

**IN THE MATTER OF AN APPEAL AGAINST THE
DECISION OF HAVANT BOROUGH COUNCIL TO
REFUSE TO GRANT PLANNING PERMISSION FOR:**

***“THE CHANGE OF USE TO A MIXED USE COMPRISING
PRIVATE EQUESTRIAN YARD AND SITING OF AN
ADDITIONAL 1 NO MOBILE HOME TO ENABLE A TOTAL
OF 2 NO MOBILE HOMES ON SITE FOR PRIVATE GYPSY
AND TRAVELLER CARAVAN SITE”***

**LAND AT THE STABLES ADJACENT TO HOLLYBANK
COTTAGE, LONG COPSE LANE, EMSWORTH**

LPA REFERENCE: APP18/00929

**HEARING STATEMENT ON BEHALF OF THE
APPELLANT**

1. My name is Dr. Angus Dougal Stanislaw Murdoch and I am a Chartered Town Planner. My qualifications include a BA with Honours (Goldsmith's College, London University, 1989), an MSC (Bristol University, 1996), a Ph D (Bristol, 2000) and an MA in Town and Country Planning (University of the West of England, 2006). I am a Member of the Royal Town Planning Institute. Before setting up in private practice in August 2009, I had been employed as a Planning Advisor to Gypsies and Travellers by the Community Law Partnership solicitors where I was instructed in many planning cases for Gypsies and Travellers at local planning authority (LPA) level, on Appeal to the Secretary of State, to the High Court and Court of Appeal as well as to the House of Lords, including both South Bucks DC v Porter [2003] UKHL 26; [2003] 2 AC 558 and South Bucks DC v

Porter (No.2) [2004] 1 WLR 1953. My most recent instruction at Court was as the Claimant's Expert Witness in the case of *Moore and Coates v Bromley and Dartford, the Equality and Human Rights Commission* (interveners).

2. I have also been involved in training individuals as well as organisations in relation to matters relating to Gypsy and Traveller planning, including LPAs and other public bodies. I am widely published in the field, including in the *Journal of Planning and Environment Law* (2002 and 2008) and am co-author of the Planning Chapter in the lead text-book on the subject, *Gypsy and Traveller Law* (Commission for Racial Equality/Legal Action Group, 2008). I have also been called to give evidence to the House of Commons Select Committee with respect to this area of planning law and policy.

THE PLANNING HISTORY OF THE APPEAL SITE

3. The Appeal site was granted planning permission on Appeal pursuant to reference APP/X1735/A/14/2220161 on 1st September 2014 for an extension to an existing stable block that had itself been granted planning permission by the LPA on 21st July 2010 for the "*change of use of land and erection of stable block with tack room, entrance gate, landscaping and associated access/groundworks.*" Those permissions have now been implemented which means that the Appeal site is to be considered as previously developed land [PDL] for the purposes of the Framework and Planning Policy for Traveller Sites [PTS] both of which suggest that the re-use of PDL is consistent with Government policy. The Framework defines PDL as:

"Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings."

Paragraph 24 of PTS states:

“When considering applications, local planning authorities should attach weight to the following matters: effective use of previously developed (brownfield), untidy or derelict land.”

4. I attach at Appendix 1 an Appeal DL I was instructed in concerning a Travellers’ site on PDL that was upheld by the High Court and Court of Appeal.
5. I was the Agent for the Appeal Decision Letter [DL] attached at Appendix 2 that was allowed by Inspector Felgate on 28th February 2018 [the 2018 DL] and authorised the *“change of use from a private equestrian yard to a mixed use comprising private equestrian yard and a single pitch private Gypsy and Traveller site, including mobile home and single touring caravan.”* The 2018 DL is a material consideration of significant weight not least because it establishes a base line that includes both an accepted residential caravan site use as well as an equestrian yard with extended stables against which this modest extension to the site should be considered.
6. This Appeal merely seeks to increase the number of residential caravans from one mobile home to two mobile homes. It is significant that when considering the application now under Appeal the LPA’s own Planning Officer recommended that permanent planning permission be granted:

“This application has been considered against both the criteria set out in policy CS10 of the Havant Borough Local Plan (Core Strategy) 2011 and the Planning Policy for Traveller Sites 2015 and found to meet the criteria. The Highway Authority has raised no objection to the scheme. Furthermore, the development is not considered to have a significant adverse impact on the amenities of neighbouring properties. In addition, the appropriate financial contribution towards the Solent Recreation Mitigation Strategy has been secured. The development is acknowledged to affect, to some degree, the character and setting of this part of the area in terms of impact on its current rural appearance and tranquillity. However, it is also acknowledged that whilst this development is in a rural location, this must be balanced against the need for an additional gypsy and traveller pitch on this established gypsy/traveller site; and the design, layout and

appearance of the development. As such this proposal is considered acceptable and is recommended for permission.” (Appendix 3).

PLANNING POLICY AND NATIONAL GUIDANCE

7. By section 70(2) of the Town and Country Planning Act 1990, when dealing with an application for planning permission the LPA is required to have regard to the provisions of the Development Plan, so far as material to the application, and to any other material considerations. By section 38(6) of the Planning and Compulsory Purchase Act 2004 planning determinations should be made in accordance with that Development Plan *‘unless material considerations indicate otherwise’*.
8. The Development Plan for the purposes of s38(6) consists of the Havant Borough Council Core Strategy within which there is a specific criteria based Gypsy sites policy CS10. The RFR does not allege a breach of CS10 from which it can be reasonably deduced that it is common ground that the proposal is consistent with that policy, a matter that attracts further significant weight. CS10 states:

“The council will allocate sufficient sites in the Development Delivery (Allocations) Development Plan Document to accommodate the needs of Gypsies and Travellers and Travelling Showpeople based on the information contained in the Hampshire and Isle of Wight Gypsy and Traveller Accommodation Assessment updated as necessary and current government requirements.

Criteria for the location of such sites that are likely to be a mix of temporary and permanent sites dependant on need must take account of the following issues to ensure that:

- 1. There is no unacceptable adverse effect on the amenities of nearby residential and/or business uses.***

By the use of the word “*unacceptable adverse effect*” it is clear that *some* effect on neighbouring land uses would not amount to a breach of criterion 1. When considering this issue, it is important to keep in mind that the base line against which to assess the impact of a single additional caravan (which is the only development sought in this Appeal) is an authorised residential caravan site and equestrian yard. Moreover, the proposed development of 260 houses on land adjacent to Hollybank Cottage in the 2018 version of the Draft Local Plan further effects the character of the area in which the assessment of a single additional caravan is to be considered. By the imposition of suitable planning conditions, no “*unacceptable adverse effect*” on the amenities of nearby land uses will occur. Indeed, when the previously proposed 2 pitch site was considered, the LPA did not find that the residential amenity of Hollybank Cottage was affected. Nor for that matter did Inspector Felgate in the 2018 DL. In the attached Officer’s Report for that application (Appendix 4) it states:

7.15 As discussed above, the application site lies in a largely rural setting, with only one isolated residential property, Hollybank Cottage, adjoining the site to the west. Thus in terms of residential amenity it is only this property which is likely to be directly affected by the combined equestrian/two pitch gypsy and traveller site use applied for.

