

TOWN AND COUNTRY PLANNING ACT 1990
Appeals under Section 78 & Section 174

Planning Inspectorate Reference: APP/L1765/C/19/3230601
APP/L1765/W/19/3221730

Local Planning Authority:

Planning Application Reference No: 18/01441/FUL
Enforcement Notice Reference: 19/00050/CARAVN

Address: Southwick Ranch
Land adjacent to Strawberry Barn
Off Southwick Road
North Boarhunt
PO17 6JF

Developments:

Planning Appeal

The use of land use of land for the stationing of caravans for residential purposes

Enforcement Notice Appeal

The material change of use of the Land from agricultural to use for the siting of 4 residential caravans and ancillary equestrian purposed and the laying of hardstanding associated with the residential use of the land.

APPEAL BY INFORMAL HEARING

STATEMENT OF CASE

WINCHESTER CITY COUNCIL
AS THE LOCAL PLANNING AUTHORITY

This statement has been prepared to comply with the guidelines set out in the Procedural Guidelines for planning appeals (January 2018) and those relating to an enforcement appeal in England (2016)

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1. Procedural Matters

- 1.1. The appellant's have raised a couple of issues with regard to both the planning and enforcement notices, which the local planning authority consider need to be clarified or resolved for the appeal hearing to precede in a satisfactory manner.
- 1.2. Firstly, with regard to the planning decision. It is considered by the appellant that notwithstanding the submitted description of the application as being for 'use of land for the stationing of caravans for residential purposes', this should be amended to properly reflect the application (SOC para. 1.4). It is acknowledged that the supporting planning statement referred the proposal as providing '1no. residential family gypsy pitch to meet a recognised need for such facilities in the area to facilitate a gypsy lifestyle' and following the submission of additional information during the course of the application, it is accepted by the local planning authority that this would be a correct description of the proposal.
- 1.3. The appellant has also raised an issue with the enforcement notice in respect of the wording of the alleged breach and the requirements.
- 1.4. The *Miller - Mead* principles were upheld on 3rd November in 2017 by Judge Waksman QC in the High Court judgement in *Oates v SoSCLG and Canterbury City Council* [2017] EWHC 2716 (Admin). Namely, in order for a Notice to be effective it must inform the recipient "with reasonable certainty what the breach of planning control was and what was needed to remedy it". However the court also held that although there may be a degree of uncertainty or other defect in a notice, it does not necessarily mean there has been non-compliance with statutory requirements. Further, even where one section of a notice is too uncertain and cannot stand; notices may be endorsed where the offending part did not "infect" the rest of the requirement of the notice. Moreover, standing back and looking at the notice as a whole, Inspectors should not adopt an approach which is unduly technical or formalistic.
- 1.5. It is well established (see e.g. *Harrogate Borough Council v Secretary of State for the Environment* [1987] J. P. L 288) that on appeal against an enforcement notice, the Inspector may correct or vary an enforcement notice to allow for considerable alteration pursuant to s.176 of the Town and Country Planning Act 1990 as amended ("TCPA") such that it is directed to the correct "planning unit", as long as she or he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.

- 1.6 The High Court case of *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207 is the principal authority for the determination of the appropriate planning unit, to consider in deciding whether there has been a material change of use.
- 1.7 The first of the three tests proposed by Lord Widgery in *Burdle* is that where it is possible to recognise a single main purpose of the occupier's use of his land, to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered as the relevant planning unit.
- 1.8 In this case there is a single main purpose that is the residential occupation of the land along with its ancillary equestrian use together with its moveable structures such as the stables and the lavatory.
- 1.9 This has also been explored in *Richmond - upon - Thames LBC v Secretary of State for the Environment & Beechgold Ltd* [1988] JPL 396 where it was held that a notice could be directed at ancillary uses without losing its meaning; and while the concept of a planning unit and ancillary uses are crucial in determining whether there has been a material change of use, they do not govern the wording of the notice.

