WS PLANNING & ARCHITECTURE
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APPEALS BY OWNERS AND OCCUPIERS OF CAROUSEL PARK

PROOF OF EVIDENCE OF BRIAN WOODS BA(TP) MRTPI

regarding three Enforcement Notices served by Winchester City Council

at Carousel Park, Basingstoke Road, Micheldever, Winchester

August 2023

Our Ref:	J004151
LPA Ref:	None
PINS Ref:	APP/L1765/C/22/3296767

WS Planning & Architecture
enquiries@wspa.co.uk | wspa.co.uk

Reg Office: 5 Pool House, Bancroft Road, Reigate Surrey, RH2 7RP
Company No. GB3763487 | WS Planning & Architecture is a trading name of Woods, Sanders & Co Ltd
Managing Director: Mr B Woods BA TP MRTPI
Planning Director: Mr S Copping BA (Hons) DipTP MRTPI
Architectural Director: Mr L Barker BA (Hons) BArch (Hons) RIBA

Surrey Office
5 Pool House
Bancroft Road
Reigate
Surrey RH2 7RP
+44 (0)1737 225 711

London Office
No. 1 Croydon
11th Floor
12-16 Addiscombe Rd
Croydon CR0 0XT
+44 (0)20 3828 1180

Kent Office
Brouard Architects
83 High Street
Farnborough Village
Kent BR6 7BB
+44 (0)1689 857 253

Foreword:

As the parties will be aware, WS Planning & Architecture have been instructed by all current appellants to progress their appeals through to the decision of the Inspector.

All appeals are progressed under the single WS Reference J004151.

The below list comprises the appeals that we are instructed to act on, and the appellants within those appeals,

- Appeal lodged under 3296503 & 3296504:
  - Patrick Stokes – Plot 5
  - Bernie Stokes – Plot 4
- Appeals lodged under 3296767 & 3296768:
  - Freddie Loveridge – Plot 1A
  - Christy Stokes – Plot 1
- Appeals lodged under 3296771 & 3296772:
  - Tommy Stokes – Plot 2A
  - Robert Stokes – Plot 2B
  - Anthony O'Donnell – Plot 2C
- Appeals lodged under 3296773 & 3296774:
  - Patrick Flynn – Plot 3A
  - George Doran – Plot 3B
- Appeals lodged under 3296776 & 3296777:
  - Hughie Stokes – Plot 6A
  - Patrick Stokes – Plot 6B
- Appeals lodged under 3296778 & 3296779:
  - Danny Carter – Plot 8
  - Danny Carter Snr – Plot 8A
  - Mary Stokes – Plot 8B
- Appeals lodged under 3296781 & 3296782:
  - Patrick Crumlish – Plot 9A
  - Oliver Crumlish – Plot 9B
- Appeals lodged under 3296783 & 3296784:
  - Christina Hegerty – Plot 9

A total of 4 Enforcement Notice were served by the LPA. Two of the Notices encompassed the entirety of the site, and comprise the appeals submitted by Green Planning Studios. The third Notice effects Plot 4, and is extant. The fourth Notice covers solely the areas of former Plot 4 and Plot 5 that have merged to become "Plot 5" on the site, and are owned by Patrick and Bernie Stokes.

It is noted that the quashing of either one, or all, of the Notices will have a knock-on effect to certain considerations, as will the granting of planning permission. This will be considered within my proof.

CONTENTS

1.0 PERSONAL

1.1 I am Brian Woods. I hold a Bachelor of Arts Degree in Town Planning that I obtained at South Bank University in London. I am also a Member of the Royal Town Planning Institute and have an ONC in Surveying, Cartography and Planning.

1.2 I have over 47 years' experience in planning, employed by various local authorities in Surrey, West Sussex and Hampshire, culminating as Head of Development Control at Runnymede Borough Council until 1989. I was subsequently employed as the Planning Manager at Commercial Property Developers, Crest Nicholson Properties, then as an Associate of Planning Consultants, Bryan Jezeph and Partners. I established WS Planning (now trading as WS Planning & Architecture) in 1992, of which I am now the Managing Director.

1.3 We act on all sides of planning disputes: for developers, landowners, local planning authorities and local residents.

1.4 I have appeared as an expert planning witness at Inquiries and hearings on behalf of local authorities, companies, residents' associations and land owners covering proposals as diverse as B1(a) office developments, industrial developments, housing proposals, A1, A3 and A5 uses, proposals relating to Conservation Areas, developments relating to farms and the use of land and buildings in the countryside and Green Belt.

1.5 I have presented papers at seminars relating to Gypsy site provision and handled many appeals relating to Gypsy/Traveller sites. We have carried out studies for Local Planning Authorities relating to both Gypsy/Traveller site provision and showman sites and attended Examinations in Public relating to Gypsy/Traveller matters and presented expert evidence in the High Court.

1.6 I can confirm that this evidence which I have prepared and provide for this appeal in this hearing statement is true and has been prepared and is given in accordance with the RTPI Code of Professional Conduct 2023 and I confirm that the opinions expressed are my true and professional opinions.

2.0 INTRODUCTION

2.1 WS Planning & Architecture have been instructed by the appellant group, those listed on Page 1 of my proof, to prepare a Planning Proof of Evidence in regards to appeals made against the service of three enforcement notices by Winchester City Council ("the LPA") on land at *Carousel Park Basingstoke Road, Micheldever, Winchester, Hampshire SO21 3BW*.

2.2 In the interests of simplicity, I will adopt the naming and numbering conventions adopted by the LPA. I will also refer to the appeals made against each Notice such that they correspond to the served Notice.

2.3 As a starting point, each appeal, against each Notice made, must be considered on its own grounds and merits. It is not open to either party to seek to decouple or join up issues. My proof is prepared on this basis, tackling each Notice, and the appeals made, accordingly.

Enforcement Notice 1

2.4 Enforcement Notice 1 (hereafter referred to as "Notice 1") alleges that,

> *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 ("the Unauthorised Use")*

2.5 Notice 1 encompasses all of the Carousel Park site, excluding parts of former Plot 7 and Plot 3. Notice 1 Requires that, **within 6 months** those affected by the Notice,

1. *Cease the use of the Land as a residential caravan site;*
2. *Remove all caravans, park homes, mobile homes, hardstanding, hard surfacing, fencing, walls, gates, services, storage containers, sheds, portaloos, animal enclosures, vehicles, machinery, trailers, waste, construction, materials, buildings, structures, lighting, and any other items associated with the Unauthorised Use of the Land;*
3. *Restore the Land to its condition before the original breach of planning control took place*

2.6 Appeal 1 is progressed on Grounds (a), (b), (d), (e), (f), (g).

Enforcement Notice 2

2.7 Enforcement Notice 2 (hereafter referred to as "Notice 2") is a Breach of Conditions Enforcement Notice, and alleges that,

> *Without planning permission, the breach of conditions 10, 11, and 15 of planning permission 02/01022/FUL of 2 October 2003 being:*
>
> *10. There shall be a maximum of three caravans or mobile homes occupied for residential purposes on each pitch. Any additional touring caravans used by the travelling showpeople may be stored within the defined storage areas but may not be occupied for residential purposes at any time.*
>
> *11. There shall be no more than 9 family pitches on the site and the pitches may not be sub-divided at any time.*
>
> *15. No more than 50 people shall occupy the site at any time.*

2.8 Notice 2 encompasses all of the Carousel Park site. Notice 2 Requires that, **within 6 months** those affected by the Notice,

> *1. Cease the use of the Land for siting more than three caravans or mobile homes per pitch occupied for residential purposes (condition 10);*
>
> *2. Cease the use of the Land for occupation by more than 50 people (condition 15);*
>
> *3. Restore 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).*

2.9 Appeal 2 is progressed on Grounds (a), (b), (c), (d), (e), (f), (g).

2.10 Whilst I note that this is not a matter raised originally by the appellants, Compliance with Notice 2 will, in the event that the Notice is upheld, have the effect of granting a deemed unconditional planning permission for a 9 Plot site hosting 27 caravans

occupiable by 50 persons of any ethnic origin, having regard to s173 (11) of the Act and the requirement to restore the sites layout to that of the Plan 02-44-01. I am not sure if this is the intention of the LPA in this instance, and notwithstanding the matters already raised prior to the preparation of Proofs, the LPA may wish to reconsider their position on Notice 2, as it does in my view have the effect of rendering Notice 1 a nullity, as the requirements, at least in part, would benefit from a Deemed Unconditional Permission.

Enforcement Notice 3

2.11 Enforcement Notice 3 (hereafter referred to as "Notice 3") alleges that,

> *Without planning permission, the material change of use of the Land to a residential caravan site for 10 caravans ("the Unauthorised Use")*

2.12 Notice 2 excludes all of the Carousel Park site, and only covers a part of former Plot 4. Notice 3 Requires that, **within 6 months** those affected by the Notice,

1. *Cease the use of the Land as a residential caravan site;*
2. *Remove all caravans, mobile homes, park homes, hardstanding / hard surfacing, fencing, services, storage containers, sheds, porta-loos, animal enclosures, vehicles, machinery, trailers, waste, construction materials, buildings, structures, and any other items associated with the Unauthorised Use from the Land;*
3. *Restore the Land to its condition before the breach of planning control took place.*

2.13 No appeal was made against this Notice, and it is therefore treated as extant.

Enforcement Notice 4

2.14 Enforcement Notice 4 (hereafter referred to as "Notice 4") alleges that,

> *Without planning permission, the material change of use of the Land to a residential caravan site for 10 caravans ("the Unauthorised Use")*

2.15 Notice 4 excludes all of the Carousel Park site, and only covers parts of former Plot 4 and Plot 5, now known as "Plot 5". Notice 4 Requires that, **within 6 months** those affected by the Notice,

1. *Cease the use of the Land as a residential caravan site;*
2. *Remove all caravans, mobile homes, park homes, hardstanding / hard surfacing, fencing, services, storage containers, sheds, porta-loos, animal enclosures, vehicles, machinery, trailers, waste, construction materials, buildings, structures, and any other items associated with the Unauthorised Use from the Land;*
3. *Restore the Land to its condition before the breach of planning control took place.*

2.16 Appeal 4 is progressed on Grounds (a), (c), (f), (g).

3.0 APPEAL SITE & SURROUNDING AREA

3.1 The Carousel Park site lies outside of any defined settlement boundary, and within the Countryside area of Winchester City Council. It is situated some 2km north of East Stratton, and approximately 4km from Micheldever, as the crow flies.

