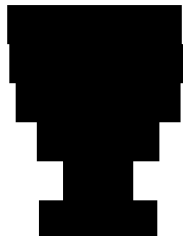


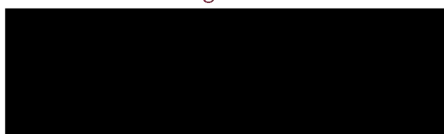
Examination of the Dartford Borough Council Local Plan

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 is produced on behalf of Mr Chambers, whose family occupies Eebs stables. It should be read alongside the following documents which are attached for ease of reference:
 - Pre plan submissions – May 2021 (appendix 1)
 - Stage 1 EIP hearing statement May 2022) (appendix 2)
 - Appeal Decisions APP/T2215/C/19/3228536 and APP/T2215/W/19/3228522 (appendix 3)
 - Extract from the Tewkesbury Local Plan Inspector' s report (appendix 4)
 - Email from Tania Smith dated 24 March 2014 (appendix 5)
2. It should be noted that an application to make the site permanent with 2 additional mobile homes to meet emerging need on the site is in preparation and will be submitted within the next two months.
3. The remainder of this statement will address the Inspector's questions where appropriate and relevant to my clients.

Question 25 - What is the timeframe for the completion of the additional work being undertaken in relation to site capacity of existing authorised and tolerated sites? Is there any update on the progress of this work? How will the outcomes from this affect the plan (being undertaken post submission)?

4. Whilst acknowledging the impact of the pandemic and other factors on the assessment of additional sites, there is a considerable urgency required for the allocation of sites for Gypsies and Travellers due to the considerable unmet need and historic failure of policy. I would invite the Inspector to consider directing the LPA to allocate Eebs stables for 5 pitches. This was the case in the EiP for the Tewkesbury Local Plan (see an extract of the Inspector's report at appendix 4). Here, a site in the Green Belt that has been previously rejected by the LPA was found to be suitable by the examining Inspector.

Question 26 – Policy M12 seeks to identify deliverable non-Green Belt sites at Ebbsfleet as a possible source of Gypsy and Traveller pitches. However paragraph 5.7 of EXAM3 states that no assessment has been undertaken. Having regard to the description of development for the outline planning permissions at Ebbsfleet, is there a reasonable prospect that any of these sites would be capable of making any contribution to Gypsy and Traveller pitches in the Borough over the plan period?



5. Having regard to Exam 6, my view is that there is no realistic possibility of a site coming forward at Ebbsfleet. As such, this option should be discounted.

Question 28 - Is the release of Gypsy and Traveller sites in the Green Belt justified? What is the evidence for any exceptional circumstances that support the release?

6. There are a number of factors which justify the release of Green Belt land. These are:
- The acute unmet need for sites
 - The lack of sites that have come forward
 - The lack of land outside the Greenbelt
 - The historic failure of policy
 - The specific nature of Gypsy and Traveller site provision
7. These factors, having regard to the judgment in *Compton PC v Guildford BC* [2019] EWHC 3242 (Admin) clearly justify the existence of exceptional circumstances.

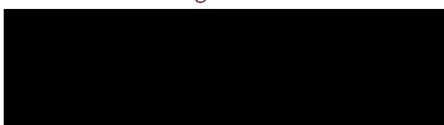
The acute unmet need for sites

8. At present the significant unmet need for sites will not be met by the plan. In my experience the total figure is exceptionally high. According to Exam 6 – 36 pitches will need to be provided within the next 4 years – which given the constraints of the Borough is unlikely to happen through windfall applications.

The lack of sites that have come forward

9. Exam 6 is unequivocal about the LPA's efforts to find sites:

- 1.6 The Council carried out a search for potential new suitable and available (i.e. deliverable or developable) sites for gypsies and travellers. This involved an assessment of whether any traveller pitches could be accommodated:
- within any of the Submission Local Plan strategic site allocations and identified areas with potential for future development;
 - on other land within Ebbsfleet Garden City; and
 - on council owned land (Dartford Borough Council and Kent County Council)
- The information on this can be found in paragraphs 4.9-4.19 of the Meeting Needs Report (pages 13-16 of GAT-2). These options were considered as being the most likely to have any prospect of coming forward. No sites were identified using this approach. Even if DBC had been able to identify sites, there is no guarantee that they would be suitable to meet the specific needs of gypsies and travellers living in the Borough.



