

IN THE MATTER OF APPEALS AGAINST:

**THE DECISION OF EASTLIEGH BOROUGH COUNCIL
TO REFUSE TO GRANT PLANNING PERMISSION FROM
AGRICULTURAL TO A MIXED USE RESIDENTIAL,
RETENTION OF BARN, HARDSTANDING, GATE,
FENCING, TOURING VAN, STABLE 1 AND STABLE 2
(RETROSPECTIVE). SITING OF ONE STATIC CARAVAN
FOR GYPSY AND TRAVELLER ACCOMMODATION,
DAYROOM AND ADDITION OF STABLE 3 (AMENDED
DESCRIPTION)**

AS WELL AS AGAINST 2 ENFORCEMENT NOTICES

**IN RESPECT OF LAND EAST OF LITTLE HATTS
RECREATION GROUND, TICKNER CLOSE, BOTLEY,
SOUTHAMPTON SO30 2SW**

**TOWN AND COUNTRY PLANNING ACT 1990 (AS
AMENDED)**

APPELLANTS HEARING STATEMENT

QUALIFICATIONS AND EXPERIENCE

1. My name is Dr Angus Murdoch and I became a Member of the Royal Town Planning Institute in 2008. 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). Before setting up in private practice in August 2009, I had been employed as a Planning Advisor 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*.

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, 3rd Edition 2020). I have been called to give evidence to the House of Commons Select Committee and have been interviewed live on the 'Today' programme on Radio 4 by John Humphries with respect to this area of planning law and policy. I was also instructed as the Claimants' Expert Witness in the case of *Moore and Coates v SSCLG and Bromley and Dartford Councils, the Equality and Human Rights Commission (Interveners) [2015] EWHC 44 (Admin)*.

REASONS FOR REFUSAL [RFR]

3. The application in the s78 Appeal was refused planning permission for the following reasons:

1

*The application has not demonstrated that the occupant of the site meets the definition of a Gypsy or Traveller as set out in Annex 1 of the Planning Policy for Travellers Sites (2015). **Accordingly** the proposal represents unjustified residential development outside of the Urban Edge contrary to Saved Policies 1.CO and 87.H of the Eastleigh Borough Local Plan Review (2001-2011).*

The Appellant was interviewed by the Gypsy Liaison Officer at Hampshire County Council, Mr Barry Jordan-Davies at the behest of the LPA with the GLO concluding that the Appellant was an ethnic Romany Gypsy as well as a Traveller in terms of Annex 1 Planning Policy for Traveller Sites (2015) [PPTS 2015] a matter that I had submitted from the outset. It is now Common Ground that the Appellant is both an ethnic Romany Gypsy and a PPTS 2015 Traveller. The LPA expressly accept that in their email to the case officer dated 12th October 2022. Given the LPA's acceptance at 8.6 of their Statement of Case that "*Policies 1.CO and 87.H allow for Gypsy and Traveller Sites in principle within the countryside*" RFR 1 falls away in the light of the Appellant's accepted Traveller status.

2

*The proposed day room contains facilities over and above what would reasonably be expected for a site **of the size proposed**. No justification for **the size of building** proposed has been made and **it is therefore considered** to be tantamount to an additional dwelling contrary to Policy 1.CO and 87.H of the Eastleigh Borough Local Plan Review (2001 - 2011)*

As indicated to the LPA, the Appellant is agreeable to having a smaller sized dayroom, something that can be achieved by way of Condition. A revised drawing is attached at Appendix 1.

The application does not show access to an adopted highway and any access gained would be over land outside of the applicant's control. It cannot be ensured therefore that the development provides access that would not interfere with the safety, function and standard of service of the road network contrary to Policy 102.T of the Eastleigh Borough Local Plan Review (2001 - 2011).

There is an agreement which affords the Appellant the right to use the access for any purpose, as is accepted in the Parish Council's Statement of Case at 3.2. In my email to the Parish Council of 19th December 2022 that was cross copied to the LPA and PINS I stated:

"As you know, the Appellant has an acknowledged right to pass and repass with or without vehicles for any purpose across the access track in question. This is acknowledged in the Parish Council's Statement at 3.2:

*"Firstly the access track across the northern part of the Little Hatts Recreation Ground falls within the Parish Council's ownership... **the owner of the appeal site inherited a right to pass and repass across the track, for all purposes, when he acquired the appeal land...** Further, due to antisocial behaviour in the recreation ground the gate from Tickner Close to the track is padlocked at dusk. The appellant has been provided with a key to gain access to the track..."*

The PC makes a further point:

"It is relevant to note that the plans forming part of the refused planning application (F/81707) site (i.e. the red line / planning unit) did not include the trackway all the way to the nearest adopted highway (i.e. Tickner Close). It is also relevant to note that only Certificate A accompanied the planning application, Certificate B was not submitted and no Notice was served on the Parish Council."

By way of their objections to the planning proposal and their application for Rule 6 status, it is clear that the PC as owner of the track in question have at all material times been fully aware of proposal and have in no way been prejudiced. However, as a belt and braces approach, the Appellant attaches the following:

1. Amended red line location plan.
2. Amended Certificate B and Notice hereby served on the PC.

Again, no prejudice to the PC arises given their full knowledge of this matter, having raised it themselves in their Statement cited above.

In the attached letter from a senior PINS Officer it states:

“On occasions incorrect Certificates are completed on appeals. In such circumstances, the Planning Inspectorate has taken the view that provided any persons who should have been notified of the application/appeal are given not less than 21 days in which to comment, then the appeals can progress, taking into account any comments so received, and retrospective Certificates can be provided.

In this case, retrospective certificates have been provided (attached) and the PC has more than 21 days to comment further should they so wish but in any event the PC has taken an active role in these proceedings for the last 5 years and so were already fully aware of the issues.”