3.2 To the west the site is bounded by Woodland, and the designated Blackwood SINC.

3.3 The site has, since at least 2005 based on aerial imagery, been a developed site, as depicted below in **Figure 1**.

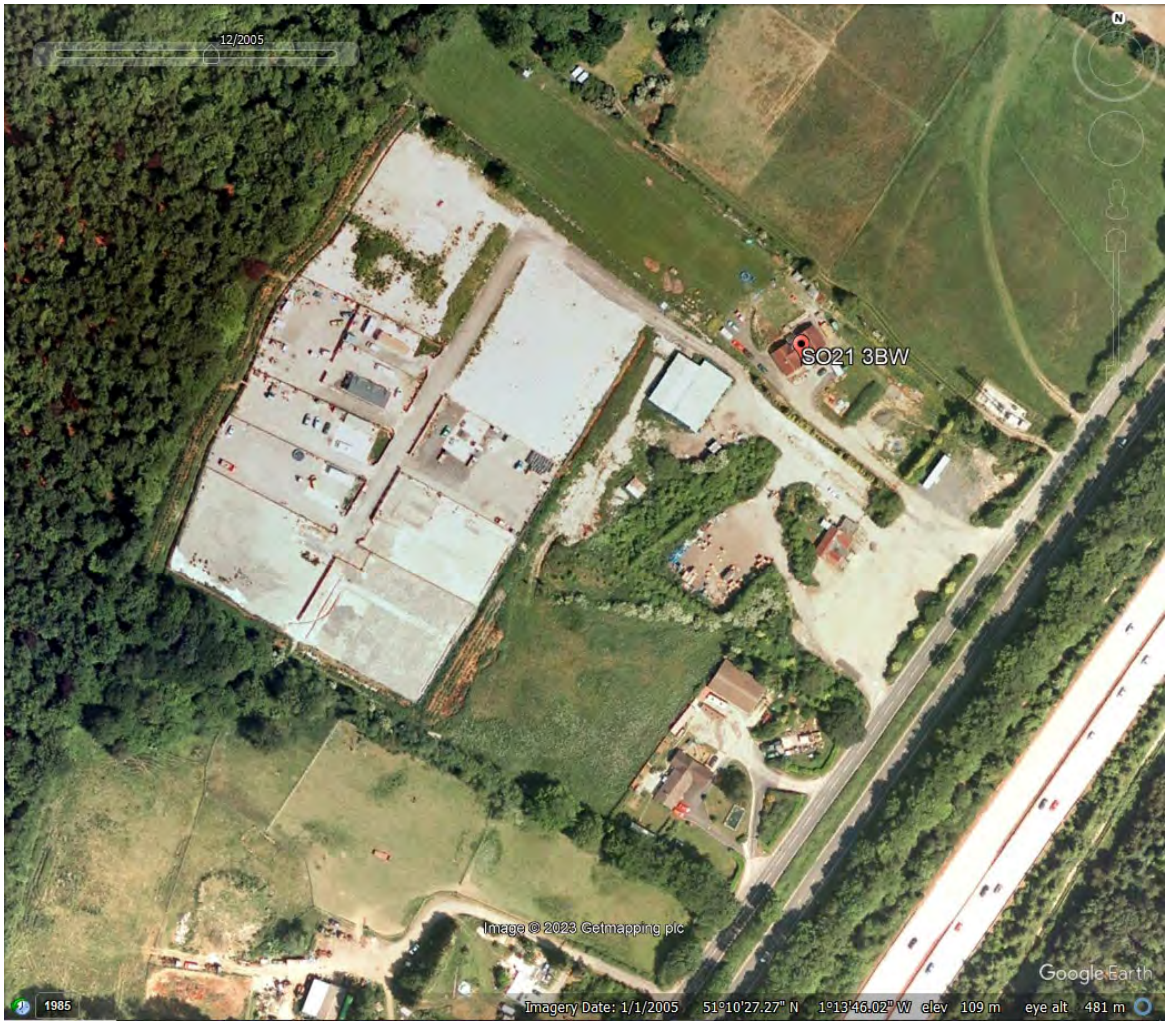

Figure 1 *Aerial image of appeal site dated 2005*

3.4 Situated to the South and east is limited development, interspersed by agricultural fields.

3.5 The site itself is accessed from the A33, via to existing accessways. Due to road arrangements, vehicle movements are only permitted to turn left from the development, heading towards Basingstoke. The A33 runs roughly parallel with the M3, and so the site is considered to have suitably good access to the strategic road network.

3.6 The entirety of the site measures some 2.7ha, including landscaping and access roads. It currently accommodates 25 separate “yards”. At the time of my last site visit, there were some 50+ static caravans, and a large number of touring caravans on the site.

3.7 During my visit, I noted a number of children on site, playing within the space of each yard, and so on an initial point in response to the LPA, I do not agree that there is no space for children’s play on site. Indeed, I consider a decision regarding 21 Plots near Brackley is relevant, and will refer to this later.

4.0 PLANNING HISTORY OF APPEAL SITES

4.1 The planning history of the appeal site is important to consider, as this establishes the baseline condition of the site, and aids in identifying whether a "fallback position" exists.

94/00616/OLD	Application Withdrawn
Use of land for storage of wooden pallets	
95/00571/OLD	Application Permitted
(Amended Description). Change of use of land for storage and distribution of wooden pallets, the implementation of a landscaping scheme, the erection of a pergola and the erection of a new store	
02/01022/FUL	Application Permitted
Change of use of agricultural land to travelling showpeoples' site	
05/01605/FUL	Application Permitted
Erection of fences (RETROSPECTIVE)	
06/00401/FUL	Application Refused
Amenity building ancillary to touring caravan	
06/00441/FUL	Application Permitted
Construct a garage workshop for the servicing and repair of travelling showman vehicles and equipment	
10/02598/FUL	Non-Det Appeal – No Further Action Taken
Use of land as travelling showmans site with the use of 4 no. buildings; 2 no. dayrooms and 2 no. stable and store buildings (RETROSPECTIVE)	

4.2 From the above, it is clear that the some of the site benefits from fencing being erected, under 05/01605/FUL. I attach a copy of the approved plans, and the decision notice for reference at **Appendix 1**. I do consider that the allegations within Notice 1 and 2 do no affect former plots 2 and 3 insofar as the fencing and alleged subdivision is concerned, as this is considered to benefit from planning permission granted in 2005.

4.3 By virtue of the service of Notice 2, alleging a Breach of Conditions of planning permission granted under 02/01022/FUL, it is evident to be common ground between the parties that this permission is extant. The implications of this permission being that the Land referred to within Notice 2 is a travelling showmen's site, and that this is the state of the site prior to the "breach" taking place. Whilst I note the comments of the 2019 Inspector, the authorised use of the land as a showmens' site is in part a residential caravan site, and as a consequence, the requirements of Notice 1 could also purport to interfere with any other lawful use of the land, or uses not enforced against.

4.4 In any event, as set out, the fact that it is common ground between the parties that permission 02/01022/FUL was implemented, and is extant, means the land is Previously Developed Land for the purposes of the NPPF, and as I will set out, I consider that there is a significant baseline for consideration of the Ground (a) appeals, on the terms of the conditions attached to 02/01022/FUL. For completeness, I attach a copy of the decision at **Appendix 2**.

4.5 In addition to the planning history of the site, there is also an extensive history of enforcement action. Notably, as referenced by the LPA in their Statement of Case, the redetermined appeals regarding enforcement notices served on 06 September 2010. For reference, I attach a copy of the redetermined appeal decision. I do not consider any reliance can be placed on this appeal decision, as to nullifying the now alleged breach of planning control, or to suggest it did not begin to occur when stated to. The Inspector is quite clear in that all of his considerations were as to whether the Notice's allegations were correct at the time of service of the Notices, i.e. on or before 06 September 2010.

5.0 NOTICE 1 & 2 - CASE FOR THE APPELLANTS UNDER GROUND (E)

5.1 The case for the appellants in respect of Notice 1 and Notice 2, progressed under Ground (e) is quite simple. The appellant asserts that the LPA have not undertaken proper service of Notice 1 and Notice 2, and that in doing so, substantial prejudice has been caused.

5.2 As is indicated within the foreword of this proof, I have been instructed by a number of persons to represent them within these appeals. I also note that the appellants former agent, Green Planning Studios Ltd, indicated on their front page of the Statement of Case, the Plots that they were acting on behalf of. These parties are repeated within the foreword, however, a number of persons on the site were not aware of the Notices having been served, and thus have been unable to progress an appeal against its service themselves. They are wholly dependent on these two Notices being quashed in order to retain their accommodation, as there are significant consequences for them if the Notice is upheld, even in part.

5.3 I am of the view that, under the powers granted to the Inspector, they will not be capable of quashing the notice in its entirety should the Ground (a) appeals, and the deemed applications, fall to be considered, and granted. This would lead to persons who were not served the Notice, and thus unable to retrospectively progress their own Ground (a) appeals, being prejudiced, as other parties on the site may be granted planning permission for the land under their control.

5.4 At face value, I consider this is sufficiently evidenced by the absence of any appeals made by Plots 3 (*note not 3A or 3B as appeals were made)*, 4, 5A, 5B, 5C, and 7. Indeed, Notice 3 is extant, and thus already has had a severe consequence on the owners of former Plot 4.

5.5 Occupants of the site intend to provide oral evidence under oath to confirm that the Notices were not served on them, and in this regard occupiers of Plots 5A, 5B, and 5C will be called upon to affirm that they as has been set out, were not properly served copies of the Notices.

5.6 Of all those involved with the site, I am aware of their desire to seek planning permission, but now being barred from doing so, and this appears to be the direct

result of a failure to properly serve the Notice. As such, they are reliant on the appellants other grounds of appeal succeeding, or the Notice being withdrawn.

5.7 It is disappointing that the LPA seek to push responsibility on the evidence for these appeals back to the appellants, and indeed all those occupying the site to avoid admitting to the fact that it is them who failed in their duties under S174(2)(e). As will be evidenced at the Inquiry with the oral evidence of Plots 5A, 5B, and 5C this has resulted in direct prejudice to these occupants, notwithstanding what can be adduced from the fact that Notice 3 was not appealed.

6.0 NOTICE 1 - CASE FOR THE APPELLANTS UNDER GROUND (B)

6.1 The key issue with Notice 1 and the alleged breach is that it asserts the entirety of the site to be a single planning unit. As is quite clear from the plan attached to the notice, each of the plots on the site are physically separated.

6.2 It is also apparent that the varying subdivision and intensification of the site has occurred at different stages in time. In this regard I attach a series of aerial images at **Appendix 3**.

6.3 I also refer to the previous appeals on the site. Six separate Notices were issued, which identified 6 separate planning units. Those appeals progressed accordingly, and there was no suggestion it was an incorrect approach.

6.4 I would also reference the fact that Notices 3 and 4 were served, and comprise smaller parcels of land, presumably considered to be separate planning units.

6.5 I note the LPA's comments in the SOC, in that they consider the appropriate planning unit against which to measure whether there has been a material change in use is the entirety of the appeal site. This particular comment is somewhat at odds with what they have actually done, which is to exclude Plot 7 and part of the former Plot 3.

6.6 If the LPA's position is correct, then the test is to determine whether a material change of use has actually occurred across the land. The Notice alleges the material change of use of land to a residential caravan site, however, as is evidenced by the Planning History of the site, and indeed by Notice 2, the site is, lawfully, a residential caravan site. It is well established law that the "*mere intensification*" of use by way of an increase in say containers or lorry bodies or farm machinery or building materials does not by itself amount to a Material Change of Use.

6.7 In this respect, reliance is placed on the recent case of *Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal Waste Recycling Limited, 2012] EWHC 277 (Admin))*. That case involved a scrapyard which more than doubled its throughput. The County Council served

enforcement notices alleging a material change of use by way of intensification had occurred. On appeal to the Secretary of State the County Council were found to be wrong and the appeals against the enforcement notices upheld.

6.8 The County Council appealed that decision, and that appeal was dismissed by Ouseley J in February 2012. *Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal Waste Recycling Limited [2012] EWHC 277 (Admin))* ("MWRL**")** The judgement of Ouseley J was appealed by Hertfordshire County Council and the Court of Appeal dismissed the appeal by way of a judgement dated 15th November 2012. *(Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal Waste Recycling Limited [2012] EWCA Civ 1473).*

6.9 In "MWRL", Ouseley J found that "*more of the same*" cannot in itself amount to a material change of use, even if it results in a major environmental impact. There has to be a change in the character of use itself, in other words a material change in the definable character of the land.

6.10 In *Lilo Blum v Secretary of State and Anr [1987] JPL 278*, Simon Brown J stated, at page 280, that,

> *"It was well recognised law that the issue whether or not there had been a material change in use fell to be considered by reference to the character of the use of the land. It was equally well recognised that intensification was capable of being of such a nature and degree as itself to affect the definable character of the land and its use and thus give rise to a material change of use.* ***Mere intensification, if it fell short of changing the character of the use, would not constitute material change of use.****"*

6.11 Further, the issue of intensification is addressed in the Encyclopaedia of Planning Law and Practice (Sweet & Maxwell) at P55.53 which states;

> *"....There may be a material change in use where an existing use has become intensified.....but mere intensification of a use does not in itself constitute a material change....it must be intensification of such a degree as to amount to a material change in the character of the use....a caravan site*

> *is still a caravan site whether three or 300 caravans are accommodated. Whilst an increase in numbers need not in itself constitute development, it will do so if the increase is of a scale sufficient to constitute a material change in the character of the use...."*

6.12 In this respect Ouseley J in ***MWRL*** added a note of caution to Planning Authorities who sought to rely on a change of use by intensification as a substitute for imposing proper planning conditions, or in the obvious alternative serving a breach of condition notice where conditions are imposed and they are breached.