10. Given that the council's extensive efforts have born no results, sites such as Eebs stables will need to be allocated to meet the need.

The lack of land outside the Greenbelt

11. This is a point that has been made continuously in planning matters for Gypsies and Travellers in Dartford. As part of my own work the following comment was provided via an email from a planning policy officer in 2014 (appendix 5):

there is no open countryside in Dartford which is out side of Green Belt designation, and in addition green spaces in the north of the borough are mostly either safeguarded as green spaces for residents or remain undeveloped due to them continuing to "gas" after landfill has taken place.

12. Consequently, it is unsurprising that all of Dartford's Gypsy and Traveller sites are situated within the Green Belt.
13. The lack of available land outside of the Green Belt was acknowledged in the Eebs stables appeal:

I also give significant weight to the likelihood that allocations or future planning applications on unallocated sites will involve designated Green Belt land, with the exception of land in the EDC area [which should be discounted for reasons set out above].

The historic failure of policy

14. My statement on the pre submission plan sets out from para. 14 onwards the 28 year failure of policy by the LPA to allocate sites for Gypsies and Travellers. This is in my view a significant material consideration in considering if exceptional circumstances exist. Furthermore, it also indicates that it is imperative that allocations are made as part of this plan, and are not delayed any longer.

The specific nature of Gypsy site provision

15. It is important to note that all the potential existing sites are privately owned. This means that the allocation of a specific site may not meet the need for the majority of those identified in the GTAA figures. In the case of my client, it would not be appropriate to move his entire family to another private site. The LPA quite fairly acknowledges this point in exam 6:



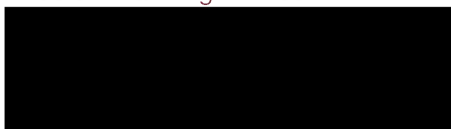
If a potential site could be identified, it would be relevant to consult with the occupiers of the existing sites from which needs are arising in order to establish whether or not it would be suitable to meet their needs.

16. This point is something that is quite specific to the Gypsy and Traveller community and should be taken into consideration.

Conclusion

17. It is encouraging that the LPA are considering the allocation of the site at Eebs stables. However, it is in our view open to the examining Inspector to direct the site to be included. There is a convincing case for the existence of exceptional circumstances, and I would invite the Inspector to ensure that allocations are made as part of the plan, and not left to a later date.

Dr Simon Ruston MRTPI September 2022



Appendix 1

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

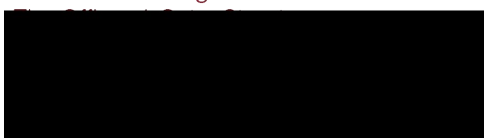
The proposed sites

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.

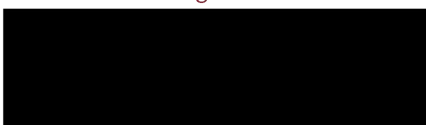
13. It is notable that the site at Ebbsfleet has been discussed since 2015, and there is still no specific location identified. I would argue that there is an urgent requirement to identify sites now in order to meet the immediate need. An aspiration is not enough. As such, the approach taken to the 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



Appendix 2

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]

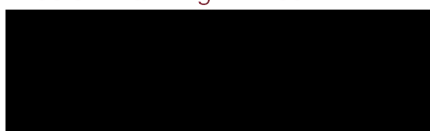
9. The question is therefore whether there is any evidence that the LPA have complied with the case law?

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:

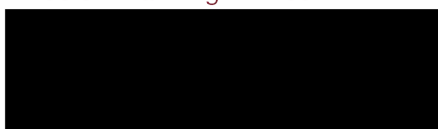
[T]he applicant's occupation of her caravan is an integral part of her ethnic identity as a Gypsy [and] the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework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

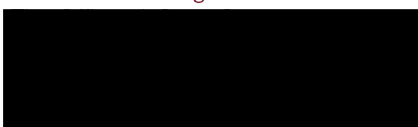
80.3 other personal circumstances of Gypsy applicants can properly be taken into account as part of the material considerations: Basildon, at [33]-[34], Ouseley J.