7.16 Hollybank Cottage is a two storey dwelling with a number of windows in its eastern elevation offering views over the application site. As such the distinct and harmful change in the character of the site described above will be fully appreciable to the occupiers of this property. At a more direct level, however, it must be acknowledged that the nearest static van would lie over 45m from the boundary with Hollybank Cottage and would be of a limited height (4m) in relation to this property. The curtilages of the static vans would also be separated from the boundary of Hollybank Cottage by the retained paddock area and area of grassland beyond. It is therefore not considered that there would be a harmful impact on Hollybank Cottage in terms of loss of privacy, overbearing impact or loss of light; nor need there be a significant loss of amenity through noise and disturbance arising from

the residential occupation of the site given the separation distances and the fact that no business use is proposed in connection with the pitches.”

Criterion 1 is met.

2. The site has a satisfactory means of access and adequate parking provision and turning space to accommodate the occupants.

No issues in relation to the existing access were raised in the 2014 or 2018 Appeals and plainly the access is suitable for the proposed use. Criterion 2 is met.

3. The traffic from the site is not generated on a scale which is inappropriate to the locality and which is likely to cause a hazard to road safety.

Currently the site is accessed by horseboxes that can lawfully be towed by vans/small lorries, a use that the LPA found to be suitable in the 2010 permission. In addition to the authorised single caravan pitch the site is visited (often daily) by the Appellant and his wife. The addition of a single extra caravan in that context would be *de minimis* so far as its impact on road safety is concerned. In my view, Criterion 3 is met.

4. The site is capable of accessing utilities; and is located within a reasonable distance from local facilities such as schools, welfare and health services and is capable of being serviced by refuse collection and recycling services.

The site is within a reasonable distance of services and facilities and is capable of being serviced by refuse vehicles. In the RTC in Appendix 4 it states:

“...the site lies over 1km from the nearest local shop... and over 800m from the nearest bus service (this assuming the use of the unmade Redlands Lane). To the east the site lies approximately 700m from the nearest local shop and almost 600m from the nearest bus stop in Westbourne - this relying on a journey of almost 0.5km along Long Copse Lane before reaching the outskirts of that settlement.”

As I will show in the section dealing with sustainability, such distances are well within tolerances of what constitutes for Traveller sites. Criterion 4 is met.

5. The site is not located in an area at high risk of flooding, does not damage the historic environment or nature conservation interests and suitable mitigation against any contamination can be carried out prior to occupation.

The site is not at risk of flooding and no other matters from Criterion 5 arise as the RTC itself accepts at 7.9:

7.9 With regard to site risks, the application site does not lie within a flood zone; nor is the land identified as having any natural or built conservation interest other than the TPO trees which lie on and adjacent to it - the Arboriculturalist has advised that the development can be carried out without detriment to the protected trees. The consultation response from the Environmental Health officer confirms that the risks of contamination are low.”

Criterion 5 is met.

From the foregoing it is clear that all the criteria in CS10 are met.

9. The planning application that is currently under Appeal was refused planning permission for the following reason (singular):

“The site lies within a rural area where the stationing and use of additional individual caravans for residential purposes is contrary to the policies of the Local Planning Authority and represents a form of development which is likely to be detrimental to the rural character and to the visual amenity of the area and the amenities of conventional residential properties in the vicinity. The proposal is therefore contrary to policies CS11, CS16 and CS17 of the Havant Borough Local Plan (Core Strategy) 2011, policy AL2 of the Havant Borough Local Plan (Allocations) 2014, Paragraph 26 of the Planning Policy for Traveller Sites 2015 and the National Planning Policy Framework 2018.”

10. Firstly, whilst the RFR refers to *the stationing and use of additional individual caravans for residential purposes* the application in fact only relates to a single additional residential caravan. It is significant that the Landscape Officer did not object to the application under Appeal; nor did the Arboricultural or Policy Officers.
11. It is even more significant that the case Officer recommended that the application be approved:

“With Policy CS10 of the Local Plan engaged, detailed assessment of the criteria listed in the Policy would indicate that residential amenity will not be unacceptably affected by the development; that the site has an adequate access and parking/turning arrangements; that traffic generation will not be at a scale which will appear inappropriate to the locality or cause a hazard; that the site is considered sustainable; and technical drainage requirements can be met by the existing infrastructure on site.

8.3 It is considered that these material considerations in favour of the scheme outweigh any harm identified and justify a permanent planning permission. Consideration has been given to whether a personal permission is necessary, as the applicant has outlined that they are willing to accept such a condition. However, in allowing the appeal under APP/16/00021 the Inspector concluded on this matter that: “However, in the light of this condition, and given that on this basis I have found the development to accord with the relevant provisions of the development plan, there is no need for a further condition restricting the occupation to any specific individuals.”. As such the existing pitch on the site is not restricted to any named individuals. It is therefore considered that it would not be reasonable to apply a personal condition on an additional pitch, giving the findings of the previous appeal.”

12. In terms of the impact of the single addition caravan at issue in this case is concerned the Officer stated:

*7.19 In considering the impact of the site being used as a gypsy and traveller site, the Inspector in the previous appeal APP/16/00021 concluded that “I accept that these structures are not likely to be reflective of nearby permanent dwellings, but the site’s local context also includes agricultural buildings in a variety of materials, and to my mind the development would not be out of keeping with structures of this kind. I note that the existing stables development at the site has been carried out and maintained to a high standard, and there seems no reason why the same quality should not be achievable in the present proposal.” The Inspector then concluded “that the proposed development could be carried out with no more than a limited visual impact on views from public vantage points. As such, it would not materially affect the character or appearance of the landscape, or of the area generally. **In this respect the scheme would not conflict with Policies CS11 or CS16.**” This appeal decision is a material consideration in determination of this application and case law requires that like cases should be considered in a like manner to allow for consistency in decision making.”*

13. The elephant in the room with the RFR is also addressed by the RTC, namely the development of some 260 houses proposed in the Local Plan Housing Statement on land adjacent to Hollybank Cottage:

“...it must be recognised that the Local Plan Housing Statement (adopted in December 2016) and Draft Local Plan 2036 (published in January 2018) propose an area of development to the north of Long Copse Lane that will extend the settlement of Emsworth to the north and west of the application site. The identification of this neighbouring site for substantial residential development is a significant and material change since the determination of application APP/16/00021, which was originally for 2 pitches. It is considered that there is a difference in impact depending on whether a proposed site is in open countryside as opposed to being immediately adjacent to an existing built-up/urban area.”