2 Site and Location

- 2.1. The site has been visited on a number of occasions the first being in July 2018 at the time of the application. A further visit was made in March 2019 prior to the serving of the enforcement notice and a more recent visit was undertaken in May 2020. A number of photographs were taken during these visits and are attached to this statement as appendix B. They are referred to below in the text.
- 2.2. The appeal site lies within the open countryside, approximately 300m to the north of Southwick Road, from where it is accessed by a narrow track, along which a few scattered dwellings are located. The track does not provide a through route, and is unlit with no footpaths. A plan is attached as appendix C that shows the appeal site and the general character of the area.
- 2.3. The appeal site consists of a rectangular parcel of land of approximately 0.43 ha in area. It is on level ground, with little in the way of screening along the boundaries of the site. At the time of the original site visit, a new layby had been created to the front of the site with wide double gates enabling vehicular access, but with the exception of a timber stable building located on the southern

boundary, there were no other buildings or features on the site. (App. B –group 1 photos)

- 2.4 There are open fields to the rear (west) and north of the site, with a further field to the east of the access track. To the south there is a modest property (Strawberry Barn) which was converted from an agricultural barn to a dwelling under the prior notification procedure (Class Q of Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). More recently a Certificate of Lawful Development has been approved in respect of the siting of a mobile home to be occupied in conjunction with the main dwelling on the basis of providing incidental accommodation.
- 2.5 It is apparent from the photographs taken in March 2019 and May 2020 (App. B, groups 2 and 3) that a number of features have been introduced to the site during the last two years, including areas of hardstanding and the siting of touring caravans and a horse box. At the time of the last visit, the site was occupied by a Mobile home, two touring caravans/motorhomes, a portaloos and a number of outbuildings and domestic features such as a pergola and play equipment. In addition an array of solar panels has been positioned to the rear. The current situation on site does not reflect the layout that was considered at the time of the planning application.

3. The Planning History

- 3.1 There have been no previous planning applications associated with the appeal site.

4. Circumstances leading to the appeals

- 4.1 The planning application reference 18/01441/FUL was submitted to the local planning authority on 11th June 2018. The proposal sought use of the land for stationing of caravans for residential purposes. The submitted plans showed a single pitch, comprising a mobile home, utility/day room, stable block and site for a touring caravan. The pitch was to be served by a package treatment plant and soakaway located near the southern boundary of the site. Access was from the existing gates to the site. All of the facilities were shown to be located towards the front of the site adjacent to the track, on an area which was roughly a third of the overall site area.
- 4.2 During the application process, concern was expressed as to the proximity of the proposed package treatment plant to a bore well on neighbouring land. An

amended site drainage plan (App. A(i)) was submitted on 15th October 2018, showing this to be relocated further north on the site.

4.3 The proposal was viewed as contrary to policy and there was no reason for it to be considered by the planning committee. The application was determined under the delegation procedure at officer level.

4.4 A report was prepared by the case officer and signed off by the team leader. The case officer's delegation report recorded the site as open ground and unoccupied at the time of the determination. A copy of this delegated report is attached to this statement as appendix D. The decision notice was issued dated 27.11.2018. A copy of the notice is attached to this statement as appendix E. The decision notice set out three reasons for withholding consent. These were:

01 The proposal would represent a new dwelling in the countryside for which there is no justification and would therefore be contrary to Policies MTRA3, MTRA4, and CP5 of, Local Plan Part 1 - Joint Core Strategy, policies DM1, DM4, of Local Plan Part 2 - Development Management and Site Allocations, the emerging Gypsy, Traveller and Travelling Showpeople Development Plan Document and Government Planning Policy for Traveller Sites.

02 The proposal would introduce residential development and activities into an area that is currently primarily comprised of undeveloped agricultural land, resulting in the increased domestication of this rural area to the detriment of its character and appearance. It would therefore be contrary to Policy DM15 and DM23 of Winchester District Local Plan Part 2 - Development Management and Site Allocations.

03 The proposed development is contrary to Policies CP15 and CP16 of the Winchester District Local Plan Part 1 - Joint Core Strategy, in that it fails to protect and enhance biodiversity across the District by failing to make appropriate provision for the Solent Disturbance and Mitigation Charge Zone.

4.5 Subsequent to the issuing of the decision and shortly prior to the submission of the appeal the appellant paid the full contribution required in connection with the Solent Disturbance and Mitigation charge and this reason for refusal (3) is no longer relevant to this appeal.

