

**APPEAL BY ANTHONY SMITH  
AGAINST THE SERVICE OF AN ENFORCEMENT NOTICE BY  
WYRE FOREST DISTRICT COUNCIL**

**WITHOUT PLANNING PERMISSION THE CHANGE OF USE OF LAND FOR THE STATIONING OF A MOBILE HOME FOR RESIDENTIAL PURPOSES AND RETENTION OF HARDSTANDING, SHEDS, SUMMERHOUSE AND FENCING ASSOCIATED WITH THE RESIDENTIAL OCCUPATION, AND USE OF PART OF THE LAND FOR THE STORAGE OF COMMERCIAL PLANT, VEHICLES AND MACHINERY.**

**TOP ACRE, CURSLOW LANE, MUSTOW GREEN, KIDDERMINSTER,  
WORCESTERSHIRE, DY10 4DX**

**PINS REF:  
LPA REF:  
OUR REF:**

**STATEMENT OF CASE PREPARED ON BEHALF OF THE APPELLANT**

## **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 have 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 for well over 350 caravan sites, throughout England and Wales, mainly on appeal.
- 1.3 This statement is divided into four parts: firstly I describe the 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 about 1 hectare of land located along the western side of Curslow Lane, Mustow Green. The site lies about 1.1 kilometres south of the settlement of Mustow Green and, about 600 metres south-east (as the crow flies) of Shenstone. The site was one of eight plots of agricultural land which were sold off and subsequently subdivided back in 2006.
- 2.2 The appeal site is sub-divided into two parts. There is a residential caravan site, measuring about 39 x 21 metres, in the south-east corner of the land. The caravan site accommodates a static caravan/mobile home along its northern side, a concrete slab for the stationing of a touring caravan along the eastern side and, a summerhouse in the south-western corner. The remainder of the land is largely laid to grass but, there is a timber stable building in the north-east corner of the land, adjacent to Curslow Lane.
- 2.3 Access to the appeal site is from Curslow Road, via a private driveway extending parallel with Curslow Lane, for a distance of about 120 metres, northwards to the south-eastern corner of the land. The access track divides into two at its entrance into the land, providing access into the caravan site to the north-west and, continuing northwards to give access to the paddock containing the appellant's stable building.
- 2.4 The access track also gives access to 3 parallel paddocks located to the west of the driveway and, south of the appeal site. Moving northwards, the first two paddocks are laid to grass; and, the third contains a "L"-shaped stable building, adjacent to the southern boundary of the appellant's caravan site, and a hard-surfaced stable yard, within an enclosure roughly equal in size to the caravan site.
- 2.5 The appeal site is enclosed by mature native hedgerows to all boundaries. In addition, evergreen hedgerows have been planted around the caravan site, giving a double screen along the eastern boundary adjacent to Curslow Lane.
- 2.6 Curslow Lane is a single track lane, giving access to Mustow Green and the A448 to the north, and the A442 Kidderminster Road to the south. There

is almost continuous development along the western side of Curslow Lane, from its junction with Kidderminster Road, to the appeal site and beyond. Moving northwards, there is: a large house and its residential curtilage; warehousing and distribution centre; two detached bungalows; commercial fishery; stable and stable yard; the appeal site containing a lawful stable building; and, a further lawful stable and stable yard on the front of an unauthorised gypsy caravan site.

## 3.0 PLANNING POLICY

### Local Planning Policies

3.1 The Council cites policies SP.14, SP.22, SP.27, DM.4, DM.22, and DM.30 of the Wyre Forest District Local Plan as justification for service of the enforcement notice. The Local Plan was adopted on 26 April 2022 and, those policies considered to be most relevant are set out below.