14. In terms of the visual and landscape character impact of the Appeal site before that development arises, the Officer’s Report finds this to be acceptable (as did both the Landscape and Policy Officers):

7.21 In its current context, it is accepted that the introduction of a further mobile home in combination with the existing would have some impact upon the character and appearance of the locality. It is also reasonable to assume that once an additional residence is established that more domestic paraphernalia would accumulate on the site, potentially further detracting from the openness of the location. To that end, however, views through to the existing static home from the main road are largely screened and have to be actively sought; it is not directly evident to users of the road, or passers by, that the site is being used as a gypsy site. Furthermore, the static home is of limited height, and from going along Long Copse Lane beyond the site entrance, the visible built form on the site would be to the west of the existing stables, which are set back approximately 4.5m from the southern boundary. From this viewpoint the top of the additional static home would be visible, however it would be largely screened by a combination of being set approximately 4 metres into the site, in combination with the existing boundary fencing, and the hedging located to the south of the fence. It is therefore considered that the views of the development that would be gained from Long Copse Lane would not be unduly intrusive or harmful. Furthermore, no public views of the site are available from the north or other directions.

7.22 It is also noted that the layout of the proposed development, in combination with the existing static home and stables, would ensure that all the built form is contained within one area of the overall site. It would relate reasonably well to this existing pattern of development and would not add to it significantly. As such, the proposed development would not encroach into the more sensitive landscape beyond the road frontage. In addition, it would not materially erode the gap between settlements or threaten coalescence.

7.23 Therefore, whilst it is accepted that the proposed additional static home would lead to some further harm to the openness of this countryside location, it is relatively well screened and is not out of keeping. In reaching this conclusion, account has been taken of the opportunity to introduce additional landscaping within and around the site, which is proposed to be secured by condition. Whilst native species are likely to take some time to establish, these would, in time,

reinforce the well-established screening which already exists immediately outside the site, particularly on the southern boundary with Long Copse Lane. Much of the site would remain open and does not jar against the wider area. Furthermore, the site is not so enclosed that it gives the impression that it is deliberately isolated from the rest of the community; this is a matter that weighs in favour of the development as set out in paragraph 24 of the PPTS.”

15. It is noteworthy that the LPA does not allege that the site is in an unsustainable location. So far as what constitutes a ‘*reasonably sustainable location for a Gypsy site*’ I attach at Appendix 5 an Appeal Decision in which I was instructed which addresses this point directly:

“Reasonably Sustainable Location

10. Policy... requires sites for Gypsies to be within a reasonable distance of local services and facilities, including public transport. That does not include access by foot. The nearest settlement providing a reasonable range of facilities, such as a school, is Ashcott about 5km away according to the local highway authority, or about 6-7 minutes in a vehicle. That is a reasonably sustainable distance in my view. ...

13. The appeal site is in a reasonably sustainable location and it would meet the Gypsy site location aims of ... the PPTS.”

16. In the Appeal DL at Appendix 6 the Inspector addressed this issue thus:

13. Neither of the previous planning applications was refused due to the site’s location away from access to services and facilities to meet daily living needs by a range of transport options. The LPA now considers though that the Framework and the PPTS, which replaced Circular 01/2006 Planning for Gypsy and Traveller Caravan Sites, have increased the emphasis on strictly controlling gypsy and traveller sites in the countryside and ensuring that development is sustainable. It is also noted that former Structure Plan policy 36 had in it a test of sites being a reasonable distance from local services and facilities which

seemed to have some flexibility to it when it came to assessing how far that sites could be from sustainable locations.

14. However, in my view the previous refusals of planning permission would have been considered in a very similar national planning policy context on sustainable development set out formerly in PPS1 Delivering Sustainable Development and PPS7 Sustainable Development in Rural Areas which also sought to strictly limit new development in the countryside and to create sustainable patterns of development. I do not see that the Framework or the PPTS are significantly more limiting or have substantially changed the emphasis on the well established approach to seeking development that is sustainable. Indeed, subject to detailed consideration the PPTS envisages that although Gypsy and traveller sites in the open countryside should be strictly limited, sites may be in rural areas provided that, amongst other matters, they respect the scale of and do not dominate the nearest settled community.

15. Furthermore, when the application was submitted reference was made to the site being for “the applicant and his wife, his parents, and their niece and husband”. I can see in this context that the greater number of adults might have led to concerns about increased travel. However, it has since been clarified that the niece and husband were only visiting and their accommodation needs are not part of this application. At the hearing the Council accepted that this would make the sustainability considerations more balanced. There is also no objection on sustainability grounds from the Local Highway Authority.

16. Due to the fast moving speed of the traffic along the A361 and the absence of access to public transport, most if not all of the travel from the site would be by private vehicles. However, Frome is not that far away where there is a good range of services. Consequently, the majority of travel would be over relatively short distances with a good prospect of trips being undertaken for more than one reason. The journeys by car would not make the appeal proposal unsustainable development in the wider context set by paragraph 11 of the PPTS. Therefore, while I have had regard to access by a range of transport

modes, I do not find that the appeal scheme would be in serious conflict with the sustainability aim of emerging LP policy DP15 or relevant national planning policies on the issue.

17. However in this case, the Appeal site is within walking distance of services and facilities including the local shop (less than 650m away) whilst in Westbourne - only 750m away - can be found the nursery school, the primary school and the GP surgery. Even on a conventional consideration of sustainability, looking only at distances to services and facilities, the Appeal site is in a highly sustainable location for a Gypsy Traveller site.
18. In these circumstances any reliance by the LPA on sustainability weighing against the granting of planning permission would have been clearly misplaced. When one goes on to consider the wider sustainability considerations in PPTS, the site's sustainability is consideration that adds weight in favour of the proposal, not against. I will explain why I consider this to be the case below in the context of the Framework/PPTS as they relate to this Appeal, dealing first with the statement at paragraph 7 of the Framework 2012 that:

“International and national bodies have set out broad principles of sustainable development. Resolution 42/187 of the United Nations General Assembly defined sustainable development as meeting the needs of the present without compromising the ability of future generations to meet their own needs. The UK Sustainable Development Strategy Securing the Future set out five ‘guiding principles’ of sustainable development: living within the planet’s environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly.

The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system.

There are three dimensions to sustainable development: economic, social and environmental.”

28. In UK Government’s 1999 publication “*A Better Quality of Life, A Strategy for Sustainable Development in the UK.*” Taken from the Bruntland Report, that Strategy provides for, *inter alia*: social progress that recognises the needs of everyone; effective protection of the environment. These same objectives were referred to in PPS12 at paragraph 3.15.

