and Mr Willoughby, but Mr Heath confirmed that he had seen people taking photographs of the land without taking any inside the barn, therefore the Council inspections were not a complete record of what was on the site. Moreover, the May 1992 aerial photograph is not inconsistent with a caravan being stationed within the barn, neither does it, or subsequent photographs, prove that there was no residential use until the previous owner sold the land.
18. The next step, therefore, is to consider whether the evidence of the witnesses of fact is true. In this respect it is submitted that this evidence is sufficiently cogent to allow a conclusion that the appeal on this ground should succeed. Moreover, a residential use may continue, and it could be the subject of enforcement, notwithstanding that the residents or resident have been away for periods. This is the “fallow period” point relied upon by the Council, but it is uncertain whether LJ Chadwick had this type of situation in mind. The fact that the residents sometimes travel does not mean that whilst they were away, and the site was then empty, the necessary continuity has not been established. On the contrary, continuous physical occupation is not required to prove residence, and an alternative approach, as suggested in paragraph 54 of the *Thurrock* judgement, should be adopted. This is the case

because a person may be habitually resident without continuous physical presence, and a finding should be made for or against this point. Satisfactorily explained absence does not cause cessation of continuous residence; this is not a borderline case and a judgement has to be made. It is symptomatic of a particular lifestyle and the Council could therefore have enforced at any time since September 1992. On the balance of probabilities, therefore, the appeal on this ground should succeed.

19. In considering these matters, there are two principal issues to be determined. Firstly, whether the use of the land, as alleged in the notice, began before 25 September 1992 and, secondly, if that has been proven on the balance of probabilities, whether that use then continued throughout the relevant ten year period to the extent that the Council could have taken enforcement action against it at any time within the ten years.
20. On the first issue, I have considered the oral and written evidence to the Inquiry, on behalf of both the appellant and the Council, and also the signed and unsigned statutory declarations and letters in support of the claim that the use has been continuing for over ten years. I can give less weight to evidence untested by cross-examination, and very little weight to the unsigned documents. From this evidence there seems to me to be little dispute that the appeal site was owned by Mr R P Willis at the relevant date. However, whilst Mrs Dolbel accepted that the site was not used in its current manner by Mr Willis, she had no direct knowledge of the land before 1998, thus she is only able to give her interpretation of documents and other evidence that she has seen or heard. Other witnesses claimed to have a longer knowledge of the appeal site, but Mrs Ball and Mr & Mrs Willoughby all accepted, in cross-examination, that they had not lived on the site before 1993, although each claimed some knowledge of the land before that date. However, this is not supported by any form of written documentation and it is clear from the aerial photograph of May 1992 that none of the land within the appeal site, outside the barn, was being used at that date for the stationing of caravans.
21. Mr Heath, however, stated that he had moved onto the land around the August Bank Holiday of 1992, whilst Mr Willis was still the owner, and he was not swayed from this statement in cross-examination, further stating that his "fourteen-foot trailer" was sited beside the barn. However, he also stated that he had stopped travelling in 1992, for health reasons, and that he had a larger caravan sited on the Little Almnors site. Furthermore, whilst it appears that he undertook security work for Mr Willis, using his dog, he said that he did not move into the barn to reside in the smaller caravan until 1995. He also stated, in answer to my question, that Mr Willis was not concerned with caravans, rather he undertook contracting work, keeping vehicles in the barn. Finally, Mr Heath stated that there were about six trailers on the land when he first came to the site, but their occupants were North Country travellers and he did not know how long they had been there.
22. From these various pieces of evidence, I am of the opinion that the appellant has not discharged the necessary burden of proof to show that the material change of use of the land alleged in the notice took place before 25 September 1992. There may have been some caravans stationed within the site on a temporary basis in the late summer of 1992, but there is no evidence that they were still there on the relevant date. Moreover, the fact that Mr Heath, who was the only witness with any specific knowledge of the site at that date, resided for at least some of the period between 1992 and 1995 on the Little Almnors site leads me to conclude that he did not live permanently on the Walnut Tree Farm land at least until after the land was sold to the current appellant. In addition, whilst the May 1992

aerial photograph cannot show any caravans sited within the barn, it is clear from his own evidence that Mr Heath was not living within the barn at that time, as he did not move to the area, from Sussex until at least August of that year. Moreover, it is apparent from Mr Heath's evidence that Mr Willis was still using the barn for the storage of valuable machinery and equipment, and I consider it most unlikely that it would be used at the same time for residential accommodation by others.

23. As for the contention that the winding down of Mr Willis' business coincided with the start of the Little Almnors site, this is not supported by the evidence before me. An appeal decision of July 2000, produced by the appellant, concerning an increase in the number of pitches within that site, includes, as part of the Inspector's report, a summary of the planning history of that site. Planning permission was first granted in 1981, with a further permission in 1992. At that time it appears that occupation of Little Almnors was limited to five gypsy families, with no more than ten caravans. The report then goes on to state that three caravans were sited there in July 1992, but by January 1994 there were 27, following the acquisition of the site by Mrs M Nolan in 1993. From this, therefore, I am of the opinion that any significant increase in the level of occupation of Little Almnors did not take place in 1992; rather it would have started in 1993. This would also provide a reason for any consequent siting of caravans at that time on Walnut Tree Farm, as an overflow from the Little Almnors site.
24. Having reached the conclusion that, on the balance of probabilities, the use of Walnut Tree Farm for the stationing of caravans did not start before 25 September 1992, it is inevitable that the ground (d) appeal must fail. However, in the event that I am wrong on this point, I shall, nevertheless, consider the period between 25 September 1992 and 25 September 2002 and the question of whether the use of the land during that period for the stationing of caravans was continuous.
25. In this context, it seems to me that the appellant does not dispute the evidence of the Council in respect of the visits made since June 1993, although she contends that the inspections may have ignored the land at the side of the barn, as well as the interior of that building. I find such assertions to be surprising, as any inspection by a professional officer of an area of land, and a building, is, in my view, unlikely to ignore the immediate surrounds and interior of that building. However, none of the photographs taken on 17 June 1993, in connection with an application for the use of the site as an animal behaviour centre and for the treatment of domestic and farm animals, do show the area to the side of the barn, or the inside of that building. Nevertheless, this does not mean that caravans were sited in those locations, and I am mindful that the burden of proof lies with the appellant on this ground of appeal.
26. The next visit took place on 17 August 1995, and it is clear from the evidence of the Council that a detailed inspection had been made, because there is reference to the siting of two caravans – one in the barn and one between it and the stable block. A further visit on 24 November 1995 was similarly detailed, as shown by the contemporary note produced in evidence. That note states that the site manager, Mr Murphy, was informed that the siting of the three caravans then present on the site was in breach of an existing enforcement notice on the land, and that he would be reported for prosecution. Whilst that situation may not have been legally correct, it is clear that action was taken by the site manager to remove the caravans, as the note refers to a telephone call made to the Council on 27 November 1995 stating that the caravans had been removed from Walnut Tree Farm and that the site

could now be inspected. It does not appear that the site was immediately re-inspected, but a visit took place on 2 February 1996, and photographs were taken, that confirmed that all caravans had been removed from the site. There is no direct evidence that the interior of the barn was viewed, but I consider it most unlikely that it was not, as the Council officer was at the site for the primary purpose of checking whether an apparent breach of planning control had been rectified.

