



Planning statement on behalf of Mr H Jeeves

Application for change of use of land to create an extension to an Existing Gypsy / Traveller pitch.

**The Robins
Heron Hill Lane
Meopham
Gravesend
Kent
DA13 0DT**

Town and Country Planning Act 1990 (as amended)

Dr Simon Ruston BSc (Hons) MA MA PhD MRTPI
Ruston Planning Limited

June 2023

Introduction

1. This statement will first provide details with regard to the application site and the proposal. The relevant development plan policies and material considerations will then be stated. This will be followed by an analysis of the main issue being whether very special circumstances (VSC) exist as a result of the following material considerations: current and future unmet need for Gypsy and Traveller sites locally, regionally and nationally; the lack of a 5 year supply of sites; the lack of alternative sites; the lack of other planning harm; the personal circumstances of the applicant and his family; the applicant's human rights; the best interests of the children; and the Public Sector Equality Duty.

The application site

2. The application site is located on the western side of Heron Hill Lane approximately 350m east of its junction with South Street / Wrotham Road, the main A227
3. The application site lies within the Metropolitan Green Belt, the North Downs Special Landscape Area (SLA) and the Culverstone Valley Area. The site is also within the Harvel Wooded Downs Landscape Character Area

Planning history

4. The site has a complex planning history as detailed in the Officers Report for the previous application. The most relevant planning history is set out below:
 - Retrospective application ref: 19990617 for the continued use of the land for the stationing of two caravans and toilet accommodation was submitted in September 1999 and refused on 17 November 1999.
 - The decision was appealed (APP/K2230/A/99/1034627) and the Appeal was allowed on 20th July 2000 for a temporary period of 3 years
 - Application 20030455 for the continuation of the use as a Traveller site, including the stationing of a mobile home and touring caravan was submitted 28th May 2003 and refused 4th February 2004.
 - The decision was appealed and the Appeal dismissed
 - Application ref: 20060423 for the continued stationing of a mobile home, one touring caravan, retention of two sheds (used as a

dayroom) and septic tank, was validated on 6th June 2006 and granted for a temporary period of two years under delegated powers on 5th September 2006

- Application ref: 20080813 for the continued stationing of a mobile home, one touring caravan, retention of two shed (dayroom) and septic tank, fencing and landscaping, was submitted on 8 September 2008 and approved on 7th January 2009 for a further 3 year temporary period.
- Application ref: 20110822 for the continued use of the land either on a temporary or permanent basis as a gypsy traveller site for one family, including the stationing of one mobile home, retention of two touring caravans, detached day room, outbuildings, septic tank and associated hardstanding was validated on 9th October 2012 and approved on the 15th March 2013.

The application proposal

5. The application seeks an extension to the existing Traveller pitch, to provide an additional pitch comprising mobile home, touring caravan, dayroom and hardstanding and a reconfiguration of the existing pitch in order to improve the layout, as shown on the attached plans.

Relevant development plan policy & other material considerations

6. The starting point for the legislative and policy framework from which this application should be viewed is section 70(2) of the Town and Country Planning Act 1990 which states:

“In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations”.

7. Furthermore, section 38(6) of the Planning and Compulsory Purchase Act 2004 states:

“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”.

Local level planning policy

Emerging development plan policies

8. The Emerging Local Plan Partial Review, Site Allocations and Development Management Policies (Regulation 18 - Stage 2) Consultation ran from Friday 23 October until Thursday 31 December 2020
9. Of primary relevance is proposed Policy RES 8: Proposals for the stationing of caravans for Gypsies and Travellers on unallocated sites in the emerging Development management Policies Document. This is addressed below.

The adopted plan

10. The Development Plan for Gravesham Borough Council currently comprises Gravesham Local Plan Core Strategy and Local Plan Policies Map (2014), Gravesham Local Plan First Review (1994) – saved Policies and Kent County Council Minerals and Waste Local Plan 2013-30 (2020)
11. The following policies are of key relevance
 - Policy CS17 - provision of Traveller Sites. (provides a strategic framework for the identification of traveller allocations, and is not intended to apply to individual planning applications)

Gypsy and Traveller Accommodation Assessment

12. The most recent accommodation assessment for the area was compiled in 2017 and found the following level of need for the plan period 2017 -2037:

Table 4: Total need for gypsy and traveller household plots over plan period

Status	Total
Meet Planning Definition	34
Unknown	0-9 (10%=1)
Do not meet Planning Definition	11

Gypsy/Traveller Status

13. The applicant and his family fulfil the definition of Gypsies and Travellers in Annex one of Planning Policy for Traveller Sites (PPTS 2015).