- 4.6 Shortly subsequent to the submission of the planning appeal, the site was occupied with two touring caravans and a motorhome, together with a shed that it was thought was being used for a toilet facility and areas of hardstanding. This was reported to the local planning authority at the beginning of March. An enforcement investigation commenced and as a result of this investigation an enforcement notice was issued dated 03 June 2019 and was served on Mr Dereck Saunders. The notice was responding to the unauthorised establishment of residential use of the site and identified the following alleged breach of planning control:

The material change of use of the Land from agricultural to use for the siting of 4 residential caravans and ancillary equestrian purposed and the laying of hardstanding associated with the residential use of the land.

- 4.7 The justification for issuing the notice contained the same reasons as set out in the refusal of planning permission. A copy of the enforcement notice is attached to this statement as Appendix F.

5. Appeal Submission

- 5.1 The appeal against the refusal of planning permission was submitted on 01.02.2019. The appeal against the enforcement notice, on grounds A, F and G, was lodged on 10 June 2019 with a request to link it to the s.78 planning appeal. Given some of the common grounds and issues, in particular those pertaining to Ground A, that the planning permission should be granted, the Planning Inspectorate has decided to run the planning and enforcement appeals as a joint appeal.

6. The Development Plan

- 6.1 The Development Plan applicable to this area is detailed in the 'relevant planning policy' section of the planning case officer's delegated report. The Development Plan (for the purposes of Section 38 of the Planning and Compulsory Purchase Act 2004) comprises;
- The Winchester Local Plan Part 1: Core Strategy (LPP1 - 2013)
 - The Winchester District Local Plan Part 2: Development Management and Site Allocations (LPP2) (April 2017)
- 6.2 A separate Development Plan Document (DPD) has been adopted, subsequent to the application being determined, specifically to address the needs of the Gypsy/Traveller/Showpeoples communities. The full title of the document is:

7. Policies referred to in the planning application decision and in the enforcement notice

- 7.1 The planning application decision and enforcement notice refer to policies, MTRA3, MTRA4, CP5, CP15 and CP16 of LPP1 and DM1, DM4, DM15 and DM23 of LPP2.
- 7.2 The LPP1 development strategy focuses substantial growth in three strategic allocations whilst setting targets for more limited growth in the market towns and larger villages. A criteria-based policy CP5 for gypsy and traveller and travelling showperson sites is included, with criteria for the allocation of sites or dealing with planning applications. Proposals should also be acceptable in terms of transport, design, the landscape and infrastructure provision.

Policy MTRA 3 – Other Settlement in the Market Towns and Rural Area.

The purpose of development should be to meet local needs through development, commensurate with their size, character and function. Within settlements, such as North Boarhunt, where there is no clearly defined settlement boundary, infilling of a small site within a continuously developed road frontage may be supported, where this would be of a form compatible with the character of the village and not involve the loss of important gaps between developed areas. In this case the site could not be said to be within a continuously developed road frontage.

Policy MTRA4 – Development in the countryside – indicates that the Council will only support particular types of development – those which generally preserve the openness and character of the countryside, or to allow appropriate expansion of existing appropriate uses. Residential uses are not supported by the policy other than in certain circumstances which are not applicable to this proposal.

Policy CP5 – Sites for Gypsies, Travellers and Travelling Showpeople, indicates that sites will be allocated and planning permission granted for the sites to meet the objectively assessed accommodation needs of gypsies and travellers, providing the criteria set out in the policy are met. In brief these are that sites should be well related to existing communities to encourage social inclusion and sustainable patterns of living, should not be over-concentrated in

one location or be disproportionate in size to local communities, they should be accessible to local services and avoid harmful impacts on nearby residential properties.

Policies CP15 (Green Infrastructure) and CP16 (Biodiversity), were included in reason for refusal relating to the payment of a contribution towards the Solent Recreation Mitigation Strategy. Whilst this has, as set out above, been resolved by the payment of the contribution, Policy CP16 is relevant to an issue that has arisen subsequent to the submission and determination of the original application. This relates to the requirement for new residential development to be nutrient neutral and is set out in more detail in section 9 of this statement.

LPP2 policies.

Policy DM1 – Location of New Development - reinforces the development strategy set out in LPP1 that in countryside areas, such as the appeal site, only development appropriate to a countryside location will be permitted.

