

Examination of the Dartford Borough Council Local Plan

Hearing Statement on behalf of Mr W Chambers and family, the occupiers of:

Land at Eebs Stables,



Dr Simon Ruston BSc (Hons) MA MA PhD MRTPI



Introduction

1. This hearing statement will address solely one aspect of Issue 2 with regard to the Public Sector Equality Duty (PSED). The Inspector's Matters, Issues and Questions states:

Equality and diversity

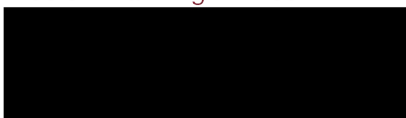
1.25 Having regard to the Dartford Customer Access Review document [COR-15], in what way does the Plan seek to ensure that due regard is had to the three aims expressed in Section 149 of the Equality Act 2010 in relation to those who have a relevant protected characteristic?

2. I will make that case that due regard has not been had by addressing the following issues:
 - The relevant case law
 - The relevance of a Customer Access Review to the Local plan
 - The impact of the submission plan on ethnic Romany Gypsies and Irish Travellers
3. It should be noted that there may be other PSED issues within the plan which have not been considered by the LPA but the scope of my clients interest is based on ethnicity.
4. The key point is that the Customer Access Review does not in anyway provide evidence that the LPA have discharged the PSED in the drafting of the submission plan. It cannot in anyway be said to be an Equalities Impact Assessment (EqIA) for the purpose of the plan. Furthermore, the plan fails to meet the needs of Romany Gypsies and Irish Travellers, which is of significance to the application of the PSED.

The relevant case law

5. The relevant case law provides a framework from which to consider how a EqIA should be drafted. R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 it was held that:

...it is good practice for those exercising public functions in public authorities to keep an adequate record showing that they had actually considered their ... equality duties and pondered relevant questions.



Proper record-keeping encourages transparency and will discipline those carrying out the relevant function to undertake their disability equality duties conscientiously. If records are not kept it may make it more difficult, evidentially, for a public authority to persuade a court that it has fulfilled the duty

6. In *R (Law Centres Federation Limited t/a Law Centres Network) v Lord Chancellor* [2018] EWHC 1588 (Admin), Mrs Justice Andrews considered the requirements of s.149 as follows [6]:

*The duty is personal to the decision maker, who must consciously direct his or her mind to the obligations; the exercise is a matter of substance which must be undertaken with rigour, so that there is a **proper and conscious focus on the statutory criteria and proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them**. Whilst there is no obligation to carry out an EIA, if such an assessment is not carried out it may be more difficult to demonstrate compliance with the duty. On the other hand, the mere fact that an EIA has been carried out will not necessarily suffice to demonstrate compliance. [my emphasis]*

7. By way of further judicial consideration, the case of *Bracking v Secretary of State* [2013] EWCA Civ 1345 [7] now sets out the relevant principles, including:

- ***that the duty must be fulfilled before and at the time when a particular policy is being considered;***
- *that it must be “exercised in substance, with rigour, and with an open mind” (it is not a question of “ticking boxes”);*
- *that the duty is non-delegable; that it is a continuing one; and*
- *that it involves a duty of inquiry. [my emphasis]*

8. The Bracking principles were approved by Lord Neuberger in *Hotak v Southwark LBC* [2015] UKSC 30, who added:

“75. As was made clear in a passage quoted in Bracking, the duty “must be exercised in substance, with rigour, and with an open mind” (per Aikens LJ in R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin), [2009] PTSR 1506, para 92. And, as Elias LJ said in Hurley and Moore, it is for the decision-maker to determine how much weight to give to the duty: the court simply has to be satisfied that



*“there has been rigorous consideration of the duty”. **Provided that there has been “a proper and conscientious focus on the statutory criteria”**, he said that “the court cannot interfere ... simply because it would have given greater weight to the equality implications of the decision”.* [my emphasis]

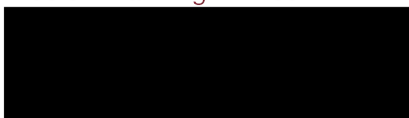
9. The question is therefore whether there is any evidence that the LPA have complied with the case law?