29. By considering sustainability in this broad way, the Framework and the PPTS continue the way in which 1/2006 applied the concept to Gypsy and Traveller caravan site matters: paragraph 64 of 1/2006 stated as follows:

*“Issues of sustainability are important and **should not only be considered in terms of transport mode and distance from services.** Such consideration include:*

- a) The promotion of peaceful and integrated co-existence between the site and the local community;*
- b) The wider benefits of easier access to GP and other health services;*
- c) Children attending school on a regular basis;*
- d) The provision of a settled base that reduces the need for long-distance travelling and the possible environmental damage caused by unauthorised encampments;*
- e) Not locating sites in areas at high risk of flooding, including functional flood plains, given the particular vulnerability of caravans.”*

30. Paragraph 11 of PPTS, applies a similar but **even wider** number of considerations than paragraph 64 of 1/2006, says this:

“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 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.”*

31. It is therefore clear that applying the Framework concept of sustainability to Gypsy and Traveller caravan site proposals under the PPTS continues the approach in 1/2006 that was not concerned solely with distance from services and facilities but with wider considerations entirely. This reflects the “*governments overarching aim*” at paragraph 3 of PPTS 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.” (emphasis added).¹

32. It is manifest that the government accepts that Gypsies and Travellers in the past as well as in the present do not experience “*fair and equal treatment*”. This is clear both in the fact that the government accepts that there is a need for special policy provision within the planning system, as well as in the recent publication *Progress Report by the Ministerial Working Group on tackling inequalities experienced by*

¹ The addition of the phrase “*traditional and nomadic*” is a significant departure from 1/2006 which referred only to “*nomadic*.” I will address the significance of this change in the section dealing with Gypsy status below.

Gypsies and Travellers which, like the Framework and the PPTS, was issued by the CLG in the Spring of 2012.

“Gypsies and Travellers experience, and are being held back by, some of the worst outcomes of any group, across a wide range of social indicators:

In 2011 just 12% of Gypsy, Roma and Traveller pupils achieved five or more good GCSEs, including English and mathematics, compared with 58.2% of all pupils

There is an excess prevalence of miscarriages, stillbirths, neonatal deaths in Gypsy and Traveller communities

Around 20% of traveller caravans are on unauthorised sites.

Studies have reported that Gypsy and Traveller communities are subjected to hostility and discriminations and in many places, lead separate, parallel lives from the wider community.

33. The findings of the Ministerial Report serve to confirm earlier Government statements on the correlation between the lack of sufficient authorised sites and the poor life chances of Gypsies and Travellers:

*“Gypsies and Travellers are believed to experience the worst health and education status of any disadvantaged group in England. **Research has consistently confirmed the link between the lack of good quality sites for gypsies and travellers and poor health and education...**A more settled existence can prove beneficial to some gypsies and travellers in terms of access to health and education services, and employment, and can contribute to greater integration and social inclusion within local communities. Nevertheless the ability to travel remains an important part of gypsy and traveller culture. Some communities of gypsies and travellers live in extended family groups and often travel as such. This is a key feature of their traditional way of life that has an impact on planning for their accommodation needs.”²*

² Paragraph 5 and 19 of 1/2006

34. The inequalities and unfairnesses experienced by Gypsies and Travellers in the planning system are manifold: I attach at Appendix 7 an Appeal decision where the Inspector considered the issue of fairness as follows:

“I recognise that there has been a high level of public concern about this proposal. I have taken full account of the written representations made by the Parish Council and nearby residents in respect of both the planning application and this appeal and of the views of those who participated at the Hearing. With regard to the perception of unfairness arising from the occupation of the site, I have had regard to the fact that the Council has a five-year supply of sites for housing for the settled population but no supply whatsoever for the travelling community. No alternative, suitable, available, affordable sites for gypsies and travellers have been provided; none are proposed.”

35. Such is also the case with this proposal: there is no 5 year supply of sites for Gypsies and Travellers unlike the situation where the settled population is concerned. In order to try to resolve these inequalities in provision, paragraph 4 of PPTS states:

“To help achieve this, Government’s aims in respect of traveller sites are:

that local planning authorities should make their own assessment of need for the purposes of planning to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites

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

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

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

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

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

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

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

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

for local planning authorities to have due regard to the protection of local amenity and local environment.”

36. In order to try to overcome these inequalities in site provision in realistic ways, both the Framework and the PPTS continue to accept that sites in the countryside will be required to meet need. Policy C in PPTS indicates that rural sites are still acceptable provided that the scale of the site does not dominate the nearest settled community nor overwhelm local infrastructure. No argument has been made by the LPA that this proposal for 2 pitches breaches Policy C and in my view any such argument could not reasonably be made on the facts of this case.

37. Whilst the first sentence in paragraph 25 of PPTS states that “LPAs should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan” the second sentence in that same paragraph clearly implies that rural sites will continue to be acceptable, provided they do not overwhelm the nearest settled community: “Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.” This very modest proposal does respect the scale of and does not dominate the nearest settled community. Moreover, as there are no areas allocated at present in the Development Plan for Traveller sites, it is submitted that the appeal site is not in conflict with PPTS on this point.

38. Given that PPTS and the Framework continue to find that Gypsy sites are suitable in rural and semi-rural areas, it is highly likely that such uses will have some impact on the character and appearance of an area: the question however is whether that impact crosses the threshold of being unacceptable. The Appellant relies on the High Court case of *Dowling* which involved a Gypsy site in the neighbouring authority of Chichester (the district boundary of which is some 250m from the Appeal site):

“...it seems to me that [the policy] cannot be so interpreted as to preclude anything which involves any detracting from the undeveloped and rural character and appearance of the countryside. It seems to me -- in effect, in agreement with the inspector -- that so to read the policy (that is to say, to read it in such a narrow way) would really virtually render it unworkable: because it is difficult to conceive in practice and reality that there would be any kind of development with regard to gypsies which would not, at least in some way, detract either from the character or from the appearance, or both, of the countryside...”

39. The Appellant is willing to accept a landscaping condition in order to mitigate any residual effects of the proposed development and will discuss suitable proposals with the LPA in advance of the Hearing.

40. In addition, as raised earlier the site is to be considered as Previously Developed Land for the purposes of PPTS and the Framework, which lends significant weight in favour of allowing the Appeal. The existing buildings and boundary treatments in turn mean that the proposed additional pitch are seen in the context of that lawful development.

41. So far as the LPA’s reliance on AL2 requires some further consideration. In the previous application’s RTC it states:

“The application site lies outside of the built-up area as defined by the Allocations Plan, and as such is in an area where new development would normally be restricted in line with the criteria of Policy AL2. With regard to the first two of those criteria, the development is not a small scale householder development; nor does it represent a form of development which meets an overriding public need.

With regard to the third criteria - the policies for exceptional development in 'rural areas' set out in the NPPF - this confirms that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as the need for rural workers accommodation; retention of a heritage asset; the re-use of redundant or disused buildings leading to an enhancement of setting; or a particularly exceptional design. None of these special circumstances are met in this case, as the proposal is expressly for the creation of two pitches for members of the gypsy and traveller community in addition to the existing equestrian use. Furthermore the site is not adjacent to an existing urban area, but instead lies adjacent to a single, already isolated dwelling and otherwise is surrounded by open fields to the north, east and south."