Moreover, there is no evidence that the Appellant’s use of the site has in any way or at any time “*interfere[d] with the safety, function and standard of service of the road network.*” RFR 3 also falls away.

4

In the absence of a legal agreement or direct payment of the Solent Recreation Mitigation Strategy sum the increased recreational pressure from the additional dwelling on site would have an unmitigated and harmful impact on the Solent Special Area of Conservation (SAC) and Special Protection Area (SPA) contrary to Saved Policy 25.NC of the Eastleigh Borough Local Plan Review (2001-2011) and the Conservation of Habitats and Species Regulations (2017).

The Appellant is content to meet this Mitigation Strategy and has sought agreement with the LPA to resolve this ahead of the Hearing. (In like manner, if the Appellant is liable for the nitrates and bird aware mitigation, the Appellant has indicated his willingness to pay any contributions that may be required, although these were not RFR. A Nitrate Budget has been prepared by a qualified Ecologist and an Expression of Interest form completed and sent to the relevant Officer at the LPA). This is clearly a matter that can be addressed by way of Conditions.

The impact of the use of the cess pit has not been adequately assessed in relation to the impact on the catchment area that serves the River Hamble Special Area of Conservation and Special Protection Area. In relation to the cess pit it has not been demonstrated that more sustainable methods of foul water disposal could be utilised that would have a lesser impact on water quality. The impact is therefore considered likely to have an unacceptable impact on a European Designated site contrary Policy 25.NC and The Conservation of Habitats and Species Regulation (2017).

It is not feasible to connect to the mains sewer at the Appeal site but the Appellant is agreeable to having a Package Treatment Plant instead of a cess pit, a matter that again can be controlled by Condition.

4. Given the foregoing, it is clear that the s78 proposal is capable of being resolved by the imposition of Conditions to which the Appellant is entirely agreeable. On this basis, the Appellant has sought the LPA's agreement to compromising the s78 Appeal, negotiations for which are ongoing.
5. In addition to the s78 Appeal, two Enforcement Notices have been issued, the first of which alleges a material change of use of land from agriculture to a mixed use of agriculture, equestrian, the stationing of caravans and non-agricultural business and storage. Further to my email dated 16th December 2022, the remaining Grounds of Appeal against this COU Notice are A and G. So far as A is concerned, the Appellant seeks to retain the caravans and the equestrian use, including the stables, fencing and hardstanding. I note that the LPA has no objection to the equestrian element (9.5) solely what they describe as the "industrial" element (which is in any event denied) (9.6). The Appellant does not seek approval for any commercial or business use and is content for Conditions to be imposed to control the use of the land so as to preclude that. On this basis, Ground A should be allowed. So far as Ground G is concerned, the Appellant would need more time to relocate his horses and other equipment. A period of 6 months is requested.

6. The second Notice is concerned with Operational Development, in particular a metal framed building and a tree house. The remaining Grounds of Appeal in relation to this EN are A and G. So far as A is concerned, this relates solely to the metal framed building, not to the tree house. For the avoidance of doubt, the tree house was erected for recreational purposes only, for when the Appellant's 7 grandchildren visit the site. The metal framed building is used to store the Appellant's Gypsy horse carts and the tools he uses for his businesses. I note that the extant Development Plan policy for Traveller sites allows for *the range of economic activities and vehicles associated with residents' mobile lifestyles without unacceptable impact*. I will return to this issue later in the Statement.

PLANNING POLICY AND NATIONAL GUIDANCE

7. By section 70(2) of the Town and Country Planning Act 1990, when dealing with an application for planning permission regard is to be had to the provisions of the Development Plan, so far as material to the application, and to any other material considerations.
8. Section 38(6) of the Planning and Compulsory Purchase Act 2004 restates the former s54A *"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."* That position remains entirely unaffected by the introduction of the National Planning Policy Framework [NPPF] and Planning Policy for Traveller Sites [PPTS]: indeed, we are reminded no fewer than 7 times in the NPPF and twice in the PPTS of the requirements of s38(6) and s70(2):

"Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise."

9. At the time the planning application was determined – and the Enforcement Notices issued - the Development Plan comprised of the policies of the Eastleigh Borough

Local Plan Review (2006) which does not contain an allocations policy for Traveller sites, in conflict with PPTS and the Framework.

10. In this regard paragraph 10 of PPTS states:

“10. Local planning authorities should, in producing their Local Plan:

a) identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years’ worth of sites against their locally set targets

b) identify a supply of specific, developable sites, or broad locations for growth, for years 6 to 10 and, where possible, for years 11-15.

11. Paragraph 11 PPTS states:

*“11. **Criteria should be set to guide land supply allocations where there is identified need.** Where there is no identified need, criteria-based policies should be included to provide a basis for decisions in case applications nevertheless come forward. **Criteria based policies should be fair and should facilitate the traditional and nomadic life of travellers while respecting the interests of the settled community.***

12. Therefore, the Development Plan in force when the application was determined was absent and out of date (as well as inconsistent) with both the Framework and PPTS. I would refer to paragraph 14 of the Framework 2012 which makes clear that

“At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking....For decision-taking this means... where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless...any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.”

13. For the avoidance of doubt, the location of the Appeal site is **not** one where the Framework indicates that development should be restricted and thus the presumption in favour of sustainable development, and the tilted balance, applies.

14. Specific National Guidance on the issue - namely PPTS - accepts that Gypsy sites are acceptable in the countryside subject to scale – as indeed do the Local Plan policies 87.H and 1.CO. It was solely because the LPA had not by then agreed that the Appellant was a PPTS Traveller that RFR1 arose. This is plain by the use of the word “*accordingly*” in that RFR. Now that the Appellant is accepted by the LPA to be a Traveller, RFR 1 should be withdrawn.

