APPLICATION FOR THE CHANGE OF USE OF LAND TO A GYPSY AND TRAVELLER CARAVAN SITE CONSISTING OF 1 NO. MOBILE HOME AN ASSOCIATED DEVELOPMENT; DEMOLITION OF STABLE BUIDLING

LAND AT RUSHETT STABLES, LEATHERHEAD ROAD, CHESSINGTON, LONDON KT9 2NG

DESIGN AND ACCESS STATEMENT

APPLICANT: _____

1. My name is Dr Angus Murdoch, Director of Murdoch Planning Ltd and I have been instructed as Agent by the Applicant in this matter, [redacted] to produce a Design and Access Statement in support the planning application

QUALIFICATIONS AND EXPERIENCE

2. I am a Chartered Town Planner. My qualifications include a BA with Honours (Goldsmith's College, London University, 1989), an MSc (Bristol University, 1996), a PhD (Bristol, 2000) and an MA in Town and Country Planning (University of the West of England, 2006). I am a Member of the Royal Town Planning Institute. Before setting up in private practice in August 2009, I had been employed as a Planning Advisor to Gypsies and Travellers by the Community Law Partnership solicitors for

the previous 10 years where I was instructed in many planning cases for Gypsies and Travellers at local planning authority (LPA) level, on Appeal to the Secretary of State, to the High Court and Court of Appeal as well as to the House of Lords, including both *South Bucks DC v Porter [2003] UKHL 26; [2003] 2 AC 558* and *South Bucks DC v Porter (No.2)* [2004] 1 WLR 1953. I have also been involved in training individuals as well as organisations in relation to matters relating to Gypsy and Traveller planning, including LPAs and other public bodies. I am widely published in the field, including in the Journal of Planning and Environment Law (2002 and 2008) and am co-author of the Planning Chapter in the lead textbook on the subject, *Gypsy and Traveller Law* (Commission for Racial Equality/Legal Action Group, 2008). I have also been called to give evidence to the House of Commons Select Committee with respect to this area of planning law and policy. My most recent instruction in the High Court has been as Expert Witness for the Claimants in Moore and Coates v SSCLG and Bromley and Dartford Councils, the Equality and Human Rights Commission intervening (21st January 2015, Gilbart J) ['Moore and Coates']. In May 2017 I was instructed in the Court of Appeal mater of Mulvenna and Ors v SSCLG, judgment for which is currently awaited in the Supreme Court.

INTRODUCTION

3. This statement provides details of Design and Access issues for the above full planning application. In short it is argued that the proposed use of the site complies with the Development Plan so far as they are relevant and up-to-date as well as with national planning policy as very special circumstances exist.

PLANNING HISTORY

4. On 30th July 2015 planning permission was granted by the Local Planning Authority [LPA] for the erection of stables, tack room, entrance gates and hardstanding pursuant to reference 15/10076.

5. On 19th May 2017 planning permission was refused on Appeal for the change of use of the site to a mixed use of the keeping of horses and the stationing of a mobile home for residential purposes for occupation by one Gypsy family.

PLANNING POLICY

6. By section 70(2) of the Town and Country Planning Act 1990, when dealing with an application for planning permission regard is to be had to the provisions of the Development Plan, so far as material to the application, and to any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that *"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."* It is clear from the foregoing that planning permission should be granted if the proposal complies with the provisions of the Development Plan. Moreover, even in situations where a breach of Development Plan policy is found, planning permission can still be granted, provided that *"other material considerations"* outweigh that breach and indicate otherwise than determining the proposal in accordance with the Development Plan.

7. That position remains entirely unaffected by the introduction of the National Planning Policy Framework [NPPF] and Planning Policy for Traveller Sites [PPTS]: indeed, we are reminded no fewer than seven times in the NPPF and twice in the PPTS 2015 of the requirements of s38(6) and s70(2):

> *"Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise."* (paragraph 2 Framework; paragraph 2 of PPTS).

8. In this DAS I proceed on the basis that s38(6) and s70(2) apply. Paragraph 214 of the Framework indicates that for 12 months from the date of publication decision-takers may continue to give full weight to relevant Development Plan policies adopted since 2004, even if there is a limited degree of conflict with the Framework. Following that period the weight to be afforded to development plan policies is dependent upon their conformity with the Framework as read in conjunction with PPTS.

9. PPTS states that:

"Local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:

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) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites

e) that they should determine applications for sites from any travellers and not just those with local connections.