The relevance of a Customer Access Review to the Local plan

10. One might be forgiven for wondering if the Customer Access Review has been wrongly provided as the notion that it might somehow pass as an EqIA for the purposes of the local plan is absurd for the following reasons:
 - The assessment is dated July 2016
 - It is assessing *Customer Services, which includes the Civic Centre, Contact Centre, Reception, Post Room, Payments, Caretaker & Cleaning Services*
 - The word ‘planning’ is not even mentioned let alone detailed assessment of the proposed policies
11. The absurdity of this document in the local plan context indicates both an astounding degree of incompetence and a total failure to even attempt to discharge the PSED.

The impact of the submission plan on ethnic Romany Gypsies and Irish Travellers

12. I turn now to providing an example of how the plan has not in anyway considered the PSED, this being the failure to meet the identified needs of ethnic Gypsies and Travellers.
13. The LPA have not identified enough deliverable sites in order to meet the need for Gypsies and Travellers (see GAT-2). Issues with their approach have been set out in my previous submission, appended to this statement for ease of reading.
14. Elsewhere in the examination documents, it is asserted that there is sufficient supply of land for housing (albeit others may question this). As such, there is



an inequality of opportunity inherent within the local plan as there is an insufficient supply of land for Gypsies and Travellers.

15. There is however a further inequality of opportunity within the plan. The plan is explicit that policy M12 only covers those who fulfil the PPTS 2015 definition. There are those ethnic Gypsies and Travellers whom no longer fulfil the PPTS definition, and the question is how their specific accommodation needs are met?
16. The occupation of caravans / mobile homes is part of the traditional way of life of Romany Gypsies and Irish Travellers. In *Chapman v UK*¹ the European Court of Human Rights held that:

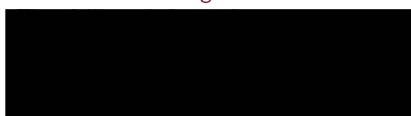
[T]he applicant's occupation of her caravan is an integral part of her ethnic identity as a Gypsy [and] the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in arriving at the 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.

17. There is therefore an intrinsic link between the occupation of caravans and the ethnic minority status of Romany Gypsies and Irish Travellers.
18. In *Thomas George Clarke v Secretary of State for the Environment transport and the regions and Tunbridge Wells Borough Council*² the offer of bricks and mortar accommodation as an alternative to the occupation of a caravan was considered by the court. At paragraph 30 the judge found that:

...in my judgment, in certain appropriate circumstances it can amount to a breach of Articles 8 and 14 to weigh in the balance and hold against a Gypsy applying for planning permission, or indeed resisting eviction from Council or private land, that he or she has refused conventional housing accommodation as being contrary to his or her culture. Such circumstances, in my judgment, are and should be, limited, just as they are if, for example, it is to be alleged similarly to be impermissible, in relevant circumstances, to hold it against or penalise a religious or strictly observant Christian, Jew or Muslim because he or

¹ (2001) 33 E.H.R.R. 18

² [2001] EWHC Admin 800



she will not, and thus cannot, work on certain days, or to hold it against, or penalise, a strictly observant Buddhist, Muslim, Jew or Sikh because he eats or will not eat certain foods, or will or will not wear certain clothing. It is not, and cannot be, a formality to establish this, and the onus is upon the person such as a Gypsy who seeks to establish it.

19. Further on at paragraph 34 the judge held that:

in my judgment, bricks and mortar, if offered, are unsuitable, just as would be the offer of a rat infested barn. It would be contrary to Articles 8 and 14 to expect such a person to accept conventional housing and to hold it against him or her that he has not accepted it, or is not prepared to accept it, even as a last resort factor.

20. Whilst the *Clarke* was concerned with offers of conventional housing, the case is useful in highlighting the significance of the occupation of caravans for ethnic Gypsies and Travellers.
21. Turning to the statutory and policy context, the Housing and Planning Act 2016 section 124 introduced duty in the Housing Act 1985 for Councils to consider the needs of people residing in or resorting to their district in respect of caravan sites and houseboats (which includes Romany Gypsies and Irish Travellers).
22. Paragraph 61 of the NPPF sets out the required approach for specialist housing:

61. Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes).

