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## Appeal Decisions

Hearing Held on 28 August 2019

Site visit made on 28 August 2019

**by K R Seward Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 October 2019**

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### **Appeal A: APP/L1765/C/18/3201565**

#### **Plot 3, Pony Paddock, 6 Hipley, Hambledon, Waterlooville, Hampshire**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Jimmy Lee against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 13 April 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from use for agriculture to use as a residential caravan site together with ancillary operational development and engineering works.
- The requirements of the notice are:
  - i) Cease the use of the Land as a residential caravan site.
  - ii) Remove from the Land all caravans (static/mobile homes and touring caravans), vehicles and trailers, and any associated residential paraphernalia.
  - iii) Remove the portable toilet and sheds from the Land.
  - iv) Demolish the fencing and gates and remove the resulting materials from the Land.
  - v) Remove the cesspits, drainage and electricity supply from the Land and refill the resulting holes with soil.
  - vi) Dig up and remove the hardstanding and remove the tarmac scalplings/rubble and gravel from the Land.
  - vii) Leave the Land clear, level and seeded to grass after compliance with steps i) to vi).
- The period for compliance with the requirements is 3 months for steps i) to vi), and 6 months for step vii).
- The appeal is proceeding on the grounds set out in section 174(2)(a)&(g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and a temporary (5 year) planning permission is granted in the terms set out below in the Formal Decision.**

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### **Appeal B: APP/L1765/C/18/3201566**

#### **Appeal C: APP/L1765/C/18/3201567**

#### **Plots 7 & 8, Pony Paddock, 6 Hipley, Hambledon, Waterlooville, Hampshire**

- 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 Bobby Knight (Appeal B) and Mr Steven Ball (Appeal C) against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 13 April 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from use for agriculture to use as a residential caravan site together with ancillary operational development and engineering works.

- The requirements of the notice are:
  - i) Cease the use of the Land as a residential caravan site.
  - ii) Remove from the Land all caravans (static/mobile homes and touring caravans), vehicles and trailers, and any associated residential paraphernalia.
  - iii) Demolish the fencing and gates and remove the resulting materials from the Land.
  - iv) Remove the cesspits, drainage and electricity supply from the Land and refill the resulting holes with soil.
  - v) Dig up and remove the hardstanding and remove the tarmac scalplings/rubble and gravel from the Land.
  - vi) Leave the Land clear, level and seeded to grass after compliance with steps i to vi.
- The period for compliance with the requirements is 3 months for steps i) to v, and 6 months for step vi.
- The appeals are proceeding on the grounds set out in section 174(2)(a)&(g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decisions: The appeal is allowed, the enforcement notice is quashed, and a temporary (5 year) planning permission is granted in the terms set out below in the Formal Decision.**

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#### **Appeal D: APP/L1765/C/18/3201570**

##### **Plot 4, Pony Paddock, 6 Hipley, Hambledon, Waterlooville, Hampshire**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Tom Buckley against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 13 April 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from use for agriculture to use as a residential caravan site together with ancillary operational development and engineering works.
- The requirements of the notice are:
  - i) Cease the use of the Land as a residential caravan site.
  - ii) Remove from the Land all caravans (static/mobile homes and touring caravans), vehicles and trailers, and any associated residential paraphernalia.
  - iii) Demolish the fencing and gates and remove the resulting materials from the Land.
  - iv) Remove the cesspits, drainage and electricity supply from the Land and refill the resulting holes with soil.
  - v) Dig up and remove the hardstanding and remove the tarmac scalplings/rubble and gravel from the Land.
  - vi) Leave the Land clear, level and seeded to grass after compliance with steps i to v
- The period for compliance with the requirements is 3 months for steps i) to v, and 6 months for step vi.
- The appeal is proceeding on the grounds set out in section 174(2)(a)&(g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and a temporary (5 year) planning permission is granted in the terms set out below in the Formal Decision.**

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#### **Preliminary matters**

1. The addresses given above are taken from the enforcement notices. The accuracy of the address was queried by a local resident at the Hearing. The Council confirmed it to be the correct postal address.

