

**APPEALS BY MR THOMAS MALONEY
AGAINST THE REFUSAL OF PLANNING PERMISSION AND, SERVICE OF AN
ENFORCEMENT NOTICE BY
WINCHESTER CITY COUNCIL**

CHANGE OF USE OF LAND TO USE AS A GYPSY CARAVAN SITE TO PROVIDE
TWO PITCHES, INCLUDING LAYING OF HARDSTANDING AND FORMATION OF A
NEW ACCESS.

LOWER PADDOCK, BENT LANE, HAMBLEDON, WATERLOOVILLE, PO7 4QP

LPA REF: 20/00739/FUL
OUR REF: 20/112

**STATEMENT OF CASE PREPARED ON BEHALF OF THE APPELLANT BY
PHILIP BROWN BA (HONS) MRTPI**

1.0 INTRODUCTION

- 1.1 This Statement of Case has been prepared by Philip Brown. I hold a Bachelor of Arts degree with honours in the subject of Urban and Regional Planning. I am a member of the Royal Town Planning Institute with more than 40 years' experience of planning matters in local government and private practice.

- 1.2 I am Managing Director of Philip Brown Associates Limited, a firm of town planning and development consultants established in 2003. We specialise in assisting Gypsies and Travellers to obtain planning permission for caravan sites and related development. We are the country's leading planning consultancy dealing with gypsy and traveller site development and, frequently appear at planning hearings and inquiries to give expert evidence on planning matters. We have obtained planning permission for well over 300 caravan sites, throughout England and Wales, mainly on appeal.

- 1.3 This Statement is divided into four parts: firstly, I describe the site and its surroundings; secondly, I give a resume of relevant planning policies; thirdly, I summarise the planning history of the appeal site; and fourthly, I set out the case on behalf of the appellant.

2.0 SITE DESCRIPTION

- 2.1 The enforcement notice encompasses a rectangular field with a width of about 55 metres and, a depth of about 79 metres (an area of approximately 0.44 hectares). This field is located along the north-western side of Bent Lane, Hambledon.
- 2.2 Prior to any development taking place there was a gap in the frontage hedgerow about 9 metres wide, situated in the centre of the road frontage. A new access has been formed from Bent Lane within this gap in the hedgerow and, the north-eastern half of the field has been laid with hardstanding. The planning application site comprises part of this hardstanding measuring about 36 metres wide and, about 57 metres in depth. The remainder of the field is laid to grass.
- 2.3 The appeal site is enclosed by substantial hedgerows and trees along the south-eastern (roadside), north-western and south-western boundaries, and by post and wire fencing along the north-eastern boundary. The site adjoins Shirmal Farm to the north-east which, not only, contains stable buildings and a partially constructed barn, but also, caravans occupied by a gypsy family. There is a separate farmstead located to the north of the appeal site and, a recently constructed farmstead to the south, along the opposite side of Bent Lane. The latter farmstead also contains a mobile home occupied for residential purposes.
- 2.4 Bent Lane is a single-track rural lane with no footpaths or street-lighting. The appeal site is located about 3 kilometres from Denmead which contains schools and shops, including a chemist and post office. The site is also within about 5 kilometres of Waterlooville which has a full range of community services and facilities, including a health centre and supermarkets.

3.0 PLANNING POLICY

Government Advice

- 3.1 The NPPF is intended to reinforce the importance of up-to-date plans and requires that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development (paragraph 11).
- 3.2 *Planning policy for traveller sites (PPTS)* sets out the Government's aims in respect of traveller sites which include, *inter alia*, local authorities developing fair and effective strategies to meet need through the identification of land for sites; protecting Green Belt from inappropriate development; promoting more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites; and to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply.
- 3.3 Local planning authorities are required to use a robust evidence base to establish accommodation needs to inform the preparation of local plans and make planning decisions (*Policy A*). In producing their local plans, local planning authorities should, *inter alia*, set pitch targets; identify and maintain a rolling 5-year supply of specific deliverable sites; and relate the number of pitches to the circumstances of the specific size and location of the site and the surrounding population's size and density.
- 3.4 Paragraph 13 sets out the wider sustainability benefits of providing permanent residential sites for gypsies and travellers which should be taken into account in plan-making and development control (*Policy B*).
- 3.5 Policy C suggests that gypsy sites may be located in rural or semi-rural areas, provided that they are of a scale appropriate to their specific location. This is reiterated in paragraph 25 of Policy H. Paragraph 22 of

Policy H sets out issues which should be considered in the determination of planning applications for gypsy sites. Policy H 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.

