

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

**THE CHANGE OF USE OF LAND FROM PRIVATE
EQUESTRIAN YARD TO A MIXED USE COMPRISING
PRIVATE EQUESTRIAN YARD AND A GYPSY AND
TRAVELLER CARAVAN SITE**

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

APP/X1735/W/16/3156978

**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) that was handed down by Gilbart J in January 2015.

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 (Appendix 1) 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 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 PPTS 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 2 a recent Appeal DL concerning PDL as well as the subsequent High Court transcript (Appendix 3).
5. Although the application was for 2 pitches, this Appeal is being progressed for a single pitch only to accommodate Mr Jimmy Magwich and his partner (who is expecting their first child on...) and who are homeless. The LPA was made aware of this prior to the submission of this Hearing Statement. I attach at Appendix 4 an indicative site layout plan for the single pitch proposed.

PLANNING POLICY AND NATIONAL GUIDANCE

6. 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*’.
7. 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, which 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 imposition of suitable planning conditions no unacceptable effect on the amenities of nearby residences will occur. Indeed even so far as the previously proposed 2 pitch site was concerned, the LPA did not find that the residential amenity of Hollybank Cottage was affected. In the attached Officer's Report (Appendix 5) 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 was raised in the 2014 Appeal and plainly the access is suitable for the proposed use. Moreover the Appellant currently has to visit the site at least twice a day to tend his horses, vehicle movements that would cease were he to reside on the site. Indeed, the Reasons for Refusal do not allege a breach of this criterion. 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 and which is very similar to the proposed use in caravans. This issue is addressed by the Appellant's Highways Expert, Mr Hurlstones in his own evidence. 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 5 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.

The Appellant is a Gypsy and Traveller within the meaning of Annex 1 PPTS in that he is a person of a nomadic habit of life; he is also an ethnic Romany Gypsy.

8. The planning application that is currently under Appeal was refused planning permission for 3 reasons:

1 The application site lies outside of the built up area and its proposed use as a two pitch private gypsy and traveller site with equestrian yard is not considered to represent a form of development which is appropriate in this location having regard to Policy AL2 and the 'Update on Council approach to meeting the accommodation needs of travellers' of the Havant Borough Local Plan (Allocations) 2014, the National Planning Policy Framework 2012 and the Planning Policy for Traveller Sites 2015.

Furthermore the form and extent of the development would have a significant and harmful impact upon the character and appearance of the site and the wider landscape, and would thereby conflict with relevant provisions of Policies CS11 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011, the National Planning Policy Framework 2012 and the Planning Policy for Traveller Sites 2015.

2 Notwithstanding Reason 1 above, the use of the site as a two pitch private gypsy and traveller site with equestrian yard is not considered to represent a sustainable or suitable form of development by virtue of the remoteness of the site from local facilities and public transport, and the rural character of Long Copse Lane which has an absence of footways and street lighting in the vicinity of the site. The proposed use thereby conflicts with Policy CS10 of the Havant Borough Local Plan (Core Strategy) 2011 and the Planning Policy for Traveller Sites 2015. Our Ref: APP/16/00021

3 Having due regard to the information submitted in respect of the intended occupiers of the site, it is considered that the proposed use of the site as a two pitch private gypsy and traveller site and equestrian yard would involve regular towing of small and large caravans into and out of the site along the narrow Long Copse Lane which would cause further deterioration of its verge edges, surface and foundations and would exacerbate the hazards to other road users. The use is therefore not considered appropriate for this location and would thereby conflict with Policies CS10 and CS20 of the Havant Borough Local Plan (Core Strategy) 2011.

4 The proposal, without completion of the appropriate binding arrangements to secure a contribution towards the Solent Recreation Mitigation Partnership, is contrary to the Council's Policy on contributions towards measures of mitigation adopted by the Local Planning Authority. These seek to ensure that provision is made from new development towards mitigating against increasing recreational pressure on the Solent SPA. The development is therefore contrary to policies CS11 and CS21 of the Havant Borough Local Plan (Core Strategy) 2011 and Policy DM24 of the Havant Borough Local Plan (Allocations) 2014 and the National Planning Policy Framework 2012.

9. Starting in reverse order, the Appellant offered the required binding agreement to remove RFR 4 at the time of the application but was informed by the Case Officer that this was not necessary at the time. In any event, this RFR can clearly be met by the production of a UU, such as will be completed before the Hearing in the usual way.

10. So far as RFR 3 is concerned, with respect this is a make-weight objection given the facts that the Highway Authority did not object to either the existing of the extant stabling permissions or indeed to this application when they were first consulted. Despite the Appellants best endeavours to remove this unnecessary objection to the scheme before settling their evidence, the LPA has persisted with it. The Appellants have therefore instructed a Highways Consultant, Mr Jeremy Hurlstones, to address this issue. Given the unreasonable position of the LPA, a Costs application will be made at the appropriate time.

11. RFR 2 alleges that the site is in an unsustainable location, which is denied. Criterion 4 of CP10 states that

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.

12. The only issue raised in RFR 2 is the Appeal site's alleged

“remoteness of the site from local facilities and public transport, and the rural character of Long Copse Lane which has an absence of footways and street lighting in the vicinity of the site.”

13. As PPTS continues to accept that Traveller sites can be found in rural and semi-rural areas, then clearly national policy expects such sites to use the rural road network, the vast majority of which are unpaved and unlit. Whenever I have visited the site, I have seen people walking, cycling and horse riding in the area, including on Long Copse Lane itself. I understand that when Mr Hurlstones visited the site recently, he too saw cyclists and pedestrians using Long Copse Lane, including an elderly woman (who appeared to have walked the entirety of the lane) as well as a mother with a baby in a pushchair. The lack of footways and street lighting in semi rural areas is not a factor that should tell against this Appeal.

14. We have already seen above that the site is:

“...the site lies over 1km from the nearest local shop... and over 800m from the nearest bus service (this assn cuming 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.”

15. So far as what constitutes a ‘reasonably sustainable location for a Gypsy site’ I attach at Appendix 6 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 7 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 the reliance by the LPA on sustainability weighing against the granting of planning permission is 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 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 Gypsies and Travellers* which, like the Framework and the PPTS, was issued by the CLG in the Spring of 2012 Appendix 8.

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 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 9 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 either this proposal - or that 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. The first RFR stated:

1 The application site lies outside of the built up area and its proposed use as a two pitch private gypsy and traveller site with equestrian yard is not considered to represent a form of development which is appropriate in this location having regard to Policy AL2 and the 'Update on Council approach to meeting the accommodation needs of travellers' of the Havant Borough Local Plan (Allocations) 2014, the National Planning Policy Framework 2012 and the Planning Policy for Traveller Sites 2015. Furthermore the form and extent of the development would have a significant and harmful impact upon the character and appearance of the site and the wider landscape, and would thereby conflict with relevant provisions of Policies CS11 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011, the National Planning Policy Framework 2012 and the Planning Policy for Traveller Sites 2015.

