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## Rebuttal Proof of Evidence of

**Tom Wicks BA(hons), PgDip, LL.M MRTPI**

On behalf of



# Winchester

City Council

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Land at Carousel Park, Basingstoke Road, Micheldever, Winchester, Hampshire, SO21  
3BW ("the Appeal Site")

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## **QUALIFICATIONS AND EXPERIENCE**

I refer to facts and matters that I believe to be true, unless I have stated otherwise, and I have expressed my true opinions. I understand my duty in giving evidence is to help the Inquiry and that duty overrides any obligation to the LPA. I confirm that I will continue to act, in accordance with the Code of Conduct of the Royal Town Planning Institute.

## **Introduction**

I produce this proof of evidence in response to the evidence provided on behalf of the Appellants in August 2023, including principally by Mr Brian Woods MRTPI.

I address issues raised in Mr Woods' proof of evidence in the order in which they appear. However, and for the avoidance of doubt, this rebuttal proof does not seek to respond to each and every point raised by Mr Woods. If a point has not been addressed in this rebuttal it does not mean that I accept it.

### **Preliminary points**

1. At the outset, I acknowledge that Mr Wood's plan at his Appendix 5 largely reflects the condition of the Appeal Site during my visits.

### *The Appellants*

2. At Mr Woods Foreword and at his paragraph 2.1, he identifies that he is instructed to act on behalf a range of appellants in numerous appeals. There are no appeals by Christy Stokes, Tommy Stokes, Robert Stokes, George Doran, Mary Stokes, Patrick Crumlish, Christina Hegerty.

### *Planning History*

3. At Section 4 of his proof of evidence, Mr Woods considers the planning history of the site and at 4.2 suggests that some of the fencing on the site benefits from planning permission.
4. Permission 05/01605/FUL condition 2 (LPA 7 pg98) requires that pitch 2 and 3 be occupied by one family each in order to prevent the sub-division of pitches. The purpose of the fences was to protect equipment from children and animals within a Yard occupied by 1 family unit (LPA 7 pg100), not to sub-divided the Yards.

5. The position of the fences are shown at LPA 7 pg103 and described on pg100. The fences for which *retrospective* planning permission was granted 10 October 2005 no longer exist.
6. Pitch 2 is divided by an approximate 1.8m fence to create a smaller front section shown at LPA 17 pg249 (top). The fence separating the 'road' is no longer there, nor is the fence running north to south within Yard 2.
7. Pitch 3 is now divided through the middle, east to west, with a brick wall, an approximate 1.8m fence, and a building. An approximate 1.8m fence encloses a part of the southern portion of Yard 3 towards the access road, whilst the rear part of the northern portion of Yard 3 is now accessed through the rear of Yard 2.

The Appellants' case in relation to Ground E in respect of EN1 and EN2 - Service

8. At Mr Woods paragraph 5.1 the Appellants assert that the LPA have not undertaken proper service of EN1 and EN2, leading to substantial prejudice. And at 5.4, Mr Woods suggests this is evidenced by a lack of appeals in relation to plot 3, 4, 5 and 7.
9. I dispute that the enforcement notices were not properly served or that the lack of an appeal is evidence of such. It is not necessary for every occupier to make an appeal in order to put their case forward.
10. The requirements of S329 of the Act are clear with regard to service:

329                      *Service of notices.*

*(1) Any notice or other document required or authorised to be served or given under this Act may be served or given either—*

*(a) by delivering it to the person on whom it is to be served or to whom it is to be given; or*

*(b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address; or*

*(c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address; or*

*(cc) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in subsection (3A), to that person at that address (subject to subsection (3B)); or*

*(d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.*

*(2) Where the notice or document is required or authorised to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of premises, the notice or document shall be taken to be duly served if—*

*(a) it is addressed to him either by name or by the description of “the owner” or, as the case may be, “the occupier” of the premises (describing them) and is delivered or sent in the manner specified in subsection (1)(a), (b) or (c); or*

*(b) it is so addressed and is marked in such a manner as may be prescribed for securing that it is plainly identifiable as a communication of importance and —*

*(i) it is sent to the premises in a prepaid registered letter or by the recorded delivery service and is not returned to the authority sending it, or*

*(ii) it is delivered to some person on those premises, or is affixed conspicuously to some object on those premises.*

*(3) Where—*

*(a) the notice or other document is required to be served on or given to all persons who have interests in or are occupiers of premises comprised in any land, and*