27. From this summary of site inspections and dialogue between the Council and the site manager over the period between August 1995 and February 1996 I am lead to the conclusion that any unauthorised use of the appeal site for the stationing of caravans had ceased by 2 February 1996. Therefore, in the light of *Thurrock*, there cannot now be any claim of a continuity of use, as the Council could not, at that date, have served an enforcement notice. In reaching this conclusion, I have considered the submission of the appellant that account should be taken of the lifestyle of the occupants of the site, and that vacation of the appeal site for travelling purposes would not necessarily show an intention to cease the use. However, there is no evidence before me to show that those who were resident on the site in November 1995 had left for that reason, rather than because the Council had requested the use to cease, and the time of year would suggest that travelling was less likely. In any event, from the evidence that I do have, it appears that a genuine attempt at compliance was made and, if that was merely a deception, it should not now work in the favour of the appellant.
28. In conclusion I find that the use of the land for the storage and/or siting of mobile homes and/or touring caravans for residential purposes did not commence before 25 September 1992, and that any such use since that date was not continuous such that the Council could have taken action during the ten years preceding the issue of their first enforcement notice on 25 September 2002. The appeal on ground (d), against Notice B, therefore fails.

#### **THE APPEALS ON GROUND (a) AGAINST NOTICES B and C**

##### **Planning Policy**

29. The Development Plan for this area comprises the Surrey Structure Plan (SSP), which was approved in 1994, and the Runnymede Borough Local Plan Second Alteration (RBLP), which was adopted in April 2001. The replacement Surrey Structure Plan Deposit Draft was placed on deposit in January 2003, and an Examination in Public was due to begin in November 2003. However, it carries little weight in the context of these appeals as it is still at a relatively early stage in the adoption process.
30. The appeal site lies within the MGB as defined in general terms in Policy PE1 of the SSP, and in further detail in the RBLP. Policy PE2 (SSP) sets out the normal presumption against inappropriate development in the MGB, but this Policy pre-dates the advice given in Planning Policy Guidance Note 2 "Green Belts". Policy LO4 of the draft replacement Structure Plan takes this advice into account and Policy GB1 (RBLP) states that, within the Green Belt, there will be a strong presumption against development that would conflict with the purposes of the Green Belt or adversely affect its open character. In any event, there is no dispute between the parties that the use of the land as a gypsy caravan site, and the associated operational development, does not fall within the categories of development considered to be appropriate in Green Belt areas.

31. With regard to gypsy sites, Policy RU11 (SSP) states, amongst other things, that the County Council will make provision for sites for gypsies residing in or resorting to the County in accordance with the requirements of the Caravan Sites Act 1968. Those requirements are no longer extant, thus the Policy is no longer applicable, and the replacement draft SSP contains no specific gypsy policy. Policy HO11 of the RBLP is applicable but it states, firstly, that proposals for new gypsy caravan sites will not be permitted if the site is in the Green Belt and, secondly, sets out three criteria to be met for development on existing sites, or proposed new sites, elsewhere.
32. The appeal site is also located within a Landscape Problem Area, and Policy NE10 of the RBLP states that, in this area, the Council will seek to improve the appearance of the landscape through development control and other powers and negotiations. However, the Council does not contend that the developments before me cause any landscape harm, and it was agreed at the Inquiry that visual issues were not material in these appeals.

#### Main Issue

33. Having regard to the above policies and understandings, therefore, and from the evidence presented at the Inquiry, the written representations and my inspection of the site and its surroundings, I consider that the main issue in each of these appeals is whether there are any very special circumstances that would warrant approval in the light of the normal presumption against inappropriate development in the MGB.

#### Reasoning

##### *The Case for the Appellant*

34. The appellant contends, on Appeal B, that there are very special circumstances in these appeals which, when taken together, outweigh the normal presumption against inappropriate development in the MGB. These matters are, essentially, firstly that there is an unsatisfied need for gypsy caravan sites within the Borough, and that the Council's adopted policy does not provide a realistic basis for meeting the future accommodation needs of the site residents. Secondly, that the refusal of the appeal would have an excessive or disproportionate effect on the interests of affected persons, contrary to the European Convention on Human Rights (ECHR), particularly Article 8, the right to respect for private and family life, and Article 1, the protection of property. Upholding of the notice would result in those resident on the site having to leave the land, notwithstanding any claim by the Council that it would not inevitably cause action under Section 178 of the Act to be taken. Allied to the second circumstance is the question of the gypsy status of the site residents. However, even if, upon detailed consideration, it is found that any or all of the site residents are not gypsies within the statutory sense, it is contended that there are still personal circumstances which justify allowing the appeal.
35. In support of the circumstances put forward reliance is placed upon various judgements. From *South Bucks District Council v Secretary of State for Transport, Local Government and the Regions and Linda Porter* [2003] EWCA Civ 687 it is clear that, if very special circumstances are to be found, a much fuller analysis of the respective cases is required and that approach is necessary in this case. In *Wrexham County Borough Council v The National Assembly of Wales, Michael Berry and Florence Berry* [2003] EWCA Civ 835 there is support for the proposition that even if the site residents are not gypsies, the matters upon which the appellant relies are still sufficient to provide justification for the appeal to

be allowed. The materiality of gypsy status is that it directs attention to the relevant Local Plan policy. However, this judgement does provide assistance in the determination of whether the site residents are, as a matter of fact, gypsies and it is submitted that those resident on the site are from a traditional gypsy background and have or follow a nomadic lifestyle. Others who may have been resident in the past, such as a number of workers at Heathrow Airport, would be excluded by the imposition of an occupancy condition agreed between the parties in the event of planning permission being granted. However, in respect of those who no longer follow a nomadic lifestyle, it is contended that there are genuine reasons for allowing them to continue in occupation. These reasons include health matters, in the case of the Latham and Willoughby families, and also age. In the latter context, support for the appellant's case is claimed from *R v Shropshire County Council ex parte Bungay* [1990] 23 HLR 195, which involved the need for care for the appellant's father who had stopped travelling as a result of age and ill health.