Other considerations of Policy and Law

National Planning Policy Framework (NPPF) 2019

14. Section 2: Achieving Sustainable development and Section 13: Protecting Green Belt Land are of Key relevance.

Planning Policy for Traveller Sites (PPTS) 2015

15. PPTS states that its overarching aim is to: “ensure the 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”. In order to do this, PPTS sets out a number of aims including:

- *“to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites*
- *to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply*
- *to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure”*

16. This echoes the ruling of the European Court of Human Rights in *Chapman v UK*¹ (PA02) which placed a positive obligation on the UK government to facilitate the traditional way of life of Gypsies.

17. In our view the following policies are of relevance:

- Policy B: Planning for Traveller sites
- Policy C: Sites in rural areas and the countryside
- Policy H: Determining planning applications for Traveller sites

Human Rights Act 1998

18. Article 8 of the Human Rights Act 1998 is of relevance to the applicant’s case as failure to grant permission would constitute an interference with home and family life. This point is discussed in further detail below.

¹ (2001) 33 E.H.R.R. 18

Children's Act 2004

19. Section 11 (2) of the Children's Act 2004 states that local authorities (regardless of whether they are also a children's services authority) should ensure that "their functions are discharged having regard to the need to safeguard and promote the welfare of children".

Equality Act 2010

20. The court of Appeal in *R (on the application of Baker) v Secretary of State for Communities and Local Government and the London Borough of Bromley*² held that the Planning Inspectorate is subject to the PSED when determining planning and enforcement appeals. The obligation to address this duty was explained by Gilbert J in *R (Moore) v Secretary of State for Communities and Local Government (Equality and Human Rights Commission intervening)*³.

² [2005] EWCH 1435.

³ [2015] EWHC 44 (Admin)

THE MAIN ISSUES

21. The applicants position is that whilst the proposals would cause harm to the objectives of the Green Belt, this harm is outweighed by material considerations that equate to VSC and which merit the granting of a permanent permission.
22. We will set out the material considerations that when taken together clearly outweigh the harm to the Green Belt and as such, we argue, demonstrate that very special circumstances exist. We then summarise the issues that are to be considered in the balance of this application, as well as indicating the appropriate weight that should be given to each material consideration. We finish with a brief conclusion.

Green Belt & Very Special Circumstances

23. We accept that the proposed development is, by definition, inappropriate within the Green Belt. Whilst the proposed development would result in harm to the open character of the Green Belt, we are of the view that such harm is limited, and is capable of being outweighed by considerations that amount to Very Special Circumstances

Harm to the Green Belt

24. Harm to the Green Belt should be assessed by first acknowledging the harm by way of inappropriateness, and then second, measuring the actual harm to the purposes of the Green Belt. In this case, it is first clear that the site is in the Green Belt, and therefore is inappropriate development. On the second test, it is suggested that the actual harm of the proposed development to the Green Belt is limited due to the small scale of development and its context as a modest extension to the existing site.
25. In order to make the case for this the proposal will be considered against the objectives for the Green Belt as set out in paragraph 134 of the NPPF:

- ***to check the unrestricted sprawl of large built-up areas;***

Given the site's location, this does not apply.

- ***to prevent neighbouring towns merging into one another;***

Given that the proposal is a modest and carefully designed extension to an existing site, there is no harm to this objective.

- ***to assist in safeguarding the countryside from encroachment;***

It is accepted that there will be some limited encroachment on the countryside.

- ***to preserve the setting and special character of historic towns; and***

Not applicable

- ***to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.***

There is currently no identified alternative, available, affordable, or otherwise suitable land for the purpose of Gypsy and Traveller sites.

26. In assessing harm to the Green Belt the Officers Report for the previous application, referred to hereafter as the Officer's Report, states the following

"What needs to be considered at this stage is the availability of sites in the short term taking into consideration that the large majority of land within Gravesham lies within the Green Belt and consequently whether there are any very special circumstances which mitigate the harm that would be caused. The difficulties in finding suitable land in areas of policy restraint such as Green Belt is acknowledged nationally, and the PPTS encourages authorities in such areas to work with neighbouring authorities, which may be less constrained, to find appropriate locations to address the need for new sites through the development plan system. This is the approach proposed by the Council in the Proposed Submission Local Plan Core Strategy. A new assessment of need is being prepared for the Council by University of Salford, and the preliminary results will be referred to at the Board meeting. Whilst these policy strategies should be followed and will provide the sites eventually, however the need is now and governmental advice is that Council's should not continually use 'temporary permission'

to resolve long term concerns. The Policy response recognises these concerns”

27. Given that these considerations still apply and that the extension is for the applicant's family, we consider that similar conclusions can be drawn for this proposal.