*(b) it appears to the authority required or authorised to serve or give the notice or other document that any part of that land is unoccupied,*

*the notice or document shall be taken to be duly served on all persons having interests in, and on any occupiers of, premises comprised in that part of the land (other than a person who has given to that authority an address for the service of the notice or document on him) if it is addressed to “the owners and any occupiers” of that part of the land (describing it) and is affixed conspicuously to some object on the land.*

11. The LPA effected service of the notices in accordance with s329.
12. Entrance to Site - I served the enforcement notices on 01 March 2022 together with Nigel Wicks by posting the enforcement notices to all letter boxes at the only entrance to the Appeal Site and affixing copies to both sides of that entrance using a hammer and tacks (LPA 26 pg338).
13. Plot 1 / 1A. On 01 March 2022 I handed copies of the enforcement notices contained within a plastic crate that I was carrying to Nigel Wicks who placed them on the doorsteps of the caravans contained within Plot 1 / 1A. I also sent copies by recorded delivery to the registered proprietor of Plot 1 and 1A, Darren Loveridge, 18 Brunner Court, Ottershaw, Surrey, KT16 0RG, and Beverley Black of Plot 2, Carousel Park, the addresses for service entered on the Land Register.
14. An occupier of Plot 1 has appealed (3296767 / 3296768).
15. Plot 2 was divided into 2, a smaller section to the north, and larger section to the south. On 01 March 2022 I handed copies of the enforcement notices contained within a plastic crate that I was carrying to Nigel Wicks who placed them on the doorsteps of the caravans contained within the northern section and the caravans within the southern section. I also sent copies by recorded delivery to the registered proprietor of Plot 2, Linda Black, 2 Old Stocks Farm, Paices Hill, Aldermaston, Reading, the address for service entered on the Land Register.
16. An occupier of Plot 2 has appealed (3296771 / 3296772).

17. Plot 3 was divided into 3 sections. On 01 March 2022 I handed copies of the notices to occupiers and placed copies on the doorsteps of the caravans. Nigel Wicks also placed copies on the doorsteps of the caravans I also sent copies by recorded delivery to the registered proprietor of Plot 3, Suzanne Wall, 2 Old Stocks Farm, Paices Hill, Aldermaston, Reading, the address for service entered on the Land Register.
18. An occupier of Plot 3 has appealed (3296773 / 32967734) and another phoned the Council on 01 March 2022 and confirmed the notices had been received.
19. Part of the northern section of Plot 3 was excluded from the EN1 plan because it is occupied by a TSP. Plot 3 is also occupied by James Flynn (3A) and George Doran (3B). Neither are TSP.
20. Plot 4 was divided into 3 sections. The north section contained 4 statics and 1 touring caravan, the middle section was empty (LPA 26 pg342), and the EN3 section contained 10 static caravans (LPA 26 pg343). On 01 March 2022 I placed copies on the doorsteps of the caravans in the northern section, affixed copies to the entrance of the middle section, and handed copies to occupiers, placed copies on the doorsteps of caravans, and affixed copies to the entrance of the EN3 area. I also sent copies by recorded delivery to the registered proprietors of Plot 4, Michael Stokes and Francis Anthony Casey, of Plot 4 Carousel Park, the address for service entered on the Land Register.
21. Part of Plot 4 and Plot 5 had been combined to form the area covered by EN4. It contained 10 static caravans and is shown on Mr Wood's plan at his Appendix 5. On 01 March 2023 both sets of entrance gates to the EN4 area were closed and dogs were roaming free within. I shouted hello but nobody appeared. I affixed the notices to the entrance gates using a hammer and tacks.
22. Appeals were made by Patrick (3296503) and Bernie Stokes (3296504). Patrick Stokes has also appealed against EN1 and EN2 (3296781 / 3296782).

