

Application No: **09/2358C**

Location: **Thimswarra Farm, Dragons Lane, Moston, Sandbach, Cheshire, CW11 3QB**

Proposal: **Retrospective Application for Change of Use from Agricultural Land to a Site for a Mobile Home for Occupation by an English Traveller who has Ceased to Travel Due to Ill Health and long Standing Disability**

Applicant: **Mr A D Arrowsmith**

Expiry Date: **10<sup>th</sup> December 2010**

Ward: **Congleton Rural**

**Date Report Prepared: 3<sup>rd</sup> March 2011**

**SUMMARY RECOMMENDATION:****Refuse****MAIN ISSUES:**

- Procedural Matters;
- Site History;
- Principles of Development;
- Assessment Against Policy;
- Sustainability;
- Impact on Character and Appearance of Open Countryside;
- Amenity;
- Highways;
- Drainage;
- Human Rights Act;
- Personal Circumstances; and
- Other Matters

## **REFERRAL**

This application was originally to be dealt with under delegated powers. However, Councillor J Wray has requested that it be referred to Committee for the following reason – *‘special circumstances of the applicant and to give a wider hearing to his case for the Committee to decide on merits etc and the effect of proposal on amenity of adjoining land’*.

## **DESCRIPTION OF SITE AND CONTEXT**

The application site is located in the corner of a (much larger) field on the south side of Dragon Lane. Furthermore, the site is in a prominent position adjacent to the junction of Dragon Lane and Plant Lane. The site boundaries are demarcated by mature native hedgerows. The applicant has erected a close boarded timber fence (in excess of 2m high) around the majority of the perimeter of the site. The site is accessed directly from Dragons Lane via a utilitarian double wooden gate. Beyond the gate is an extensive area of hard standing which skirts around the periphery of the site and terminates at a large static caravan (which is the subject of this application), located to the front of the caravan is a large timber decked area and pergola, with a lawned area beyond. It was noted that when the case officer conducted his site visit there was numerous vehicles and a touring caravan. Located towards the rear of the mobile home was a steel shipping container with solar panels erected on top of it. Towards the south of the application site are a number of chicken houses. The application site is separated from the remainder of the field by a post and wire fence. The application site is located wholly within the open countryside.

## **DETAILS OF PROPOSAL**

This is a retrospective application for the change of use of agricultural land to a site for a mobile home at Thimswarra Farm, Dragons Lane, Moston, Sandbach. The static caravan comprises two no. bedrooms, lounge, dining area, kitchen, bathroom and hallway. The caravan has been positioned in the northwest corner of the application site adjacent to the junction of Dragons Lane and Plant Lane. The caravan is occupied solely by the applicant who claims to be an English Traveller who has ceased to travel due to ill health and long standing disability.

## **RELEVANT HISTORY**

No relevant site history

## **POLICIES**

### **Local Plan Policy – Congleton Borough Local Plan First Review 2005**

- GR1 (New Development)
- GR2 (Design)
- GR6 (Amenity and Health)

- GR9 (Accessibility, Servicing and Parking Provision)
- GR17 (Car Parking)
- GR19 (Infrastructure)
- GR20 (Public Utilities)
- PS8 (Open Countryside)
- H6 (Residential Development in the Open Countryside and the Green Belt)
- H7 (Residential Caravans and Mobile Homes)
- H8 (Gypsy Caravan Sites)

### **National Planning Guidance**

- PPS.1 (Delivering Sustainable Development)
- PPS.7 (Sustainable Rural Development)
- PPG.13 (Transport)

### **Other Material Considerations**

Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites

### **CONSIDERATIONS (External to Planning)**

#### **Contaminated Land Comments:**

No objections

#### **Environmental Health Comments:**

If planning permission were granted a site licence would be required under the Caravan Sites and Control of Development Act 1960. The following conditions will need to be taken into consideration that may have a knock on effect for planning:

**Site boundaries**, should be clearly marked i.e. with fences or hedges.

**Roads, gateways and footpaths** must be of suitable material/construction and suitably lit, and have adequate access for emergency services etc. Suitably surfaced parking spaces shall be provided where necessary to meet the additional requirements of the occupants and visitors.