2. The appeals relate to three separate sites located among a row of eight plots (numbered 1 to 8). They are accessed via an unmade track off Fareham Road<sup>1</sup>. The appeals concern four of those plots numbered 3, 4, 7 and 8. At the time the enforcement notices were issued plots 7 and 8 were physically combined to form one larger plot, hence only one enforcement notice being directed at their use. Since then, fencing has been erected to sub-divide the site and at the time of my visit there was only one touring caravan on plot 7. There are some other differences within each of the plots, but for the purposes of the ground (a) appeal and the deemed planning applications arising thereunder, the position falls to be considered as laid out and used when the notices were issued.
3. I understand that an injunction is in place for the remaining plots in the row which are not included in these proceedings. Apparently, the injunction is stayed for the plots now enforced against pending the outcome of these appeals. That has no bearing on my decisions.
4. Prior to the issue of the present enforcement notices, a planning application for the proposed development of the 8 plots for gypsy/traveller families was dismissed on appeal in a decision dated 30 July 2015<sup>2</sup>. Clearly, that decision concerned a larger area encompassing all eight plots. Whilst that decision may be a consideration in these appeals, it was made over 4 years ago and things can and do change.
5. When the Council issued the enforcement notices the Winchester District: Gypsy, Traveller and Travelling Showpeople Development Plan Document ('Traveller DPD') was in draft. It was adopted on 28 February 2019 and its policies can now be given full weight. The DPD covers the period 1 September 2016 to 31 August 2031. There have been other changes in national policy which I return to below. The appeals must be assessed against prevailing policy.
6. Except for their individual personal circumstances which are set out in each Appeal Form, the same issues arise in all the appeals. The only differences in the requirements of the enforcement notices are that the notice for Plot 3 requires removal of a portable toilet. A single Appeal Statement has been compiled on behalf of all the appellants. The Council has likewise submitted one Appeal Statement to address all the appeals. In view of the commonality in issues the appeals were conjoined for consideration at one Hearing. For the same reason, I have dealt with the appeals in one decision document and addressed common issues together. Clearly, I have considered each appeal on its individual merits and reached separate conclusions having also taken into account the effect if planning permission were granted for all the sites.
7. There is a minor typographical error in the notice for Appeals B and C. At paragraph 5.vi) reference should be made to the preceding steps i to v and not steps i to vi. It is clear what was meant, and no injustice would arise to any party by its correction.
8. One of the reasons for the issue of the enforcement notices concerned the effect on the living conditions for prospective residents with particular reference to on-site open space. The concern stemmed from the lack of children's play

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<sup>1</sup> Some references are made to the site being accessed off Forest Road which is another road off Fareham Road

<sup>2</sup> Appeal ref: APP/L1765/A/14/2224363

space within the sites. Within the newly adopted Traveller DPD it is a requirement of Policy TR7 that all sites will be required to provide an area of open space within the site for safe children's play, located to avoid conflict with vehicles on the site. The parties agreed at the Hearing that the plots enforced against are large enough to accommodate green space suitable for safe children's play. There would not be space for a separate communal area, but these appeals concern 4 plots and not the 8 considered previously. It was further agreed that green space within the plots is capable of being secured by a planning condition requiring approval of the site layout. Subject to the imposition of such a condition, the Council confirmed at the Hearing that it no longer pursues this ground as a reason to refuse planning permission due to conflict with Policy TR7.

### *Gypsy/traveller status*

9. Among other changes, the definition of "gypsies and travellers" to whom the Government's Planning Policy for Travellers Sites, 2015 (PPTS) applies was changed in August 2015 i.e. after the last appeal decision. The definition no longer includes those who have permanently ceased to travel. The appellants were interviewed by the Council's Gypsy and Traveller Liaison Officer and the Council is satisfied of the gypsy/traveller status of those occupying the sites. Nevertheless, it has been challenged in representations from local residents and I must also be satisfied of the status of the appellants.
10. All the appellants describe themselves as English/Romany Gypsies. They are not the same occupants who were on the plots when the 2015 appeal was heard. From the details given at the Hearing, including regularity of travel and stated intention to continue to do so, I have no reason to doubt that the appellants and their families are persons of nomadic habit of life who meet the definition within the PPTS.

### **Ground (a) and the deemed planning applications**

11. Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. This ground is concerned with the planning merits of the case, and it raises the same issues as the deemed application for planning permission.

### *Policy background*

12. National policy is contained within the PPTS and National Planning Policy Framework ('the Framework') and these are material considerations. The Framework has been revised since the enforcement notices were issued. It is the latest document that now applies.
13. Whilst a case was made on behalf of the appellants for the inclusion of the appeal sites within the development plan for the area for use as gypsy/traveller accommodation, none were allocated.
14. Where as in these cases, a site is not allocated as a gypsy/traveller site and lies outside the settlement boundaries, Policy TR6 of the Traveller DPD now provides that use for traveller accommodation will only be permitted in prescribed circumstances. The site must be for occupation by persons identified as gypsies or travellers within the PPTS who can demonstrate a personal or cultural need to be located in the area and there is a lack of other suitable