Policy DM4 – Gypsies, Travellers and Travelling Showpersons – includes targets for additional pitches/plots for Gypsies, Travellers and Travelling Showpeople to meet the assessed need for traveller accommodation. At the time that LPP2 was adopted this amounted to about 15 gypsy and traveller pitches and about 24 travelling showpeoples plots between 2016 and 2031) though this may have altered with subsequent applications. The supporting text to Policy DM4 indicates that LPP1 Policy CP5 will be used in conjunction with Policy DM4 to determine planning applications.

Policy DM15 – Local Distinctiveness seeks to ensure that new development respects the qualities, features and characteristics that contribute to the distinctiveness of the local area. Regard will be had to the cumulative effects of development on the character of an area.

Policy DM23 – Rural Character - Outside defined settlement boundaries, development proposals which accord with the Development Plan will be permitted where they do not have an unacceptable effect on the rural character of the area, by means of visual intrusion, the introduction of incongruous features, the destruction of locally characteristic rural assets, or by impacts on the tranquillity of the environment. Developments should not detract from the enjoyment of the countryside from the public realm or public rights of way.

7.3 Other Material Policy Considerations

Other material considerations include the National Planning Policy Framework (NPPF), Planning Practice Guidance (PPG), Planning Policy for Traveller Sites (PPTS, DCLG 2015), and the Pre-Submission Traveller Development Plan Document.

- 7.4 **NPPF and PPTS.** National planning policy for traveller sites (PPTS) should be read in conjunction with the NPPF. The Government's overarching aim is to ensure fair and equal treatment for travellers in a way that facilitates the traditional and nomadic way of life of travellers, while respecting the interests of the settled community. PPTS paragraph 24 states that local planning authorities should consider the existing level of local provision and need for sites, the availability (or lack) of alternative accommodation for applicants and the personal circumstances of the applicant.

Paragraph 25 indicates that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the Development Plan.

Paragraph 26 refers to the need for the site layout to be well planned with respect to soft landscaping to enhance the appearance of the site, avoiding hard landscaping and ensuring adequate play areas for children.

PPTS expects local planning authorities to set pitch targets for gypsies and travellers - including travelling showpeople – to address both permanent and transit site accommodation needs. A 5 year supply of deliverable sites is also required. Site allocations should therefore be made within a Local Plan, based on the needs assessment.

- 7.5 **Traveller DPD.** The Traveller DPD, adopted on 28 February 2019, subsequent to the determination of the application, sets out the Council's proposed strategy to provide traveller accommodation to meet identified needs – 15 gypsy and traveller pitches between 2016 and 2031(GTAA, ORS 2016). The strategy set out in the DPD is to safeguard existing permitted sites, grant permanent permission on suitable sites with temporary permission, and implement specific allocation policies to consider the potential contribution of larger more complex sites. In applying the DPD strategy, the current position is that the Council has a 5 year supply of gypsy and traveller sites and has indeed identified sites to meet its full objectively assessed needs for gypsy and traveller pitches for the plan period to 2031.

7.6 The Inspector's Report into the Traveller DPD concluded that it provided an appropriate basis for the planning of the District, provided that a number of modifications were made to it. The most relevant of these to the appeal was the introduction of a new criteria based policy (TR6) and this was included in the DPD adopted in February 2019.

8. The Council's Case

8.1 The planning appeal and ground (a) of the enforcement appeal Reason1. The first reason for refusal was based on policy considerations. The NPPF indicates that applications should be determined in accordance with the development plan, unless material considerations indicate otherwise. In assessing development proposals planning authorities should apply the presumption in favour of sustainable development. The site is located in the open countryside where, under Policy MTRA4, there is a general presumption against development unless a scheme can meet a community need, demonstrates community support or has an operational need for a countryside location. The development as submitted did not fall within any of the above categories and would not normally be acceptable under policy MTRA4 of LPP1.

8.2 Policy CP5 of LPP1 looks at development site criteria for gypsy, travellers and travelling showpeople and, providing that proposals are consistent with other local plan policies, such as on design and the protection of the natural and built environment, a gypsy/traveller site can potentially be permitted within a rural location.