> *'Although it might be said that the earlier authorities treated the principle of a material change of use by intensification as being well established, the fact remains that there is still **no decided case** in which it has been found to occur'.*

6.13 That was the position in **Brooks and Burton Ltd v SSE & Another [1977] WLR 1294**, which was referred to by Sullivan J in **R v Thanet District Council** and remained so at the time of the judgement in **MWRL**. It is submitted that there has been no subsequent change in the use of the land.

6.14 In this regard, notwithstanding the appellants issues raised on the matter of the planning unit, I consider that the position of the LPA remains flawed in their approach to the alleged breach. They have as a matter of fact alleged a material change of use by way of intensification, and whilst they make reference to what this intensification is ("approximately 100 Caravans"), it appears more appropriate for the LPA to rely upon a breach of conditions to be enforced.

6.15 Furthermore, in relation to the issues surrounding the planning unit, I support those of the Statement of Case submission, in that any change in the red line area for this Notice would prejudice potential Appellants who may not have appealed Notice 1 in the knowledge that others have already done so.

6.16 A further matter I would raise on Notice 1 under Ground (b) is the reference to "Waste" within the requirements of the Notice. It would be incorrect to presume the intention to this wording is domestic waste and waste resulting from compliance with the requirement as the wordings inclusion is referenced within the LPA's statement of case at Paragraph 124, whereby they state *"… and evidence of waste*

processing…". This confirms that the District Authority appear to be taking action on a County Matter. In this regard, I refer the Inspector to *East Sussex County Council v SSCLG & Robins CO/9845/09* which I attach at **Appendix 4**. I admit this would be more appropriate to be referenced with Ground (f), and appreciate it is not an issue taken by the appellants former representatives, but there are numerous preliminary matters which I consider should be addressed prior to consideration of other grounds, and do feel that this jurisdiction issue is necessary to be raised as it has implications on prejudice to interested parties if the County Authority were not in agreement to the action taken.

6.17 Given the issues with Notice 1, I consider that the LPA should withdraw the Notice. They of course have the fallback of Notice 2 which would be determined, and would in part result in the same effect occurring were this Notice upheld.

6.18 Additionally, I note that, as will be considered in the Ground (a) section, the 2022 GTAA report prepared for Winchester City Council indicates in the survey of the travelling communities, 5 Plots were identified as occupied by Showmen, with 5 interviews undertaken, and no recorded statement of them not being Showmen. As such, it is curious to note whether or not the LPA will make reference to this, as it would appear to suggest the alleged breach is not occurring as widespread as they claim it to be.

6.19 The LPA state at Para 59 of their SOC, that,

> *"The number and occupation of caravans contained on the appeal site has fluctuated from the 11 recorded by the inspector during site visits 11 and 14 October 2011, to around 100 on the Councils visit 21 September 2021, and from only travelling showpeople (except on plot 7), to a mix of gypsy and travellers, travelling showpeople, and non-gypsy / travellers."*

I find the last part of this paragraph interesting, given the way in which Notice 1 has been served. It alleges the material change of use, but if there were indeed still Showpeople occupying the land at the time of the Notice's service, then the failure to distinguish the individual planning units is a significant flaw in the service of the notice, given that, at the time the Notice was served, there was no breach, on some of the plots.

7.0 NOTICE 2 - CASE FOR THE APPELLANTS UNDER GROUND (B)

7.1 With regard to Ground (b) for Appeal 2, I must submit that I do not agree with those submissions originally made. Notice 2 is a Breach of Conditions Enforcement Notice, and therefore must relate to the Planning Permission for which conditions are alleged to be breached.

7.2 I do acknowledge the comments made about the red line, but also consider this is sufficiently capable of correction.

7.3 In this regard, noting that I have taken over for the appellants at a relatively late stage in the process, I do not seek to progress Ground (b) against Notice 2 for the reasons originally put forward, as I do not consider there is merit in progressing such an appeal.

7.4 The appropriate matter to be considered by the Inspector is set out within the appeals for Notice 1, and Notice 4, and whether there has been a material change of use of the planning unit, thus rendering the 2003 permission to be not extant. I am however concerned that the purpose of this Notice appears to be to restore the Showmens' use of the land, but in seeking to do so has some not insignificant consequences.

7.5 There is no power in section 173(3) and (4) of the Town and Country Planning Act 1990 to require a use to be restored or reinstated, and Section 173(11) of the Town and Country Planning Act 1990 deals with the situation where "under-enforcement" has occurred, by providing that planning permission shall be treated as having been granted for the development or the activity, as it is in the state resulting from the owner or occupier having complied with the enforcement notice's requirements. As the section applies to all the remaining uses or activities on land once the enforcement notice has been complied with, LPAs should ensure that they identify all the relevant breaches of planning control involving the use of land before they issue an enforcement notice. Where the land is in mixed use, it is important that the notice should allege a change of use to that mixed use, specifying all the component elements in the notice's allegation. The deemed application for planning permission under section 177(5), arising from any appeal

against the notice, which the Inspector will need to consider, should properly relate to the mixed use in its entirety, not just to those elements of the use which the LPA may have identified as being in breach of planning control and which are covered by the notice's requirements.

7.6 That being said, I repeat my comments made at Para 2.9, in that it is my view that through compliance with Notice 2 there will be the effect of granting a deemed unconditional planning permission for a 9 Plot site hosting 27 caravans occupiable by 50 persons of any ethnic origin, having regard to s173 (11) of the Act and the requirement to restore the sites layout to that of the Plan 02-44-01, and failing to require any adherence to the remaining conditions associated with that permission.

7.7 Again, I am not sure if this is the intention of the LPA in this instance, and notwithstanding the matters already raised prior to the preparation of Proofs, the LPA may wish to reconsider their position on Notice 2, as it does in my view have the effect of rendering Notice 1 a nullity, as the requirements, at least in part, would benefit from a Deemed Unconditional Permission, which would render the entirety of the appeal site undoubtedly a “residential caravan site”.

7.8 Whilst this particular issue could be capable of correction, I note that it would require the imposition of additional requirements. This is typically beyond an Inspector’s power as it has the effect of expanding the scope of the Notice. Indeed, correction of the Notice would seem to have the effect of prejudicing those interested parties who were not served a copy, and thus unable to progress an appeal.

7.9 I would also note that the LPA’s case, against the granting of planning permission, appears predicated on the loss of the appeal site as a showmen’s site. This is not reflected in Notice 2, as no breach of the occupation condition is alleged, or required to cease. The correct framing would have been to allege a breach of the occupation condition, and require this to cease, and to also require, after compliance with step 3, the remaining conditions presented on the Planning Permission. It would have negated any scope for a Deemed Planning Permission to be inadvertently granted through compliance with Notice 2.

7.10 All in all, the issues I have raised beg the question of what Notice 2 seeks to achieve. Is the intention of the LPA to secure the showmens site use be restored, or solely for the additional caravans to be removed, and the plots to be restored to their permitted layout? There is no power in section 173(3) and (4) of the Town and Country Planning Act 1990 to require a use to be restored or reinstated. Indeed, I am of the view that the LPA should be considering much of the use of the site as a Showmen's site to be lost, unless of course they intend to rely upon compulsory purchase powers, as much of the site is not in Showmen ownership, and so it is not readily available to meet any Showmen's plot needs. Our clients have advised that in the event the Notice's are upheld, whilst they may be required to vacate their respective sites, they will not sell or rent the sites to travelling showpeople, and so the double affect will be that our clients will need to resort to a roadside existence due to in-availability of alternative sites and perfectly good sites remaining vacant.

7.11 A further point arises in respect of 05/01605/FUL, granted retrospectively, after the 2003 permission which is subject to this Notice. I will address this within the next section covering the appellants case under Ground (c).

8.0 NOTICE 2 – CASE FOR THE APPELLANTS UNDER GROUND (C)

8.1 Notice 2, as I have set out, is a Breach of Conditions Enforcement Notice. This Notice attacks the subdivision of the site, however, whilst Condition 11 of 02/01022/FUL prohibits sub-division, it did not revoke permitted development rights. This would need to have been expressly stated as the planning permission is read on the four corners of the page.

8.2 Under the circumstances, the construction of fences/walls is permitted on site; the construction of fences/walls, is a separate issue to subdivision and did not require planning permission.

8.3 It is true that there is no express removal of permitted development rights from the extant planning permission granted under 02/01022/FUL, and as such, with such explicit revocation of these rights, the land would benefit from the rights awarded under Schedule 2, Part 2, Class A of the GPDO.

8.4 In this regard, the erection of fencing and walls is permitted development which cannot be attacked by the Notice.

8.5 Furthermore, planning permission was granted under 05/01605/FUL. Notice 2 purports to interfere with the permission granted retrospectively, which does allow for the erection of dividing fencing of 1.8m in height in accordance with the approved plans. Which, from review, would appear to reflect what is on site. Albeit I would note that some of these boundary works have been subsequently superseded by walls being erected, a large degree of fencing remains in situ, which cannot be attacked by the Notice, or required to be removed.

8.6 Indeed, from review of the decision notice for 05/01605/FUL, and the conditions imposed, if the LPA are alleging subdivision and occupation of the site by additional families, it would appear that it is not correct to solely allege a breach of 02/01022/FUL, as a condition is attached which prohibits occupation of the two separate pitches by more than one family each. As such, it would appear a subsequent condition exists which could be alleged to be breached.

9.0 NOTICE 4 – CASE FOR THE APPELLANTS UNDER GROUND (C)

9.1 The LPA make reference within their Statement of Case to a Ground (c) appeal against Notice 4. Having lodged these appeals, I can confirm no such grounds are formally advanced. This is evident from the appeal forms submitted by WS Planning & Architecture, and the subsequent Statement of Case that was prepared.

9.2 With regard to the "hidden" Ground (c) case that the site benefits from planning permission, it is acknowledged after review of the court of appeal decision that the Ground (c) appeal should not be pursued on the basis of the site being a "residential caravan site". Therefore, I do not comment further on this ground and confirm its pursuance was flawed.

10.0 NOTICE 1 & 2 – APPEALS UNDER GROUND (D)

10.1 Notice 1 alleges a material change of use of the land. The requisite period of time for immunity to have been achieved is therefore 10 years prior to the date the Notice was served, i.e. 01 March 2012.

10.2 Notice 2 alleges a Breach of Conditions, for which the requisite period of time for immunity to have been achieved is 10 years prior to the date the Notice was served, i.e. 01 March 2012.

10.3 In both appeals, the base line date is the same. For immunity against the action taken by the LPA to be achieved, the breach must be demonstrated to have been continuous since at least 01 March 2012.

10.4 From the 2019 redetermined appeal decision, it is clear that the LPA considered the actual breach on the site that was occurring was,

> *without planning permission, the material change of use of the Land from use as a Travelling Showpersons' site to a use for the siting of caravans for residential use*

(Para 10).

10.5 Moving on to Para 21, the Inspector states,

> "… *This necessitates a focus on the identity of the occupiers <u>when the notices were issued</u>."*

10.6 At the time the original Notices were issued, the Inspector concluded no breach of planning control, barring that occurring on Plot 7, had taken place on the basis of the evidence considered. This is repeated by the LPA in their Statement of Case (Para 44).

10.7 Therefore, the case under ground (d) cannot consider the alleged breach on or before 06 September 2010, as these are matters that have been determined.

10.8 Nonetheless, the Notices subject to these appeals was served on 01 March 2022, and so in the 2 years which followed the service of the first notices, quashed at appeal, the change of use now alleged *could* have occurred.