Local Planning Policies

- 3.6 The Development Plan comprises of the Winchester District Local Plan Part 1 adopted in March 2013; the Winchester District Local Plan Part 2 adopted in April 2017; and, the Winchester District Gypsy, Traveller and Travelling Showpeople Development Plan Document, adopted in February 2019. Policies relevant to this appeal include Policy CP5 of the Part 1 Local Plan, DM4 of Part 2 of the Local Plan and, policy TP6 of the Traveller DPD.

4.0 PLANNING HISTORY

- 4.1 Planning application No. 20/00739/FUL was submitted on 8 April 2020 for the change of use of land to use as a residential caravan site for two gypsy/traveller families, each with two caravans including no more than one static caravan/mobile home, together with laying of hardstanding, construction of new access and erection of two ancillary amenity buildings.
- 4.2 Planning permission was refused on 06 May 2020 for the following reasons:
1. The proposal fails to accord with policies MTRA4 and CP5 of the Winchester District Local Plan Part 1 and DM4 of the Winchester District Local Plan Part 2 in that it would result in additional dwellings in the countryside for which there is no justification.
 2. The proposal is contrary to policies CP13 of the Winchester District Local Plan Part 1 and policies DM15 and DM23 of the Winchester District Local Plan Part 2 in that they fail to respond to or enhance the rural character of the area.
 3. The proposal fails to provide sufficient information in regard to policies CP16 of the Winchester District Local Plan Part 1 in regard to the impact of the proposal on the nearby protected landscape features and ecology.
 4. The proposal fails to provide sufficient information in regard to policy DM18 of the Winchester District Local Plan Part 2 in that the proposal has not demonstrated acceptable visibility splays at the proposed site access that could detrimentally impact the safety of highways users.
- 4.3 The Council served an enforcement notice on 5 May 2020 alleging, without planning permission, the material change of use of the land to a residential caravan site for gypsies and travellers (which includes creation of an access and engineering works to create a hardstanding).

5.0 CASE ON BEHALF OF THE APPELLANT

Background

- 5.1 The appellants, brothers Thomas and James Maloney, are Irish travellers who make their livings by buying and selling horses. They supplement their incomes by also finding small building jobs. They distribute leaflets door to door to find work mainly in the Southampton and Portsmouth areas but, travel all over the country to attend horse fairs, including Appleby and Stow-on-the-Wold. They travel away from their home area for 3-4 months each year for work. They are clearly travelling for an economic purpose and, are gypsies as defined in Annex 1 of PPTS.
- 5.2 Having established that the appellants are gypsies for planning purposes, It is clear that gypsy policies should apply to the proposed development.

Presumption in Favour of Sustainable Development

- 5.3 The National Planning Policy Framework (NPPF) puts the presumption in favour of sustainable development at the heart of both plan-making and decision-taking. For decision-taking this means approving development proposals that accord with the development plan without delay; or, if the policies which are most important for determining the application are out-of-date, granting planning permission unless, *inter alia*, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
- 5.4 In the latter regard, the appeal site is not located within the Green Belt, or within a SPA, SSSI, Conservation Area, local greenspace, AONB or National Park. Furthermore, the proposed caravan site is not located within an area shown on the Environment Agency's flood maps as being at high risk from flooding.

Principle of Development

- 5.5 Paragraph 4 of the NPPF requires that the Framework should be read in conjunction with the Government's planning policy for traveller sites. Policy C of PPTS makes clear that some sites will be in rural areas and the countryside. This advice is qualified by Policy H (paragraph 23) which states that sites should be very strictly limited in the open countryside **away from** existing settlements.
- 5.6 Where, as in this case, a site is not allocated as a gypsy/traveller site and lies outside the settlement boundaries, Policy TR6 of the Traveller DPD 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 falling within the PPTS definition 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, and comply with the requirements of Policy TR7 of the Traveller DPD which contains provisions applicable to all sites.
- 5.7 Policy MTRA 4 of the Joint Structure Plan, referred to in the Council's first reason for refusal, is a generic policy which limits the type of development in the countryside. It makes no provision for gypsy and traveller sites in the countryside, unlike the later Traveller DPD, and should therefore carry little weight in the determination of this appeal. Development Plan policies TR6 and CP5, and PPTS, acknowledge that there may be cases where exception to countryside policies (MRTA 4) may be justified and that, gypsy and traveller sites may be appropriately located in the countryside in principle.