42. Here the RTC is alluding to paragraph 55 of the 2012 Framework; please note the use of the words "such as" which clearly allows for other examples in addition to those specified in paragraph 55 that can constitute "special circumstances" for a development being suitable in a rural or semi-rural location. PPTS says that that document should be read in conjunction with the Framework and allows for sites in rural areas, thereby disclosing that Traveller sites including the Appeal site can be allowed as an exception to the usual policies of restraint in the countryside. This is precisely how CS10 operates: as an exception to usual policies of restraint.

43. In that RTC the Officer asserted:

"Paragraphs 2.31-2.35 of the Allocations Plan expressly address the most recent travellers needs assessment for the Borough, the Travellers Accommodation Assessment for Hampshire 2013, which has concluded that there is no identified need for permanent gypsy and traveller accommodation in Havant up to 2027."

44. When we look at those paragraphs they state:

"Update on the Council approach to meeting the accommodation needs of Travellers

2.31 Policy CS10 of the Core Strategy sets out the criteria which need to be considered for the appropriate location and development of permanent and

temporary Gypsy, Traveller and Travelling Showpeople accommodation. The policy also states that Allocations Plan will identify and allocate any sites required. Havant Borough Council has undertaken work that has identified that there is no need for permanent accommodation for Gypsies and Travellers. It is still progressing work on finding appropriate sites with neighbouring authorities for transit sites for Gypsies and Travellers, and sites for Travelling Showpeople. Until this work is concluded Policy CS10 should be used to determine the appropriateness of any sites that might come forward through the planning application process.

2.32 The Traveller Accommodation Assessment for Hampshire 2013 is part of the evidence base to this plan. It aims to understand the current and future accommodation needs of Gypsies, Travellers and Travelling Showpeople in the Borough, in accordance with government planning policy for Traveller Sites. The assessment was carried out on behalf of a partnership of local authorities across Hampshire, including Havant Borough Council, East Hampshire District Council, Eastleigh Borough Council, Fareham Borough Council, Gosport Borough Council, New Forest District Council, New Forest National Park Authority, South Downs National Park Authority, Test Valley District Council and Winchester City Council.

2.33 The assessment considered the need for additional ‘pitches’ but concluded that there is no identified need for permanent Gypsy and Traveller pitches in Havant Borough up to 2027. A Gypsy, Traveller and Travelling Showpeople residential pitch may comprise one or more units; separate mobile homes, touring caravans, or other accommodation structures shared by one or more families.

2.34 The assessment identified a need for 47 transit pitches for Gypsy and Travellers across the study area. It recommends that the ‘East Hampshire’ authorities of Havant, Fareham, Winchester, Gosport and East Hampshire work together to meet a target of 29 pitches in their area up to 2027. Havant Borough Council is currently working with these authorities to understand where this accommodation should be located. If there is a need to accommodate transit pitches in Havant Borough, then the accommodation will be allocated as part of

the review of the local plan. If there is an urgent need to find this accommodation, then application for development should be considered in accordance with the criteria set out in Policy CS10.

2.35 In addition to the need for Gypsy and Traveller accommodation, the assessment identified a need for 25 pitches for Travelling Showpeople across the study area up to 2027. It recommends that the 'East Hampshire' authorities work together to accommodate a target of 16 pitches in their area up to 2027. Havant Borough Council is currently working with these authorities to understand where this accommodation should be located. If there is a need to accommodate Travelling Showpeople pitches in Havant Borough, then the accommodation will be allocated as part of the review of the local plan. If there is an urgent need to find this accommodation, then application for development should be considered in accordance with the criteria set out in Policy CS10."

45. From the foregoing I conclude that the Appeal proposal complies with the Development Plan, the NPPF and PPTS and that therefore planning permission should be granted subject to reasonable conditions.

46. However, if the Inspector concludes that is some conflict with the Development Plan then pursuant to the second limb of s38 (6), it is advanced that considerations indicate other than determining the Appeal in accordance with that Development Plan. Those other material considerations include, but are not limited to, the following:

- i. The Gypsy and Traveller status of the Appellants;
- ii. the issue of need for more Gypsy and Traveller sites a) nationally b) regionally c) at county level and d) within the District,
- iii. the unavailability of suitable, available, acceptable alternative site(s);
- iv. the family's personal circumstances and needs
- v. the sustainability of the Appeal site;
- vi. the progress the Council has made in respect of its Local Development Framework and Site Allocations DPD;
- vii. the deficiencies with Development Plan policies with respect to Gypsy caravan sites which goes back many years;

- viii. matters of discrimination and inequality in provision
- ix. that the site comprises PDL
- x. Human Rights considerations.

GYPSY AND TRAVELLER STATUS

47. The Appellants and their family are Travellers in terms of Annex 1 PPTS as well as ethnic Romany Gypsies for the purposes of the Equality Act 2010. The family were interviewed by the County Gypsy Liaison Officer at the behest of the LPA and his Report is detailed in the RTC thus:

“Hampshire County Council - Gypsy Liaison Officer

Officer note: Hampshire County Council's Gypsy and Traveller Service was commissioned by the Local Planning Authority to analyse the planning application and assess whether it demonstrated (a) whether the applicants met the statutory definition of gypsies and travellers; and (b) whether the applicants had a need for accommodation. The Gypsy Liaison Officer's findings are as follows:

1. I am the Gypsy Liaison Officer (GLO) for Hampshire County Council.
2. I have been asked by Havant Borough Council planning department to make enquiries relating to the above planning application with a view to establishing the current planning status of the applicant Mr Les Madgwick.
3. In March 2017 I made extensive enquiries at the site regarding the previous application; Stables Adjacent to Hollybank Cottage, Long Copse Lane, Emsworth PO107UR – APP/16/01234 – when I interviewed Mr James Madgwick and his father Les Madgwick. As a result of these enquiries Gypsy ethnicity was established for both and there is no reason to doubt that this still stands today.
4. At 11.40 hours on Tuesday 20th November 2018, I met with Mr James Madgwick (27 years of age) and his father Les (53 years of age) on the land I

now know as Southdown View, LongCopse Lane, Emsworth.

5. In addition to discussing at length the planning application submitted to Havant Borough Council I also verified that the land in question is owned by Mr James Madgwick but the land is viewed as in Madgwick family ownership.

6. I informed Mr Les Madgwick that I had a number of queries that I wished to address from Havant BC planning and for clarity I would replicate the queries in my report and address matters raised accordingly;

(a) Do the applicants meet the definition of gypsy/traveller? With regard to this point, the LPA are aware that it is likely that the applicant likely owns a house in Portsmouth. Therefore, the LPA would need to understand whether this constitutes that they are now 'settled', and therefore whether the applicants comply with the definition of gypsy/traveller. Also, we are aware from your previous correspondence, that the house in Portsmouth has a household containing Les and Tina Madgwick's daughters, we would need to understand the context of this.

