

**APPEAL BY DARREN SMITH  
AGAINST THE REFUSAL OF PLANNING PERMISSION AND  
SERVICE OF ENFORCEMENT NOTICE BY  
SOUTH OXFORDSHIRE DISTRICT COUNCIL**

CHANGE OF USE OF LAND TO USE AS A RESIDENTIAL CARAVAN SITE FOR 3  
GYPSY/TRAVELLER FAMILIES, EACH WITH TWO CARAVANS, TOGETHER WITH  
THE LAYING OF HARDSTANDING

**EMMANUEL RANCH, WINDMILL ROAD, TOWERSEY, OXFORDSHIRE, OX9 3QQ**

PINS REF: APP/Q3115/W/24/3346849 & APP/Q3115/C/24/3346856

LPA REF: P24/S0941/FUL

OUR REF: 24/DS/TOWERSEY

**STATEMENT OF CASE PREPARED ON BEHALF OF THE APPELLANT BY  
PHILIP BROWN BA (Hons) Urban and Regional Planning**

## **1.0 INTRODUCTION**

- 1.1 This Statement of Case 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, who specialise in assisting Gypsies and Travellers to obtain planning permission for caravan sites and related development. We are the country's leading planning consultancy dealing with gypsy and traveller site development and, frequently appear at planning hearings and inquiries to give expert evidence on planning matters. We 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 summarise the planning history of the appeal site; thirdly, I give a resume of relevant planning policies; and fourthly, I set out the case on behalf of the appellant.

## **2.0 SITE DESCRIPTION**

- 2.1 The appeal site comprises of about 0.5 hectare of land of which the proposed caravan site comprises about 0.2 hectare. It is located along the eastern side of Windmill Road, about 180 metres north of Towersey.
- 2.2 The appeal site contains an “L”- shaped range of stables and a barn, about 50 metres back from Windmill Road, enclosing the western and southern sides of a stable yard. There is a horse exercise arena, measuring about 38 x 20 metres occupying the south-eastern corner of the land, comprising of a sand surface over a hardcore base.
- 2.3 Access to the site is from Windmill Road, via a hard-surfaced driveway running east-west along the centre of the site to the stable yard. Land to the north of the access road, stable yard and manege is laid to grass, as is the area to the south of the access road, between Windmill Road and the stable buildings.
- 2.4 The appeal site is enclosed by hedgerows along its western (roadside), southern and, parts of the, northern boundaries. New fencing has been erected behind the hedgerows along the western and southern boundaries and, along parts of the northern and eastern boundaries. The original entrance gates were at least 2 metres high and, have been replaced with gates of similar height.
- 2.5 The site is surrounded by open fields on 3 sides and, there are open fields along the opposite side of Windmill Road. The village sewage treatment works are located about 70 metres north of the appeal site and, there is a large solar farm about 120 metres to the north-east.

### 3.0 PLANNING HISTORY

- 3.1 Planning permission was granted on 01 August 2019, under application No. P19/S0606/FUL, for conversion of part of existing stables and barn to residential use, providing a one-bedroom dwelling. A Phase 1 Ground Investigation Report was submitted with this application and, is attached at **Appendix PBA 1**.
- 3.2 Planning permission was granted on 21 July 2022, under application No. P22/S2300/DIS, for the discharge of conditions 5, 6 and 7 attached to planning permission No. P19/S0606/FUL relating to ground contamination. A Phase 2 Ground Investigation Report and, Phase 3 Remediation Strategy were approved and, are attached at **Appendices PBA 2 and PBA 3**. Although the remediation strategy was implemented, the Council considered that this did not constitute a legal start and, that planning permission No. P19/S0606/FUL had expired.
- 3.3 Planning permission was granted on 21 November 2022, under application No. P22/S3712/FUL, for conversion of part of existing stables and barn into residential use, providing a 1-bedroom dwelling. A copy of the planning permission is attached at **Appendix PBA 4** and, a copy of the approved Block Plan is attached at **Appendix PBA 5**. Conditions attached to this permission include the following:

*5. The development shall be carried out in accordance the STM Environmental Contaminated land Risk Assessment Phase 2 Environmental Site Investigation report PH2-2022-000026 dated 16 June 2022, satisfactorily addresses the requirements for submission of a Phase 2 comprehensive intrusive investigation. The submitted STM Environmental Contaminated Land Remediation Strategy and Verification Plan Windmill Meadow, Windmill Road, Towersey, OX9 3QQ Report Reference REM-2022-000017 dated 14 July 2022, approved under application P22/S2300/DIS dated 21 July 2022.*

*8. Prior to the first occupation of the development hereby approved a turning area and car parking spaces shall be provided within the curtilage of the site so that motor vehicles may enter, turn round and leave in a forward direction and vehicles may park off the highway. The turning area*