39. The “extent” of the proposal is now only pitch and not 2 pitches so it remains to be seen if the LPA’s argument on visual impact will continue to be advanced in these Appeals. 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...”

40. Furthermore the Appeal site forms part of an established, authorised equestrian development of stables, tack room and hay store rather than a greenfield site. As the RTC states:

“The site features an existing gravelled access off Long Copse Lane at the south western corner of the site, extending to an area of gravelled hardstanding within the southern part of the site which leads to a stable block within the south eastern corner of the land...

1.3 A two-storey dwelling, Hollybank Cottage, adjoins the application site to the west – the western boundary of the site featuring some established hedging and a number of mature Oaks covered by TPO1974. The southern boundary of the site features 1.8m high close boarded fencing on top of a small bank rising up from the carriageway of Long Copse Lane; this bank features some reduced native hedging, with a mature Ash the subject of TPO1974 lying just within the site....

Screen planting would seem an appropriate means of mitigation...

7.13...the application site is screened from Long Copse Lane to some extent by the existing close boarded fencing on the southern boundary of the site ”

41. 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.

42. 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.

43. So far as the LPA’s reliance on AL2 requires some further consideration. In the 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."

44. Here the RTC is alluding to paragraph 55 of the 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 it 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.

45. In the 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."

46. 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."

47. I therefore now move on to consider the robustness of the April 2013 Hampshire Traveller Accommodation Assessment ['HTTA 2013'] upon which the LPA's case relies. From a detailed reading of the document I have concluded that by reason of significant omissions and failure to comply with government guidance, the assessment significantly under-estimates need, for reasons that I discuss below.

48. I have been professionally involved in Gypsy and Traveller planning matters for nearly two decades and consequently am very familiar with the process of considering the robustness of Gypsy and Traveller Accommodation Assessments. I have given evidence at Examinations in Public into such assessments since 2008 when I appeared before (former Chief) Inspector Burley in relation to the evidence base underlying the South West RSS Gypsy and Traveller needs assessments. My most recent evidence to an EIP was in June 2016 in relation to objections I had raised with respect to the evidence base concerning Gypsy site provision involving the accommodation assessment for Winchester Council.

49. I refer to the EIP Inspector's letter of 2nd December 2013 to Wiltshire Council from which:

“3) Gypsy and Travellers

The ‘Planning policy for traveller sites’ (PPTS), alongside the Framework, sets out national policy on this issue and indicates the evidence based approach that local planning authorities should take in relation to gypsies and travellers.

As indicated by the PPTS (para 6), there is an expectation that a robust evidence base exists to establish accommodation needs and inform the preparation of a local plan....

*During the Examination process a number of issues were raised in relation to the Council’s justification for Core Policy 47 and the content of Topic Paper 16. **In particular and with regards to the latter, concerns were raised at the validity of the figures contained in Table 6 and the absence of any independent benchmarking of the Topic Paper as a whole. These concerns would appear to have some validity** in as much as overcrowding on local authority sites and unauthorised developments/ encampments may have been underestimated with the consequent effect that there may be an additional need for pitches that exceeds the Council’s figure of 88 (Table 6 2011-2016). With regards to supply, the Council appears to countenance 10 pitches (Cricklade) which have unresolved issues of deliverability whilst a further 6 may have limitations as to their occupation (eg family members only). The evidence is not conclusive on these matters but leads to a concern that the potential supply of additional pitches (2011-2016) is overestimated. The net effect is that there is a degree of substantive doubt as to whether the figures within Topic Paper 16 justify robustly the pitch requirements within Core Policy 47 [that being the Gypsy site policy for the UA of Wiltshire].. The data contained and presented in the caravan count for 2013 does not aid clarity on this point*

...

*The Council has proposed a change to Core Policy 47 that would make clear that the pitch requirements are minimums. This would be prudent and would introduce flexibility within the plan which would aid the effectiveness of its delivery. The CS is also clear that a Gypsy and Travellers Site Allocation DPD, providing a further opportunity to work with neighbouring authorities, will be prepared to aid the implementation of Core Policy 47 and to deliver the pitch requirements therein. **Overall however, the justification for the pitch***

requirements of Core Policy 47, which will inform any subsequent part of the development plan, is weak. Given the content and subsequent analysis of the GTAA, a more robust approach for the purposes of informing the CS may have been to pursue 'Alternative Option 4' to recalculate local need. It is unsatisfactory that the Council has chosen to merely undertake a limited review of a document which contained previously acknowledged flaws.

...

Notwithstanding the intended DPD, I must query whether the CS approach towards gypsies, travellers and showpeople is consistent with national policy and is justified by the evidence base. Whilst the Council has requested that I modify the plan to ensure soundness, this is most challenging and may not be feasible on the basis of the available data.

It appears to me that the Council could reassess this matter with a view to ensuring that it does not underestimate the requirements for the remainder of the Plan period. The programmed DPD could assist in matters of specific delivery but the CS should logically set a robust indication of necessary pitch provision for the relevant period, including the next five years whilst acknowledging the absence of a specific land supply. Consequently further work would appear to be required to ensure that there is reliable data to inform the strategic content of the plan..."

50. I was the only person to give evidence to the Wiltshire Core Strategy EIP Inspector and he has endorsed the criticisms I levelled, criticisms that are as valid so far as the HTAA is concerned as they were for Wiltshire, as I will demonstrate below.

51. On the basis of the considerable experience I have in this area, the first thing that struck me when reading the HTAA was that the time period for data collection and then for data analysis was unusually short. We can see that the fieldwork part of the assessment for all 11 constituent authorities in Hampshire took just 2 months (paragraph 5.7 p15 Appendix 10). This works out at a maximum of 5.5 days' fieldwork for each authority.