Policy TR6

- 5.8 The appellants are gypsies/travellers falling within the definition in Annex 1 of PPTS and, they have a personal and cultural need for a caravan site in this area, between Portsmouth and Southampton, where they make their living. They have purchased the land where, irrespective of the outcome of this appeal, they will graze their horses and, which provides them with

a tie to the local area. Furthermore, they have no suitable alternative site available to them. In the past they have been reliant on friends and relatives who have allowed them to occupy pitches on existing sites in the area for short periods whilst the usual residents have been away travelling. Otherwise, they have resorted to roadside encampments within the Hampshire area. The Covid-19 pandemic has restricted the availability of short-stay pitches on private sites, as owners have closed their sites to new residents. As a result, the appellants are currently homeless and, provided that the proposed site complies with the criteria in policies CP5 and TR7, the proposed development will comply with Policy TR6.

Suitability of the Location

- 5.9 Clearly, neither local or national planning policies require that all gypsy sites should be located within existing settlements. The cost of land within urban areas would make this unrealistic and impractical. On the other hand, there is no definition of what should be regarded as “*well related to*”, “*accessible to*” or “*away from*” existing communities or settlements.
- 5.10 PPTS does not put forward any distance restriction to help define the term “*away from*” in relation to the siting in open countryside. There is no requirement under Policy H of PPTS for settlements to be designated as such in a Local Plan, or for the settlement, that the site is not away from, to contain community services and facilities. Furthermore, neither PPTS or Policy CP5 require that access to local services should be available by means other than the private car. It has been left to Inspectors on appeal to judge what terms such as “*away from settlements*” mean.
- 5.11 I attach an appeal decision at **Appendix PBA 1** in which the Inspector considered that a site located 800 metres from the closest settlement, a hamlet containing 11 dwellings, was not away from existing settlements for the purposes of Policy H of PPTS, notwithstanding that the settlement did not contain any community services or facilities. Furthermore, the Inspector considered that the site, which was located 2 miles from the closest service centre (Shawbury), and 4 miles from Shrewsbury (the nearest town with a wider choice of facilities), was a reasonably

sustainable location for a small traveller site (2 pitches), notwithstanding that the Inspector considered it likely the occupiers would be almost entirely reliant on the private motor vehicle for most of their day-to-day travel needs. The Inspector opines, in paragraph 17 of his decision, that this degree of reliance is not that uncommon in a mainly rural area and, the distances involved were not excessive by rural standards.

5.12 The very strict control over traveller sites in the countryside away from existing settlements is a reflection of the advice in paragraph 79 of the NPPF which states that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances.

5.13 In this case, I do not consider the appeal site to be isolated from the local community using the meaning of “*isolated*” set out by the High Court in the case of ***Braintree DC v. SSC&LG & Ors [2017] EWHC 2743 Admin***. The site adjoins an existing traveller site to the north-west (Ydal Acres), together with its associated stable buildings and a modern barn; and, Shirmal Farm to the north. There is an intensive calf rearing enterprise at Little Oaks, including a temporary dwelling, located along the opposite side of Bent Lane and, there are two substantial clusters of residential development further north along Bent Lane, within 400 metres of the appeal site: at Bent Farm where there are 5 dwellings and associated outbuildings; and, Hill House, where there are a further 4 or 5 dwellings. When seen in the context of the dispersed settlement pattern in the area, the appeal site is clearly not isolated and, in that it lies within 2-3 miles of the local service centres of Hambledon, Denmead and Waterlooville, the site is not away from settlements for the purposes of PPTS.

5.14 Having established that gypsy sites can be appropriately located outside of existing settlements, within rural and semi-rural areas, it is self-evident that gypsy sites will generally not be as conveniently located for access to local services as conventional housing. Paragraph 103 of the NPPF recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Paragraph 103 generally seeks to direct developments that generate significant movement to locations where the need to travel will be minimised and the use of sustainable transport modes can be maximised. A development

of 2 caravan pitches would not generate significant movement, i.e. requiring submission of a Transport Statement or Transport Assessment (para. 111 of the NPPF). As such, the proposed development should only be prevented or refused on transport grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network are severe (para. 109).