*and parking spaces shall be constructed, laid out, surfaced, drained and completed to be compliant with sustainable drainage (SuDS) principles in strict accordance with specification details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The turning area and car parking spaces shall be retained unobstructed except for the parking and manoeuvring of motor vehicles at all times.*

3.4 Planning application No. P24/S0941/FUL was submitted on 19 March 2024 for the change of use of part of the yard area, and a small paddock to the rear, for use as a residential caravan site for 3 gypsy households. Each household would have two caravans including no more than one static caravan/mobile home. The proposals also include the laying of hard-standing within the rear paddock. Planning permission was refused on 9 May 2024 for the following reasons:

1. The application site is situated in an unsustainable location in the open countryside, physically separate and remote from the nearest settlement and without safe and sustainable access to local services and facilities. The proposed development would be highly reliant on the use of private motor vehicle to access local services and facilities and does not benefit from any exceptions under either the National Planning Policy Framework or Development Plan that would justify its provision in such an isolated and unsustainable location in the countryside. The develop is therefore contrary to policies STRAT1, DES8 and TRANS5 of the South Oxfordshire Local Plan 2035; policy TOW1 of the Towersey Neighbourhood Plan; and government guidance contained in the National Planning Policy Framework and the Planning Policy for Traveller Sites in so far as these aimed at achieving sustainable development.
2. The lack of a 5-year supply of gypsy/traveller sites under the South Oxfordshire Local Plan 2035 and the personal circumstances of the applicant and his family are outweighed by other considerations, including the adverse impacts of the development in terms of the character of the landscape; the intrinsic value of the countryside; the character and visual amenity of the surrounding area; the unsustainable location of the site; the net loss of biodiversity; the failure to adequately address contamination risks; the lack of

information regarding sustainable surface and foul water drainage; and the deliberate unauthorised nature of the development already undertaken. Furthermore, the proposed development would not positively enhance the environment and increase its openness. Rather, it has been designed in a manner that encloses the site in a way that gives the impression that the site and its occupants are deliberately isolated from the rest of the community. The proposed development is therefore contrary to policy H14 of the South Oxfordshire Local Plan 2035; and government guidance contained in the Planning Policy for Traveller Sites aimed at achieving the suitable and sustainable location of gypsy/traveller sites; and the suitable design and assimilation of gypsy and traveller sites into their surroundings.

3. The proposed material change of use of the land and related operations have an urban character and appearance that sits uncomfortably in the existing rural landscape and countryside setting. The development is harmful to the landscape and the intrinsic character, beauty and tranquillity of the countryside, contrary to policies ENV1 and H14 of the South Oxfordshire Local Plan 2035; and government guidance contained in the National Planning Policy Framework and the Planning Policy for Traveller Sites in so far as these aim to protect the landscape qualities and intrinsic value of the countryside from adverse development.
4. The proposed development is of a character and appearance that sits uncomfortably in an otherwise open and tranquil rural setting. The multiple proposed caravans, by their very nature, do not respect the local distinctiveness of the area, being of a standardised, modern, utilitarian and non-vernacular design. The development does not physically or visually enhance or complement its surroundings and does not make adequate provision for any outdoor amenity space, including provision for landscaping or a play area for children. The development is therefore contrary to policies DES1, DES2, DES5 and H14 of the South Oxfordshire Local Plan 2035; policy TOW 16 of the Towersey Neighbourhood Plan; and government guidance contained in the National Planning Policy Framework and Planning Policy for Traveller Sites, aimed at achieving good design and respect for local distinctiveness.

5. Insufficient information has been submitted with the application to allow for a proper assessment of the impacts of outdoor lighting relating to the proposed development on the amenity of the area, the natural environment and dark sky character of the setting. This is contrary to policies DES6 and ENV12 of the South Oxfordshire Local Plan 2035.
6. The potential harm to the health of the occupants of the proposed development from existing contaminants on the site has not been adequately addressed in the current application. This is contrary to policy ENV11 of the South Oxfordshire Local Plan 2035.
7. The unauthorised development already undertaken by the applicant and the additional development proposed to be undertaken has and will result in a net loss of biodiversity and likely harm to protected species. Insufficient information has been submitted with the current application to determine what mitigation or compensation would be required to achieve compliance with policies ENV2 and ENV3 of the South Oxfordshire Local Plan 2035; policy TOW7 of the Towersey Neighbourhood Plan; and government guidance contained in the National Planning Policy Framework aimed at protecting biodiversity.
8. Insufficient information has been submitted to demonstrate that the proposed development can be feasibly and sustainably drained in a manner that addresses flood risk and water quality concerns, having particular regard to the impermeable nature of the underlying geology, the natural fall of the land away from the highway and the absence of any water course or public sewer in proximity to the site. The development is therefore contrary to policy EP4 and H14 of the South Oxfordshire Local Plan 2035 and government guidance contained in the National Planning Policy Framework aimed at addressing flood risk and water quality

3.5 The Council has subsequently issued two enforcement notices: the first aimed at the change of use of land to a mixed use for the keeping of horses and stationing of caravans for residential purposes and facilitating development; and the second aimed at operational development, including that carried out after service of the first notice. Appeals have been submitted against the refusal of planning permission and, both enforcement notices.