Mr Madgwick informed me that he does still own a house in the Portsmouth area and explained that this was a family home for eighteen to nineteen years during the time that his children were growing up. All his children have now left the family home and he now has a wish to revert to his ethnic roots and traditions by living in a caravan together with his wife and intends to sell the house for use by another family. (Note: during my years as a GLO I have know numerous Gypsy and Traveller housed families who have reverted to their traditional lifestyles and moved back into caravans / mobile homes after their offspring have grown up and left home)

(b) Do they have a need for accommodation within the Borough?

The applicant advised that he does have a need for future accommodation in the Havant BC area because when the house is sold he will not have access to any alternative suitable accommodation and would have to revert to living at the roadside.

(c) Are you able to verify if there is no other suitable accommodation in terms of available gypsy/traveller pitches in Portsmouth, the New Forest (where they state they have family connections) or West Sussex, including any private sites in Westbourne? Our members referred to these sites during the Planning Committee.

I can confirm from my enquiries that there is no suitable accommodation available in the Portsmouth and New Forest area's and would comment that it would be most unusual after so many years for a Gypsy to move from his own private accommodation onto a 'Council' run site. I have made enquiries of West Sussex relating to the Westbourne Site and whilst there is currently one pitch available on that site, I am advised that this particular site is historically very settled and there are twenty applicants currently being considered for the pitch in question. Mr Madgwick is not on the waiting list and it is considered highly unlikely that he would be considered for this pitch.

I had a discussion with Mr Madgwick regarding the Westbourne site and if he had considered living in that local area on any private land / pitch and he informed me that it was now far too expensive and why when the family already owns land in the Borough of Havant and he wishes to be with his own family.

The applicant informed me that the family does not own any other land other than that at Long Copse Lane and whilst they have family links and connections in the Portsmouth and New Forest area, they also have family living in the Havant area and in particular on the land subject of the application.

7. I discussed at length with Mr Madgwick what he has planned for the future and he informed me that now that all his children had left home he needed to revert to living in a caravan as he was suffering from depressive periods from his continuing to living in bricks and mortar accommodation.

He also felt strongly that living with his son would ensure that there would be someone to assist him as he gets older and to ensure that his future health and welfare would be taken care. I would comment that Mr Les Madgwick's lifestyle is somewhat physically arduous and as he gets older he will more and more need the assistance of his son to continue the family trade. The applicant informed me that currently he continues to visit countless horse fairs in the UK and Ireland in company with his son Jimmy and whilst they are away travelling his wife would be on site to ensure the security of the land and also to keep Jimmy's partner company.

8. The Madgwick family continue to be predominantly horse dealers and traders as was evidenced by the stables on site being fully occupied during my visit. I established that the family have historically and still do visit most of the horse fairs in the country through out the year, not just as a family holiday but to conduct business buying and selling horses and ponies together with tack and equipment.

9. I clarified again where they stayed when travelling and did they have any documents to prove where they had travelled to and was informed that when travelling they stayed with friends and relatives on private land. However, historically they would have stayed at the side of the road but in keeping and in common with this community the retention of any records and official notices to quit is not very common.

10. I asked if it was possible to obtain written letters to prove where they had been and who they had stayed with over the years and was informed that this could be done if required.

11. Like most families of the Gypsy and Travelling community in this day and age they live in mobile homes when on their own land and take a mobile tourer (caravan) with them to live in whilst they are away on business and / or holidays.

12. I was informed that during his life the applicant together with his family have

travelled the Country widely for business / economic purpose and he is still away working for at least 4 to 5 months of the year. His home base would not solely be used as a place to commute to work and return home daily but would be somewhere for his family to establish a settled lifestyle whilst he is away as opposed to living at the side of the road due to the lack of local, regional and national pitch and transit site availability.

13. I am not by any means and do not profess to be an expert in planning and case law but I do have a limited knowledge of these matters and also practical expertise attained having dealt with matters and issues relating to the Gypsy and Traveller community over the last sixteen years.

14. The applicant currently has permanent bricks and mortar accommodation but also has a cultural lifestyle of living in a traditional caravan and a history of travelling for economic purpose. He has a strong desire to settle down for the stability, health and future of his family unit. I conclude that after consideration of all the facts, my balanced view is that Mr Les Madgwick is of Gypsy and Traveller status as required for planning purposes.”

28. In the Court of Appeal (*Wychavon DC v the Secretary of State and the Butlers*) the significance of being an ethnic Gypsy was considered.

*“I say at once that in my view the judge was wrong, with respect, to treat the words “very special” in the paragraph 3.2 of the guidance as simply the converse of “commonplace”. Rarity may of course contribute to the “special” quality of a particular factor, but it is not essential, as a matter of ordinary language or policy. The word “special” in the guidance connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes. Thus, for example, respect for the home is in one sense a “commonplace”, in that it is an aspiration shared by most of humanity. **But it is at the same time sufficiently “special” for it to be given protection as a fundamental right under the European Convention. Furthermore, Strasbourg case-law places particular emphasis on the special position of gypsies as a***

minority group, notwithstanding the wide margin of discretion left to member states in relation to planning policy (see Chapman v UK 33 EHRR 399; and the comments of Lord Brown in Kay v Lambeth LBC [2006] 2 AC 465 para 200). Thus, in Chapman the Strasbourg court recognised that the gypsy status did not confer “immunity from general laws intended to safeguard the assets of the community as a whole, such as the environment”, but added:

“...the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases... To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the Gypsy way of life...” (para 96, emphasis added)

The special position of gypsies in this respect is reflected in the 2006 guidance. Against this background, it would be impossible in my view to hold that the loss of a gypsy family’s home, with no immediate prospect of replacement, is incapable in law of being regarded as a “very special” factor for the purpose of the guidance.”

28. Paragraph 3 PPTS states:

*“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.*

29. Part of the traditional way of life of Travellers is living in extended family groups for mutual support. This is given effect by Article 8 of the Human Rights Act 1998, as recognised in the case of *Chapman v the UK*. This purpose of this Appeal is so that the Appellant can move back into caravans and bring his extended family back together on a Gypsy caravan site. This factor attracts great weight.

NEED IN A POLICY CONTEXT

30. Relevant legislation that has a direct bearing upon this appeal is the Housing Act 2004 and the Planning and Compulsory Purchase Act 2004. Part 6 of the Housing Act 2004 places a duty upon all LPAs to consult with and assess the needs of those requiring affordable housing within their area (explicitly including Gypsies and Travellers amongst other priority communities under Section 8 of the Housing Act 1985) and to undertake an exercise which will assist them in understanding the nature and level of housing demand and need in their local housing markets. Special emphasis is placed on local authorities assessing the needs of those Gypsies and Travellers who live in, or resort to an area, allowing consideration of both the need to provide appropriate temporary accommodation as well as permanent accommodation.
31. In addition, Part 6 of the Housing Act 2004 requires LPAs to develop a strategy to meet the needs of ‘Gypsies and Travellers’ in line with Section 87 of the Local Government Act 2003, and to take any such strategy into account when they are exercising their other functions, such as planning, education and social care. Local housing authorities must also take into account any guidance issued by the Government when carrying out their Gypsy and Traveller Accommodation needs Assessments (GTAAs) and when developing their strategy.
32. Changes to the planning system, introduced by the Planning and Compulsory Purchase Act, 2004 also require LPAs to prepare Local Development Frameworks to replace their Local Plans. Housing needs assessments will inform the strategies for meeting the accommodation needs of Gypsies and Travellers. The Local Housing Strategy will show how the accommodation needs identified by the local housing assessment will be met. The Development Plan Documents will identify the location of sites.
33. Local housing assessments are the key source of information that will enable local authorities to assess the level of provision that is required, particularly when preparing their local development documents. Local authorities when preparing a local housing needs assessment must consult with key stakeholders and local communities, i.e. with Gypsies and Travellers themselves. One of the tests of soundness of a Development Plan Document will be whether it is founded on robust and credible evidence. Data from these assessments will be an important part of the evidence base.