23. In a recent section 288 High Court Case the judge considered whether the planning system was capable of meeting this group's accommodation needs³:

³ Lisa Smith v SSCLG [2021] EWHC 1650 (Admin)



80. In my judgment, the Secretary of State was plainly justified in drawing a distinction between the specific land-use needs of those seeking to lead a nomadic lifestyle and those seeking a more settled existence. The former throws up particular challenges both for applicants and planning authorities, and the Secretary of State was entitled to devise a specific policy focusing on that issue which did not also seek to address the cultural needs of those Gypsies and Travellers now seeking a permanent home. The critical consideration is that PPTS 2015 does not stand alone. While the policy deals specifically with the housing needs of Gypsies and Travellers who follow a nomadic habit of life, it is part of a patchwork of provisions. As I have already identified:

80.1 paragraphs 59 and 61 of the NPPF require planning authorities to address the needs of Gypsies and Travellers irrespective of whether they meet the PPTS definition;

80.2 the specific accommodation requirements of permanently settled Gypsies who seek planning permission in order to maintain their cultural identity as Gypsies are “material considerations” which must be taken into account pursuant to s.70(2)(c) of the 1990 Act; and

80.3 other personal circumstances of Gypsy applicants can properly be taken into account as part of the material considerations: Basildon, at [33]-[34], Ouseley J.

81. It was a matter for the executive and not the judiciary to determine whether:

81.1 The PPTS should make provision for the land-use needs of all Gypsies and Travellers irrespective of whether they remain nomadic or have ceased travelling.

81.2 Alternatively, the policy should make discrete provision only for the land-use needs of Gypsies and Travellers who remain of a “nomadic habit of life” and make provision for the needs of permanently settled Gypsies and Travellers through the mainstream planning system.

82. There is nothing inherently objectionable to the executive choosing to take the latter approach as it did between 1994 and 2006 and again from 2015, **provided that the system is capable of taking into account the article 8 rights of permanently settled Gypsies and Travellers and**



***their particular personal circumstances.** I am therefore satisfied that the planning system taken as a whole is capable of being operated such that it respects the article 8 rights both of nomadic Gypsies and Travellers, and of those who through age or disability have been forced to give up a nomadic life. [my emphasis]*

24. It is clear from the above that the needs of ethnic Gypsies and Travellers whom do not meet the PPTS definition must be addressed within the local plan.

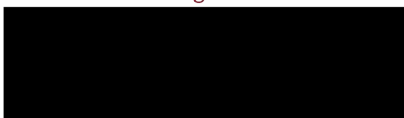
25. In Dartford, the GTAA sets out the following:

Pitch Needs – Gypsies and Travellers that did not meet the Planning Definition

*7.32 It is not now a requirement for a GTAA to include an assessment of need for households that did not meet the planning definition. However, this assessment is included for illustrative purposes and to provide the Council with information on levels of need that will have to be addressed through separate Local Plan Policies. **On this basis, it is evident that whilst the needs of the 20 households who did not meet the planning definition will represent only a very small proportion of the overall housing need, the Council will still need to ensure that arrangements are in place to properly address these needs – especially as many identified as Romany Gypsies and may claim that the Council should meet their housing needs through culturally appropriate housing.***

*7.33 Analysis of the household interviews indicated that there is a need for 6 pitches for teenage children in need of a pitch of their own in the next 5 years; and a need for 5 pitches as a result new household formation, derived from the demographics of the residents. Therefore, the overall level of need for those households who did not meet the planning definition of a Gypsy or Traveller is for **11 pitches** over the GTAA period. [my emphasis]*

26. Despite the clear advice of its consultants, the LPA have not considered this need at all. This is a clear failure, and is relevant to the failure to properly consider the PSED.



Conclusion

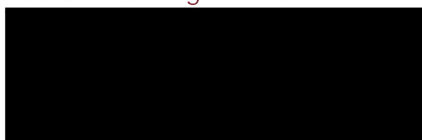
27. For reasons set out above, there has been a clear failure to discharge the PSED. As such, the plan cannot be said to be sound at present. It will not be enough for a EqlA to be drafted now as the correct time is at the drafting of the plan. This point is illustrated by the clear equalities issues identified with the provision of accommodation for Romany Gypsies and Irish Travellers. The Inspector is invited to find that the PSED has not been discharged correctly and to take the appropriate action on the plan as a consequence.

Dr Simon Ruston MRTPI May 2022

- 3.3 However, the figures date from 2019 and the following uses data from the above table to update the five year and subsequent needs as at 2021.

