

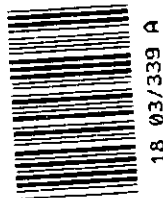
Our Ref: 03/00339/E

Strategic Manager: Alun Davies

Your Ref:

Enquiries to: C Garrett

Date: 10 February 2004



Planning Services
Monkton Park
Chippenham
Wiltshire
SN15 1ER

Tel: 01249 706594

Fax: 01249 460810

email: cgarrett@northwilts.gov.uk

www.northwilts.gov.uk

Dear Sirs / Madams

ENFORCEMENT NOTICES AT GYPSY SITE AT HEATH LANE, STARTLEY

The Council have issued an Enforcement Notice relating to the above Land and I now serve on you copies of this Notice, in view of your interest in the Land.

Unless an appeal is made, as set out in the Annex, the Notice will take effect on the date shown in Paragraph 7 of the Notice and you must ensure that the required steps for which you may be held responsible are taken within the period or periods specified.

Yours faithfully

P.P.

Charles Pescod
Implementation Team Leader
Development Control and Listed Buildings

To: Mr J MacDonald
The Paddock
Heath Lane
Startley
Chippenham
Wiltshire
SN15 3HH

Mrs J MacDonald
The Paddock
Heath Lane
Startley
Chippenham
Wiltshire
SN15 3HH

Mr M Miller
194 Wood Lane
Chippenham
Wiltshire
SN15 1EE

Mrs J Miller
194 Wood Lane
Chippenham
Wiltshire
SN15 1EE



INVESTOR IN PEOPLE

Our Ref: 03/00339/E

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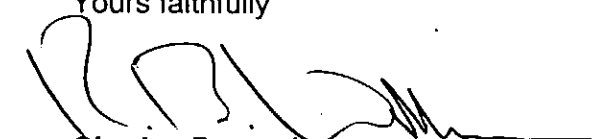
Dear Sirs / Madams

ENFORCEMENT NOTICE AT GYPSY SITE AT HEATH LANE, STARTLEY

Should you wish to appeal against the enforcement notice the following fees will be required:-
£220 for both the Local Planning Authority and the Planning Inspectorate.

These fees must be included with your appeal forms, which you have to send to the Council at the above address and the Planning Inspectorate at the address on the appeal form.

Yours faithfully



Charles Pescod
Implementation Team Leader
Development Control and Listed Buildings

To: Mr J MacDonald
The Paddock
Heath Lane
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Wiltshire
SN15 1EE



INVESTOR IN PEOPLE

03/00339/E (A)

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

**TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)**

ENFORCEMENT NOTICE

ISSUED BY: North Wiltshire District Council

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.
2. **THE LAND TO WHICH THE NOTICE RELATES**

Land off Heath Lane (part O.S. 9482), Startley, Chippenham, Wiltshire SN15 5HH shown hatched on the attached plan.
3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission, the material change of use of the land from agriculture to a caravan site.
4. **REASONS FOR ISSUING THIS NOTICE**
 - a) It appears to the Council that the above breach of planning control has occurred within the last 10 years.
 - b) The development is located remote from services, employment opportunities and is unlikely to be well served by public transport, is contrary to the key aims of Planning Policy Guidance Note 13, which seeks to reduce growth in the length and numbers of motorised journeys.
 - c) The continued use of this land, without planning permission, for a caravan site would, in due course, lead to the unauthorised development

becoming lawful. The loss of planning control over the use of this site as a caravan site would seriously detract from the rural character and amenity of this area contrary to policy RC9 of the North Wiltshire Local Plan 2001 and also conflict with policy RH16 of the Local Plan relating to the siting of mobile homes and residential caravans.

5. WHAT YOU ARE REQUIRED TO DO

- a) Cease using the land as a caravan site.
- b) Remove all caravans from the site together with any ancillary works or structures.
- c) Restore the land to a grass paddock by providing at least 75 mm of top soil with natural contouring of levels matching those of adjoining land and sowing with grass seed sufficient to restore the site suitable for the grazing of animals.

6. TIME FOR COMPLIANCE

6 Months from the date this notice takes effect.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 23 March 2004 unless an appeal is made against it beforehand.