- accommodation. In addition, sites must be in sustainable locations well related to existing communities, as defined by Policy CP5 of the Winchester District Local Plan Part 1 – Joint Core Strategy ('JCS'), 2013 and comply with the requirements of Policy TR7 which contains provisions applicable to all sites.
15. Policy MTRA 4 of the JCS is a generic policy which limits the type of development in the countryside. It makes no provision for gypsy and traveller development unlike the later Traveller DPD and so it carries little weight in the consideration of these appeals.
  16. Other local plan policies within the Winchester District Local Plan Part 2 Development Management and Site Allocations, 2017 ('LP'), notably Policy DM23 as referenced in the enforcement notices, remain of relevance. They have not been superseded by the Traveller DPD as suggested by the appellants. Policy DM23 is still part of the development plan and pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004 development must be in accordance with the development plan unless material considerations indicate otherwise.
  17. The Denmead Neighbourhood Plan 2011-2031 was made on 1 April 2015. Annex B proposes that the development of two new sites for travellers accommodation will be supported provided that (i) each comprises a self-contained site of no more than 2 or 3 pitches or plots (ii) they are located in close proximity to the settled traveller community in Old Mill Lane and adjacent to the existing traveller site at West Fork in Bunns Lane, and (iii) they will accord with all relevant policies in the Neighbourhood Plan and Winchester Development Plan. Criterion (ii) is not fulfilled, but the Council confirmed that the Annex is not adopted as policy forming the development plan for the area. It is a statement of intentions rather than a policy requirement. Moreover, it is not consistent with the more recently adopted Traveller DPD. Accordingly, I give it little weight.

### **Main issues**

18. Therefore, based on the reasons for issuing the enforcement notices, the main issues are:
  - the effect of the developments on the character and appearance of the surrounding countryside;
  - whether the sites comply with relevant policies relating to the location of gypsy and traveller sites; and
  - whether any conflict with the development plan is outweighed by other conditions.

### **Reasons**

#### ***Character and appearance***

19. The appeal sites are in World's End which is not within any protected designated area. The Council has produced an extract of a Landscape Character Assessment which is said to be adopted as Supplementary Planning Guidance. The extract is undated, and officers were unable to recall when it was adopted. The appeals sites are identified within the document as part of 'Forest of Bere

- Lowlands Landscape Character Area' which has 'an ancient character, retaining historic landscape features and a network of winding narrow lanes.' Apart from at the access point along the relatively narrow and winding Fareham Road, the appeal sites do not display those key characteristics. This is not a new access created through the hedgerow although it appears to have been widened.
20. The Denmead Village Design Statement 2016 ('VDS') has been adopted by the Council as a Supplementary Planning Document. No specific provisions are brought to my attention. It describes the open countryside surrounding Denmead outside of the defined settlement boundary as "generally high in the North and low in the South". It refers to a small part of the parish being within the South Downs National Park, but that does not include these sites which are not affected by National Park considerations.
  21. Worlds End is a small hamlet. There is a continuous row of housing along Forest Road on reasonably spacious plots, but residential development is otherwise sporadic. There are occasional rural buildings. A public house with large car park is not far away on the corner of Fareham Road with Forest Road. Another public house in Hipley is further away, but still relatively near the sites. Otherwise the surrounding area is characterised by open countryside behind hedge and tree lined roads. This includes the approach to the sites where there are paddocks and expansive water meadows opposite the access track.
  22. The gypsy and traveller development has taken place on the southern side of the track. On the opposite side there are paddocks with horses providing separation from the public house. More paddocks are situated to the east of plots 7/8. Some small outbuildings were pointed out to me on the land behind plots 1/2, but they were confined to a small area and their status was unclear.
  23. It may not be uncommon to find an occasional caravan in the countryside, but not in such numbers or intensity of use as has taken place on each of these plots. The public house represents a reasonably large commercial development in a relatively prominent corner position, but its surroundings are distinctly rural with fields all about. It is a fairly typical country pub.
  24. The appeal plots are well screened from the public highway and public house by hedgerow and trees. However, upon entering the access track the surroundings are dominated by the presence of the caravans, including large static caravans on plots 3 and 8, together with numerous commercial and other vehicles in enclosed plots with large amounts of panel fencing. Much of the land across the plots has some form of hard surfacing creating a harsh urban appearance which jars with the soft immediate surroundings.
  25. None of this development sits comfortably with the open paddocks that lie opposite and the verdant character of the setting. It would not be unreasonable to impose a condition on the number of caravans and size of commercial vehicles parked on each site, which would limit the visual impact and extent of harm. However, it would not alleviate the urbanisation that has occurred through the change of use and associated development.
  26. The appellants take issue with the previous Inspector describing the area as "tranquil" which is a term also used by the Council's Landscape Officer. The appellants consider that it means peacefulness which they contest given the proximity to the nearest public house.