23. At LPA 20 pg298 Michael Stokes and Anthony Casey describe the western side of the EN4 area as Plot 4A Carousel Park which they transferred to Bernie Stokes on 29 June 2018. Plot 4 (HP648948), was sold to Hugh Patrick McGinley, Bernard McGinley, and Bidget Hegarty on 10 May 2022 for £10,000.
24. At LPA 20 pg291 Maurice Cole describes the eastern side of the EN4 area as Plot 5A Drivers Diner which he transferred to Patrick Stokes on 20 February 2022.
25. At paragraph 1.1 of his proof of evidence Patrick Stokes also describes the land he owns and occupies as Plot 5A. It appears to be a different 5A than the 5A described by Maurice Cole which contains 5 static caravans occupied by non-gypsy travellers or TSP.
26. Plot 5 less the new EN4 area, was divided into 3. The south contained 2 static caravan and 2 touring caravans. The middle contained 1 static caravan and 3 touring caravans, and the north contained 1 static caravan and 1 touring caravan. On 01 March 2022 I placed copies on the doorsteps of the caravans and handed copies to occupiers. I also sent copies by recorded delivery to the registered proprietor of Plot 5, Maurice Cole, 19 Lawford Crescent, Yateley, Hants, GU46 6JX, the address fir service entered on the Land Register.
27. Plot 6 was divided into 2 sections. The western section contained 4 static caravans and the eastern section contained 4 touring caravans. I handed copies of the notices to occupiers of Plot 6 east, and affixed copies to the gates of Plot 6 west as there was a dog roaming free within and I could not attract the attention of occupiers. I also sent copies by recorded delivery to the registered proprietor of Plot 6, Anna Lee, of Plot 6, Carousel Park, the address for service entered on the Land Register.
28. An occupier of Plot 6, Hughie Stokes, has made appeals (3296776 / 3296777).
29. Plot 7 contained 1 static caravan and 1 touring caravan (LPA 26 pg341). On 01 March 2022 handed copies to an occupier of Plot 7. I also sent copies by recorded delivery to the registered proprietors of Plot 7, Derek George Birch, Derek William



Birch, Valeria Ann Birch, 1 Firgrove Lane, North Boarhunt, Wickham, Hants, PO17 6JS, the address for service entered on the Land Register.

30. Plot 8 was divided into 3 sections, north, middle and south. On 01 March 2022 I placed copies of the notices on the doorsteps of the caravans. I also sent copies by recorded delivery to the registered proprietors, Danny Carter, Joe Ripley, and Jimmy Ripley, Plot 8, Carousel Park, the address for service entered on the Land Register.
31. Danny Carter is the owner of Plot 8 and was an occupier of Plot 8B at the time of the 2019 decision (LPA 15 pg224 para85). He has made appeals (3296778 / 3296779).
32. Mary Stokes moved onto Plot 8 after the notices were issued (para 2.1) and after Danny Carter appeal against those notices 11 April 2022.
33. Plot 9 was divided into 3 sections. The east section contained 1 static caravan, the middle contained, the middle contained 4 statics, and west 2 statics and 1 touring caravan.
34. Patrick Crumlish states (2.3) he occupies Plot 9A along with his son, Oliver Crumlish. In his appeal form (3296783 / 3296784), Oliver Crumlish states he occupies Plot 9B.
35. Patrick also states Plot 9B is occupied by Patrick Jnr and that additional statics on Plot 9 are rented to non-traveller / TSP.
36. On 01 March 2022 I placed the notices on the doorstops to caravans in plot 9 and posted copies by recorded delivery to the registered proprietors, Valerie Carter, Shannon Marie Mcdonagh, and Caroline Stevens of Plot 9 Carousel Park, the address for service entered on the Land Register.
37. Appeals have been made by occupiers of Plot 9 (3296781 / 3296782 / 3296783 / 3296784).

38. At his paragraph 5.7 Mr Woods says it is disappointing that the LPA seek to push responsibility on the evidence for these appeals back to the Appellants and states something can be adduced from the lack of an appeal against EN3.
39. I handed copies of the notices to occupiers of the EN3 area on 01 March 2022. I affixed copies to the entrance of the EN3 area on 01 March 2022. I placed copies on the doorsteps to caravans of the EN3 area on 01 March 2022, and I sent copies to the registered proprietors of the EN3 area.
40. The only thing that can be adduced from the lack of an appeal against EN3 is that despite proper service nobody appealed against EN3.

#### Desire for planning permission

41. At his paragraph 5.6, Mr Woods states that all those involved with the site have a desire to seek planning permission but have been barred from doing so as a result of a failure to properly serve the notice.
42. Occupants of plots 5A and 5C say they would have sought planning permission for their plots if they had received the notices (Stokes 1.11, Hegerty 1.8), yet have chosen not to (Mr Woods 13.5).
43. It has always been the prerogative of those with an interest in the Appeal Site to seek planning permission. No planning applications have been received in relation to the Appeal Site since 2010.