8.3 The Traveller DPD sets out the Council's strategy for the provision of gypsy and traveller accommodation to meet identified needs. The strategy does not require the allocation of additional sites not currently used for gypsies and travellers and the Council is able to demonstrate a 5 year supply of traveller accommodation as required by national planning policy. The DPD also sets out how the Council will meet the identified need for gypsy and traveller pitches up to 2031. In addition there have been a number of subsequent decisions that have allowed additional pitches, not referenced in the DPD. In planning policy terms, the grant of planning permission was not justified in this case.

8.4 In this case very little information was submitted about the gypsy/traveller status of the applicants to demonstrate whether or not they met the definition of a traveller in the PPTS. Additional information was requested from the agents and a letter submitted about the personal circumstances of the applicants which went

further towards confirming their cultural status. However, even where this is accepted, it is still necessary for it to be demonstrated that the need for accommodation cannot be met through existing allocations, in order to meet the requirements of policy TR6.

- 8.5 The Council's Strategic Planning Team was consulted on the additional information provided by the applicant's agents on 25.09.18. The response received referred to the proposed modification to the emerging DPD in the form of the criteria based policy TR6. However it was concluded, in testing the proposal against this policy, that there was insufficient information to confirm that the criteria of the policy were satisfied. In these circumstances it was not considered that there was sufficient justification for a departure from policy MTRA4 and the application was therefore refused.
- 8.6 **Reason 2.** Impact on the character and appearance of the area. The site is located to the north of Southwick Road, from where it is accessed by a narrow track. The land in the immediate vicinity of the site is a relatively level plateau, from which there are longer views, particularly to the west and east. There is little in the way of screening around the perimeter of the site, with a post and rail fence along its frontage with the access and sparse hedges/ bushes around the other sides. The site is surrounded by open fields, including to the other side of the access and, although there are a few residential properties in its vicinity, the area is predominantly rural in character and appearance. Photographs in Appendix B, group 1)
- 8.7 The proposal, as originally submitted, comprised the provision of a mobile home, a permanent utility/day room, a pitch for a touring caravan and a stable block, which whilst all relatively low structures that would not be visually intrusive in the wider landscape character area assessed by the Council's Landscape officer, would have a significant local impact. This is in fact evidenced by the introduction of the features currently on the site which, notwithstanding some hedge/tree planting along the frontage, are clearly visible from the surrounding area, particularly the access track. The domestic nature of these features, including the pergola and play equipment, together with the predominantly pale colour of vehicles, mobile home and fencing, results in the site becoming a discordant and incongruous feature in the countryside to the detriment of its character and appearance.
- 8.8 It is recognised that the originally submitted layout plan indicated further planting, this will take a number of years to develop and it is questioned if this will be fully

effective in providing a total screen. Furthermore the presence of any lighting associated with the occupation of the site or from arriving or departing vehicles will all add to the presence of activity that will reflect the change from countryside to residential use.

- 8.9 **Reason 3.** It has been acknowledged that the third reason for refusal which, at the time of the decision related only to the required contributions to the Solent Recreation Mitigation Strategy, is no longer relevant.

Enforcement appeal

Ground (f) - the steps required to comply with the requirements are excessive, and lesser steps would overcome the objections

- 8.10 The appellant claims that the requirements of the notice at 5(ii) are excessive in that it requires the removal of mobile stables as the equestrian use of the land is not ancillary to the residential use and given that the stables are mobile they are not development and do not require removal.

- 8.11 It is widely accepted that the grazing of horses falls within the term “agriculture” and that under s55 (2) (e) of the Town and Country Planning Act 1990 (as amended) this would not involve the development of the land. However, it is considered the keeping of horses and as an ancillary use to the main residential use of the land forming one planning unit is part of the breach of planning control and a material change of use of the land. As such the requirement to remove ancillary structures such as the stables and the lavatory is not excessive and the appeal should fail on this ground.

Ground (g) - the time given to comply with the notice is too short

- 8.12 The appellant claims that 28 days is too short a compliance period and requests the notice be amended to 12 months for requirements (i) – (iv) with an additional two months for requirement (v). The Council concedes on this point and accepts that 28 days is too short to find a suitable alternative site with planning permission.

