

**APPEAL BY MR JAMES DORAN
AGAINST THE SERVICE OF AN ENFORCEMENT NOTICE BY
CHERWELL DISTRICT COUNCIL**

MATERIAL CHANGE OF USE OF LAND TO USE AS A RESIDENTIAL CARAVAN SITE
TOGETHER WITH ASSOCIATED PARKING AND STORAGE OF MOTOR VEHICLES
AND A TRAILER, STORAGE OF TOURING CARAVANS AND ASSOCIATED
DOMESTIC PARAPHERNALIA.

**LAND AT THE STABLES, MAIN ROAD, GREAT BOURTON, BANBURY,
OXFORDSHIRE, OX17 1QU**

PINS REF: APP/C3105/C/21/3268454
LPA REF: 20/00419/ENF
OUR REF: 21/109

**HEARING STATEMENT PREPARED ON BEHALF OF THE APPELLANT BY
PHILIP BROWN BA (HONS) MRTPI**

1.0 INTRODUCTION

- 1.1 This statement has been prepared by Philip Brown. I hold a Bachelor of Arts degree with honours in the subject of Urban and Regional Planning. I am a member of the Royal Town Planning Institute with more than 40 years' experience of planning matters in local government and private practice.
- 1.2 I am Managing Director of Philip Brown Associates Limited, and specialise in assisting Gypsies and Travellers to obtain planning permission for caravan sites and related development. I frequently appear at planning hearings and inquiries to give expert evidence on planning matters. I have obtained planning permission well over 300 caravan sites throughout England and Wales, mainly on appeal.
- 1.3 This Statement is arranged into four parts: firstly, I describe the appeal site and its surroundings; secondly, I give a resume of relevant planning policies; thirdly, I summarise the planning history of the appeal site; and, fourthly, I set out the case on behalf of the appellant.

2.0 SITE DESCRIPTION

- 2.1 The appeal site comprises 0.15 hectare of land located along the south-eastern side of Main Street, Great Bourton. It is a rectangular piece of land occupied by a wooden stable building along the north-western boundary (backing onto Main Street), and by an open fronted storage building along the eastern boundary. The front half of the site is hard-surfaced with gravel and, the rear half contains a shallow duck pond.
- 2.2 Access to the appeal site is from Main Street. The site entrance is set back from Main Street behind a 7 metre-wide grass verge, on the outside of a gentle bend in the highway, giving excellent visibility for the drivers of vehicles entering or leaving the site. There is a footpath along the northern side of Main Street leading eastwards into the village of Cropredy. The site entrance is approximately 280 metres from the built-up edge of Cropredy, which is formed by Cropredy Primary School. There are bus stops located on Main Street, outside of the Primary School.
- 2.3 The appeal site forms part of a much larger land holding which is approximately 208 metres long x an average of about 37 metres wide. The appeal site comprises the first 35 metres of the land holding, with the remainder used as grass paddocks for the grazing of horses.
- 2.4 There are mature hedgerows along the northern, southern and eastern boundaries of the land holding. The appeal site adjoins a stable yard to the west, containing a large "L"-shaped block of brick stables. There is a screen fence between the two properties. The remainder of the western boundary comprises post and rail fencing. There is a public footpath which crosses diagonally through the rear field, and crosses the south-eastern corner of the appeal site before passing through the eastern boundary hedge into a neighbour's field. This footpath emerges onto Main Street about 4 metres north-east of the appeal site.
- 2.5 A main-line railway runs north-south, about 100 metres to the east of Main Street. At its closest, this railway line is approximately 50 metres from houses in Cropredy and, passes as close as 23 metres to housing in Banbury.

3.0 PLANNING POLICY

Local Planning Policies

Commented [PB1]:

- 3.1 The Development Plan comprises of the saved policies of the Cherwell Local Plan (1996) and, policies in the Cherwell Local Plan Part 1 (adopted in July 2015).
- 3.2 Policy PSD1 of the Cherwell Local Plan Part 1 echoes the NPPF's requirements for sustainable development and, that planning applications that accord with the development plan will be approved without delay unless material considerations indicate otherwise.
- 3.3 Policy BSC6 states that land allocations will be made in Local Plan Part 2, and planning permissions granted for suitable sites, in order to meet the identified need for new traveller pitches in the District during the plan period and, to maintain a five-year supply of deliverable land for traveller sites. Policy BSC6 also sets out a sequential approach to identifying suitable sites, together with 8 criteria for assessing the suitability of sites.
- 3.4 Policy ESD15 of the adopted Cherwell Local Plan Part 1 states that:
"Development should consider the amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space".