10. The Development Plan for the purposes of s38(6)/s70(2) consists of the Core Strategy 2012 within which there is a criteria-based Gypsy sites policy, DM16 which states that sites should:

a) Have access to local services including shops, schools, GPs and other health services;
b) Have good access to and from the public highway, bus routes and other transport modes;
c) Not be located in areas of flood risk and
d) Not be located on contaminated land.

f) The supporting text to DM15 states:

"Any applications for new sites should demonstrate that the above criteria can be met and that consideration has been given to good design (including adequate landscaping) in the layout of site."

11. In the 2017 DL the Inspector concluded on DM16 as follows:

> *"18. The site is in an open countryside location, but not significantly away from settlements in the terms of paragraph 25 of Planning Policy for Traveller Sites. That statement of policy allows for sites to be in rural areas provided the scale does not dominate the nearest settled community; that is not the case here. The main road has a footway on the west side and there are nearby bus stops on a half-hourly frequency route which runs into the evening and on Sundays linking Kingston and Leatherhead. A short walk to the north gains access to a more frequent route that terminates at Chessington World of Adventures, and serves Chessington South railway station and Kingston.*
>
> *19. Whilst also served by these bus routes, the walking or cycling distances to shops, doctors and schools are within the accepted distances of 2km and 5km respectively. There is a food store associated with a petrol filling station to the south.*
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> *20. The road is busy, but cyclists were evident, and being a wide road, this would not feel an unduly vulnerable means of transport. Walking would involve the use of a short length of verge to access the central refuge and the footway on the west side. The road is lit and the terrain would not present difficulties to those carrying shopping or pushing a buggy.*
>
> *21. It is accepted however that there may be a likelihood of private vehicles being used, as part of the working life of the occupiers, but the opportunities exist for alternative means of transport, so that the requirements of the remaining two criteria of Policy DM16 are met."*

12. The application site complies in full with DM16, a matter that attracts significant weight.

13. However, it is also clear the Core Strategy is out of date so far as this proposal is concerned given that there is no 5 year supply of Gypsy sites and the Site Allocations

DPD remains a long way from adoption. PPTS is clear that where there is an identified need, LPAs should have had a 5 year supply of sites annually updated every year since 2013. This means that no only has there been 5 separate years of policy failure but that with no form timetable for meeting that need.

14. Paragraph 14 of the Framework makes clear that

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

15. The absence of a site allocation DPD in the context where there is undisputed unmet need (of which more below) means that that there is a clear breach of national planning policy, a matter that attracts substantial weight: in the attached Appeal Decision Letter – which, like here involved a Travellers caravan site in the Green Belt where paragraph 27 PPTS applies – the Inspector found:

> *"It is well established that there is an acute national need for more public and private gypsy and traveller pitches. It is common ground in this appeal that East Dorset is no exception. There is no up to date assessment of need in the County. On the best information available from previous Gypsy and Traveller Accommodation Assessments, it was accepted at the Hearing that, for the purposes of this decision, East Dorset requires at least 19 additional pitches up to the year 2028. It was also accepted that not one pitch has come forward in answer to that established need, such that the current five year supply is zero…*

Against the substantial harm to the Green Belt and very limited harm to character must be set the acute unmet need for gypsy and traveller sites in East Dorset and the County as a whole, with no provision to meet an identified need in East Dorset alone for at least 19 pitches up to 2028, such that the current five year supply is zero. ***This failure of local policy to provide for traveller sites in accordance with the PPTS renders the development plan out of date in this respect and also carries substantial weight, but in favour of the appeal."***

16. Although the proposal is sited within the Green Belt, the Development Plan and national policy permit such changes of use provided that very special circumstances exist. In this case one of the material considerations that contribute to there being very special circumstances is the fact that the site is to be considered as previously developed land. The Framework defines previously developed land as:

> *"Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings."*

17. The application site is occupied by permanent structure that is not related to agriculture or forestry, namely the stables permitted pursuant to reference 15/10076 in 2015 and therefore the land is previously developed for the purposes of the NPPF and PPTS, the latter of which states at paragraph 26:

> *"When considering applications, local planning authorities should attach weight to the following matters: a) effective use of previously developed (brownfield), untidy or derelict land."*

18. The Inspector in the 2017 Appeal on this site did not consider whether the site was previously developed land and therefore did not give any weight to that fact. The previously developed status of the site is a factor that attracts significant weight.