52. On top of the criticisms above, part of the reason for my concerns in relation to the HTAA 2013 assessment arises from the lack of any involvement in the production

of the HTAA and/or the analysis of the data by Gypsy and Traveller support and representative bodies, of which there are many examples in the area including the Canterbury Gypsy Support Group and Friends Families and Travellers Advice and Information Unit (both with national coverage and considerable experience gained over many years of assisting LPAs and their consultants reach these very difficult to reach groups) neither of whom appear to have been contacted. The failure to involve or even consult these representative groups at any stage in this process undermines the HTAA further. This is a failure that runs counter to the advice in Policy A PPTS:

“In assembling the evidence base necessary to support their planning approach, local planning authorities should:

- . pay particular attention to early and effective community engagement with both settled and traveller communities (including discussing travellers’ accommodation needs with travellers themselves, their representative bodies and local support groups)*
- . co-operate with travellers, their representative bodies and local support groups, other local authorities and relevant interest groups to prepare and maintain an up-to-date understanding of the likely permanent and transit accommodation needs of their areas over the lifespan of their development plan working collaboratively with neighbouring local planning authorities*
- . use a robust evidence base to establish accommodation needs to inform the preparation of local plans and make planning decisions.”*

53. Those failings are compounded further still when one considers that the HTAA 2013 itself repeatedly refers to the CLG *Gypsy and Traveller Accommodation Needs Assessments Guidance* (2007) [‘the CLG Guidance’] which I have attached at Appendix 11. Paragraph 33 of the CLG Guidance refers to “important [matters] to consider” continuing at 38:

*“It is also essential to ensure that the process has credibility and acceptance within the local Gypsy and Traveller community. **This can best be achieved by involving members of the local Gypsy and Traveller***

communities from the very outset of the process, both to advise and help ensure that the culture and traditions of the communities and their accommodation needs are fully understood by those conducting the assessment, and to ensure that the process is properly explained. This should help ensure the communities have trust in the objectivity of the proceedings and encourage a willingness to participate.”

54. It is the failure to follow through on the advice above – coupled with the extremely short time period allowed for the assessment and the ill-considered timing of the survey (of which more below) – that undermines the reliability of the HTAA. One of the reasons for this is that without representation by Gypsy community groups, the process of estimating the local population itself is brought into question. Unless there is robust evidence of the size of the target population itself, you can’t meaningfully or reliably determine whether you have surveyed a representative sample of that population. In this context, I note that the HTAA itself accepts that *“the reliability of the baseline data is of paramount importance...”*

55. The CLG Guidance provides detailed advice on how to ensure the survey and results are robust from paragraph 46 onwards:

“A steering group for the work will help to ensure that the process is informed by all available expertise, and links in as far as possible with the Strategic Housing Market Assessment for the rest of the community. It is important that key stakeholders are aware and involved from the outset, for example:

- *representatives from the Housing and Planning Departments;*
- *representatives from the local Gypsy and Traveller communities;*
- *representatives from the BME and/or Gypsy and Traveller Service and other services such as education who work closely with the Gypsy and Traveller communities.”*

56. As well as failing to include Gypsy representative groups, the HTAA failed to include the Traveller Education Service when they often have extremely good access into the community and have earned their trust over many years. Paragraph 62 of the CLG Guidance:

“...a local authority may also have additional sources of data about local Gypsy and Traveller populations, subject to personal confidentiality safeguards, via service providers, such as health workers, Supporting People staff, and the Traveller Education Service (TES). The TES will have information on Gypsy and Traveller pupil numbers via the Pupil Level Annual School Census.”

57. It is not understood why TES were not consulted when they are such an obvious source of information and contacts in the Gypsy population, both housed and site based. In the section on Stakeholder Engagement from paragraph 49 the CLG Guidance states:

“Wider consultation on the design and conduct of the assessment should also be undertaken with local agencies and the local Gypsy and Traveller communities. Advice on how to assess the accommodation needs of ethnic minority groups in general is provided within the Communities and Local Government guidance on the Strategic Housing Market Assessment.

*50. It is crucial that the purpose of the work is fully explained to the Gypsy and Traveller communities before the assessment begins. A **community liaison group** could be formed for this purpose, with the help of the Gypsy and Traveller representatives on the steering group, which could also provide advice on other matters, including the conduct of the assessment itself. Representatives of the Gypsy and Traveller community would be able to advise on this. They could also help interpret and comment on the results emerging from the assessment, the conduct of a specialist survey where undertaken and generally help encourage greater trust and community buy-in for the overall process.”*

58. No such community involvement in the production of the assessment - nor in the consideration of the results - was in fact invited and the HTAA once more falls

short of a robust approach. This is particularly problematic when the CLG Guidance to which the HTAA itself refers states in the next paragraph that:

“Given that the results of the assessment are a crucial aspect of the evidence base for both planning and housing purposes, it is essential that the exercise is conducted properly and contains a high quality evidence base.”

59. At paragraph 57 the CLG Guidance states:

“...Members of the steering group should be involved in production of a specification for the purpose of appointing a consultant, and to ensure the subsequent process is best planned to secure an accurate evidence base and analysis of accommodation needs in the area concerned.

58. In the event that a local authority or partnership proceeds to commission a consultant, the management of the process can be assisted if one person is appointed as the client representative, responsible for contractual matters, issues concerning the consultant’s brief and co-ordinating comments and responding to queries.”

60. None of the above occurred in relation to the production of the DTAA. This is the context where the CLG Guidance itself refers to Gypsies as being “hard to reach” (paragraph 69) and then goes on in the section on “Difficulties in accessing the community” to state:

“Even where the local Gypsy and Traveller community has been identified, approaching the community to undertake a specialist needs assessment survey may not be straightforward. There may be a reluctance to provide information, or a suspicion about the purposes to which the information will be put. Some Gypsies and Travellers may be unwilling to co-operate. Gypsy Liaison Officers and other service providers who may have the trust of the various Traveller communities,

along with Gypsy and Traveller representatives can play an important role in preparing the ground and encouraging participation, explaining the purpose of the survey and introducing researchers.”

61. The CLG Guidance goes on to recommend that the early results of the assessments are considered by the community itself, which again did not occur in the HTAA:

“It can be very helpful for those conducting the assessment to hold a stakeholder event at key stages to present emerging findings and to have early warning of any differences of understanding or interpretation which may arise from that of the local Gypsy and Traveller community. Members of the community liaison group, if formed, would be able to help encourage participation in this. In the event that the steering group has doubts about the degree or quality of data which has been obtained, it may be necessary to consider whether a booster survey should be conducted to improve the evidence base.”

62. Finally, the “*timing of the survey*” is raised as an issue in the CLG Guidance from paragraph 81 onwards where it is recommended that:

“Careful consideration should be given to the appropriate timing for the survey. The caravan count consistently shows higher numbers on unauthorised encampments, and lower numbers on permanent residential sites, in the summer. It is likely that numbers in housing will also be lower in the summer.

*82. The local authority or partnership will need some knowledge of travelling patterns and the local Gypsy and Traveller population before a decision can sensibly be made. For example, if Gypsies and Travellers moving during the summer come from the local area, they may be easier to access during the winter in their permanent residential bases. If on the other hand they come from outside the area, the survey will need to be carried out during the summer if their needs are to be assessed – and account should also be taken of the fact that some Gypsies and Travellers normally resident in the area may be away travelling themselves. **Experience has shown that a Gypsy and Traveller Accommodation***

Needs Assessment is best conducted over a six to nine month period to identify the effect of seasonal migration.”