10.9 The fact that the breach alleged, as in the change of use from Showmen Site to Residential Caravan Site use did occur, without prejudice to the other appeals, is what needs to be demonstrated on the balance of probabilities.

10.10 I note from the apparent submissions, given I was not party to previous proceedings, the LPA accept that at some point in the 10+ years since those Notices were issued, the change of use has occurred.

10.11 As set out within the appellants statement of case, 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. Admittedly, it's a rather unfortunate situation for the now occupants, who had thought they were comfortably occupying the site, until the court matters were ultimately dealt with.

10.12 The appellants in this regard, will be seeking to give evidence regarding key dates, that they can attest to, such as when the commenced occupation on the land, and whether at that point in time, they met the definition of a Showmen or not.

10.13 In terms of Notice 2, I consider it likely that the Inspector will be satisfied on the balance of probability that more than 50 people were in occupation between 01 March 2012 and the date of the Notice's service.

10.14 Aerial imagery assists in confirming the situation from 2017, which is helpful, and at confirms for the latter part of the period, the breach has occurred, at least insofar as the numbers of caravans are concerned.

11.0 NOTICE 2 - CASE FOR THE APPELLANTS UNDER GROUND (A)

11.1 Notice 2 is a Breach of Conditions Enforcement Notice, and therefore the Deemed Application to be considered is the development approved under the planning permission referred to without compliance with the relevant conditions referred to in the notice. Given some of the implications regarding Notice 2, and the deemed application, I consider it is appropriate to review this particular case first, particularly given it provides context for the other appeals.

11.2 As such, I will consider Appeal 2 Ground (a) on such a basis, and would note that for many occupying the site, this is their only recourse without the Notice being quashed given that any grant of planning permission for this appeal would change the original permission granted.

11.3 I consider the first matter to be addressed is condition 15 of 02/01022/FUL, and that the site shall not be occupied by more than 50 people at any one time. Planning permission was granted for 9 family plots, allowing an average of 5.6 persons per plot. Given that you cannot have a fractional person, I find it appropriate to round this limitation down to 5 persons per plot. To exceed this would breach the condition, and in some respect, in the 20 years since this permission was granted, is wholly unenforceable, and potentially inhumane in its consequences. This is a point that I am sure the LPA would agree.

11.4 I say this, as quite reasonably, each plot could have been occupied by a married couple and their three children. To have a fourth however, would, potentially, render them in breach, and consequences would be that one of the family unit would be required to vacate the site. This could be a child, or it could be a parent. I do not consider this condition serves any reasonable purpose any longer, and find that insofar as the Deemed Application relates to this condition, the Inspector should discharge it in its entirety.

11.5 However, also quite reasonably, given that each plot was permitted 3 static caravans, it could be presumed that each plot could have been occupied by up to 15 persons, assuming each static caravan provided accommodation for 5 persons.

11.6 The condition therefore serves no relevant purposes, and does not pass the current tests. In the event that all appeals fail, I do consider that the Inspector should allow the Ground (a) appeal against Notice 2 insofar as it relates to this condition (Condition 15).

11.7 Turning now to Conditions 10 and 11, the deemed application to be considered seeks permission for the elevated number of caravans, and the subdivision of the site.

11.8 Whilst the appellants progress Appeal 2 Ground (a), I would note that as a result of the Breach of Condition Enforcement Notice's service, and the appeal against ground (a) made, the unique scenario of a planning permission being sought for a development, if permitted, which would not allow continuance of the actual breach taking place.

11.9 As set out, the Deemed Application to be considered is the development approved under the planning permission referred to without compliance with the relevant conditions referred to in the notice, which would be an intensified use of the permitted Showmen's site.

11.10 The reality of Appeal 2 Ground (a) is that, if allowed, planning permission would be granted for the intensified use, to an extent that it may well address in its entirety the needs of Showmen plots within the LPA area.

11.11 As such, many of the objections of the LPA would as a matter of fact fall away, as the appellants cannot seek planning permission for a materially different scheme that the breach which is alleged. As such, the LPA may need to consider withdrawal of Notice 2.

11.12 If Ground (a) of Appeal 2 does fall to be considered, as set out, the considerations before the Inspector would be whether or not to discharge the conditions in their entirety, or grant a new permission for the development approved under the planning permission referred to without compliance with the relevant conditions referred to in the notice.

11.13 The LPA's case is that the site is required as a Showmen's site, and therefore why not enhance its value for the current occupants, who may be better placed to secure suitable alternative accommodation, given the increasing costs of land and the issues of Nutrient Neutrality within Hampshire, by allowing the Ground (a) appeal, thus remedying in part the breach of planning control by allowing the layout on the ground and the numbers of caravans to be retained.

11.14 With all due respect to the LPA, I do not consider the issue of caravan numbers is one which could be adequately argued against given what the 2003 permission allows. I understand that the actual numbers are not the heart of the issue, but it does affect a significant aspect of their case on visual amenity, and I consider their case should fail on account of the fact that the actual numbers. To put this in context, I would refer to the table below with *approximate* measurements (based on Approved Plan, scanned in by LPA in 2003) of Plots as permitted,

Plot 1	55m by 65m	3575sqm	50% = 1787.5sqm
Plot 2	32m by 64m	2048sqm	50% = 1024sqm
Plot 3	42m by 66m	2772sqm	50% = 1386sqm
Plot 4	41m by 62m	2542sqm	50% = 1271sqm
Plot 5	41m by 53.3m	2185sqm	50% = 1092.5sqm
Plot 6	30m by 50m	1500sqm	50% = 750sqm
Plot 7	33m by 52m	1716sqm	50% = 858sqm
Plot 8	30m by 53m	1590sqm	50% = 795sqm
Plot 9	31.5m by 53m	1669.5sqm	50% = 834.75sqm

11.15 Even if the above is disputed, a reasonable basis to work on is that each plot measures 1500sqm at least. Thus the "defined storage areas" cannot exceed 750sqm.

11.16 A touring caravan can vary in size, but typically measure around 2.5m by 5.5m, or 13.75sqm. On this basis, within the defined storage areas of each pitch, which do not exceed 50% of the area of each plot, the 2003 permission allows the storage (not residential occupation) of a maximum of 54 touring caravans per plot, amount to 486 touring caravans, as a worst case baseline, being permitted on the land.

11.17 For completeness, the conditions of the 2003 permission to which I refer, and lead me to this conclusion, are,

> *"10. There shall be a maximum of three caravans or mobile homes occupied for residential purposes on each pitch. **Any additional touring caravans used by the travelling showpeople may be stored within the defined storage areas** but may not be occupied for residential purposes at any time.*
>
> *…*
>
> *12. There shall be no open storage within the pitches other than within the approved storage areas. **The defined storage areas shall not exceed 50% of the area of each pitch."***

11.18 I would ask in this respect, the LPA review the conditions attached to the 2003 permission and seek agreement with the appellant on the numbers plausible. It is a worst case scenario, and assumes that each plot occupier would be moving around with 54 touring caravans, but I do consider it places the deemed applications for all the appeals in context particularly in regard to siting and layout, and visual amenity. It does also suggest that the actual injury to amenity needing remedy is the residential use, and not the caravan numbers.

11.19 In terms of the planning merits, it does seem to be the case that all that is necessary to be considered, given what is being sought is the change to Traveller accommodation, and the intensification of that use, is the suitability of the site for such a use and the loss of the showmen plots, not the alleged harm to visual amenity.

12.0 RELEVANT PLANNING POLICY

National Planning Policy Framework (2021)

12.1 The revised National Planning Policy Framework (NPPF) was published in July 2021 and sets out the Government's most up-to date vision for future growth. The document introduces a presumption in favour of sustainable development. The Ministerial Foreword highlights that **"sustainable development is about positive growth – making economic, environmental and social progress for this and future generations".** The opening statement goes on to state that **"development that is sustainable should go ahead, without delay".**

12.2 Paragraph 38 highlights that **"local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible"**.

12.3 Paragraph 47 states that,

> **"Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing."**

12.4 Paragraph 73 makes it clear that LPA's need to identify and update annually a supply of specific sites to provide a minimum of 5 years supply.

12.5 Paragraph 85 of the NPPF acknowledges that some residential development will be located beyond the settlement boundary and not well served by public transport.

12.6 Paragraph 105 states that **"the planning system should actively manage patterns of growth in support of these objectives. Significant development**

should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions and improve air quality and public health. However, 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". This paragraph acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.

Planning Policy for Traveller Sites (2015)

12.7 The NPPF should be read in conjunction with the Planning Policy for Traveller Sites 2015 (PPTS), and forms a material consideration for development of the type proposed.

12.8 Paragraph 3 of the PPTS states that **"the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community."**

12.9 Paragraph 4 sets out the Government's aims in respect of Traveller sites in that,

a) that local planning authorities should make their own assessment of need for the purposes of planning

b) to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites

c) to encourage local planning authorities to plan for sites over a reasonable timescale

d) that plan-making and decision-taking should protect Green Belt from inappropriate development

e) to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites

f) that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective

g) for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies

h) to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply

i) to reduce tensions between settled and traveller communities in plan-making and planning decisions

j) to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure

k) for local planning authorities to have due regard to the protection of local amenity and local environment

12.10 Paragraph 9 states that LPAs should set pitch targets.

12.11 Paragraph 10 states that LPAs should identify a supply of specific deliverable sites sufficient to provide 5 years' worth of sites.

12.12 Paragraph 13 of the PPTS states that LPA's should ensure that their policies,

"Local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. Local planning authorities should, therefore, ensure that their policies:

- **promote peaceful and integrated co-existence between the site and the local community**
- **promote, in collaboration with commissioners of health services, access to appropriate health services**
- **ensure that children can attend school on a regular basis**

- **provide a settled base that reduces both the need for long distance travelling and possible environmental damage caused by unauthorised encampment**
- **provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development**
- **avoid placing undue pressure on local infrastructure and services**
- **do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans**
- **reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability."**

12.13 Paragraph 14 states 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."*

12.14 This section of the document does not rule out the principle of providing Traveller sites in rural or semi-rural locations such as the application site. Furthermore, the use of land within this area for Travellers sites has previously been found acceptable.

12.15 Paragraph 24 of the PPTS sets out the material considerations that should be taken into account when determining applications for Gypsies and Travellers. These relevant considerations are set out below,

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) **that 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 should be used to assess applications that may come forward on unallocated sites

e) that they should determine applications for sites from any travellers and not just those with local connections

12.16 Whilst Paragraph 24 does state,

> **"However, as paragraph 16 makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances."**

it must be reiterated that there exists Case Law that has established that the best interests of the child are of prime importance, and therefore the educational, health, and welfare needs of the child are required to be taken into account in the planning balance.

12.17 Furthermore, Paragraph 24 of the PPTS sets out that proposals for Gypsy/Traveller sites are not required to originate from people with local connections, and that all proposals should be determined on the same basis, regardless of whether the applicant resides within the District, and was therefore accounted for within the Needs Assessment, or not.

12.18 Paragraph 26 sets out that when considering applications, local planning authorities should attach weight to the following matters:

a) effective use of previously developed (brownfield), untidy or derelict land

b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness

c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children

d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community

Lisa Smith Judgement

12.19 The *Lisa Smith* [1] court of appeal judgement was handed down on 31 October 2022. This judgement has relevance to all decision-making involving developments for gypsies and travellers. The Court of Appeal has found that the PPTS definition is unlawfully discriminatory.

12.20 However, the PPTS, which sets out the Government's policy for traveller sites, remains extant, albeit some parts of it are affected by the judgement.

12.21 The key point to be made, is that whilst it remains to be seen what the future of the PPTS definition is, it has, by virtue of this judgement, been ruled discriminatory to all non-nomadic Gypsies and Travellers (Para 2 – *"… as a result of, inter alia, disability or old age"*), and not simply those with disabilities or the elderly. Therefore, for all decisions moving forward, it is necessary to consider non-PPTS need, unless demonstrated otherwise. As such, irrespective of any determination on status the positive advice of the PPTS should be applied in any decision on the proposal.

