TOWN AND COUNTRY PLANNING ACT 1990

(A) APPEALS BY (1) MR F LOVERIDGE (2) MR A O'DONNELL (3) MR P FLYNN (4) MR H STOKES (5) MR D CARTER (6) MR P STOKES (7) MR O CRUMLISH AGAINST AN ENFORCEMENT NOTICE ISSUED BY WINCHESTER CITY COUNCIL ON 1 MARCH 2022 ALLEGING WITHOUT PLANNING PERMISSION, THE MATERIAL CHANGE OF USE OF THE LAND TO A RESIDENTIAL CARAVAN SITE, INCLUDING THE STATIONING OF APPROXIMATELY 100 CARAVANS FOR RESIDENTIAL USE.

(B) APPEALS BY (1) MR F LOVERIDGE (2) ANTHONY O'DONNELL (3) MR P FLYNN (4) MR H STOKES (5) MR D CARTER (6) MR P STOKES (7) MR O CRUMLISH AGAINST AN ENFORCEMENT NOTICE ISSUED BY WINCHESTER CITY COUNCIL ON 1 MARCH 2022 ALLEGING WITHOUT PLANNING PERMISSION, THE BREACH OF CONDITIONS 10,11, AND 15 OF PLANNING PERMISSION 02/01022/FUL OF 2 OCTOBER 2003.

PLOTS 1, 1A, 2A, 2B, 2C, 3A, 3B, 6A, 6B, 8, 8A, 8B, 9, 9A, 9B CAROUSEL PARK, MICHELDEVER, WINCHESTER

PINS REFERENCE (A) APPEALS: (1) APP/L1765/C/22/3296767 (2) APP/L1765/C/22/3296771 (3) APP/L1765/C/22/3296773 (4) APP/L1765/C/22/3296776 (5) APP/L1765/C/22/3296778 (6) APP/L1765/C/22/3296781(7) APP/L1765/C/22/3296783

PINS REFERENCE (B) APPEALS: (1) APP/L1765/C/22/3296768 (2) APP/L1765/C/22/3296772 (3) APP/L1765/C/22/3296774 (4) APP/L1765/C/22/3296777 (5) APP/L1765/C/22/3296779 (6) APP/L1765/C/22/3296782 (7) APP/L1765/C/22/3296784

GPS REFERENCE: 09_313A

STATEMENT OF CASE

ON BEHALF OT THE APPELLANTS

GREEN PLANNING STUDIO LTD

1. In the Proof of Evidence and at the Inquiry the following submissions will be made on behalf of the Appellant.

2. The site will be described.

3. The planning history will be stated.

4. The Development Plan and relevant Supplementary Planning documents will be referred to and discussed.

5. The National Planning Policy Framework will be referred to and discussed.

(A) <u>Appeals against EN1</u>

Nullity

6. Requirement 3 of Enforcement Notice 1 ('**EN1**') is uncertain as it is unclear when according to the LPA the breach of planning control took place and what the condition of the site was at that point in time. What would need to be done to comply with this requirement is therefore unclear to the site owners or to any reasonable person. This makes the notice uncertain, which renders it null. There is body of case law and appeal decisions supporting this. *Kaur v SSE & Greenwich LBC* [1989] EGCS 142; [1990] JPL 814; *Payne v NAW & Caerphilly CBC* [2006] EWHC 597 (Admin); and *Oates v SoCLG and Canterbury* [2017] EWHC 2716, which all draw on the principals in *Miller-Mead v MHL* [1963] 2 WLR 225. On this basis it is submitted that the Enforcement Notice should be found to be a nullity.

7. If EN1 is found not to be a nullity then the Appeals against **EN1** are made on grounds (e), (b), (d), (a), (f) and (g).

<u>Ground (e)</u>

8. The Council are put to proof that EN1 was properly served on all of those individuals with an interest in the land as required by Section 172 TCPA.