63. In the light of the clear and cogent advice from the CLG Guidance above – advice that the HTAA itself drew attention to it is surprising that the fieldwork was “conducted in June and July 2012” (para 5.7). Given the advice from the CLG above, it is striking that a) not only was the survey conducted in the summer months but b) took place over such an extremely short period of time. The decisions that were taken by the LPA to issue a brief to consultants with such in-built short-comings – on top of the manifold shortcomings detailed earlier – prevent the resultant HTAA being robust.
64. The traditional annual Gypsy and Traveller horse fairs run from May through to October – with Wickham Fair at the beginning of May, followed by the first Stow Fair also in May and then probably the largest fair, Appleby in Cumbria in the first week in June, with the second Stow fair ending the season in October. To conduct the survey in June and July was therefore bound to coincide with a great many Gypsies and Travellers being absent from their sites and homes at precisely the time when the HTAA survey was undertaken.
65. It is important to understand that Romany Gypsies do not simply travel between their base and Fairs on the days before and after the Fair. They travel more slowly, working or visiting on the route. For example, some travel by horse-drawn wagons that can only cover about twenty miles a day and thus take a long time to reach the fairs. Even motorised Gypsies leave for the fairs 3-4 days beforehand not only to ensure they are guaranteed a good spot on site but also to visit friends and relatives on the way. Others try to find work en route to the fairs, some find agricultural work on the way. For many the road trip to the fair is every bit as important as the fair itself, both economically and socially. I know of many Gypsies who don’t make it back to their home base for the whole season, leaving in May and returning only once the second Stow fair has closed in October. Conducting the survey during this period means that the most nomadic people would have been missed in the HTAA.

66. In contrast to the rushed HTAA that took place over just 2 weeks at the very time of year when many Travellers would be away working and/or at the fairs, that did not engage with any Gypsy and Traveller support or representative groups and failed to consult the Traveller Education Service, other assessments elsewhere in the country have been far more robust. For example the 2011 Somerset Gypsy and Traveller Accommodation Assessment was an extremely robust piece of work that had community buy-in from the Traveller and settled communities and was not challenged at EIP or at Appeals. In the acknowledgements we can see that there was a very wide spread of stakeholder and local authority involvement from the outset:

“The project team would like to thank everyone involved in the research project. We are particularly grateful for the advice and information from Sally Woodbury and Maggie Smith-Bendell of the Romany Gypsy Advisory Group South West, Tony Thompson and Emma Nuttall of Friends, Families and Travellers, Rachel Inman, Julez Jones, Sioux How and everyone at the Robert Barton Trust. The project team would like to acknowledge the work of all the community interviewers who undertook the survey; this study would not have been possible without their hard work and local knowledge and expertise. Thank you also to Lucy Workman at the Traveller Education Service and Debbie Harvey at the Children’s Society. Finally, thank you to Andy Foyne at South Somerset District Council, and all of the key contacts at the district and county councils for information and advice, and to Patsy Wallace for clear project timetables and guidance.”

67. Mrs Smith-Bendall MBE is a member of the Romany Gypsy Advisory Group, as is Mrs Woodbury (the latter also being a member of the Somerset Travellers group). Mr Thompson is a New Traveller who lives on the road in Somerset and is a member of Friends Family and Travellers Support Group, as is Emma Nuttall (though she is not a Traveller herself). The involvement of these individuals facilitated access into these “hard to reach” communities that comes from firstly knowing where they are, having earned their trust over many years. In turn that experience was then enriched by the involvement of the Traveller Education Service (part of the County Council) and the Children’s Society (who have a specialist Traveller section) a Development Management Officer with

South Somerset District Council, as well as many other agencies (the Gypsy Liaison Officer, police officers and so on.) What this wealth of experience and contacts enabled was a statistically reliable sample size to be achieved. Once that reliable sample was determined, then the surveys could be developed in concert with the Gypsy and Traveller representative bodies and carried out over a reasonable timescale. In contrast to the 5 day fieldwork period for Havant part of the HTAA, the Somerset GTAA took evidence over a full 12 months, thereby ensuring that seasonal variation was precluded, in turn increasing the reliability of the results obtained.

68. I would refer the Inquiry to the fact that in November 2013 the EIP Inspector considering the Leeds' draft Traveller policy issued a finding that their needs assessment and consequent policy were unsound due to similar issues that are present in this case too:

"I do not consider that, on its own, it can be said to provide a robust and reliable indicator of the full need for gypsy and traveller accommodation in Leeds. As stated by Mrs Jones from Leeds Gypsy and Traveller Exchange (GATE), families may be reluctant to register on the Council's waiting list, either because of its length or dissatisfaction with the Cottingley Springs site which is the only Council site available.

10. Planning Policy for traveller sites (PPTS) does say that local planning authorities should make their own assessment of need but that does not mean that any assessment will do. Paragraph 6 of PPTS provides advice on how to gather evidence and more detailed guidance can be found in DCLG's 2007 publication, 'Gypsy and Traveller Accommodation Needs Assessment'¹⁰. This document sets out the steps required and the type and range of information necessary to produce a robust indication of need and who should be involved, which includes groups like GATE and neighbouring authorities. I am aware that GATE's views have been sought with regard to the further work submitted on 6 November but without a GTAA of a type which accords with government guidance, I cannot determine that Policy H7, as proposed to be amended, complies with PPTS and is sound."

69. In the HTAA itself, the Consultants acknowledge these shortcomings that arose from “*the very specific requirements of the Brief*” (para 5.1) :

“[The fieldwork] stage **had** to be conducted during June and July 2012; both the Consortium and Forest Bus accept that this is not ideal given that the summer is the primary season for Travellers to be on the move and away from their normal base. **The timing was determined**, however, by the respective plan-making pressures of the various authorities.” (para 5.7)

70. Paragraph 8.9 of the HTAA provides a clear indication of the extreme extent of seasonal variation in travelling patterns which gives cause for concern that the fieldwork took place at an inappropriate time when people were likely to be away travelling:

“*The County Council’s figures also illustrate the significant seasonal variations in the movement of traveller families. The highest count of [unauthorised roadside] camps in 2012 was in June (36 sites, with 211 caravans), and the lowest in December (6 sites, with 8 caravans).*”

71. Given this obvious – and indeed self-acknowledged – deficiency in the timing of the fieldwork programme, it is perhaps unsurprising that the authors “*were disappointed ...that the overall response rate can be described as modest...*” (5.8) as “*the timing of the field research (see 5.7) was not conducive to a strong response.*”

72. Some of the other manifold deficiencies with the HTAA assessment which indicate that the level of need has been under-estimated can be found below.