**Drainage sanitation and washing facilities.** There must be provision of a foul drainage system made. Each caravan standing should be connected to foul drainage. Each caravan standing should have its own water supply, W.C, W.H.B, shower or bath (hot & cold water). Where these facilities are not present, they should be provided in an adequately constructed building. Each hard standing should have adequate surface water drainage.

1. **Hard-standing.** Every caravan should stand on a concrete or tarmac hard-standing which should extend over the whole area occupied by the caravan placed upon it, and should project a sufficient distance outwards from its entrance to enable occupants to enter and leave safely.

This division is concerned about the existing method of foul drainage (i.e. Septic tank) and whether it has been constructed in an adequate manor for the site and ground conditions. Advice should be sought from the Borough's Drainage Department and the Environment Agency.

This department would have to issue a caravan site licence if this application is permitted. It appears that the applicant is claiming English Gypsy or Irish Traveller status (it is not clear which given the terminology used). However, the supporting statement does not suggest this ethnicity group, but rather a circumstantial mode of living and it is suggested that the Planning Department satisfy themselves as to this question given the differing criteria under planning and caravan site licensing legislation. We would be grateful for any permission if granted to state if the permission is open residential or restricted Gypsy/Traveller use.

**Highways:** No comments received at the time of writing this report.

### **VIEWS OF THE PARISH / TOWN COUNCIL**

No objections subject to the following comments

- Time constraints to be put in place on this planning application; and
- Any decision the Council makes should be for the applicant only.

### **OTHER REPRESENTATIONS**

Letters of objection have been received from the occupiers of 124 Plant Lane, 8 Oakwood Lane; Salter Cottage, Plant Lane; 6 Plant Lane, Woodville Farm, Dragons Lane; Ivy Cottage Farm, Plant Lane; White House, Dragons Lane. The salient points raised in the objection letters are:

- The proposal would detract from the essentially agricultural nature of the area;
- If approved the proposal could lead to other 'Travellers' joining the applicant;
- We do not want a traveller home to be allowed on agricultural land in our community when there are four travellers' sites already in the area. We have a nature reserve close by and wish to keep the countryside as it is. If one traveller is allowed a mobile home on this land, others may follow;
- Moston is a predominantly agricultural area where planning permission is extremely restricted. The applicant has set up an intrusive unpermitted development which has an adverse effect on the countryside area and is contrary to policies GR1 and GR2 of the adopted Congleton Borough Local Plan First Review;
- There is nothing to stop the site being further developed if permission is granted, leading to further retrospective planning applications to increase the site development;
- Allowing retrospective planning permission for this application will set a precedent which may encourage others to follow a similar route, by

ignoring recognised planning process and procedure in the hope of securing a positive outcome;

- The proposal would be detrimental to the area as it is in a green belt area which, by definition, is predominately an agricultural area;
- There is already a similar development further down Dragon's Lane at its junction with Warmingham Lane. This development seems to have grown out of all proportion. I would hope that if this application were to be approved, that restrictions would be imposed so that subsequent growth would not be permitted;
- This site is unnecessary as there are already sufficient adequate sites in the local area;
- The application, plans and photograph submitted do not reflect the true nature of the development and the number of vehicles, structures and units has continued to increase since the applicant took up residence in April 2009;
- In addition to the mobile home there is a large lorry permanently sited, a big livestock trailer, a sizeable metal storage container and an additional caravan. There are mounted solar panels highly visible above the site and a substantial pergola type structure at least equal in size and area to the mobile home and attached to it. There are also collections of garden ornaments and paraphernalia and a poultry/aviary construction. There is extensive and totally inappropriate waneylap type garden fencing, camouflage netting and high solid wooden gates topped by barbed wire;
- The application states on-site parking for 2 cars and 1 motorcycle. There are now 6 cars, often 7, regularly parked on the site plus a JCB digger and a tractor;
- The planned position of a septic tank is not suitable for access/servicing/emptying because it is to be placed at the edge of the site, far away from the entrance gate. There is no indication of the position/structure/materials required for a soakaway or connections to field drains/outlets. The overflow/waste water from impermeable structures such as the mobile home, storage unit, vehicles, driveways and septic tank will exit into roadside ditches and have serious implications for nearby land, neighbouring properties and highways;
- The applicant claims to have consulted his 'neighbours' but he has not approached the two nearest – ourselves at Woodville Farm and Miss Ruth Williams (Ivy Cottage Farm, Plant Lane). We are both in direct sight and hearing of the development and are directly affected by it;
- The applicant's occupation of the site presents unacceptable consequences for the amenity of nearby residents and detracts from the aesthetic value of the surrounding landscape and area;
- The proposal has a detrimental impact on the character and appearance of the area;
- There is an audible impact on nearby residents and the locality. Electricity is not only produced by the solar panels but also by the frequent use of a noisy generator that can be heard in the surrounding area.
- We question the validity of the applicant's definition of himself as a disabled nomad/traveller and therefore his justification for the residential use of agricultural land. Furthermore this development is undesirable and non-sustainable;