19. In addition, the fact that the proposed residential part of the development would be contained entirely within the red line of the 2015 permission also means that there would be no encroachment into the countryside to consider. Thus, there is no conflict with one of the purposes for including land in the Green Belt, namely encroachment into the countryside. In the 2017 Appeal, the Inspector attached *"significant harm"* to encroachment (paragraph 17).

20. Furthermore, the Applicant intends to offset the impact of the mobile home by demolishing the stable building if planning permission is granted. This means that the proposed use is not inappropriate development given the changes to the NPPF issued in July 2018 where changes of use that do not have a greater impact on openness are no longer considered to be inappropriate development in the Green Belt. This is a significant change to when the proposal was considered in the 2017 DL/

21. In terms of the visual impact of the proposal, it is also clear that the only part of the mobile home that is visible is the very top of the roof of the mobile home (2017 DL paragraph 14). It forms no part of national or local planning policy that Gypsy caravan sites must be entirely hidden or invisible to be acceptable: PPTS accept that Gypsy sites can be found in the countryside and therefore *some* degree of visual impact is to be expected. The question then becomes: is the extent of harm caused by the proposal acceptable as it is *or* can it be made so by the imposition of suitably worded planning conditions, for example in relation to soft and hard landscaping? In my opinion, the latter applies in this instance and, given the applicant's surrounding land holdings and the fact that the mobile home is located on previously developed land, such conditions would ameliorate the visual impact of the site.

22. In any event in the case of Dowling the High Court found that

> *"Turning then to the wording of* [the policy] *it seems to me that it cannot be so interpreted as to preclude anything which involves any detraction from the undeveloped and rural character and appearance of the countryside. It seems to me -- in effect, in agreement with the inspector -- that so to read the policy (that is to say, to read it in such a narrow way) would really virtually render it unworkable: because it is difficult to conceive in practice and reality that there would be any kind of development with regard to gypsies which would*

not, at least in some way, detract either from the character or from the appearance, or both, of the countryside… Accordingly, there must, and certainly can properly be, a legitimate modification of the literal wording."

23. PPTS does not preclude the establishment of Gypsy caravan sites even if (which is not the case here) there is no established need for sites. In fact, bullet point 5 of paragraph 4 of PPTS suggests that *"the Government's aims in respect of Traveller sites are: to promote more* ***private*** *Traveller site provision while recognising that there will always be those Travellers who can not provide their own sites."* It is clear therefore that the Government's policy prefers private site provision. Allowing this application would thereby comply with Government policy in this regard.

24. It is accepted that Gypsy and Traveller caravan sites are inappropriate development for the purposes of paragraph 88 of the Framework and policy E of PPTS. In such circumstances it is necessary for the evidence to demonstrate that the harm by way of inappropriateness and any other harm is clearly outweighed by other considerations such as to amount to very special circumstances. In terms of the *"other harm"* there is a highly localised and limited impact on openness.

25. In those circumstances it is accepted that the combined weight to the harm identified above would be substantial further to paragraph 88 of the Framework. In the PPTS paragraph 16 states that *"subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt and any other harm so as to establish very special circumstances."* Firstly, by the use of the word *"unlikely"* it is clear that there will be cases where personal circumstances and unmet need in the absence of the best interests of the child are found to clearly outweigh harm to the Green Belt by way of inappropriateness and any other harm, such as to amount to very special circumstances.

26. In terms of the other side of the Green Belt balancing exercise, case law has established that *"in planning as in ordinary life a number of factors when combined together result in something that is very special. Whether any particular combination of factors amounts to very special circumstances… is a matter for the planning judgement of the decision-taker."* (*Basildon BC v FSS and Temple and Dennard*, in

which the author was instructed in both the High Court and Court of Appeal.) It will be submitted that, *inter alia*, the following material considerations combine to clearly outweigh the harm caused by inappropriateness, together with any other harm, thereby constituting very special circumstances which justify planning permission for this proposal.

27. In this case, however, the Applicant is not advancing only personal circumstances and unmet need as the other considerations that in combination clearly outweigh the harms and thereby amount to very special circumstances. Rather we rely upon:

- The previously developed status of the site;
- policy failure;
- the lack of suitable, acceptable affordable alternative sites;
- personal circumstances;
- Gypsy status;
- the lack of a 5 year supply of sites;
- the failure to have an adopted Site Development DPD for Traveller sites in conflict with both the PPTS and Framework;
- the best interests of the children;
- human rights;

  amongst other matters, all of which the applicant continues to advance in this application.