12.22 As such, in the light of the judgement, a condition limiting occupation to those who meet the definition of travellers within PPTS could be considered unlawfully discriminatory. However, a condition restricting the site to gypsies and travellers would still be required as the application will have been considered against their particular needs and in the context of relevant national and local policy.

12.23 It is also considered that the judgement has implications on the assessment and consideration of need. As a result of the discriminatory PPTS definitions, GTAA's undercount actual need, possibly by some 75% (Para 112). There is a discounting of those persons who do not meet the definition from any Need, despite their being a PSED to provide for such need. The *Lisa Smith* judgement does evidence the NPPF as failing this minority and it is therefore considered necessary, in the absence of any Plan provision for non-nomadic ethnic Gypsies and Travellers, for need to be taken as a singular figure, i.e. all unknown need, and non-PPTS need

[1] Smith v SSLUHC & Ors [2022] EWCA Civ 1391

should now be counted as "Need". This is the pragmatic approach, without resorting to forensic scrutiny of any GTAA figures, given that there is the inevitability that persons identified as not meeting the PPTS definition will have been discounted on the basis of age or health, and thus been unlawfully discriminated against.

12.24 In this regard, it is important to give careful consideration to the matter of need and supply, and the *Lisa Smith* judgement represents a material change in circumstances since the determination of previous appeals and applications, particularly those prior to 31 October 2022.

Winchester City Council's Local Plan

12.25 The Local Plan currently consist of a series of documents which set out the planning policies that guide development for the part of the district (60%) that is located outside of the South Downs National Park (SDNP). The Local Plan Part 1 is the long term strategic plan for development within Winchester District, and includes the strategic vision, objectives and the key policies needed to achieve sustainable development in Winchester District to 2031. It identifies the amount of development, broad locations for change, growth and protection, including allocating strategic sites. The relevant policies from the Local Plan Part 1 are set out below.

12.26 Policy MTRA3 relates to other settlements in the Market Towns and Rural Area. Development and redevelopment opportunities are supported within the defined boundaries of the listed settlements, to meet local needs.

12.27 Policy MTRA4 sets out the general circumstances in which development may be permitted in the countryside and the policies below provide further guidance in terms of proposals relating to particular forms of economic development.

12.28 Policy DM4 reflects the conclusions of the Accommodation Assessment and incorporates these into pitch targets for gypsies/travellers and plot targets for travelling showpeople. And states that,

> **"Planning permission will be granted for pitches to meet the accommodation needs identified for the area covered by this Plan for people falling within the definition of 'travellers', of about 15 gypsy/ traveller pitches and about 24 travelling showpeople's plots between 2016 and 2031.**
>
> **Sites will be identified and consent granted as necessary to meet identified traveller needs in the Plan area which could not otherwise be met, subject to the criteria outlined in Policy CP5. Proposals for transit sites will be considered on an individual basis, following the criteria of CP5."**

12.29 Policy DM23 pertains to issues of landscape character and visual impact that are of particular importance in the countryside.

12.30 Policy CP5 of LPP1 is a criteria-based policy that will be used in conjunction with Policy DM4 to determine planning applications and to assist in allocating sites through the Gypsy and Traveller Site Allocations DPD. The policy states that,

> **The Local Planning Authority will undertake needs assessments (in Local Plan Part 2 or the South Downs Local Plan) to quantify the accommodation requirements for gypsies, travellers and travelling showpeople within the District.**
>
> **Sites will be allocated and planning permission will be granted for sites to meet the objectively assessed accommodation needs of gypsies, travellers and travelling showpeople, providing they meet all of the following criteria:-**
>
> > **Sites should be well related to existing communities to encourage social inclusion and sustainable patterns of living, while being located so as to minimise tension with the settled community and:**
> >
> > - **avoid sites being over-concentrated in any one location or disproportionate in size to nearby communities;**

- **be accessible to local services such as schools, health and community services but avoid placing an unreasonable burden on local facilities and services;**
- **avoid harmful impacts on nearby residential properties by noise and light, vehicle movements and other activities.**

Sites should be clearly defined by physical features, where possible, and not unduly intrusive. Additional landscaping may be necessary to maintain visual amenity and provide privacy for occupiers. This and any security measures should respect local landscape character;

Sites should be capable of accommodating the proposed uses to acceptable standards and provide facilities appropriate to the type and size of the site, including:

- **water supply, foul water drainage and recycling/waste management;**
- **provision of play space for children;**
- **sites for travelling showpeople should include space for storing and maintaining equipment;**
- **safe vehicular access from the public highway and adequate provision for parking, turning and safe manoeuvring of vehicles within the site (taking account of site size and impact);**
- **in rural locations, any permanent built structures should be restricted to essential facilities such as a small amenity block.**

Proposals should be consistent with other policies such as on design, flood risk, contamination, protection of the natural and built environment or agricultural land quality and protect areas designated for their local, national or international importance, such as Gaps and the South Downs National Park.

Existing permanent authorised gypsy, traveller and travelling showpeople sites within the District which are needed to meet the identified needs of particular groups will be retained for the use of these groups unless it has been established that they are no longer required.

12.31 Policy CP16 sets the overall requirement for protecting sites of European importance from inappropriate development.

Gypsy, Traveller & Travelling Showpersons Development Plan Document (Traveller DPD)

12.32 Winchester City Council adopted the Local Plan Part 1 (LPP1) - Joint Core Strategy on 20 March 2013 and Local Plan Part 2 – Site Allocations and Development Management on 7 April 2017. Both LPP1 and LPP2 include reference to travellers through Policies CP5 and DM4 respectively. The Traveller DPD only applies to that part of the Winchester District that lies outside the South Downs National Park. Various studies were undertaken to provide the evidence base to inform decision-making, including site assessments and gypsy and traveller accommodation needs assessment.

12.33 Policy TR1 sets out that specific sites within the District will be safeguarded from further development, but acknowledges that some need for further plots may arise during the course of the Plan period. It should be noted that the site is allocated under Policy TR3. As such, the principle of the use, for residential purposes by persons of a nomadic habit, should be deemed acceptable.

12.34 Policy TR5 sets out that the Local Planning Authority will consider proposals for the additional provision of pitches/plots through intensification within sites covered by Policies TR1 – TR4 above, on a case-by-case basis and in accordance with the provisions of Policy TR7.

12.35 Policy TR6 sets out that proposals for traveller accommodation outside the sites identified in policies TR1 – TR4, including expansion of these sites, will be permitted within the settlement boundaries defined by policy DM1 or through

infilling in accordance with policy MTRA3, provided that they are for occupation by persons who:

- **are defined as gypsies and travellers or travelling showpeople (Planning Policy for Traveller Sites 2015 Annex 1 or a subsequent revision); and**
- **can demonstrate a personal or cultural need to be located in the area; and**
- **there is a lack of other suitable accommodation.**

12.36 The policy also sets out that sites must be in sustainable locations well related to existing communities, as defined by Policy CP5, and comply with the requirements of Policy TR7.

12.37 Policy TR7 sets out criteria which news sites considered either through the Development Plan Document or subsequent planning applications will be required to comply with in addition to policy CP5.

13.0 NOTICE 1 - CASE FOR THE APPELLANTS UNDER GROUND (A)

Preliminary Matters

13.1 Notice 1 alleges the material change of use of the Land to a residential caravan site, including the stationing of approximately 100 caravans for residential use. The ground (a) appeal, and the deemed application therefore seeks planning permission for the use of the land edged black on the Plan attached to Notice 1 for,

> **Use as a residential caravan site, comprising the stationing of approximately 100 caravans**

13.2 This deemed application is quite broad in its parameters, but ultimately, if Notice 2 or 4 were upheld, then as per S180(1) of the TCPA, were the appeal under Ground (a) against Notice 1 to be allowed, the upheld Notices, including the extant Notice (Notice 3) would cease to have effect for the works granted planning permission.

13.3 If the Ground (b) appeal against Notice 1 does not succeed, it is unclear how the matter will be approached, given that multiple appellants seek planning permission, and therefore the terms of such a deemed application may be unclear if permission is granted.

13.4 I am of the view that the Inspector can only grant planning permission in part, if Ground (a) is to succeed, for the alleged breach. Doing otherwise would open the decision to challenge. However, as I have set out, if such a position is to be agreed, then the failure of service results in significant prejudice to interested parties, who would have appealed otherwise.

13.5 As such, I approach Ground (a) in this instance on the basis that permission is only being sought in relation to former Plots 1, 2, 3, 6, 8, and 9, and that the if Ground (a) deemed application falls to be considered, the Notice would be upheld insofar as it relates to the former Plots 4 and 5, of which I note a separate appeal is progressed, which has a deemed application of its own to be considered.

Policy Considerations – Site as a whole

13.6 There are a number of policy context considerations which apply to the entirety of the site. I address these general points here, whilst turning to detailed consideration for individuals, and their needs.

Policy TR1 - Safeguarded Use

13.7 The first matter to be considered is the safeguarded use of the site as a Travelling Showmens site. Winchester City Council provided their Statement of Case in July 2022. The submission of this SOC pre-dates the publication of the GTAA 2022, which was released in October 2022.

13.8 I understand from a previous appeal regarding a Traveller Site that the LPA's position on this document is that the Traveller DPD is the current adopted strategy that confirms a 5-year HLS, and that the GTAA is to inform the emerging plan only.

13.9 As I did in that appeal, I contest this position, and the assertion that the needs identified are not required to be met. Put simply, even the GTAA disagrees with the LPA position, and states at Para 1.2,

> *"…The outcomes of this study supersede the outcomes of any previous GTAAs for Winchester City Council."*

Whilst I am not privy to the LPA's case at time of preparing this evidence, I hope that they are not presenting the same case they did previously, and do now accept that there is an identified need.

13.10 What the GTAA also states, about the appeal site, is that 5 Plots were occupied by Showmen. 19 Plots were recorded as unauthorised, with 12 interviews undertaken, but also that *"4 x no contact, 2 x refusal, 5 x non-travellers, 1 x vacant".* During my visits, there have been no vacant plots, so I presume that at least this element is incorrect.

13.11 Whilst I do not contest the issue of Safeguarded Use, and accept that, in some respect, the site would result in the loss of TSP plots, this policy conflict is a matter which should be considered in the right context.

13.12 Simply put, Winchester have a significant, and somewhat overwhelming need for Gypsy and Traveller sites. I will return to this matter later within my proof, but suffice to say, in the context of the Need situation, and the PPTS, the loss of the TSP plots is a matter that I consider only limited weight can be afforded against the development.

13.13 I acknowledge the safeguarded use, and that a need for further Showmen Plots in the District remains, but this is severely tempered by the fact that there is such a substantial need for Gypsy and Traveller pitches, and that the land is now owned, and occupied, by the appellant group. Unless the LPA are considering the use of compulsory purchase powers, the use as Showmen Plots could be lost forever due to the ownership of the site. Nevertheless, I do consider in the context of the PPTS, that the use of the site as a Traveller site, is an effective alternative use of the land, given it is now in the ownership of the traveller community, and not the showmen's community.

Policy TR7 / CP5 - General Design Guidance and Site Layout & Sites for Gypsies, Travellers and Travelling Showpeople

13.14 The LPA assert that the layout of the site, which I would note generally accords with the extant TSP layout, does provide a turning head within the layout. As such, I see find no substance in the issue raised by the LPA, and the assertion that vehicles are *"unable to turn without significant reverse manoeuvring into and around blind corners".* I attach at **Appendix 5** a sketch plan based on the originally approved layout, which denotes the plots not appealing (and the plot hatched green which would have appealed had a copy of the Notice been received).