3.2 Policy SP.14 - Gypsy and Traveller Site Provision states as follows:

The following sites (A-M), as shown on the Policies Map, will continue to be safeguarded for Gypsy and Traveller use, and in addition, a new site, (Site N) (Policy SA.K17) is allocated on land to the rear of Zortech Avenue, Kidderminster, to contribute to meeting the housing needs of the Gypsy and Traveller community that are expected to arise over the Plan period:

- Site A – Lower Heath, Stourport-on-Severn ( 22 pitches)
- Site B – Broach Road, Stourport-on-Severn (9 pitches)
- Site C – Power Station Road, Stourport-on-Severn (4 pitches)
- Site D – 1 Broach Meadow, Stourport-on-Severn ( 3 pitches)
- Site E – 1b Broach Road, Stourport-on-Severn (3 pitches)
- Site F – 6/6a Broach Road, Stourport-on-Severn (5 pitches)
- Site G – Meadow Park, Stourport-on-Severn (7 pitches)
- Site H – Saiwen, Stourport-on-Severn (5 pitches)
- Site I – 28/29 Sandy Lane, Stourport-on-Severn (6 pitches)
- Site J – Land adjacent Nunn’s Corner, Stourport-on-Severn (8 pitches)
- Site K – The Gables Yard, Stourport-on-Severn (5 pitches)
- Site L – Gatehouse Caravan Park (16 pitches)
- Site M – Wilden Lane (4 pitches)
- Site N – Land rear of Zortech Avenue, Kidderminster (16 pitches)

The 2020 Gypsy and Traveller Accommodation Assessment identifies the need for 13 pitches, under the Planning Policy for Traveller Sites (PPTS) definition to be provided in the period 2020/21 to 2035/36, 3 of which need to be provided by 2024/5. It is anticipated that the short-term and longer-term needs can be met through the allocation of the land to the rear of Zortech Avenue (Policy SA.K17) and limited intensification/expansion of the existing safeguarded sites where proposals would comply with the other policies of the Plan. Gypsy and Traveller sites are predominantly residential in nature. Outside the sites safeguarded and allocated in this Plan, planning permission for new sites will be granted on previously developed land or in areas allocated primarily for residential

development subject to all relevant policies within the Local Plan being met. Development in the open countryside that is away from existing settlements or outside areas identified in this Plan will be strictly limited in accordance with the Plan's policies.

There is a wider cultural need for 22 pitches to address the housing needs of Gypsies and Travellers who do not meet the planning definition set out in PPTS. This will be addressed through various means, including residential caravans/mobile homes sites and through other policies in the Plan which provide for different types of housing.

### 3.3 Policy SP.22 - Landscape Character relates to protection of the countryside and, in this respect, states amongst other things that:

#### 1. Landscape Character

New development must protect and where possible enhance the unique character of the landscape including individual settlements or hamlets located within it. Opportunities for landscape gain will be sought alongside all new development, in order that landscape character is strengthened and enhanced.

The Worcestershire County Council Landscape Character Assessment Supplementary Guidance (2012 or as later amended) and Historic Landscape Characterisation will be used as guidance when determining applications for development within the rural areas.

Planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils.

### 3.4 Policy DM.22 - Safeguarding the Green Belt

Within the Green Belt (as defined on the Policies Map), development will not be permitted, except in very special circumstances, or unless one of the following applies:

- a. There is a clear need demonstrated for new buildings for the purposes of agriculture or forestry.
- b. Provision of appropriate facilities (both for existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
- c. The replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
- d. The development involves the re-use or conversion of buildings in accordance with the policies for the re-use and adaptation of Rural Buildings (especially Policies SP.11 (dwellings) and DM.10 (employment)).

- e. The proposals involve the limited infilling or redevelopment of an identified Previously Developed Site in the Green Belt, in accordance with the site specific policies contained in Policy SA.PDL.
- f. The proposals are part of a Community Right to Build Order or a Neighbourhood Development Order.
- g. Other operations, including changes of use which preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. In addition, development of housing in the Green Belt will not be permitted unless one of the following circumstances applies:
  - i. There is a proven need in association with the purposes of agriculture or forestry.
  - ii. It is for affordable housing, reserved for local community needs in accordance with Addressing Rural Housing Needs (Policy SP.11).
  - iii. It is for the extension of an existing dwelling, provided that it does not result in disproportionate additions over and above the size of the original dwelling.
  - iv. Limited infilling in villages

Proposals within, or conspicuous from the Green Belt, must not be detrimental to the visual amenity of the Green Belt, by virtue of their siting, materials or design.