Years	5 year supply period	Years 6-10	11-14	Total
	2019-26	2026-31	2031-35	
	52	9	9	70

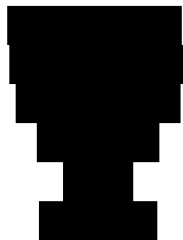
Dr Simon Ruston MRTPI May 2021



RUSTON PLANNING

Submissions on behalf of Mr W Chambers and family, the occupiers of:

Land at Eebs Stables,



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

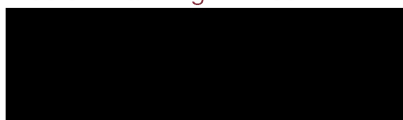


Introduction

1. Mr Chambers and his family live on a private Gypsy site previously subject of a temporary permission. Appeals against the refusal of a planning application and a subsequent enforcement notice are currently in progress.
2. Mr Chambers and his adult children are Romany Gypsies with a longstanding connection to the Dartford area. They have requirement for a small private site in Dartford. It is helpful that the needs of my client's family are explicitly acknowledged in the supporting report for the pre submission plan.
3. This submission will address whether the pre submission plan is able to satisfactorily address that need. I will cover:
 - The requirements of Planning Policy for Traveller sites (PPTS)
 - The proposed sites
 - Approach to the Green Belt
 - Proposed inclusion of Ebbs Stables
 - The wording of the policy

The requirements of Planning Policy for Traveller sites (PPTS)

4. The relevant extract of PPTS states:
 9. *Local planning authorities should set pitch targets for gypsies and travellers as defined in Annex 1 and plot targets for travelling showpeople as defined in Annex 1 which address the likely permanent and transit site accommodation needs of travellers in their area, working collaboratively with neighbouring local planning authorities.*
 10. *Local planning authorities should, in producing their Local Plan:*
 - a) *identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets*
 - b) *identify a supply of specific, developable sites, or broad locations for growth, for years 6 to 10 and, where possible, for years 11-15*
5. Deliverable is defined as:



To be considered deliverable, sites should be available now, offer a suitable location for development, and be achievable with a realistic prospect that development will be delivered on the site within five years. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within 5 years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.

6. Developable is defined as:

To be considered developable, sites should be in a suitable location for traveller site development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged

The proposed sites

7. The potential sites have reduced to 3 possible options:

8. The first is the large allocation at Ebbsfleet Central:

4.8 In terms of the Local Plan development sites, only Ebbsfleet Central is potentially suitable and available for the provision of a traveller site. It is a very large site which is currently subject to detailed masterplanning work and the Council considers that a traveller site could be incorporated within the development. This possible use is not specifically referred to Pre-Submission Local Plan policy E4 (Ebbsfleet Central Allocation) given that this policy focuses on the central layout principles and most major uses in this large scale development. However, policy E1 (Ebbsfleet Garden City Strategy) states that the Council and the Ebbsfleet Development Corporation will explore opportunities to make provision for gypsy, traveller and travelling showpeople's sites to help meet the needs of the Borough (see paragraph 2.6).

4.9 Policy E1 applies across the Ebbsfleet Garden City area, and it includes land not specifically identified in the Plan for development. Therefore, there may be additional land opportunities not currently identified that could contribute to meeting needs that, in the absence of alternative development proposals, may prove deliverable. The



Garden City area is large, varied in character and often with complex delivery considerations. However, particularly at its edges and in some more northern parts, the area includes some smaller or less prominent land parcels created by level changes, transport infrastructure, previous/ ongoing industrial operations etc.

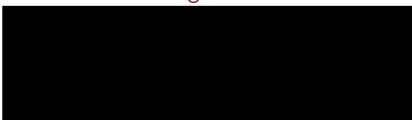
4.10 One example of vacant land is the Essenden site between Galley Hill Road and the North Kent railway line. It is recognised that the London Resort proposals put forward by a developer for a large part of northern Ebbsfleet may cover some relevant sites. It is still unclear whether the resort will be consented but it is also unclear whether the Resort proposals will take up all of the Essenden site and whether there may be space for some traveller accommodation.

4.11 The Council informed the Corporation shortly after its inception in 2015 that it was interested in exploring land options to meet traveller needs at Ebbsfleet. Ebbsfleet was highlighted as a potential location in the Local Plan Preferred Options consultation document in January 2020.