Government Advice

- 3.5 The NPPF is intended to reinforce the importance of up-to-date plans and requires that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development (paragraph 11).
- 3.6 Paragraph 59 of the NPPF makes clear that, in order to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed

without delay. Paragraph 61 requires that, within this context, the size, type and tenure of housing needed for different groups in the community, including gypsies and travellers, should be assessed and reflected in planning policies.

- 3.7 Planning policy for traveller sites (PPTS) sets out the Government's aims in respect of traveller sites which include, inter alia, local authorities developing fair and effective strategies to meet need through the identification of land for sites; protecting Green Belt from inappropriate development; promoting more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites; and to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply.
- 3.8 Local planning authorities are required to use a robust evidence base to establish accommodation needs to inform the preparation of local plans and make planning decisions (Policy A). In producing their local plans, local planning authorities should, inter alia, set pitch targets; identify and maintain a rolling 5-year supply of specific deliverable sites; and relate the number of pitches to the circumstances of the specific size and location of the site and the surrounding population's size and density.
- 3.9 Paragraph 13 sets out the wider sustainability benefits of providing permanent residential sites for gypsies and travellers which should be taken into account in plan-making and development control (Policy B).
- 3.10 Policy C suggests that gypsy sites may be located in rural or semi-rural areas, provided that they are of a scale appropriate to their specific location. This is reiterated in paragraph 25 of Policy H. Paragraph 24 of Policy H sets out issues which should be considered in the determination of planning applications for gypsy sites. Policy H states that local planning authorities 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.

4.0 PLANNING HISTORY

- 4.1 Planning permission was granted on 31 March 2005, under application No. 05/00198/F, for the erection of stables. Although constructed, these stables were apparently never used for the stabling of horses.
- 4.2 Planning permission was granted on 18 May 2006, under application No. 06/00593/F, for the erection of one multi-use livestock and hay store building.
- 4.3 A Certificate of Lawful Use was granted on 23 May 2013, under application No. 13/00431/CLUE, for an area of rolled gravel hardstanding, lean-to pig pen and small soakaway/duck pond. This certificate confirms that the development, subject of the application, was completed by 01 January 2009.
- 4.4 The Council served an enforcement notice on 8 January 2021 alleging, without planning permission, "the change of use of the land to use as a caravan site currently accommodating one mobile home type caravan designed and used for human habitation together with associated parking and storage of motor vehicles and a trailer, storage of touring caravans and associated domestic paraphernalia"...
- 4.5 The Council's reason for issuing the notice are as follows:
 1. By virtue of its siting in the open countryside, overall scale and appearance, the development would have an urbanising effect on the open countryside, and results in significant harm to the rural character and appearance of the area and would fail to preserve the natural environment at this location. The development is therefore contrary to Policies ESD13 and ESD15 of the Cherwell Local Plan Part 1, saved Policies C8 and C28 of the Cherwell Local Plan 1996 and Government guidance within the National Planning Policy Framework.
 2. The unauthorised development constitutes sporadic development beyond the built-up limits of any village and, in the absence of an appropriate justification, represents new housing in an unsustainable location contrary to Policies ESD1 and Villages 1 of the Cherwell Local

Plan 2011-2031 Part 1, saved Policy H18 and c8 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

3. In the absence of sufficient information to the contrary, the Council cannot be satisfied that, by virtue of its siting adjacent to the Birmingham to London railway, the development would not be adversely affected by noise or result in an [un]acceptable living environment for the occupiers of the site. As such, the development does not provide a good standard of amenity for any resident of the mobile home and does not result in sustainable development, contrary to Policy ESD15 of the Cherwell Local Plan Part 1, saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance within the National Planning Policy Framework.
 4. The Council has concerns about flooding risk to the site and without a Flood Risk Assessment is unable to make an assessment of the flood risks arising from the development. The Council cannot be certain that the development and its future users will be safe over the lifetime of the development. The development is therefore contrary to Policy ESD6 of the Cherwell Local Plan Part 1 and Government guidance contained within the National Planning Policy Framework.
- 4.6 An appeal has been submitted against the enforcement notice and is proceeding under grounds (a), (d), (f) and (g). This statement addresses the case under grounds (a) and (d).