#### The Appellants' case in relation to Ground B in respect of EN1

44. At his paragraphs 6.1 to 6.5 Mr Woods questions the LPA's approach to planning units with reference to the earlier notices issue against individual plots and the plan attached to the enforcement notice.
45. Whether the use of the Appeal Site as a residential caravan site has resulted in a material change in use is a matter of fact and degree. There is no statutory

definition of a material change in use. It should be assessed in relation to the appropriate planning unit having regard to *Burdle*.

46. In *Burdle* it was held that although parts of a single unit of occupation could be considered as separate planning units, the test to be applied was whether there were two or more physically separated and distinct areas which were used for substantially different and unrelated purposes.
47. During my visits the Appeal Site was occupied as a residential caravan site in an area physically separated and distinct from the surrounding area. It has a single entrance and is identified by a large sign reading "Carousel Park Caravan Site" (LPA 26 pg351). It is physically enclosed by fencing and bunds.
48. Occupiers share a common entrance and a common thoroughfare and post is left at that shared entrance.
49. The Appeal Site has been the subject of two planning applications for a material change in use, LPA 1 and LPA 10. Neither seek planning permission on a caravan by caravan, plot by plot, yard by yard, or pitch by pitch basis.
50. Occupation of the Appeal Site fluctuates consistently and is not reflected by the land register. Plot, pitch, and yard identities are confused and fluid.
51. Whilst physically separate areas *could* be identified, such as the EN3 and EN4 areas, they remain occupied for substantially the same purpose, the residential occupation of caravans.
52. The Appeal Site is used for substantially the same and related purposes, as a residential caravan site.
53. Parallels can be drawn between the Appeal Site and a house converted into flats. Whilst enforcement notices *could* address the material change of use of each flat within that house, it is not uncommon to allege the material change of use of the whole, even though each flat constitutes a planning unit.

54. For the purposes of determining the materiality of the change in use it is unhelpful and arbitrary to treat each caravan, plot, pitch, yard, or enclosure as a separate planning unit in circumstances where each is occupied for substantially the same purpose where materiality needs to be assessed by reference to a wider area and policy considerations are site wide.
55. The plans attached to the Enforcement Notices do not identify planning units. They identify the land where the breach of planning control has occurred and where the LPA require that breach to cease.
56. Plots 3 and 7 were excluded from the plan attached to EN1 because they are occupied by TSP and the LPA do not object to that occupation, and Plot 7 is already the subject of an effective enforcement notice (LPA 9 pg132).
57. There is no physically separate and distinct area not used as a residential caravan site.
58. The Appeal Site has its own policy designation (TR3), to safeguard its use as TSP site.
59. Whether the Unauthorised Use is materially different to the authorised TSP use, which includes the residential occupation of caravans, is a different consideration.

#### Materiality

60. At paragraph 6.6 and onwards (and also at paragraph 4.3), Mr Woods suggests that the site is lawfully a residential caravan site and that the enforcement notice is premised on there having been an 'intensification' of an existing lawful use. Aside from the fact that any such argument should be pursued by reference to ground (c) rather than ground (b), Mr Woods is wrong to suggest that the lawful use of the site is as a residential caravan site. The lawful use of the Appeal Site is not as a residential caravan site (see *Wall* LPA 13 pg197):

*"19. The planning permission in the present case was for a change of use of agricultural land to a TSP site. It permitted that change of use and no other, it*

*did not permit a change of use to a use for the stationing of caravans for residential purposes by persons who were not TSP”.*

61. Mr Woods confirms the lawful use is not a caravan site as his paragraph 13.60.
62. The only authorised use of the Appeal Site is as a TSP site permitted by the 2003 permission (LPA 1).
63. At his paragraph 6.6 Mr Woods says that the test is to determine whether a material change of use has actually occurred across the land and I agree with Mr Woods in this regard.
64. The approach to be taken in these Appeals is set out by Sullivan J at paragraph 27 of the *Wall* judgement LPA 13 pg200.
  - a. Whether the 2003 permission was implemented; and if so
  - b. Whether the alleged change in use has taken place; and if so;
  - c. Whether that change of use amount to a material change of use.
65. It is common ground that the 2003 permission was implemented (Woods 4.4).
66. The alleged material change in use is to a residential caravan site. Mr Woods at his paragraphs 4.3 and 6.6 appears to accept the Appeal Site is a residential caravan site. It is identified as such at its entrance (pg351), described as such by the Appellants in their evidence and in their appeal forms, and I consider that description of the use of the Appeal Site as a residential caravan site to be correct.
67. The approach to be taken to assessing materiality was set out by the Inspector in the 2019 decision at LPA 15 pg229.
68. The authorised use of the Appeal Site is as a TSP site (LPA 1). That use is a “distinct and narrower use” (*Wall* LPA 13 pg193) and fulfils a proper planning purpose that is safeguarded by the Development Plan.

