

**RE: LAND AT CAROUSEL PARK, BASINGSTOKE ROAD,
MICHELDEVER, WINCHESTER**

**OPENING SUBMISSIONS ON BEHALF OF THE
APPELLANTS**

1. These appeals represent that latest in the long running saga of enforcement at this site, the original enforcement notices issued in September 2010 finally being quashed in November 2019. The LPA have now issued further notices, but once again they have failed to grapple with what is actually happening on the site and the notices are consequently, largely defective. The site represents the home of a great many adults and children, some of whom have only ever known this site as home. Many of the families on site moved here believing they were lawfully entitled to live on site, and some have been subjected to the misery of the LPA's defective enforcement process for a significant period of time.
2. The site is 2.7ha in area and has an extant planning permission for use as an extensive travelling showpersons' site ("TSP") comprising up to 27 residentially occupied caravans of any type, touring caravan storage limited only by the available space (providing for something upwards of 450 caravans), equipment storage and maintenance areas, a large vehicle workshop, fencing, roadways and other buildings. There are no conditions that would or could define the meaning of a TSP and the description of development is such that it is not a mixed use per se but a TSP use. If the permitted use was described as a 'mixed use for the stationing of caravans for residential purposes, business use, parking and maintenance of vehicles and storage', conditioned such that only those who met the definition of a TSP could use the site then matters would be a great deal more simply.

3. The use of the phrase '*travelling showpeople*' in the description of permitted development, without more by which that use can be defined, provides for a very wide range of permissible uses, essentially focused on the identity of the occupier not the physical use of the land. Such a use does not have to be a mixed use, indeed it could be a use for residential caravans only, or residential caravans and any one or all of the variety of uses that might be associated with a TSP use. Unlike in a conventional mixed use case, where a change of use might occur when one permitted element is lost to the benefit of another, there are no explicitly permitted mixed use elements in this case and no requirement for any combination of uses to be present. In essence, if a person occupying the land can be considered to be a TSP, however that is defined, then there would be no breach of planning control.
4. This extant permission must underly all of the planning considerations in respect of the development enforced against, representing both PDL and a lawful fallback position.
5. There are appeals against three enforcement notices before the Inquiry:
 - **Appeal 1 – EN1 – MCU** – To a residential caravan site for approximately 100 caravans (Grounds a, b, d, e, f, g);
 - **Appeal 2 – EN2 – BOC** – In respect of the limitation on the number of caravans on each pitch to 3 (condition 10), the limitation of the number of pitches to 9 (condition 11) and the limitation on the number of residents to 50 (condition 15) (Grounds a, b, c, d, e, f, g)
 - **Appeal 3 – EN4 – MCU** – to a residential caravan site for 10 caravans (Grounds a, f, g)
6. As has been an understandable theme of this site, there is some difficulty in aligning site residents with plots and the HM Land Registry records, but what is beyond doubt is that the site comprises a number of individual plots or pitches occupied by individual families and wider family groups who do so independent of and separate to other

plots/pitches such that the wider site cannot be considered to be a single planning unit but a number of smaller individual planning units.

7. In the interests of expediency, these opening submissions only set out in outline the approach of the Appellants.

Appeal 1 and 2 – Ground (e)

8. The site is made up of separate pitches occupied and/or owned by separate individuals. It is not one integrated site with a single owner. The Appellants will demonstrate that there has been a failure of service in respect of Appeals 1 and 2 and consequently a number of residents were not made aware of the notices and have not been able to lodge appeals. The obvious prejudice arising from this is that if the appeals fail then they will lose their homes, they are entirely dependent upon both notices being quashed in order to retain their homes.
9. There are no appeals from plots 3, 4, 5A, 5B, 5C and 7 and thus they, most importantly cannot progress ground (a) appeals in circumstances where their personal circumstances are fundamental to these appeals.
10. In ground (e) appeals it is often claimed that there is seemingly no prejudice arising, the claimed prejudice being illusory as the material issues in play are addressed by the single landowner appellant, but that is not the case here.
11. The Appellant will assert in due course that Notices 1 and 2 should consequential be quashed.