15. In 2022 the LPA adopted a new Local Plan within which there is a development management policy for Traveller sites, DM31 which states:

Policy DM31, Gypsies, Travellers and Travelling Showpeople

1. The Council will meet the need for additional Gypsy and Travellers pitches and plots for Travelling Showpeople as identified in the Gypsy and Travellers and Travelling Showpeople Accommodation Assessment (GTTSAA). Sites are allocated for additional pitches and plots in policies BU4 and BU5 to meet this need.

I will address the issue of need in the GTAA in details later in this Hearing Statement. In the light of the recent Court of Appeal judgment in *Lisa Smith* (Appendix 2) there is a need for 22 pitches. The allocations made within the Plan are solely for existing unauthorised sites and therefore whilst they reduce need, they do not increase the supply of generally available Traveller sites.

2. In accordance with the assessment, the Council will work with neighbouring authorities to determine whether there is a need for a transit site in a wider area and to address any need identified in a suitable location.

This is irrelevant as the Appeal is not for a transit site.

The relevant criteria to apply are below:

3. Development for Gypsies, Travellers and Travelling Showpeople, including transit sites, will be permitted where:

a. there is an identified need for the pitch or plot provision which the proposal helps to meet;

In addition to the Appellant's own personal need for a site, in the light of *Lisa Smith* there is a general unmet need for some 22 pitches (discussed further below). This criterion is met.

b. the site is able to accommodate both residential use and where necessary the range of economic activities and vehicles associated with residents' mobile lifestyles without unacceptable impact on local amenities, road safety, heritage, landscape or biodiversity interests;

The site is able to accommodate the proposed residential use without unacceptable impacts. No commercial activities are proposed and could be controlled by way of standard Conditions, including the size of vehicles (no larger than 3.5 tonnes – which would address the Parish Council's concern about HGVs). This criterion is met.

c. the site has safe and convenient access to existing and proposed services and facilities to serve the residents, including education, health facilities and shops;

The site is adjacent to a recreation ground and play area, as well as on the edge of the settlement Botley, being within walking distance of services and facilities. This criterion is met.

d. the site has or can be viably provided with utility services; and

The site can be provided with all necessary services. This criterion is also met.

e. the site has vehicular access to and from the strategic road network adequate to accommodate mobile residential units and any vehicles/machinery associated with residents' working activities.

No objection from the Highway Authority has been made. No commercial activities are proposed. A maximum vehicle size of 3.5t is proposed. This criterion is met as well.

4. Existing Gypsy and Travellers sites and Travelling Showpeople sites permitted in the Borough, and any new sites granted permission and implemented, will be safeguarded for these purposes as long as the need exists for accommodation within the Borough.

Not applicable.

16. From the foregoing, it is clear that subject to enforceable planning Conditions, the proposed use is fully compliant with the specific adopted Development Plan policy for Traveller sites, a matter that attracts significant weight.

17. In my view, the s78 Appeal should be allowed subject to reasonable Conditions.

18. So far as the Ground A MCU EN is concerned, as stated previously the Appellant only seeks to retain the equestrian and caravan elements. The Council accepts that 8.6 that:

“9.5 While the LPA does not consider the use of the land as equestrian as a harmful impact in this countryside location there are other uses including the use of the site for businesses purposes which appear to include the appellant’s driveway and tarmac business from the site.

9.6 Saved Policy 1.CO of the adopted local plan and Policy S7 of the Emerging Borough Local Plan, while taking slightly different approaches, both apply a presumption against new industrial development in the countryside and there has been no justification provided in the appellant’s statement suggesting why a countryside location is needed for the appellant’s driveway business to be operated within this countryside.

19. The Appellant does not seek planning permission for any industrial or commercial activities on the Appeal site, these being the only matters that the LPA objects to in the MCU EN. It is submitted that the stables and equestrian element of the Appeals should be allowed as they are agreed not to be harmful. We can see the from Google Earth photograph at 9.14 that the stables have been in place at least since 2012

(although the Appellant argues they were built by 2009). They form part of the character of the area and do not weigh against these Appeals.

20. Similarly, the Appellant notes that the LPA has no objection to the metal framed building remaining on the Appeal site:

“9.30 ...the Local Planning Authority does not consider the metal framed building to be harmful to the character of the landscape and on the basis that the building is used for equestrian purposes it is not considered that the building’s location in the countryside is inappropriate.

9.31 Whilst the enforcement notice references policies 18.CO, 59.BE and 154.OS the LPA does not wish to advance a case that the proposal would result in harm to the character of the landscape or that the proposal has not taken proper account of its setting. The LPA will therefore request that the inspector remove requirement 5.1 from the OP Dev Enforcement Notice.

21. The Appellant therefore considers that the Ground A Appeal for the Op Dev EN should be allowed so far as the metal framed building is concerned.

22. On the basis of the foregoing, the Appellant respectfully invites the Inspector to allow his s78 and Ground A Appeals pursuant to the first limb of s38(6) of the 2004 Planning Act.

23. In the alternative, and without prejudice to the Appellant’s primary case, if the Inspector is against the Appellant in relation to compliance with the Development Plan, then it will be argued that pursuant to the second limb of s38(6) the Appeals should be allowed on the basis that other material considerations indicate otherwise than determining the Appeals in accordance with the Development Plan.

OTHER MATERIAL CONSIDERATIONS

24. Should the Inspector find a breach of Development Plan policy, then the Appellant argues the that “*other material considerations*” which must be weighed in the balance are not limited to the following:

- i. The Appellant’s ethnic and policy status as a Gypsy and Traveller
- ii. The provisions of the PPTS, particularly in the context of the NPPF
- iii. the wider sustainability benefits of the site;
- iv. the issue of need for more Gypsy and Traveller sites nationally, regionally, at county level and within the Borough,
- v. the Appellants accommodation needs,
- vi. the unavailability of suitable, alternative sites;
- vii. the Appellants Human Rights,
- viii. the deficiencies with Development Plan policies with respect to Gypsy caravan sites which goes back many years; and
- ix. matters of discrimination and inequality.