73. Any need for permanent residential need arising from unauthorised encampments was disregarded by the HTAA despite the assessment referring to:

“*the pressures of being moved on by ‘authority’, and it is not easy to reconcile these concerns with those travellers who may, as the County Council suggest, have a more*

permanent base elsewhere. Certainly, the families in our survey all see themselves as nomadic, a claim supported by the fact that hardly any were registered on waiting list for housing or permanent traveller sites. The survey responses, and the unsuitable locations in which we found them (including on the highway and a car park) strongly point towards a general need for improved formal transit accommodation in certain parts of Hampshire.
(6.24)

74. The HTAA did not interrogate the extent to which this element of unauthorised camping disclosed a need for permanent as well as transit accommodation. In other GTAAAs between 10% and 30% of unauthorised encampments are considered as being a suppressed residential need. The Appellant's case is a prime example: he was living on unauthorised encampments and was in need not of transit accommodation but of a permanent residential base. Without factoring in need from this source, the HTAA will clearly have underestimated the real extent of need for permanent residential development. In spite of this, at 6.3 the HTAA states:

"However, despite these interesting findings, and the clearly significant levels of 'need' for alternative or additional accommodation within our interviewed sample, we have decided not to factor in this aspiration or demand as tangible need for additional plot provision."

75. Paragraph 8.8 then refers to the level of information that the Consortium possessed but which the assessment disregarded. (I have asked for a copy of this information and will comment upon it once in my possession.):

The County Council's data provides useful context; the number of recorded sites (occupied by varied numbers of families, vehicles and caravans, and for varied lengths of stay) during the whole of 2012 demonstrates the scale of the issue. An allowance must be made for double or even triple-counting (as families move from one district to another), but the total number of camps was as follows: Winchester (40 sites/126 caravans); Test Valley (20/67); Fareham (10/71); Eastleigh (8/39); New Forest (8/65); Havant (6/49); East Hampshire (6/15) and Gosport (2/15). (The figures for Winchester, East Hampshire, and New Forest include the areas within the respective National Parks).

76. The issue of potential double counting has been well-known since the 2006 draft CLG Guidance was issued as a result other authorities include between 10% and 30% of unauthorised encampments as disclosing a need for permanent pitch requirement. I am not suggesting that 100% of unauthorised encampments need a permanent residential pitch, as that would inflate the real extent of need, rendering the process not robust. However by including 0% of unauthorised encampments as an indicator of need is to render the process not robust at the other extreme: by significantly under-estimating need.

77. Nor does there does not appear to have been a robust consideration of the extent to which overcrowding on public and/or private site has contributed to hidden or concealed need; in fact the only reference to overcrowding in the HTAA is at 7.12 but this does not include any analysis of the data. The omission of the residential pitch requirement arising from overcrowding is a serious failing that further reduces the robustness of the assessment, thereby indicting an inaccurate underestimate of need has resulted.

78. Tellingly, the HTAA explicitly accepts that it has significant shortcomings as it omits elements of need that the assessment failed to cover in a robust and defensible way:

*7.21 We also need to explain what **Table 4** does not include. As we noted above (paragraph 7.7) future projections are fraught with difficulty, and, given the number of assumptions and adjustments listed above, we consider it prudent to refrain from employing statistical assumptions about which we are less sure. In particular, despite Government guidance and best practice elsewhere, we have decided to omit factors for which the survey did not provide robust data. In particular:*

***We have not factored in possible future demand for permanent pitches from those currently residing in bricks and mortar accommodation;** although there is some evidence of dissatisfaction with current accommodation (see paragraphs 6.26 to 6.33) and/or a desire to travel, we believe this represents demand for*

alternative housing and/or transit site provision to meet temporary short term needs;

We have not factored in demand for permanent pitches from those we interviewed on unauthorised encampments in June and July 2012; , for the reasons set out in paragraphs 6.20 – 6.25;

We have not factored in ‘new households expected to arrive from elsewhere’ (Gypsy and Traveller Accommodation Needs Assessment); given the complex picture painted by the County Council’s Traveller Database, this would not make for sound assumptions, although we note that the Consortium is exploring a wider perspective with similar local authority partnerships in three adjoining counties, and our recommendations allow for future flexibility here and in other aspects of the statistical projections.”

79. I have requested the Traveller database as well as the ‘master lists’ of all sites known to the Consortium but at the time of writing these have not been provided. I therefore reserve the right to refer to these documents once received.

80. Returning to the issue of need arising from bricks and mortar, the context in Hampshire generally and Havant in particular reveals that there is a very large population of sedentarised Travellers who were housed after the Second World War; indeed, they form the largest ethnic minority group in Hampshire.

81. To disregard any element of residential pitch requirement from the housed Gypsy population in Havant represents a fatal flaw in the HTAA.

82. This theme is enlarged upon on p65 of the HTAA as follows:

“Through our previous research, we have evidenced that the health and social needs of the bricks and mortar group are currently not being met. We have established that the families who live in bricks and mortar feel very isolated. We have identified that there is still a huge divide between the Gypsy Traveller and the wider community.

The housed community remain hidden and yet often they have even greater social need than those families who continue to pursue the traditional way of life by travelling, either permanently or on a seasonal basis.

General Findings from our Research Papers

The concerns which have been identified and are relevant to the Gypsy and Traveller community (the main minority group in Hampshire) are:

- *Lack access to mainstream services*
- *Life limiting issues*
- *Premature mortality will life expectancy on average less than 60 years*
- *Racial discrimination*
- *Low take up of preventative health services*
- *Poverty and isolation*
- *Lack of safe places to play which hinders cognitive development*

Racism and marginalisation has generally increased, and people report that they are feeling more isolated and victimised.”

83. To then ignore any element of need – be that suppressed, latent or express - arising from Travellers in bricks and mortar who would chose to live on site in a caravan were such options open to them, represents a fundamental misunderstanding of the target population, resulting in an artificially reduced level of need.

84. I will now briefly return to the issue of the timing of the fieldwork, this time in terms of the length of the time the fieldwork took. In so doing I will compare the length of time the HTAA fieldwork took for the 11 authorities in the Consortium with other GTAAAs I have considered. I have calculated that for if the 11 authorities were surveyed over a 2 month period, then only 5.5 days was spent surveying each individual authority. This compares poorly with assessments in other areas. I have chosen to look at authorities in the county of Kent as an example because like Hampshire a) that is also in the South East Region and b) comparisons can then be drawn between how authorities in Kent and Hampshire deal with the issue. In the Executive Summary for the Sevenoaks GTAA 2012 “*the fieldwork period took place between October and December 2011. The base*

date for the assessment is 1st October 2011.” Therefore in the single district of Sevenoaks the fieldwork took some three months and took place outside of the summer months (when nomadic people are likely to be travelling).

85. I turn now to the Maidstone GTAA 2012, Appendix 1 of which states that “*the fieldwork took place between September and November 2011*” which like Sevenoaks meant that a three-month time period for fieldwork outside of the summer months for that single authority.

86. In the Executive Summary to the Swale GTAA 2013 it states that “*the fieldwork took place between January and February 2013. The baseline date for the assessment therefore is 2nd February 2013.*” In contrast to the HTAA therefore the Swale GTAA fieldwork took three months for a single authority and was undertaken in the Winter when Travellers are far more likely to be present on their sites.