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



Appendix 3



Appeal Decisions

Hearing Held on 25 January 2022

Site Visit made on 31 January 2022

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2022

Appeal A Ref: APP/T2215/C/19/3228536

Land at Eebs Stables, Trollingdown Hill, Green Street Green Road, Dartford DA2 6NR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr W Chambers against an enforcement notice issued by Dartford Borough Council.
 - The notice was issued on 12 April 2019.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of the land to form a private Gypsy and Traveller caravan site.
 - The requirements of the notice are to:
 - (i) Discontinue the use of the land edged red on the site plan as a caravan site.
 - (ii) Remove from the land all of the mobile homes/static caravans, touring caravans, vehicles, sheds and all other ancillary structures, domestic goods, services and materials associated with such services, rubbish, hardstandings, concrete bases and all other materials or items associated with the residential use including the parking of vehicles not associated with the use of the paddock.
 - (iii) Reinstate the stable building for the sole function of the stabling of horses, and reinstate the land to a condition suitable for the grazing of horses.
 - The period for compliance with the requirements is: six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Appeal B Ref: APP/T2215/W/19/3228522

Eebs Stables, Downs Farm, Dartford, DA2 6NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr W Chambers against Dartford Borough Council.
 - The application Ref DA/19/00102/FUL, is dated 23 January 2019, was refused by notice dated 10 April 2019.
 - The development proposed is the change of use of the land for residential purposes with the siting of 3 No. mobile homes, partial conversion of existing stables as a utility room, and ancillary hard standing.
-

Decisions

Appeal A APP/T2215/C/19/3228536

1. It is directed that the enforcement notice is corrected by:
 - substituting "171A(1)(a)" with "171A(1)(b)" in paragraph 1;
 - deleting the description of the allegation in paragraph 3 and replacing it with:
-

“The continuation of the residential use of the land as a private gypsy and traveller caravan site in breach of Condition 1 of permission ref 17/02024/FUL.”

2. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the residential use of the land as a private gypsy and traveller caravan on the land as shown on the plan attached to the notice and subject to the conditions in the attached schedule.

Appeal B APP/T2215/W/19/3228522

3. The appeal is allowed and planning permission is granted for the change of use of the land for residential purposes with the siting of 3 No. mobile homes, partial conversion of existing stables as a utility room, and ancillary hard standing at Eebs Stables, Downs Farm, Dartford DA2 6NR in accordance with the terms of the application, Ref DA/19/00102/FUL, dated 23 January 2019, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

4. The enforcement notice relates to a roughly rectangular area of land, which contains hardstanding, mobile homes, touring caravans and a stable block at its western end, with the rest of the site being laid to grass and used for associated purposes, such as car parking. The parties confirmed that at the time the notice was issued there were three mobile homes and a touring caravan on the site.
5. Appeal B relates to a smaller application site, which is restricted to the western area, containing the mobile homes, caravans and stable block. The appellant confirmed that the application the subject of Appeal B sought the change of use of the land for residential purposes with the siting of 3 no. mobile homes. I have used this amended description in the banner heading above for clarity.
6. As the mobile homes were already on site and the use had continued following the expiry of the temporary permission, the application sought planning permission for development that has already been carried out. The layout of mobile homes does not reflect that shown on the submitted drawing no. TDA.2239.01. In particular, all three mobile homes are aligned parallel to the access drive and extend into the paddock to the east. The existing stable block appeared to have been partially converted to a dayroom, but not in the manner shown on the submitted layout.
7. There is a lawful equestrian use of the site following the grant of planning permission¹ for the block of stables. At the sitting it was stated that the equestrian use is to continue, although there was no evidence of any horses on the land at the time of my site visit. I am satisfied that the primary use of the land identified in the notice is residential.
8. Since the appeals were lodged, the National Planning Policy Framework (NPPF) has been revised in July 2021 and the parties have had the opportunity to comment on its implications for the case.

¹ Ref 12/01197/FUL and 13/01622/FUL

9. The draft Dartford Local Plan has been submitted to the Planning Inspectorate for examination, in the form of the Pre-Submission (Publication) Dartford Local Plan to 2037 (Pre-submission DLP), which was published in September 2021. The most relevant policy is M12 and a copy has been provided.

Gypsy/traveller status

10. The definition of 'gypsies and travellers' to whom the Government's Planning Policy for Traveller Sites 2015 (PPTS) applies is set out in Annex 1: Glossary. The Council does not dispute the gypsy/traveller status of those occupying the site. Information was provided by the appellant's agent giving personal details for the appellant and his family living on the site, and this was supplemented in oral and written evidence at the hearing. Based on the details, including the regularity and purpose of travel and the stated intention to continue to do so, I have no reason to doubt that the appellant and his family are persons of nomadic habit of life who meet the definition within the PPTS.