25. At paragraph 22 of PPTS a broadly similar list of material considerations to those I listed above can be found:

*“Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:
.the existing level of local provision and need for sites
.the availability (or lack) of alternative accommodation for the applicants
.other personal circumstances of the applicant
.that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
that they should determine applications for sites from any travellers and not just those with local connections.”*

26. Moreover, it is generally recognised that for Gypsy site proposals it is unlikely that all the criteria will be met on any one site and that a balance will need to be struck. Sites should comply with as many as possible of the criteria. Also, in any given case it is necessary to

conduct a balancing exercise, weighing against any harm to the countryside other circumstances (material considerations) in order to form a view as to whether those other circumstances are sufficient to override non-compliance with any breached criterion and warrant the grant of planning permission.

GYPSY AND TRAVELLER STATUS

27. It is now Common Ground that the Appellant is an ethnic Romany Gypsy, as well as a Traveller in terms of Annex 1 PPTS (2015). In order to satisfy themselves of this matter, the LPA instructed the Gypsy Liaison Officer at Hampshire County Council to interview the Appellant. The GLO's full Report is at Appendix 3 but he concludes as follows:

“8, I was shown photographs of family members near caravans at horse fairs and advised of books and documents in which the James family is mentioned evidencing their ethnic Gypsy origins. I am advised that documentation and photographs are available to the planning authority and can be provided to the relevant planning officer and committee through the applicants planning agent.

9. I ascertained that the applicant's family roots were very local having been born, brought up and schooled in Sholing near Southampton in Hampshire. Mr James advised that he had lived his formative years in a wooden shed type of property in the Botany Bay Road, Sholing area with his father a Traveller and his non-Traveller mother. The family have never lived on a Local Authority site or at the side of the road and whilst away from home they predominantly lived on the land they were working on or on private land or with relatives. In keeping with his cultural lifestyle, they visited and continue to visit horse fairs nationally to deal in horses and ponies and all the associated equine tack and paraphernalia.

10. He left school at 13 years of age to assist his father in the groundwork business which he continues to do today offering a licenced service in tarmacking, block paviour driveways / paths and dropped kerb work.

11. *In his early 20's he moved down to Cornwall to continue his groundwork business for about ten years before returning to live with his father and then obtaining the land on which he currently resides. **He has for years now worked away from home returning every other weekend to visit and stay on his land and then decided some 5 to 6 years ago to live more permanently on his own land.** He initially 'plugged' out his horses on the land and then started the legal process to take over ownership and commenced developing the stables and open barn.*

12. *I was advised that he has a wife Tracey and four children with seven grandchildren. They very much have their own lifestyles and private accommodation but if successful with his planning application his wife would be living with him¹ with family members visiting on occasions who would be accommodated in tourer caravans.*

13. *To this day he continues to travel away for economic purposes mostly in the Hampshire and Wilshire areas within a 50-to-60-mile radius of his land. He frequently resides away in a touring caravan and when required stays with family members on private land or on camp sites and occasionally uses bed and breakfast accommodation, but he returns regularly to his land due to the livestock thereon.*

14. *Due to the lack of Local Authority alternative suitable accommodation provision Mr James is determined to establish a more settled permanent home for himself and his wife. This, to facilitate a home base from where he can travel for economic purpose conversant with his lifestyle and recognised ethnicity as a Romany Gypsy. In keeping with many members of the Gypsy and Traveller community he has an aversion to bricks and mortar accommodation.*

15. *In my capacity as the Hampshire County Council GLO I am aware that the JAMES family has strong and traceable Romany Gypsy and Traveller family roots in Hampshire.*

16. *Since commencing employment with Hampshire County Council in 2005, I have known of JAMES families in general including various members of the Gypsy and Traveller community who have been related to them either directly or by marriage living on permanent residential council sites.*

17. *The question of Romany Gypsy ethnicity is without question with regards to Mr James and his family and during conversation I informed the applicant that Hampshire County Council now has responsibility for one council site in the north of the county near Fleet and currently there are no pitches available with six applicants on the waiting list.*

18. *As mentioned previously, having walked the site in question I am of the considered view that the land in question would more than accommodate the needs of the applicant and any consideration of any future planning permission should be subject to conditions that the land in question is for the applicant having satisfied his Gypsy and Traveller ethnicity.*

19. *I enquired about local facilities in the area which would allow easy access for shops and medical facilities and was informed that the Gypsy and Traveller community are well used to travelling for the purposes of accessing facilities and in any case all they currently required was within a short distance of the site in question.*

20. *Due to the lack of local, regional, and national pitch and transit site availability I was informed that the home base would not solely be used as a place for Mr James to commute for work and return home daily but would be somewhere for the family to establish a more settled lifestyle and medical facilities, as and when required.*

21. *During my visit I did inform the applicant that any evidence he could produce to prove a traveling lifestyle and if possible, to show for economic purpose would be beneficial to this application. I advised that the planning officer having site of*

¹ This is incorrect: the Appellant is separated from his wife, Tracy, a non-Traveller, and she will not be

such documents / letters prior to any planning committee meeting would be beneficial.

22. Based on the interview and evidence thus far, the applicant has a cultural lifestyle of living in a traditional caravan and a history of travelling for economic purpose but would like to settle down to establish a more stable lifestyle and I conclude that after consideration of all the facts, my balanced view is that the applicant Sonny James is of Romany Gypsy ethnicity and satisfies the status required for current planning purposes...”

28. For the avoidance of doubt, the GLO applied the definition of Traveller in Annex 1 PPTS. The LPA now accepts that the Appellant is an Annex 1 Traveller, The Appellant would also accept a personal planning permission.