- The applicant claims to be disabled yet has undertaken heavy physical work including erecting a large pergola, installing solar panels and general maintenance;
- The proposal is detrimental to the amenity of the area;
- The overflow/waste water etc from the mobile home, septic tank and soakaway into roadside ditches must run a risk of toxic waste that could affect the neighbouring properties;
- I feel threatened by this development which has expanded at an alarming rate. I am concerned that there will be further growth in residential use directly opposite my house, stables and lane.

**Email from William Goodall former CBC Councillor, Brereton Ward  
(Dated 16<sup>th</sup> February 2011)**

- In the application documentation posted on the Cheshire East Website, the letter dated 24th July 2009 from Mr Alan David Arrowsmith does not appear to be strictly accurate. I imagine that the planning office have made suitable checks and are aware of this. However for the avoidance of doubt, I attached the following public domain information brought to my attention;
- According to the Electoral Roll 2004, Alan D Arrowsmith was resident in Sandbach, Cheshire, with Scott N Bradshaw, Tracy Bradshaw, Judith Arrowsmith, Alice Davenport and Tracey Bradshaw.
- According to the Electoral Roll 2003, Alan D Arrowsmith was resident in Sandbach, Cheshire, with Arthur J Mellor, Judith Arrowsmith, R Thompson, Denise A Mellor, Paul Arrowsmith.
- There are further records in earlier electoral rolls for the CBC area, to which I am confident planning has full and detailed access.
- Given the above information, the development therefore breaches a number of planning regulations including CBC Policy H8 I) & III). You will also be aware that this development is visible from the junction of Plant Lane & Dragons Lane and now blocks former views over open countryside, that existed in early 2009.

**APPLICANT'S SUPPORTING INFORMATION**

**Design and Access Statement**

- The proposed residential use of the land would have no detrimental effect on the amenities of the neighbouring occupiers. It is associated with the continued agricultural use of the remainder of the field. The use is entirely compatible with the area and would add to an existing mix of residential and agricultural uses in the locality;
- A single caravan pitch is proposed. This will not place an unacceptable burden on local services and is an efficient use of a small plot of land;
- The proposed caravan pitch is compact and located close to the road and field boundary, restricting built development to a minimum and allowing good screening by the field hedge. Each space within the site has a definite function. Hard standing is kept to a minimum and the site is made secure by field gates;

- Fencing is also domestic and unobtrusive. Although the caravan on the site does not comprise building operations it is of reasonable size for a single residential plot;
- The natural rural simplicity of the site is retained and no complex urban style soft landscaping, which would in any case appear incongruous, is proposed;
- the proposed development would fit well with its surroundings and has no detrimental visual impact;
- The site is safe and it is easy for people to move around within the site. In terms of vehicular access the shared access onto the land provides excellent levels of visibility in both directions for vehicles entering and exiting the site.

### **Numerous Emails Received form Alan David Arrowsmith (The Applicant)**

- The Council has not handled the planning application in an appropriate manner;
- The application site is not in the Green Belt;
- There are similar types of development within the locality;
- The application site is completely screened from any view by mature native hedgerow and fencing;
- Other people in the locality are living in mobile homes in the area;
- I have become homeless and have had two operations on my back and am not able to work.