5.0 CASE ON BEHALF OF THE APPELLANT

Appeal under Ground (a)

- 5.1 The National Planning Policy Framework (NPPF) puts the presumption in favour of sustainable development at the heart of both plan-making and decision-taking. For decision-taking this means approving development proposals that accord with the development plan without delay; or, if the policies which are most important for determining the application are out-of-date, granting planning permission unless, inter alia, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
- 5.2 In the latter regard, the appeal site is not located within the Green Belt, or within a SPA, SSSI, Conservation Area, local greenspace, AONB or National Park. Furthermore, the proposed caravan site is not located within an area shown on the Environment Agency's flood maps as being at high risk from flooding.

Gypsy Status

- 5.3 The appellant is an Irish Traveller whose gypsy status has been accepted by an Inspector on appeal in 2009 and, by the Council in 2016 when approving the development and expansion of the Appellant's caravan site at Corner Meadow, Mollington Lane, Farnborough. The mobile home on the appeal site was being occupied by a traveller at the time the enforcement notice was served and, the appeal under ground (a) is advanced on the basis that the caravan site would be occupied by gypsies and travellers and, would be subject to an occupancy condition to ensure that this remains the case. The Council's second reason for issuing the enforcement notice relates to housing for the general population and, is not relevant to an application for a gypsy and traveller site which, both national and local policies accept, can be appropriately located outside of existing settlements and, therefore, in the countryside.

Principle of Development

- 5.4 Paragraph 4 of the NPPF requires that the Framework should be read in conjunction with the Government's planning policy for traveller sites. Policy C of PPTS makes clear that some sites will be in rural areas and the countryside. This advice is qualified by Policy H (paragraph 25) which states that sites should be very strictly limited in the open countryside **away from** existing settlements. The term "away from" infers a significant degree of detachment, such that the site may be considered to be isolated. I attach an appeal decision at **Appendix PBA 1** in which the Inspector made clear that a site located 800 metres from the closest settlement, was not away from existing settlements for the purposes of Policy H of PPTS, notwithstanding that the settlement of Bings Heath was no more than a hamlet of 11 houses and, did not contain any community services or facilities. It was 2 miles (3.2 kilometres) from the closest service centre of Shawbury and, 4 miles (6.4 kilometres) from Shrewsbury.
- 5.5 The Inspector considered that, although there was a bus service in Bings Heath, the occupiers of the site would be reliant almost entirely upon the private motor car for most of their day-to-day travel needs. However, he found that this degree of reliance is not that uncommon in a mainly rural area, and the distances involved were not excessive by rural standards. In terms of location, the Inspector took the view that the site was not totally isolated from nearby settlements for the kind and scale of the development (2 pitches).

The Development Plan

- 5.6 The Development Plan comprises of the saved policies of the Cherwell Local Plan (1996) and, policies in the Cherwell Local Plan Part 1 (July 2015).
- 5.7 Policy BSC6 of Part 1 of the Local Plan sets out the Council's commitment to providing a net additional 19 permanent traveller pitches in the period 2012-2031. Since adoption of the Local Plan Part 1, Newlands Caravan Park at Bloxham Road, Milton has closed with the loss of 16 pitches and, planning permission has been granted for redevelopment of Station

Caravan Site in Banbury. The pitch requirement set out in the explanation to Policy BSC6 was based on the findings of a Gypsy and Traveller Accommodation Assessment published in 2013. The GTAA assumes that 16 unimplemented pitches at Newland Caravan Park, Bloxham Road, Milton would be provided and, that there was a supply of 10 pitches on Station Caravan Site in Banbury. The unimplemented pitches on Newland Caravan Park were not provided and, the existing Caravan Park closed in 2017, with the loss of 20 pitches. Furthermore, planning permission has been granted for redevelopment of Station Caravan Site with 63 apartments. As such, the net need to be met in the period 2012-2031 is at least 65 permanent pitches which, according to Policy BSC6, will be met by the allocation of land within Part 2 of the Local Plan and, by granting planning permission for suitable sites.