9. Other material considerations

- 9.1 In the period between the decision and the appeal, advice has been issued by Natural England relating to the risks to European protected sites (notably the Solent and Southampton Special Protection Area (SPA) and Ramsar site, Solent Maritime Special Area of Conservation (SAC), Portsmouth Harbour SPA and Ramsar Site and Chichester and Langstone Harbours SPA and SAC. Collectively

known as the Solent SPAs) resulting from the development of housing or overnight accommodation. This is due to the consequent increase in eutrophication (the increase in dissolved nutrients that simulate the growth of aquatic plant life, usually resulting in the depletion of dissolved oxygen).

- 9.2 Development within Winchester district will increase the levels of nutrients (particularly nitrates) discharged at the coast and thus increase the level of eutrophication resulting in loss of feeding grounds and disturbance of bird species. The impacts of eutrophication (both at the site-scale and in combination with other development in the Solent area) are analogous to impacts from direct habitat loss as they can cause important habitat and feeding grounds to be unavailable for use (the habitat is functionally lost, either permanently or for a defined period). Birds can be displaced by eutrophication and use valuable resources in finding suitable areas in which to rest and feed undisturbed. Ultimately, the impacts of eutrophication can be such that they affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European sites.
- 9.3 In line with Policy CP16 of the Winchester City Council Local Plan Part 1 Joint Core Strategy, and the WCC position statement on nitrate neutral development, a permanent significant effect on the Solent SPAs due to the increase in eutrophication as a result of the new development, is likely. As such, in order to lawfully be permitted, the development will need to include a package of avoidance and/or mitigation measures.
- 9.4 Winchester City Council formally adopted the Position statement on nitrate neutral development and European Site Checklist on 29th January 2020. The document provides a strategic solution to ensure the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased pressure on the Solent SPAs arising from new residential development.
- 9.5 In most cases this solution is by means of a Grampian Condition which requires the full avoidance and mitigation package to be secured prior to the granting of any permission. The standard wording is set out below, but it is recognised that this would need to be altered to reflect the fact that the continued occupation of the site, without appropriate mitigation, results in harm to the European sites.

The development hereby permitted shall NOT BE OCCUPIED until:

- a) *A water efficiency calculation which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this*

calculation has been submitted to and approved in writing by the Local Planning Authority

- b) A mitigation package addressing the additional nutrient input arising from the development has been submitted to, and approved in writing by the Local Planning Authority. Such mitigation package shall address all of the additional nutrient load imposed on protected European sites by the development and be implemented in full prior to first occupation and shall allow the Local Planning Authority to ascertain on the basis of the best available scientific evidence that such additional nutrient loading will not have an adverse effect on the integrity of the protected European Sites, having regard to the conservation objectives for those sites; and*
- c) All measures forming part of that mitigation have been secured and submitted to the Local Planning Authority.”*

9.6 With the agreement to a Grampian Condition, secured through the planning process, it is possible to ensure that appropriate mitigation is in place to ensure that the continued occupation of the site will not further affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European sites. The appellant’s agent was initially advised of this issue in August 2019 and the Council sought advice from Natural England. Their response was that there was a likely significant effect on the internationally designated sites and advised that a nutrient budget be calculated for the development proposal.

9.7 This has not, to date, been submitted by the appellants, though there has been further correspondence with their agent, who is querying the necessity for such an approach, due to the appellants having lived locally for many years (although moving around) and therefore not adding to the resident population. Further advice has been received from Natural England, maintaining their recommendation that the proposal should be examined with an appropriate assessment following the submission of a nutrient budget. The comments from Natural England together with correspondence relating to the nutrient issue is contained in appendix H

10. Comments on the Appellants Statement of Case

10.1 A number of issues have been raised in the Statement of Case, some of which have been addressed in the body of this statement. Others are clarified below.

Para. 1.6 – The strategic planning officer was consulted on the additional information provided by the applicant’s original agent on 25.09.18 and responded accordingly. Whilst this was not made publicly viewable, the response was reported in full to the agents (email dated 03.10.18, App.xx) with a request for further information and a revised plan to address drainage concerns.