### **OFFICER APPRAISAL**

#### **Procedural Matters**

A number of local residents have claimed that as the application is retrospective the applicant has been acting illegally. However, as confirmed in PPG 18: Enforcing Planning Control, it is not an offence to carry out development without first obtaining planning permission required for it. Furthermore, Section 73A of the 1990 Town and Country Planning Act specifically provides that a grant of planning permission can be given for a development that has already taken place. A number of local residents have stated that the planning application forms have been completed inaccurately. The case officer acknowledges that this may be the case but does not consider that the application is fundamentally flawed and the information submitted is sufficient for it to be determined on its merits, and if necessary some of the issues raised by residents could be controlled by the imposition of conditions, in the event that planning permission is granted.

#### **Site History**

The siting of the mobile home was first reported to the Council in April 2009. The site was visited on 29<sup>th</sup> April 2009 when it was noted that a mobile home had been stationed on the site and at that time there were also a 4 wheel drive vehicle, a lorry containing furniture and a horsebox. Since that time a pergola has been constructed along with an area of decking directly outside

the mobile home. In addition to this a driveway/hardstanding has been formed around the part of the perimeter of the site. A steel shipping container has been sited on the land with solar panels installed on top of it.

In June 2009 a letter was sent to the applicant which set out the Council's view regarding the use of the land. In this letter the applicant was advised that, having due consideration to relevant national and local policies it was unlikely planning permission would be granted for the change of use of the land for the siting of a residential caravan.

In July 2009 a retrospective planning application was submitted to the Council, however, this could not be made valid as it lacked sufficient information and a fee. Whilst the outstanding documentation was submitted the full fee was not paid so the application remained invalid. By May 2010, the applicant had still failed to pay the full fee, consequently a further letter was sent advising if the outstanding balance was not received by the 14<sup>th</sup> May 2010 the Council would have no option but to consider the expediency of taking enforcement action. On the 28<sup>th</sup> July 2010 authority was given to issue an Enforcement Notice in relation to the unauthorised change of use. The Enforcement Notice was issued on the 14<sup>th</sup> October 2010. However, the applicant made the final payment on the 15<sup>th</sup> October 2010 and the planning application was made valid. Upon receipt of the Enforcement Notice the applicant decided to Appeal against it. The Enforcement Notice Appeal is due to be heard in April. If the Committee decides to approve this application, the Council would have to withdraw their Enforcement Notice and the applicant could apply for an award of costs against the Council.

### **Principles of Development**

As with national planning guidance, Policy PS8 (Open Countryside) of the Local Plan seeks to safeguard the countryside for its own sake and prevent non-essential development that may cause harm to the character and appearance and openness of the countryside.

However, policies within the development plan, in conjunction with national planning guidance and advice in Circular 01/2006 (Planning for Gypsy and Traveller Caravan Sites), accept that outside Green Belt areas, rural settings are acceptable in principle for gypsy and traveller caravan sites. The applicant argues that a degree of harm to the character and appearance of the countryside is unavoidable but points out that Government advice suggests that in most cases this visual harm can be satisfactorily mitigated with appropriate landscaping. However, whilst the need for gypsy and traveller accommodation is a consideration, both development plan policies and Government guidance require, in addition, consideration of the impact on the surrounding area, neighbouring amenity, highway safety, the need to respect the scale of the nearest settled community and also the availability of alternatives to the car in accessing local services.

### **Assessment against Policy**

*Policy H.8 (Gypsy Caravan Sites)*

According to Policy H.8 planning permission will be granted for proposals for temporary or permanent gypsy caravan sites provided they comply with the following criteria:

- (i) Avoids unacceptable consequences for the amenity of nearby residents;*
- (ii) Comprises a site which is not within the Greenbelt, Area of Special County Value for Landscape or affects sites of nature conservation or archaeological interest;*
- (iii) Is of an appropriate scale which would not detract from the value of the surrounding landscape;*
- (iv) Is adequately screened and landscaped;*
- (v) Provides satisfactory onsite parking and access from a public highway;*
- (vi) Provides adequate onsite facilities and services to serve all caravans;*
- (vii) Does not prejudice other relevant local plan policies;*
- (viii) Does not conflict with utility company or agricultural interests;*
- (ix) Avoids wherever possible encroachment on the open countryside; and*
- (x) Is, wherever possible, within 1.6km (1 mile) of existing local shops, community facilities, primary school and public transport facilities.*