- 5.8 Policy BSC6 sets out a sequential approach to the selection of suitable sites, with preference given to sites within 3 kilometres road distance of Banbury, Bicester or a Category A village. In this case, the site is located less than 300 metres from Cropredy, which is designated as a Category A Village (Part 1 Local Plan Policy Villages 1: Village Categorisation). Cropredy contains a primary school, "Spa" shop, post office, church, public house and GP surgery. The appeal site is also within a reasonable walking distance of bus stops located adjacent to Cropredy Primary School, providing a very limited bus service to Banbury and Leamington Spa. That said, Banbury town centre is only about 5 kilometres from Cropredy for access to a full range of services and community facilities. The appeal site clearly satisfies the first criterion of Policy BSC6 for the sequential selection of suitable sites with reasonable accessibility to services and facilities.
- 5.9 Policy BSC6 also requires an assessment of the suitability of sites against the following generalised criteria:
- a) Access to GP and other health services;
 - b) Access to schools;
 - c) Avoiding areas at risk from flooding;

- d) Access to the highway network;
- e) The potential for noise and other disturbance;
- f) The potential for harm to the historic and natural environment;
- g) The ability to provide a satisfactory living environment;
- h) The need to make efficient and effective use of land;
- i) Deliverability, including whether utilities can be provided;
- j) The existing level of local provision;
- k) The availability of alternatives to applicants.

5.10 It is worthy of note that these criteria do not impose absolute requirements and, are more in the nature of relevant considerations. The first two criteria, for example, do not define what are, or are not, acceptable distances to medical and education services, and do not distinguish between different modes of transport.

Access to Services

5.11 With regard to sustainability, the site is only a short walk from the primary school in Cropredy and, is clearly not in a location away from settlements where traveller sites should be very strictly limited in accordance with PPTS. Cropredy contains a good range of local services and facilities, including the school, GP surgery, shop and post office, public house and church. The proposed caravan site would enable reasonable access to community services and facilities by modes of transport other than the private car. Furthermore, the site is already connected to mains water and electricity, and other necessary utilities are capable of provision on the Appellant's land. The appeal site is a sustainable location for gypsy accommodation and, the proposed development complies with criteria a), b), and i) of Policy BSC6.

Flood Risk

- 5.12 The appeal site is shown as lying within Flood Zone 1 on the Environment Agency's flood maps for planning. Furthermore, other than the area of the duck pond, the site is not shown as being at risk from surface water flooding. Even the rear part of the site, containing the duck pond, is only shown as being at low risk of pluvial flooding, where the depth of flood water would be less than 300mm. There is no risk of flooding from reservoirs. Copies of the Environment Agency's flood risk maps are attached at **Appendix PBA 2**.
- 5.13 The mobile home situated on the appeal site when the notice was issued is shown on the plan accompanying the notice and, is not within the area shown on the Environment Agency's maps as being at risk from surface water flooding. Notwithstanding this, the floor level of a mobile home will typically be about 600mm above ground level and, would not be at risk of inundation even if stationed within the area shown as being at low risk of surface water flooding. Any caravans or mobile homes located in the rear part of the site could be tethered to the ground if need be, and would have a dry means of escape to Main Street should the occupiers need to leave the site. The Council's concerns with regard to flood risk are clearly unfounded. Criterion c) can be satisfied.

Noise

- 5.14 Policy ENV1 of the Cherwell Local Plan (1996) seeks to resist development which is likely to cause materially detrimental levels of noise, and paragraph 180 of the NPPF says that planning decisions should avoid noise giving rise to significant adverse impacts on health and the quality of life.
- 5.15 The Council's reasons for issuing the Notice state that the site is adjacent to the Birmingham to London railway line. The site is actually a minimum of 100 metres away from the closest railway track, double the distance for houses in Cropredy and, four times the distance for new housing in Banbury alongside the same railway line. An analysis of the Category A villages in Cherwell, published in March 2016, noted with regard to Cropredy that "trains along the railway line occasionally interrupt an otherwise tranquil landscape setting".