Very Special Circumstances

28. It is clear that there is harm by way of inappropriateness, and limited harm by way of encroachment. The significant issue is whether the harm to the Green Belt by reason of inappropriateness and any other harm is outweighed by other material considerations leading to the existence of very special circumstances.

29. Turning now to the case law with regard to very special circumstances two cases are of relevance. First, Basildon DC v First Secretary of State and Temple⁴. In this case the LPA challenged the decision of a planning inspector to grant a Gypsy family planning permission in the Green Belt. The planning inspector concluded that very special circumstances existed having taken account of a number of factors, including:

- *the local authority’s failure to assess the needs of Gypsies and Travellers in its area;*
- *the severe shortage of suitable alternative and available sites within the area;*
- *the educational needs of the children of the family; and*
- *the fact that the dismissal of the appeal would force the family to choose between abandoning their traditional way of life by accepting local authority housing in order to keep their children in school and return to a life on the road.*

30. The local authority argued that very special circumstances could not merely be factors which weigh in favour of granting planning permission, but that each factor relied upon had to be of such a quality that it could reasonably be called ‘very special’. Sullivan J disagreed and made it clear that:

“10...There is no reason why a number of factors ordinary in themselves cannot combine to create something very special. The claimant’s approach flies in the face of the approach normally adopted to the

⁴ [2004] EWHC 2759 Admin

determination of planning issues: to consider all the relevant factors in the round...

17. The short answer to the claimant's argument is that in planning, as in ordinary life, a number of ordinary factors when combined together result in something very special."

31. The relevance to the present application is clear, there are a number of similar relevant considerations that, in our view, when taken together amount to very special circumstances; these are outlined below.
32. The second case which is of relevance is that of Wychavon DC v SSCLG and Butler⁵, again with regard to a Gypsy site in the Green Belt. A planning inspector had identified three factors which, taken together, clearly outweighed the harm to the Green Belt, namely: the fact that there was to be an assessment of need that would lead the LPA to allocate sites; the undisputed need for such sites; and the lack of available alternative sites. Mitting J found that these were commonplace factors which did not amount to very special circumstances. The Court of Appeal disagreed and quashed his decision. Carnworth LJ held:

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

33. It is well established in the case law that a number of seemingly ordinary factors can combine to equate to very special circumstances. Such factors do not have to by definition be 'rare'.
34. Before turning to consider the specific facts of the case, it is important to note the 2015 amendments in Planning Policy for Traveller Sites (PPTS). The relevant policy is at paragraph 16 which states:

⁵ [2008] EWCA Civ 692

*“Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Subject to the best interests of the child, personal circumstances and unmet need are **unlikely** to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.” (emphasis added)*

35. The first point to note is that the revised policy does not place an outright restriction on personal circumstances and unmet need outweighing the harm to the Green Belt. It is therefore still entirely correct for personal circumstances and unmet need to be taken into consideration, and whilst admittedly a higher hurdle to jump, the VSC test is still able to be met on this basis.
36. Second, it should also be noted from the approach in AZ v SSCLG & South Gloucestershire DC⁶ that the Article 8 rights of the applicant and his family are able to constitute VSC.
37. Third, as will be noted from the confidential submissions, part of the applicant's case is based on the best interests of the children. There has been no change in the weight to be given to the best interests of the children and clearly this is a primary consideration.
38. This approach is supported by the judgement in Doncaster MBC v Secretary of State for Communities and Local Government [SSCLG] & AB [2016]⁷ where it was held at para. 72:
 - *The new policy PPTS does not prevent a decision maker, be they he, she or it, being an Inspector or a local planning authority, from giving whatever weight they consider they should to a consideration which is material. The PPTS does not prevent it by its terms. If a decision maker could not rely on either [unmet need and personal circumstances] to establish the very special circumstances required, the words in the PPTS would be surplusage. Further, a decision maker is not bound to apply a policy, provided he or she gives reasons for not doing so, as is long settled legal principle. What the PPTS does do is to say to decision makers that the policy regards it as unlikely that unmet need and personal circumstances are to be enough to overcome the hurdle posed by Green Belt policy. It does not say that either or both could not do so*

⁶ [2012] EWHC 3660 (Admin)

⁷ EWHC 2876 (Admin)

39. The factors we consider to amount to VSC are discussed in detail below. In summary these are:

- Need for Traveller Sites
- Lack of alternative sites and the likelihood of alternative sites in Green Belt
- Lack of a 5 year supply of sites
- Policy Failure
- The suitability of the site in all other planning terms
- Personal Circumstances
- Best Interests of the child
- PSED
- Human Rights

Material considerations

Need for Gypsy and Traveller sites

40. The 2018 GTAA for the area identified and unmet need for 54 pitches over the plan period (2017 - 2037) . This need is divided as follows: 34 pitches for those who meet the planning definition, 9 pitches for those where it is unknown whether they meet the planning definition, and 11 pitches for those who do not meet the planning definition.