### **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 60 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 62 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 Section 13 of the National Planning Policy Framework (NPPF) sets out the

presumption against inappropriate development in the Green Belt, which is only to be permitted in very special circumstances. Inappropriate development is, by definition, harmful to the Green Belt and it is for the applicant to show why permission should be granted. Very special circumstances will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Substantial weight is to be accorded to the harm to the Green Belt when carrying out this balancing exercise.

- 3.8 *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.
- 3.9 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.
- 3.10 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*).
- 3.11 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.

- 3.12 Policy E makes clear that traveller sites are inappropriate development in the Green Belt and should only be approved in very special circumstances. 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.

#### **4.0 PLANNING HISTORY**

- 4.1 The initial occupation of the application site by the appellant in 2006 took place without the benefit of planning permission. A retrospective application (ref: 06/1062/FULL) was subsequently Refused on 15/12/06.

A subsequent Enforcement Notice, requiring the removal of the unauthorised caravans and associated development, was served on 21/02/07.

- 4.2 Both the refused planning application and the Enforcement Notice were the subject of appeals to the Planning Inspectorate, which were considered by means of Public Inquiry held in September 2007. The appeals were subsequently allowed by the Planning Inspector, with the Enforcement Notice quashed and planning permission granted, on a temporary basis for 5 years from the date of the Inspector's decision (26/11/07), subject to conditions. Planning permission therefore expired on 26 November 2012.
- 4.3 Planning permission was granted on 24 October 2008, under planning application No. 08/0838/FULL, for the change of use of land to use for the keeping of horses and erection of stables with hardstanding on land north of Top Acre, i.e. the northern half of the appeal site. This land is accessed from Curslow Lane, via the same driveway as Top Acre and, through Top Acre, via the paddock behind (to the west of) Top Acre.
- 4.4 Application No. 11/0545/FULL was submitted in August 2011, under S.73 to vary conditions 1 and 2 of Planning Permission 06/1062/FULL to remove all reference to the limited time period of 5 years for the stationing of caravans for residential purposes, the laying of hardstanding and erection of a close boarded and gravel board fence. This application was refused on 16 March 2012.
- 4.5 An appeal against the refusal of planning permission was heard by means of a Hearing held in March 2013. The Inspector recommended that planning permission be granted for a further temporary period but, the appeal was recovered on 3 July 2013, by the then Secretary of State, and planning permission was refused on 30 July 2014. The Secretary of State was subsequently found to have unlawfully discriminated against gypsies

and travellers by calling-in a disproportionate number of gypsy appeals (*R.(Moore and Coates) v. Secretary of State for Communities and Local Government* [2015] EWHC 44 (Admin)).

4.5 The Council served its enforcement notice on 22 November 2022, to take effect on 21 April 2023 and, giving 6 months for compliance.

## **5.0 CASE ON BEHALF OF THE APPELLANT**

### **Appeal Under Ground (d)**

5.1 Part of the appeal site is occupied as a residential caravan site for the

stationing of 2 caravans, including a static caravan/mobile home, together with hardstanding, sheds and summerhouse. The enforcement notice acknowledges that the site is also in use for the storage of commercial plant, vehicles and machinery. This latter activity is connected with the appellant's business activities, operating a property maintenance company and a vehicle sales business.