5.16 A noise report submitted in support of planning application No. 17/00778/OUT for a development of 37 houses on land between Station Road and the railway line found that the dominant source of noise was from the railway and, from traffic along Station Road. A copy of the Noise Report is attached at **Appendix PBA 3**. Noise readings were taken close to the railway boundary and, used to model predicted noise levels across the development site. Noise levels did not exceed 50 LAeq.8hr (dB) at a distance of 75 metres from the railway line, whatever the time of day. BS8233:2014 – “Guidance on sound insulation and noise reduction for Buildings” recommends maximum internal and external noise levels. Modern park homes are designed to standards set out in BS3632:2015 which require minimum standards of noise reduction for walls, floors and roofs. Park homes must achieve noise attenuation of 32 dB which, if external noise levels are below 50 dBA, would result in internal noise levels below 20 dBA: well within recommended standards for living rooms during daytime and, bedrooms at night-time. The standard for outside amenity areas is 55 dBA and, therefore, the appeal site, which is more than 100 metres from the railway, is likely to offer an acceptable noise environment for the proposed caravan site, thereby complying with criteria e) and g) of Policy BSC6.

Effect on the Countryside

- 5.17 The in-principle acceptability of gypsy sites in rural and semi-rural locations (Policy C of PPTS), has a number of inevitable consequences. Traveller sites have a number of characteristic features which, depending on the particular setting, can be atypical in the countryside, such as: caravans, hardstandings, utility buildings and residential paraphernalia. As a result, some degree of visual impact must be accepted and, if an adequate supply of gypsy sites is to be provided, some degree of visual harm must be acceptable.
- 5.18 The test for countryside harm must be whether the development causes unacceptable harm which cannot be made acceptable with additional landscaping. In this regard, paragraph 26 of Policy H makes clear that soft landscaping can positively enhance the environment, whereas sites should not be enclosed with so much hard landscaping that the impression is given that the site and its occupants are deliberately

isolated from the rest of the community. This infers that, firstly, sites do not have to be adequately screened from the outset; secondly, that gypsy sites do not have to be hidden from view; thirdly, that sites can be assimilated into their surroundings to a sufficient degree using indigenous species; and fourthly, that it is to be expected that gypsy sites will be more visible in the winter months, when the leaves are off deciduous trees and shrubs.

- 5.19 The NPPF seeks to ensure that planning policies and decisions recognise the intrinsic character and beauty of the countryside, and the need to protect and enhance valued landscapes. However, paragraph 71 makes clear that local plans should distinguish between the hierarchy of international, national and locally designated sites; and, amongst other things, allocate land with the least environmental or amenity value, where consistent with other policies in the Framework. The NPPF does not suggest that there should be an embargo on all development within the countryside but, seeks to direct appropriate development towards areas of least environmental or amenity value. In this regard, the appeal site is not identified in the Development Plan as being of any particular landscape value and, use of this land as a gypsy caravan site would be consistent with paragraphs 14 and 25 of PPTS. In particular, it is a relatively small site, close to an existing settlement, which is of a scale which would neither over-dominate the local settled community or, put undue strain on local infrastructure.
- 5.20 In this case, the appeal site is located behind a substantial mature hedgerow along Main Street. As a result, there are only highly localized views into the site from Main Street, primarily through the site access. The site is already developed with stables, storage building and hard-surfacing. The addition of caravans would not change the character or appearance of the site to any material extent. The appeal site is screened by existing development to the west and, by buildings and a mature hedgerow to the east. The only public view, apart from through the site access, would be from the public footpath to the south. In views from the public footpath, the caravans would be seen within the context of the existing stable yard and, against a background formed by boundary hedgerows.

5.21 In my opinion, the small scale and low height of proposed development means that the impact on the landscape should be capable of adequate mitigation. Whilst any proposed planting will not hide the development, as it matures it will increasingly screen the caravan site and, assimilate the site into its rural surroundings. The proposed development would have a diminishing impact on its immediate locality and, would not have any unacceptable impact on the character or appearance of the wider landscape. Criterion (f) of Policy BSC6 would therefore be satisfied.