4.12 More recently, the Council has made a formal request to the Ebbsfleet Development Corporation to incorporate the requirement for traveller pitches within its masterplanning work for the Ebbsfleet Central site. This has to be a priority consideration at present given the ongoing work and Corporation ambitions for a planning application this year. A response is awaited.

4.13 Clarity over the London Resort proposals would enable consideration as to whether further Ebbsfleet area land options can be considered in partnership with the Corporation.

9. It is clear from the above extract that whether a site can be delivered is not a foregone conclusion. At best, this option could only really be described as being 'developable' as distinct to 'deliverable', the LPA have rightly not made any assertion to the contrary.
10. Turning to the private sites listed, in submissions made elsewhere to the LPA (see the appeal documents), Knoxfield and Salinas are not available to Mr Chambers and his family. It is understood that the tennis courts is a private family site and is therefore unlikely to be made available. Furthermore, understandably the council has been hampered in its efforts by the pandemic,



and there is not a clear indication that the proposed sites are deliverable. Further work will no doubt clarify this.

Approach to the Green Belt

11. The LPA in the supporting report take two conflicting approaches to the Green Belt. First with regard to existing sites it is stated that:

It is considered that these are exceptional circumstances which justify a limited alteration to the Green Belt boundary in accordance with the PPTS

12. However, the justification for strategic allocations is:

Given national policy on the Green Belt, it is important that non Green Belt sites are considered before Green Belt ones.

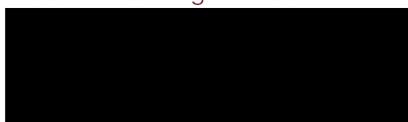
13. It is notable that the site at Ebbsfleet has been discussed since 2015, and there is still no specific location identified. I would argue that there is an urgent requirement to identify sites now in order to meet the immediate need. An aspiration is not enough. As such, the approach taken to the Green Belt with regard to the extension of existing sites (that there are exceptional circumstances) is in my view correct.

14. Further support for this proposition is found in the historical context of unmet need in Dartford since 1994. The DoE circular 1/94 issued in 1994 required that LPAs should allocate in their development plan enough land for the needs of Gypsies and Travellers. This was then repeated in ODPM Circular 01/06 in 2006 which required LPAs to make site allocations by February 2011. PPTS continued this policy. As I will outline below, Dartford has manifestly failed to properly identify the need and subsequently identify sites. The longstanding nature of this failure is evidenced the following appeal decisions:

15. In 2002 at an appeal at Tennis Court, Sutton-at-Hone¹ the Inspector found the following:

21. The Council agreed that there were no spaces available on its own Gypsy site at Bean, which has 12 pitches, and it was not able to identify any suitable alternative site in the Borough, either within or outside the Green Belt.

¹ APP/T2215/C/01/1067491, APP/T2215/C/01/1068799



26. The Council has not carried out any assessment of the needs of travellers as required by PPG 3 *Housing*. Although it is likely that many Gypsies are passing through the Borough, the schedule of unauthorised encampments may indicate a latent demand that is not being met. Mr Moloney's family have been recorded as part of several unauthorised encampments and it may well be the case that other families travelling in the area are also seeking a permanent base. Although the extent of the need has not been properly quantified, in the absence of any clear indication to the contrary, I conclude on the evidence before me that that there is a need for further Gypsy sites within Dartford Borough.
16. In decision letter from 2007 at Land to the rear of 3 & 4 Woodside Cottages, Darenth Wood Road² the Inspector found the following:
- 20. The Borough Council, together with Kent County Council, accepts that there is a general need for additional sites for Gypsies in the local area. This is backed up by information from various sources. The bi-annual count indicates that in January 2006 there were over 100 Gypsy caravans on unauthorised sites in Kent of which 17 were within Dartford. In view of this it is not surprising that over the last 5 years the Council has been faced with a number of planning applications for new or extended Gypsy sites. The Council, however, has only granted permission for one of these applications, although some have been allowed at appeal.*
- 21. The Knoxfield site is the only local authority run site in the Borough with 14 authorised pitches. It currently accommodates 19 caravans and the Council's Housing Department has stated that it is full with an extensive waiting list. Consequently there are unlikely to be pitches available on this site in the foreseeable future. No detailed evidence has been submitted to suggest that there are vacancies on the authorised private sites in the Borough. On the basis of this material I believe that it is reasonable to find that there is a need for additional sites for Gypsies in the local area. However, no additional sites are currently planned.*
- 22. The Borough Council is undertaking a Gypsy and Traveller Housing Needs Survey but it is not known when the results will be published. Once the extent of need is quantified it is likely to be some time before additional Gypsy sites are identified. Kent County Council estimates that additional sites are unlikely to be identified in the County before 2009-2010.*