Dated : 10 February 2004

Signed :

A handwritten signature in black ink, appearing to read 'R.B. Smith', written over a horizontal line.

on behalf of North Wiltshire District Council

ANNEX

YOUR RIGHT OF APPEAL

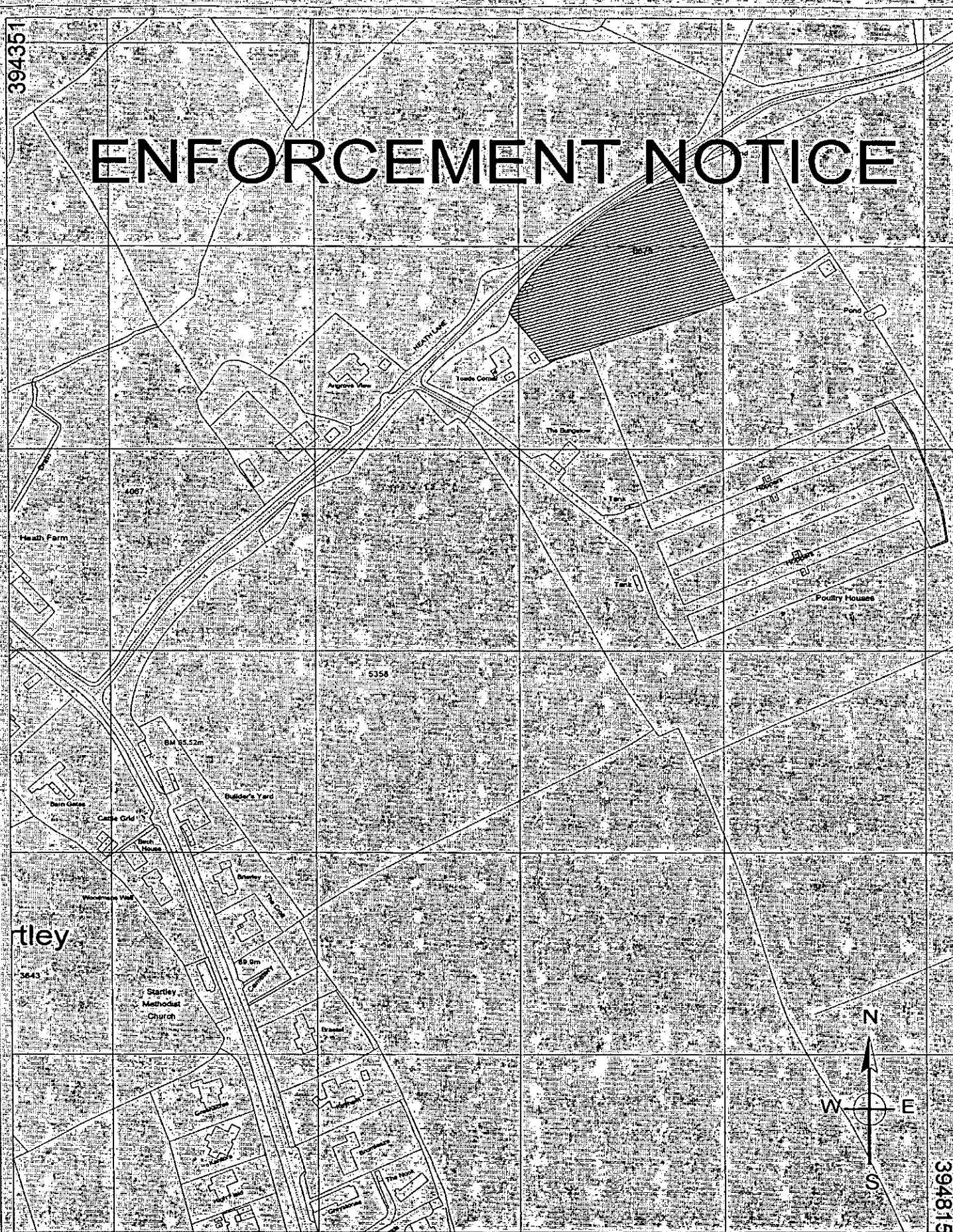
You can appeal against this notice, but any appeal must be received, or posted in time to be **received**, by the First Secretary of State **before** the date specified in paragraph 7 of the notice. The enclosed booklet "Making your enforcement appeal" sets out your rights. The enclosed appeal forms are for your use.