5.15 PPTS makes no mention of distances to services or modes of travel when assessing the sustainability of gypsy sites. PPTS expects local planning authorities to ensure that gypsy sites are sustainable economically, socially and environmentally – by promoting access to appropriate health services, and ensuring that children may attend school regularly. “Access” in this sense is related to the fact that gypsies may only have the right to register with a GP or obtain education if they have a settled base. I attach an appeal decision at **Appendix PBA 2** in which the Council’s principle objection was that the site lay in such a location that the development would result in unsustainable travel. The Inspector examines distance to services and modes of transport in paragraphs 50-52 of her decision but, goes on to consider sustainability in its wider sense. In paragraph 53, the Inspector makes clear that the NPPF and PPTS require a consideration of the effects of development on a broader basis than simply in relation to transport. *“That is true of all developments – but particularly sites for gypsies, because they have a travelling way of life by definition and this must be factored into the planning assessment.”* The Inspector examines the wider sustainability benefits in paragraphs 54-57, and concludes, in paragraph 60, that the development (for an extra 5 residential pitches) is not unacceptably unsustainable, despite her finding that the site residents would be reliant on the private motor car for access to a range of local services in Leighton Buzzard, 5 kilometres away.

5.16 In this case, the appeal site is located about 3 kilometres by road from Denmead which contains schools and shops, including a chemist and post office. The site is also within about 5 kilometres of Waterlooville which has a full range of community services and facilities, including a health centre and supermarkets: within the distances found to be acceptable in the appeals attached at appendices 1 and 2. As in those cases, the appeal site is well related to the dispersed settlement of Denmead and, provides a reasonable level of accessibility to local services.

5.17 The provision of a settled site would allow the appellants to register with a GP for their day-to-day health care and, enrol children into local schools. They will also use other local services and facilities and, encourage social inclusion and a more sustainable pattern of living. The provision of a settled site would reduce the need for frequent travelling and possible environmental damage caused by unauthorised camping; and, facilitate the appellants' traditional lifestyle. The ability of the appellants to use the appeal site as a base for their horse dealing activities has the potential to omit many travel to work journeys and, contribute towards sustainability. The proposed site would provide a good standard of residential environment, free from undue noise, air pollution or, flood risk and, there is little likelihood that a development of two pitches would place undue pressure on local infrastructure and services. The proposed development would, in short, fulfil all of the sustainability objectives set out in paragraph 13 of PPTS.

5.18 The provision of 2 additional pitches, adjacent to the existing traveller site at Ydal Acres would not represent an over-concentration of sites in this location: it would be of similar size to the clusters of development at Bent Farm and Hill House. Furthermore, there would be sufficient distance between the proposed caravan site and any nearby dwellings to avoid harmful impacts on local residents from activity on the appeal site. The proposed development would therefore satisfy the criteria relating to sustainability set out in the first part of Policy CP5.

Character and Appearance of the Countryside

5.19 The in-principle acceptability of gypsy sites in rural and semi-rural locations has a number of inevitable consequences. Traveller sites have a number of characteristic features which, depending on the particular setting, can be atypical in the countryside, such as: caravans, hardstandings, utility buildings, residential paraphernalia and lighting. As a result, some degree of visual impact must be accepted and, if an adequate supply of gypsy sites is to be provided, some degree of visual harm must be acceptable.

5.20 The test for countryside harm must be whether the development causes unacceptable harm which cannot be made acceptable with additional

landscaping. In this regard, paragraph 26 of Policy H makes clear that soft landscaping can positively enhance the environment, whereas sites should not be enclosed with so much hard landscaping that the impression is given that the site and its occupants are deliberately isolated from the rest of the community. This infers that, firstly, sites do not have to be adequately screened from the outset; secondly, that gypsy sites do not have to be hidden from view; and thirdly, that sites can be assimilated into their surroundings to a sufficient degree using indigenous species. Likewise, Policy CP5 does not require traveller sites to be completely hidden from view. It merely requires that sites should be clearly defined by physical features, where possible, and not be unduly intrusive. Additional landscaping may be necessary to maintain visual amenity and provide privacy for occupiers.

5.21 The Landscape Character Assessment adopted by the Council as Supplementary Planning Guidance in 2004, identifies the appeal site as comprising a "Mixed Farmland and Woodland Landscape" type forming part of the "Forest of Bere Lowlands Landscape Character Area". This area is described as having "*an ancient character, retaining historic landscape features and a network of winding narrow lanes*". Although Bent Lane is a typical winding narrow lane flanked by hedgerows and, the landscape has a distinctive pattern of small irregular fields interspersed with irregularly shaped woods and copses, the proposed development would not affect these key characteristics. Although a new access has been formed, it was located within a 9 metre-wide break between roadside trees and, has resulted in only a minor loss of hedgerow in the intervening area. The formation of an improved access to Little Oaks, opposite, has had a far greater effect on the character of the lane. Furthermore, the loss of about 9 metres of hedgerow along the front of the appeal site would be more than made up for by the planting of new hedgerows.