## **4.0 PLANNING POLICY**

### **Local Planning Policies**

- 4.1 The South Oxfordshire Local Plan was adopted in December 2020. Policy H14 of the adopted Local Plan sets out the Council's strategy for meeting the accommodation needs of gypsies and travellers. This strategy is based, in part, on the safeguarding of existing gypsy sites and the allocation of land for 10 pitches within strategic housing sites.
- 4.2 Policy H14 provides that additional proposals for pitches for Gypsies, Travellers and Travelling Showpeople not set out in Part 1 of this policy will be permitted where it has been demonstrated that the following criteria have been met:
- i) the capacity of the site can be justified to meet needs for further Gypsy, Traveller and Travelling Showpeople sites, or extensions to existing sites;
  - ii) the site is not located within the Oxford Green Belt unless very special circumstances are demonstrated;
  - iii) the proposal will not have an unacceptable impact on the character and appearance of the landscape and the amenity of neighbouring properties, and is sensitively designed to mitigate visual impacts on its surroundings;
  - iv) there are no adverse impacts on the significance of heritage assets;
  - v) the site has safe and satisfactory vehicular and pedestrian access to the surrounding principal highway network. The site will be large enough to enable vehicle movements, parking and servicing to take place, having regard to the number of pitches/plots on site;
  - vi) the site can be provided with safe electricity, drinking water, sewage treatment and waste disposal facilities; and
  - vii) no significant barriers to development exist in terms of flooding, poor drainage, poor ground stability or proximity to other



hazardous land or installation where other forms of housing would not be suitable.

#### 4.3 Policy ENV 1 – Landscape and Countryside states, inter alia, that:

2. South Oxfordshire's landscape, countryside and rural areas will be protected against harmful development. Development will only be permitted where it protects and, where possible enhances, features that contribute to the nature and quality of South Oxfordshire's landscapes, in particular:

- i) trees (including individual trees, groups of trees and woodlands), hedgerows and field boundaries;
- ii) irreplaceable habitats such as ancient woodland and aged or veteran trees found outside ancient woodland;
- iii) the landscapes, waterscapes, cultural heritage and user enjoyment of the River Thames, its tributaries and flood plains;
- iv) other watercourse and water bodies;
- v) the landscape setting of settlements or the special character and landscape setting of Oxford;
- vi) topographical features;
- vii) areas or features of cultural and historic value;
- viii) important views and visually sensitive skylines; and
- ix) aesthetic and perceptual factors such as tranquility, wildness, intactness, rarity and enclosure.

#### **Government Advice**

#### 4.4 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).

- 4.5 Paragraph 61 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 63 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.
- 4.6 *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.
- 4.7 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.
- 4.8 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*).
- 4.9 Policy C suggests that gypsy sites may be located in rural or semi-rural areas, provided that they are of a scale appropriate to their specific location. This is reiterated in paragraph 25 of Policy H. Paragraph 24 of

Policy H sets out issues which should be considered in the determination of planning applications for gypsy sites. Policy H states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.

4.10 Paragraph 28 of PPTS states that: *“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, the provisions in paragraph 11(d) of the National Planning Policy Framework apply”*.

## 5.0 CASE ON BEHALF OF THE APPELLANT

### Preliminary Matters

- 5.1 The National Planning Policy Framework (NPPF) puts the presumption in favour of sustainable development at the heart of both plan-making and decision-taking. For decision-taking this means approving development proposals that accord with the development plan without delay; or, if the policies which are most important for determining the application are out-of-date, granting planning permission unless, *inter alia*, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
- 5.2 In the latter regard, the Council's reasons for refusal, and for serving both enforcement notices, concede that the Council cannot demonstrate a five-year supply of deliverable land for traveller sites and, therefore, the planning policies most important for determining these appeals are out of date. Furthermore, the appeal site is not located within the Green Belt, or within a SPA, SSSI, Conservation Area, local greenspace, AONB or National Park, or within an area shown on the Environment Agency's flood maps as being at high risk from flooding. As such, the "tilted balance" is engaged whereby planning permission should be granted unless, *inter alia*, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits

### Principle of Development

- 5.3 Paragraph 4 of the NPPF requires that the Framework should be read in conjunction with the Government's planning policy for traveller sites. Policy C of PPTS makes clear that some sites will be in rural areas and the countryside. This advice is qualified by Policy H (paragraph 26) which states that sites should be very strictly limited in the open countryside **away from** existing settlements. The term "*away from*" infers a significant degree of detachment, such that the site may be considered to be isolated.