- (a) One is for you to send to the Secretary of State if you decide to appeal, together with a copy of this enforcement notice.
- (b) The second copy of the appeal form should be sent to the Council.
- (c) The third copy is for your own records.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

ENFORCEMENT NOTICE



*North
Wiltshire
District
Council*

Land off heath Lane (Part O.S. 9482), Startley, Chippenham; Wiltshire
SCALE 1:2500

Grid Ref: ST 946 827

4/2/2004

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NORTH-WILTSHIRE DISTRICT COUNCIL - LA078840 2004



Appeal Decision

Inquiry held on 17 November 2004

Site visit made on 18 November 2004

by **Bridget M Campbell BA(Hons) MRTPI**

an Inspector appointed by the First Secretary of State

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

Date

17 FEB 2005

Appeals A: APP/J3910/C/04/1147243 & 1147245

Land off Heath Lane (part O.S.9482), Startley, Chippenham SN15 5HH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr and Mrs J MacDonald against an enforcement notice issued by North Wiltshire District Council.
- The Council's reference is 04/00777/ENF.
- The notice was issued on 10 February 2004.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from agriculture to a caravan site.
- The requirements of the notice are to:
 - a) cease using the land as a caravan site;
 - b) remove all caravans from the site together with any ancillary works or structures; and
 - c) restore the land to a grass paddock by providing at least 75mm of top soil with natural contouring of levels matching those of adjoining land and sowing with grass seed sufficient to restore the site suitable for the grazing of animals.
- The period for compliance with the requirements is 6 months.
- The appeals were initially proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals succeed in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Appeal B: APP/J3910/A/04/1147941

The Paddock, Heath Lane, Startley, Chippenham SN15 5HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs J MacDonald against the decision of North Wiltshire District Council.
- The application Ref 03/02421/COU, dated 3 October 2003, was refused by notice dated 28 January 2004.
- The development proposed is a residential gypsy site comprising access road, 2 hardstandings, double amenity unit, cesspit and 1.8m feather edge fencing.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. In connection with appeals A, since the prescribed fees were not paid within the specified period, the appeals on ground (a) have lapsed and the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered. Appeals A, therefore, proceed on ground (g) only.

Appeal B – the planning application

Planning policy

2. The Development Plan for the area includes the Wiltshire Structure Plan – 2011 (2001) and the North Wiltshire Local Plan (2001). The appeal site lies outside any identified framework boundary of a settlement as identified in the Local Plan and thus is within the countryside where the intention is protection for the countryside's own sake. Local Plan policy RC9 sets out criteria aimed at ensuring that where development considered to be appropriate to the countryside is permitted, it is in sympathy with the rural character of the area.
3. At the inquiry, Mrs MacDonald presented evidence to confirm the family's gypsy status, which was not disputed by the Council, by illustrating a continuing nomadic lifestyle. Structure Plan policy DP16 recognises the special needs of gypsies when seeking to identify suitable sites for them and recognises that these are sometimes best met by locations outside settlements. Local Plan policy RH17 confirms that gypsy sites might be permitted on the edge of settlements and in the countryside subject to a number of criteria. Those of particular concern in this appeal are Nos. 1. which seeks to protect the rural character and environment of the countryside; 2. which seeks to minimise landscape impact and suggests locations close to existing buildings and facilities; 5. addressing traffic issues; and 10. concerned with neighbouring amenity.
4. There is also a Revised Deposit Draft of the North Wiltshire Plan 2011, policy H9 of which requires gypsy sites to be located within areas which contribute to promoting sustainable patterns of development. Whilst the Plan does not carry the weight of the adopted Plans; this requirement follows current government guidance. In addition, Structure Plan policy DP1 sets out a number of general priorities aimed at the pursuit of sustainable development.