36. With regard to *Allan Samaroo and Memet Sezek v Secretary of State for the Home Department* [2001] EWCA Civ 1139, the need for a balancing exercise is confirmed, but it is submitted that this cannot be telescoped down to necessity, even where the relevant Development Plan policy requires openness to be maintained, as that would place a disproportionate burden on those affected by the decision. In this case, whilst harm to the MGB is accepted, such harm is overridden by human rights, thus a two-tier approach is needed. Finally, with regard to case law, it was recognised in *Chapman v United Kingdom* [2001] 33 EHRR that special consideration needs to be given to those in a national minority, as the Human Rights Act was founded upon the principle of the protection of minority interests. This applies whether the site residents are statutory gypsies or part of some other social group. In this context it is recognised that the burden lies with the appellant to produce evidence of means, as only the site residents can give information on accommodation needs. However, it is submitted that it is probably not a matter of dispute that, whilst Policy HO11 (RBLP) envisages the provision of gypsy sites outside the MGB, the cost of land elsewhere within the Borough would be too expensive and the fact is that there is no prospect of any further gypsy caravan site other than in the MGB.
37. Having regard to the points drawn from this case law, it was submitted that it is elementary that the appeal should be considered on the basis that the appellants are gypsies. Indeed, the Council's officers must have been satisfied that this was the case or they would not have been included in the twice-yearly counts of gypsies or said to have alternative accommodation on the existing gypsy sites. Therefore, in relation to status it is common sense to regard all residents as gypsies albeit that, for some, travelling is in abeyance. Gypsy status also gives an important extra dimension to the case for another reason, as the fact that they are a national minority gives rise to a positive duty, in accordance with *Chapman*, to consider their particular accommodation requirements, which are to be able to place their caravans somewhere. If there is no prospect of the site residents getting accommodation elsewhere on existing sites, and existing gypsy site policy does not provide a realistic basis for meeting their future accommodation needs then, in the context of there being no significant local landscape harm, the material considerations are properly to be regarded as very special circumstances displacing the strong policy presumption against this development. Alternatively, if it is found that accommodation is available on other sites, this should not be a reason for dismissal of the appeal, as that accommodation should first be offered to those on the roadside. Indeed this is the only way to construe the final sentence of paragraph 21 of Circular 1/94, the only part of that Circular in bold type; that is

that the government expects that the proven unmet need for further accommodation for gypsies will be met by further private sites such as that in this case.

38. In this case there is clearly an unmet need for gypsy site provision in the Runnymede area, as all other gypsy sites are, as a matter of fact, full with no vacancies, contrary to the suggestions put forward by the Council. Moreover, the limitations of the Council's Local Plan policy, coupled with the evidence put forward to show that land outside the Green Belt is not affordable, means that this demand can only be met through a site in the MGB. Such need is not confined to this area, as research undertaken by the ODPM in 2002 showed that between 1,000 and 2,000 additional residential pitches will be required in England over the next five years. In addition, counts of gypsies in Runnymede show between 7 and 28 families on unauthorised encampments over the period July 2000 to July 2002. The number of such encampments, which would also provide competition for any new sites, was found to show evidence of general need for gypsy caravan sites in the Borough in the Secretary of State's decision in July 2000 to allow an additional number of caravans on the adjoining Little Alnmers site. It is relevant to note that the Council's witness accepted that the approval of that development, allowing a further 20 caravans to be sited, only went some way towards meeting the outstanding need in Runnymede.
39. There is, therefore, an overall unmet need for further gypsy site provision in this area, and the wider need has resulted in grants of planning permission in similar cases elsewhere, as highlighted in the planning evidence put forward on behalf of the appellant. Additionally, other factors also point in favour of a grant of planning permission. There is a clear local connection with several residents, including Mr Willoughby, having been born in the area, and a grant of planning permission would allow extended families to stay together. In addition, the education needs of children would be met better from a position on the appeal site, as it is submitted that children living on the roadside do attend school on a regular basis, not least because they do not know if their caravan will still be there when they return from school. Therefore, it is submitted that all of these special circumstances justify the allowing of the appeal against the normal presumption of Green Belt policy.
40. On Appeal B, whilst detailed evidence was not presented at the Inquiry, it is apparent that the hardstanding area has been constructed to accommodate the gypsy caravans. Therefore, if it were to be found that the caravans should remain, this would provide the justification for allowing that appeal.

#### *The Case for the Council*

41. The Council contends that the starting point for the determination of this issue is the fact that the very presence of the unauthorised caravan site within a strategically important part of the MGB is, by definition, harmful. Moreover, the appellant's planning witness conceded that the mere fact of gypsy status is not in itself a very special circumstance. In addition, it is contended that, in the situation where the burden lies with the appellant to demonstrate very special circumstances, it is inadequate for her case to be underpinned by assumptions and assertions, rather than by evidence. This relates to the contentions that the residents of the appeal site do not have the means to compete in the open market for alternative land; that there are no alternative sites available; and that the appeal site is the least damaging to interests of acknowledged importance. On the first contention, no enquiry was made of the residents' sources of income, neither was any information provided about the cost of their residence on the appeal site. In addition, whilst it was

claimed that some agents had been contacted about alternative sites, no paperwork was produced and the witness accepted that her efforts had been of an *ad hoc* nature. It must follow, therefore, that it is impossible to reach a conclusion that the residents do not have the means to compete in the open market, or that there are no alternative sites available and that the site is the least damaging to interests of acknowledged importance. It is in this context, therefore, that the question of need falls to be considered.

42. On need, it is firstly necessary to comment on the various authorities put forward on behalf of the appellant. In *Chapman*, whilst it was recognised that some special consideration should be given to gypsies' needs and their different lifestyle, the majority of the European Court of Human Rights held that Article 8 did not impose an obligation on the United Kingdom to make available to the gypsy community an adequate number of suitably equipped sites. Also, when considering the proportionality of a requirement that an individual leave his home, relevant considerations include whether the home was established unlawfully, whether alternative accommodation is available, and the suitability of such accommodation. None of these material considerations can assist the appellant in this case. In *Porter*, the Court of Appeal stressed the need to establish very special circumstances in Green Belt cases, and warned that if very special circumstances can be established simply by relying on a catalogue of hardship, the concept would be devalued and the planning system undermined.
43. The issue of gypsy status was comprehensively reviewed by the Court of Appeal in *Wrexham*, and it is necessary to follow the approach identified in that case. From the evidence given to this Inquiry, it appears that the residents of the site may fall into three categories. Firstly, that there are, or were, five airport workers resident for whom no need case can be properly advanced. Secondly, there is a group who have now retired permanently from travelling for whatever reason, including ill-health or age or simply because they no longer wish to travel. These include the Willoughbys, the Larkhams, Mr Lowther and Mr Heath, together with the infirm and elderly. They are not gypsies as a matter of planning law and policy, but it is still correct to have regard to their personal circumstances to the extent that they are known and of weight. There is also a potential third category of those who are gypsies as a matter of planning law and policy, but the difficulty in this appeal is that those within that group have not been specifically identified and there is no evidence available as to which residents of the site, if any, can confidently be ascribed gypsy status. This gap in the appellant's case includes evidence as to which residents actually live a travelling life, come from a traditional gypsy background, have or do not have an honest and realistically realisable intention of resuming travelling, and the reasons for those not living a travelling way of life at the relevant time.
44. Turning to the question of need within Runnymede, it is accepted, from *Hedges and Hedges v Secretary of State for the Environment and East Cambridgeshire District Council* [1997] 73 P&CR 534, that there is a requirement to consider the question of the provision of sites for gypsies in general, and the personal needs for accommodation, independently of matters of personal circumstance or hardship. In this respect, the twice-yearly counts show that the total number of gypsy caravans in the Borough is declining, by 4 and 11 in the twelve months to January and July 2003 respectively. It is also the Council's evidence that there are 15 vacancies at Elm Farm and The Paddocks arising from under-utilisation of double pitch sites. This is a matter that is to be taken up with the County Council with a view to the sub-division of sites to accommodate two families, and such rationalisation of space is an approach that must be overwhelming preferred to the creation of new sites within the