27. In the Appeal Decisions produced where a gypsy and traveller site was allowed on land at Stockbury Valley<sup>3</sup>, it was in an Area of Outstanding Natural Beauty and Special Landscape Area, but the site itself was beside a dual carriageway. It is not comparable to the location of these sites which are located off a busy but narrow single carriageway country road.
28. Whilst the appellant's agent submitted that there is no policy provision for tranquillity, LP Policy DM23 says that outside settlement boundaries development which accords with the Development Plan will be permitted where they do not have an unacceptable effect on the rural character of the area. One of the factors to be taken into account is the impacts on the tranquillity of the environment including the introduction of noise and lighting.
29. Certainly, there is ambient noise from the Fareham Road with regular passing traffic, but it lessens once away from the road along the access track. Traffic noise is not constant, and it will inevitably fluctuate around peak periods. During lulls in traffic I observed the area to be very quiet and still even though the public house was open and customers were sat outside.
30. That sense of calm is disrupted in various ways. Not only will the multitude of vehicles at the sites generate traffic movements, but the day to day activities of the occupiers will also cause impact as they go about their daily business. That is particularly so as children will play outside and there are kennels with barking dogs. These factors all add to the domestication of the sites and fundamentally alters the character from the previous agricultural use.
31. The public house is said by the appellants to be very active with outdoor events and an annual summer festival. It is popular for food (including takeaway meals) and people arrive by car. Even though there may be occasional music going on into the evenings, and noise emitted from use of the pub garden and regular comings and goings of customers, it is by no means indicative of the area. This cannot be described as suburban fringe. To my mind, the impact of the public house on the character of the area is over stated by the appellants.
32. In any event, the appeal sites are physically and visually separated from the public house by paddocks and the treeline. They can properly be regarded as secluded. The location relates more readily to the surrounding countryside which is largely free from buildings. As described above, the use as a caravan site is not typical of the area.
33. I observed various types of outside lighting at each of the plots and the illumination of the plots is a recurring cause of complaint from local residents. It is not difficult to see how the introduction of lighting into this previously unlit piece of countryside will have caused significant detriment to the character and appearance of the surroundings. That said, external lighting can be controlled by the imposition of a planning condition and the main parties agreed that this would address the harm arising in this regard. I agree.
34. Notwithstanding the ability to control lighting by condition, each development both individually and collectively has a significant adverse effect on the character and appearance of the surrounding area contrary to LP Policy DM23.

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<sup>3</sup> Appeal refs: APP/U2235/C/17/3175400 & APP/U2235/W/17/3173195 dated 13 July 2018

There is also conflict with the aims of paragraph 170 of the Framework which recognises the intrinsic character and beauty of the countryside.

### ***Suitability of the location***

35. Paragraph 25 of the PPTS states 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.
36. Nevertheless, Policy TR6 of the Traveller DPD acknowledges that there may be cases where exception to countryside policies (MRTRA4) may be justified. The Council has not challenged the personal or cultural needs of the families in these appeals to be located in the area as required by Policy TR6. I heard how each appellant has family connections to the area. Whilst the four families concerned are not related, they have social links with each other which they consider to be important and they sometimes travel as a group. They have purchased the land they occupy which provides a tie with the area.
37. Under Policy TR6 the sites must also be in a sustainable location well related to existing communities, as defined by JCS Policy CP5 and which relates specifically to sites for gypsies and travellers. It aims to encourage social inclusion and sustainable patterns of living, while being located so as to minimise tension with the settled community.
38. Policy CP5 requires sites to be accessible to local services such as schools, health and community services but avoid placing an unreasonable burden on local facilities and services.
39. Apart from the two public houses there are no facilities in the immediate vicinity. It was agreed at the Hearing that the nearest services and facilities are located around 2 miles away in Denmead. The VDS describes how the village centre contains "a valued range of facilities covering religion, health, retail, finance and service business".
40. Whichever route is taken there is no footway along the winding roads with fast moving traffic which make it unsuited for pedestrians. Bus services are infrequent. The route could be cycled, but it is unlikely to be safe for younger children especially.
41. As set out in paragraph 103 of the Framework, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.
42. It seems to me that there would be reliance upon the car, and this issue of accessibility is contrary to the overriding aims of sustainability. However, it is only a short journey to Denmead and in the context of a rural setting it is not especially remote from services. Furthermore, much gypsy and traveller development will inevitably have to be satisfied outside settlements. These factors therefore reduce the weight that I attach to this harm.