GYPSY AND TRAVELLER STATUS

29. The site is to be occupied by

in both the planning and the ethnic senses of that word and in particular Gypsies and Travellers within the meaning of Annex 1 to PPTS in that she is a person of a nomadic habit of life. Paragraph 3 PPTS states that *"the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates* ***the traditional and nomadic way of life of travellers*** *while respecting the interests of the settled community."* Given the evidence base in the needs assessments that local need arising from existing sites forms a large

part of the unmet need in the District, then significant weight should be given to this material consideration, so that this existing family, with strong local connections, can stay close to their kin and support systems.

30. In this context the fact that no 5 year supply of deliverable sites for Gypsies exists is a material consideration that should be afforded substantial weight.

ANALYSIS OF THE CASE-LAW ON VERY SPECIAL CIRCUMSTANCES

GENERAL NEED

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

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

38. Changes to the planning system, introduced by the Planning and Compulsory Purchase Act, 2004 also require LPAs to prepare Local Development Frameworks (LDFs) to replace their Local Plans. Housing needs assessments will inform the

strategies for meeting the accommodation needs of Gypsies and Travellers. The Local Housing Strategy (LHS) will show how the accommodation needs identified by the local housing assessment will be met. The Development Plan Documents (DPDs) will identify the location of sites.

39. Local housing assessments are the key source of information that will enable local authorities to assess the level of provision that is required, particularly when preparing their local development documents. Local authorities when preparing a local housing needs assessment must consult with key stakeholders and local communities, i.e. with Gypsies and Travellers themselves. One of the tests of soundness of a Development Plan Document (DPD) will be whether it is founded on robust and credible evidence. Data from these assessments will be an important part of the evidence base for Housing and Spatial Strategies. LPAs should allocate sufficient sites in DPDs to ensure that the pitch requirements identified in Gypsy and Traveller Accommodation Assessments can be met.

40. Nationally 1 in 4 caravans are on unauthorised sites, amounting to some 3000 caravans in total. There is a substantial level of unmet need for further sites in the district and the LPA failed to meet the target in Circular 1/2006 that this need for sites was met within 5 years of the Circular's publication, ie by 2011. This historic policy failure also militates in favour of allowing the application.

41. The bi-annual count of Gypsy caravans for July 2017 reveals only a 'snapshot' of unauthorised caravans parked up in the area. The bi-annual counts are widely viewed as under-representing the true extent of need as they are merely a reflection of those caravans known about and counted on that day but even these show that there were 16 caravans on unauthorised sites in the District as well as 2 with only a temporary permission. This is in the context where there are only13 authorised pitches on public sites and zero pitches on private sites. It was a dis-satisfaction with those very counts that led the Government to introduce a statutory duty on LPAs to properly assess need in the same way as they do for conventional housing, via a Housing Needs Survey. Circular 1/94 had required this since 1994 but the Council failed to undertake such an exercise. PPG 3 had required this in relation to Gypsies and Travellers since 2000 but again the LPA failed to undertake the work. The PPTS and s225/6 of the Housing Act

2004 have made such assessments a statutory duty so only now are we finally able to begin to gauge the extent of need.

42. In the 2017 Appeal the issue of need is discussed:

> *"27. The level of unmet need for gypsy pitches in the Borough. The latest assessment is the 2008 London Gypsy and Traveller Accommodation Needs Assessment, which identified a need for 11 additional pitches in the borough, whilst the evidence is that no pitches have been granted permanent permission since that time. Furthermore, it appears that a socially-rented site for 18 caravans is occupied by 7 more than that intended number. The appellant gave evidence of having lived on the car park of that site for a while until moved on. A temporary permission at Green Lane has recently expired and there is a long-term tolerated site at Clayton Road. Whilst the Council accepted that they were, pending the new assessment, unsure of the need, there is certainly an unmet need against the most recent assessment and indications of unacceptable doubling-up on existing sites. This attracts considerable weight…*
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> *28. Whether the Council will be able to meet the need for gypsy pitches in the Borough. The answer to this depends on the level of that need, and the Council has not publicly embarked on the process towards a new Assessment. There was discussion over whether the 2015 change to the definition in the Glossary to Planning Policy for Traveller Sites would reduce need, but on the evidence it would be premature to assume this. The indications are that at least in the short term, the Council will be unable to meet the need. It was agreed that much of the land within the borough outside the built-up area is either Green Belt or Metropolitan Open Land which has similar constraints, although the call for sites may bring forward sites, which although in such designated land, would be more suitable than the appeal site. Significant weight attaches to this consideration…*
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> *29. Policy progress and timetable. The Officers anticipate taking a report to the Committee in May 2017 further to Regulation 18 to start the issues and*