41. Given the conclusions of the Lisa Smith ruling, provision needs to be made for all of this identified need.

Lack of alternative sites and likelihood of alternative sites in Green Belt

42. It is important to note that 78% of Gravesham Borough is designated as Green Belt, so it is highly likely that any new Gypsy/Traveller sites will need to be located within it.

43. Further, it is prudent to note that emerging policy contains criteria relating to sites in the Green Belt.

Lack of a five-year supply of sites

44. As set out in paragraph 9 of PPTS Local Authorities are obliged to ensure a five-year supply of deliverable sites for Gypsies and Travellers. Footnote 7 of PPTS defines 'deliverable' for the purposes of paragraph 9:

"To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that development will be delivered on the site within five years and in particular that development of the site is viable."

45. Given that there is identified unmet need and the LPA has yet to make any allocations, it is considered that Gravesham presently does not have a five-year supply of land for Gypsy / Traveller sites.
46. Paragraph 27 of PPTS states that the present lack of a five-year supply of deliverable sites in the area is a significant material consideration when considering a temporary permission:

"if a local planning authority cannot demonstrate an up-to-date five-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission".

47. Whilst the 2015 amendments to PPTS made clear that this paragraph did not apply to sites in the Green Belt, we would argue that the lack of a 5 year supply is an inherent part of general need which should be afforded substantial weight in the grant or any consent be it temporary or permanent. This approach was taken by the Secretary of State in a recovered Green Belt appeal (PA06):

"...given the need for sites is substantial and immediate, the Secretary of State agrees with the Inspector and main parties that, in this case, the absence of a five year supply of specific deliverable sites is a significant material consideration in considering a temporary permission [IR117]. He also agrees with the Inspector that the lack of a five year supply is an integral part of the general need and that general need should be accorded substantial weight [IR117]."

Failure of policy

48. The Appeal Decision Letter for the neighbouring site found that there had been a serious failure of policy in Gravesham concluding, at paragraph 91, that:

91. Overall, there has been a persistent and grave failure to plan for the needs of gypsies and travellers in the borough. As most of the countryside outside urban areas and rural inset settlements in Gravesham is Green Belt, travellers have had to demonstrate very special circumstances in seeking to establish sites, and this no doubt has served to limit the supply of sites coming forward.

49. Whilst the emerging plan does contain criteria based policy, this is yet to be adopted and furthermore, to the best of our knowledge, no Gypsy and Traveller site allocations have been put forward, as such these conclusions still stand.

The suitability of the site in planning terms

50. There is currently no criteria based policy against which to assess individual applications for Gypsy and Traveller sites in Gravesham.
51. Emerging policy RES8 contains criteria based policy for assessing applications for Gypsy and Traveller sites. In accordance with NPPF para 48 this can be given weight according to:

a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);

b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

The relevant emerging policies are considered to be consistent with the framework. Given the early stage of development and significant delays that the emerging policy has encountered, it can be given some, limited weight.

52. We assess the proposal against the emerging policy below:

In assessing the suitability of sites for stationing caravans, trailers, tourers, etc. for gypsies and travellers, proposals will only be permitted where the proposal will afford a high standard of amenity for existing and future users; and

- *sufficient space is available to satisfactorily accommodate the planned number of caravans, and any associated amenity buildings, amenity space, vehicle space and commercial use within the site;*

The proposal is well designed with adequate space and does not contain any commercial use.

- *the site is in a location which is accessible to a range of local services, including schools and health facilities;*

The site is well located for access to services. This is addressed in more detail below.

- *the site is within flood zone 1 or alternatively meets the exception test for flood zone 2;*

The site is in flood zone 1

- *there will be no unacceptable adverse effects on the local built, natural and historic environment;*

There is no reason to anticipate that this modest extension to an existing site will have any unacceptable adverse effects

- *safe pedestrian and vehicular access to and from the highway network will be provided;*

No highways issues were raised in relation to the previous application. The issue of pedestrian access is addressed below.

- *there will be a satisfactory living environment for future occupants and the proposal will not result in an unacceptable adverse impact on the amenity of occupiers of neighbouring properties;*

The proposed site layout will provide a high standard of living for future occupants and will not impact the amenity of neighbouring properties

- *there is adequate and readily accessible parking on site for all types and the number of vehicles to be accommodated, and a secure metered power supply is available for the provision of electric vehicle charging points unless otherwise justified as an exception;*

The proposed site layout provides adequate space for parking. The provision of electric vehicle charging points has not been provided, but can be addressed in the future, when required.