- 5.4 PPTS does not define what is meant by “*settlement*” and, there is no suggestion that the expression should be limited to designated settlements or, that they should contain services. Paragraph 26 continues with “*Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure*”. PPTS recognises, therefore, that traveller sites that are not within, or contiguous with, the nearest, undefined, settled community are not unacceptable in principle.
- 5.5 The term “*away from*” is, similarly, undefined but, infers a significant degree of detachment, such that the site may be considered to be isolated. I attach two appeal decisions at **Appendices PBA 6** and **PBA 7**, which demonstrate how other Inspectors have approached the issue of whether, or not, sites can be considered to be away from settlements for the purposes of PPTS. In the appeal decision attached at **Appendix PBA 6** the Inspector made clear that a site located 800 metres from the closest settlement, was not away from existing settlements for the purposes of Policy H of PPTS, notwithstanding that the settlement of Bings Heath was no more than a hamlet of 11 houses and, did not contain any community services or facilities. It was 2 miles (3.2 kilometres) from the closest service centre of Shawbury and, 4 miles (6.4 kilometres) from Shrewsbury. The Inspector observed that: “*such a degree of reliance [on private transport] is not that uncommon in a mainly rural area ....and the distances involved are not excessive by rural standards*”. The Inspector considered that Shrewsbury was only “*a short car journey away*” and, in terms of location, he took the view that: “*the site is not totally isolated from nearby settlements for the kind and scale of the development*”.
- 5.6 In the appeal decision attached at **Appendix PBA 7**, the Inspector accepted that, because of the dispersed pattern of settlement, a site 1.6 kilometres from the village core (Smallwood contains a primary school and church but, no shop) was not “*away from*” settlements for the purposes of PPTS, despite its reliance on the use of private motor vehicles to access the wider range of services available in Sandbach more than 4 kms away. The term “*away from*” can, therefore, involve distances greater than 0.8 – 1.6 kilometres, depending on the particular circumstances.

- 5.7 In this case, the appeal site is only 215 metres from a ribbon of residential development extending along Windmill Road to its junction with Thame Road, and 840 metres by road to the developed edge of Towersey. Towersey contains a church, public house/restaurant, recreation ground and village hall. The appeal site is about 1.5 kms by road from the developed edge of Thame and, within about 3.5 kms of the town centre where there are supermarkets and post office. The closest medical centre is about 2.8 kms from the site. There is a choice of 3 primary schools in Thame all well within the range of distances found to be sustainable in the appeal decisions referred to above.
- 5.8 The appeal site is within a convenient walking distance of Towersey and, of the bus stops along Thame Road (about 500 meters) which give access by public transport to the wide range of community services and facilities available in Thame. Although there are no footpaths for the first 250 metres along Windmill (from the appeal site), Windmill Road is perfectly straight, with good forward visibility, and has grass verges either side providing a safe pedestrian refuge. Notwithstanding this, the site is also within a reasonable cycling distance of Thame town centre along relatively flat terrain.
- 5.9 Although in this case there are viable alternatives to the use of private motor vehicles, paragraph 110 of the NPPF recognises that different policies and measures will be required in different communities and, opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Paragraph 110 generally seeks to direct developments that generate significant movement to locations where the need to travel will be minimised and the use of sustainable transport modes can be maximised. PPTS recognises that gypsy sites can be appropriately located in rural or semi-rural areas and a development of 3 caravan pitches would not generate significant movement, i.e. requiring submission of a Transport Statement or Transport Assessment (para. 118 of the NPPF). As such, the proposed development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe (para. 116). In this case, the site residents would be in a similar position to the many other families living in this rural area and, even if primarily reliant on the private car, car trips would be relatively short in both length and duration.

- 5.10 The NPPF and PPTS require a consideration of the effects of development on a broader basis than simply in relation to transport. That is true of all developments – but particularly sites for gypsies, because they have a travelling way of life by definition and this must be factored into the planning assessment.
- 5.11 PPTS makes no mention of distances to services or modes of travel when assessing the sustainability of gypsy sites. PPTS expects local planning authorities to ensure that gypsy sites are sustainable economically, socially and environmentally – by promoting access to appropriate health services, and ensuring that children may attend school regularly, “Access” in this sense is related to the fact that gypsies may only have the right to register with a GP or obtain education if they have a settled base. In this case, the proposed development would facilitate access to schools and medical facilities in Thame and, take away the need for unauthorised or frequent travelling.
- 5.12 The appeal site is clearly not in an isolated location “*away from*” settlements in a location where traveller sites should be strictly controlled. The provision of 3 pitches would not over-dominate the closest settled community and, there is no evidence that the proposed development would place undue strain on local infrastructure. The appeal site is, in principle, an acceptable location for a traveller site.