options process and the call for sites. At present adoption is not anticipated until 2019. Having mind to the lack of progress in providing the identified site requirement from 2008, and the likely timetable for adoption and allowing a time for sites to become available and useable, this should be seen as a failure of local policy to facilitate the gypsy way of life, an aim stated as part of the balance in paragraph 3 of Planning Policy for Traveller Sites, along with respecting the interest of the settled community. This failure is afforded significant weight.

30. The lack of available, suitable, acceptable and affordable alternative sites. Having regard to the case of Doncaster MBC v FSS & Angela Smith [2007] referred to by the appellant on what would constitute such a site, it is agreed between the Council and the appellant that no such sites can be identified."

PERSONAL CIRCUMSTANCES

43. So far as the issue of personal circumstances is concerned, Lord Scarman stated in the Westminster City Council v Great Portland Estates: the *"Personal circumstances of an occupier, personal hardship, the difficulties of businesses that 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 planning control the human factor from the control of our environment…which is always present of course indirectly as the background to the consideration of the character of land use. It can and it sometimes should be given determinative effect as an exceptional or special circumstance."*

44. It is clear that the personal circumstances of Gypsies and Travellers are capable of being material considerations of determinative weight. In *Basildon v Secretary of State for the Environment, Transport and the Regions* [2001] JPL 1184 paragraph 34 the Court found that:

"There was no requirement in law on the Secretary of State to find that the personal circumstances of these gypsy families were exceptional amongst the population at large or among gypsies in particular for him to be able lawfully to

take those circumstances into account. The exceptional nature or otherwise of those circumstances went only to the weight he attached to them, in particular as constituting very special circumstances. The Secretary of State had to decide how much weight he would give to what I have identified as a material consideration"

45. In *McCarthy and Ors v Basildon DC and Equality & Human Rights Commission* [2008] EWHC 987 (Admin) where at paragraph 14, in relation to a Green Belt site governed by PPG2, it states:

*"There is no question …that what they have done amounts to inappropriate development in the Green Belt so that planning permission can only be granted if they can show that there are very special circumstances**.** It is accepted and the Planning and enforcement decisions confirm that the individual circumstances of the claimants are capable of amounting to very special circumstances provided that those circumstances clearly outweigh the damage done to the Green Belt by the development and any other harm"*

46. In *Basildon DC v SETR and Ors* [2001] JPL 1184 (paragraph 11) the High Court set out (and later upheld) the reasoning by the Secretary of State that:

"[The Secretary of State] considers that the Inspector gave insufficient weight to [the Gypsy's] personal circumstances. He is of opinion that their personal circumstances, and in particular the children's educational needs, carry significant weight. Consequently, when undertaking the Green Belt balancing exercise himself, he finds that the harm to the Green Belt – albeit substantial – is clearly outweighed by the Gypsy families' personal circumstances and the need for more Gypsy sites in the area. He is satisfied therefore that very special circumstances do exist which justify allowing all three appeal proposals in the Green Belt"

47. In *Doncaster MBC v SOS* [2002] JPL 1509 paragraph 70 the Court had said:

"Given that inappropriate development is by definition harmful, the proper approach was whether the harm by reason of inappropriateness and the ***further***

harm, albeit limited, caused to the openness and purpose of the Green Belt was ***clearly*** *outweighed by the benefit to the appellant's family and particularly to the children so as to amount to* ***very*** *special circumstances justifying an exception to Green Belt policy"* (original emphases).

48. On Appeal from *South Bucks DC v Porter (No.2)* [2004] 1 WLR 1953 - where the Court of Appeal had considered the circumstances advanced by the Gypsy family to be insufficiently *"very special"* - Lord Brown in the House of Lords said:

(a) "*What was required of [the Inspector] was above all a value judgment whether the hardship which would result for dispossessing from her land was sufficiently extreme and unusual to justify the environmental harm occasioned by her remaining there as long as she needed"*: at p1965 paragraph 38;

(b) *"Should she be dispossessed from the site onto the roadside or should she be granted a limited personal planning permission? The Inspector thought the latter, taking the view that "very special circumstances" "clearly outweighed" the environmental harm involved. Not everyone would have reached the same decision but there is no mystery as to what moved the inspector"*: at 1965 paragraph 41.