In addition to the above, Circular 01/2006 'Planning for Gypsy and Traveller Caravan Sites' is an important material planning consideration. The Circular defines a gypsy or traveller as:

*'Person of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such'. (Paragraph 15)*

At the time of the Council's initial visit to the site the applicant stated that he was not employed in agriculture, forestry or any other appropriate rural enterprise and that he was not a gypsy. However, in a subsequent letter, dated 24<sup>th</sup> July 2009, he claimed to be an English Person of Nomadic Habit of Life that due to disability has ceased to travel. He explained that for many years he was a long distance lorry driver spending many nights away from home and sleeping in his vehicle. He goes on to claim to have an aversion to living next door to other people and finds the idea of settling in suburbia unthinkable. The applicant claims that prior to purchasing the application site he owned a motor home in which he lived and travelled the country, staying in lay-bys and fields, but unfortunately due to his disability which affected his health he reluctantly had to sell this.

The applicant has previously likened his travelling during his occupation as an HGV driver to that of being a gypsy and as referred to the aforementioned definition of Gypsies and Travellers. He claims that his occupation of the site does not represent unacceptable consequences for the amenity of nearby residents and in particular to prevent noise pollution he has installed solar

panels to produce silent renewable energy. The site is not within a Green Belt or an Area of Special County Value for landscape, and the proposal does not affect sites of nature conservation or archaeological interest. The plot of land is approximately 1.5 acres which the applicant contends is ample to site the mobile home and provide good parking for at least three vehicles plus space for growing vegetables for home consumption without detracting from the value of the surrounding landscape. The plot is positioned in the corner of a field with front and side elevations well screened from nearby roads by mature trees and hedges. Access is via a previous existing gateway with sufficient on-site parking for up to three vehicles screened by mature hedges. The applicant contends that he only wants to have one mobile home on the site and on-site facilities would be adequate for this when the septic tank is installed. The applicant claims that the Change of Use would not prejudice other Local Plan policies and he has checked with the utility company operating the gas governor in the far corner of the field who has confirmed that the development would not cover any of their underground services or present them with any other problems. The applicant has pointed out that the mobile home will not be occupied by children requiring primary school facilities. He believes the site is within easy reach of community facilities and local shops.

Circular 01/2006 defines gypsies and travellers as 'Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or families or dependants educational or health needs or old age have ceased to travel temporarily or permanently'. The applicant's description of his personal circumstances suggest that until recently he has shared a permanent home with his (now ex-) wife. Long distance lorry driving denotes a mobile job rather than a motor home. After moving out of the matrimonial home, the period which was spent travelling in a mobile home appears to have been a recent and temporary phase connected with a specific event (his divorce) rather than a lifestyle habit. There is nothing in his description of his personal circumstances to support a professed aversion to suburban life, certainly nothing to suggest that it is genuine, fixed and longstanding. Furthermore in the applicant's email dated 28<sup>th</sup> February 2011 he states 'I became homeless' which confirms the fact that he used to reside in a dwellinghouse. Therefore, it is considered that the applicant does not satisfy the definition of a Gypsy or Traveller and that policy H.8 (*Gypsy Caravan Sites*) should not be applied.

The application must be assessed against Policies H.6 (Residential Development in the Open Countryside and the Green Belt) and H.7 (Residential Caravans and Mobile Homes). According to policy H.7 planning applications for residential caravans and mobile home development will need to satisfy the same policies in the Local Plan as would applications for new housing development. Policy H.6 of the Local Plan states that a new dwelling will only be permitted (amongst other criteria) for: a person engaged full time in agriculture or forestry. The replacement of an existing dwelling by a new dwelling not materially larger, the conversion of an existing rural building into a dwelling in accordance with policies BH15 and BH16. The change of use or redevelopment of an existing employment site in accordance with policy E10;

limited development within the infill boundary; and affordable housing in accordance with the rural exceptions policy H14. It is not considered that the application satisfies any of the aforementioned criteria.