9. The Council purport to have served four Enforcement Notices, two of which (EN1 and EN2) cover the majority of the site. EN1 alleges that there are over 100 caravans on site. The Council have not provided a list of the individuals served with the notices. As such there is no evidence that they have complied with their requirements pursuant to Section 172 TCPA.

10. Evidence will also be adduced to demonstrate that the papers were left in envelopes at the entrance to the site. Even if, the Council are able to evidence that EN1 was provided, it will be demonstrated that this is not an effective method of service.

Ground (b)

11. The breach of planning control as alleged in EN1 has not occurred as a matter of fact.

12. The Appellants will demonstrate that there are errors in EN1 which are not capable of amendment and EN1 ought to be quashed.

13. EN1 alleges that there is one large mixed use planning unit. However, in the Council's enforcement report it is stated:

'It is also unclear if the site comprises a single planning unit or a combination of smaller planning units.'

14. The Appellants will demonstrate that the site is not one large planning unit but comprises a series of small planning units. This will be demonstrated with reference to relevant case law including ***Burdle v Secretary of State for the Environment [1972] 3 All ER 240.***

Reference will also be made to the fact that different parts of the site were developed at different times. It will be demonstrated that each yard is owned and used individually.

15. The Appellant will make reference to the fact that in Enforcement Notices 3 and 4 (issued on the same day) the Council have identified two smaller planning units which are individual yards. There is no reason why these yards are any different to the others on site which have not been categorised as separate planning units.

16. Reference will be made to the previous appeals at the site. It will be shown that in 2010 the Council issued six separate enforcement notices covering original plots 1, 2, 3, 7, 8 and 9 (i.e. as separate planning units), and there has never been any suggestion by the Council, the then appellants, or indeed any of the Inspectors determining the appeals against those notices, that that approach was incorrect, merely that there were small errors in the areas covered by two of the notices.

17. The above will be used to show that the breach of planning control as alleged is therefore incorrect.

18. It will be shown that the Enforcement Notice is not capable of remedy. It would not be possible to reduce the red line area to reflect the numerous planning units on site. Any change in the red line area in this way would also prejudice potential Appellants who may not have appealed EN1 in the knowledge that others have already done so.

Ground (d)

19. The Appellants will demonstrate, without prejudice to ground (b) that the material change of use of the site occurred more than 10 years prior to the issue of EN1 and that the time for enforcement pursuant to Section 191(B) Town and Country Planning Act 1990 has passed.

20. The Appellants will demonstrate that the material change of use took place the weeks immediately following the issue of the Appeal Decisions on this site dated 11th December 2011, which were subsequently quashed in the Courts.

21. Reference will be made to and reliance placed upon to aerial imagery, witness statements, evidence submitted and accepted in previous appeals at this site along with the prior appeal decisions.

Ground (a)

22. Without prejudice to grounds (b), (d) and (e), the Appellants contend, that pursuant to Ground (a) planning permission should be granted for the breach of planning control as alleged.

23. The Appellants will demonstrate that the most relevant Local Plan policies are out of date and therefore the weighted balance in paragraph 11 of the NPPF is engaged, and that the development complies National Policy.

24. It will be shown that the site is occupied by a mixture of people and the site provides accommodation for:

- Gypsy and travellers
- Travelling Showpeople
- Households requiring affordable housing.

25. In the alternative, the Appellant will demonstrate that the Council is, , unable to demonstrate:

- A five-year supply of gypsy and traveller pitches
- A five-year supply of travelling showpersons sites

- A five year housing land supply

26. It will be demonstrated that Paragraph 11 and footnote 8 of the NPPF will be engaged as a result of the above.

27. It will also be demonstrated that the Council are unable to demonstrate sufficient affordable housing provision.

28. The Appellants will establish, that any alleged harms, as a result of the development will not significantly and demonstrably outweigh the benefits of the development (material considerations), when assessed against the policies in the NPPF when taken as a whole.