Para. 2.3. At the time that the application was determined the draft policy TR6 of the DPD referred to the need to demonstrate ‘exceptional personal or cultural need to be located in the area’. Although it is acknowledged that this was amended prior to the adoption of the DPD and the term ‘exceptional’ removed, the policy still refers to a lack of other suitable accommodation.

Paras. 2.5 – 2.15. This provides considerably more information, not available at the time of the original application, about the appellant’s cultural status and lifestyle, to the extent that it is accepted that they meet the PPTS definition of Gypsy-Travellers. There are also more details of the local connections and schooling of the appellant’s children, which contribute to meeting the criteria of Policy TR6 of the DPD. In fact following the submission of the appeal, there was correspondence with the appellants agent to the effect that it may have been possible to reconsider the decision in the light of the subsequent adoption of this policy, though it was decided by the appellant not to explore this route. (Correspondence relating to this discussion is contained in App. I). However, if the details submitted are considered to be sufficient to meet the requirements of TR6, it may be possible to justify a temporary consent to enable the longer term needs of the appellants to be considered in the updated GTAA and the next Local Plan. A permanent consent, such as that that has been applied for, is not considered to be appropriate to this location as it would result in permanent damage to the visual amenity and rural character of the area.

Section 3 raises a number of issues with the council’s claim that they can meet the 5 year supply of sites. The provision of this is assessed annually over a period from 1 September to 31 August, as this reflects the base date of the 2016 GTAA. The Council is currently in the 4th monitoring year (Sept 2019 – Aug 2020), the 5-year assessment period should be from September 2019 to August 2024.

The level of need is set in LPP2 (policy DM4), and the GTAA breaks this down into 5 year periods. The assessment period of September 2019 – August 2024 covers the first 5-year period (2016-2021) and part of the second period (2021-2026).

The 5-Year Requirement

The pitch/plot requirement is calculated by taking the LPP2/GTAA requirement for the first 5 years (2016-2021), subtracting sites authorised ('completed') since September 2016 and adding three year's worth of the next 5-year requirement (2021-2026). The 'requirement' calculation is set out below:

5 Year Traveller Pitch/Plot Requirement 2019 – 2024

Calculation	Gypsies & Traveller Pitches
a. 2016-2021 requirement + other proven need	9 + 4 = 13
b. Completions 2016-2019	22
c. Remaining requirement 2019 – 2021 (a – b)	- 9
d. 2021 – 2026 requirement	3
e. 2021-2024 requirement (3/5 ^{ths} of d)	1.8
f. Total 5 year requirement 2019-2024 (c + e)	- 7.2
g. Buffer (5% / 20%) (f x 5% or 20%)	0
h. Total 5 year requirement 2019 – 2024 with 5% / 20% buffer	- 7 (rounded)

Traveller Pitch Supply

The sources of supply reflect those used by the 2016 GTAA, with the addition of a category for additional sites arising from adoption of the Traveller DPD, as follows:

- Vacant sites
- New sites / commitments
- Pitches vacated
- Traveller DPD sites

Each of these potential sources as detailed below.

Vacant Sites

The GTAA includes 10 (gypsy & traveller) pitches at Tynefield that were vacant at the time of the survey as 'supply'. A further 7 pitches had been vacated at Tynefield by residents that have now moved away from the District. There are no other vacant traveller's pitches (1 vacant pitch previously recorded at Travellers Rest, Bishops Sutton has been occupied). However, it is accepted that there may be some debate over whether the vacated pitches at Tynefield are available, so no allowance is made for supply from vacant sites.

New sites/commitments

All the 22 new pitches permitted from Sept 2016 – Aug 2019 are taken into account in calculating the pitch/plot requirements (see Table, row b above). The details of 18 of these sites are set out at Appendix B of the Traveller DPD, with the remaining 4 coming from a recent consent at The Piggeries (DPD policy TR2).

Pitches Vacated

No pitches have been identified since the GTAA as being vacated by people moving to bricks and mortar, or by households moving away from the area, other than those counted already above as vacant sites.