- *and if a cesspit/septic tank is used for foul drainage, there are adequate arrangements to enable the safe servicing of the cesspit/septic tank and no unacceptable impact on the water environment*

The proposed cesspit is in a suitable location to ensure that it can be safely serviced and will be installed and maintained to ensure that there are no unacceptable impacts on the water environment

53. It is notable that the emerging policy goes on to provide additional criteria for proposals for Traveller sites in the Green Belt. This is reproduced and addressed below:

Proposals for sites within the Green Belt which have not been allocated through the local plan process will be treated as inappropriate development requiring the demonstration of very special circumstances that clearly outweigh harm to the Green Belt and any other harm. In determining whether very special circumstances exist to meet the national policy test, the Council will have regard to:

The status of the applicant and his or her family in terms of the definitions set out in the appendices to the Planning Policy for Traveller Sites (2015) or superseding documents;

The occupants meet the PPTS definition of Gypsy / Traveller

Where the above definitions are not met, and a nomadic lifestyle is no longer being followed, whether or not the applicant and his or her family are from gypsy and traveller stock and can demonstrate a cultural preference for living in a caravan;

Not applicable

The existence of suitable alternative accommodation, including allocated sites through the Local Plan and the need to occupy an unallocated site within the Green Belt; and

There are no suitable alternative sites

The personal circumstances of the applicant and his or her family, and whether or not these can only be satisfied through the occupation of the site, including the best interests of the child.

The personal circumstances of the family will be satisfied through the provision of this additional pitch.

54. As such we consider that the proposal satisfies emerging policy. No other issues were raised in the Officers Report. Therefore the site is, in our view, suitable in all other planning terms.

Sustainability of the site

55. It is informative to also consider the 'sustainability' criteria set out in PPTS. The holistic view of sustainability in paragraph 11 of PPTS is intended to provide a basis from which local plan policies are devised. The policy has a number of different considerations, these have been set out below and annotated with regards to the application site:

11. Local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. Local planning policies should, therefore, ensure that their policies:

a) promote peaceful and integrated co-existence between the site and the local community

The applicant and his family have lived at the application site for over 10 years without any problems; there is no reason as to why an extension to this small family site should not enjoy a peaceful co-existence with the local community.

b) promote, in collaboration with commissioners of health services, access to appropriate health services

The family all have access to local health services including GP surgeries and hospitals.

c) ensure that children can attend school on a regular basis

Both a primary school and a secondary school are in easy reach of the site.

d) provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment

The site ensures that the intended residents are not living on unauthorised encampments.

e) 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

There is no reason to anticipate that the proposals will be contrary to this criterion.

f) avoid placing undue pressure on local infrastructure and services

As a family site which has been in existence for over 10 years there is no reason to anticipate that there will be undue pressure on local infrastructure and services.

g) do not locate sites in areas at high risk of flooding, including functional floodplans, given the particular vulnerability of caravans.

The site is situated within Flood Zone 1 and as such is not at risk.

h) 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.

Not applicable.

56. In summary the application site meets the criteria for sustainable Gypsy/Traveller sites set out in national planning policy (PPTS). These should be given considerable weight in the decision-making process.

57. We have set out above how the site satisfies the sustainability criteria set out in PPTS. We now address the issue of locational sustainability in more depth.

58. With regards to this matter The Officers Report for the previous application found that *'whilst the site is located some distance from the nearby villages of Culverstone Green and Meopham, which can be accessed by public transport, it is accepted that the site is not overly accessible and sustainable in terms of easy access to local services given the limited bus services and location of the site.'*

59. For the Appeal for the neighbouring site,⁸ the Inspector found the site's location to be sustainable. The Decision Letter states as follows:

48. As established above, the appeal site is located outside the village of Culverstone Green in the countryside. The site is located some 1.5 kilometres from the facilities in the village, including a local shop, petrol station, primary school and community centre. Meopham is located some 2.5 kilometres or more to the north and has a GP, secondary school and other services. The nearest bus stop is some 700 metres from the site, on the A227, and provides services to Gravesend and Sevenoaks. The site is not far from Culverstone Green and is within the sporadically developed CVA. As such the site is not physically isolated or away from the nearest existing settlement.

[...]