69. The Unlawful Use affects the capacity of the Appeal Site to contribute to that purpose through the loss of a TSP site and is relevant to materiality (See *RBKC*<sup>1</sup>).
70. TSP sites often combine residential, storage, and maintenance activities, and are usually less occupied during the summer months when TSP would attend fairs, but would never the less be required to be available for year-round occupation.
71. Land requirements of TSP are distinct from gypsy and travellers or the settled community who do not require the same space for storage and maintenance activities do preserve their culture.
72. The Unlawful Use is materially different in character to the permitted TSP use. There are no defined areas for the storage and maintenance of equipment associated with TSP and the Appeal Site is not less occupied during the summer months whilst TSP attend fairs.
73. Accommodation at the Appeal Site is advertised on the internet and let out to members of the settled community and gypsy travellers for commercial benefit.
74. That occupation is materially different to the occupation of the site across 9 plots by TSP who share family, trade, and resources (LPA 15 pg221 para68).
75. In the proofs of evidence the Appellants have identified:
  - a. Plot 1 (F Loveridge), 2 adults, 3 children, static 1
  - b. Plot 1 (F Loveridge Jnr), 2 adults, 2 children, static 2
  - c. Plot 1 (E Loveridge), 1 adult, static 3,
  - d. Plot 1 (M Loveridge), 2 adults, static 4
  - e. Plot 1 Pitch 1 (C Stokes) 3 Adults, 1 child, 2 grandchildren, in 1 static caravan, identify as travellers

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<sup>1</sup> [2016] EWHC 1785 (Admin)

- f. Plot 1 Pitch 2 (P Stokes) 2 adults, 4 children, in 1 static caravan
- g. Plot 2A (T Stokes) 5 adults, 4 children, in 4 static caravans, identify as travellers
- h. Plot 3A (James Flynn), 6 adults, 5 children, 4 static caravans
- i. Plot 3b (George Doran), 4 adults, 2 children, 2 statics, identify as travellers
- j. Plot 5A (P Stokes), 2 adults, 3 children
- k. Plot 5B (A Stokes), 4 adults, 1 child
- l. Plot 5C (P Hegerty), 2 adults, 3 children, 1 static
- m. Plot 5C (C Hegerty), 2 adults, 3 children, touring caravan
- n. Plot 6 Pitch 1 (H Stokes), 5 adults, 1 static
- o. Plot 6 Pitch 1 (C and M Stokes), 2 adults, touring caravan
- p. Plot 6 Pitch 2 (MJ and P Stokes), 2 adults, 6 children,
- q. Plot 6A (P Stokes), 2 adults, 2 children in two statics
- r. Plot 8 (Mary Stokes), 1 adult, 3 children
- s. Plot 9A (P Crumlish), 4 adults, 3 children 2 statics
- t. Plot 9b (P Crumlish Jnr), 2 adults.
- u. Plot 9b – Additional statics rented out to non-travellers
- v. Plot 9C (C Hegerty), 1 adult, 4 children, 2 statics.

(Approximately 56 adults, 49 children, additional non-travellers in 27 statics, 2 touring caravans).

- 76. I have identified 2 TSP on the Appeal Site within Plot 3 (brick building) and Plot 7 (mobile home).

77. There are approximately 60 static caravans on the Appeal Site and using the Appellants calculations at Mr Woods' paragraph 11.5, up to 300 occupiers.
78. The Appellants' evidence accounts for around a third of that occupation, either in relation to caravans 26 v 60+, or occupiers 105 v up to 300.

#### Intensification (Mr Woods 6.6)

79. At his paragraph 6.6 onwards, Mr Woods suggests the LPA are alleging a material change in use by intensification.
80. The LPA are not alleging a material change in use by "mere intensification" (Mr Woods 6.6). This is not a case of "*more of the same*". It is a case of a material change in the definable character of the land, as is explained above.

#### Waste

81. At his paragraph 6.16 and 16.5 Mr Woods says the LPA as District Authority are taking on a County Matter. Reference to waste in the notice is part and parcel of the requirement to restore the land to its condition before the breach of planning control took place. It is reference to waste generated through compliance with the requirements of the notice and waste that is incidental or ancillary to the Unauthorised Use.