### **Sustainability**

A key principal of national and local planning policies is to promote sustainable patterns of development in order to reduce the need to travel and the dependence on the private car. It is noted that buses travel along Dragons Lane at various intervals in the day. However, the application site is in an isolated rural setting and is far removed from any settlement, shop(s), school(s), community facilities or place(s) of employment. Consequently, it is considered that the proposal does not represent a sustainable form of development and is contrary to policies H.8 (Gypsy Caravan Sites), in particular, criterion (x) and GR.1 (New Development) and advice advocated within PPS 1: Delivering Sustainable Development.

### **Impact on the Character and Appearance of the Open Countryside**

The applicant has submitted detailed plans of the static caravan and according to them the caravan measures approximately 10m deep by 3.6m wide. The floor plans show that the internal accommodation comprises of 2 no. bedrooms, bathroom, hallway, kitchen, dining area and lounge. Located at the front of the static caravan is a large decked area projecting out approximately 5m and includes a pergola. As mentioned previously the static caravan is located in the northwest corner of the application site. It was noted that immediately behind the static caravan was a large steel shipping container with solar panels located on top of it. The applicant also has a tourer caravan, and a number of vehicles. There is a large area of hard standing predominately around the periphery of the site and there are chicken runs/houses on the site. The case officer noted that the application site is bounded by mature native hedgerow, which is punctuated at sporadic intervals by trees. It was noted around the majority of the periphery of the application site, the applicant had erected a close boarded timber fence which is in excess of 2m high which is visible through the hedge line, particularly during winter months when the hedgerow and trees are in leaf fall.

It is considered that there is inherent harm and inappropriateness in using this open site in the open countryside for the siting of a static mobile home and all the other associated paraphernalia. Even if the proposal were completely hidden from public view it would continue to be out of sympathy with the predominately rural surrounding. According to PPS7 states that

*'The Government's overall aim is to protect the countryside for the sake of its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife, the wealth of its natural resources and so it may be enjoyed by all'.*

It then goes on to state that

*'Planning authorities should continue to ensure that the quality and character of the wider countryside is protected and, where possible, enhanced'.*

Furthermore, development control guidance advocated within PPS 1 places a greater emphasis upon Local Planning Authorities not to accept proposals that fail to provide opportunities to improve the character and quality of an area. It is considered that the proposal is an inappropriate use and has a detrimental impact on the character and appearance of the open countryside. Policy PS8 (Open Countryside) restricts what development will be permitted in the open countryside. The siting of a static mobile home on the application site is not the type of development that is allowable under Policy PS8.

### **Amenity**

Policy GR6 (Amenity and Health) states that development will be permitted provided that the proposal would not have an unduly detrimental effect on amenity due to loss of privacy, loss of sunlight and daylight, visual intrusion, environmental disturbance or pollution, traffic generation, access and parking.

The nearest residential properties are those located to the south west (Ivy Cottage Farm) and west (Woodville Farm) which are sited approximately 85m and 110m respectively away from the application site. Furthermore, the site is demarcated by a mature native hedgerow, which is punctuated at irregular intervals with mature trees. It is considered the distances between the existing properties and the application site and the intervening vegetation will minimise any loss of amenity through overlooking or over domination. A number of representations have been received stating that the applicant is running a generator at various times of the day and the noise created significantly detracts from the amenities of the neighbouring properties. Whilst the concerns of the objectors are noted, any noise generated by the generator which residents feel is unacceptable is an issue to be dealt with under the Environmental Health Statutory Noise Nuisance. Furthermore, Environmental Health raise no objections.

### **Highways**

The Highway Authority's response is awaited at the time of writing this report and will be reported to the Development Control Committee in an update.

### **Drainage**

A number of objectors are concerned about how the development will be drained. The proposed method for drainage would be via a septic tank and it is the Council's understanding that a drainage pipe will connect the mobile home to the septic tank, which has not yet been installed. Development on sites such as this generally reduces the permeability of at least part of the site and changes the site's response to rainfall. Planning Policy Statement 25 (Development and Flood Risk) states that in order to satisfactorily manage

flood risk in new development, appropriate surface water drainage arrangements are required. The guidance also states that surface water arising from a developed site should, as far as possible, be managed in a sustainable manner to mimic the surface water flows arising from the site prior to the proposed development. It is possible to condition the submission of a drainage scheme in order to ensure that the site is appropriately drained.