Matters concerning the notice

11. The notice alleges a change of use of the land, but the reasons for issuing the notice indicate that the change of use had previously been permitted on a temporary basis for one mobile home², with two subsequent applications³ each gaining permission for one additional mobile home. Thus, the use has continued in breach of condition 1 of the most recent permission (17/02024/FUL), which was agreed to be the operative permission for the site. I am satisfied that I can use my powers to correct the allegation without causing injustice, to reflect that the continued use is in breach of the temporary condition.
12. It follows that the alleged breach of planning control is within paragraph 171A(1)(a) rather than 171A(1)(b) of the 1990 Act and I can correct the notice accordingly.

Appeal A on ground (a) and the deemed application and Appeal B

13. As the appeals are for broadly similar developments and the Council has raised similar concerns in relation to both appeals, I have considered ground (a) of Appeal A and Appeal B together. Although Appeal A relates to a larger site, there is little difference in effects between the two sites. The site is within the Green Belt where the NPPF sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy E of the Planning Policy for Traveller Sites 2015 (PPTS) states that traveller sites in the Green Belt, whether temporary or permanent, are inappropriate development. The parties agree that the development is inappropriate and I have no reason to disagree. Therefore, having regard to the reasons for issuing the notice and the reasons for refusal, the main issues are as follows:
- The effect of the development on the openness of the Green Belt and Green Belt purposes,
 - The effect of the development on the character and appearance of the area,

² Appeal Ref APP/T/2215/W/3006764

³ Ref 17/00373/FUL and 17/02024/FUL

- Whether the site is a suitable location for the development, having regard to accessibility to local facilities and services,
- The general need for and supply of gypsy and traveller sites in the area,
- The accommodation needs of the appellant and his family and their personal circumstances,
- The weight to be given to other identified considerations,
- Green Belt balance.

Openness of the Green Belt

14. The NPPF states that one of the essential characteristics of the Green Belt is its openness, and its purposes include checking the unrestricted sprawl of large built-up areas and safeguarding the countryside from encroachment. Prior to the development taking place, the site contained development limited to that associated with the keeping of horses on the land, namely a stable building with a yard.
15. In spatial terms, the introduction of the mobile homes and other paraphernalia associated with the residential use has resulted in a loss of openness. Visually, the loss of openness is apparent in close views from the access road to the north and in some long distance views. The mobile homes are clustered together on a relatively small area of land and I therefore find the development to be moderately harmful. As the site is at the edge of Dartford it adds to urban sprawl and represents an encroachment into the countryside and therefore conflicts with the related Green Belt purposes.

Character and appearance

16. The appeal sites are located adjacent to the urban edge of Dartford, in an elevated position on a ridge, with land sloping away to towards the south. The site is towards the eastern end of a private access road that skirts the edge of the urban area, with scattered built development along its southern side. Beyond the development, the land to the south, east and west is generally open, with some long views across open fields and patches of woodland or scrub, crossed by the A2 and M25. There is a belt of tree and hedge planting between the access road and the edge of the urban area to the north. The site is within the open countryside and has a rural character, despite the proximity of the built up area to the north.
17. The area is identified in an extract from the Landscape Assessment of Kent (LAK) 2004 as the Dartford and Gravesend Fringes landscape character area. These are identified as pockets of land that have become isolated from the wider countryside to the south by the A2 and are now sandwiched between the urban area and the A2 corridor. The condition of the area as a whole is assessed as being very poor, as it is intensely physically fragmented, and the relationship between landform and landscape elements is obscured by urban development and the transport corridor. However, this is a broad brush study that does not provide a detailed analysis of the site and its landscape setting. Despite the proximity to the urban edge, the site has a rural character and is part of the distinctive open rolling landscape.