29. Within EN1 the following harms are alleged:

The land is allocated for travelling showpeople in order to meet an identified need and impact on the amenities of the occupiers

30. It will be demonstrated that the occupation of the site by those not fitting the definition of travelling showpeople will not result in a loss of accommodation for those who are travelling showpeople as implied.

31. The site previously allowed space for storage of the equipment of travelling showpeople. It will be demonstrated that the majority of travelling showpeople no longer require storage space for their equipment as this is more commonly, for insurance purposes hired out.

32. The occupation of the site by others will be where that storage would have taken place and will not result in a loss of accommodation for those who are travelling showpeople.

It will be demonstrated that the site is a form of affordable housing; mobile homes are to be considered affordable housing, in comparison with houses and as such this site meets a need for affordable housing in the area. It will be demonstrated that there is a need for

gypsy and traveller pitches in the area, which this site is able to contribute towards. *Impact on the character and appearance of the countryside/SINC*

33. It will be demonstrated that the existence of mobile homes etc is an established characteristic of the area.

34. The Appellants will set down that the development sought is in-keeping with the immediate character of the wider area. If the Inspector considered appropriate a landscaping scheme could be conditioned so as to reduce any harm.

Site density

35. The Council's case is that the site is one large mixed use planning unit. It will be shown that the site has different densities at different points (supporting the Appellant's ground (b) argument).

36. The mixed-use permission was to permit storage of the equipment of travelling showpeople. It will be demonstrated that the majority of travelling showpeople no longer require storage space for their equipment as this is more commonly, for insurance purposes hired out. There is therefore no harm resulting from the density of the site.

Insufficient space for vehicle turning

37. It will be shown that any conflict between pedestrians and vehicles is minimised. The issue of vehicle turning spaces is a matter for site licencing and as such should not prevent the grant of a permission.

Adequate open space for children's play

38. It will be shown that the development is capable of complying with caravan site licensing in this regard and if necessary (it is after all a matter for site licensing) any permission can be conditioned appropriately.

Absence of details of wastewater infrastructure, including a foul drainage assessment and surface water drainage and the safe storage of waste and recycling.

39. It will be shown that the development is capable of complying with the caravan site licensing and if necessary (it is after all a matter for site licensing) any permission can be conditioned appropriately.

Commercial activities are taking place on the land

40. This allegation is not fully set out. Any permission can be conditioned appropriately to restrict commercial use.

Location – away from existing settlements

41. The Council state that the site is away from existing settlements. It is unclear if they are alleging that the site is unsustainable, isolated or both, the Council will need to confirm following which the Appellant will respond.

42. It will be demonstrated that the site is in compliance with Policy H PPTS.

43. The material considerations outlined below will be advanced in favour of the appeal. Those material considerations include but are not limited to are need (national, regional and local), lack of available, suitable, acceptable, affordable alternative sites, lack of a five-year land supply, failure of policy, if necessary, the personal circumstances of the site occupants (personal need, health, education, and the best interests of the child).

Need

44. Taking into consideration the latest available estimations of need for gypsy and traveller sites in the District, GPS Ltd are of the view that the relevant GTAA underestimates the level of need in the District.

45. The need for housing, affordable housing and for travelling showpersons sites will also be demonstrated.

46. These are all material considerations of significant weight.

Lack of suitable, acceptable, affordable sites

47. Alternative sites must be available, acceptable and affordable (Angela Smith v Doncaster MBC). It appears from all of the available information that there are no alternative available sites for the Appellants to move to and there seems little likelihood that there will be in the foreseeable future. The lack of alternative sites is a material consideration of significant weight in favour of the appeal.

Five-year land supply

48. The LPA are unable to demonstrate a five-year land supply of deliverable land for housing, gypsy and traveller sites and travelling showpersons. A lack of a five-year land supply is a matter that should attract considerable weight in favour of a grant of planning permission. The lack of a five-year land supply is a material consideration of significant weight in favour of the appeal.