### **Human Rights Act**

The applicant in a number of correspondences refers to Article 8 of the Human Rights Act which states that everyone has the right to respect for private and family life and his home. Also there should be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

With this in mind the applicant has suggested that refusing planning permission would not respect his private life and interfere with his right to respect for his private life, and denial of these rights is not necessary in the interests of national security, public safety or the economic well being of the country, the prevention of disorder or crime, the protection of health or morals or the protection of the rights and freedoms of others. In particular he says that the change of use of the land has not affected any third party and cannot therefore be said to be harmful to the public interest.

Circular 01/2006 requires local planning authorities to consider the consequences of refusing or granting planning permission on the rights of individuals concerned, both in regard to gypsies and travellers and local residents. The Human Rights Act 1998 makes it unlawful for a public authority to violate the rights contained in the European Convention of Human Rights unless, because of an Act of Parliament, it has no choice.

Under Article 6 of the Convention, in the determination of his civil rights, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Both the applicant and residents have the right to make representations to the proposal and planning decisions can be challenged either by appeal to the Secretary of State in the case of the applicant or through the courts in the case of residents.

Under Article 1 of the First Protocol of the Convention, every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The proposal has been considered not to conflict with this Article.

As the refusal of this planning application and the subsequent enforcement action could interfere with the applicant's home, the Council should and has considered whether action would be a proportionate step under Article 8 of the Human Rights Act 1998 by taking the applicant's personal circumstances into account. On balance it is considered that the harm caused by this inappropriate development in the open countryside outweighs the harm which the refusal of the planning application and any subsequent enforcement action would cause to the applicant.

### **Personal Circumstances**

The applicant claims that he used to travel around the country in his motor home stopping in various lay bys. However, he has ceased to travel due to ill health and long standing disability and claims that he is registered disabled. Furthermore, whilst the case officer was out on site the applicant stated that he has had several operations and suffers from a chronic illness (arthritis). The applicant also claims that if planning permission is refused he will become homeless and he does not have adequate funds available to live elsewhere locally. Furthermore, the applicant states that he has lived in the locality for the majority of his life and wishes to remain so.

However, the applicant has not provided any details to confirm his disability or how the disability and ill health impact upon his residential needs, specifically, how his disability requires him to live in a mobile home on this site. Furthermore, personal circumstances are not a material reason for allowing the proposal, as the development would exist long after the personal circumstances have ceased to be material. Therefore, the application must be assessed on the relevant material planning considerations, which are cited in this report.

### **Other Matters**

One of the representations makes reference to the application site lying within the Greenbelt. However, this is not the case and according to the Local Plan the whole of the application site is located wholly within the Open Countryside.

### **CONCLUSIONS AND REASON(S) FOR THE DECISION**

It is considered that the current use of the site represents an inappropriate form of development within the Open Countryside in terms of its effect on the openness, its unsustainable nature and the fact that new residential development in the open countryside is contrary to both national and local policy unless it falls into certain categories. The development fails to meet any of the required criteria and is therefore unacceptable.

### **Refuse**

- 1. The Local Planning Authority does not accept that the occupier of the caravans qualifies as a Gypsy or Traveller as defined in**

**Circular 01/2006 or that he is engaged in full-time in agriculture, forestry or other business appropriate to the locality and that it is necessary for him to reside in this location. The use of the land for the stationing of residential caravans is therefore contrary to policies PS8 (Open Countryside), H6 (Residential Development in the Open Countryside and the Greenbelt) and H7 (Residential Caravans and Mobile Homes) of the adopted Congleton Borough Local Plan First Review 2005.**

- 2. The site which includes a static mobile home, a touring caravan, a shipping container, solar panels and boundary fencing etc is clearly visible from Dragons Lane and Plant Lane and the Local Planning Authority considers that the proposal due to its inappropriateness causes inherent harm to the visual appearance and character of this part of the open countryside. To allow the development would be contrary to policies GR1 (General Criteria), GR2 (Design) and PS8 (Open Countryside) of the adopted Congleton Borough Local Plan First Review 2005 and advice advocated in PPS1: Delivering Sustainable Development and PPS7: Sustainable Development in Rural Areas**

Location Plan: Cheshire East Council Licence No. 100049045