49. As Lord Brown later pointed out in *Porter (No.2)* paragraph 39:

"Lord Clyde in the South Bucks case [South Bucks DC v Porter [2003] UKHL 26; [2003] 2 AC 558], at p 593, para 75, described circumstances as "quite special": in part because they owned the land in question and in part because, although the land lies within the Green Belt, "it is not suggested that there is any urgent environmental problem".

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

"I say at once that in my view the judge was wrong, with respect, to treat the words "very special" in the paragraph 3.2 of the guidance [PPG2] as simply the converse of "commonplace". Rarity may of course contribute to the "special" quality of a particular factor, but it is not essential, as a matter of ordinary language or policy. The word "special" in the guidance connotes not a quantitative test, but a qualitative judgment as to the weight to be given to the particular factor for planning purposes. Thus, for example, respect for the home is in one sense a "commonplace", in that it is an aspiration shared by most of humanity. But it is at the same time sufficiently "special" for it to be given protection as a fundamental right under the European Convention. Furthermore, Strasbourg case-law places particular emphasis on the special position of gypsies as a minority group, notwithstanding the wide margin of discretion left to member states in relation to planning policy (see Chapman v UK 33 EHRR 399; and the comments of Lord Brown in Kay v Lambeth LBC [2006] 2 AC 465 para 200). Thus, in Chapman the Strasbourg court recognised that the gypsy status did not confer "immunity from general laws intended to safeguard the assets of the community as a whole, such as the environment", but added:

> *"…the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases… To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the Gypsy way of life…" (para 96, emphasis added)*

The special position of gypsies in this respect is reflected in the 2006 guidance. Against this background, it would be impossible in my view to hold that the loss of a gypsy family's home, with no immediate prospect of replacement, is incapable in law of being regarded as a "very special" factor for the purpose of the guidance."

THE BEST INTERESTS OF THE CHILDREN

51. From paragraph 35 onwards the Inspector considers the Applicant's personal circumstances "*on the evidence presented.*" Since then

    This factor attracts significant weight.

52. Since the 2017 Appeal has also applied for a pitch on all the public sites run by Surrey County Council but none have been offered. also tried to apply for a pitch on the only authorised site in the Borough but was refused as she has not been living in the Borough for 5 years. In addition has registered with land agents looking for suitable land for sale but none has been identified. On the basis of this evidence, it is clear that there are no suitable, alternative sites available. This factor attracts significant weight.

53. At the 2017 Hearing no written evidence from the schools was presented. Attached to this DAS is a letter from the Headteacher of lated 28th February 2018 which, *inter alia*, states:

    love school and

    are making good academic progress.

55. a factor that very recent case law confirms is a key statutory requirement for all decision makers to take into consideration: in the case of *Sedgemoor District Council v Marie Hughes and Ors (unreported [2012] EWHC 1997 (QB))* handed down in July 2012 - HHJ Thornton refused to grant an Injunction pursuant to s187B Town and Country Planning Act 1990 to restrain a breach of planning control by Gypsies and Travellers who remained living on their own land in caravans in breach of an Enforcement Notice upheld on Appeal in 2009. The Defendants argued that they had amended the planning application since then by the production of substantial new highway safety evidence which meant that on Appeal to the Secretary of State's Inspector, the site had a realistic prospect of success (see *South Buckinghamshire District Council v Porter [UKHL] 2004*).

56. PPTS 2015 is clear that the best interests of the child are capable of outweighing the definitional and other harms.

57. In the Sedgemoor case, the judge then went further still and stated:

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

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

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

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

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

32. Traditionally in planning enforcement proceedings, welfare evidence of the kind I have indicated has not been used. However, courts and tribunals, including planning appeal inspectors, are now, particularly since the judgment of Baroness Hale in the

relatively recent decision of the Supreme Court (admittedly in the field of immigration), having to take account of the welfare and best interests of children. It seems to me that a proper consideration of the claimants' applications must involve a consideration of the best interests of these children and ordinarily that needs to involve, at the very least, social inquiry reports or welfare reports from those other than the defendants themselves which give consideration to these matters. It is not sufficient for the claimants simply to place the onus on the defendants, particularly in situations where it is now very difficult to obtain public funding to obtain appropriate welfare reports in this type of situation."