Failure of policy

49. The Council's failure of policy in relation to the provision of the following will be set down:

• Gypsy and traveller pitches

• Travelling showperson sites

• Housing land supply

• Affordable Housing

50. The LPA do not currently have policies capable of delivering the required level of housing/pitches. The LPA are working towards too low a figure and will inevitably fail to meet the actual level of need in the District.

51. Failure of policy is a material consideration of significant weight in favour of the appeal.

Personal circumstances

52. Personal circumstances only need to be considered if the Inspector determines a departure from policy and/or other harm and then finds that the other material considerations are insufficient to outweigh the identified harm. If necessary, personal circumstances can then be included to outweigh any harm. These will be set down with appropriate weight indicated.

Best Interests of the Children

53. The best interests of the children on the site are of paramount consideration and no consideration should be given greater weight than the best interests of the child when considering whether the material considerations outweigh any harm. In the assessment of proportionality there is an explicit requirement to treat the needs of the children on the site as a primary consideration (UNCRC Article 3, fully set out at para 80-82 of AZ).

Planning balance

54. If it is concluded that the paragraph 11 'weighted balance' does not apply and some conflict with the development plan is identified, the Appellants will demonstrate that, even applying the traditional planning balance, the material considerations relied upon outweigh any harm identified such that a permanent non-personal permission should be granted.

Permanent or temporary consent

55. It is common sense as well as case law Court of Appeal Judgment ***Moore v SSCLG and London Borough of Bromley [2013] EWCA Civ 1194*** that a temporary consent means the harm is reduced. The appropriate time frame for a temporary consent will be considered in the Hearing Statement. Human Rights Article 8 considerations The Appellant will demonstrate that there is a clear obligation upon the Inspector to ensure that any decision made by a state body accord with the obligations under Article 8 ECHR. Incorporated into that obligation are the obligations set out under the United Nations Convention of the Rights of the Child, and in this case specifically Article 3. This obligation was no crystallised upon in the publication of ***AZ v SSCLG and South Gloucestershire District Council [2012] EWHC 3660 (Admin),*** but has existed for a number of years.

Best Interests of the Child

56. The best interests of the children are to enable them a safe environment where they have access to education and healthcare. Where the best interests of the child clearly favour a certain course, in this case a grant of planning permission, that course should be followed unless countervailing reasons of considerable force displace those interests. There are no countervailing reasons of considerable force that have been relied upon to outweigh the need for the children to have a settled permanent base, which will enable amongst other things, access to education and to healthcare when needed. It is submitted that the welfare and wellbeing of the child can only be safeguarded by the grant of a permanent planning permission, or in the alternative a temporary permission for a period that should give certainty of alternative suitable and lawful accommodation being secured by the LPA through the plan process.

57. The Appellant's will therefore demonstrate that planning permission should be granted for the breach of planning control as alleged.

Ground (f)

58. Without prejudice to the aforementioned grounds, it will be shown that some of the requirements of EN1 are excessive.

59. Requirement 3 requires the restoration of "*the land to its condition before the breach of planning control took place."*

60. It will be shown that different parts of the site were developed at different times, supporting the ground (b) claim above that different planning units exist. Notwithstanding, as the Council contend that there is one large planning unit, the breach can only have occurred at one point in time. The Council will therefore need to set down when the breach occurred and at what point in time the restoration needs to be dated back to. This would have different effects for different parts of the site. Requirement 3 would then need amendment.

Ground (g)

61. The time for compliance is 6 months.

62. The Appellants will demonstrate that a compliance period of at least 2 years is required.

63. This will be demonstrated with reference to the lack of a five-year supply of gypsy and traveller pitches and travelling showpeople pitches, along with the lack of affordable housing, the lack of alternative available other sites and the LPA's failure of policy, to enable the occupiers living on the site to find alternative accommodation.