- 5.2 In order to establish the lawful use of the land it is first necessary to identify the appropriate planning unit. In the case of *Burdle v. Secretary of State for the Environment* [1972] 1 WLR 1207 Bridge J suggested three broad tests for determining the appropriate planning unit:

*"First, that whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered...But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land. Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each are used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit."*

- 5.3 Bridge J went on to point out that the assessment was a matter of fact and degree, and that there might be almost imperceptible change from one category to another. He suggested, as a useful working rule, that it should be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use **both physically and functionally** [my emphasis].
- 5.4 It is not disputed that the appeal is the unit of occupation. It will be argued that that the current use of the site is as a single planning unit in mixed use, complying with the second example in *Burdle*. The whole site is accessed from a single driveway and, the three uses

are not incidental or ancillary to each other and are not carried out on physically different parts of the site. There is, for example, no hedge, fence or gate separating the caravan site from the adjoining paddock and, the caravan site is being used for the storage of commercial vehicles for sale.

- 5.5 Planning permission was granted for a temporary 5-year period on 26 November 2007 under appeal reference Nos. APP/R1845/C/07/2039465 and APP/R1845/A/07/2040181 for: *“the use of land”... “and the use for the stationing of caravans and a portable toilet for residential purposes, the laying of a hardstanding and the erection of a close boarded and gravel board fence in connection with the residential use”*. This permission affected only the land occupied by the caravan site and the area of paddock immediately to the rear (west). It did not apply to the land to the north of the caravan site, containing the appellant’s stable building.
- 5.6 It will be demonstrated that the appellant has operated two businesses from the appeal site, including the land containing the stables and hardstanding, since 2009. The appellant began trading as A.R. Home Improvements and Contract Services on 1 January 2008 and, after purchasing Plot 3 (the land containing the stables and hardstanding) started paying Business Rates in 2009. The business address registered with the Council for rating purposes is *“Stables at Plot 3”*.
- 5.7 The home improvements/contract services business involves use of the stable building for the storage of building materials, tools and equipment. Commercial vehicles and equipment are stored outside the stables, on the associated hardstanding and paddock, including: a 3.5 tonne van; 1 tonne van; Diahatsu pick-up; tipper trailer; and, 1 tonne mini-digger.
- 5.8 The appellant operates a second business from the land involving the storage and sale of 4 x 4 vehicles and vans. A.R.Smith Fleet Disposal Services began trading in 2010; changed name to Van Lot Limited in August 2016; and became Van Lot UK Limited in January 2020. This business involves the appellant buying vehicles through auctions, Autotrader, e-bay, and business contacts. There are up to 20 vehicles stored on the appeal site, usually on the hardstanding in front of the mobile home or, in the paddock to the west (accessed through the

caravan site) and north. The appellant re-sells these vehicles by advertising in Autotrader, e-bay and Gumtree. He also sells vehicles to other travellers and, occasionally, through auctions.

5.9 Extensive documentary records will be provided to demonstrate that commercial vehicles have been purchased by the appellant and, registered at his home address. Numerous letters have been obtained from business acquaintances who have sold vehicles to, and/or purchased vehicles, from the appellant. Many, as regular visitors to the site, can attest to the fact that Mr Smith has been buying and selling commercial vehicles from the appeal site since 2010.

5.10 It will be argued that these business uses, involving the storage of commercial vehicles, plant, machinery and building materials, have been operating from the appeal site since 2009/2010. They have not been confined to parts of the appeal site which are physically and functionally separate from the caravan site but, have included use of the caravan site. This part of the mixed use has operated from the land for a period of at least 12 years prior to service of the enforcement notice and, therefore, is now immune from enforcement action and, lawful.

### **Appeal under Ground (a)**

5.11 The appeal site lies within the Green Belt, which the NPPF makes clear will be protected from inappropriate development. There is no dispute that gypsy sites constitute inappropriate development in the Green Belt and that inappropriate development is, by definition, harmful to the Green Belt. In deciding whether to approve such development, substantial weight must be attributed to the harm to the Green Belt.