87. In Appendix 1 “*The Assessment Methodology*” to the East Kent GTAA it states that “*the fieldwork took place during July and August 2013.*” That means that the fieldwork for a single authority took place over two months, rather than for 5 days in the HTAA.

88. Finally the Basildon GTAA December 2013 paragraph 5.2 on page 29 of which states: “*Interviews were attempted with every Gypsy and Traveller household in the area who were present during February and March 2013. Therefore the base date for the findings of this study is March 2013. Throughout the study period interviewers from ORS worked from 9am to 7pm each day and made repeat visits to each household until a successful interview was concluded. In total 107 interviews were achieved on site with 107 households.*” Once again the survey was conducted in the Winter months, thereby being outside of the time period when most Travellers are away travelling (May to October) and took three months for a single authority.

89. From the evidence above I conclude: the CLG 2007 guidance recommends that surveys take place over a 6-9 month period to allow for seasonality and that some

GTAAAs cover a full 12-month period (such as the Somerset GTAA 2011) but that most seem to take place over three months for individual authorities, as well as outside of the summertime when Travellers are more likely to be away travelling.

90. In the Basildon 2013 GTAA undertaken by ORS we can see that great efforts were made to get community ‘buy in’ – for both the Traveller and settled community: firstly we can see at 1.30 the depth of knowledge and community expertise involved

“1.30 The research methodology for identifying the housing needs of Gypsies and Travellers adopted in this report was largely based upon face to face interviews with Gypsies and Travellers across Basildon. The survey questionnaire has been developed over the past 10 years, with significant input from Gypsy and Traveller representative groups over that time, most notably the Derbyshire Gypsy Liaison Group. We sought to undertake a census of Gypsy and Traveller households between February and March 2013. Interviews were attempted with every known Gypsy and Traveller household present during this time period and 107 interviews were achieved with Gypsies and Travellers on-site with a further 3 interviews for households living in bricks and mortar.”

91. ORS also held public ‘drop in’ sessions at 4 separate locations, as detailed at section 3:

“3.1 As stated in the ‘Planning Policy for Traveller Sites’ it is recommended that, in assembling the evidence base to support their planning approach, local planning authorities should:

Pay particular attention to early and effective community engagement with both settled and Traveller communities

3.2 In order to meet the above requirement ORS facilitated four public drop-in sessions as part of the engagement programme. These sessions were open to members of the settled community and were widely publicised via:

Advertisements in local media (Basildon Echo, Yellow Advertiser)

Posters on local notice boards and shop windows; and

Distribution of poster and leaflets to Parish Councils.

3.3 This section is a summary of the outcomes of four drop-in sessions undertaken between January and March 2013. The sessions were held and attended as follows:

Wickford Session - The Wick Community Centre, Friday 25th January 2013 – 8 participants.

Basildon Session - Frypa Hall, Tuesday 29th January – 7 participants.

Billericay Session - Billericay Day Centre, Friday 1st February – 12 participants

Noak Bridge Session - Noak Bridge Village Hall, Thursday 14th March – 22 participants

3.4 At least two members of the ORS research team were present at each of the sessions. All drop-in session lasted six hours (2pm-8pm). Each participant was given the opportunity to talk confidentially to a member of the research team. The length of the discussions ranged from five minutes to an hour. The varying length of discussions was dictated by the amount of time given up by the participant and, in Noak Bridge in particular, the volume of other participants.

3.5 The ORS research team member explained to each participant the objectives of the GTAA and the purpose of the public drop-in sessions prior to each session. Each participant was also given a copy of the document Planning Policy for Traveller Sites. Indeed, for a number of participants their reason for attending the session was to receive the aforementioned information.

92. In contrast, in the HTAA, the Forest Bus produced a flyer which promised participants a free Tesco's voucher if they took part.

93. The criticisms above do not represent the full extent of the inadequacies of the HTAA but serve to demonstrate that the assessment has fundamental problems that result in an estimate of need that is incomplete and under-records the real

extent of that need. This is because of, inter alia, the lack of community involvement, the short time period in carrying out of the survey, the failure to assess need from unauthorised encampments, from over-crowding and from those in bricks and mortar. As such it falls short of the requirements of the 2007 CLG Guidance, the PPTS and s225 of the Housing Act 2004. For these amongst other reasons the Inspector can conclude that the need is greater than the figure reached by those carrying out this assessment.

94. From the foregoing I conclude that the Appeal proposal complies with CP10 and that therefore planning permission should be granted subject to reasonable conditions.

95. However if the Inspector concludes that is some conflict with CP10, then pursuant to the second limb of s38 (6), it is advanced that other 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 issue of need for more Gypsy and Traveller sites a) nationally b) regionally c) at county level and d) within the District,
- ii. the availability or otherwise of suitable, available, acceptable alternative site(s);
- iii. the family's personal circumstances and needs
- iv. the progress the Council has made in respect of its Local Development Framework and Site Allocations DPD;
- v. the deficiencies with Development Plan policies with respect to Gypsy caravan sites which goes back many years;
- vi. matters of discrimination and inequality in provision
- vii. that the site comprises PDL
- viii. Human Rights considerations; and
- ix. The best interests of the children.

NEED IN A POLICY CONTEXT

96. 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.

97. 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 (GTAAAs) and when developing their strategy.

98. 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.

99. 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.

100. 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

- 101.** 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 was the only authority to have zero public or private sites over the last 5 counts. It would appear that Havant has never had an authorised Travellers site in its history. In my experience that is very unusual and indicates that it is likely that the LA enforces against unauthorised sites rapidly thereby preventing them becoming an established need.
- 102.** The Appellants' previous Agent posed some questions in FOI request to the LPA re need and supply and received the following replies:

1. A copy of the latest Gypsy Traveller Area Assessment together with the timetabling for re-assessment.

The latest Travellers Accommodation Assessment (2013) can be downloaded from our website at: <http://www.havant.gov.uk/planning-and-environment/planning-policy/evidence-base-studies/travellers-accommodation-assessment-hampshire-2013>. This is in the process of being revised and an updated study is due to be finalised in October.

2. Details of all gypsy traveller applications within the Council's administrative area within the last 3 years (*together with confirmation as to whether they were permitted / refused / withdrawn / allowed or dismissed on appeal etc....*)

There are no other planning applications other than the one subject to this appeal.

3. A list of all reported unauthorised encampments within the last 3 years

Havant Borough Council has dealt with 10 unauthorised encampments since 2013.

3. Confirmation of any criminal law actions (Injunctions / Stop Notices etc...) undertaken by the Council with respect to unauthorised gypsy pitches within the last 3 years

We have issued four 'directions to leave' under the section 77 and 78 Criminal Justice and Public Order Act 1994 and the subsequent possession actions, and asked the police to use their powers under section 61 of the same legislation on 6 occasions for unauthorised encampments on council land.