29. Photographs of the Appellant’s family travelling with horse drawn wagons are attached at Appendix 4.

NEED IN A POLICY CONTEXT

30. Relevant legislation that has a direct bearing upon this appeal is the Housing Act 2004 and the Planning and Compulsory Purchase Act 2004. Part 6 of the Housing Act 2004 places a duty upon all LPAs to consult with and assess the needs of those requiring affordable housing within their area (explicitly including Gypsies and Travellers amongst other priority communities under Section 8 of the Housing Act 1985) and to undertake an exercise which will assist them in understanding the nature and level of housing demand and need in their local housing markets. It states “*special emphasis is placed on local authorities assessing the needs of those ‘gypsies and Travellers’ who live in, or “resorting to” and area, allowing consideration of both the need to provide appropriate temporary accommodation for ‘gypsies and Travellers’, as well as permanent accommodation.*”

residing on the Appeal site. Only the Appellant himself will reside there.

31. In addition, Part 6 of the Housing Act 2004 requires LPAs to develop a strategy to meet the needs of ‘Gypsies and Travellers’ in line with Section 87 of the Local Government Act 2003, and to take any such strategy into account when they are exercising their other functions, such as planning, education and social care. Local housing authorities must also take into account any guidance issued by the Government when carrying out their ‘Gypsy and Traveller’ Accommodation needs Assessments (GTAAs) and when developing their strategy.

32. Changes to the planning system, introduced by the Planning and Compulsory Purchase Act, 2004 also require LPAs to prepare Local Development Frameworks (LDFs) 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 (LHS) will show how the accommodation needs identified by the local housing assessment will be met. The Development Plan Documents (DPDs) will identify the location of sites.

NATIONAL, REGIONAL AND LOCAL NEED

33. Nationally 1 in 4 caravans are on unauthorised sites, amounting to some 3000 caravans in total. The bi-annual count of Gypsy caravans for July 2021 reveals only a ‘snapshot’ of unauthorised caravans parked up in Eastleigh. The bi-annual counts are widely viewed as under-representing the true extent of need as they are merely a reflection of those caravans known about and counted on that day but even these show that caravans were 7 parked up without permission on that day which equates to 13.33% of the total number of caravans that the Council recorded on that day. It was a dis-satisfaction with those very counts that led the Government to introduce a statutory duty on LPAs to properly assess need in the same way as they do for conventional housing, via a Housing Needs Survey. Circular 1/94 had required this since 1994 but Eastleigh Council failed to undertake such an exercise. PPG 3 had required this in relation to Gypsies and Travellers since 2000 but again the LPA failed to undertake the work. Circular 1/2006 and the s225 of the Housing Act 2004 made such assessments a statutory duty so only since then are we finally able to begin to gauge the extent of need. These failings on the part of the Council going back many years lend further significant support to the Appeal.

34. The LPA also failed to meet the target in 1/2006 that the need for sites should be met within 5 years of the publication of that advice (i.e. by 2011 at the latest).
35. The LPA now relies on the 2017 GTAA² produced by ORS to assert that there is only a need for 5 pitches over the entire Plan period. At 10.6 of the Council's SoC we can see that that figure of need was reliant in full on the definition of Traveller in PPTS 2015:

*“The appellant also raises unmet need for further gypsy sites nationally, regionally and locally. In 2017 LPA ORS (appendix 21) published the updated Gypsy and Traveller Accommodation Assessment (hereafter the GTAA) **in order to inform the LPA submission of the local plan following the changes to the definition in Annex 1 of the PPTS which excluded those who had permanently ceased travelling.**”*

36. In the GTAA itself we can see that the main reason that ORS undertook this assessment so soon after the previous assessment (which had found a higher level of need³) was because in August 2015 the definition of Traveller had been amended to exclude people who had become too old or ill to continue travelling for work:

*“1.2 As well as updating previous GTAAs, another **key reason for completing the study was the publication of a revised version of Planning Policy for Traveller Sites (PPTS)** in August 2015. This included a change to the definition of Travellers for planning purposes. **The key change that was made was the removal of the term persons...who have ceased to travel permanently, meaning that those who have ceased to travel permanently will not now fall under the planning definition of a Traveller for the purposes of assessing accommodation need in a GTAA** (see Paragraph 2.11 for the full current planning definition).*

*1.3 The GTAA provides a robust and credible evidence base which can be used to inform the preparation of site allocation and criteria-based policies for Gypsies, Travellers and Travelling Showpeople for the 2011-2036 Local Plan **based on the new planning definitions**. Specifically the new Local Plan will replace the draft 2014 Travelling*

² The 2017 GTAA is attached to the LPA SoC Appendix 21 so I have not included it to save duplication.

³ The 2014 GTAA had found 3x as many pitches (15) were needed to 2029 than the 2017 GTAA
http://www.eastleigh.gov.uk/pdf/PPI-GTAA_Final_Draft_Rpt_June%2014.pdf

Communities DPD for the submitted 2011-2029 Plan which was based on previous planning and housing definitions. . The outcomes of this study supersede the outcomes of any previous Traveller and Travelling Showpeople Accommodation Needs Assessments completed in Eastleigh.

..

*1.4 The GTAA has sought to understand the accommodation needs of the Gypsy, Traveller and Travelling Showpeople population in Eastleigh through a combination of desk-based research, stakeholder interviews and engagement with members of the travelling community living on all known sites. **The fieldwork for the study was completed between May and September 2016, which was after the publication of the new (August 2015) Planning Policy for Traveller Sites (PPTS). As a result of this change questions to enable the determination of the travelling status of households were included in the household interviews.***

1.5 The additional pitch needs for Gypsies, Travellers and Travelling Showpeople from 2016-2036 are set out in the key findings below. Additional needs are set out for:

» Households that meet the (August 2015) planning definition of a Gypsy or Traveller, and Travelling Showpeople;

» Unconfirmed households where an interview was not able to be completed (either due to households refusing to be interviewed, or not being present despite 3 visits to each site) who may meet the planning definition; and

» Households that do not meet the planning definition - although this is not now a requirement under the current guidance in PPTS (2015).