Main issues

5. Against this background and from the evidence presented to the inquiry, the main issues in this appeal are:
 - 1) the effect of the development on the rural character of the area;
 - 2) the effect of the development on the objective of achieving sustainable patterns of development; and
 - 3) whether there are other material considerations, which support the proposal, sufficient to outweigh any identified conflict with the policies of the Development Plan.

Reasons

First Issue- effect on rural character

6. Heath Lane is a modest rural lane which serves a handful of houses and a poultry farm. The appeal site formerly formed part of a field to the east of the dwelling, Toad's Corner, and it has now been subdivided into two plots. The appeal site comprises that plot immediately adjoining Toad's Corner. There is a solid gated access from the road at the boundary with Toad's Corner and a surfaced track leads across the site to the mobile homes and proposed double amenity unit towards the eastern end of the site. The northern and southern boundaries of the site are defined by hedgerows whilst the eastern and western boundaries

have been secured with solid fencing. Beyond the site, Heath Lane changes to an unsurfaced track.

7. The appeal site and immediate surroundings do not benefit from any specific designation affording special protection. Nonetheless Heath Lane has a distinct and attractive rural character with only a few scattered houses and discretely located poultry houses. The appeal site has a noticeably developed appearance with its forbidding gated entrance, suburban type fencing to two boundaries, significant length of surfaced drive/track and a concentration of buildings/structures to one end, together with vehicles, equipment and storage in connection with Mr MacDonald's landscaping business. This has changed the character of the site from an open field, which would have contributed to the rural character of the area and to the countryside scene, to one which erodes those qualities by adding a further developed site. Whilst I recognise that screening goes some way in concealing the development from public view, I consider that a sufficient amount is apparent from Heath Lane to cause an actual visual intrusion in the rural scene from the lane. Additional planting might be added to further screen the site but this would not address the loss of open land to development.
8. The harm that the development has on the rural character of the area is in conflict with Local Plan policy RC9 and criteria 1. and 2. of policy RH17.

Second issue - Sustainability

9. The site holds an isolated position having regard to its accessibility to services and facilities to provide for day to day needs of the occupiers and it is not conveniently situated to encourage alternative means of travel by walking, cycling or public transport. Startley does not offer any local services, but there is a primary school and small shop in the nearby village of Great Somerford. However, to reach this village by foot is unlikely to be attractive on a day to day basis as it takes in the region of half an hour to get there. This includes walking along a bridleway which would be muddy in inclement weather, or there is a longer route along busier roads without proper pedestrian facilities.
10. The nearest settlement providing a reasonable range of facilities including a supermarket and senior school is Malmesbury some 5km distant. There is a bus service through Startley to Chippenham, Malmesbury and Swindon but the nearest bus stop is in excess of 500m from the appeal site and services are infrequent.
11. I recognise that Mr MacDonald is reliant on the use of his own vehicles to run his business and in pursuing the family's nomadic lifestyle. However, when on the settled base, there are other day to day trips such as the school run, shopping or visits to the doctor that might be undertaken other than by car. The appeal site offers little opportunity to do so. Moreover, the remote location means that the length of trips are not minimised, as they might be with a site closer to a reasonable sized settlement, even if occupiers still chose to use their cars.
12. I note the argument for the Appellants that the Council site at Thingley has a remote location, but that does not provide justification for other isolated sites which undermine the objective of achieving sustainable patterns of development. The development is in conflict with the government's sustainability policies, Structure Plan policy DP1 and draft Local Plan policy H9.