(B) Appeals against EN2

64. The Appeals against Enforcement Notice 2 (**'EN2'**) are made on grounds (e), (b), (c) (d), (a), (f) and (g).

Ground (e)

65. The Council are put to proof that EN2 was properly served on all of those individuals with an interest in the land as required by Section 172 TCPA.

66. EN1 alleges that there are over 100 caravans on site. EN2 covers a larger area and will inevitably include more caravans than the area for EN1.

67. The Council have not provided a list of the individuals served with the notices. As such there is no evidence that they have complied with their requirements pursuant to Section 172 TCPA.

68. It will be shown that there is no evidence that EN2 was in fact served.

- The Appellant's in instructing GPS made reference to one enforcement notice suggesting that not all notices were served.

- The Appellants subsequently provided GPS with the papers received; copies of EN1, EN3 and EN4 were provided. No copies of EN2 were provided.

- The letters provided by the Appellants are all generic with no personal details. They do not reflect the cover letter provided by the LPA to PINS by way of email dated 26th April 2022. That cover letter makes reference to the issue of 4 enforcement notices and refers throughout to enforcement notices in the plural. However, in the copies of the letters provided by the Appellant's there is only reference to 1 notice. We will produce copies of the letters received by the Appellant's to evidence this. It is therefore unclear whether the covering letter provided to PINS was an accurate reflection of the covering letter used or whether it was amended post service to make reference to all 4 notices.

69. It will be shown, with reference to the above, that there is no evidence that EN2 was in fact served.

70. Evidence will also be adduced to demonstrate that the papers were left in envelopes at the entrance to the site. Even if, the Council are able to evidence that EN2 was provided, it will be demonstrated that this is not an effective method of service.

Ground (b)

71. The breach of planning control as alleged in EN2 has not occurred as a matter of fact.

72. The Appellants will demonstrate that there are errors in EN2 which are not capable of amendment and EN2 ought to be quashed.

73. EN2 alleges that there is one large mixed use planning unit. However, in the Council's enforcement report it is stated:

'It is also unclear if the site comprises a single planning unit or a combination of smaller planning units.'

74. The Appellants will demonstrate that the site is not one large planning unit but comprises a series of small planning units. This will be demonstrated with reference to relevant case law including ***Burdle v Secretary of State for the Environment [1972] 3 All ER 240.*** Reference will also be made to the fact that different parts of the site were developed at different times. It will be demonstrated that each yard is owned and used individually.

75. The Appellant will make reference to the fact that in Enforcement Notices 3 and 4 (issued on the same day) the Council have identified two smaller planning units which are individual yards. There is no reason why these yards are any different to the others on site which have not been categorised as separate planning units.

76. Reference will be made to the previous appeals at the site. It will be shown that in 2010 the Council issued six separate enforcement notices covering original plots 1, 2, 3, 7, 8 and 9 (i.e. as separate planning units), and there has never been any suggestion by the Council, the then appellants, or indeed any of the Inspectors determining the appeals

against those notices, that that approach was incorrect, merely that there were small errors in the areas covered by two of the notices.

77. The above will be used to show that the breach of planning control as alleged is therefore incorrect.

78. It will be shown that the Enforcement Notice is not capable of remedy. It would not be possible to reduce the red line area to reflect the numerous planning units on site. Any change in the red line area in this way would also prejudice potential Appellants who may not have appealed EN2 in the knowledge that others have already done so.

79. Additionally, the plan attached to EN2 does not, along the western boundary of the redline area, match the western boundary of the planning permission, and in particular it appears that there is land outside the planning permission included within the plan attached to EN2. An enforcement notice alleging breach of conditions can only cover land within the original planning permission to which the conditions attach. This does appear to be a drafting error by the LPA and it is accepted that the Inspector in this instance has the power to vary the notice by attaching an amended plan.

Ground (c)

80. Without prejudice to grounds b), d) and e), it will be demonstrated that there has not been a breach of planning control.