### ***Other sustainability issues***

43. Sustainability is not confined to accessibility of the location. Other factors to be considered in relation to traveller sites are set out at paragraph 13 of the PPTS. The NPPF also has a presumption in favour of sustainable development at its



- heart. Both documents indicate that there are economic, social and environmental dimensions rather than simply the narrow question of how far the site is from local services and facilities and whether there would be undue reliance on the car.
44. These wider considerations did not form part of the reasoning by the previous Inspector. It encompasses other factors as set out in paragraph 13 of the PPTS. It includes at paragraphs 13b) and c) promoting access to health services and ensuring that children can attend school on a regular basis.
45. The current families have lived at Pony Paddocks for about 2.5 years. All are now registered with the local GP. Each family has children. A child is also expected by one family at Plots 7/8. Of those who have reached school age, all except one child (who is home schooled) are in education at local schools. One child at Plot 4 is at pre-school.
46. The Council argued that wherever the families live, the local education authority will be obliged to find school places for their children to attend. However, a life on the road means that the families will regularly be moving on. Without a settled base the children are unlikely to have the same access to schooling. Moreover, unless the families stay locally, they are unlikely to be able to access healthcare without a registrable address. These are important considerations to which I must attribute significant weight. The families will also be contributing economically by their use of local services and facilities.
47. Thus, when sustainability is looked at in the round including economically, socially and environmentally as provided by national policy in both the NPPF and the PPTS there is some harm in terms of accessibility, but there are also benefits and other factors which must be weighed in the balance. All things considered, I do not regard this as an unsustainable location for these gypsy and travellers.

*Availability of other suitable accommodation*

48. To fulfil Policy TR6 of the Traveller DPD there would need to be a lack of suitable accommodation.
49. The Council had asserted that alternative pitches are available for all the families at Tynefield Caravan Park near Fareham. Planning permission had been granted for 19 gypsy and traveller pitches when the site was in County Council ownership. The site has since come into the private ownership of a gypsy and traveller family. It remains allocated as a caravan site. Indeed, the Council relies upon Tynefield to deliver its 5-year supply of sites.
50. My attention is drawn by the appellants to another recent Appeal Decision<sup>4</sup> within the district where an enforcement notice was quashed, and planning permission granted for a residential caravan site for gypsies and travellers at Stablewood Farm. Having considered the Tynefield site and other options, the Inspector concluded that there was a lack of other suitable accommodation available. The appellants submit that their position is no different.

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<sup>4</sup> Appeal ref: APP/L1765/C/17/3190135 dated 10 July 2019

51. At the Hearing, the Council acknowledged that following a recent inspection, the Tynefield site<sup>5</sup> was found to be substantially in a 'derelict condition' and not fit for habitation. It now accepts that realistically the Tynefield site will not be available in time for these families if the enforcement notices come into effect.
52. The families have put their names down for the local county site at 'Starhill' and say they have been on the waiting list for some years. As at July 2019, the Council confirmed that another site in the Eastleigh area had an 18-month waiting list. In consequence the Council accepts that in the short term the families would have no alternative but to go back on the road.
53. The Council argues that it has no duty to find an alternative site when it has fulfilled the requirement within the PPTS to identify a 5-year supply of sites. However, that supply must be 'deliverable' and to be deliverable, sites should be available now. With the Tynefield site presently unavailable, it may pose a question over current deliverability, but I do not explore this point further as the full facts and figures are not before me. Ultimately it is undisputed that there is no current provision to accommodate the appellants and their families.
54. Paragraph 13.d) of the PPTS states that local planning authorities should ensure their policies provide a settled base that reduces both the need for long-distance travelling and possible environmental damage caused by unauthorised encampment. It is evident that these families will be without a base if the enforcement notices take effect which in all probability will result in a roadside existence. Invariably this will give rise to adverse social, economic and environmental consequences arising from the travel involved and the unsuitability of locations that the families will have no option but to use.

#### *Integration with the local community*

55. The sites are not contiguous with the established small settled community in Worlds End, but they are not far away. I note the previous Inspector's conclusion, but I consider that they are near enough to the settled community to become integrated without being so close to cause tension with other residents. The evidence now is that the children attend local schools where they will be integrating with other children in the community. It seems to me that integration has started to occur at least among the children. Thus, the sites are not, in principle, located where the aims of local and national policy to promote peaceful and integrated co-existence with the local community cannot be achieved.

#### *Summary on the suitability of the location*

56. To summarise, I have found that each development results in a reliance upon the car to access services and facilities and so there is an issue of accessibility. However, in the context of a rural area it is not a major issue as it will generate only short journeys. When looked at in the round and taking into account other environmental, economic and social issues including the social benefits to individuals in having a settled base, I do not consider the location to be unsustainable. Therefore, I consider that it is suitable location for gypsy and traveller families and where peaceful and integrated co-existence with the local community is capable of being achieved to fulfil paragraph 13.a) of the PPTS.

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<sup>5</sup> At the end of June or early July 2019.