#### The Appellants' case in relation to Ground B in respect of EN2 Section 7

82. At his paragraphs 7.4 to 7.6, and 17.2, Mr Woods says the LPA seek to restore the TSP use of the Appeal Site, that by s173(11) the LPA have "underenforced", and that LPA should ensure that they identify all relevant breaches of planning control and all components of a mixed use.



83. Mr Woods has misunderstood the effect of s173(11) in that EN2 could *not* have required those matters to cease because they were not included in the breach and therefore compliance with EN2 would *not* have the stated effect (see *Hammond*<sup>2</sup>).
84. The notice does not and cannot require a use of the Appeal Site<sup>3</sup>.
85. At his paragraph 7.9 Mr Woods suggest that the LPA should have alleged a breach of an occupation condition. There is no occupation condition attached to 02/01022/FUL.

#### *Ownership 7.10*

86. At his paragraph 7.10 suggests that even if the enforcement notices were complied with, the use of the Appeal Site as a TSP site would be lost because the current owners will not rent or sell the sites to TSP and so they will be vacant.
87. I do not consider that this is a relevant consideration for this appeal. It is impossible to say with certainty what will happen to the Appeal Site and I consider it to be highly unlikely that the owners of the site would leave the land vacant rather than sell or rent the land to TSP. There is a clear need for TSP sites in the district and the current evidence suggests that the Appeal Site is rented by non-TSP to TSP, and vice versa:
- a. Michael Wall, a TSP, occupied Plot 1 whilst owned by D Loveridge, a non-TSP (LPA 15 pg216);
  - b. Beverley Black, a TSP, owns plot 1A/2C (LPA 15pg218 / LPA 6 pg70), but it is occupied by Tommy Stokes, a traveller;
  - c. Tommy Stokes has rented 2A from Mr and Mrs Black who are TSP (LPA 15 pg221 para65) since February 2022 and Randolph Black, a TSP, left plot 2B between 2011 and 2017 (LPA 15 pg220 para 63).

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<sup>2</sup> *Hammond* [2004] EWCA (Civ) 1073

<sup>3</sup> *Lipson v SoSE* (1977) 33 P & CR 95 (1976)

- d. Suzanne Wall, a TSP, owns plot 3 (LPA 6 pg76), but it is occupied by James Flynn, a non-TSP and George Doran, a traveller;
  - e. Plot 4 was owned by Michael Stokes, and Francis Casey (LPA 6 pg79), and is occupied by Non-TSP or gypsy / travellers;
  - f. Plots 9 is occupied by travellers and non-travellers (Patrick Crumlish 2.10).
88. Planning permissions generally run with the land to which they relate not – at least ordinarily – as personal permissions for the present owner or the applicant.
89. The suggestion that owners of land can frustrate the Development Plan through a refusal to rent or sell their land to a particular group based on their ethnic origin is perverse.

#### The Appellants' case in relation to Ground D in relation to EN1 and EN2

90. At his paragraph 10.12, Mr Woods states that the Appellants *will be seeking to give evidence regarding key dates...and whether they met the definition of a TSP*".
91. The relevant date for the purposes of this appeal is 01 March 2012, being 10 years before the enforcement notices were issued (s171B(3)).
92. The Appellants provide no evidence of occupation until after the relevant date and do not identify any TSP. None of those giving evidence to this inquiry gave evidence to the previous inquiries save for Freddie Loveridge who did not occupy the Appeal Site until 2013 on his evidence (2.3).

#### The Appellants' case in relation to Ground A in respect of EN2 Section 11

93. At his paragraph 11.3 Mr Woods says condition 15 is wholly unenforceable and inhumane.
94. Condition 15 (No. of Occupants) is the threshold at which planning permission is required not at which enforcement action would be taken. It protects the amenities

of occupiers of the Appeal Site in circumstances where occupation exceeds acceptable levels, such as is the case.