### **The Development Plan**

- 5.13 Local Plan Policy H14 sets out the Council’s locally specific criteria against which proposals for windfall traveller sites are to be considered. It provides that additional proposals for pitches for Gypsies, Travellers and Travelling Showpeople not set out in Part 1 of this policy will be permitted where it has been demonstrated that a total of 7 criteria can be satisfied. This is a permissive policy and, does not imply that, if one or other of the criteria is not satisfied, planning permission should be refused.
- 5.14 Policy H14 does not exclude traveller sites from the countryside and, nor does it require that sites should be accessible by means of travel other than the private motor vehicle.
- 5.15 In this case, the site is large enough to meet the accommodation needs of the extended Smith family, including the applicant, his two adult sons and

their families. The appellant's sons have been living on holiday caravan sites or, roadside encampments. They all need a permanent base where they can live together as a traditional, extended Gypsy family for mutual help and support, and from which they can travel for the purpose of making their livings (criterion i.).

5.16 The site is not located within the Green Belt (criterion ii.); there would be no adverse effects on any nearby heritage assets (criterion iv.); the site has safe access and, is large enough to accommodate adequate vehicle parking and manoeuvring space (criterion v.); and, the site already benefits from mains electricity and water, and can be connected to the main sewer for the disposal of foul drainage (criterion vi.). The site is located within Flood Zone 1 and, according to the Environment Agency's flood maps, is not at risk from either fluvial or surface water flooding (part criterion vi.).

5.17 The outstanding issues raised by the Council's reasons for refusal relate to surface water drainage, ground contamination, loss of biodiversity and countryside harm.

### **Contamination**

5.18 A Phase 1 Ground Contamination Risk Assessment was carried out for the whole of the appellant's land holding in 2019. This identified two potential sources of contamination: use of buildings as stables; and, the nearby sewage treatment works. This risk assessment discounted the sewage works as a likely source of contamination but, recommended that intrusive ground investigations be undertaken to determine the effects on the land of its use for the stabling of animals.

5.19 A Phase 2 Ground Contamination Risk Assessment was carried out in June 2022. Again, this covered the whole of the Appellant's land holding and, trial holes were spaced out across the site, whilst ensuring that samples were taken from the most sensitive areas: i.e. the proposed garden area. As a result of testing, the Conceptual Risk Model was reassessed. Potentially Significant Potential Pollutant Linkages were considered to exist to human health receptors due to the elevated bacteriological contaminants that were found in Borehole No. 03. These were concerned with the risk to human health receptors (construction workers and future occupiers) being exposed to the contamination identified whilst



undertaking groundworks and recreational activities in gardens. The only remedial action recommended was in the area proposed as a residential garden. No remedial action was considered necessary in areas covered by hardstanding or, outside of the area edged red (**Appendix PBA 5**).

- 5.20 A Remediation Strategy submitted in July 2022 and, subsequently approved by the Council, recommended 3 options for remediation, including encapsulation of contaminated areas under hardstanding or buildings. The appeal proposals envisage the laying of hardstanding within the caravan site and, therefore, comply with the recommendations of the approved Risk Assessments and Remediation Strategy.

### **Effect on the Countryside**

- 5.21 Paragraph 188 of the NPPF makes clear that local plans should distinguish between the hierarchy of international, national and locally designated sites; and, amongst other things, allocate land with the least environmental or amenity value, where consistent with other policies in the Framework. In this regard, the appeal site is not identified in the Development Plan as being of any particular landscape value and, use of this land as a gypsy caravan site would be consistent with paragraphs 14 and 26 of PPTS. In particular, it is a relatively small site, close to an existing settlement, which is of a scale which would neither over-dominate the local settled community or, put undue strain on local infrastructure.
- 5.22 The in-principle acceptability of gypsy sites in rural and semi-rural locations, has a number of inevitable consequences. Traveller sites have a number of characteristic features such as: caravans, hardstandings, utility buildings and residential paraphernalia. As a result, some degree of visual impact must be expected and, if an adequate supply of gypsy sites is to be provided, some degree of visual change must be acceptable.
- 5.23 The test for countryside harm must be whether the development causes unacceptable harm which cannot be adequately mitigated with additional landscaping. In this regard, paragraph 27 of Policy H makes clear that soft landscaping can positively enhance the environment, whereas sites should not be enclosed with so much hard landscaping that the impression is given that the site and its occupants are deliberately

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

5.24 In this case, the site is located close to the edge of an existing village, rather than within open, undeveloped countryside. It is self-evident that sites not “*away from*” settlements are the Government’s preferred locations and where gypsy sites are neither an uncommon or alien feature. There would be little point in the policy (Policy C of PPTS) accepting sites in principle within the countryside if the nature and appearance of caravans was considered to be inherently unsuitable to such locations, as inferred by the Council’s reasons, 3 and 4, for the refusal of planning permission.