Given the current lack of other suitable accommodation, the requirements of Policy TR6 of the Traveller DPD are met.

### **Other considerations**

#### *Intentional unauthorised development*

57. The written ministerial statement issued on 31 August 2015 announced that it is national planning policy that intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals.
58. The appellants will have occupied the sites in the knowledge that they do not have planning permission. This is a factor against the grant of planning permission, but it carries limited weight only given the circumstances where the appellants have nowhere else to go.

### **Other matters raised in objection**

59. Various other matters have been raised by interested third parties which I have taken into consideration.
60. Concerns are expressed over safety of the vehicular access, but they are not supported by the local highway authority which has raised no objection. The access onto Fareham Road (where the national speed limit applies) is via a gap in the hedgerow. With splays on either side it is wide enough to give reasonable visibility in each direction for those exiting the site.
61. JCS Policy CP5 also seeks to avoid sites being over-concentrated in any one location or disproportionate in size to nearby communities. This ties in with Policy C of the PPTS which provides that when assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.
62. These are small scale developments both individually and collectively and the number of caravans can be limited by condition. There are other sites on neighbouring land that are subject to an injunction. When taking account of the amount of lawful development, the grant of planning permission for these sites cannot be regarded as dominating the nearest settled community.
63. Reference is made to the sites being directly opposite water meadows listed in 'Hampshire Treasures Survey' published by Hampshire County Council. The publication does not have any status as a policy document, but it identifies places of interest. The water meadows are classified as type 3, being "*Large complexes of water meadows situated where the river system occupies a broad flood plain. Large meanders taken advantage of, with a visually complex-looking system of major carriers and drains.*" Their condition is identified as category 3 where the extent of survival is only partial and only the basic elements survive as earthworks. The Council says that this "supports the view that drainage in the area is a concern". No mention of this is made in its reasons for issuing the notice and the Council clarified that it is not seeking to advance a new reason for refusal.
64. Paragraph 2.10 of the VDS says there is a spring line parallel to Forest Road and in many areas the water table is quite high giving rise to drainage

problems and or ground water flooding. Whilst I acknowledge the concerns of residents over flood risk, I note that from the previous appeal that the submitted drainage strategy indicated that a suitable drainage scheme could be designed. That is something which could be addressed through approval of the site layout by way of condition.

#### *Personal Circumstances*

65. In the event of planning permission for a generic gypsy and traveller site not being justified then the personal circumstances of the appellants and their families are a material consideration to be taken into account if considering a temporary or personal planning permission.
66. Each appellant has a family with children in local education. The appeal site would enable consistent access to medical and educational services. Should the children need to leave their schools then this will cause them major disruption and potentially interfere with their education. This carries substantial weight.
67. It has been established that the best interests of children are a primary consideration with no other consideration being inherently more important.

#### *Human rights and public sector equality duty*

68. As regards Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights the appellants and their children are currently living on the appeal site, albeit without the benefit of planning permission. Dismissal of the appeals would result in their removal from the sites and interference with their home and private and family life. These are qualified rights and it is necessary to consider whether it would be proportionate to refuse planning permission in all the circumstances of each case.
69. There is the wider public interest in addressing the harm to the character and appearance of the area and in securing compliance with the development plan.
70. The need to maintain a gypsy lifestyle is an important factor in the decision-making process. Those gypsies without an authorised site can face difficulties in endeavouring to continue their traditional way of life within the law. There is no site currently available within the area. That lack of alternatives makes any interference with the appellants' private and family rights more serious. This is a matter of significant weight in consideration of the grant of a permission.
71. I have also had regard to the Public Sector Equality Duty within section 149 of the Equality Act 2010. This sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The appellants share a protected characteristic, and I have taken into account the need to avoid discrimination.

#### *Overall Balance*

72. I have taken full account of the previous Inspector's decision, but things have changed. That decision concerned 8 plots whereas these appeals concern only 4 plots. Since the time of the previous decision both policy requirements and the circumstances have moved on.