5. Confirmation of the location of any Council gypsy sites (together with the number of pitches at each site) within the Council's administrative area

None

6. Confirmation of the location of any Council gypsy transit sites (together with the number of pitches at each site and restrictions on duration of stay) within the Council's administrative area

None

7. Confirmation as to whether there are any vacancies at any Council gypsy or gypsy transit sites

N/A

8. Confirmation of the number of people on the waiting list for Council gypsy sites

N/A

103. 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 12) 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."*

104. In my opinion, it is unrealistic for there to be need everywhere in the area *except* Havant. Considering the inadequacies of the HTAA raised above, I conclude that the figure of zero need is unreliable and should not be given weight. In any event the Appellant does not rely on general need alone but also upon his personal need for accommodation, particularly given the fact that his partner is about to have their first baby.

PERSONAL CIRCUMSTANCES

105. 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"

106. 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”

107. 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”

108. 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).

109. 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.

110. 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*”.

111. Much more recently, the issue of what can constitute “*very special circumstances*” for the purposes of PPG2 has again been considered by the Court of Appeal (*Wychavon DC v the Secretary of State and the Butlers*).

“*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 [PPG2] 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.”

THE APPELLANTS PERSONAL CIRCUMSTANCES

112. Mr Jimmy Magwich is 26 years of age and lives on the Appeal site with his partner in a caravan. The couple moved onto the Appeal site in caravans because they are expecting their first child and had nowhere else to go. Mr Magwich has registered the family with the GP surgery in Emsworth so that his partner can be assigned a midwife for the pregnancy. The baby is due in March 2017. The family is homeless as they have no other site where they can park their

caravan and live. The Appeal site is their only home and if they had to leave there they would have to go back on the roadside

113. It is clear that the Appellants personal circumstances and medical needs add further substantial weight to the case for the Appeal to be allowed. It is also clear that the best interests of the children would be served by allowing the Appellants to remain on the site whilst the Planning Appeal is completed, given the LPA's acceptance that no suitable alternative sites exist in their area.

114. The children's best interests is a factor which very recent case law confirms is a key statutory requirement for all decision makers to take into consideration: in the case of Sedgemoor District Council v Marie Hughes and Ors (unreported [2012] EWHC 1997 (QB)) handed down in July 2012 - HHJ Thornton refused to grant an Injunction pursuant to s187b Town and Country Planning Act 1990 to restrain a breach of planning control by Gypsies and Travellers who remained living on their own land in caravans in breach of an Enforcement Notice upheld on Appeal in 2009. The Appellants argued that they had amended the planning application since then by the production of substantial new highway safety evidence which meant that on Appeal to the Secretary of State's Inspector, the site had a realistic prospect of success (see South Buckinghamshire District Council v Porter [UKHL] 2004). The judge then went further still and stated:

27. A further, and to my mind significant, consideration that both this court and the planning inspector must consider, are the best interests of the ... children...

28. There is now a statutory duty on any public authority, which would include both a judge of this court and a planning inspector, to give consideration to the best interests of the children and there is some evidence from the adult Appellants that the best interests of these children would be put at risk if there was any enforced removal from this site in the near future. The considerations that must be considered by any public authority include their education, their safety, their welfare and the appropriateness of the accommodation in which they are living.

29. *The Appellants' evidence is... that there is no other place available to them... where they will be able to pitch their caravans and continue their life as travellers. Furthermore, whereas at present those... who are of school age are making reasonable progress in schools and the educational difficulties that have historically confronted travellers' children are well known, that progress will be hindered if not wholly disrupted since there will be no obvious schooling available to them, certainly in the immediate aftermath of their leaving this site.*

30. *Indeed, the somewhat gloomy prognosis is put forward by the Appellants that they will simply have to pitch their caravans by the roadside since there are no available sites in the Sedgemoor District Council area.*

31. *It would appear that Sedgemoor District Council do not regard it as any part of their function to involve Social Services in a consideration of the welfare of these children. Indeed, it is suggested that they have no obligation to do so, it is a county matter for Somerset [County Council] to be involved in. There is certainly no available evidence to this court to give any indication of how the balancing exercise that this court must undertake should be undertaken other than the somewhat unstructured evidence from the Appellants themselves.*

32. *Traditionally in planning enforcement proceedings, welfare evidence of the kind I have indicated has not been used. However, courts and tribunals, including planning appeal inspectors, are now, particularly since the judgment of Baroness Hale in the relatively recent decision of the Supreme Court (admittedly in the field of immigration), having to take account of the welfare and best interests of children. It seems to me that a proper consideration of the LPAs' applications must involve a consideration of the best interests of these children and ordinarily that needs to involve, at the very least, social inquiry reports or welfare reports from those other than the Appellants themselves which give consideration to these matters. It is not sufficient for the LPAs simply to place the onus on the Appellants, particularly in situations where it is now very difficult to obtain public funding to obtain appropriate welfare reports in this type of situation."*

115. The immigration case in the Supreme Court to which the judge referred above is that of *ZH (Tanzania) v. Secretary of State for the Home Department [2011] 2AC 166* where it was held that:

“international law placed a binding obligation upon public bodies, including the immigration authorities and the Secretary of State, to discharge their functions having regard to the need to safeguard and promote the welfare of children; that the obligation applied not only to how children were looked after in the United Kingdom but also to decisions made about asylum, deportation and removal from the United Kingdom; that any such decision which was taken without having regard to the need to safeguard and promote the welfare of any child involved would not be "in accordance with law" for the purposes of article 8.2 of the Convention; that, further, in all decisions directly or indirectly affecting a child's upbringing national authorities were required to treat the best interests of the child as a primary consideration, by identifying what those best interests required and then assessing whether the strength of any other consideration, or the cumulative effect of other considerations, outweighed the child's best interests.”

116. On 9th October 2013 the Court of Appeal unanimously upheld the judgment of Cox J in the High Court in a Green Belt Gypsy case which concerned this issue and in which I was instructed. Lord Justice Richards found:

“13. Cox J found that the inspector's refusal of temporary planning permission was unlawful... She pointed out that the substantial weight attaching to the harm arising from inappropriate development in the Green Belt fell to be reduced in the case of a temporary permission, because it would be limited in time... She then summarised the inspector's findings in relation to the other material considerations, including the findings relating to the claimant's health and the children's education, the fact that refusal of permission would probably result in the claimant and her children having to leave the site, and the absence of evidence that there were any alternative sites that were suitable, available and affordable.