Other Material Considerations

5.22 Other relevant matters for local planning authorities when considering planning applications for traveller sites are set out in paragraph 24 of PPTS as comprising:

- a) the existing level of local provision and need for sites;
- b) the availability (or lack) of alternative accommodation for the applicants;
- c) other personal circumstances of the applicant;
- d) 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, used to assess applications that may come forward on unallocated sites; and,
- e) determining applications for sites from any travellers and not just those with local connections.

5.23 The first two matters are factors (repeated as criteria j) and k) of Policy BSC6) which may count in favour of proposals for new gypsy pitches but, are not matters which count against a development which otherwise satisfies the Council's locally specific criteria. Sub-paragraph d) of paragraph 22 makes clear that local plans should contain a criteria-based policy for site provision, even where there is no identified need, to assess applications that may come forward on unallocated sites. Sub-paragraph e) makes clear that applicants do not need to have local connections for their applications to be considered and, therefore, approval may be

granted to travellers whose accommodation needs were not assessed or anticipated in a local gypsy and traveller accommodation assessment (GTAA).

Local Provision and Need

- 5.24 Local Plan Policy BSC6 is based on a GTAA published in January 2013 which estimated a need for a net additional 19 traveller pitches in the period 2012-2031. This estimate is based on the assumption that existing traveller sites remain available to gypsies and travellers and, that an unimplemented planning permission for 16 pitches would contribute towards supply within the assessment period. In fact, Newlands Caravan Park at Bloxham closed in January 2017, with the loss of 36 existing and/or approved traveller pitches; and, planning permission has been granted for the redevelopment of Station Caravan Park in Banbury, resulting in the loss of 10 traveller pitches. As a result, and irrespective of the approval of additional permanent pitches at Yarnton (3 pitches), Mollington (5 pitches), Chesterton (2 pitches) and Widnell Lane (6 pitches), the unmet need for traveller pitches is substantial in Cherwell and, far exceeds the need estimated by the 2013 GTAA.
- 5.25 The Council's latest GTAA, published in 2017, is based on survey information obtained from interviews but, only 12 interviews were achieved out of the 61 households occupying known gypsy sites in the District: a success rate of only 19%. In my opinion, there can be little confidence in the results and, because the GTAA has not been subject to public examination through the development plan process, it clearly cannot carry as much weight as the pitch requirement contained within the adopted Local Plan.
- 5.26 The 2017 GTAA assumes that anyone not interviewed as part of their survey of households living on known gypsy sites is potentially a non-gypsy for planning purposes and, it discounts them from the assessment of need. The report's authors are the sole arbiters of who is and who is not a "gypsy", and their assessment has not been subject to any independent public scrutiny.

- 5.27 In an appeal in Aylesbury Vale (**Appendix PBA 4**), the Inspector records in paragraph 13 of his decision that, whereas ORS had interviewed only 5 of the 13 occupying families and found that none of these met the planning definition, he was satisfied from the evidence presented at the Inquiry that several of the resident families met the definition and, certainly more than was being assumed in the GTAA (10% of the unknowns). The Inspector also found (paragraph 30) a discrepancy between the GTAA and, the outcome of other planning decisions in Aylesbury Vale. ORS had only managed to interview 17 families, leaving 87 families whose status was unknown (19 %, as in Cherwell). The GTAA assumed that only 10% of these would meet the planning definition but, a total of 28 pitches had been approved since the base date of the GTAA, presumably on the basis that all of the occupants were gypsies and travellers complying with the definition, i.e. 100%, not 10%. The Inspector concluded that the needs identified by the GTAA were an under-estimate.
- 5.28 ORS suggest that, because of the new definition of gypsy and traveller set out in PPTS, a GTAA now has only to formally assess the needs of households that meet the planning definition and those that “may meet the planning definition”. ORS have interpreted the latter phrase to mean “households where an interview was not possible”. This is too restrictive an interpretation. ORS only interview households who identify as gypsies and travellers and, although the head of the household may have ceased to travel permanently, their offspring are none-the-less likely to follow a nomadic habit of life when they form households of their own. New households arising out of households who do not currently meet the definition are, therefore, just as likely to satisfy the planning definition as new households arising out of households who do meet the definition.
- 5.29 An Inspector in a further appeal in Wokingham accepted this criticism of a GTAA which, as with GTAA's conducted by ORS, distinguished between household growth arising from cultural gypsies and PPTS gypsies. The Inspector considered that there was a strong argument that many non-PPTS travellers will wish to assert or experience a travelling lifestyle, a key part of their cultural identity (APP/X0360/C/16/3153193). The Inspector concluded that the GTAA under-estimated need [by excluding in-migration and also] possibly because of its simplistic treatment of emerging households. The Inspector also found (paragraph 22 of his