Green Belt. Indeed *ad hoc* releases of sites through appeals should not be countenanced until such measures are exhausted. Reliance on the guidance in Planning Policy Guidance Note 3 "Housing" (PPG3) is also misplaced, as it does not promote a simplistic assessment of demand and the allocation of land to meet it, and greenfield sites of this type at the bottom of the hierarchy.

45. With regard to the claim that eviction would be a disproportionate remedy, dismissal of these appeals would not result in such action. Mrs Dolbel confirmed, in cross-examination, that the residents would not leave even if the appeals failed, and it is only in proceedings under Section 187B of the Act that the question of eviction arises. In such proceedings, the judge would be required to take into account considerations of common humanity relevant at the time. If there were genuinely nowhere for residents to go, the Council's duties as Housing Authority would be triggered. It is noted, in this context, that no case has been put forward by the appellant that any resident of the site has an aversion to bricks and mortar, and it cannot be concluded that offers of housing assistance would be culturally offensive to those residing on the appeal site.
46. Turning to the question of common humanity, very little is known of the residents' personal circumstances, because of the way in which evidence has been led on behalf of the appellant. Some do suffer from ill health, some have small children and others have children in education, but beyond that guesswork has to be used. Moreover, no analysis of potential hardship can be carried out because nothing is known of the residents' financial means. It is known that some families have members in paid employment and, in relation to these families, it cannot be assumed that they would be unable to find alternative accommodation. Furthermore, in the absence of any meaningful evidence on the issue of the availability of alternative sites, it cannot be assumed that families would be relocated to areas distant to existing schooling and health care, thus little weight can be given to this issue, especially in the light of *Porter*.
47. It follows, from all of the above, that a compelling package of other considerations would be required to outweigh the harm by reason of inappropriateness identified by the Council and it is submitted that the evidence called by the appellant falls a long way short of the mark. Therefore very special circumstances to justify the grant of planning permission have not been demonstrated by the appellant.
48. Finally, on Appeal B, beyond agreeing to the amendment necessary in respect of the area of hardstanding, the appellant has presented no evidence in support of this appeal, and there was no cross-examination of the Council's witness on his evidence. Therefore this appeal should be dismissed.

#### *Appraisal*

49. In considering the above submissions and the evidence put forward at the Inquiry it is important to preface my appraisal by drawing attention to the fact that the residents of the appeal site are not the appellants in these cases, notwithstanding that much of the case presented at the Inquiry was directed at their needs. The appellant is Mrs K O'Brien, who was not present and did not appear at the Inquiry, and I have no information before me as to her circumstances, other than that she is the owner of the land in question. In particular, no case was made that she is of gypsy status. Nevertheless, it is clear that those who occupy the site for residential purposes are directly affected by my decisions, and this requires me to take full account of their particular needs and circumstances in the context of the main

issue. This also includes consideration of whether those residents are, as a matter of fact, gypsies, having regard to the statutory definition, and to the judgement in *Wrexham*.

50. Dealing firstly with that matter, therefore, I have reviewed the evidence presented at the Inquiry. Various residents of the site gave oral evidence based upon written statutory declarations, and the appellant submitted other statutory declarations, some of which were unsigned. The latter evidence attracts less weight than that tested by cross-examination at the Inquiry. In addition, oral and written evidence was presented by the assistant site manager and by a planning consultant, together with a number of documents giving information about residents of the site. From this evidence it is possible to construct a basic profile of the residents of the site.
51. Firstly, none of those residents who gave direct evidence to the Inquiry are currently travelling. Mr and Mrs Willoughby do not travel because of the special needs of their daughter Charlotte in both health and education terms, although Mr Willoughby expressed a preference to be able to travel in the future if circumstances allowed him to. He also stated that the majority of residents on the site were third-generation descendants of Irish travellers. Mr Heath does not travel for health reasons and is constantly on medication. The location of the site close to his doctor and St Peter's Hospital is beneficial to his particular condition. Mrs Ball does not travel because of her age, being 78 years of age, and also for health reasons. She gave evidence on the benefits of the site in terms of keeping families together in one place. Secondly, from the untested evidence, it appears that there are further residents who are unable to travel for health reasons, including Mr Lee and Miss Larkham, and others who are too old to travel, including Mr McShane. Miss Larkham, in particular, has a chronic renal condition and requires daily dialysis. In addition there are some, such as the Willets and the Lowther families, who appear not to travel at present because of the age of their children and their education needs. Thirdly, from the lists supplied by Mrs Dolbel at the Inquiry, there are other residents about whom little can be ascertained other than that several appear to be part of the extended families of site residents. Some of these "residents" are listed on the document submitted in connection with my inspection of the site as being away, and I noted that some residents listed as being in residence on that date had moved off the site. The reasons for such absence could not, however, be ascertained although I gained the distinct impression that it was because they were away travelling, rather than in the process of moving to another site elsewhere.
52. From this analysis I am lead to the conclusion that, on the balance of probabilities, the majority of the residents of the site have a nomadic background, but that there are a significant number who no longer travel for various reasons, with several unlikely to ever resume a nomadic existence. This places them outside the strict definition of gypsies following *Wrexham*. However, a common thread running throughout the evidence put forward is that of the congregation onto this and the adjoining Little Almnors site of a group of families, of up to four generations in each, all of whom have a traditional travellers' background and lifestyle. Within these family groups there appear to be members who do follow a traditional gypsy life, as well as others who are resident because of the need for particular care by their families, by reason of age or health. With regard to the Council's submission concerning a lack of evidence of an aversion of residents to "bricks and mortar", it seems to me that, whilst such evidence was not promoted at the Inquiry, the fact that elderly and sick persons were living on the site in caravans is a good indication that this form of accommodation is overwhelmingly preferable to them. Therefore, for all of these reasons, I consider that it is legitimate to apply gypsy policy to these appeals. Indeed that

has been the approach of the Council in relation to this site, notwithstanding their understandable submission that it is not possible to ascribe gypsy status without doubt to any particular resident.