13.15 Notwithstanding this, and that the internal road layout remains approximately as it was originally approved, the access road is some 8.5m in width, and so I don't think it is reasonable to sustain the argument that there is insufficient turning space within the site.

13.16 In this regard, I consider that much of the concern regarding manoeuvring and layout could be resolved through a Site Development Scheme condition, were permission granted, as the appellants are not seeking planning permission for the

entirety of the additional caravans in situ on the land, and a number of touring caravans would be removed to be replaced by Statics, thus enabling a formal layout to be secured, and enforceable.

13.17 The LPA also assert that the boundary treatment of the site is inadequate. Again this is a matter capable of being secured by way of a site development scheme, but noting the LPA's particular comments, it appears the issue is more with the westernmost plots, adjoining Blackwood Forest. The Landscaping being "inadequate" as the LPA state, is in my view not a reason to oppose the development. There is clearly a breach of condition in this regard (2 and 4), which the LPA should enforce against to secure the landscaping boundaries. In terms of visual harm, despite the numbers of caravans, the site is actually quite imperceptible in its setting, to the extent that I do not consider there to be any undue harm to character and appearance and visual amenity.

13.18 This is not the case when one takes a birds eye view, and the development is clearly present in its full extent, but from sensitive receptors, such as the road, or neighbouring properties, the development is well screened and is not visually intrusive.

13.19 In terms of Policy CP5 and asserted conflict, it is unclear what conflict the LPA are alleging to be occurring. The site was allocated within the DPD for the Showmen's use, clearly the visual amenity of the area was accepted to be fundamentally changed by the presence of development here, whether it be a showmens yard or not, it should not be treated as though it were a green field previously.

13.20 What conflict is clear is that the LPA consider there to be an over-concentration resulting from the development. I presume this extends to identified conflict with Para 14 and 25 of the PPTS, which reflects the intention of Policy CP5 in seeking to avoid disproportionate densities in any one location. At its most local scale, I do not dispute that the number of pitches present on the site does result in the scales being tipped in favour of an over-concentration. However, I do not consider its most local scale to be the correct context to consider this matter in. Such a way of thinking would inevitably lead to decision makers being unable to grant

permissions for Gypsy and Traveller developments simply due to there being no other development, or there being a singular house within the vicinity.

13.21 I consider the correct context to consider this particular matter is within a "parish wide" context. This same approach was adopted by the former Wycombe District Council in their local plan, and the Marsh exclusion area Policy DM26, and recently helped to inform a planning committee determining an application for 6 pitches in the Somersham area of Huntingdonshire. Whilst a different Council, the policy Wycombe Local Plan set contained a criteria which restricted Traveller sites within a specific parish area (Marsh) due to the number of pitches which had accumulated when compared to the number of dwellings within the Parish as whole as opposed to within specific site local areas. A similar approach was taken by a planning inspector on a site in Mendip, which is attached at **Appendix 6**. I adopt a similar approach in my own considerations, and consider, given the merits of the site in terms of its general location, previous use as a Showmen's site.

Lack of adequate open space for safe children's play

13.22 This particular point I note is tied with the alleged conflict with TR7 and CP5. However, I consider, having regard to a recent appeal I was involved in, in late 2022, that the issue is not a genuine issue raised.

13.23 Gypsies and travellers, and their families, tailor sites to meet their own specific needs. Some families find that providing open space and play equipment is needed, whilst a number of others do not, preferring their children be involved in traditional traveller cultural activities with Horses and other animals.

13.24 I noted from my site visit a number of children playing on site during my visit. The site as it is, is capable of making such provision, and children were riding around on their bikes, and racing through makeshift obstacle courses.

13.25 The situation on this site, reminded me of the Inspector's comments in relation to an appeal in Buckinghamshire, regarding 21 Plots near Brackley. I attach this decision letter at **Appendix 7**. The decision letter is quite long, and I do not refer to the content in its entirety.

13.26 The relevant sections I consider can be relied upon to draw a parallel to the current appeals is the section where the Inspector considered the main issue of *Whether the proposed site would provide suitable living conditions for future occupants with particular regard to amenity space and privacy*. This is set out at Para's 51-56.

13.27 Particular reference should be given to Para 55, set out below,

> **"At the time of my visit I observed that for the most part vehicles were parked discretely to the side of caravans leaving the centre of the Plots free and this provided informal playspace for children. There were also a number of Plots with small pockets of more private space. I accept that these areas are also used by vehicles manoeuvring on and off the individual Plots. Most Plots are occupied by family groups, or individuals well known to each other. The Plot holders would be aware of the presence of children and I see no reason why the shared use of this space, in these particular circumstances, would pose a safety risk to children, particularly since the caravans are static so would not be moving on and off site. Whilst the amount of amenity space may be less than for bricks and mortar housing, I noted at the time of my visit that there was sufficient space on many Plots for children to pursue an informal game of football or other activities. Moreover, the reality is that the alternative for many of these children would be living at the roadside."**

13.28 With regard to amenity space, I do acknowledge more generous provisions could be made, or even a designated area shared by all plots, and would be desirable, but this would be idealistic, and would not reflect the needs of the occupants of the site, who have made their own arrangements to satisfy the play space needs. There is, in this respect, more than adequate space on site for informal playspace for children, and I do not find any conflict which arises from this matter. I would hope that the Inspector, following a site visit, would be able to make this judgement for themselves, and reach a similar conclusion.

Material Considerations

13.29 It is requested that any identified conflict with the development plan be balanced against the following,

- Previously Developed Land & Para 26 of the PPTS
- The need for and supply of Gypsy and Traveller sites
- The availability of alternative sites
- Likely Location of alternative sites
- The accommodation needs and personal circumstances of the appellants.

<u>Previously Developed Land & Para 26 of the PPTS</u>

13.30 Paragraph 26 under Policy H of the Planning Policy for Traveller Sites (March 2015) lists, in addition to those matters set out at Paragraph 24, a number of other matters to which a decision maker should attach weight. These matters are:

a) effective use of previously developed (brownfield), untidy or derelict land

b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness

c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children

d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community

13.31 I do not consider the LPA can reasonably argue that the land is not previously developed, nor do I consider this is a conclusion the Inspector can reach. The site is developed, and there is a fallback position of the whole site being used as a Showmens site, which would accommodate a minimum of 27 Static Caravans, and

could potentially accommodate a significant number of touring caravans (a defined storage area not exceed 50% of the area of each Plot – Condition 12). I consider that this, in all fairness to the LPA's case, is the baseline against which to assess the Deemed Application.

13.32 If any development results in the redevelopment of a part of such land that is deemed to be Previously Developed, then weight needs to be afforded to this matter as per Para 26(a). The proviso is that the use is an effective re-use of the land. In this instance, the need for Traveller pitches substantially outweighs the needs for Showmen's plots, and whilst deemed to be different uses by the Courts, they are materially similar to the point that there would be no significant policy conflict resultant, aside from the inevitable loss of the Showmen's plots, which could not be otherwise addressed by planning conditions.

13.33 I consider that considerable weight should be afforded to the matter in given the extent of land to which this use covers and the agreed position that the 2003 permission was implemented, and therefore represents a fall back position, which is sought to be secured through the Breach of Conditions enforcement notice.

13.34 Moderate to significant weight should be afforded in the event that Ground (a) against appeal 2 is allowed.

Need for and Supply of Sites

13.35 On the matter of Need and Supply following the LPA's GTAA publication, I consider any reliance on a now out of date assessment, is unreasonable, and I consider this to be a deliberate failure of policy.

13.36 There is also the need to consider the implications of the *Smith* judgement, which are as I have already set out within the policy section.

13.37 The appellants consider the GTAA 2022 (**Appendix 8**) is an update which justifies the case that has been put forward on the matter of Need and Supply, and evidences the fact that the LPA cannot demonstrate a 5-year supply of sites and have a significant level of unmet need.

13.38 Without seeking to go into great detail and examination of the GTAA itself, the report states that the LPA have a current and future need for 115 pitches for PPTS need.

13.39 In addition, the LPA have a current and future need for up to 40 pitches for "unknown" need.

13.40 The LPA also have a current and future need for 45 pitches for non-PPTS need.

13.41 In light of the *Smith* judgement, the appellant considers these three figures should be combined into a singular figure, i.e. **200 pitches** required. This level of need is considered to be substantial, and therefore worthy of being given significant weight in the balance, as does the lack of supply.

13.42 Notwithstanding this, Figure 3 of the GTAA states that between years 2022-2026, there is an immediate need of at least **79 pitches** required outside of the SDNP area,

13.43 Irrespective of why the appeal proposal is brought forward, the allowing of the appeal, on a non-personal basis, will enable the site to contribute to the supply of sites within the District. Whether or not the Appellant's group is within the identified need of the GTAA is not crucial, since individual needs can in any event be addressed in 2 ways – either as part of the development plan allocation process, or as a reaction to planning applications being assessed against development plan policies.

13.44 The appellant does not accept the LPA's currently submitted position that 5-year supply should be based on the Development Plan figures. This is because the GTAA published, is done so in accordance with the policy requirements of Para 10 of the PPTS. The LPA's prior failure to update the GTAA regularly could be considered a failure of policy in itself which should be afforded weight. To consider need on the basis of Development Plan figures would be to ignore the GTAA in its entirety, and would be contrary to Para 24 of the PPTS which states that the **existing level of local provision** and need for sites is a relevant consideration.

13.45 The appellant considers that the LPA's position is not one that can be sustained.

13.46 Having regard to the above, I consider that the established position within the District is one of a substantial shortfall in supply of Gypsy and Traveller pitches, and a complete and utter lack of a supply.

13.47 Having been opposite Winchester City Council in a number of appeals since the previous GTAA and DPD documents were published, I consider they have adopted the approach of burying their head in the sand despite all evidence pointing to the cases made against them, that there is a need to be met.

13.48 In terms of the contrast between Showmen Plot and Traveller pitch, I would note that the immediate need for Showmen is 21 plots between 2022-26. Whereas the need for Traveller pitches is at least 3 times this figure.

13.49 As such, I consider that whilst there is a need for more Showmen's plots, the fact that the appeal site currently provides accommodation for the travelling community, means that any grant of permission would go towards meeting an existing need, which has been known about for a number of years, and is evidenced by all the LPA's policies on the appeal site. In this regard, I do not consider the LPA could seek to claim that there is no need generated by the occupants of the site, or that their needs may have been considered elsewhere. Many of the families have been occupying the land since 2016, and many much longer than that.

Availability of Alternative Sites

13.50 There are general considerations which can be applied to the consideration, and these relate to the availability of alternative sites. In *Doncaster MBC v. FSS & Angela Smith [2007]* the Court set out that alternative accommodation has to be suitable, affordable, available and acceptable for it to be considered a realistic alternative. *SCDC v. SSCLG and Julie Brown [2008] EWCA Civ 1010* sets out as well that there is no requirement in planning policy, or indeed within any case law, for an applicant to demonstrate that there are no other sites available, or that particular needs could be met from another site.

13.51 However, within the District, it is noted that there is a significant number of privately owned pitches, and the pitches which would previously be available at Tynefield

are considered unavailable due to the fact that it is now privately owned, and the LPA have previously agreed the site is not available. As such, neither the LPA or the CPA have any influence on who can reside here, and whether they previously, or continue to, reside within the District itself.

13.52 It is considered that Private sites are unavailable on the basis that they will already be occupied, or not available.

13.53 Notwithstanding this, the GTAA 2022 evidences such a level of need that there quite simply cannot be any available sites.

13.54 In any event, a particular submission applicable to both Travellers and Showmen, is that to be an available alternative Pitch or Plot, that land **must have planning permission, be vacant and be actually available to the proposed occupier**. Due to the ownership of the site, I do not consider that it can be presented that the site represents an available alternative to any Showmen in need, whereas a planning permission can be granted for the current use, in a controlled form, which allows the needs of the existing occupants to be addressed.