5.12 Notwithstanding the above, the NPPF allows for the approval of inappropriate development in the Green Belt where very special circumstances can be demonstrated. It is accepted that it is for the appellant to demonstrate that very special circumstances exist to justify

approval. Very special circumstances will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

5.13 The Courts have clarified the meaning of “very special circumstances”. In Regina v. Secretary of State and Temple, Justice Sullivan made the following ruling:

***“In planning, as in ordinary life, a number of ordinary factors may when combined together result in something very special. Whether any particular combination amounts to very special circumstances for the purposes of PPG2 [now section 13 of the NPPF] is a matter for the planning judgement of the decision-taker.”***

5.14 The upshot of this decision is that material considerations which weigh in favour of allowing inappropriate development do not have to be very special, or even special, in themselves. In my experience, very special circumstances rarely comprise of a single factor and, although *Planning policy for traveller sites* states that it is “unlikely” that unmet need and personal circumstances will outweigh harm to the Green Belt and any other harm, this is not to say that unmet need and/or personal circumstances cannot ever outweigh harm to the Green Belt, or that there will not be other factors which tip the balance in favour of granting planning permission (***Doncaster MBC v. Secretary of State for Communities and Local Government and AB*** [2016] EWHC 2876 Admin.).

5.15 PPTS specifically mentions that the needs of the children must be treated as a primary consideration, and cannot be regarded as being intrinsically of less weight than any other consideration: including, for example, harm to the Green Belt by reason of inappropriateness.

### **Harm to the Green Belt**

5.16 It is accepted that the appeal proposals constitute inappropriate development in the Green Belt and, that substantial weight must be attributed to this harm to the Green Belt. However, bearing in mind that the definitional harm arising from inappropriate development relates to the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open, the additional weight to be attributed to

the actual loss of openness will vary according to: the scale of development; its visibility; and its permanence. In ***Turner v. SSCLG & East Dorset Council*** ([2016] EWCA Civ 466) the Court of Appeal confirmed that the openness of the Green Belt has a visual dimension. As such, where a

development in the Green Belt has limited or no visual impact it follows that the impact on openness is reduced from that of a more visible development. Further, the Court decided that it was not irrational for an Inspector to determine that the impact on openness of moveable development, such as caravans and mobile homes, is less than the impact of an equivalent permanent structure.

5.17 The appeal site is not undeveloped, greenfield land. It has accommodated stables and hardstandings for more than 10 years and, in part constitutes previously developed land. If it is accepted that the appeal site has a lawful use for business purposes, as set out under the ground (d) appeal, the only additional development resulting from use as a residential caravan site would comprise two caravans. This would result in some limited loss of openness in spatial terms but, visually, the degree of harm to openness would be tempered by the existing lawful use for business purposes and, degree of screening from public vantage points by existing boundary hedgerows. The majority of the appeal site would remain undeveloped and free of development.

5.18 The proposed development would not encroach beyond the area already used for lawful business purposes and, would not therefore encroach into the countryside. Furthermore, the site is located within a tract of land which makes no contribution to checking urban sprawl or, preventing towns from merging. Development of the appeal site would have no effect upon the setting of a historic town and, would not make urban regeneration any less likely. As a result, the proposed development would not prejudice any of the 5 purposes of including land within Green Belts.

5.19 Even in 2007, when the appeals were only being made in respect of the caravan site, the Inspector considered that the development would cause limited harm to the openness of the green belt because of the small size of the site, and the small-scale nature and relatively low height of the caravans and fence. The Inspector also found that the above-mentioned factors also limited the degree of encroachment into the surrounding

countryside. Since 2007, a landscaping scheme has been implemented in accordance with a condition on the planning permission, and the visibility of the caravan site has substantially reduced, thereby further reducing the impact on openness.