² APP/T2215/A/06/2021897



23. The Council is unable to identify any alternative sites where the occupiers of the appeal site could be accommodated. Notwithstanding this it was confirmed at the hearing that the Council would pursue the extant enforcement notice and in due course secure the removal of the mobile homes from the site if this appeal were to be dismissed. Given this, and the lack of transit sites in Kent, it is unclear where the occupiers of the appeal site would find accommodation. In view of this the possibility that the occupiers may have to resort to unauthorised camping if the appeal were to be dismissed cannot be discounted. In my view these considerations must be given significant weight.

17. In another 2007 appeal at Tennis Court, Sutton-at-Hone³ the Inspector found at para. 21: *'there is a substantial need for additional gypsy sites in this part of Kent'.*
18. Finally, at an appeal in 2011 again at the Tennis Court⁴ the Inspector found the following:

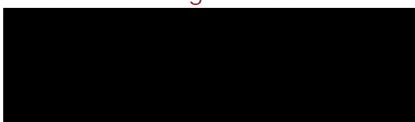
16. A Gypsy and Traveller Accommodation Assessment (GTAA) for North Kent (covering the Boroughs of Gravesham, Dartford, Medway and Swale) was completed over the summer of 2007. The study identified a need for 114 additional authorised permanent pitches across the study area over the next 5 years. Of these, 27 are identified as needed within Dartford Borough. The biannual counts between January 2008 and January 2010 recorded between 13 and 19 caravans on unauthorised sites, indicating continuing immediate need for authorised pitches.

17. In my view, the GTAA is an important baseline for establishing the need for additional pitches, but is not definitive. It is likely that the need of Mr Harber Junior is not reflected in the figures. The previous appeal decision notes that the Harbers did not complete any needs questionnaire or interview as part of the survey work underpinning the GTAA.

18. There is no evidence of any substantial progress having been made in meeting this need or of firm intentions to meet them in the future. Core Strategy policy CS20 states that the Council will provide 4 additional pitches to meet the needs of existing households on the Council owned Claywood Lane site, but no timescale is given. In any

³ APP/T2215/A/07/2047100

⁴ APP/T2215/A/10/2136290



case, this appears to be a rationalisation of the site for the needs of households already there. There is no indication of how other needs will be met, such as by allocations in another Development Plan Document. In my view, the considerable and longstanding local needs and the lack of any clear prospects of these needs being met within the foreseeable future weighs substantially in favour of the appeal.

19. As can be from this small selection of appeal decision letters, there has need unmet need for the last 27 years. This in my view is a clear example of the exceptional circumstances required to remove land from Green Belt in order to provide sites.

Proposed inclusion of Ebbs Stables

20. For reasons that have been set out in detail in the appeal submissions, I am of the view that the site at Ebbs stables is suitable for allocation. All existing Gypsy sites in Dartford are in the Green Belt, and if the immediate needs of my clients and indeed others are to be met then sites will need to be allocated within the Green Belt.

The wording of the policy

21. The only suggestions I would make to the wording of the criteria based policy is that:

d) Is located close to a range of services and facilities

22. Is amended to:

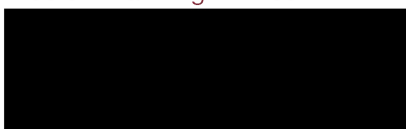
*d) Is located **reasonably** close to a range of services and facilities*

23. This would allow a greater degree of flexibility in the consideration of sites. Turning to landscape:

f) Is screened and visually integrated into the local and wider landscape, with careful siting within the site (including of any day rooms).

24. Should be amended to:

f) Would not cause significant harm to landscape character



25. This allows sites which are capable of being screened to be included.

Conclusion

26. It is clear that the council's efforts have been significantly hampered by the pandemic. As such, we would ask that consideration is given to the allocation of Ebbs Stables in order to meet the immediate need for sites.

Dr Simon Ruston MRTPI May 2021