81. EN2 attacks the subdivision of the site. It will be shown that permitted development rights have not been removed, the construction of fences/walls is permitted.

Ground (d)

82. The Appellants will demonstrate, without prejudice to grounds (b) and (c) that the time for enforcement pursuant to Section 191(B) Town and Country Planning Act 1990 has passed.

83. It will be demonstrated, with reference to relevant case law that the correct period within which the Council ought to have taken was within 4 years of the breach of condition.

84. Case law has established that the appropriate time period for enforcement, even where the use of a dwelling house amounts to a breach of condition, is 4 years due to the provisions at Section 171(B)(1) and (2) taking precedence i.e., the breach of condition does not take precedence when determining the appropriate enforcement period, any enforcement is to be governed by the operational development timescales

85. Applying this logic, the subdivision of the site amounts to operational development for which the enforcement must take place within 4 years.

86. In the alternative, the Appellants will demonstrate that there is evidence of breaches of conditions in excess of 10 years prior the issue of EN2 and as such the time for enforcement action has passed.

87. It will be shown that some subdivision occurred prior to the issue of the Council's enforcement notice dated 6th September 2010 (which alleged some subdivision of the site), it will be demonstrated that further subdivision occurred following the issue of that notice, prior to the issue of the Appeal Decisions on this site dated 11th December 2011, which were subsequently quashed in the Courts and immediately after those decisions.

88. In pursuing the ground (d) appeals, reference will be made to and reliance placed upon to aerial imagery, witness statements, evidence submitted and accepted in previous appeals at this site along with the prior appeal decisions

Ground (a)

89. Without prejudice to grounds (b), (c), (d) and (e), the Appellants contend, that pursuant to Ground (a) planning permission should be granted for the breach of planning control as alleged.

90. It will be demonstrated that as drafted condition 15 in applying a total population limit across a number of individually owned plots is on its face not necessary; is not relevant to planning; is not relevant to the development to be permitted; is not enforceable; and is not reasonable in all other respects.

91. For example, if each of the 9 original plots had the permitted 3 mobile homes and each was occupied by only 2 people, the condition would be breached.

92. Condition 4 needs to be removed as it clearly fails the relevant tests for conditions.

93. Planning permission is sought for conditions 10 and 11 to be removed or varied.

94. The Appellants will demonstrate that the most relevant Local Plan policies are out of date and therefore the weighted balance in paragraph 11 of the NPPF is engaged, and that the development complies with National Policy.

95. It will be shown that the site is occupied by a mixture of people and the site provides accommodation for:

- Gypsy and travellers
- Travelling Showpeople
- Households requiring affordable housing.

96. In the alternative, the Appellant will demonstrate that the Council is, and was at the time of the Enforcement Notice was, unable to demonstrate:

- A five-year supply of gypsy and traveller pitches

- A five-year supply of travelling showpersons sites
- A five year housing land supply

97. It will be demonstrated that Paragraph 11 and footnote 8 of the NPPF will be engaged as a result of the above.

98. It will also be demonstrated that the Council are unable to demonstrate sufficient affordable housing provision.

99. The Appellants will establish, that any alleged harms, as a result of the development will not significantly and demonstrably outweigh the benefits of the development (material considerations), when assessed against the policies in the NPPF when taken as a whole.

100. Within EN1 the following harms are alleged:

The land is allocated for travelling showpeople in order to meet an identified need and impact on the amenities of the occupiers

101. It will be demonstrated that the occupation of the site by those not fitting the definition of travelling showpeople will not result in a loss of accommodation for those who are travelling showpeople as implied.

102. The site previously allowed space for storage of the equipment of travelling showpeople. It will be demonstrated that the majority of travelling showpeople no longer require storage space for their equipment as this is more commonly, for insurance purposes hired out.

103. The occupation of the site by others will be where that storage would have taken place and will not result in a loss of accommodation for those who are travelling showpeople.