95. Condition 15 prevents the overcrowding of the Appeal Site leading to poor living conditions for occupiers through a lack of privacy, adequate spacing between caravans, lack of private amenity space, and inadequate provision for services such as waste disposal or and electricity supply (LPA 19 pg286).
96. It is necessary to avoid the Appeal Site becoming over-concentrated in its location and disproportionate in size to nearby communities (LPP1 CP5), to avoid further intensification of the Appeal Site (Traveller DPD TR3), and to protect the amenity of occupiers.
97. At his paragraph 11.4 Mr Woods addressed condition 10 (Caravan numbers), and at 11.16 suggests 486 caravans could be stored on the land, but condition 10 limits storage to caravans used by TSP not caravans storage for its own sake.
98. Condition 10 prevents the overcrowding of the Appeal Site leading to poor living conditions for occupiers through a lack of privacy, adequate spacing between caravans, lack of private amenity space, and inadequate provision for services such as waste disposal or and electricity supply (LPA 19 pg286).
99. Condition 10 is necessary to avoid the Appeal Site becoming over-concentrated, to maintain space for TSP to store and maintain equipment, and to ensure adequate provision for parking, turning and safe manoeuvring within the site (LPP1 CP5 and Traveller DPD TR7).
100. At his paragraph 13.20, Mr Woods accepts that *the number of pitches present on site does result in the scales being tipped in favour of an over-concentration.*
101. It is unlikely TSP would store caravans on the Land in the number Mr Woods suggests let alone have use for that number of caravans.

The Appellants' case in relation to Ground A in respect of EN1 – Section 13

102. At his paragraph 4.4 and 13.31 Mr Woods states that because 02/01022/FUL (LPA 1) was implemented, the Appeal Site can be categorised as previously developed land, as defined by the NPPF.
103. Previously Developed Land (“PDL”) is defined by the NPPF at page 71 as ‘*land occupied by permanent structures*’. The Land is not occupied by permanent structures, with the only permission for permanent buildings being a workshop (06/00401/FUL). PPTS para 26 refers to ‘*effective use of previously developed (brownfield), untidy or derelict land*’. The Land is not PDL and the enforcement notices do not allege it is ‘untidy or derelict’, so PPTS para 26 is not relevant.
104. In addition, condition 13 of the 2003 permission (LPA 1) requires that in the event Appeal Site ceases to be used for the purposes of TSP, it shall be restored to its former condition.
105. At his paragraph 13.10, Mr Woods confirms that during his visits at an unknown time, there have been no vacant plots. I saw vacant plots during my visits and the 2022 GTAA records one.
106. At his paragraph 13.12, Mr Woods suggests that only limited weight can be afforded to the loss of a safeguarded TSP site, which he accepts is inevitable (13.32), and for which additional need remains, but justifies the Appellants’ application for planning permission on the basis of a different need.
107. At least as much weight should be attached to the loss of a site for an identified need as to any gain for a different need, especially when the site is safeguarded and allocated for TSP use.
108. The LPA cannot begin to plan for the needs of protected groups if existing site allocations, for which an identified needs remains, are lost to different uses.
109. The fact that the updated GTAA shows a greater numerical need for GT pitches than for TSP plots does not mean that GT provision should take priority. Both

groups have unmet needs, but it has proved particularly challenging in practice to meet TSP needs. This is demonstrated by the Council's inability to identify sufficient sites to meet the level of TSP need identified in the Traveller DPD.

110. Experience since the 2016 GTAA shows that large numbers of GT pitches have been approved (see Mr Opacic's Appendix SO2, pages 127-128 which show there have been 35 GT pitches permitted since 2016) compared to a limited number of TSP plots (see Mr Opacic's Appendix SO2, pages 127-128 which show there have been 4 TSP plots permitted since 2016). A large proportion of the GT pitches permitted were non-allocated ('windfall') sites, compared to the TSP sites which are all Traveller DPD allocations.
111. There may be a number of reasons why TSP plots seem more difficult to provide, for example they need different physical characteristics to GT pitches.
112. Typically, TSP plots are larger due to the need for equipment storage and maintenance areas, and require ready access to main routes for the large vehicles often employed.
113. The Appellants accept at paragraph 5.5 of their Statement of Case prepared by WSPA that existing TSP need is a reason not to grant planning permission.
114. At his paragraph 13.13, Mr Woods says that unless the LPA are considering compulsory purchase powers, the TSP site could be lost forever. The Appellants evidence suggests the new GTAA has underestimated current TSP need.
115. The new GTA recorded 5 TSP pitches (pg47) and 19 G & T pitches (pg46).
116. The evidence presented by the Appellants is of 25 'Yards' (Woods 3.6).
117. I have only met two TSP on the Appeal Site and the Appellant has no identified any others.
118. The evidence suggests there are less TSP on site now than the 2022 GTAA recorded and therefore additional plots may be required.