decision letter) that the lack of transparency around the methodology for determining the proportion of travellers that meet the PPTS definition, and the lack of independent scrutiny, must reduce the weight that can be attached to the findings of the GTAA (**Appendix PBA 5**).

- 5.30 Even if ORS are correct about the current gypsy status of some existing site residents, if this were to threaten their continued residency on a traveller site, it is likely that many would resume a nomadic habit of life in order to regain their "gypsy" status.
- 5.31 Due to the acknowledged unreliability of the GTAA prepared by ORS for Aylesbury Vale, based on the same proportion of successful interviews as was achieved in Cherwell, Aylesbury Vale District Council, in preparing its new Local Plan, took a precautionary approach to site provision and, assumed that the full identified needs of known and unknown Gypsies and Travellers should form the target figure against which the five-year supply is to be assessed. In Cherwell's case, this would result in a minimum need for the provision of a net additional 27 pitches, 2017-2032, of which 17 are required in the first 5 years. The only planning permissions granted in Cherwell District are those at Widnell Lane and Chesterton, for a total of 8 permanent pitches.

Alternative Sites

- 5.32 In **Doncaster MBC v. FSS & Angela Smith [2007]** the Court decided that to be a realistic alternative, accommodation has to be suitable, affordable, available and acceptable. Notwithstanding this, there is no requirement in planning policy, or case law, for an appellant to prove that no other sites are available or that particular needs could not be met from another site (**SCDC v. SSCLG and Julie Brown [2008] EWCA Civ 1010 at paras 24,27-36**).
- 5.33 The 2017 GTAA identifies 4 existing traveller sites in Cherwell: Station Caravan Park, Banbury; Bicester Trailer Park, Chesterton; Corner Meadow/The Stable Block, Mollington; and, Woodstock Road, Yarnton. Of these, Station Caravan Park is being redeveloped for housing and, the sites at Mollington and Yarnton are fully occupied. There are no public gypsy sites in Cherwell District and, the GTAA does not suggest that there are any vacant pitches on private sites.

5.34 No land has been allocated for gypsy and traveller sites in Cherwell and, the Council is only at an early stage in collaborating to the production of the Oxfordshire Plan 2050. The latest version of the Local Development Scheme (March 2020) anticipated that the Plan would be submitted for public examination in Spring 2021, and be adopted by March 2022. In fact, the Plan has not progressed beyond the Issues and Options stage, and is probably about 12 months behind schedule. In the meantime, the Council will be unable to identify a five-year supply of deliverable land for traveller sites.

5.35 The identified unmet need for sites; the absence of a five-year supply and the failure of the development plan to meet the identified need are each matters which weigh in favour of the appeal proposal: the unmet need is evidence of a current failing; the lack of a five-year supply is indicative of failing to meet that need in the future; and the failure of policy that has led to the present situation can be traced back at least to 2006. It would be possible for one or two of these factors to exist without the third and so, in the balance, each should be accorded weight where they all occur, as in this case.

Balance of Considerations

5.36 The appeal site is not located within the Green Belt, or within a SPA, SSSI, AONB or National Park. Furthermore, the proposed caravan site is not located within an area shown on the Environment Agency's flood maps as being at high risk from flooding. There is a development plan policy of direct relevance to consideration of a proposal for a gypsy caravan site and, therefore, **planning permission should be granted in accordance with the development plan without delay**. The Council's reasons for issuing the enforcement notice allege that the proposed development may only fail to comply with 3 of the 11 criteria set out under Local Plan Policy BSC6 and, apart from complaining about a lack of information relating to flood risk and noise, alleges that the proposed development would have an unacceptable impact on the character and appearance of the local area.