34. Local Development Frameworks should offer more flexibility and community involvement at the local level. Under the 2004 Act, local planning authorities are required to prepare a Statement of Community Involvement in which they are required to set out their policy on involving the community in the preparation of Development Plan Documents. There must be arrangements put in place so that communication with specific groups within the community is direct and accessible.

NATIONAL, LOCAL AND REGIONAL NEED

35. Nationally some 1 in 4 caravans are on unauthorised sites without planning permission. 18% of Travellers are homeless compared with under 2% of the general population. The South West of England has 1 on 3 caravans on unauthorised sites. All of the other Hampshire authorities have a need for further Traveller sites: in the bi-annual count for January 2016 Basingstoke and Deane had 11 unauthorised caravans out of a total of 25; East Hampshire had 3, as well as 9 with only a temporary permission; Eastleigh had 20 unauthorised; Gosport had 4. Havant had 4 unauthorised caravans in the January 2018 count. It would appear that Havant had never had an authorised Travellers site in its history until the previous Appeal on this site was allowed in 2018.
36. The Officer's Report accepts that there is an unmet need for one further pitch. I consider this to be a significant underestimate but given the LPA's acceptance that there is unmet need, I do not intend to trouble the Inspector with my arguments at this time. The RTC states:

"7.10 The PPTS requires that local planning authorities "identify and update annually, a supply of specific deliverable sites against their locally set targets". While the policy approach through the adopted Local Plan (2011 & 2014) has previously been sound and justified with no allocation, the position changed following the publication of the 2017 GTAA, in that there was now a need to be addressed which represented a local 'target', which comprised the provision of 1 pitch in the borough. Whilst that need was met, the 2017 GTAA can only represent a 'snapshot in time' regarding need - as outlined above, the PPTS advises that the LPA needs to identify and update annually a supply of deliverable sites. Given that this applicant is a gypsy by definition and has local connections, this creates a

further current need for provision of 1 pitch within the borough. Given that the Draft Local Plan 2036 is at an early stage and the lack of any other deliverable identified

sites within the borough as a whole, consideration should be given to an appropriate site being granted permission. This would reduce the need for other sites, which could have a significant adverse impact on the landscape of the area. Given the available advice and evidence, it is considered that the granting of permission for a further pitch on this established gypsy/traveller site would address the current need for gypsy and traveller sites within the Borough. The combination of these factors weighs significantly in favour of the development.”

37. In addition, of course the Appeal site is only 250m from the boundary with Chichester District; in fact, the village of Westbourne in Chichester District is described in the RTC as being “a nearby community”. Westbourne, only 750m away has a 16 pitch Traveller site run by the County Council, adjacent to which are a series of private Gypsy, Traveller and Showpeople’s sites. Chichester District accepts that it has a need, as is evidenced in the attached Decision Letter (Appendix 8) in which I was instructed:

22. The Council accept there is an unmet need for gypsy sites and they have no five year supply. The Council’s position is that currently they have a shortfall of 4 sites, the appellants argued it was 10. ...

23. The Council were able to show they have been actively granting planning permissions for gypsy sites where suitable proposal come forward and have made efforts to tackle the backlog, however, it still remains as noted by the previous Inspector. The appellants pointed out that as the DPD process had stalled, unmet need could only be met from windfall sites and Marsh Farm was one such site. I agree that there have been no changes since the previous Inspector’s conclusion and despite the efforts of the Council, there is still an unmet need and no plan to deal with it. This is a matter of substantial weight.”

38. In January 2019 Chichester DC published its latest GTAA (Appendix 9) from which it is clear that need has increased considerably since the 2018 DL:

“1.22 There were 57 Gypsy or Traveller households identified in Chichester that met the planning definition, 72 unknown households that may meet the planning definition, and 32 households that did not meet the planning definition.

*1.23 The GTAA identifies a need for **94 additional pitches** for households that met the planning definition, and this is made up of 10 pitches that are unauthorised, 23 concealed or doubled-up households or adults, 2 from households on waiting lists for public sites, 17 teenage children in need of a pitch of their own in the next 5 years, 6 from pitches with temporary planning permission, and 37 from new household formation using a rate of 1.80% derived from the site demographics. There is also supply of one pitch from a household seeking to move from a public site.*

*1.24 The GTAA identifies a need of up to **28 additional pitches for unknown households** and this is made up of 3 unauthorised pitches, 2 concealed or doubled-up households or adults⁴, and new household formation of up to 23 from a maximum of 74 households⁵. If the ORS national average of 25% were applied this could result in a need for 7 additional pitches. Whilst the proportion of households in Chichester that met the planning definition is higher (64%) than 25% this is based on a small household base. Therefore, it is felt that it would be more appropriate to consider the more statistically robust ORS national figure. However, if the locally derived proportion were to be applied this could result in a need of up to **18 additional pitches from unknown households**.*

39.

*1.25 Whilst no longer a requirement to include them in a GTAA, there is a need for **23 additional pitches for households** that did not meet the planning definition. This is made up of 2 unauthorised pitches, 6 concealed or doubled-up households or adults, 3 from households on waiting lists for public sites, 2 teenage children who will be in need of a pitch of their own in the next 5 years, and 10 from new household formation using a formation rate of 1.25% derived from the household demographics.*

40. In my opinion, it is unrealistic for there to be substantial need everywhere in the area except Havant. In any event the Appellant does not rely on general need alone but also

upon his personal need for accommodation, as described by the Gypsy Liaison Officer above.