It will be demonstrated that the site is a form of affordable housing; mobile homes are to be considered affordable housing, in comparison with houses and as such this site meets a need for affordable housing in the area. It will be demonstrated that there is a need for

gypsy and traveller pitches in the area, which this site is able to contribute towards. *Impact on the character and appearance of the countryside/SINC*

104. It will be demonstrated that the existence of mobile homes etc is an established characteristic of the area.

105. The Appellants will set down that the development sought is in-keeping with the immediate character of the wider area. If the Inspector considered appropriate a landscaping scheme could be conditioned so as to reduce any harm.

Site density

106. The Council's case is that the site is one large mixed use planning unit. It will be shown that the site has different densities at different points (supporting the Appellant's ground (b) argument).

107. The mixed-use permission was to permit storage of the equipment of travelling showpeople. It will be demonstrated that the majority of travelling showpeople no longer require storage space for their equipment as this is more commonly, for insurance purposes hired out. There is therefore no harm resulting from the density of the site.

Insufficient space for vehicle turning

108. It will be shown that any conflict between pedestrians and vehicles is minimised. The issue of vehicle turning spaces is a matter for site licencing and as such should not prevent the grant of a permission.

Adequate open space for children's play

109. It will be shown that the development is capable of complying with caravan site licensing in this regard and if necessary (it is after all a matter for site licensing) any permission can be conditioned appropriately.

Absence of details of wastewater infrastructure, including a foul drainage assessment and surface water drainage and the safe storage of waste and recycling.

110. It will be shown that the development is capable of complying with the caravan site licensing and if necessary (it is after all a matter for site licensing) any permission can be conditioned appropriately.

Commercial activities are taking place on the land

111. This allegation is not fully set out. Any permission can be conditioned appropriately to restrict commercial use.

Location – away from existing settlements

112. The Council state that the site is away from existing settlements. It is unclear if they are alleging that the site is unsustainable, isolated or both, the Council will need to confirm following which the Appellant will respond.

113. It will be demonstrated that the site is in compliance with Policy H PPTS.

114. The material considerations outlined below will be advanced in favour of the appeal. Those material considerations include but are not limited to are need (national, regional and local), lack of available, suitable, acceptable, affordable alternative sites, lack of a five-year land supply, failure of policy, if necessary, the personal circumstances of the site occupants (personal need, health, education, and the best interests of the child).

Need

115. Taking into consideration the latest available estimations of need for gypsy and traveller sites in the District, GPS Ltd are of the view that the relevant GTAA underestimates the level of need in the District.

116. The need for housing, affordable housing and for travelling showpersons sites will also be demonstrated.

117. These are all material considerations of significant weight.

Lack of suitable, acceptable, affordable sites

118. Alternative sites must be available, acceptable and affordable (Angela Smith v Doncaster MBC). It appears from all of the available information that there are no alternative available sites for the Appellants to move to and there seems little likelihood that there will be in the foreseeable future. The lack of alternative sites is a material consideration of significant weight in favour of the appeal.

Five-year land supply

119. The LPA are unable to demonstrate a five-year land supply of deliverable land for housing, gypsy and traveller sites and travelling showpersons. A lack of a five-year land supply is a matter that should attract considerable weight in favour of a grant of planning permission. The lack of a five-year land supply is a material consideration of significant weight in favour of the appeal.

Failure of policy

120. The Council's failure of policy in relation to the provision of the following will be set down:

- Gypsy and traveller pitches
- Travelling showperson sites
- Housing land supply
- Affordable Housing

121. The LPA do not currently have policies capable of delivering the required level of housing/pitches. The LPA are working towards too low a figure and will inevitably fail to meet the actual level of need in the District.

122. Failure of policy is a material consideration of significant weight in favour of the appeal.

Personal circumstances

123. Personal circumstances only need to be considered if the Inspector determines a departure from policy and/or other harm and then finds that the other material considerations are insufficient to outweigh the identified harm. If necessary, personal circumstances can then be included to outweigh any harm. These will be set down with appropriate weight indicated.