*1.6 **Only the need from those households who meet the planning definition and from those of the unconfirmed households who subsequently demonstrate that they meet it are considered as need arising from the GTAA.***

37. The GTAA concluded that, **on the basis of the 2015 PPTS definition**, there was a need for just 5 pitches in Eastleigh Borough for the entire Plan period:

Additional Pitch Needs – Gypsies and Travellers

1.10 In summary the GTAA assessment has found there is a need for:

» 5 additional pitches in Eastleigh for the 4 Gypsy and Traveller households that meet the planning definition;

» Up to 4 additional pitches for the 11 Gypsy and Traveller households that may meet the planning definition; and

» A need for 6 additional pitches for the 4 Gypsy and Traveller households who do not meet the planning definition.

1.11 The need for **5 additional pitches** for households that meet the planning definition is made up of 3 unauthorised pitches¹ and 2 from new household formation.

38. On 31st October 2022, the Court of Appeal handed down judgment in the *Lisa Smith* case, this being a challenge to the 2015 PPTS definition of Traveller relied on in the Eastleigh GTAA above (attached at Appendix 2). In *Smith* the Court held that the application of the 2015 PPTS definition by excluding Travellers who had become too old or too ill to travel for work was discriminatory and had artificially reduced the real level of need by 75% in needs assessments undertaken since August 2015:

“20. At [43] to [53] of the judgment, under the heading “The Gypsy Experience”, the judge set out the difficulties that the planning system posed for Gypsies and Travellers, and at [47] expressed his disquiet about the poor outcomes achieved by many Gypsies and Travellers, and the disproportionate difficulty faced by many in obtaining planning permission. He concluded that the planning system was “going wrong”. He then went on to address the impact of PPTS 2015. He noted at [52] that the evidence was that this had led to a sharp drop of almost 75% in the provision of pitches, and at [53] that nearly half of those assessed as needing a pitch in the South East fell outside the PPTS 2015 definition.

...

32. In August 2015, PPTS 2015 was published. The overarching aim of the policy was expressed in precisely the same words as in PPTS 2012 (above). However, the definition of “Gypsies and Travellers” was amended to exclude those who, because of their education or health needs, or old age, had permanently ceased to travel. This was achieved by the simple deletion of the words “or permanently” from the definition noted in paragraph 30 above. Those who had ceased to travel temporarily for those reasons remained within the definition. The effect of this – the relevant exclusion – was that those who, for the stated reasons, had ceased to

travel permanently were within the policy definition in July 2015, but excluded from it by PPTS 2015 in August 2015.

33. On behalf of Ms Smith, Mr Willers referred to a number of cases where the courts have recognised that, at least in its operation, the planning system has found it difficult to accommodate the interests of the Gypsy and Traveller community. It is unnecessary to set out all the authorities in which that difficulty has been identified. Simply by way of example, we would refer to the decision of this court in London Borough of Bromley Council v Persons Unknown [2020] EWCA Civ 12, in which the appellant council's appeal against the judge's refusal to grant a borough-wide injunction against Gypsies and Travellers was dismissed, and the cases cited there.

39. I was one of the Expert Witnesses in the *Bromley* case (Appendix 5) referred to at paragraph 33 of *Smith* above. I was also one of the authors of the Report by the Equality and Human Rights Commission into the effect of the 2015 PPTS definition (Appendix 6).
40. Since *Smith*, I have had a series of Appeal Decision Letters issued in other Traveller cases in which I was the Agent. In the first (Appendix 7) the Inspector granted a permanent non-personal permission for 6 pitches in the Green Belt, stating:

*61. I have considered the conditions suggested by the Council and discussed with the parties at the Hearing. A condition confirming that planning permission is restricted for residential use by gypsies and travellers is required in order to safeguard the supply of the site for this purpose. **However, in light of the recent Court of Appeal judgment cited belows, in order to avoid discrimination, the condition should include those gypsies and travellers who have ceased to travel permanently.***

...

*1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy), but **including those gypsies and travellers who have ceased to travel permanently.***

41. In the second Decision Letter (Appendix 8) which involved a Traveller site in the Green Belt⁴, the Inspector found that *Smith* meant that need in the area increased from 3 pitches to 27:

The need for and provision of sites

25. *The Council's Gypsy and Traveller Accommodation Assessment (GTAA) of 2018 found a need for 3 pitches for those gypsies and travellers who met the PPTS definition; 7 pitches for households whose status was unknown; and 17 pitches for those households who did not meet the PPTS definition. **The need for all ethnic gypsies and travellers is likely to have been no less than 27 pitches in January 2017, the base date of the GTAA.***

26. Meeting the total need would be a reasonable objective having regard to paragraph 62 of the Framework and the housing needs of different groups. In addition the CoA judgement suggests that it is not lawful to distinguish between those who have temporarily or permanently ceased travelling. Moreover, the Housing Acts place a duty on local authorities to consider the needs of people residing or resorting to their District in caravans.

42. In the third (Appendix 9) issued on 14th December 2022 – which involved a site in neighbouring Winchester - the Inspector held:

*“35. However, the recent Court of Appeal decision, the thrust of which found that the PPTS definition change in 2015 was unlawfully discriminatory, is an important material consideration. The PPTS 2015 remains extant policy, and it remains uncertain what the full repercussions of the recent caselaw will be. Nevertheless, **it is likely to have implications for how needs assessments should be conducted in the future and casts considerable doubt on whether previous needs assessments based upon the PPTS 2015 definition can be taken as an accurate reflection of need without being tainted by discrimination.***

36. Therefore, although the balance of evidence presented to me does not clearly demonstrate that the Council has a shortfall of pitches against the targets in the

⁴ The Appeal was dismissed solely on the grounds of unacceptable noise from Heathrow airport.

development plan, that evidence and policy is predicated upon a definition of gypsies and travellers that has been severely undermined by recent caselaw.