## **Any Other Harm**

- 5.20 The in-principle acceptability of gypsy sites in rural and semi-rural locations, set out in PPTS, has a number of inevitable consequences. Typically, 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, residential paraphernalia and lighting. As a result, it will be argued that 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.
- 5.21 It will be further argued that 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 (PPTS) 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.
- 5.22 In this case, it will be argued that the caravan site is substantially, if not wholly, screened from public vantage points by the existing boundary hedgerows. Notwithstanding this, it is not unusual to see caravans in the countryside used for purposes ancillary to appropriate rural land uses. There are already lawful business uses operating from the appeal site and, whether or not permission is granted for residential use, it would not be unexpected for such business uses to be accompanied by the stationing of a static caravan on the land for use as ancillary office/mess facilities. As such, retention of the residential use would be unlikely to cause unacceptable harm to the character and appearance of this rural area.

## **Highway Safety**

5.23 The safety of the existing site access has already been examined on appeal and for previous planning applications, and found to be safe. There is no evidence to suggest that Curslow Lane is anything other than a relatively lightly used country lane where traffic speeds are restricted by the width and alignment of the carriageway. Its use in association with development on the appeal site has not raised any concerns in the past 12-19 years

## **Other Material Considerations**

5.24 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.

## **Provision and Need for Sites**

5.25 The Local Plan has been adopted recently and in Policy SP.14 it sets out that there is a need for 13 pitches over the plan period of 2020/1 to 2035/6, 3 of which need to be provided by 2024/5. This is the need in

terms of gypsies which meet the definition set in the PPTS. In addition, 22 pitches are needed to address the needs of gypsies who do not meet the definition set out in the PPTS.

- 5.26 The Local Plan was adopted in advance of the Lisa Smith judgement (Lisa Smith v SSLUHC [2022] EWCA Civ 1391). This judgement regards the interpretation of the PPTS and the application of that policy to gypsies and travellers who have ceased to pursue nomadic lifestyles. The Council has not yet revisited its position on the need and supply of sites in the light of the Lisa Smith judgement.
- 5.27 However, it is reasonable to assume that the Council may need to reconsider its approach to fulfilling the need for sites for gypsies and travellers who do not meet the PPTS definition. To this extent, Policy SP.14 is already out of date and, unless allowing for the provision of a minimum of 35 permanent pitches, 2020-2036, has the potential to discriminate unlawfully against gypsies and travellers denied reliance on Policy SP.14 to meet their accommodation needs.
- 5.28 I will demonstrate, with reference to recent appeal decisions, that Inspectors have taken the view that the needs of all gypsies and travellers should be taken into account in assessing and meeting need. As such, it will be argued that there is a significant unmet need for gypsy and traveller pitches in the District and, a lack of a five-year supply of deliverable land to meet that need.

### **Alternative Sites**

- 5.29 In terms of supply, Policy SP.14 sets out a list of sites which are safeguarded to meet the needs of gypsies and travellers over the plan period. The majority of these are sites which are already in use and, there are only two sites of relevance to this appeal. These are at Wilden Lane and Land to the rear of Zortech Avenue, Kidderminster.
- 5.30 The Wilden Lane site is in private ownership and currently in use as a scrap yard and, there is no guarantee that it will become available. The Zortech Avenue site is Council owned and Policy SP.14 states that it has a capacity of 16 pitches. However, in order to be regarded as deliverable an identified site should be available now, offer a suitable location for development and be achievable with a realistic prospect that development will be delivered on the site within five years. The Zortech Avenue site is not currently available to purchase, planning permission

has not been sought for use of the site and, there is no evidence that limitations in terms of access to the site and contamination are in the course of, or capable of being dealt with. In particular, it has been estimated that the cost of removing contamination may exceed £800,000, making its development as a gypsy site unviable and highly unlikely.

5.31 The unmet need and absence of alternative available sites are material considerations which, individually, add significant weight in favour of this appeal. Bearing in mind the uncertainty surrounding delivery of the Wilden Lane and Zortech Avenue sites, the Council is unable to demonstrate that it can identify a 5-year supply of deliverable land and, this adds further weight in favour of this appeal.