73. I have found significant harm on the first main issue to the character and appearance of the surrounding area albeit that harm can be mitigated to some degree by the imposition of conditions regarding the layout of the sites and to limit the presence of commercial vehicles. Also weighed against the appeals is the intentional unauthorised development.
74. Despite the issue of accessibility, I have found compliance with the development plan on the second main issue in terms of the location of the sites under the newly adopted Policy TR6 of the Traveller DPD given the lack of other suitable accommodation.
75. Considerable weight falls to be attached to the personal circumstances of the appellants and their families and in particular the best interests of the children in having a settled base from which to continue their educations and to access health care. Attempts have been made by the families to secure an alternative location by placing their names on the waiting list for the County site, but there are no indication places will become available in the foreseeable future. Significant weight also attaches to the human rights of the occupants who will lose their homes.
76. On balance, I am not satisfied that the other considerations suffice to outweigh the conflict with the development plan to warrant the grant of a permanent permission. Where a permanent permission is not justified, the lack of alternative available sites and the unlikelihood of suitable sites becoming available in the foreseeable future make it appropriate to grant a time limited permission, resulting in lesser harm by virtue of its temporary nature.
77. The Council was up front at the Hearing in acknowledging that if temporary planning permission is to be granted then it should be for the period of 5 years as sought by the appellants. This was in light of the need for a 5-year supply of deliverable sites and the progression of its next local plan. This seems to be a reasonable and proportionate approach in the circumstances of these cases. I therefore propose to grant temporary planning permission in each case subject to conditions.

#### *Conditions*

78. The Council suggested several conditions in the event of this appeal being allowed which were discussed and altered at the Hearing. I have considered those draft conditions in accordance with Paragraph 55 of the Framework and the national Planning Practice Guidance. Where appropriate, I have adjusted these conditions for greater clarity and precision.
79. As set out above, a time limited condition is to be granted in each case and a corresponding condition is therefore required. Whilst I do not consider it necessary to make the permissions personal to the current occupants, it is necessary to restrict occupation to gypsies and travellers.
80. It was agreed by the main parties that the number of caravans should be restricted to two (of which one can be a static caravan) in respect of the single plots at 3 and 4. In the case of the double plot at 7/8, the number should be limited to four caravans of which two may be static caravans.
81. Given the harm to character and appearance from external lighting in this countryside location, a condition is appropriate to prohibit its installation and

use unless previously approved in writing by the Council. It was agreed that it would be reasonable to limit commercial vehicles to those of no more than 3.5 tonnes in order to protect the character and appearance of the area.

82. The Council withdrew its objection to the lack of open space for safe children's play on the basis that a condition is imposed for details to be approved for the site layout. This is necessary to fulfil JCS policy TR7. It is reasonable and necessary for those details to ensure satisfactory foul and surface water drainage arrangements are in place in the interests of health and to prevent flooding particularly given the proximity to the water meadows.
83. Compliance with the condition for the site development scheme needs to be pursuant to a strict timetable because it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters when development has already taken place. The purpose and effect of the condition is therefore to ensure that the use of the land authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.
84. The Council seeks a condition to remove permitted development rights for the erection of fences, gates and walls. I note that such a condition was imposed in the Stablewood Farm appeal, but the characteristics of that site and its surroundings differed. In accordance with paragraph 53 of the Framework planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In this case, the means of enclosure does impact upon the character and appearance of the surrounding countryside. The visual harm can only be addressed if details are approved and it is reasonable for this to be achieved by the submission of details as part of the site layout scheme. In the circumstances therefore, I consider that the removal of those permitted development rights is not warranted.

#### *Conclusions on ground (a) and the deemed planning applications*

85. Having regard to the above and all other matters raised, I conclude that the ground (a) appeals should succeed and a time limited planning permission be granted in each case.

#### **The appeals on ground (g)**

86. Since temporary permission is granted the enforcement notices will be quashed. Hence the appeals on ground (g) do not fall to be considered, and no further action is required on the appeals.

#### **Formal Decisions**

##### **Appeal A**

87. The appeal is allowed, and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely a material change in the use of the land from use for agriculture to use as a residential caravan site together with ancillary operational development and engineering works at Plot 3, Pony Paddock, 6

Hipley, Hambledon, Waterlooville, Hampshire referred to in the notice, subject to the conditions set out in Annex A at the end of this Decision.

### **Appeals B & C**

88. It is directed that the enforcement notice be corrected by the deletion of 'steps i to vi' at the end of paragraph 5.vi) and the substitution of 'steps i to v'.
89. Subject to that correction, the appeal is allowed, and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely a material change in the use of the land from use for agriculture to use as a residential caravan site together with ancillary operational development and engineering works at Plots 7 & 8 Pony Paddock, 6 Hipley, Hambledon, Waterlooville, Hampshire referred to in the notice, subject to the conditions set out in Annex B at the end of this Decision

### **Appeal D**

90. The appeal is allowed, and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely a material change in the use of the land from use for agriculture to use as a residential caravan site together with ancillary operational development and engineering works at Plot 4, Pony Paddock, 6 Hipley, Hambledon, Waterlooville, Hampshire referred to in the notice, subject to the conditions set out in Annex A at the end of this Decision

*KR Seward*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANTS:

Alan Masters	of Counsel
Brian Woods BA(TP) MRTPI	WS Planning & Architecture
Jimmy Lee	Appellant
Tom Buckley	Appellant
Amy Lee	Appellant's wife
Sarah Knight	Appellant's wife