18. The mobile homes are substantial structures that have inevitably resulted in the site having a more developed appearance. They are screened from some public viewpoints due to the topography, vegetation and existing built form. However, they are apparent in close views from the private access road and also in longer views from Darenth Country Park to the south-east and from Trolling Down Hill to the south, where there are views across the allotments from the main road. In the prominent location on the ridge, where the well-defined urban edge is generally screened by trees and vegetation, the mobile homes consolidate the scattered development on the south side of the access road. The mobile homes represent a small and intensively developed site that consolidates the intermittent pattern of development and results in a more suburban appearance.
19. There are several recently planted laurel hedges within the site, including along the frontage with the access road and between the mobile homes. There is a conifer hedge separating the mobile homes and adjacent paddock from the larger field to the south. These hedges provide some screening but due to the slope and the substantial size and elevation of the mobile homes, they are nonetheless apparent in views from the surrounding area. The appellant's landscape consultant indicated that a more appropriate landscape planting scheme could be developed, based on native species. A well designed scheme could better integrate the development with existing landscape features, such as the hedgerow to the east of the site, and would assist in screening the development from long distance views, thereby creating a better defined boundary to the urban area. However, this would not entirely mitigate the harm that is caused by the encroachment of development into a hitherto open area of countryside.
20. Although appropriate planting would mitigate the impact to some extent, the development would still be moderately harmful to the character and appearance of the area. It would therefore be in conflict with Dartford Development Policies Plan 2017 (DPP) Policies DP2, DP10 and DP22 and Dartford Core Strategy 2011 (CS) Policies CS13 and CS20, insofar as they seek to ensure that development responds to, reinforces and enhances positive aspects of the locality.

Suitable location

21. CS Policy CS20 sets out that in identifying sites to meet the agreed requirement for traveller pitches, the Council will take into account, amongst other considerations, the accessibility of a proposed location to educational, health and community facilities and public transport. DPP Policy DP10 sets out criteria that proposals for gypsy and traveller pitches need to meet. This includes the requirement to be located close to a range of services and facilities. Paragraph 13 of the PPTS requires that traveller sites are sustainable economically, socially and environmentally, and sets out a number of considerations that flow from that requirement. In particular, local planning authorities should ensure that their policies promote access to appropriate health facilities, ensure children can attend school on a regular basis, and provide a settled base that reduces the need for long distance travelling.
22. The appellant has provided a table indicating the distance and approximate journey times to local facilities, including schools, shop, health services and public transport. This indicates that they are all within a 10 minute drive from

the site, while the secondary school and bus stop are 12 minutes' walk away. All could be reached by cycling within 13 minutes. However, despite the proximity of the site to Fleetdown Primary School, as there is no pedestrian link to the site it is nearly 30 minutes' walk away. I recognise that the access drive is unlit and does not have a footway, however it only serves a small number of properties and it is not unusual for access roads in the countryside to be unlit. While it is likely that most trips are taken by car, the occupiers are an extended family and there is likely to be an element of car shared trips.

23. Moreover, as set out above, the PPTS and the relevant development plan policies do not specifically refer to avoiding reliance on the private car. The NPPF in paragraph 108 recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Therefore, despite the Council's concerns, and having regard to the recent appeal decision⁴ for a new house in the locality, I am satisfied that the site is a suitable location for the development, having regard to accessibility to a range of services and facilities. It therefore accords with CS Policy CS20 and DPP Policy DP10, insofar as they seek to ensure that gypsy and traveller sites are well located in relation to a range of services and facilities. It is also not in conflict with the guidance in the PPTS and the NPPF.

The general need for and supply of gypsy and traveller sites in the area

24. Paragraph 4a of the PPTS sets out the Government's aim in respect of traveller sites that local planning authorities should make their own assessment of need for the purposes of planning. Paragraph 10 sets out the requirement for local plans to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set target. CS Policy CS20 states that the Council will work with Kent authorities to agree a sub-regional distribution of traveller pitches, and sets out criteria that will be taken into account in identifying sites to meet an agreed requirement, and the Council will produce an Implementation Strategy for the delivery of the sites.
25. DPP Policy DP10 states that Dartford will maintain a five year supply, with deliverable land to meet identified requirements for traveller pitches. Continuing provision to meet future need will be made through determining applications and through following the actions set out in the Implementation Strategy to confirm additional site availability. However, I was advised at the hearing that so far no sites have been allocated for gypsy and traveller plots in the Borough.
26. The Council has produced a Gypsy and Traveller Accommodation Assessment (GTAA) in October 2019. It sets out a need for 70 pitches over the period to 2035. The reasoned justification to Policy M12 in the draft DLP sets out that 48 of those pitches were identified as being needed in the five years from 2019 to 2026. Since the GTAA was published, 18 additional pitches have gained planning permission, while the need to 2026 is 52 pitches. As a result, the number of pitches required to meet needs from 2021 to 2026 is reduced to 34 pitches. I understand this to be the latest position, although the requirement will presumably increase as five years is now to 2027.
27. The draft DLP sets out the approach to the supply of gypsy and traveller sites, whereby the 34 pitches by 2026 will be provided through intensifying

⁴ Appeal Ref APP/T2215/W/18/3213421

development on existing authorised and tolerated sites, allocating land for additional pitches at Tennis Courts and Salinas, actively seeking to identify deliverable non-Green Belt sites within Ebbsfleet Garden City, and determining planning applications expeditiously.