53. This leads me, therefore, to consideration of the Council's policy in respect of the provision of sites for gypsies, including the adequacy of that policy and the question of whether it results in the satisfaction of demand for such sites within the Borough. In this context, the most pertinent policy is Policy HO11 of the RBLP, which is criteria-based. It was adopted in 2001, thus it is relatively up-to-date and was prepared in the light of relevant government guidance, including Circular 1/94 and PPG3. Moreover, I note, from the documents produced by the Council, that an objection to the policy on similar grounds was considered by the Inspector who held the Public Local Inquiry in the draft Plan. He did not consider it necessary to make any substantial changes, and this confirms to me that Policy HO11 is not inadequate as a matter of principle. Nevertheless, it is necessary to examine the degree to which it has been successful in its objectives, through an analysis of the extent to which the apparent demand for gypsy site accommodation has been met within the Borough.
54. In this context, I have examined the twice-yearly counts of gypsy caravans undertaken in both the Borough and in Surrey over the period from January 1999 to July 2003. This shows that the number of caravans on unauthorised encampments in Runnymede has risen generally throughout this period, with the summer figure showing a steady rise from 17 in July 1999, 20 in July 2000, 35 in both July 2001 and July 2002 to 40 in July 2003. The January figures also show an overall rise in this category, albeit with more fluctuation. The five counts from January 1999 to January 2003 reveal 21, 18, 32, 15 and 27 caravans on unauthorised encampments respectively. Over the same period, however, the number of caravans on authorised sites, both Council and private, has remained relatively constant, with 67 in both January and July 2003, compared with 61 in both January and July 1999. However, numbers did rise in 2001 and 2002, with a peak in the latter year of 83 in both January and July. In total, therefore, the number of gypsy caravans counted within the Borough has risen from 82 in January 1999, and 78 in July 1999, to 94 in January 2003 and 107 in July 2003, with those on unauthorised encampments increasing at a greater rate. Consequently, I find the Council's submission that the count reveals a decline is rather selective, as it refers only to total numbers in the years 2002 and 2003.
55. In Surrey there is more fluctuation and the count for July 2003 was not available. Nevertheless, from those figures that were produced, the number of caravans on unauthorised encampments rose from a figure of 47 in January 1999 to 76 in January 2003, albeit with intervening January counts of 31, 41 and 29 respectively. The July 1999 figure was 70, but this fell to 47, 46 and 52 in the three July counts available since that date, thus this does seem to indicate a falling trend in terms of summer occupancy. However, the count on authorised sites shows a rise in both January and July figures - from 460 in January 1999 to 485 in January 2003, and from 435 in July 1999 to 524 in July 2002.
56. There is one further statistic that I have extrapolated from the figures produced at the Inquiry. This is that whilst the number of caravans on authorised sites in Runnymede is between about 13% and 16% of the total on such sites in Surrey as a whole, the number on unauthorised encampments is significantly higher. It ranges from 24%, counted in July 1999, to 78% as counted in January 2001, with the most recent comparable figure being 36% in January 2003.

57. From these figures, and from the evidence of witnesses to the Inquiry, I consider that it is clearly shown that there is an unmet need for further gypsy caravan sites within Surrey in general but more pointedly within Runnymede Borough in particular. Indeed this seems to be accepted by the Council, as their witness informed me of a forthcoming appraisal of current gypsy caravan sites, to be undertaken in conjunction with the County Council, that would examine the scope for increasing the number of pitches on those existing sites. In this context it is significant that the Inspector's report into the proposed expansion of caravan pitches at Little Almnors in 2000 also found an unmet demand that justified approval of that proposal. Moreover, whilst that report, and the subsequent decision letter, concluded that an increase in the number of pitches at Little Almnors would go some way towards meeting the identified need, it did not conclude that it would satisfy that need.
58. The Council contend that 15 pitches could be found within two existing sites but, from the evidence of my site inspection, it is clear that such provision would involve the use of vacant half-pitches by those in need of a site for their caravan. This suggestion seems to me to be at odds with the general principles of gypsy caravan site provision where double pitches are invariably provided for each family, for reasons that include the ability to site a caravan for occupation when not travelling, and to store a touring caravan at such times. No information was provided by the Council on the question of whether the "vacant" half-pitches at Elm Park and The Paddocks were a consequence of absence through travelling, or simply a lack of a continuing need for such traditional provision. The Council's witness stated, however, that an exercise was to be undertaken, in conjunction with the County Council, on this question.
59. Finally, on this matter, there is the question of the likelihood of other sites being provided for occupation by gypsies elsewhere in the Borough. The appellant's evidence on the lack of affordability of land outside the MGB can attract little weight because no systematic search has been undertaken, and there is no information before me as to the financial circumstances of current site residents. However, the Council provided no evidence whatsoever to show that suitable land is potentially available in any location within their area, and it is apparent that Policy HO11 has not resulted in any planning application or permission for a gypsy caravan site, notwithstanding the clear need shown in the twice-yearly counts. Therefore, I consider it to be extremely unlikely that any site outside the MGB would be provided, whereas the provision of a private site such as this would make a significant contribution to the needs of gypsies in this area.
60. I return now to the personal circumstances of the site's residents, which I have outlined above in relation to their status as gypsies or otherwise. It is apparent that some of those residents have compelling personal needs that warrant the assurance of secure accommodation on the basis of common humanity and the provisions of Article 8 of the ECHR. In particular the needs of Miss Larkham, Mr Heath and the daughter of Mr and Mrs Willoughby are pertinent in this respect. I note the Council's assertion that the dismissal of these appeals would not inevitably lead to the eviction of current residents, and that human rights matters would be taken into account in the prosecution of the notice in the event of non-compliance. However, I am of the view that such matters do fall to be considered in the context of these appeals, and that the possibility of the loss of a secure base for those residents with particular health problems, or those infirm through age, in a situation where no alternative site has been positively identified, is a significant factor in favour of granting planning permission.

61. To conclude on this issue, in relation to Appeal B, I find that there is an identifiable need for further gypsy caravan site provision in Runnymede that is extremely unlikely to be met on sites outside the MGB. This need, coupled with the personal circumstances of some of the residents of the site, has then to be balanced against the general public interest of upholding the planning policies applicable to this area. However, in this context, the site is well located in relation to other gypsy sites, and there is an accepted lack of visual harm, subject to the provision of landscaping, which could be the subject of appropriate conditions on any grant of planning permission. I therefore consider that all of these factors, when taken together, amount to very special circumstances sufficient to outweigh the normal presumption against inappropriate development in the MGB. The appeal on ground (a) against Notice B therefore succeeds and planning permission will be granted.
62. Finally, on Appeal C, although little evidence was directed towards this appeal by the appellant, it is entirely logical that, in the event of planning permission being granted for the use of land in the MGB as a gypsy caravan site, the provision of a hardstanding for the siting of such caravans is also justified. This area should, however, be confined to that agreed between the parties in the event of planning permission being granted, thus a 40m section of hardstanding at the north-western end of the site would need to be removed. I consider, however, that this can be required by condition, as dealt with below. The appeal on ground (a) against Notice C also succeeds and planning permission will be granted.