5.37 The test for countryside harm must be whether the development causes unacceptable harm which cannot be made acceptable with additional

landscaping. This judgement must take into account that the Government accepts that gypsy sites can be adequately assimilated into countryside settings using indigenous species and, that the objective of screening should not be to hide gypsy sites. In this case, the visual impact of the development is highly localised and, bearing in mind the limited visibility of the proposed caravan site, the proposed development would be unlikely to have an unacceptable impact on the character or appearance of the wider countryside.

5.38 There is a substantial unmet need for additional sites, there are no alternative sites currently available and, an absence of a five-year supply of deliverable land for gypsy sites which should each carry considerable weight in favour of this appeal. The long-standing failure of the Council to address gypsy and traveller accommodation needs, by allocating land in the development plan, is a further matter that should carry considerable weight in favour of this appeal.

5.39 In my opinion, the proposed development complies fully with the Council's locally specific criteria set out in Local Plan Policy BSC6 and, the other material considerations in this case support the appellant's case. The presumption in favour of sustainable development should, therefore, prevail and, this appeal should be upheld.

Appeal under Ground (d)

5.40 Section 191(1) of the 1990 Planning Act 1990, as amended by the Planning and Compensation Act 1991, provides that if a person wishes to ascertain whether, inter alia, any existing use of buildings or other land is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use in question.

5.41 Section 191(2) requires that if, on an application under this section, the local planning authority are provided with information satisfying them that the use described in the application is lawful at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

5.42 The onus of proof in this case is on the applicant and, the relevant test of that proof is the “balance of probability”. Section 193 contains supplementary provisions relating to certificates under sections 191 and 192, and section 193(4) provides that a certificate under either of these sections may be issued for the whole or part of the land specified in the application.

Evidence of Use as a Caravan Site

5.43 There is clearly a lawful agricultural use of the appellant’s land holding but, the front part of the site has been used for a mixed use comprising the keeping of livestock (mainly chickens, ducks and geese when I visited the site earlier this year) and, as a caravan site: defined as land used for the stationing of a caravan for residential purposes. There is a clear division between the front part of the holding containing buildings, residential caravan, hardstanding and duck pond, and the rear part of the holding comprising grazing land which, at the time of my site visit, was being used for the grazing of horses.

5.44 I attach a Statutory Declaration at **Appendix PBA 6** from the former owner of The Stables, Mr Michael Bolton, who confirms that he purchased the property on 5 December 2008 and, that he resided in a caravan on the land from March 2010 until June 2020, when he sold the land to Mr James Doran.

5.45 Google Earth Street View corroborates Mr Bolton’s statutory declaration by showing that in June 2011 there was a touring caravan stationed on the land, just to the right of the site access. The only aerial photograph available of the application site on Google Earth is dated August 2017 and, further corroborates Mr Bolton’s statement that there was a static caravan/mobile home stationed on the land at that time, together with a motor home. Copies of the photographs are attached at **Appendix PBA 7**.

Lawful Use

5.46 Conclusive and unambiguous evidence has been provided by Mr Michael Bolton, in a statement sworn in front of a Solicitor, of his residence in a caravan stationed on the application site for a continuous period, from

March 2010 until June 2020: a period in excess of 10 years. There is no evidence which calls Mr Bolton's evidence into doubt.

5.47 In my opinion, Mr Bolton's statement can be accepted as sufficient evidence, on its own, to demonstrate that, on a balance of probabilities, use of the site for the mixed purposes of agriculture and as a residential caravan site has subsisted for a continuous period in excess of 10 years. Such use is, therefore, immune from enforcement action and, is lawful.

6.0 LIST OF APPENDICES

Appendix PBA 1 – Appeal decision – Shawbury, Shropshire

Appendix PBA 2 – Flood map for planning

Appendix PBA 3 – Noise Report

Appendix PBA 4 – Appeal decision – Oaksvie Park, Arcott

Appendix PBA 5 – Appeal decision – Kybes Lane, Reading

Appendix PBA 6 – Statutory Declaration of Mr Michael Bolton

Appendix PBA 7 - Photographs