⁸ APP/K2230/W/19/3223958

50. Heron Hill Lane is a narrow road with no footpaths and a lack of formal passing places for vehicles. It is also unlit and steep in sections. Some journeys to the nearby village could feasibly take place on foot or bike. The appellant's technical traffic evidence shows that the road is lightly trafficked. There are also opportunities to access the village and other settlements via public footpaths through the woods. However, given the condition of Heron Hill Lane, the unlit and unmade condition of the woodland paths, and distances involved, I consider that many journeys to and from the site are likely to be by private vehicle. Although the nearby bus service provides key links, the walk to the bus stop is likely to limit its use. 51. Opportunities to use sustainable modes are therefore constrained. However, whilst many journeys are likely to be via private vehicle, trips to access village facilities would not be long. Furthermore, the PPTS, in recognising that traveller sites may be located in rural areas, is cognisant of the fact that opportunities for sustainable transport solutions vary between urban and rural areas. This is notwithstanding the NPPF's objectives to limit the need to travel, reduce congestion and emissions and improve air quality and public health.

54. Overall, I consider that the appeal proposal accords with local and national planning policy for the location of gypsy and traveller sites. The local policies are CS01, CS02 and CS19 in the Core Strategy, insofar as they seek to ensure development is sustainably located. There is no conflict with paragraph 25 of the PPTS or paragraph 79 in the NPPF as the site is not away from settlements or isolated. (emphasis added)

60. In summary, we are of the view that the site is acceptable in principle, and that the site is considered sustainable when viewed against national policy. Although we consider the site's location to be sustainable it is important to emphasise that distances to services and facilities are only one factor, the implication of the policy in PPTS is that a holistic view of sustainability should be taken when considering Gypsy and Traveller planning cases.

Personal Circumstances

61. The personal circumstances of the site occupants are set out in a separate Statement of Personal Circumstances submitted along with the application.
62. It is important to set out the case law with regard to the personal circumstances of an applicant. The leading case on this is Great Portland Estates Plc v Westminster City Council⁹ which held at 750:

“Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our development the human factor. The human factor is always present, of course, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. But such circumstances, when they arise, fall to be considered not as a general rule but as exceptions to a general rule to be met in special cases. If a planning authority is to give effect to them, a specific case has to be made and the planning authority must give reasons for accepting it. It follows that, though the existence of such cases may be mentioned in a plan, this will only be necessary where it is prudent to emphasise that, notwithstanding the general policy, exceptions cannot be wholly excluded from consideration in the administration of planning control.”

63. It is clear that as a matter of principle the personal circumstances of the applicant are able to be taken into account and can potentially outweigh any planning harm. Given the cited case law above, this is equally applicable to the Green Belt. Personal circumstances need to be taken in the context of the three following legal principles: best interests of the children, human rights, and the Equality Act.

Best Interests of the Children

64. The best interests of the children must be treated as a primary concern. There is now as a matter of law a requirement for a decision maker to treat the best

⁹ [1984] 3 All ER

interests of any children affected by a decision to grant/refuse planning permission/issue/uphold an enforcement notice as 'a primary consideration'.

65. As there are children involved in this case, it is in their best interests to have a settled base from which to access education services. This is a consideration that as a matter of law should be afforded significant weight.

Human Rights

66. It is important to acknowledge the correct approach to this important consideration.
67. First, as a matter of principle the Article 8 rights of the applicant are engaged as the application site is the family home.
68. Second, in order to properly assess human rights considerations it is necessary for the LPA to carry out an article 8 structured proportionality decision. The correct approach to this is set out in the decision of the High Court in AZ v SSCLG & South Gloucestershire District Council¹⁰. At para 59 it states that such an assessment is not the same as a consideration of whether the personal circumstances of an applicant amount to very special circumstances. At page 25 where His Honour Judge Thornton QC interpolated an extract from the ruling of Lord Bingham in Razgar v Secretary of State for the Home Department¹¹ to set out a set of steps in order to assess proportionality:

“17. In considering whether a challenge to the Secretary of State's decision to remove a person [refuse planning permission] must clearly fail, the reviewing court must, as it seems to me, consider how an appeal would be likely to fare before an adjudicator [inspector], as the tribunal responsible for deciding the appeal if there were an appeal. This means that the reviewing court must ask itself essentially the questions which would have to be answered by an adjudicator [inspector]. In a case where removal [refusal of permission and consequent removal from the appeal site] is resisted in reliance on article 8, these questions are likely to be:

¹⁰ [2012] EWHC 3660 (Admin)

¹¹ (2001) UKHRR 1150, CA

- [1] *Will the proposed removal [refusal of permission] be interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life [or home]?*
- [2] *If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?*
- [3] *If so, is such interference in accordance with the law?*
- [4] *If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?*
- [5] *If so, is such interference proportionate to the legitimate public end sought to be achieved?*