### **Locally Specific Criteria**

5.32 The Council's approach to development to meet the needs of gypsies and travellers is to firstly direct development to sites allocated in the Local Plan and secondly to existing caravan sites. In other cases, it relies on its approach to residential development which is to locate new development within defined settlement boundaries or allocated areas. This approach is encapsulated in Policy SP.14 of the Local Plan which adds that development in open countryside that is away from existing settlements or outside areas identified in the Local Plan will be strictly limited in accordance with the policies in the Local Plan.

5.33 There is no dispute that the site is outside the settlement boundaries for Kidderminster and Stourport-on-Severn. These settlements are nevertheless a short distance by car from the site and provide a range of shops and services. Furthermore, footpaths adjacent to the site provide access to Shenstone where there are some facilities. Nevertheless, it is accepted that there would be a reliance by occupiers of the site on the private car to access shops, schools etc.

5.34 The Framework sets out that significant development should be focussed on locations which are or can be made sustainable in terms of transport choices. However, it also accepts that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. The PPTS reference to enabling gypsies and travellers to access education, health, welfare and employment infrastructure, does not refer to access

by sustainable modes of transport only. Furthermore, neither the PPTS or Policy SP.14 preclude the development of gypsy and traveller sites outside settlement boundaries which are defined in development plans. While the development does not accord with the Local Plan in respect of its location outside the settlement boundaries for Kidderminster and Stourport-on-Severn, the site, although in the countryside, is not “away from” settlements for the purposes of PPTS. Given the proximity of shops and services to the appeal site, the location is a suitable site for a gypsy and traveller site. On that basis the development accords with the policies in the Framework and the guidance provided by the PPTS and this matter weighs significantly in favour of allowing the appeal and granting planning permission for retention of the appellants’ caravan site.

### **Personal Circumstances**

5.35 The appellant, his partner and their 4 children have been living on the appeal site for almost 20 years: with planning permission for 5 years; and, tolerated for almost 10 years. They have long-established social and economic connections to the appeal site and, the locality. In particular, their youngest daughter attends school locally and, has special educational and health needs which are catered for locally.

5.36 It is consistent with caselaw in *Stevens v. SSCLG [2013] EWHC 792 (Admin)* that the best interests of children should be a primary consideration in this appeal, although not necessarily the determinative factor. Their best interests would be for the site to be retained as proposed. It would give the two youngest children the best opportunity for a stable and secure family life, for access to regular schooling and health care, and with opportunities for play and personal development.

### **Very Special Circumstances**

5.37 On balance, the unmet need for sites; the Smith family’s personal accommodation needs and personal circumstances; the absence of alternative sites; and the needs of the children, the lawful business uses

taking place on the appeal site and, the suitability of the location for a gypsy and traveller site, clearly outweigh harm to the Green Belt and any other harm. Very special circumstances therefore exist to justify the granting of planning permission.

### **Appeal under Ground (g)**

5.38 The appeal site has been the appellant's home since before 2007 and, the family have close social and economic ties to the locality. In the absence of any available alternative sites, a 6-month compliance period is too short a time in which to find alternative accommodation and, avoid the hardship of roadside living. A period of at least 12 months is reasonably required.

## **6.0 DOCUMENTS WHICH MAY BE REFERRED TO**

1. Wyre Forest District Local Plan

2. Gypsy and Traveller Accommodation Assessment
3. Local Development Scheme
4. NPPF and PPTS
5. Relevant case law
6. Relevant appeal decisions
7. Wyre Forest Council's list of occupied premises subject to Business Rate
8. Non-Domestic Rating Demands from 2012/13 to 2022/23
9. Letter from employee of Anthony Smith
10. Letters from business associates of Anthony Smith
11. Letters from neighbours
12. Certificates of Motor Trade Insurance
13. Letter from Appellant's Accountant
14. Letters and invoices from suppliers
15. Letters from customers