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

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

SUSTAINABILTY

59. From paragraph 17 – 21 of the 2017 Appeal Decision, the Inspector concluded that the site is in a sustainable location. Whilst it is a material consideration in favour of

allowing the Application that the site is within a reasonable distance of the services and facilities, it is clear that the government also wishes to see a wider interpretation of sustainability where Gypsy sites in particular are concerned, as I will show in a stage by stage way below, starting with paragraph 7 of the Framework which states that:

> *"International and national bodies have set out broad principles of sustainable development. Resolution 42/187 of the United Nations General Assembly defined sustainable development as meeting the needs of the present without compromising the ability of future generations to meet their own needs. The UK Sustainable Development Strategy Securing the Future set out five 'guiding principles' of sustainable development: living within the planet's environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly.*
>
> *6. The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system.*
>
> *7. There are three dimensions to sustainable development: economic, social and environmental."*

60. By considering sustainability in this broad way, the Framework and the PPTS continue the way in which 1/2006 applied the concept to Gypsy and Traveller caravan site matters: paragraph 64 of1/2006 stated as follows:

> *"Issues of sustainability are important and* ***should not only be considered in terms of transport mode and distance from services.*** *Such considerations include:*
>
> *a) The promotion of peaceful and integrated co-existence between the site and the local community;*
> *b) The wider benefits of easier access to GP and other health services;*
> *c) Children attending school on a regular basis;*

d) *The provision of a settled base that reduces the need for long-distance travelling and the possible environmental damage caused by unauthorised encampments;*
e) *Not locating sites in areas at high risk of flooding, including functional flood plains, given the particular vulnerability of caravans."*

61. Paragraph 13 of PPTS, applies a similar but even wider number of considerations than paragraph 64 of 1/2006, says this:

> *"Local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. Local planning authorities should, therefore, ensure that their policies:*
>
> . *promote peaceful and integrated co-existence between the site and the local community*
> . *promote, in collaboration with commissioners of health services, access to appropriate health services*
> . *ensure that children can attend school on a regular basis*
> . *provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment*
> . *provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development*
> . *avoid placing undue pressure on local infrastructure and services*
> . *do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans*
> . *reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability."*

62. It is therefore clear that applying the Framework concept of sustainability to Gypsy and Traveller caravan site proposals under the PPTS continues the approach in 1/2006 that was not concerned *solely* with distance from services and facilities (as may have

been the case in the now revoked PPG13) but with wider considerations entirely. This reflects the *"governments overarching aim"* at paragraph 3 of PPTS to:

"ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community."

63. It is manifest that the government accepts that Gypsies and Travellers in the past as well as in the present do not experience *"fair and equal treatment"*. This is clear both in the fact that the government accepts that there is a need for special policy provision within the planning system, as well as in the recent publication *Progress Report by the Ministerial Working Group on tackling inequalities experienced by Gypsies and Travellers* which, like the Framework and the PPTS, was issued in April 2012:

> "*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."*

DESIGN PRINCIPLES AND CONCEPTS

Layout

Layout of the proposed change of use is open to negotiation with the Local Authority and has been designed to minimise visual impact by the siting of the mobile home to the rear of the site with restricted public views. There is already an adequate level of screening afforded to the site and further landscaping measures can be illustrated to

the Local Planning Authority's satisfaction and imposed by way of standard condition.

Scale

This modest application is to meet the accommodation needs of one Gypsy family in a mobile single home.

Landscaping

The Applicant is agreeable to any reasonable landscaping conditions being imposed on any permission.

Appearance

The Applicant intends that structures which comply with the definition of caravan in terms of the Caravan Sites Control and Development Act 1960, the Caravan Sites Act 1968 and the "Social Land Laws (permissible additional purposes) England (Order 2006) Definition of Caravan (amendment) England (Order 2006) will be installed on the site.

Access

There is easy access onto the transport networks and the access to the sites itself with some existing entrance of long standing onto the highway network with adequate visibility.

Car parking

There is space for car parking provision for up to 2 vehicles on the site.

Dr Angus Murdoch, MA, MSc, Phd, MRTPI
Murdoch Planning Ltd
20th May 2019