### FOR THE LOCAL PLANNING AUTHORITY:

Sarah Castle	Principal Planning (Enforcement) Officer
Joan Ashton	Senior Planning Officer

### INTERESTED PERSONS:

Councillor Michael Read	District Councillor
Councillor Judith Clementson	Ward Member for Denmead
David Boase	Chairman of The Worlds End Residents Association
Peter Ambrose	Chairman of Denmead Village Association
Lesley Crawford	On behalf of Denise Searle, local resident

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Notice of Hearing
2. Written submission of David Boase
3. Written submission of Councillor Judith Clementson<sup>6</sup>
4. Written submission of Denise Searle
5. Policy MTRA 4 of Winchester District local Plan Part 1 – Joint Core Strategy

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<sup>6</sup> Document redacted at the Hearing



## **ANNEX A: SCHEDULE OF CONDITIONS**

### **Appeals A and D:**

- 1) The use hereby permitted shall be for a limited period being the period of 5 years from the date of this Decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Planning Policy for Traveller Sites, August 2015, (or any subsequent definition that supersedes that document).
- 3) No more than two caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended, shall be stationed on the site at any one time, of which no more than one shall be a static caravan, and no further caravans shall be placed at any time anywhere within the site.
- 4) No external lighting shall be put in place or operated on the site at any time other than has been previously submitted to and approved in writing by the Local Planning Authority.
- 5) No vehicle over 3.5 tonnes shall be stationed parked or stored on the site.
- 6) No commercial activity shall take place on the land including the storage of materials.
- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (v) below:
  - (i) Within 3 months of the date of this Decision, submit details to the Local Planning Authority for the approval of:
    - (a) the internal layout of the site, hereafter referred to as the Site Development Scheme (SDS), including the siting of the approved caravans, play area, vehicular parking and manoeuvring areas;
    - (b) fencing and other means of enclosure, hard and soft landscaping;
    - (c) any storage provision and its location;
    - (d) foul and surface water drainage, including flood protection.

The SDS shall include a timetable for its implementation.

(ii) Within 11 months of the date of this decision the SDS should have been approved in writing by the Local Planning Authority or, if the Local Planning Authority refuse to approve the SDS or fail to give a decision within the prescribed period, an appeal should have been made to and accepted as validly made by the Secretary of State.

(iii) If an appeal is made in pursuance of (ii) above, that appeal should have been finally determined and the submitted SDS should have been approved by the Secretary of State.

(iv) The approved SDS shall have been carried out and completed in accordance with the approved details and timetable.

- 8) The approved works comprised in the SDS pursuant to condition 7 shall be implemented in accordance with the approved timetable and thereafter retained for the duration of the use of the site and development.

## **ANNEX B: SCHEDULE OF CONDITIONS**

### **Appeals B and C:**

- 1) The use hereby permitted shall be for a limited period being the period of 5 years from the date of this Decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Planning Policy for Traveller Sites, August 2015, (or any subsequent definition that supersedes that document).
- 3) No more than four caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended, shall be stationed on the site at any one time, of which no more than two shall be a static caravan, and no further caravans shall be placed at any time anywhere within the site.
- 4) No external lighting shall be put in place or operated on the site at any time other than has been previously submitted to and approved in writing by the Local Planning Authority.
- 5) No vehicle over 3.5 tonnes shall be stationed parked or stored on the site.
- 6) No commercial activity shall take place on the land including the storage of materials.
- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (v) below:
  - (i) Within 3 months of the date of this Decision, submit details to the Local Planning Authority for the approval of:
    - (a) the internal layout of the site, hereafter referred to as the Site Development Scheme (SDS), including the siting of the approved caravans, play area, vehicular parking and manoeuvring areas;

- (b) fencing and other means of enclosure, hard and soft landscaping;
- (c) any storage provision and its location;
- (d) foul and surface water drainage, including flood protection.

The SDS shall include a timetable for its implementation.

(ii) Within 11 months of the date of this decision the SDS should have been approved in writing by the Local Planning Authority or, if the Local Planning Authority refuse to approve the SDS or fail to give a decision within the prescribed period, an appeal should have been made to and accepted as validly made by the Secretary of State.

(iii) If an appeal is made in pursuance of (ii) above, that appeal should have been finally determined and the submitted SDS should have been approved by the Secretary of State.

(iv) The approved SDS shall have been carried out and completed in accordance with the approved details and timetable.

- 8) The approved works comprised in the SDS pursuant to condition 7 shall be implemented in accordance with the approved timetable and thereafter retained for the duration of the use of the site and development.

-END-