28. The appellant questioned the availability of land at Tennis Courts and Salinas, which are privately owned sites. The Council was not able to confirm that a potential site had been identified at Ebbsfleet Garden City, which is under the jurisdiction of Ebbsfleet Development Corporation (EDC), and the Council was unable to clarify whether provision would be made by 2026. It would not be appropriate in these appeal decisions to conclude in any detail on matters that are being considered through the examination of the DLP. It is clear however that there is currently an unmet need for sites in the Borough.
29. The Council envisages in the Local Development Scheme July 2021 that the Local Plan will be subject to examination by the third quarter of 2022, and adopted by mid-2023. However, it was acknowledged that there was likely to be some slippage.
30. There is a publicly owned 12 pitch gypsy and traveller site in the District at Claywood Lane, Bean. It has a waiting list which is regularly reviewed. Although the appellant is not currently on the waiting list, it seems unlikely that space will become available that would accommodate the three pitches required by the appellant and his family in the foreseeable future. The Council did not identify any alternative sites for the appellant to move onto.
31. The appellant argued that there has been a failure of policy, as the authority has persistently failed to put policies or other measures in place to meet the accommodation needs of travellers. The parties agreed that the Council has never allocated land for gypsy and traveller pitches. There has been a long-standing unmet need for sites, since the requirement for Councils to ensure a supply of sites was first introduced in Circular 1/94.
32. Paragraph 27 of the PPTS makes clear that if a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision. However, an exception is where the development is on Green Belt Land. It is for the decision maker to attribute weight. The lack of a five year supply warrants significant weight in the light of the appreciable deficit in supply and the Council's persistent under delivery. The shortfall is unlikely to be remedied until the new Local Plan is in place, estimated to be within the next 2-3 years. I also note that the open countryside in the Borough is designated as Green Belt, and therefore it is unlikely that unallocated sites will come forward that are not in the Green Belt.

Accommodation needs and personal circumstances

33. The appellant moved onto the site with his family due to the lack of any alternative accommodation. The first mobile home is now occupied by him and his daughter. The second and third mobile homes and the touring caravan are occupied by his other children and their spouses. Two of his children now have their own children who are also living on site. Some of them attend local nurseries and primary school.

34. The family has previously lived in bricks and mortar but this did not suit them and was detrimental to their health. The health and wellbeing of the occupiers has improved since moving onto the site, and having a settled base has allowed them to receive ongoing healthcare and for educational needs to be identified and met. It would be in the best interests of the children to remain on the site with their families, which is a primary consideration.
35. If the appeals are unsuccessful and they have to leave the site, this would mean they would either have to live on the roadside or in bricks and mortar. Both options would be harmful to their health, while a roadside existence would make it difficult to access ongoing education and healthcare and would not be a safe place to live with young children. The extended family would like to be able to stay together, which would be difficult if they have to leave the site. The family has been looking for sites over a considerable period of time, and neither the Council nor the appellant are aware of any vacant sites that would be available to them.

Other considerations

36. I heard that the appellant and his family are living in peaceful coexistence with the local community, as evidenced by a petition in support of the original 2014 application, which therefore accords with the objective set out in paragraph 13 a) of the PPTS. Paragraph 25 however advises 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. 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. I therefore give this consideration limited weight.
37. At least part of the site is previously developed land, as it is within the curtilage of the stable building. As the use extends beyond this area into a part of the site that is open and previously undeveloped, I give this consideration limited weight.
38. The site has a lawful use for equestrian purposes, which could involve a horse lorry being parked on the site, and a caravan could be sited there if it was in use for a purpose that is ancillary to the equestrian use. Paraphernalia associated with the keeping of horses could also be brought onto the land. I give these considerations limited weight, as the use for residential purposes is over a larger area and involves large structures on the site, as well as the increased levels of activity associated with the number of caravans on the site. Furthermore, the appellant indicated that the equestrian use would continue so that a horse lorry could be parked on the site if there is a continuing equestrian use.
39. A local concern was expressed that if the appeals are allowed, it could set a precedent for similar sites. However, each case is considered on its own merits based on its particular circumstances at that time, and in the Green Belt would have to demonstrate very special circumstances.