Traveller DPD sites

The recently-adopted Traveller DPD safeguards and allocates various traveller sites, some of which will result in a net gain of authorised sites. It is estimated that the DPD will result in 3 additional gypsy and traveller pitches within the 5-year period, through 3 temporary pitch consents being granted permanent permission under Policy TR2 at Gravel Hill, Shirrell Heath (permission granted after August 2019). It is estimated that a further 3 pitches will be achieved from intensification of existing sites, as allowed for by policy TR5 of the DPD, but these are not currently sufficiently certain to be included in the 5-year supply.

Traveller Site Supply – Conclusion

On the basis of the above the Council can demonstrate a supply of gypsy and traveller sites as follows:

Traveller Pitch/Plot Supply

Calculation	Gypsies & Traveller Pitches
i. Vacant pitches / plots	0
j. Traveller DPD sites (within 5 years)	3
k. Total supply 2019 – 2024 (i + j)	3

Conclusion

There is a negative requirement (-7) compared to a 5-year supply of 3 pitches so comparison of the 5-year requirement and supply for gypsies and travellers produces an infinite supply. The above assessment takes account of most of the points raised by the appellant in relation to matters such as new consents/recent appeals and the availability of Tynefield. However, the situation regarding traveller provision is constantly changing as new sites are permitted and the Council has commissioned a new GTAA which is not yet complete.

The results of the new GTAA will be incorporated into an update to the Local Plan, so the recently-adopted LPP2 and Traveller DPD should continue to be used to establish the pitch requirement. Therefore, it is not intended to respond

in detail to each point on pitch supply raised by the appellant, as some are themselves out of date. Instead, the Council will liaise with the appellant to seek to produce a statement of common ground on traveller site supply in advance of the appeal hearing.

Para.3.5 (x) – pending appeals.

- Little Ranch. Whilst the appeal is pending, the applicants have resubmitted their application, which may be acceptable under the TR6 criteria based policy. A decision on this has however been delayed whilst the issue of nitrate mitigation is addressed.
- Stablewood Farm. The enforcement notice was quashed and the appeal allowed on ground (a), subject to a condition restricting occupation of the site to 4 caravans, no more than 2 of which shall be static.
- Pony Paddocks. The appeal was allowed and temporary permission for a period of 5 years granted for 4 pitches (plots 3, 4, 7 and 8). Plots 5 and 6 have subsequently been approved under app 19/02469/FUL.

These decisions add to the supply of traveller pitches in the District, but are not counted as ‘completions’ in the tables above as they post-date August 2019.

Para. 4.3. Reason 2 related to the impact of the proposal on the surrounding area, which it is considered would be detrimental to its rural character and appearance. The appellant states that PPTS accepts that the use of the land is appropriate in rural area and therefore the resultant domestication can not be harmful. PPTS does, however, specify that that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Policy CP5 of LPP1 sets out the criteria for such development and includes the requirement for site to be clearly defined by physical features where possible and not unduly intrusive. It is not considered that these criteria are met in this case.

Para.4.4 refers to the use of conditions in order to address concerns over the visual impact of the proposal. Whilst these could be considered if they were all that were necessary to make the development acceptable where, as in this case there is a more fundamental policy objection which cannot be resolved by conditions, their use is not relevant.

Para. 5.5 refers to the lack of comment in the officers report on the personal circumstances of the appellants. The information provided was fully assessed, as is evidenced by the further consultation that was carried out, but it was considered that they did not provide sufficient justification for a departure from the adopted policies and emerging policy at that time.

11. Summary & Conclusions

- 11.1 The planning application was determined on the basis of the submitted supporting information and in accordance with national and local planning policies and guidance. The Council has demonstrated that there is a 5 year supply of sites over the plan period. As such the principle of additional gypsy/traveller plots is unacceptable in policy terms.

The appeal site also occupies land that is distinctly within the open countryside and its residential use, with associated structures, lighting and vehicle movements, results in a marked change in its appearance to the detriment of the rural character of the area.

One of the reasons for refusal has been resolved with the appropriate contribution made towards the Solent Recreation Mitigation Strategy, but further concerns about the impact of additional residential units on the Solent SPAs have been raised and require consideration.

Following the unauthorised occupation of the site an enforcement notice was served.

The local planning authority does accept that the time period for compliance with the enforcement notice could be extended and this can be discussed with the appellants.

For the reasons outline above the inspector's support is requested in dismissing the appeals against the refusal of planning permission and the service of the enforcement notice.