Third issue – Other material considerations in support

Need and alternative sites

13. The Appellant was settled on the County Council run gypsy site at Thingley but unfortunately was evicted through the Courts. The Council say that this was as a result of a deliberate action by the Appellants, whereas the Appellants claim that it was as a result of a misunderstanding. Whatever the reason, the Appellants were given 5 days to vacate that site and they are now barred from applying for a pitch on any site run by Wiltshire County Council. It is clear, therefore, that the family had a pressing need to find, and to move onto, an alternative site if they were not to be forced onto the road. Although the Council says that the Appellants could have been looking for an alternative site whilst legal proceedings were progressing, it seems to me that their expectation of being allowed to remain at Thingley was not unreasonable since they had engaged legal representation to fight the action.
14. The Council argues that the criteria based Local Plan policy works well in that its application has enabled 24 pitches to receive planning permission, 20 directly from the Council and 4 on appeal, and 18 of those have been granted since the year 2000. Certainly the policy accepts that sites will be needed on the edge of settlements and in the countryside and I recognise that the policy is permissive. Nevertheless, in the absence of any assessment of need within the District there is nothing to demonstrate that sufficient sites are coming forward through the policy to satisfy the need.
15. There is a recognised national shortage of sites for gypsy families. Neither party sought to rely on the bi-annual counts for the County and District which are recognised as representing only a snapshot in time and are not, therefore, particularly informative. The Council provided information, however, of 24 known unauthorised pitches on 6 sites within the District which suggests an ongoing need for more sites locally.
16. I am well aware of the difficulties generally encountered by gypsies who are trying to identify a suitable site on which to provide a settled base. In this case, however, no site search was undertaken, the Appellants taking the first option available to them in view of the pressing need to have somewhere to move to. Whilst that action might be understandable at that time, it does not indicate that the Appellants need to remain on this particular site and there is no evidence to suggest that another more suitable site to better accord with policy could not be identified given adequate time.

Personal circumstances

17. The site is currently occupied by the Appellants and their two children, although at the time of the inquiry Mr MacDonald's brother and Mrs MacDonald's sister were visiting from Hereford. The second mobile home is intended for Mr MacDonald's parents and 4 of their children. That family is currently located on a Council run site in Weston-Super-Mare which, I am told, is overcrowded. The appeal site was first occupied towards the end of 2003.
18. The Appellants' two children have attended the primary school in Great Somerford since September 2003 where, the Headteacher reports, they have settled well, made many friends and are progressing well. They are assisted by the Traveller Support Service. Mrs MacDonald has become involved with the school's activities, attending assemblies and

parent evening meetings and helping with the weekly swimming lessons. She also helps out with the Brownies when they have overnight stays.

19. Without another identified base that the Appellants could move to, there is potential for the children's education to be seriously disrupted. I deal with this matter in my consideration of appeals A. I can understand the parents' reluctance to remove their children from a school where they seem happy and settled. However, the children are not at a critical stage of their education and, whilst it can be disturbing for any child to have to move school, there is no evidence to demonstrate that the children might not settle happily at another school or that a more suitable site could not be found without the need to change schools. I have taken full account of Mrs MacDonald's involvement with the school's activities and both Appellants' use of local social facilities with regular visits to the public house in Great Somerford but again there is no evidence that the Appellants might not become equally involved in the local community at an alternative site.

Conclusion on third issue

20. Taking into account the above and all other arguments advanced in support of the proposal, I find no material considerations sufficient to outweigh the conflict with the policies of the Development Plan that I have identified. I find nothing to indicate that the appeal should be determined otherwise than in accordance with the Development Plan.

Other matters

21. In coming to my conclusions I have noted the concerns of local residents in relation to additional traffic generated, to possible flooding, and to the effect on the immediate neighbouring occupiers. Having regard to the residential properties and poultry farm already served by Heath Lane, I consider that the few additional traffic movements generated by the two gypsy pitches would have no material effect on existing conditions of highway safety. In this respect I note that no objection was raised by the highway authority. No evidence was presented to the inquiry to demonstrate that the site suffers from flooding and the Environment Agency, consulted on the planning application, raised no objection. With regard to the effect on neighbours, the residents of Toad's Corner have a view across the site, but views can change. The mobile homes and associated structures are located at the farthest end of the site from that property, so that to my mind they do not appear unduly overbearing in the outlook. I understand that there have also been some problems with bonfires on the site but I am satisfied that this could have been controlled by condition had the proposal been acceptable in all other respects. In these matters I find no conflict with the relevant policies of the Development Plan.
22. The issue of precedent was also raised. In this particular case the appeal site was part of a field now subdivided into two. In my view, if this appeal were to be allowed other than in exceptional circumstances, there would be a strong possibility that the remaining half of the field would become attractive as a further potential gypsy site. In those circumstances, the Council would have difficulty resisting another application, if one were to be made, the cumulative effect of which would be to cause further erosion of the countryside and to further undermine policies promoting sustainable forms of development.