Green Belt Balance

40. The development is inappropriate and is therefore harmful to the Green Belt by definition. There is also moderate harm to openness and the purposes of

including land in the Green Belt. I give substantial weight to the Green Belt harm. There is also moderate harm to the character and appearance of the area.

41. To be weighed against the harm is the unmet need for gypsy and traveller sites and the failure to provide for them through allocations, to which I give significant weight. I also give significant weight to the likelihood that allocations or future planning applications on unallocated sites will involve designated Green Belt land, with the exception of land in the EDC area. I give moderate weight to the personal circumstances of the extended family unit and their wish to remain on the site together. I give significant weight to the best interests of the children, whose needs are best met through staying on the site with their family and being able to remain in their educational settings. I give limited weight to the use of previously developed land and that the appellant has a peaceful coexistence with the local community. Taken together, these considerations do not clearly outweigh the harm to the Green Belt by reason of inappropriateness, and the other harm resulting from the development, so as to comprise very special circumstances. I therefore find that a grant of permanent permission is not justified.
42. However, it is necessary to consider whether a temporary or personal planning permission would be appropriate. The Planning Practice Guidance (PPG) advises temporary permissions may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of that period. It will rarely be justifiable to grant a second temporary permission, and further permissions can normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning permission will then be granted permanently.
43. In granting the temporary permission in 2015, the Inspector considered that a period of three years was likely to allow the Council to complete its assessment of other possible sites and for opportunities to be pursued, and for appropriate efforts to be made by the appellant to avoid homelessness. The Council has established the level of need, and has a draft DLP policy seeking to make provision to meet the identified need. It is likely that a new local plan will be in place within the next 2-3 years and therefore the planning circumstances will have changed at the end of a three year temporary period. I consider this to be a case where a further temporary permission is justifiable.
44. If planning permission were to be refused, the outcome would be that the appellant and their family would lose their home. This would represent a serious interference with the family's right to respect for private and family life and the home. In addition, the children's education would be likely to be adversely affected. A personal permission would ensure that the site is available for the family in view of the best interests of the children and the benefits of having a stable base for education and health care needs. In view of the particular circumstances of the case, I consider that this is an exceptional occasion where granting planning permission for development that would not normally be permitted on the site could be justified, because of who would benefit from the permission.
45. If I grant planning permission for a temporary period of three years it would avoid the family becoming homeless. This would be a proportionate approach to the legitimate aim of protecting the environment, and granting a personal

permission for a limited period would have no greater impact on the appellant and their family than would be necessary to address the wider public interest.

46. As the harm to the Green Belt would therefore be temporary, the personal circumstances of the appellant and other considerations are sufficient to clearly outweigh the harm to the Green Belt and the other harms. Taking account of the positive obligation to facilitate the gypsy way of life, there are very special circumstances to justify a personal permission. As such, the development complies with the development plan when read as a whole, and is not in conflict with the NPPF. I conclude that the appeal on ground (a) and Appeal B should succeed, and personal planning should be granted, subject to appropriate conditions.

Conditions

47. A schedule of conditions has been provided in the Statement of Common Ground, which I have considered in the light of the advice in the PPG. The parties have stated that the conditions should apply to both appeals. Allowing the ground (a) appeal results in a new planning permission, as the development granted in the original permission is no longer authorised, and the conditions attached to it no longer apply, except insofar as they require the restoration of the site after the cessation of the use.
48. A personal condition is required for the reasons set out above, and it is not therefore necessary to restrict the occupation by gypsies or travellers. A temporary condition was discussed at the hearing. The appellant requested five years on the grounds that alternative sites were unlikely to have been provided before that. However, I consider that three years is appropriate in view of the timetable for the adoption of the DLP and for there to be a realistic prospect that by the end of the period the circumstances will have changed.
49. Since the grant of planning permission will be for the use of the land as a residential caravan site, it is necessary to control the maximum number and type of caravan. It was agreed at the hearing that at the time the notice was served there were three mobile homes and a touring caravan on the site. Appeal B sought permission for the use of the land with the siting of three mobile homes. A touring caravan which could be used for travelling could be stationed on the land for purposes ancillary to the residential use of the site, and it is not therefore unreasonable to limit the number of caravans to 3 mobile homes and 1 touring caravan, given the constraints of the site.
50. It is appropriate to require details of landscaping. Although temporary permission is being granted, an appropriate landscaping scheme would assist in mitigating the impact on the rural character and the Green Belt, whilst bringing ecological benefits. There are laurel and conifer hedges currently within and adjacent to the site, which could be replaced with more appropriate native species. This should form part of a condition that requires submission of a site development scheme (SDS). As the development has already commenced, this should be worded in such a way that unless details are submitted and approved by the Council, and works carried out, to an agreed timescale, then the use must cease.
51. As the development has already been carried out, there is no need for a condition listing the approved drawings in relation to Appeal B. However, the site layout does not reflect that shown on the drawing that accompanied the