#### Conditions

63. A schedule of conditions (Document 37) suggested by the Council in event of planning permission being granted on Appeal B was put before the Inquiry and discussed in a more open session. The need for an occupancy condition was agreed but it was submitted that, in the event of my finding that those who no longer travelled were not statutory gypsies, it should be expanded to include the names of such persons who were entitled to remain on the site by virtue of the personal circumstances put forward. I agree with such an approach and I shall therefore impose an appropriate condition. As for those entitled to continued occupation, it seems to me that each of the four residents who were witnesses to the Inquiry, and their dependants, including the husband of Mrs Ball, together with Miss L Larkham, Mr J Lee, Mr D McShane and Ms Rosemary Ball, whose daughter has a heart condition, should be included, particularly in the light of the lack of challenge by the Council to the evidence put forward on their behalf. As for others, such as the Willets and Lowther families, who have children at school, I do not consider that the evidence before me justifies their inclusion as named persons. However, it would be open for the appellant to seek to vary this condition at any time so as to add the names of other residents who would not meet the statutory test but for whom a case for occupation could be made out.
64. With regard to the proposed limitation on the number of caravans stationed on the land, I consider that a figure of 30 is too restrictive, and does not relate to the situation I observed at the site. A total of 20 pitches, with no more than two caravans stationed on each pitch would be more reasonable. There is, however, no dispute about the suggested restriction on commercial activity on the site, and the size of vehicles kept thereon, and I agree with the need for such a condition to be imposed.
65. The other conditions suggested require landscaping, boundary treatment and the detailed laying-out of the site, following the submission of schemes to the Council, and their subsequent approval. I agree with the need for these conditions, notwithstanding the lack of

visual harm created by the development, because it is necessary to create a readily definable area within which caravans may be stationed so as to discourage any unauthorised extension to such area. I shall therefore impose such conditions accordingly.

66. With regard to Appeal C, it was agreed that it is necessary to impose a condition that requires the north-western 40m section of hardstanding to be removed, and the land reinstated to its former condition within two months of the date of this decision. I also consider, however, that such a condition should be imposed upon that granted in relation to the material change of use, in order to assist in the definition of the caravan site. In addition a condition is required to ensure that the entire area of hardstanding is removed and the land reinstated to its former condition within two months of the cessation of the use of the land as a caravan site. Again, I consider that such a condition should be imposed upon both planning permissions.
67. In formulating my decision, and setting out appropriate conditions, I have taken account of the advice contained in Circular 11/95, thus the detailed wording agreed between the parties may not, in places, have been followed precisely.

#### **Other Matters**

68. All other matters raised in evidence at the Inquiry, and in the written representations, have been taken into account, including the concerns of nearby residents and the Ward Councillor and Leader of the Borough Council about the problems of concentrating large numbers of gypsies in this area. However, I also note that the immediately adjoining occupiers offer no objection to the development, and I do not consider that these matters outweigh the benefit of the provision of a site that makes such a contribution to the needs of a particular minority group that has clear local connections. These and the other matters raised do not, therefore, alter the conclusions I have reached on the main grounds and issues of these appeals.

#### **Conclusions**

69. It was agreed at the Inquiry that the plans attached to Notices B and C should be corrected so as to refer to the wider planning unit and the actual area of occupation, and to the area of hardstanding put down within the past four years. I am satisfied that no injustice will be caused by this and I am therefore correcting the notices in those two respects in order to clarify the terms of the deemed applications under Section 177(5) of the Act as amended.
70. For the reasons given above, I consider that the appeals should succeed on ground (a) and I shall grant planning permission in accordance with the deemed applications under Section 177(5) which will now relate to the corrected site areas.

#### **FORMAL DECISIONS**

##### **Appeal B:**

71. In exercise of the powers transferred to me, I direct that the enforcement notice (Notice B) be corrected by:
- (a) the deletion, in paragraph 2, of the words "edged red" and the substitution thereof of the words "edged black"; and,
  - (b) the substitution of Plan A annexed to this decision for the plan attached to the notice.

72. Subject to these corrections I allow the appeal and direct that the enforcement notice be quashed. I grant planning permission 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 shown edged black on Plan A annexed to this decision to a mixed use for agriculture and the storage and/or siting of mobile homes and/or touring caravans for residential purposes and the parking and/or storage of associated vehicles, subject to the following conditions:
- 1) The occupation of the land and caravans/mobile homes shall be restricted to persons defined as gypsies in Section 24(8) of the Caravan Sites and Control of Development Act 1960 as amended, or any Act revoking or re-enacting that Act.
  - 2) The development hereby permitted shall also inure for the benefit of Mr R and Mrs C Willoughby, Mr P Heath, Mrs R E Ball, Miss L Larkham, Mr D McShane, Mr J Lee, Ms Rosemary Ball and their dependants for such time as the named person on whom they are dependent continues to reside on the land.
  - 3) No more than twenty pitches containing a maximum of two caravans or mobile homes per pitch shall be provided on the land.
  - 4) Within two months of the date of this decision, a layout plan showing the details of each pitch, including parking area, and their delineation, shall be submitted to the Local Planning Authority for their written approval. Within six months of the date of such approval, the approved scheme shall be carried out in full and thereafter retained for so long as the permitted use of the site persists.
  - 5) No commercial activity shall take place on the site, including the storage of materials and the parking or stationing of any vehicle over 3.5 tonnes.
  - 6) Within two months of the date of this decision, a scheme of hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development shall be submitted to the Local Planning Authority for their written approval. The scheme shall give details of the size, species and spacing of all proposed trees and shrubs and set out the specification, including colours, of all hardsurfacing materials.
  - 7) All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the approval of the Local Planning Authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
  - 8) Within two months of the date of this decision, a scheme for the treatment of the boundaries of the area cross-hatched on Plan B annexed to this decision shall be submitted to the Local Planning Authority for their written approval. The scheme shall be implemented in full within six months of the date of the Local Planning Authority's written approval.
  - 9) Within two months of the date of this decision the area of extended hardstanding shown hatched on Plan B attached to this decision shall be removed and the land reinstated to its former condition.

- 10) Within two months of the permanent cessation of the use of the land for the storage and/or siting of mobile homes and/or touring caravans for residential purposes and the parking and/or storage of associated vehicles all hardstanding areas shall be removed and the land reinstated to its former condition.

**Appeal C:**

73. In exercise of the powers transferred to me, I direct that the enforcement notice (Notice C) be corrected by:
  - (a) the deletion, in paragraph 2 of the words "edged red" and the substitution therefor of the words "edged and hatched black"; and,
  - (b) the substitution of Plan A annexed to this decision for the plan attached to the notice.
74. Subject to these corrections I allow the appeal and direct that the enforcement notice be quashed. I grant planning permission 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 laying of hardcore to form a hardstanding on the land shown edged and hatched black on Plan A annexed to this decision, subject to the following conditions:
  - 1) Within two months of the date of this decision the area of extended hardstanding shown hatched on Plan B attached to this decision shall be removed and the land reinstated to its former condition.
  - 2) Within two months of the permanent cessation of the use of the land for the storage and/or siting of mobile homes and/or touring caravans for residential purposes and the parking and/or storage of associated vehicles all hardstanding areas shall be removed and the land reinstated to its former condition.