5.25 The test for countryside harm set out in criterion iii) of Policy H14 sets the bar at “unacceptable harm”. In this case, the proposed caravan site would be set back from Windmill Road behind a grass paddock and existing stable buildings. There are substantial native hedgerows along the western (roadside), northern and southern boundaries of the applicant’s land holding, and there is a stable building on the land adjoining the eastern boundary. The proposed caravan site would not be prominently located or obtrusive in the landscape and, as such, would not cause unacceptable harm to the countryside and, the appeal proposals would satisfy criterion iii) of Policy H14.

### **Biodiversity**

5.26 The base line for consideration of this issue must be the development approved under application No. 22/S3712/FUL. This permission allows for the site edged red on the approved Site Layout Plan to be hard-surfaced in order to provide the vehicle manoeuvring and parking spaces required by planning condition. Land to the east of the above-mentioned area edged red comprises a former manege, as shown on the aerial photographs attached at **Appendix PBA 8**. As such, the only additional area of

hardstanding would be along the northern edge of the stable yard about 3 or 4 metres wide. The loss of grassland would be minimal.

- 5.27 Local Plan Policy ENV3 provides that: development that will conserve, restore and enhance biodiversity in the district will be supported. All development should provide a net gain in biodiversity **where possible**. As a minimum, there should be no net loss of biodiversity. All proposals should be supported by evidence to demonstrate a biodiversity net gain using a recognised biodiversity accounting metric. There is no requirement to provide a biodiversity net gain and, the application was made before this became a statutory requirement.
- 5.28 This policy was in force before planning permission was granted for conversion of part of the stables and barn into a dwelling. The Council must have been satisfied that no protected species would be affected and, that there would be no net loss of biodiversity. In this case, the Council did not request an ecological assessment and, validated the application without submission of a biodiversity accounting metric.
- 5.29 Notwithstanding the above, more than half of the land holding would remain un-developed and, the likelihood is that the small loss of grassland involved in the proposed development could easily be mitigated through the imposition of a landscaping condition. I attach a recent appeal decision at **Appendix PBA 9** in which, in similar circumstances, the Inspector considered that the matter could be dealt with by the imposition of a suitably worded condition.

### **Surface Water Drainage**

- 5.30 The Environment Agency's flood maps for planning show the appeal site to be at low risk from surface water flooding. The existing hard-standing is permeable, it is about one-metre deep, constructed from gravel over a base of brick hardcore. It provides on-site storage during extreme weather and, as a result, the appellant has not experienced any standing water on site, even after heavy rain.
- 5.31 The issue of surface water drainage was considered as part of the appeal decision attached at **Appendix PBA 9**. The Inspector made the following observations and conclusions with which I concur:

*“29. The details presented by the appellant for the surface and foul water drainage are minimal. However, the reason for this is that often these matters are subject to a planning condition. This can reduce the need for expensive studies being carried out when it is unknown if planning permission would be granted. In the case of Gypsies and Travellers, this is a genuine concern given the costs that can arise.*

*30. In this instance, the Council is of the opinion that these details cannot be secured by condition. It considers that the site is not capable of technically being able to drain the surface water or safely treat the foul water.*

*31. Whilst the ground conditions may be more impermeable than other areas in the district, over half the site would not be developed. Furthermore, the hardstanding could comprise permeable materials, and only the day rooms would be permanent fixtures. Therefore, I fail to understand how a technical solution to drain the site could not be achieved by condition. Given that the occupants are on site, the condition would require these details to be submitted within a set time frame. If they were not submitted, or the details were unacceptable and a solution could not be found, the wording of the condition results in the planning permission ceasing. Therefore, the Council is protected in all regards”.*

### **Other Material Considerations**

5.32 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.

I have already compared the appeal proposals against the Council's locally specific criteria, and the final matter simply means that a lack of local connections should not count against the applicant. The remainder of this statement will therefore address matters a), b) and c).