14. Having repeated that the nature of the balancing exercise changed when the inspector was considering a temporary rather than a permanent permission, she continued:

"73. ... Further, in this case, the vulnerable position of Gypsies generally and the need for special consideration to be given to their needs, to which Carnwath LJ referred in Wychavon [Wychavon District Council v Secretary of State for Communities and Local Government [2008] EWCA Civ 692, [2009] PTSR 19], had a particular focus when considering temporary permission for this Claimant. In addition to her status as a single Gypsy mother with three young children, she was a person with compelling health needs, for whom the consequences of refusal of a temporary planning permission were potentially extremely serious.

74. In circumstances where no alternative sites were available, or likely to become available in the foreseeable future; where injunction proceedings for immediate eviction had already been started; where the inspector found that the Claimant and her children would probably have to leave the site if permission were refused; where there was a recognised risk that the Claimant and her children, once evicted, would have to resort to roadside existence, which would harm the Claimant's health and cause serious harm to the quality of life of the Claimant and her children; and where there was no evidence that the Claimant, once evicted, would in fact be offered a pitch on one of the Council-run sites or indeed anywhere else in the area, the decision that the other material considerations in this case were not sufficient to clearly outweigh the identified harm and to justify the grant of temporary permission was, in my judgment, irrational.

75. The inspector's tentative findings, that there was no certainty that the Claimant would resort to a roadside existence, and that the Council may not evict the Claimant before a pitch becomes available, do not save the decision to refuse a temporary permission, when considered in the context of the other findings referred to above. The probability that the Claimant and her children would have to leave the site; the lack of any finding as to where they would go once evicted; and, in particular, the medical opinion as to the adverse effects of roadside existence upon this Claimant's health, the adverse effects upon the continuity of her children's education and upon the quality of life for them all cannot in my judgment be said to constitute other than very special circumstances."

14. She expressed agreement with Ouseley J in R (Sheridan) v Basildon District Council [2011] EWHC 2938 (Admin), para 129, that for the purposes of article 8(2) there was a duty to have regard to the best interests of the children as a primary consideration, and that the crucial factors for consideration were health and education. She said that in the present case the inspector appeared to recognise these as important factors. She accepted the submission of Mr Cottle, counsel for the claimant, that the question whether or not, on eviction from the site, there was likely to be suitable alternative accommodation available for the family went directly to the balancing exercise required under article 8 when considering the application for a temporary permission. She continued:

"78. I accept [Mr Cottle's] submission that, in this case, it was incumbent on the inspector, for the purposes of that balancing exercise, to make clear findings as to what would happen in this case once the Claimant was evicted and, in particular, whether it was more likely than not that the Claimant and her children would have to move to a roadside existence or whether, alternatively, they would be offered accommodation on a suitable, alternative site.

79. *I do not accept Mr Whale's submission that such a finding was not necessary. In my view this issue went to the heart of the balancing exercise required in this case. Nor do I accept his submission that the inspector was not asked expressly to make such a finding and cannot now be criticised for not making it. The Claimant's case, as expressed in the witness statement she submitted at the hearing, was that the appeal site was her only home and that she and her children had no lawful site where they could park their caravans and live. The whole basis of her case in support of a temporary permission was that she had nowhere else to go.*

80. *Given the importance of these factors and their relevance to the necessary, balancing exercise I cannot accept Mr Whale's submission that the inspector's findings on these points would have made no difference to his decision. Nor does the inspector's finding that roadside camping would be likely to be equally harmful to the Green Belt answer the point, without clear findings as to all the relevant circumstances to be weighed in the balance.*

For all these reasons I consider that the inspector failed to make relevant findings, as required, and that his decision to refuse a temporary planning permission to this Claimant was irrational and cannot stand. Alternatively, I consider that his decision on the issue of temporary permission was inadequately reasoned and that, for that reason in addition, his decision cannot stand."

117. Richards LJ continued:

"I would attach particular importance, as did Mr George QC in his submissions on behalf of the claimant, to the judge's criticism of the inspector's failure to make any finding as to whether it was more likely than not that the claimant and her children would have to resort to

roadside camping if temporary permission were refused. I agree with the judge that a finding on this issue went to the heart of the balancing exercise required and that it was not sufficient simply to treat it as “possible” or as “no certainty”.

If the family was likely to face a roadside existence in the event of refusal of temporary permission, it would involve a far more serious interference with their article 8 rights, especially through the impact on health and education, than if they were likely to obtain alternative accommodation. Thus the issue went to the core of the article 8 analysis. Moreover, the “other material considerations” advanced by the claimant included “the likely outcome of refusing planning permission including human rights considerations” (para 17 of the inspector’s decision), which underlined the need for a finding on likelihood.

The question whether the family was likely to resort to a roadside existence was also important in relation to the “harm” side of the balance. On the inspector’s own finding, at para 31 of his decision, roadside camping would be likely to be equally harmful to the Green Belt and potentially more harmful to the countryside. Of course, the grant of temporary permission would still result in the harm identified by the inspector, and it may not be strictly accurate to describe that harm as being cancelled out or neutralised by the harm that would result from the refusal of temporary permission, but the overall balance would necessarily be affected if the harm resulting from the refusal of temporary permission would be equal to or greater than the harm resulting from the grant of such permission. The judge did not deal with the point in quite this way but it goes to support the conclusion she reached.

There was ample material before the inspector on which to make a finding as to the likelihood of roadside camping if temporary permission was refused. The point does not fall for decision, but I doubt whether on that material he could reasonably have reached any conclusion other than that roadside camping was a likelihood. The council’s injunction application, although on hold pending the appeal to the inspector, was for the

claimant's immediate eviction; and as the judge said at para 71(e) and (f) of her judgment, the council had adduced no evidence that there were any alternative sites or as to the circumstances in which pitches had been offered previously to those forced to move. It is difficult to see what realistic alternative the family had to a roadside existence."

118. That is precisely the situation facing Mr Magwich and his family: they have tried to find but been unsuccessful in obtaining a suitable alternative site and they face being evicted onto the roadside and other unauthorised sites if the Appeal is dismissed.

ALTERNATIVE SITES

119. 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.

120. 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 2016 shows there are simply no sites whatsoever, neither public nor private, in the area over the last 5 counts.

121. However, there is no requirement in law for *the Applicants* – 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]..."

122. In this case, however, the Appellant has made enquiries of other site owners to see if there were any vacancies on their sites. As the replies in Appendix 13 show, not only are there no vacancies but there is no prospect of vacancies arising for some years.

123. 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

124. There is evidence of a clear and immediate need for further sites for Gypsies and Travellers, a fact evidenced through Gypsy and Traveller Accommodation Assessment and the Core Strategy. The site complies with the specific Development Plan policy for Gypsy sites, CP10 as well as national policy in PPTS and the Framework. Insofar as the Appeal is considered by the Inspector 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, combine with the limited harm caused by the development and the clear and immediate need for further site provision for this young family, to allow for planning permission in this case.

125. For all of these reasons, in my opinion, the Appellant respectfully invites the Inspector to allow this Appeal.