**Information**

75. These decisions do not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.
76. An applicant for any approval required by a condition attached to these permissions has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the Authority fails to give notice of its decision within the prescribed period.
77. Particulars of the right of appeal against these decisions to the High Court are enclosed for those concerned.

*Marti Joyce*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Michael Druce of Counsel, instructed by Mr A M Pearson, Borough Secretary and Leisure Services Officer

He called:

Mr P J Lee DipGeog BA(Hons) MRTPI Development Control Officer with the Council

### FOR THE APPELLANT:

Mr Stephen Cottle of Counsel, instructed by Bevan Ashford, Solicitors, 35 Colston Avenue, Bristol BS1 4TT

He called:

Mr P Brown BA(Hons) MRTPI Associate Director of Emery Planning Partnership Ltd  
Miss E Nuttall Unit Manager, Friends, Families & Travellers Advice & Information Unit

Mrs V P Dolbel Assistant Site Manager and Resident of Walnut Tree Farm, Almnors Road, Lyne

Mr R Willoughby Resident of Walnut Tree Farm Caravan Site

Mrs P Willoughby Resident of Walnut Tree Farm Caravan Site

Mr P E Heath Resident of Walnut Tree Farm Caravan Site

Mrs R E Ball Resident of Walnut Tree Farm Caravan Site

### INTERESTED PERSON:

Mr R Habgood Ward Councillor and Leader of Runnymede Borough Council

## DOCUMENTS

- |           |       |  |
|-----------|-------|--|
| Documents | 1a-1c | Lists of persons present at the Inquiry.   |
| Document  | 2     | Letters of notification of the Inquiry.  |
| Document  | 3     | Statement of Common Ground.  |
| Document  | 4     | Letters dated 24 and 28 October 2003 from the appellant's agent withdrawing all grounds of appeal against Notice A, and the ground (d) appeal against Notice C.                        |
| Document  | 5     | Bundle of appendices (Nos EPP1-EPP11) produced by Mr Brown.  |
| Document  | 6     | Tables showing gypsy sites provided by local authorities in Surrey, 2 January 2002, and counts of gypsy families in Surrey July 2000-July 2002, produced by Mr Brown as Document PB12. |
| Documents | 7a-7b | Bundles of appendices (Nos 1-21 and 8.1-8.7) produced by Miss Nuttall.   |
| Document  | 8     | ODPM Report "The Provision and Condition of Local Authority Gypsy/Traveller Sites in England", October 2002, produced by Miss Nuttall.   |
| Document  | 9     | DES Guide to Good Practice "Aiming High: Raising the Achievement of Gypsy Traveller Pupils", July 2003, produced by Miss Nuttall.  |

Document	10	Bundle of appendices (Nos 1-3) produced by Mrs Dolbel.
Document	11	Curriculum Vitae of Mrs Dolbel.
Document	12	List of families and their wider family at Walnut Tree Farm, produced by Mrs Dolbel.
Document	13	List of residents of Walnut Tree Farm with medical problems, produced by Mrs Dolbel.
Document	14	Further list of families living on Walnut Tree Farm, produced by the appellant.
Document	15	List of families living on Walnut Tree Farm at 20 November 2003, and associated plan showing their location within the site, produced by Mrs Dolbel.
Document	16	Statutory Declaration of Mr R Willoughby, and appended photograph and document.
Document	17	Statutory Declaration of Mrs P Willoughby.
Document	18	Statutory Declaration of Mr P Heath, and appended document.
Document	19	Statutory Declaration of Mrs R Ball.
Document	20	Unsigned Statutory Declaration of Mr J Lee, and appended document, produced by the appellant.
Document	21	Statutory Declaration of Mr R Seaman, produced by the appellant.
Document	22	Statutory Declaration of Miss L Larkham, and appended document, produced by the appellant.
Document	23	Statutory Declaration of Mr M Willets, produced by the appellant.
Document	24	Unsigned Statutory Declaration of Mr T Lowther, produced by the appellant.
Document	25	Unsigned Statutory Declaration of Ms K Webster, produced by the appellant.
Document	26	Unsigned letter, dated 22 October 2003, from Mr T Lowther, produced by the appellant.
Document	27	Signed statement of Mr D Winters, produced by the appellant.
Document	28	Letter dated 22 October 2003 from Mr P Willis, former owner of Walnut Tree Farm, produced by the appellant.
Document	29	Letter of support, dated 10 October 2003, from Mrs L P Albrecht, 246 Chertsey Lane, Staines, produced by the appellant.
Document	30	Letter dated 7 July 2003 from Chief Executive of Rainbow Nursery, Almnors Priory Complex, Almnors Road, Lyne, produced by the appellant.
Document	31	Unsigned letter of support, dated 26 June 2003, from John and Marie Claxton, The Cottage, Almnors Farm, Lyne, produced by the appellant.
Document	32	Fax from Miss Nuttall, dated 29 October 2003, produced by the appellant.
Document	33	Minutes of Runnymede Borough Council, Services Review Board, 26 July 2001, produced by the appellant.
Document	34	Fax message from the appellant's agent, dated 18 November 2003, and attached email, confirming permission to inspect other gypsy sites in Runnymede.
Document	35	Bundle of appendices (Nos 1-20) produced by Mr Lee.
Document	36	Draft of proposed conditions in the event of planning permission being granted, produced by the Council.
Document	37	Revised schedule of conditions in the event of planning permission being granted, and attached plan, produced by the Council.

- Document 38 Email, dated 28 October, concerning housing tenancies for residents of Walnut Tree Farm, produced by the Council.
- Document 39 Bundle of Land Registry entries, produced by the Council.
- Document 40 Report of *Basildon District Council v The Secretary of State for the Environment, Transport and the Regions and Others* [2001] JPL 1184, produced by Mr Brown.
- Document 41 Report of *R v South Hams District Council and Another ex parte Gibb* [1995] QB 158, produced by Miss Nuttall.
- Document 42 Report of *Burdle and another v Secretary of State for the Environment and another* [1972] 3 All ER, produced by the Council.
- Document 43 Copy of judgement in *Secretary of State for the Environment and Terry Holding v Thurrock Borough Council*, [2001] EWCA Civ 226, produced by the Council.
- Document 44 Copy of judgement in *South Bucks District Council v Secretary of State for Transport, Local Government and the Regions and Linda Porter* [2003] EWCA Civ 687, produced by the appellant.
- Document 45 Copies of judgements in *Wrexham County Borough Council v The National Assembly of Wales, Michael Berry and Florence Berry* [2003] EWCA Civ 835, and *Mrs K O'Connor v Secretary of State for Transport, Local Government and the Regions and Bath and North East Somerset Council* [2002] EWHC 2649, produced by the appellant.
- Document 46 Copy of judgement in *Allan Samaroo and Memet Sezek v Secretary of State for the Home Department* [2001] EWCA Civ 1139, produced by the appellant.
- Document 47 Report of *Allan Samaroo and Memet Sezek v Secretary of State for the Home Department* [2002] INLR 55, produced by the appellant.
- Document 48 Report of *Chapman v United Kingdom* [2001] 33 EHRR, produced by the appellant.
- Document 49 Report of *Hedges and Hedges v Secretary of State for the Environment and East Cambridgeshire District Council* [1997] 73 P&CR 534, produced by the appellant.
- Document 50 Report of *R v Shropshire County Council ex parte Bungay* [1990] 23 HLR 195, produced by the appellant.
- Document 51 Report of *Clarke v Secretary of State for Transport, Local Government and the Regions and Tunbridge Wells District Council* [2002] JPL 1365, produced by the appellant.