41. Case-law on this particular issue shows that the personal circumstances of Gypsy Travellers can have determinative weight: for example in *Basildon v Secretary of State for the Environment, Transport and the Regions* [2001] JPL 1184 paragraph 34 the Court held that:

“There was no requirement in law on the Secretary of State to find that the personal circumstances of these gypsy families were exceptional amongst the population at large or among gypsies in particular for him to be able lawfully to take those circumstances into account. The exceptional nature or otherwise of those circumstances went only to the weight he attached to them, in particular as constituting very special circumstances. The Secretary of State had to decide how much weight he would give to what I have identified as a material consideration”

42. Recently the High Court has delivered judgment in the case of *McCarthy and Ors v Basildon DC and Equality & Human Rights Commission* [2008] EWHC 987 (Admin) where at paragraph 14, in relation to a Green Belt site governed by PPG2, it states:

“There is no question...that what they have done amounts to inappropriate development in the Green Belt so that planning permission can only be granted if they can show that there are very special circumstances. It is accepted and the Planning and enforcement decisions confirm that the individual circumstances of the LPAs are capable of amounting to very special circumstances provided that those circumstances clearly outweigh the damage done to the Green Belt by the development and any other harm”

43. In *Basildon DC v SETR and Ors* [2001] JPL 1184 (paragraph 11) the High Court set out (and later upheld) the reasoning by the Secretary of State that:

“[The Secretary of State] considers that the Inspector gave insufficient weight to [the Gypsy’s] personal circumstances. He is of opinion that their personal

circumstances, and in particular the children's educational needs, carry significant weight. Consequently, when undertaking the Green Belt balancing exercise himself, he finds that the harm to the Green Belt – albeit substantial – is clearly outweighed by the Gypsy families' personal circumstances and the need for more Gypsy sites in the area. He is satisfied therefore that very special circumstances do exist which justify allowing all three appeal proposals in the Green Belt"

44. In *Doncaster MBC v SOE* [2002] JPL 1509 paragraph 70 the Court had said:

*"Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the **further** harm, albeit limited, caused to the openness and purpose of the Green Belt was **clearly** outweighed by the benefit to the appellant's family and particularly to the children so as to amount to **very** special circumstances justifying an exception to Green Belt policy"* (original emphases).

45. On Appeal from *South Bucks DC v Porter (No.2)* [2004] 1 WLR 1953 - in which I was instructed - the Court of Appeal had considered the circumstances advanced by the Gypsy family to be insufficiently "very special" but Lord Brown in the House of Lords said:

(a) *"What was required of [the Inspector] was above all a value judgment whether the hardship which would result for dispossessing Mrs Porter from her land was sufficiently extreme and unusual to justify the environmental harm occasioned by her remaining there as long as she needed":* at p1965 paragraph 38;

(b) *"Should she be dispossessed from the site onto the roadside or should she be granted a limited personal planning permission? The Inspector thought the latter, taking the view that Mrs Porter's "very special circumstances" "clearly outweighed" the environmental harm involved. Not everyone would have reached the same decision but there is no mystery as to what moved the inspector":* at 1965 paragraph 41.

46. As Lord Brown pointed out in *Porter (No.2)* paragraph 39:

“Lord Clyde in the South Bucks case [South Bucks DC v Porter [2003] UKHL 26; [2003] 2 AC 558], at p 593, para 75, described Mrs Porter’s (and Mr Berry’s) circumstances as “quite special”: in part because they owned the land in question and in part because, although the land lies within the Green Belt, “it is not suggested that there is any urgent environmental problem”.

47. In terms of alternative sites, I was instructed in the High Court defence of the Inspector’s Decision Letter in the case of *Angela Smith v the FSS and Doncaster MBC* which found that for a site to be considered a suitable alternative it was necessary to consider not just its availability but also whether it was suitable affordable and acceptable.

48. In terms of the actual availability of alternative sites in the area, it is clear that there are no public or private sites available in the whole of the Havant Borough, as the bi-annual count for January 2018 shows there are simply no sites whatsoever, neither public nor private, in the area over the last 5 counts except the Appeal site. The RTC also accepts that there are no alternative sites, a factor that attracts significant weight.

49. However, there is no requirement in law for *the Appellant* – as opposed to *the evidence* - to establish that issue as a matter of fact, even though in this case they have done just that. This is made plain by the Court of Appeal case of *South Cambridgeshire District Council v the Secretary of State and Julie Brown (2008)* from which I reproduce the following:

“[Lady Justice] Hallett ... granted permission “with a very considerable degree of hesitation and on one ground only.” That ground is whether Keith J. was correct in stating [at paragraph 34] reciting paragraph 74 of the Inspector’s determination, that:

“In seeking to determine the availability of alternative sites for residential gypsy use, there is no requirement in planning policy or case law for an applicant to prove that no other sites are available or that particular needs could not be met from another site.”

The subject matter of this appeal is therefore a very narrow point.

*“In seeking to determine the availability of alternative sites for residential gypsy use, **there is no requirement in planning policy, or case law, for an applicant to prove that no other sites are available or that particular needs could not be met from another site. Indeed such a level of proof would be practically impossible. The case of Simmons, relied upon by the Council, establishes no such requirement, even in the Green Belt.** The lack of evidence of a search and the clear availability of alternative sites in more suitable locations elsewhere, can undoubtedly weigh against the applicant where there are policy or other objections to a proposed development. **Equally, evidence of a search by an applicant over a reasonable area for a reasonable length of time and the absence of any obvious alternatives weigh in favour of him.** But there is no absolute requirement for an applicant to prove he has explored and exhausted all possible alternative options before planning permission can be granted; or for a local authority to identify an alternative site before being able to refuse planning permission for another and adequately justify their decision at appeal. These are just material considerations to be weighed in the overall balance.”(emphasis added).*

...Keith J.’s conclusion is to be found at para 39 of his judgment where he said:

“The fact of the matter is that section 38(6) of the 2004 Act required the inspector to conduct a balancing exercise. That involved first determining whether there were material considerations which might suggest that the development should be

allowed even though it conflicted with the provisions of the development plan. If the evidence revealed the existence of one or more such material considerations, the inspector then had to conduct a balancing exercise and decide whether those considerations in fact outweighed the provisions of the development plan and the harm which would be caused if the development was allowed to proceed. I see no basis for saying that if one of those material considerations is said to be the non-availability of a suitable alternative site it is for the (applicant) for planning permission to prove such non-availability. As with any other material consideration, the question is whether the evidence which the parties have chosen to call reveals the existence or non-existence of another site which would meet the needs of the applicant for planning permission. In these circumstances I do not believe that the inspector's approach to the burden of proof was flawed."

...In my judgment the inspector approached the question of alternative sites in an impeccable fashion and Keith J. was correct to conclude that there was no basis for interfering [with that decision]..."

50. In my opinion, the evidence establishes that there are no suitable, affordable, acceptable sites available either in the public or the private sector for the Appellant. This is a factor which should also be attributed substantial weight.

CONCLUSIONS AND CONDITIONS

51. The site complies with the specific Development Plan policy for Gypsy sites, CS10 as well as national policy in PPTS and the Framework. Insofar as the Appeal is considered to fail to comply with any element of the Development Plan, material considerations indicate that the Appeal should be allowed in any event. In particular, the lack of suitable alternative accommodation, the unmet need for further Traveller sites combine with the limited harm caused by the development

and the clear and immediate need for further site provision for the Appellants family, to allow for planning permission in this case.

52. For all of these reasons the Appellant respectfully invites the Inspector to allow this Appeal.