5.22 As set out above, the proposed caravan site is located along a winding rural lane lined with mature trees and hedgerows. As a result, the site is well-screened other than in short range views from Bent Lane in the immediate vicinity of the site access. Any limited views available would be against a background of existing agricultural and stable buildings on adjoining land to the north-east and south-east. Additional screening, in the form of hedgerow and tree planting along the south-western and

north-western boundaries of the caravan site would help to clearly define the boundaries of the caravan site, as required by Policy CP5. Existing and proposed planting would provide significant screening from Bent Lane, particularly during the summer months and, filter views at times of the year when the vegetation is not in leaf. I consider that, with retention and reinforcement of the existing vegetation, the proposed development would not be unduly intrusive or, result in unacceptable harm to the character and appearance of this area of countryside.

Ecology

5.23 The enforcement notice states that the land edged red on the notice plan lies within 50 metres of Hoegate Common Site of Importance for Nature Conservation (SINC) and Mill Plain SINC. The proposed development only affects the north-eastern part of the appellants' land holding and, is actually 50-80 metres away from Hoegate Common: separated from it by a field in separate ownership. Mill Plain is located on the opposite side of Bent Lane, to the south-west of the developed site of Little Oaks. There is little or no potential for construction activity (the building of two amenity buildings), drainage or external lighting to affect the nearby SINCs, subject to the imposition of planning conditions to control foul and surface water drainage, and external lighting. The Council have not raised any such concerns, or requested habitat surveys, when approving development on Ydal Acres or Little Acres (the latter adjoins Mill Plain SINC and the watercourse referred to in the enforcement notice). I attach aerial photographs at **Appendix PBA 3** which show the extent of new development at Little Acres, including the stationing of a mobile home for residential purposes, which has taken place within the last 4 or 5 years.

5.24 With regard to biodiversity, there are no trees or hedgerows within the body of the site and, all of the work involved in laying hardstanding has already taken place. Retention of the caravan site would not involve the laying of any additional hardstanding, and would not require any loss of trees or, further hedgerow around the boundaries of the site. The granting of planning permission could be made subject to conditions which seek to reduce the amount of hardstanding, and increase the amount of planting around the site: thereby, helping to increase biodiversity.

5.25 The Council allege that the appellants have removed part of an ancient hedgerow in order to create a new access into the field. Aerial photographs available on Google Earth (**Appendix PBA 4**) show that the access has been formed in a location where there has been a long-standing gap between the canopies of trees lining the lane. This suggests that trees have been removed and, the photograph attached at **Appendix PBA 5**, suggests that the hedgerow which has been removed to form the new access contained a single woody species and, being less than 10 metres long, was not the type of hedge protected under the Hedgerow Regulations.

5.26 There are several other openings that have recently been formed onto Bent Lane, such as those providing access to Ydal Acres and Applemore (adjacent to High House). There is no evidence to suggest that the removal of these short lengths of hedge has had any material effect on protected species. Given that any harm resulting from hedgerow removal has already occurred, the planting of a considerable length of new hedgerow would more than mitigate for that loss and, has the potential to significantly enhance biodiversity.

5.27 Thus, although no ecological survey has been conducted, given the distance of the proposed caravan site from the SINCs and the existing surrounding development and activities, there is no evidence to suggest that there would be an adverse effect on the conservation interest of nearby protected landscape features as a result of the proposal. Similarly, there is no reason to find there would be a detrimental effect on protected species. As such, the proposed development would not conflict with Policy CP16 of the Local Plan.

Highway Safety

5.28 Due to the nature of Bent Lane, the level of use and associated vehicle speeds in this location are low. I have observed for myself that it is seldom possible to achieve a speed of 30 mph along Bent Lane if driving with due care and attention, as the law requires. More typically, I found that speeds of 20 mph were more usual. Although the proposal for 2 pitches would result in additional vehicle movements on Bent Lane, the

level of use would not be significant. There are a number of passing places and private entrances along Bent Lane which would minimise any conflict from vehicles passing.