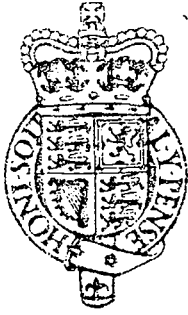
## PLANS

- Plan A Plan attached to Notice A.
- Plan B Plan attached to Notice B.
- Plan C Plan attached to Notice C.
- Plan D Plan showing the location of the appeal site in relation to the settlements of Virginia Water and Chertsey, and the M3 and M25 Motorways, produced by the Council.
- Plan E Plan showing the location of approved gypsy sites within Runnymede Borough, produced by the Council.
- Plan F Plan showing the ownership boundaries of the appellant derived from Land Registry searches, produced by the Council.

- Plan G Plan showing extent of extended hardstanding, produced by the Council.  
Plan H Plan of the appeal site, produced by Mr Heath.

#### PHOTOGRAPHS

- Photo 1 Aerial photograph of the appeal site dated 22 May 1992, produced by the Council.  
Photo 2 Aerial photograph of the appeal site dated 11 September 2000, produced by the Council.  
Photo 3 Aerial photograph of the appeal site dated July 2003, produced by the Council.



# Plan A

This is Plan A referred to in my decision dated:

by **Martin Joyce DipTP MRTPI**

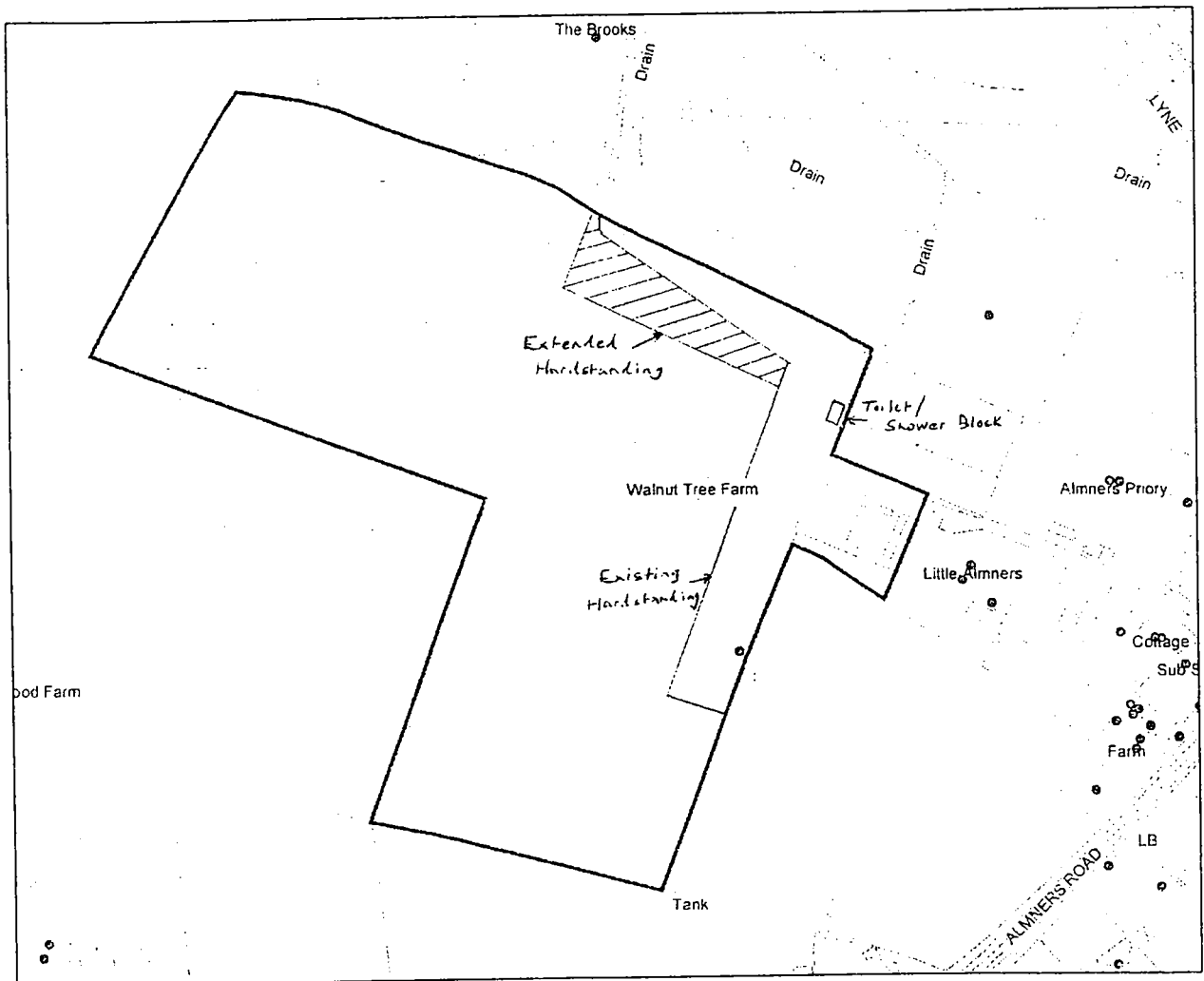
**Land at Walnut Tree Farm, Almners Road, Lyne,  
Surrey**

**References: APP/Q3630/C/02/1103640 &  
APP/Q3630/C/03/1118321**

The Planning Inspectorate  
4/09 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
☎ 0117 372 6372  
e-mail enquiries@planning-  
inspectorate.gsi.gov.uk

23 JAN 2006

Scale:  
Not to scale





# Plan B

This is Plan B referred to in my decision dated:

23 JAN 2004

by Martin Joyce DipTP MRTPI

Land at Walnut Tree Farm, Almers Road, Lyne, Surrey

References: APP/Q3630/C/02/1103640 & APP/Q3630/C/03/1118321

The Planning Inspectorate  
4/09 Kite Wing  
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Scale:

Not to scale