Appeal 1 and Appeal 2 - Ground (b)

12. The ground (b) arguments are set out in detail in the PoE of BW and will be elaborated upon in evidence. The principal problem for the LPA is that they have treated the site as a single planning unit and alleged a breach of planning control over that entire unit, which has not occurred. The alleged breach needs to be addressed in the context of

each of the smaller planning units, applying the ‘*Burdle Principles*’, there remains a TSP use within the area enforced against (according to the LPA’s own case), and the LPA has no jurisdiction over matters relating to ‘waste’.

13. The Appellant will demonstrate that the site has not become a ‘residential caravan site’.

Appeal 1 and 2 – Ground (d)

14. The Appellant will demonstrate through evidence of the site residents and other documentary evidence that elements of the enforced development were immune from enforcement at the date of issue in March 2022.

Appeal 2 – Ground (a)

15. The deemed consent under Appeal 2 will be a use of the site as a TSP site without compliance with some or all of the three conditions said to be breached. Condition 15 is Kafkaesque in its nature, seeking to limit the number of people who can occupy a pitch, in the manner of an overbearing State. There is no place in a modern, humane world for such a restriction on the use of land and the condition should be discharged. It is unenforceable and serves no proper purpose.
16. Allowing the appeals in respect of conditions 10 and 11 will result in a TSP site with a greater number of caravans and pitches, something the LPA cannot resist where they so fundamentally rely upon the need for such sites to oppose the ground (a) appeals.
17. The Appellant will demonstrate that even on the case presented by the LPA the Appeal 2 ground (a) appeal should succeed.

Appeal 1 – Ground (a)

18. Although the enforcement notice treats the site as a single whole site the appeals are lodged in respect of the individual pitches occupied by the appellants. The appeals have to be determined individually, by reference to the harm and MC relied upon specific to

those pitches, and not addressed in a global sense. That is the folly resulting from the manner of enforcement adopted by the LPA.

19. The principal complaints of the LPA are that this is a safeguarded site for TSP and that there is a significant need for such sites. Setting aside whether or not the site will ever return to a wholly TSP use, the immediate need for G&T accommodation is overwhelming and eclipses the need for TSP sites.
20. The site is considered suitable for TSP use and with a conditioned Site Development Scheme there is no reason why it cannot be and is not suitable for G&T use.
21. Matters relating to nutrient neutrality, raised for the first time by the LPA at 1726hrs on Friday 22nd September 2023 are capable of resolution over time, and will have to be returned to.
22. Against these limited harms the Appellants will rely upon a number of material considerations, including; PDL (and fallback position), the need for sites nationally, regionally and locally, the lack of alternative accommodation, the likely location of future sites and, if necessary, the personal circumstances of the residents of the individual pitches.
23. The Appellant will demonstrate that the material considerations relied upon outweigh the limited harm identified by the LPA such that a permanent non-personal permission should be granted or, in the alternative a personal permanent permission, or as a fallback a temporary permission.

Appeal 3 – Ground (a)

24. The same arguments as relied upon in respect of Appeal 1 ground (a) will be advanced in respect of Appeal 3 ground (a).

Appeal 1, 2 and 3 – Ground (f)

25. The ground (f) cases will be substantiated through the evidence of BW and in submissions, once the evidence of the site residents has been heard.

Appeal 1, 2 and 3 – Ground (g)

26. The elephant in the room in this matter is that the site is a lawful TSP site, but is not in the ownership of TSPs and a dismissal of the appeals will result in over 100 people, including over 50 children, being made homeless. If the LPA pursue the case that 6 months is adequate time to remedy the breach then the LPA will need to demonstrate the alternative accommodation that will be available to this significant number of people in an area where there is already an overwhelming need for more G&T accommodation. The Appellants will demonstrate that 6 months is a wholly inadequate period of time in which to reasonably and proportionately return the site to a nominal TSP site.

Michael Rudd
Kings Chambers
Manchester – Birmingham – Leeds
26th September 2023