18. *If the reviewing court is satisfied in any case, on consideration of all the materials which are before it and would be before an adjudicator [inspector] that the answer to question (1) clearly would or should be negative, there can be no ground at all for challenging the certificate of the Secretary of State [decision to refuse permission] of the adjudicator [inspector by way of an application to the Administrative Court]. Question (2) reflects the consistent case law of the Strasbourg court, holding that conduct must attain a minimum level of severity to engage the operation of the Convention: see, for example, *Costello-Roberts v United Kingdom*. If the reviewing court is satisfied that the answer to this question clearly would or should be negative, there can again be no ground for challenging the certificate [refusal]. If question (3) is reached, it is likely to permit of an affirmative answer only.*

19. *Where removal [refusal of permission] is proposed in pursuance of a lawful immigration [planning] policy, question (4) will almost always fall to be answered affirmatively. This is because the right of sovereign states, subject to treaty obligations, to regulate the entry and expulsion of aliens [such matters as the control of development in the green belt] is recognised in the Strasbourg jurisprudence ... and implementation of a firm and orderly*

immigration [planning] policy is an important function of government in a modern democratic state. In the absence of bad faith, ulterior motive or deliberate abuse of power it is hard to imagine an adjudicator [inspector] answering this question other than affirmatively.

20. The answering of question (5), where that question is reached, must always involve the striking of a fair balance between the rights of the individual and the interests of the community which is inherent in the whole of the Convention. The severity and consequences of the interference will call for careful assessment at this stage. The Secretary of State must exercise his judgment in the first instance. [The inspector must make her own assessment at the first section 78 appeal stage ... The Administrative Court dealing with an application under section 288 of the TCPA] must assess the judgment [decision] which would or might be made by an adjudicator [inspector on appeal]. ...

21. ... Decisions taken pursuant to the lawful operation of immigration [planning] control will be proportionate in all save a small minority of exceptional cases, identifiable only on a case by case basis."

69. We will address each step in turn:

[1] Will the proposed removal [refusal of permission] be interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life [or home]?

Given that the applicant and her family are currently on the site the answer must be yes.

[2] If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?

The answer to this must be yes.

[3] If so, is such interference in accordance with the law?

If the LPA finds that very special circumstances do not exist then it would be in accordance with the law.

[4] If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

Affirmative.

[5] If so, is such interference proportionate to the legitimate public end sought to be achieved?

This is the crux of the proportionality argument. It is contended that the interference is wholly disproportionate to the legitimate aim that is sought to be achieved. The relevant considerations have been outlined in this letter in support of this contention. AZ (PA05) provides a useful summary of the relevant applicable law that should be taken into consideration in an Article 8 proportionality assessment at pages 34-36 of the judgement. We have reproduced the sections relevant to the present application below:

“(2) The proposed development, being for a change of use and the siting of a mobile home in the green belt, was one where there was a general presumption against inappropriate development so that the application should not be approved unless the applicant could show that there were very special circumstances why permission should be granted. Such circumstances would not be shown to exist unless the harm by reason of the inappropriateness and any other harm was clearly outweighed by other circumstances. It was for the applicant to show why permission should be granted.

(3) The applicant was contending that the development site was the only site on which he could pitch his mobile home as his home. In order to establish that there were very special circumstances so as to justify his being granted permission, he had to show that there was an absence of alternative sites or that there were compassionate reasons amounting to very special circumstances since his proposed development would otherwise cause harm or conflict with a policy to a degree which would justify refusal. The applicant

had to overcome a substantial burden to show this given that the proposed development was otherwise inappropriate development in the green belt.

(4) However, if planning permission was not granted on the basis of there being very special reasons for its grant, it was open to the applicant to seek to satisfy the inspector that, exceptionally, the refusal decision would constitute an unfair and disproportionate interference with the applicant's, his son's, his wife's and his sister-in-law's right to respect for a family life and a home notwithstanding the interests of the community in pursuing the green belt policy. In such a case, the finding of disproportionality would amount to a very special circumstance for permitting the proposed development.

(5) The applicant, his son, his wife and his sister-in-law had joint and several rights to respect for their family life and their home. These rights were, in this case, rights involving the enjoyment of a family life together and the enjoyment of the mobile home on the appeal site as their home. The applicant was entitled to rely on his son's and his wife's and his sister-in-law's individual rights protected by article 8(2) in addition to, and as a support for, his reliance on his own entitlement in that regard...

...(7) The applicant's wife appeared on the facts taken into account by the inspector to enjoy use of the mobile home as her home for the purposes of article 8 protection in addition to the enjoyment of such use by the applicant and his son and all three applicants enjoyed a family life together in the mobile home on the appeal site. The applicant's, his son's and his wife's article 8 rights to a family life and a home were, therefore engaged by the appeal decision.