Likely location of alternative sites

13.55 Much of the District is situated within the Countryside, and the LPA has previously accepted that such sites may be appropriate in countryside locations, depending upon need. I would also note that all of the sites put forward within the Traveller DPD are within the countryside. This provides a clear indication that the LPA envisages that development in the countryside will be necessary to meet the needs of gypsies and travellers in the district.

13.56 Therefore, I submit that it is inevitable that sites will be located within the countryside, and outside of the settlement boundary. Weight should be afforded to this matter.

Personal Circumstances

13.57 An applicant, irrespective of their ethnic background, may seek permission for a permanent Traveller pitch (in accordance with the planning definition of a Traveller

as set out in PPTS as expanded by the Smith judgement), to be conditioned for this use, and that an applicant can provide information about personal circumstances to add into planning balance, if required. A permission should only be conditioned for personal occupancy if that condition is required to make the proposal suitable in planning terms. If it is considered that the proposal is suitable for a Gypsy/Traveller pitch, regardless of personal circumstances, a personal condition is not required. In this regard, it is not necessary for Personal Circumstances to be considered from the outset, or even for Gypsy Status to be demonstrated. This is only necessary if there is a clear policy conflict, such as Green Belt location, which is not present within this particular case.

13.58 I do not find clear policy conflict in this case which would warrant detailed consideration of personal circumstances. Nonetheless, I have interviewed all parties pursuing appeals in this case, and they have each provided their circumstances to be considered, in a compiled format through witnesses who will speak on behalf of each appeal made, rather than seeking to call each individual occupant. If particular matters can be treated as read, then I consider some time could be saved in the Inquiry proceedings.

13.59 The appellants will be giving evidence to the Inquiry to detail their own circumstances, but this will be summarised within this section, with the following points necessary to take into account,

a) the personal need for accommodation of the applicant

b) the availability (or lack) of alternative accommodation for the applicant

c) the medical and/or welfare considerations of the applicant

d) the best interests of the child (if relevant)

13.60 With regards to points (a) and (b) above, the appellants resorted to residing on the land on the basis that they had no home, and no alternative. A long search for suitable land led them to the appeal sites, and in order to avoid remaining on the road, they commenced occupation of the appeal site, not having known that they were in breach of planning control, given that they were told the land had

permission as a “caravan site”. Clearly, however, the courts determined this is not the case.

13.61 Many within the Travelling community have also resorted to doubling up, developing land without permission, or ceasing to travel due to the change in law permitting the seizure of touring caravans, which are the community’s “home” when they are leading a roadside existence. The new police powers are of great concern to the community, and contribute to considerations on the personal need for accommodation and lack of alternative accommodation.

13.62 With regards to points (c) and (d) the appellants will set these matters out, but suffice to say, I consider in each appeal the needs of the appellant and their family are of substantial weight when considered in the overall balance, and on the presumption that the conflict identified by the LPA is present, and as such, I consider that the Inspector, if minded to not allow all appeals, could take into consideration the particular circumstances put forward by the appellants and allow some of the appeals.

13.63 Suffice to say, in conclusion on personal circumstance matters, I consider that each of the appellants own circumstances should be afforded substantial weight in the overall balance.

14.0 NOTICE 4 - CASE FOR THE APPELLANTS UNDER GROUND (A)

14.1 I refer back to Section 12 of my evidence. I consider many of the same matters can be applied to this particular appeal, and do not consider it necessary to repeat matters.

14.2 With regard to the layout of the site, 10 caravans, with amended sitings can be accommodated on the appeal site in a manner which would meet caravan site licence requirements.

14.3 References by the LPA to the site being located in the countryside whilst being correct is of limited relevance bearing in mind the fact that the site and the wider area benefits from planning permission. As such, Para 26a) of the PPTS is applied in this instance, as are the multitude of considerations in favour of a permission that I have already outlined.

14.4 Specific to this appeal, is the evidence of Mr. Stokes provided on behalf of the appeal site. The same general commentary on personal circumstances remains, and having considered the issues put forward, I consider that significant weight ought to be afforded to the matter.

15.0 NEIGHBOURING AUTHORITY NEED AND SUPPLY

15.1 Whilst this particular issue is not distinct to the LPA's need and supply situation, I consider it is helpful to place the issue in a wider context. As such, this section outlines need and supply of neighbouring authorities, and will be relied upon particularly in respect of arguments made for the availability of alternative sites, both under Ground (a), and Ground (g).

15.2 The matters of Winchester's GTAA are already set out in my evidence. My "sub-regional" opining is based upon those authorities immediately adjoining the District, being Basingstoke & Deane, East Hampshire, South Downs National Park, Havant, Portsmouth, Fareham, Eastleigh, and Test Valley.

Basingstoke & Deane

15.3 To the North of Winchester is Basingstoke & Deane District. A recent appeal (PINS Ref: APP/H1705/W/20/3251951) established that,

> **"33. The B&DLP made some provision for pitches through large greenfield housing allocations. Of the allocations, 5 pitches have been permitted at Manydown on the edge of Basingstoke and 1 pitch at Basingstoke Golf Course. An application for 2 pitches at Hounsome Fields remains pending because of an issue with a pipeline. In addition 2 pitches were permitted at appeal on an occupied site at Pamber Heath in January 2018. No other permissions have been granted since the adoption of the B&DLP in May 2016, although a further allocation on land east of Basingstoke makes provision for a single pitch. Therefore, provision that has been made or is planned for since the adoption of the B&DLP amounts to around 11 pitches against a need for at least 16 pitches.**
>
> **34. In terms of a 5 year supply of deliverable sites, the Inspector in the Silchester appeal indicated that the 5 year requirement is for 8 pitches. Having considered the conclusions of the GTNA and the other evidence before me such as that relating to the**

occupancy of the Silchester site, I consider that this figure would represent the minimum required. Taking into account permissions, some 6 pitches are currently deliverable. As the application at Hounsome Fields is undetermined, I would not consider the site deliverable at present. Therefore, there is not a 5 year supply of deliverable sites.

35. Accordingly there is a need for further pitches for travellers both to ensure a 5 year supply of deliverable sites and to get closer to the pitch requirement of the B&DLP which is itself likely to be an underestimate of current needs. This conclusion differs from that of the Inspector in the Silchester appeal but I have explained why the Hounsome Fields site should not be considered deliverable. Moreover, the CoA judgement represents a material change in circumstances since July."

15.4 The assessment for Basingstoke is quite dated, and identified a modest shortfall for Traveller pitches, which as evidenced by the above extract of the Inspector's decision, has only worsened. On the contrary, no need for further showmen plots was identified, and the GTAA 2017 for Basingstoke notes at Para 6.33,

> **"There is one Travelling Showperson yard in Basingstoke and Deane with 2 plots. The household meets the planning definition of a Travelling Showperson. The demographics of the household suggest that there is no current need and the household interview indicated that future need can be met through the development of a plot that is currently used for equipment storage. <u>The owner has another piece of land 4 miles away which the Council are aware of and would like to get planning consent to use this land for equipment storage</u>."**

This suggests to me that there would be scope for the LPA to work with its neighbour in seeking to provide showmen accommodation outside the District, and an intensification of this site, could be such a solution.

East Hampshire

15.5 East Hants to the northeast has had a more recent update to their GTAA, and I have worked with a number of traveller households in promoting sites within the District to assist in meeting the needs therein.

15.6 The GTAA published in 2020 identified, a total of 66 pitches for Gypsies and Travellers, and 46 plots for Showpeople.

15.7 East Hants identifies a 0 years supply for both Travellers and Travelling Showpeople.

South Downs National Park

15.8 South Downs National Park is an authority which spans a number of Districts. It relies upon the multiple GTAA's for each authority area, which denote between those areas of the SDNP and those outside.

15.9 The Local Plan document, published in 2019, sets out a total need of 9 Showmen plots. It also identified a need for 23 Traveller pitches, 4 of which were in the Hampshire area.

Havant

15.10 Havant Borough Council rely upon the GTAA document published in May 2017 on behalf of the Hampshire Consortium.

15.11 The report identified a need for a single pitch, and no need for Showpeople plots. There was one identified unauthorised Traveller site, and no Showpeople Plots within the Borough which is the reason for this.

Portsmouth

15.12 Portsmouth City Council rely upon the GTAA document published in November 2018.

15.13 The report identified that, at the baseline date for this study, there were no Gypsy and Traveller sites or Travelling Showpeople yards identified, and no need for pitches or plots required.

Fareham

15.14 Fareham Borough Council rely upon the GTAA document published in May 2017 on behalf of the Hampshire Consortium.

15.15 The report identifies 9 traveller households in the Borough, generating a need of 3 pitches. There are no Travelling Showperson yards in Fareham Borough so there is no current or future accommodation need.

Eastleigh

15.16 Eastleigh Borough Council rely upon the GTAA document published in February 2017.

15.17 The 4 households who meet the planning definition were found on 1 private site and 3 unauthorised sites. As well as the need arising from the 3 unauthorised pitches, analysis of the household interviews indicated that there was a longer-term need for 2 additional pitches for new household formation. The report concluded that there was a need for a further 5 pitches, although I consider this situation has altered given a large site of in-migrating families (10 Pitches), from East Hants and Winchester, was formed in 2020, and is being occupied by Gypsies and Travellers (*Allington Lane site*).

15.18 The report advised that the need could increase by up to 6 further pitches if unknown households were confirmed to meet the definition.

15.19 Representation was also received from 3 Travelling Showpeople families currently living on unauthorised yards in Winchester who are related to the families living at Botley Road and Candy Lane (in Southampton). They all expressed a desire to move to Eastleigh due to the strong work and family connections with the area. It is unclear if this point is recorded in Winchester's recent GTAA and these families have left the District, or if they still maintain the desire to migrate out of the District.

15.20 The report identified a need for no further plots, but evidence was provided that a further 3 showmen plots, which could up to 5 plots for unknown households, were desired by in-migrating families.

Test Valley

15.21 Test Valley District Council rely upon the GTAA document published in May 2017 on behalf of the Hampshire Consortium.

15.22 The report identified that there were 12 private sites all with permanent planning permission for one pitch. There is one site that has temporary planning permission (which expired in July 2017), two sites that are tolerated for planning purposes, and 2 unauthorised sites.

15.23 The report identified a need for those households who meet the planning definition of a Gypsy or Traveller is for 3 additional pitches over the GTAA period, and noted this need could increase by up to a further 11 pitches, plus any concealed adult households or 5 year need arising from older teenagers living in these households (if all 14 unknown pitches are deemed to meet the planning definition)

15.24 There are five yards that had permanent planning permission for Travelling Showpeople in Test Valley comprising 20 pitches collectively. Travelling Showpeople families living at Forest Edge Park, Gardeners Lane and Wellow have expressed a strong desire to develop land (within their control) adjacent to Forest Edge Park and have submitted several planning applications which have been refused or withdrawn. The existing yard is at full capacity and the families would like to expand the yard.

15.25 The report identified a need for those households who meet the planning definition of a Travelling Showperson is for 14 additional plots over the GTAA period, and noted that this need could increase by up to a further additional 1 plot, plus any concealed adult households or 5 year need arising from older teenagers living in these households.

Conclusions on Sub-Regional Need

15.26 In terms of sub-regional need, neighbouring authorities either have a level of unmet need which should not be worsened by extraditing households from one District to another, as could occur if the appeals were dismissed, or have no need for further pitches.

15.27 What is notable from the sub-regional consideration is that there is a substantial need for further pitches, when considered against the rather pale in comparison need for showpeoples plots. This is not to say that one need should trump the other, but it certainly suggests that there would be significant consequences if the appeals were dismissed in terms of the scale of accommodation needs required to be met for Gypsies and Travellers, both in the District and across Hampshire.

16.0 NOTICE 1 - CASE FOR THE APPELLANTS UNDER GROUND (F)

16.1 The requirements of the Notice are excessive. Whilst the alleged breach is stated to be the material change of use of the Land to a residential caravan site, including the stationing of approximately 100 caravans for residential use, and this is highlighted within Section 3 of the Notice to be the "unauthorised use" referenced in Section 5, as I have set out, the appeal site can lawfully accommodate the number of caravans situated on the land.