119. The Development Plan safeguards the Appeal Site for TSP use, for which there remains an identified need. The grant of planning permission for a different use would result in the loss of a TSP site and exacerbate the lack of supply of an identified need and must weigh heavily against the grant of planning permission.
120. At 13.14 Mr Woods says the layout of the site generally accords with the extant TSP layout. I disagree with Mr Woods.
121. The permitted layout (LPA 1) was for 9 plots, each occupied by one family, split between a residential area and an area for the storage and maintained of TSP equipment.
122. The current layout bears little resemblance to that arrangement. There are no areas for the storage and maintenance of TSP equipment and there are at least 3 times the number of residentially occupied caravans as originally intended (27 + 100+).
123. At his 13.15 Mr Woods argues that because the internal road layout remains approximately as originally approved, there is sufficient turning space within the site. Turning space requirements are not limit to the internal access roads. Vehicles, including caravans, are not restricted to access roads. It includes turning space across the Appeal Site, which due to the number of caravans on site, is inadequate.
124. At his paragraph 13.21 Mr Woods seeks to draw support from an appeal decision at his Appendix 6 with regard to the correct context to consider the effect of proposals on the nearest settled community.
125. The LPA are not arguing that the Unauthorised Use dominates the nearest settled community. The Appeal Site is occupied to a large extent by the settled community. Notwithstanding, that approval was for a single pitch accommodating 1 static and 1 touring caravan only and required parking and turning areas to be constructed and kept clear.

126. The Appeal Site contains approximately 50 times the number of caravans and is a very different proposal.
127. At his paragraph 13.22, Mr Woods states that the Appeal Site is capable of making provision for open space for safe children's play and that he considers children riding around on their bikes, and racing through makeshift obstacle courses evidence of this.
128. I disagree with Mr Woods. Children will find ways to play in whatever environment they find themselves in. That is as true on a housing estate as it is on a private estate or a caravan site. That does not mean to say that proposals should not aim to provide dedicated areas for play, such as those required of new housing developments. Why should children living in bricks and mortar benefit from LAP, LEAPS, and NEAPS, but not children living on caravan sites?
129. In any event, the circumstances of the Appeal Site are different to those described at paragraph 55 of the appeal decision Mr Woods attaches at his appendix 7 and the Inspector was making a different assessment.
130. At paragraph 55 the Inspector describes how 'most plots are occupied by family groups' and 'the caravans are static'. At paragraph 53, the Inspector notes "All caravans are positioned at least 6 meters from each other and therefore comply with the Caravan Act".
131. Most plots on the Appeal Site are not occupied by family groups, there are many touring caravans, and caravans are not positioned 6 meters from each other.
132. Furthermore, the comments are made in a different policy context. 'D11' requires a reasonable level of visual and acoustic privacy, whereas policy TR7 is directed specifically to areas of open space for safe children's play.
133. At his paragraph 13.48, Mr Woods compares the immediate need for TSP plots against the need for GT pitches but does not have regard to the difficulty in finding TSP compared to GT pitches as explained above.

134. At his paragraph 13.54 Mr Woods says that due to the ownership of the Appeal Site, it cannot contribute to TSP need. For the reasons explained above, I do not agree.
135. At his paragraph 13.61, Mr Woods says 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.
136. Those concerns would apply equally to TSP.

#### The Appellants' case in relation to Ground A in respect of EN4

137. There is no evidence the area covered by EN4 is occupied by TSP or Gypsy / Travellers. The grant of planning permission would not meet any identified need and is wholly contrary to the Development Plan. The PPTS is not relevant to an application for a residential caravan site not occupied by TSP or Gypsy / Travellers.
138. It is not clear which Mr Stokes Mr Woods is referring to but none give evidence in relation to the EN4 area.

#### Status of Appellants

139. The LPA do not challenge the evidence regarding the status of the Appellants, where stated.

#### Ground F EN1 section 16

140. At 16.3, Mr Woods states that the requirements of EN1 interfere with the lawful fallback position of the land.
141. EN1 only requires the removal of items associated with the Unauthorised Use. Items associated with the lawful use could remain.

#### Conclusion

142. Having read the proof of evidence of Brian Woods I still hold the opinion that the LPA are correct in their approach to issuing the enforcement notices and that



planning permission should not be granted for the Unauthorised Use or without compliance with conditions 10, 11, and 15 of LPA 1.