43. In the fourth Decision Letter (also issued on 14th December 2022, Appendix 10) which also involved a Green Belt Traveller site in Basildon, the Inspector considered the impact of *Smith* as follows:

“There is justification for the site to be occupied by Gypsies and Travellers to safeguard the supply of the site for this purpose and as such a condition is necessary to restrict occupation. In order to avoid discrimination to the elderly or disabled, the condition should include those Gypsies and Travellers who have ceased to travel permanently. Even though I am not aware that any of the current occupants have ceased to travel due to age or disability, that may not always be the case and to apply such a condition restricting their occupation of the site would, in the light of the 2022 judgement, be unlawfully discriminatory. A personal condition is not necessary as I have already found that there is an outstanding need for Gypsy and Traveller pitches.

Need

16. The SOCG agrees that the Gypsy and Traveller Accommodation Assessment 2020 (the GTAA) establishes a need for 85 additional pitches for those who meet the definition of Gypsies and Travellers within the PPTS. The appellant drew my attention to figure 14 of the GTAA which details that there were a further 93 who did not meet the definition within the PPTS and who, given the 2022 judgement, should now be considered within the need figure creating a total of 178. However, as the needs of those 93 would be met through other Local Plan housing policies, the Council is satisfied that the figure of 85 stands.

44. From the foregoing it is clear that the Eastleigh 2017 GTAA was only able to assert a need for 5 pitches by relying on a definition of Traveller that was itself discriminatory and has been found to be unlawful by the Court of Appeal. If we instead applied the *Smith* definition, the need in Eastleigh would be at least 22 pitches rather than 5. On that basis, the LPA a) cannot establish a robust 5 year supply; b) has a significant level

of unmet need and c) clearly has a failure of policy. These factors attract substantial weight.

THE SUSTAINABILITY OF THE APPEAL SITE

45. Being on the edge of a settlement with services and facilities within walking distance, it is beyond doubt that the Appeal site is in a sustainable location for a Travellers site although I understand that the Council may seek to introduce this argument – entirely absent from their previous considerations – in their evidence. In my view, such make-weight arguments should be dismissed for reasons that I detail below.

46. Paragraph 7 of the NPPF 2012 states 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.

6. 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.

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

47. The 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.

48. By considering sustainability in this broad way, the NPPF 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.” (emphasis original).*

49. Paragraph 13 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.”*

50. It is therefore clear that applying the NPPF 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.”

51. 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 for Traveller sites, as well as in the publication Progress Report by the Ministerial Working Group on tackling inequalities experienced by Gypsies and Travellers which, like the NPPF and the PPTS, was issued by the CLG in April 2012 and re-published in 2019.

52. In order to try to overcome these inequalities, both the NPPF and the PPTS continue to accept that sites in the countryside will be required. 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 (which as a small single pitch site the application site does not).

53. 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 dominate 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.” The application site does not offend the PPTS in this regard. Therefore, it is submitted that the site is not in conflict with PPTS on this point.

54. It is instructive to see how the Secretary of State’s Inspectors have considered the issue of the locational and other sustainability issues relating to Gypsy and Traveller caravan sites. I attach a Decision Letter involving an Appeal in which I was instructed (Appendix 11) where the Inspector considered the issue of what constitutes a “reasonably sustainable location” for a Gypsy site as one of the main issues in that Appeal:

“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 [both local] policy...and...the PPTS.”

In contrast this application site is under 2km from a Category 1 village, as well as less than 1.2km from the Town of Stourport on Severn where a full

range of services and facilities can be found. There is a bus stop within walking distance of the application site with buses to Stourport.

In the next DL I have attached the issue was addressed 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...

*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.***

...

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 [local] policy ...or relevant national planning policies on the issue.”

55. In the next DL (Appendix 12) – which involved a site in the South Downs National Park – the Inspector considered the locational sustainability of the site as follows:

“The locational sustainability of the site

11. Policy H14(d) requires that a gypsy site is “readily capable of being serviced and is in a reasonable distance of local services...”. PPTS has no specific requirement for sites to be within a “reasonable distance of local services” but at paragraph 4(j) suggests sites should be somewhere from where “travellers can access education, health welfare and employment infrastructure”. It clearly envisages sites may well be in rural areas and at paragraph 25 advises they should not “dominate the nearest settled community”.

12. It was accepted that Fulking has no facilities except for a pub and no bus service. Henfield is the nearest settlement with doctors, schools and shops which is about 4 miles away. I was told the primary school catchment for Fulking is Albourne school which is about 4½ miles away. Hassocks is a reasonable sized town with secondary schools about 6 miles away. Mr Mitchell said that he got most of his groceries at the store which was part of a garage on the A23 at Pyecombe which is less than 3m miles away and there is a garden centre with a butcher’s a similar distance away.

13. I was given a decision letter where the Inspector found that 5km was a reasonable distance and that this had also been suggested in another appeal. 5km is just over 3 miles, and it seems to me in this appeal the site is within 4-7km of most services that are required. For a rural site I

consider this to be just about within a “reasonable distance of local services”. There is no suggestion that the site, along with the Market Garden site, would dominate the local community and I consider it to be locationally sustainable.”