5.29 The appropriate visibility splays for an access onto a road where the 85th-percentile vehicle speeds are below 30 mph, as in the case, are 2.4 metres (“x” distance) x 43 metres (“y” distance). I have measured the available visibility from a point 2.4 metres back from the carriageway edge, measured along the centre-line of the access, to be in excess of 50 metres to the south-west, measured along the nearside edge of the Bent Lane carriageway. Visibility to the north-east also exceeds 43 metres, measured to the centre of the carriageway, after some trimming back of vegetation overhanging the highway verge.

5.30 Paragraph 109 of the NPPF explains that development should only be prevented on highway grounds if there would be an unacceptable impact on highway safety. Having regard to the limited number of likely traffic movements, the character of Bent Lane and, the extent to which visibility for drivers at the site access can be improved (without any further loss of hedgerow), in my opinion, there would be no significant impact on highway safety and, there would be no conflict with Local Plan Policy DM18.

Other Material Considerations

5.31 Other relevant matters for local planning authorities when considering planning applications for traveller sites are set out in paragraph 22 of PPTS as comprising:

- a) the existing level of local provision and need for sites;
- b) the availability (or lack) of alternative accommodation for the applicants;
- c) other personal circumstances of the applicant;
- d) the locally specific criteria used to guide the allocation of sites in plans or, which form the policy where there is no identified need for pitches/plots, used to assess applications that may come forward on unallocated sites; and,

(e) determining applications for sites from any travellers and not just those with local connections.

5.32 I have already compared the proposed development against the Council's locally specific criteria. With regard to the final matter, PPTS does not suggest that, when there is no remaining identified need for traveller sites in a District, that no further sites should be approved. Quite the opposite in fact. Paragraph 10 of PPTS provides that, where there is no identified need, criteria-based policies should be included in local plans to provide a basis for decisions in case applications nevertheless come forward. For decision-taking, PPTS makes clear (*paragraph 22e*) that local authorities should determine applications for sites from any travellers and not just those with local connections. As such, a lack of an identified need for a development cannot be regarded as a reason for refusal. Estimates of need are just that, estimates, and cannot be used to impose a maximum level of provision.

Existing Level of Local Provision and Need for Sites

5.33 The Winchester Gypsy and Traveller Accommodation Assessment was published in 2016 and, identified 24 existing traveller sites, containing a total of 65 pitches. There are no public sites in Winchester and, apart from the former public site at Tynfield with 18 pitches, the remaining sites, including 4 temporary sites and 4 unauthorised sites, were small, family sites.

5.34 The 2016 GTAA seeks to distinguish between gypsies meeting the definition in Annex 1 of PPTS, those who do not satisfy the definition and, those whose status is unknown. Anyone not interviewed as part of the survey of households living on known gypsy sites is assumed to potentially be a non-gypsy for planning purposes and, the GTAA discounts them from the assessment of need. The report's authors are the sole arbiters of who is and who is not a "gypsy", and their assessment has not been subject to any independent public scrutiny.

5.35 The GTAA estimates a need for a total of 31 permanent pitches for gypsies and travellers meeting the new definition comprising a current need for 8 pitches (3 households on unauthorised developments and, 5 concealed

households) and, a future need for 21 permanent pitches (4 from older teenage children, 7 households on sites with temporary planning permission and, 10 from new household formation).

5.36 As a result of the interviews undertaken for the GTAA, 20 households were determined to fall within the new definition, 18 were considered to be outside the definition and, 11 were “unknown”. These 11 “unknown” households were believed to be ethnic gypsies and travellers and, the authors of the GTAA recognised that they may have met the new definition. As a result, the overall level of need could rise by up to 7 pitches with temporary planning permission and 4 pitches from new household formation, plus any concealed adult households or 5-year need arising from older teenagers living in these households (para 5.29 of the GTAA attached at **Appendix PBA 6**). Neither the GTAA or the Traveller DPD make clear how the needs of those who may be ethnically gypsies and travellers, but do not fall within the definition (or whose status is unknown), are to be met.

5.37 Appendix B of the Traveller DPD sets out details of sites that contribute towards supply. Of the 18 pitches identified, 10 pitches result from temporary pitches being made permanent since the beginning of the GTAA assessment period, of which 3 were not accounted for in the assessment of need, i.e. only 7 address the need identified in the GTAA. Of the remaining 8 pitches, 5 pitches are located on formerly unauthorised sites (The Paddock, Durley Street, Durley; and, Woodley Farm, Alma Lane, Lower Upham) which are not identified or taken into account in the GTAA. Thus, of the need identified in the GTAA (25 pitches during the period 2016-2031), planning permissions have been granted for 10 pitches, i.e. leaving a residual need for 15 pitches.