Best Interests of the Children

124. The best interests of the children on the site are of paramount consideration and no consideration should be given greater weight than the best interests of the child when considering whether the material considerations outweigh any harm. In the assessment of proportionality there is an explicit requirement to treat the needs of the children on the site as a primary consideration (UNCRC Article 3, fully set out at para 80-82 of AZ).

Planning balance

125. If it is concluded that the paragraph 11 'weighted balance' does not apply and some conflict with the development plan is identified, the Appellants will demonstrate that, even applying the traditional planning balance, the material considerations relied upon outweigh any harm identified such that a permanent non-personal permission should be granted.

Permanent or temporary consent

126. It is common sense as well as case law Court of Appeal Judgment ***Moore v SSCLG and London Borough of Bromley [2013] EWCA Civ 1194*** that a temporary consent means the harm is reduced. The appropriate time frame for a temporary consent will be considered in the Hearing Statement. Human Rights Article 8 considerations The Appellant will demonstrate that there is a clear obligation upon the Inspector to ensure that any decision made by a state body accord with the obligations under Article 8 ECHR. Incorporated into that obligation are the obligations set out under the United Nations Convention of the Rights of the Child, and in this case specifically Article 3. This obligation was no crystallised upon in the publication of ***AZ v SSCLG and South Gloucestershire District Council [2012] EWHC 3660 (Admin),*** but has existed for a number of years.

Best Interests of the Child

127. The best interests of the children are to enable them a safe environment where they have access to education and healthcare. Where the best interests of the child clearly favour a certain course, in this case a grant of planning permission, that course should be followed unless countervailing reasons of considerable force displace those interests. There are no countervailing reasons of considerable force that have been relied upon to outweigh the need for the children to have a settled permanent base, which will enable amongst other things, access to education and to healthcare when needed. It is submitted that the welfare and wellbeing of the child can only be safeguarded by the grant of a permanent planning permission, or in the alternative a temporary permission for a period that should give certainty of alternative suitable and lawful accommodation being secured by the LPA through the plan process.

128. The Appellant's will therefore demonstrate that planning permission should be granted for the breach of planning control as alleged.

Ground (f)

129. Without prejudice to the aforementioned grounds, it will be shown that one of the requirements of EN2 is excessive.

130. Requirement 3 requires the restoration of the *"layout of the Land to comprise no more than 9 family pitches as shown on the attached plan 02-44-01 of December 2002 (condition 11)."* This fails to acknowledge that some of the works of division are clearly lawful through the passage of time.

131. Requirement 3 of EN2 and requires amendment.

Ground (g)

132. The time for compliance is 6 months.

133. The Appellants will demonstrate that a compliance period of at least 2 years is required.

134. This will be demonstrated with reference to the lack of a five-year supply of gypsy and traveller pitches and travelling showpeople pitches, along with the lack of affordable housing, the lack of alternative available other sites and the LPA's failure of policy, to enable the occupiers living on the site to find alternative accommodation.

Documents

135. Documents that may be referred to include:

i. The Enforcement Notices, the attached plans and the Enforcement Report.

ii. GPS grounds of appeal.

iii. The Planning History of the site including previous appeal decisions

iv. Relevant extracts of the Development Plan.

v. Any relevant Local Development Schemes

vi. Any relevant Gypsy and Traveller Accommodation Assessment

vii. Any relevant assessment of five-year housing land supply

viii. Any relevant correspondence between the LPA, GPS and PINS.

ix. Evidence pertaining to the history and use of the land.

x. Affidavits and witness statements.

xi. Witness statements and written evidence from third parties if appropriate.

xii. Aerial photography

xiii. Relevant case law.

xiv. Any other documents that may need to be referred to in response to the LPA's evidence.

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