16.2 In this regard, requirement 1 is excessive insofar that it refers to the use of land as a residential caravan site. The injury to amenity, and in some respect the alleged breach, would be remedied by requiring the cessation of the residential use of the caravans situated on the land in excess of those permitted by the 2003 permission.

16.3 Requirement 2 is excessive in that it purports to interfere with the lawful fallback position of the land. It states "*remove all …*". This would prohibit all plant equipment, containers and vehicles, whatever their purpose or use on the Land or any part of it, irrespective of whether it is used for or in connection with the permitted activities.

16.4 As shown in **Figure 1**, the entirety of the site was put to hardstanding when the 2003 permission was implemented. Therefore, the Notice cannot seek to remove development which has permission, such as the hardstanding, fencing, walls, gates, services, and lighting. There are no such works present which require remedy, and cannot be achieved through Notice 2.

16.5 Furthermore, requirement 2 includes within it reference to waste. I have set out considerations on this already within Section 6. Whilst no such activity was taking place, that I could see, during my own site visits, it is a county matter which the LPA seek to enforce against. No confirmation has been provided by the LPA that the County were consulted, and therefore the Inspector cannot proceed with confidence that any correction of Notice 1 can be done without prejudice, notwithstanding the appeals under Ground (e).

16.6 Requirement 3 requires the land to be restored to its condition prior to the breach of planning control taking place. Requirement 3 does not state "the unauthorised

use" and therefore is vague, unclear, and excessive in its requirements. The appellants should not be required to restore the land to its state as a green field prior to the implementation of the 2003 permission, as that is not the breach of planning control. This requirement is too vague to meet the standards of precision required in an enforcement notice.

16.7 In this regard, the appeals under Ground (f) must succeed, and the Notice be corrected. However, the consequences of correction must be considered, as it cannot be done if there would be prejudice which results against any interested party. There would be, and so Notice 1 must be withdrawn.

17.0 NOTICE 2 - CASE FOR THE APPELLANTS UNDER GROUND (F)

17.1 Notice 2 is a Breach of Conditions Enforcement Notice, Notice 2 requires that the parties served,

1. *Cease the use of the Land for siting more than three caravans or mobile homes per pitch occupied for residential purposes (condition 10);*

2. *Cease the use of the Land for occupation by more than 50 people (condition 15);*

3. *Restore 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).*

17.2 Under Ground (b) I have already set out that compliance with this Notice has the effect of granting a deemed unconditional permission for a 9 pitch, 50 person, 27 static home caravan site.

17.3 Requirement 1 seeks to ensure compliance with the terms of the 2003 permission, it is reasonable in its scope, and what is needed to comply.

17.4 Condition 2 requires the site cease to be occupied by more than 50 people. This condition is in itself excessive, and I do not consider it would pass the necessary tests if considered today. In this regard, whilst I note it is a condition of the 2003 permission, compliance with it is excessive. If the Inspector were minded to agree with my submissions under Ground (a), but chose not to allow that appeal, then I consider deletion of this requirement is the suitable alternative route to be taken. Under the circumstances, if the Notice were upheld in its entirety, future occupants, or owners of the land, could be denied opportunity to seek removal of the condition, through use of S70C powers. Deletion of the requirement would ensure this route is kept open to those persons, if the Notices were upheld, and the land returned to Showmen ownership.

17.5 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, and benefit from existing permissions for such works. I consider Requirement 3 to therefore be excessive.

17.6 Given that the above ties to Ground (d), it should be noted that compliance with Notice 2 could be deemed to interfere with Notice 1's requirements insofar as hardstanding and surfacing is related. The plan on which the LPA rely only details a layout of a single plot (Plot 7), and thus there could be difficulty in defining whether non-compliance with Notice 1 has occurred. If the Notice's are to be upheld, I do consider that it needs to be made abundantly clear what Notice 2 requires in conjunction with what Notice 1 requires, such that nothing less is undertaken and non-compliance with the Notice's results.

18.0 NOTICE 4 - CASE FOR THE APPELLANTS UNDER GROUND (F)

18.1 Notice 4 is framed in the same manner as Notice 1, in that the "unauthorised use" is defined, and subsequently referenced. However, much of the same issues arise from the requirements of Notice 4.

18.2 As such, I will rely upon the matters set out therein, and do not seek to repeat them here.

19.0 THE CASE FOR THE APPELLANTS UNDER GROUND (G)

19.1 The time for compliance with all appealed Notices is 6 months.

19.2 The ground (g) appeals need to be considered in the context of personal circumstances.

19.3 Upholding the Notices, and dismissing all appeals would result in a significant hardship for a number of families, and their children. Therefore, 6 months is far too short a period of time.

19.4 A compliance period of at least 12 months should be provided, however, given the circumstances involved, 2 years is sought.

19.5 The LPA's position on need is dire. They have no supply of sites, and there is a severe lack of available alternatives. This is not simply the case in Winchester, but also prevalent within neighbouring authorities.

19.6 In this instance, to provide accommodation needs for the families occupying will take time. The ideal route would be for a Plan-led method, with this intention set out from the outset of a revised DPD, or Local Plan policy. The occupants of the site have been in situ for such a period of time, that it cannot be denied that they now form a part of the identified needs of the LPA, and therefore they should be provided for. This can be achieved through a number of smaller sites brought through the planning applications process, or through a larger site allocation. My own experience with the LPA is that they are significantly resistant to any new development for Gypsies and Travellers, noting that I am currently dealing with 10 pitches, 5 of which remain pending determination at a local level (for 2 and 1 years each), 5 of which are pending appeal determination. For reference these relate to 21/03271/FUL, 22/02061/FUL, and 20/00841/FUL (PINS Ref: APP/L1765/W/20/3259672).

19.7 I am also aware, through involvement with these cases, of a further pitch still sought, following a dismissed appeal in Hambledon, and temporary pitches due to, or already having, expired permissions, also in Hambledon.

19.8 Suffice to say, individuals seeking to accommodate their own needs through the applications process have not been well received by the LPA, who have taken a presumption against granting any new permissions, even those for extensions to existing sites, on the basis that they have “no need”. Whilst this is not intended to be a criticism of the LPA, I cannot support a shorter period of time being permitted on the basis that the LPA will seek to support relocation of individuals on this site.

19.9 I therefore submit that, taking account of the personal circumstances, and the consequences for these families if the appeals are dismissed, that the Inspector must allow sufficient time, and sufficient time is a period of 2 years.

20.0 THE PLANNING BALANCE

20.1 It is acknowledged that the site is located in the Countryside, but it is also located on an allocated site for a residential caravan site development, albeit one for Travelling Showpeople. This weighs against the development to an extent.

20.2 However, the site benefits from an existing permission, which significantly reduces any alleged visual impact from the development. A suitable site development scheme condition could ensure the delivery of landscaping boundaries, although I do not consider them to be overly necessary when the development is considered in the context of its actual baseline. I consider this weighs significantly in favour.

20.3 I find that the appeal site and the development is generally compliant with Policies within the Development Plan. Where there is some immediate conflict, it is not a matter which could be otherwise suitably addressed by a site development scheme condition.

20.4 There is an evidenced need for a significant level of Traveller pitches, and the facts that the site is no longer under the ownership entirely of those within the Showpeople's community means that the site can, if granted permission, meet accommodation needs of those in occupation on the land.

20.5 I consider the material considerations in favour are,

(i) The previously developed nature of the wider appeal site, Carousel Park, and its "*fallback position*",

(ii) The lack of any available, suitable, acceptable, and affordable alternative sites,

(iii) The Likely Location of New Sites within the District, and the inevitability for new sites to be located outside of settlement boundaries,

(iv) The fact that the development is acceptable on the appeal site with major areas of policy being complied with,

(v) The fact that there is a demonstrable general need for more pitches for Gypsy/Travellers in the District, and at a sub-regional level, and the contributions to resolving this need that the proposals can make,

(vi) The fact that the site is not in the AONB or a valued landscape, and the actual harm of the development would not be long lasting,

20.6 The personal needs of the family, the duration of time in which all the family's have occupied the site and established their links to the local area, are material considerations that weigh in favour of a grant of planning permission.

20.7 Should the personal circumstances come to need to be considered, I am of the view that the following broad considerations can be attributed to all of the individual cases,

(i) The appellants personal need for a site,

(ii) The Best interests of any children resident on any of the sites,

(iii) The social benefits of having family cohesion by allowing family groups to remain in close proximity and to support one another, as the appeal sites can offer,

(iv) The consequence of the Appeal being dismissed for those persons already occupying the site and their resident dependents, and those persons who are currently leading a roadside existence and who could be accommodated on the site,

20.8 For the reasons I have set out, I consider that the Inspector will be presented with three options for allowing any one, or all, of these appeals under ground (a),

Option 1: Permanent Non-Personal Permission – The Inspector allows the appeal and imposes the standard Gypsy/Traveller occupation condition alongside the Travelling Showpersons occupation condition on any grant of planning permission for the development, thus enabling the site to be retained in part, should ownership change, for its allocated use.

Option 2: Personal Permission – The Inspector allows the appeal and imposes a condition requiring the cessation of the use and restoration of the land should the site cease to be occupied by those named persons, and their resident dependents, on the basis that their own need for a site and any personal circumstances clearly outweigh any harm which is identified. When those persons cease to occupy the site, the land reverts back to an agreed position. Either a green field, or back to the allocated Showmen's use.

Option 3: Temporary Permission – The Inspector allows the appeal, having regard to the lack of available alternatives for the occupants to resort, and the consequences of dismissing the appeals outright, and permits a time-limited planning permission for 5 years, such that the group are enabled to remain on site, without being in breach of planning control, and are allowed sufficient time to secure an alternative base which, through time, will benefit from planning permission before they vacate the appeal site.

20.9 A matter in support of both options 2 and 3 is that the Showmen use would not be lost forever, and the LPA could retain the site as an allocation. Albeit the use, and delivery would be delayed until the current occupation of the site ceases.

21.0 SUMMARY AND CONCLUSIONS

21.1 In summary, it is considered that the alleged breach, whilst there is a development that has occurred, is not correctly described in both the Notice and on the Plans. It would not be possible to amend the Notices to address this, and as such they ought to be withdrawn, or the Notice's quashed and Ground (b) successful.

21.2 A significant consideration is the prejudice afflicted to occupants and owners who were not correctly served a copy of the Notice, and are reliant upon appeals made by others to succeed on Grounds (b). These interested parties, such as the occupants of Plots 5A, 5B, and 5C, were not served, and have not been able to appeal as a result.

21.3 The ground (c) appeals should succeed insofar that permission for fencing is not required.

21.4 The appeals under ground (d) will demonstrate on the balance of probabilities that the alleged breach is immune from enforcement action.

21.5 On the planning merits of the case, for the reasons I have set out, I consider that the development is acceptable, and should be granted planning permission.

21.6 The requirements of the Notices are excessive, vague, and unclear. They fail to meet the tests of specificity required by Enforcement Notices, and also make reference to matters that are outside of the LPA's jurisdiction.

21.7 The time for compliance is woefully short given the consequences of the appeals being dismissed, and a period of two years is sought.

21.8 I submit that there is no reason for the Inspector to not allow one, or all, of these appeals on any one of the grounds put forward within this case.

22.0 APPENDICES

Appendix 1 **05/01605/FUL – Decision Notice & Plan**

Appendix 2 **02/01022/FUL – Decision Notice**

Appendix 3 **Aerial Images**

Appendix 4 **ESCC v Robins**

Appendix 5 **Sketch Plan**

Appendix 6 **3246321 - Willow Brook Stables, Marsh Road**

Appendix 7 **3295746 - Plot 20A, Sunset Park Homes**

Appendix 8 **Winchester City Council GTAA October 2022**