(8) The applicant's sister-in-law appeared on the limited facts taken into account by the inspector to enjoy a family and private life with the applicant's wife which was engaged by the appeal decision and she was entitled to have those rights taken into account by the inspector

(9) The son's article 8 protected rights included, additionally, the right to have his best interests and his own views as to those best interests taken into account as a primary consideration by the inspector and weighed in the balancing exercise involved when deciding whether the application should, exceptionally be allowed.

(10) The inspector was required to undertake a structured proportionality assessment involving the weighing up and balancing of all relevant factors. The purpose of this assessment was to determine whether the protected rights of the applicant and his family members were disproportionately interfered with by the inspector's decision upholding the rights of the community to the maintenance of green belt policies and, if they were, what the decision should be in order for there to be a proportionate interference with those rights"

70. Importantly, even if the very special circumstances test is not met (which we argue that it is), the article 8 rights of the applicant and his family can amount to very special circumstances.

Public Sector Equality Duty

71. Section 149 of the Equality Act 2010 states:

"149 Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.*
- (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.*
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—*
- (a) tackle prejudice, and*
 - (b) promote understanding.*
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.*
- (7) The relevant protected characteristics are—*
- *age*
 - *disability*
 - *gender reassignment*
 - *pregnancy and maternity*

- *race*
- *religion or belief*
- *sex*
- *sexual orientation*

(8) A reference to conduct that is prohibited by or under this Act includes a reference to—

(a) a breach of an equality clause or rule;

(b) a breach of a non-discrimination rule.

(9) Schedule 18 (exceptions) has effect.”

72. The LPA as the decision maker in the present case is subject to this duty given that the applicant and her family are Irish Travellers.
73. It is relevant to consider the effect of the potential of unauthorised encampments community relations. Regarding these matters it is useful to cite the approach taken in appeals at Land at The Workshop, Stokesley Road, Brompton, Northallerton, North Yorks¹² where the Inspector found:

“86. I have had due regard to the Public Sector Equality Duty (PSED) set out in the Equality Act 2010, which concerns the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Having found that the appellant has gypsy status, he has a protected characteristic for the purposes of the PSED.

87. A refusal of permission for development that is acceptable in planning terms would fail to foster good relations between the site occupants and the settled community – and it could amount to unlawful discrimination. I am also concerned that the shortage of sites for

¹² APP/G2713/C/13/2198583, APP/G2713/C/13/2198584

travellers, if not the 'need' test set out in DP14 could indicate inequality of housing opportunity for gypsies. The Council's efforts to bring forward gypsy sites may overcome any such inequality in time – and I note that CP1 seeks to reduce disadvantage. Even so the PSED adds weight to my overall conclusion that Appeal A should succeed on ground (a) and the deemed planning application should be approved."

74. It is also useful to contextualise the inequalities faced by Gypsies and Travellers by referring to the 2012 DCLG *Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers* which states:

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

- *In 2011 just 12% of Gypsy, Roma and Traveller pupils achieved five or more good GCSEs, including English and mathematics, compared with 58.2% of all pupils*
- *There is an excess prevalence of miscarriages, stillbirths, neonatal deaths in Gypsy and Traveller communities*
- *Around 20% of traveller caravans are on unauthorised sites.*
- *Studies have reported that Gypsy and Traveller communities are subjected to hostility and discrimination and in many places, lead separate, parallel lives from the wider community."*

75. The wider academic body of knowledge supports these findings. In particular it is widely accepted that the lack of suitable and secure accommodation underpins many of the inequalities that Gypsies and Travellers encounter.

The Balance

76. The question for the decision maker in this case is do the combination of material considerations amount to very special circumstances that outweigh the harm to

the Green Belt by reason of inappropriateness or any other harm? It is useful to briefly outline the matters to be balanced:

- Harm by reason of inappropriateness which should be given substantial weight
- Other limited harm caused to openness which should be given some weight

Balanced against this are the following material considerations:

- The substantial unmet need for Gypsy and Traveller sites
- Lack of alternative sites and likelihood of alternative sites in Green Belt
- The lack of a five-year supply of sites
- Significant policy failure
- The suitability of the site in all other planning terms
- Personal Circumstances
- Best Interests of the Children
- Human Rights
- Public Sector Equality Duty

77. In our view these factors are of sufficient weight to allow for the very special circumstances test to be met and permanent permission to be granted.

Conclusions

78. We are of the view that on balance this site meets the VSC test in order for a permanent personal permission to be granted.

79. Given the pressing national and local need for Gypsy and Traveller pitches, this application represents an opportunity for the LPA to meet some of this need without expense to anyone other than the applicant.

Yours faithfully,

Dr. Simon Ruston MRTPI