## **Need**

- 5.33 Paragraph 7b) of PPTS requires that local planning authorities should *"prepare and maintain an up-to-date understanding of the likely permanent and transit accommodation needs of their areas over the lifespan of their development plan"*. In this case, the Council last commissioned a Gypsy and Traveller Accommodation Assessment (GTAA) in 2017. It is based on the 2015 definition of *"Gypsy and Traveller"* and, distinguishes between those that were deemed to satisfy the definition, those that did not and, those whose status was unknown.
- 5.34 The GTAA estimated a need for 9 additional pitches for "PPTS" gypsies; 8 for non-travelling gypsies; and 5 for unknowns (+ any concealed or overcrowded households), i.e. a minimum of 22 additional pitches in the period 2017-2033. Of these, a minimum of 16 pitches should be provided by 2027. Following the change in definition, in December 2023 and 2024 it is the cultural need which must be provided for in order to avoid unlawful discrimination. A copy of the GTAA is attached at **Appendix PBA 10**.
- 5.35 A search of the Council's planning application records suggests that only 3 permanent residential pitches have been approved in South Oxfordshire since the beginning of the GTAA assessment period and, these have all been granted subject to personal occupancy conditions and do not contribute to meeting general gypsy accommodation needs. Site allocations in the Local Plan will not meet the shortfall and, consequently, the Council cannot demonstrate a five-year supply of deliverable land for traveller sites. This is conceded in the Council's reasons for refusal. The unmet need for traveller sites and absence of a five-year supply are each material considerations to which significant weight should be attributed.

## Alternative Sites

- 5.36 In ***Doncaster MBC v. FSS & Angela Smith*** [2007] the Court decided that to be a realistic alternative, accommodation has to be suitable, affordable, available and acceptable. Notwithstanding this, there is no requirement in planning policy, or case law, for an appellant to prove that no other sites are available or that particular needs could not be met from another site (***SCDC v. SSCLG and Julie Brown*** [2008] ***EWCA Civ 1010 at paras 24,27-36***).
- 5.37 Gypsies and Travellers have difficulty in acquiring land for new pitches within towns and villages, particularly in affluent areas such as South Oxfordshire, due to competing development interests that generate much higher land values. As such, the Gypsy and Traveller site subject of this appeal needs to be located in a countryside location as there is no realistic prospect of it being provided within a town and village boundary. About two-thirds of land outside of settlement boundaries in South Oxfordshire is subject to Green Belt and AONB designation, limiting still further the choice of sites available to Gypsies and Travellers.
- 5.38 In an appeal decision attached at **Appendix PBA 11** the Inspector, in November 2022, considered the availability of alternative sites in South Oxfordshire:
- “The Council accepts that none of the sites allocated in the Local Plan currently meet the definition of a deliverable site for the purposes of the PPTS. Moreover, the Council indicates that development of the strategic sites at Culham and Chalgrove will not begin until 2025/26, and are unlikely to be delivered until after 2026” and,*
- Planning permission P15/S/S1878/FUL was granted, in part, because there was no capacity on existing Council sites at that time, for which there was already a waiting list. It was also considered that private traveller sites tend to be for single pitches or occupied by extended families, and therefore unlikely to be suitable for the applicant’s family needs.”* This remained the case in November 2022 when the Inspector records that: *“The Council accepts that it cannot point to any immediately available sites that are suitable and affordable.”*

In granting a temporary and personal consent for a site in the Green Belt, the Inspector concluded on the subject of alternative sites:

*“Overarching the above is that, in the process of adopting the Local Plan, the Council could only identify a total of 10 sites on the whole district. To my mind, that illustrates the difficulty of finding suitable sites. The appellant is a member of the gypsy and traveller community and, it seems to me, would be aware if a suitable site did become available. None have. Consequently, even if the appellant does have the resources to mount a search for sites, it is my view unlikely that any sites that are both suitable and available would be found.”*

5.39 Not surprisingly, the appellant was searching for land for 2 to 3 years before finding the appeal site. The absence of alternatives to the appeal site should carry significant weight in favour of this appeal.

#### **Personal Circumstances**

5.40 The proposed caravan site would accommodate an extended family comprising the following households:

1. Darren and Ellen Smith, together with their children: [REDACTED]  
[REDACTED]
2. Darren and Whitney Smith, together with their children: [REDACTED]  
[REDACTED]
3. Milo and Italia Smith, together with their children: [REDACTED]  
[REDACTED]

5.41 The adult males of the family all earn their living as builders/roofers and, until recently, have travelled all over the country to find work in the summer months. They have had to put their travelling on hold this summer and, take up residence on the appeal site because Whitney is expecting her third child and Emmanuel has serious health issues requiring specialist health care. Darren (Jnr) and Milo have not had a settled base: they have been moving from place to place, living either on holiday campsites where possible or, on the roadside. This has become

untenable given the need for Whitney to have support of other family members as her pregnancy progresses and, for Emmanuel's parents to arrange and receive medical appointments.