Appeals A – the enforcement appeals

23. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The Appellants are in a difficult position in that no County run gypsy site is available to them. Should they wish to remain in the area, therefore, they need to seek out an alternative private site and probably apply for planning permission. Whether or not this situation was of their own making, it seems to me that the children should not be made to suffer unnecessarily and in this respect I consider that sufficient time should be given for the Appellants to look for an alternative site to minimise the disruption to these vulnerable members of the family and to avoid the need to take to the road. At the inquiry, the Council were willing to accept a longer period than the 6 months specified in the enforcement notice. In my view, a period of compliance of 18 months is justified in this instance bearing in mind that, should it be necessary, the best time to move the children to another school would be at the beginning of the school year or at least at the start of a new term.

Human rights

24. The dismissal of these appeals will result in the Appellants losing their home and in these circumstances their rights under Article 8 of the European Convention on Human Rights are engaged. The interference with home and family life needs to be balanced against the qualifications to Article 8 and in this respect, protection of the countryside and the pursuit of sustainable objectives are legitimate aims for the public good. The public interest can only be safeguarded by the refusal of planning permission and upholding the enforcement appeal. In balancing the two conflicting interests, with the additional time that I consider appropriate for compliance with the requirements of the notice, I find that a disproportionate burden would not be placed on the Appellants and their family that would result in a violation of their human rights.

Conclusion

25. For the reasons given above and having regard to all other matters raised, I conclude that appeal B should be dismissed. I further conclude that a reasonable period for compliance with the notice would be 18 months, and I am varying the enforcement notice accordingly, prior to upholding it. Appeals A under ground (g) succeed to that extent.

Formal Decision

Appeals A: APP/J3910/C/04/1147243 & 1147245

26. I allow the appeals on ground (g), and direct that the enforcement notice be varied by the deletion from paragraph 6 of the words "6 Months" and the substitution therefor of the words "18 months" as the period for compliance. Subject to this variation I uphold the enforcement notice.

Appeal B: APP/J3910/A/04/1147941

27. I dismiss the appeal.


INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr D Kenrick	61 Blenheim Crescent, London W11 2EG
He called	
Mr R Stainer	65 Hawthorn Grove, Combe Down, Bath BA2 5QF
Mrs R MacDonald	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Wadsley	of Counsel, instructed by Mr P Jeremiah, Solicitor, Team Leader Legal Services
He called	
Mr S Chambers BSc MA MRTPI	Director in the firm of LPC (Trull) Limited, Trull, Tetbury, Gloucestershire GL8 8SQ

INTERESTED PERSONS:

Mr G Currie DipTP MRTPI	Acting for Startley Residents' Association, Director in the firm of DPDS Consulting, Old Bank House, 5 Devizes Road, Old Town, Swindon SN14BJ
Mrs A Henshaw	CPRE, South Newlands, Yatesbury, Calne SN11 8YB
Councillor T Sturgis	District Councillor, Somerford and Brinkworth Ward, Brook Farm, Great Somerford, Chippenham SN15 5JA
Mr R Metcalf	Toad's Corner, Heath Lane, Startley, Chippenham SN15 5HH

DOCUMENTS

Document 1	List of persons present at the inquiry
Document 2	Letters of notification of the appeals
Document 3	Letters of representation
Document 4	Statement of Common Ground
Document 5	Appendices 1-4 to the evidence of Dr Kenrick
Document 6	Appendices 1-11 to the evidence of Mr Chambers
Document 7	Letter from Headteacher of Somerfords Walter Powell School and school reports
Document 8	Advertisement – building plot in Great Somerford
Document 9	Statement from DPDS Consulting acting for Startley Residents' Association
Document 10	Statement from CPRE – North Wiltshire and Swindon Group
Document 11	Statement from Councillor T R Sturgis
Document 12	Statement from Mr R Metcalfe with attachments
Document 13	Authorities submitted for the Appellant in closing
Document 14	Bi-annual gypsy count figures

PLANS

Plan A	Planning application drawing – site location plan
Plan B	Planning application drawing – site layout plan
Plan C	Planning application drawing – plan, elevations and section of double amenity unit