Alternative Sites

5.38 In *Doncaster MBC v. FSS & Angela Smith* [2007] the Court decided that to be a realistic alternative, accommodation has to be suitable, affordable, available and acceptable.

- 5.39 The GTAA assumes that 10 pitches will become available on Tynefield but, this assumption has been discredited in two recent appeals where evidence was presented to show that the vacant pitches at Tynefield were neither suitable (because of their condition) or available (because of the owner's reluctance to release pitches to non-family members). At an appeal Hearing held on 28 August 2019 (APP/L1765/C/18/3201565) the Council acknowledged that, following a recent site inspection, the Tynefield site was found to be in a substantially derelict condition and, not fit for habitation. Clearly, this site does not currently contribute towards supply and, is not a viable alternative to the appeal site.
- 5.40 The Traveller DPD allocates two temporary sites under Policy T2 for the provision of additional permanent pitches: at The Piggeries, Firgrove Lane, North Boarhunt; and, adjacent to Gravel Hill, Shirrell Heath. These sites are already occupied and, five of the "unknown" households identified in Figure 1 of the GTAA were living on these sites (4 at The Piggeries and, 1 at land adjacent to Gravel Hill). As a result, only 2 of the allocated pitches would contribute towards the need identified in the 2016 GTAA and, none of the allocated pitches would be available for occupation by the current appellants.
- 5.41 The 2016 GTAA clearly under-estimates the true level of need in Winchester District by, amongst other things, failing to take adequate account the needs of the "unknowns". The "unknowns" living at The Piggeries and at Gravel Hill have clearly been accepted by the Council as falling within the new definition. I attach an appeal decision at **Appendix PBA 7** in which the Inspector analyses the 2016 GTAA and, concludes that it under-estimates need. Furthermore, it over-estimates the contribution that vacant sites will make towards supply. The upshot is that, based on the 2016 GTAA and the Traveller DPD, there is an unmet need for traveller sites in Winchester and, an absence of alternative sites which would be available to the appellants. These are both matters which should carry considerable weight in favour of this appeal.

Personal Circumstances

5.42 The proposed caravan site would accommodate the following households:

1. Thomas and Margaret Maloney, together with their sons: Johnny (17 years of age); Jimmy (14); and, Edward (6).
2. James and Ann Maloney, together with their children: Margaret (14); Johnny (10); Helen (7); Ann (3); and Edward (under 1).

5.43 They have no permanent site of their own and, if they cannot stay temporarily on other traveller's yards, stay on roadside encampments: as they are having to do currently. Whilst living on temporary or roadside sites, the families are unable to maintain registration with a GP or, enrol their children into schools. There are 9 children currently with no settled home, including 5 children of school age who are missing out on regular schooling. The longer this situation pertains, the more difficult it will be for any of these children to enter mainstream education.

5.44 It has been established by the Courts (***ZH (Tanzania) v. Secretary of State for the Home Department [2011] UKSC 4***) that the needs of the child must be treated as a primary consideration. In this case there are 9 children whose health, safety and welfare will be put at jeopardy if this extended family is denied accommodation on the appeal site with no lawful caravan site to go to. In deciding whether to grant planning permission or dismiss this appeal, the welfare and best interests of these children must be regarded as a primary consideration to which appropriate weight must be given (***AZ v.S of S and South Gloucestershire DC [2012] EHC 3660 (Admin)***). In the absence of any suitable alternative site, it is a matter which should be attributed substantial weight in the determination of this appeal.

5.45 Public authorities have a duty to facilitate the gypsy way of life which 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 are no sites currently available within the area and, that lack of alternatives makes any interference with the appellants' private and family rights more serious.