5.42 Since arriving on site, the families have been trying to register children in school and, in the meantime, have arranged for them to be privately tutored.

5.43 Recent case law, including the Supreme Court decision in the case of *Zoumbas v. Secretary of State for the Home Department*, has established that the best interests of the children must be at the forefront of the decision-maker's mind. In *Zoumbas* the Court found that the needs of the children must be treated as a primary consideration, but not always the only prime consideration; that when considering the cumulative effect of other considerations, no other consideration could be treated as inherently more significant; but that the best interests of the children might point only marginally in one, rather than another, direction. The likely outcome of a refusal of planning permission would be that the Smith family would have to resume moving from site to site, and rely on roadside camping. Thus, in considering the best interests of the children, the choice is clear: life on a lawful site where they can obtain access to schooling, and obtain appropriate health care; or life on the roadside where schooling and health care are likely to be disrupted for an indeterminate period.

### **Balance of Considerations**

5.44 The extended Smith family clearly has an unmet need for a lawful gypsy/traveller site in this area. There are no alternative sites available for members of the appellant's extended family to which they could re-locate if evicted from Emmanuel Ranch and, the needs of 5 children under 18 + the unborn child would be best served by allowing their families to remain on the appeal site.

5.45 The Council cannot demonstrate a five-year supply of deliverable land for traveller sites and, therefore, the planning policies most important for determining these appeals are out of date. Furthermore, the appeal site is not located within the Green Belt, or within a SPA, SSSI, Conservation



Area, local greenspace, AONB or National Park , or within an area shown on the Environment Agency's flood maps as being at high risk from flooding. As such, the "tilted balance" is engaged whereby planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits

- 5.46 The proposed development would comply fully with the Authority's locally specific criteria for the consideration of applications for new gypsy/traveller sites. In conclusion, I consider that the benefits of the proposal are material considerations that are not significantly and demonstrably outweighed by any alleged conflict with local and national planning policy, and planning permission should therefore be granted.

#### **Appeal under Ground (c)**

- 5.47 There was an existing driveway and hardstanding on the land which have been renewed and extended largely in accordance with the planning permission granted for conversion of the stable building/barn into a single dwelling. The erection of fencing and replacement of the existing entrance gates has been undertaken in pursuance of that same planning permission, well before occupation of the land as a traveller site and, constituted "permitted development". Furthermore, the appellant stationed a caravan on the land in order to implement the planning permission for conversion of the stable/barn into a single dwelling. The temporary stationing of a caravan for this purpose was permitted under the GPDO and, remains so. An enforcement notice cannot take-away permitted development rights.

#### **Appeal under Ground (f)**

- 5.48 Bearing in mind the extant planning permission for development of the land, the steps required to comply with the notice exceed what is necessary to remedy the alleged breach of planning control. In particular, it is unnecessary to remove the access driveway, vehicle manoeuvring and parking areas contained within the area edged red on the block plan approved under application No. P22/S3712/FUL.
- 5.49 Bearing in mind the allegations in the change of use and operational development notices, the restoration of the land to its condition prior to

the “*material change of use to a mixed use*”, including “*stationing of 4 caravans for residential purposes*” would not require the removal of the new entrance gates and fencing, driveway and hardstanding, or removal of the appellant’s 2 caravans, which were in situ prior to the alleged change of use occurring.

**Appeal under Ground (g)**

5.50 A period of 12 months is the minimum time required for compliance given the personal health and education needs of the family and, current absence of any alternative site to which the extended family could relocate. A further period of 3 months (i.e. a total of 15 months) is required for restoration of the land.

## **6.0 LIST OF APPENDICES – ATTACHED WITH APPEAL REFERENCE APP/Q3115/W/24/3346849**

Appendix PBA 1 – Phase 1 Ground Contamination Risk Assessment

Appendix PBA 2 – Phase 2 Ground Contamination Risk Assessment

Appendix PBA 3 – Phase 3 Remediation Strategy

Appendix PBA 4 – Planning permission No. P22/S3712/FUL

Appendix PBA 5 – Approved block plan - No. P22/S3712/FUL

Appendix PBA 6 – Appeal decision – Bings Heath, Shropshire

Appendix PBA 7 – Appeal decision - Smallwood, Cheshire

Appendix PBA 8 – Aerial photographs

Appendix PBA 9 – Appeal decision – Edgcott, Buckinghamshire

Appendix PBA 10 – South Oxfordshire GTAA

Appendix PBA 11 – Kiln Lane, Garsington

Appendix PBA 12 – Google Street View image of the site entrance