56. In the final DL (Appendix 13) I will refer to on this issue Inspector Dakyene stated:

“Sustainable site

*16. The appeal site is about 850m from the southern edge of Arncott and just over 1km from a small convenience store, village hall and recreation ground within the village. Arncott itself is categorised in the Cherwell Local Plan as a Category A Service Village where residential development within the built-up limits can take place. **The nearest primary school and a satellite surgery are in Ambrosden about 4km away. Secondary schools and larger scale health care facilities are in Bicester which is about 7km from the site. In these respects the site is not physically isolated or away from the nearest existing settlements which together provide a good range of facilities.***

17. Once Murcott Road leaves the built-up area it does not have pavements or lighting and is subject to the national speed limit. Vehicles pick up speed when they exit the 30mph speed restriction zone at the edge of the village. Although there is a grass verge between the appeal site and the settlement, when I visited much of the verge was overgrown and uneven. Some journeys from the site to the village may be undertaken on foot or by cycle but I would not see the route as welcoming for pedestrians or that attractive to cyclists, particularly in poor weather, outside daylight hours, or if accompanied by young children.

18. The nearest bus stops are also about 1km from the site. They give access by an hourly service to Ambrosden, Bicester and Oxford during the daytime Mondays to Saturdays with reduced frequency in the evening. The Sunday service is limited to two afternoon journeys in each direction.

Although the service is reasonable for a village of the size of Arncott, the walk to the bus stop, as with the journey on foot to village facilities, would be an obstacle to its use.

*19. Therefore, the opportunities to use sustainable transport modes are constrained. Moreover, it is not proposed to make walking more attractive by providing a footway between the site and village. **However, whilst most journeys would be undertaken by private vehicle, trips to access facilities would not be long. Moreover, the PPTS, in accepting that many sites will be in rural areas, is cognizant of the fact that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, notwithstanding the objectives of the Framework to promote accessible services, healthy lifestyles and a choice of transport modes.***

20. Furthermore, the PPTS at paragraph 13 considers the sustainability of traveller sites in the round. The provision of a settled base for up to 19 Traveller families would promote access to health services; ensure that children can attend school on a regular basis; reduce the need for long-distance travelling and possible environmental damage caused by unauthorised encampments; and allow some to live and work from the same location. The site is not in a flood plain and would provide a site of reasonable environmental quality for its occupants.

...

*26. **Accordingly the traveller site is sustainable taking into account local and national policies. There is no conflict with the Government's policy of very strictly limiting new traveller development in open countryside as the site is not away from existing settlements.***

The distance to services and facilities in this application are far less than those detailed above which the Secretary of State found to be acceptable. The site is in a sustainable location for a Travellers caravan site. Given that these were your only concerns, it is clear that the proposal complies with Policy 17, PPTS and the NPPF and should be approved."

57. It is therefore clear that applying the NPPF 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.
58. The inequalities and unfairnesses experienced by Gypsies and Travellers in the planning system are manifold. In order to try to overcome these inequalities in site provision in realistic ways, both the NPPF 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 acceptable provided that the scale of the site does not dominate the nearest settled community nor overwhelm local infrastructure (which as a small single pitch site the Appeal site does not).
59. Whilst the first sentence in paragraph 25 of PPTS states that “*LPA’s 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 dominate 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.*” The Appeal site does not offend the PPTS in this regard. Therefore, it is submitted that the appeal site is not in conflict with PPTS on this point.
60. That Gypsy sites continue to be considered acceptable in rural and semi-rural areas under the NPPF has implications for RFR, which I would address in the following way: paragraphs 24 – 26 of PPTS state:

“When considering applications, local planning authorities should attach weight to the following matters: ...b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness ... Local planning authorities should consider how they could overcome planning objections to particular proposals using planning conditions or planning obligations...”

61. Traveller caravan site development is acceptable in a countryside location to meet an identified local social and/or economic need in order to sustain the countryside as a place of varied and productive social and economic activity. The Appellant's Gypsy caravan site accommodation meets an identified local social need and therefore its countryside location is appropriate.

ANALYSIS OF THE CASE-LAW ON PERSONAL CIRCUMSTANCES

62. It is clear that the personal circumstances of homeless Gypsies and Travellers are material considerations of significant weight in the determination of planning applications and Appeals. In *Basildon v Secretary of State for the Environment, Transport and the Regions* [2001] JPL 1184 paragraph 34 the High 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”

63. I was the Agent for Mrs Porter on her successful Appeal to the House of Lords in *South Bucks DC v Porter (No.2)* [2004] 1 WLR 1953, where the Court of Appeal had considered the circumstances advanced by the Gypsy family to be insufficiently “very special.” In quashing the Court of Appeal decision, Lord Brown 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.

65. The Appellant is a local Romany Traveller whose family have roots in the area going back generations but for whom no suitable caravan site is available. In my opinion, the Appellant's personal circumstances attract significant weight.

ALTERNATIVE SITES

66. 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 available, affordable and acceptable.

67. 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 Borough. The situation at County level is worse still, as evidenced in the GLO's Report in Appendix 3.

68. There is no requirement in law for the Appellant – as opposed to the evidence - to establish that issue as a matter of fact. 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]..."

- 69.** The evidence in this case suggests 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 significant weight.

CONCLUSIONS

64. The Appellants primary case is that the s78 and Ground A proposals comply with the Development Plan as well as national policy and should be allowed pursuant to the first limb of s38(6).
65. In the alternative, if the Inspector is against the Appellant in relation to compliance with the Development Plan, then it is submitted that the Appeal should be allowed on the basis that other material considerations indicate otherwise than determining the Appeal in

accordance with the Development Plan. There is evidence of a clear and immediate need for further sites for Gypsies and Travellers. In addition, the personal circumstances of this Gypsy Traveller, including the lack of suitable alternative accommodation, combined with the limited harm caused by the development, allow for planning permission to be granted in this case. The Appellant is agreeable to the imposition of any reasonable Planning Conditions which the Inspector might consider necessary in this regard.

66. For the reasons detailed above, the Appellant respectfully invites the Inspector to allow this Appeal and grant planning permission, subject to reasonable conditions.