Conclusions

- 5.46 The appeal site is not located within the Green Belt, or within a SPA, SSSI, Conservation Area, local greenspace, AONB or National Park. Furthermore, the proposed caravan site is not located within an area shown on the Environment Agency's flood maps as being at high risk from flooding.
- 5.47 Where, as in this case, a site is not allocated as a gypsy/traveller site and lies outside the settlement boundaries, Policy TR6 of the Traveller DPD provides that use for traveller accommodation will only be permitted in prescribed circumstances. In this case, the appellants are gypsies/travellers falling within the definition in Annex 1 of PPTS and, they have a personal and cultural need for a caravan site in this area, between Portsmouth and Southampton, where they make their living. They have purchased the land where, irrespective of the outcome of this appeal, they will graze their horses and, which provides them with a tie to the local area. Furthermore, they have no suitable alternative site available to them. The appeal proposal will satisfy Policy TR6 provided that it also satisfies the criteria of Local Plan Policy CP5.
- 5.48 In this case, the appeal site is not isolated from the local community. The site adjoins an existing traveller site to the north-west (Ydal Acres), together with its associated stable buildings and a modern barn; and, Shirmal Farm to the north. There is an intensive calf rearing enterprise at Little Oaks, including a temporary dwelling, located along the opposite side of Bent Lane and, there are two substantial clusters of residential development further north along Bent Lane, within 400 metres of the appeal site: at Bent Farm where there are 5 dwellings and associated outbuildings; and, Hill House, where there are a further 4 or 5 dwellings. When seen in the context of the dispersed settlement pattern in the area, the appeal site is clearly not isolated and, in that it lies within 2-3 miles of the local service centres of Hambledon, Denmead and Waterlooville, the appeal site is well related to the dispersed settlement of Denmead and, provides a reasonable level of accessibility to local services.
- 5.49 The provision of 2 additional pitches, adjacent to the existing traveller site at Ydal Acres would not represent an over-concentration of sites in this

location: it would be of similar size to the clusters of development at Bent Farm and Hill House. Furthermore, there would be sufficient distance between the proposed caravan site and any nearby dwellings to avoid harmful impacts on local residents from activity on the appeal site. The proposed development would therefore satisfy the criteria relating to sustainability set out in the first part of Policy CP5.

5.50 The proposed caravan site is located along a winding rural lane lined with mature trees and hedgerows. As a result, the site is well-screened other than in short range views from Bent Lane in the immediate vicinity of the site access. Any limited views available would be against a background of existing agricultural and stable buildings on adjoining land to the north-east and south-east. Additional screening, in the form of hedgerow and tree planting along the south-western and north-western boundaries of the caravan site would help to clearly define the boundaries of the caravan site, as required by Policy CP5. Existing and proposed planting would provide significant screening from Bent Lane, particularly during the summer months and, filter views at times of the year when the vegetation is not in leaf. I consider that, with retention and reinforcement of the existing vegetation, the proposed development would not be unduly intrusive or, result in unacceptable harm to the character and appearance of this area of countryside.

5.51 Although no ecological survey has been conducted, given the distance of the proposed caravan site from the SINCS and the existing surrounding development and activities, there is no evidence to suggest that there would be an adverse effect on the conservation interest of nearby protected landscape features as a result of the proposal. Similarly, there is no reason to find there would be a detrimental effect on protected species. As such, the proposed development would not conflict with Policy CP16 of the Local Plan.

5.52 Paragraph 109 of the NPPF explains that development should only be prevented on highway grounds if there would be an unacceptable impact on highway safety. Having regard to the limited number of likely traffic movements, the character of Bent Lane and, the extent to which visibility for drivers at the site access can be improved (without any further loss of

hedgerow), in my opinion, there would be no significant impact on highway safety and, there would be no conflict with Local Plan Policy DM18.

5.53 The 2016 GTAA clearly under-estimates the true level of need in Winchester District by, amongst other things, failing to take adequate account the needs of the “unknowns”. The “unknowns” living at The Piggeries and at Gravel Hill have clearly been accepted by the Council as falling within the new definition. Furthermore, it over-estimates the contribution that vacant sites will make towards supply. The upshot is that, based on the 2016 GTAA and the Traveller DPD, there is an unmet need for traveller sites in Winchester and, an absence of alternative sites which would be available to the appellants. These are both matters which should carry considerable weight in favour of this appeal.

5.54 In my opinion, the proposed development complies fully with Development Plan policies TP6 and CP5 and, therefore, planning permission should be granted unless there are material circumstances which indicate otherwise. In this case, the unmet need and absence of alternative sites are both matters which weigh in favour of the appeal.

5.55 For the above-mentioned reasons, I respectfully request that this appeal be upheld.

6.0 LIST OF APPENDICES

PBA 1 – Appeal decision – Bings Heath, Shropshire

PBA 2 – Appeal decision – Willows Park, Slapton, Buckinghamshire

PBA 3 – Aerial photographs of Little Acres

PBA 4 – Aerial photographs of Lower Paddock

PBA 5 – Street View of position of site access

PBA 6 – 2016 GTAA

PBA 7 – Appeal decision – The Paddock, Durley Street, Durley