application. The SDS condition should therefore include the site layout, drainage, lighting and waste storage in the interests of visual amenity and to ensure that the site is adequately drained. Conditions restricting commercial uses and the parking of commercial vehicles (except those associated with the lawful equestrian use) are necessary to protect the rural character. The Council has suggested a condition removing various permitted development rights. As there is already hardstanding and areas of decking around the mobile homes the removal of permitted development rights for them is not justified. It would be appropriate however to remove permitted development rights for means of enclosure, in the interests of the rural character of the area. The parties suggested a condition requiring the stable block to be returned to equestrian use at the end of the temporary period. However, I consider that the actions required in condition 2 are sufficient to ensure that the use ceases and the land is restored to its previous condition.

Conclusions

52. For the reasons given above, I conclude that Appeal A succeeds on ground (a) and Appeal B should be allowed. I shall grant planning permission for the use as described in the notice as corrected. The appeal on ground (g) does not therefore fall to be considered.

N Thomas

INSPECTOR

APPEARANCES:

For the appellant:

Timothy Jones

Dr Simon Ruston

Rhodri Crandon

William Chambers

Kelly Chambers

For the Local Planning Authority:

Matthew Apperly

Neill Whittaker

Interested persons:

Councillor Rosanna Currans

HEARING DOCUMENTS

DOCUMENTS SUBMITTED DURING THE HEARING

Document 1 – Circular 1/94

Document 2 – ODPM Circular 1/2006 Planning for Gypsy and Traveller Caravan Sites (Office of the Deputy Prime Minister)

Document 2 – Planning Policy for Traveller Sites 2012 Department for Communities and Local Government

Document 3 – Updated personal details of site occupiers

Document 4 – Dartford Borough Council Local Development Scheme July 2021

APPEAL A AND APPEAL B: SCHEDULE OF CONDITIONS

1. The use hereby permitted shall be carried on only by Mr W Chambers senior, Scarlett Chambers senior, Ellimay Williams, William Chambers junior, Courtney Chambers, Ebony Boswell, Tommylee Boswell and their resident dependants, and shall be for a limited period being the period of three years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
2. When the site ceases to be occupied by those named in Condition 1 above, or at the end of three years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought onto the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
3. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within 3 months of the date of this decision and notwithstanding the details submitted with application ref DA/19/00102/FUL, details of: the site layout, the means of foul and surface water drainage of the site, landscape planting, facilities for the storage and collection of refuse and waste; and details of any external lighting, shall have been submitted for the written approval of the local planning authority and the said details shall include a timetable for their implementation;
 - (ii) Within 11 months of the date of this decision the details to be submitted in (i) shall have been approved by the local planning authority or, if the local planning authority refuse to approve the details, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State;
 - (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State.
 - (iv) The approved details shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved details specified in this condition, those details shall thereafter be retained.
In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
4. No more than four caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the land at any one time, of which no more than three shall be a static caravan or mobile home.

5. No commercial activities shall take place on the land, including the storage of materials.
6. No vehicles over 3.5 tonnes, other than in connection with the pre-existing equestrian use of the site, shall be stationed, stored or parked on the site.
7. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no new walls, fences or other means of enclosure shall be erected on the site at any time.

Appendix 4

Report to Tewkesbury Borough Council

By David Reed BSc DipTP DMS MRTPI
an Inspector appointed by the Secretary of State

Date: 12 April 2022

Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

Report on the Examination of the Tewkesbury Borough Plan 2011-2031

The Plan was submitted for examination on 18 May 2020

The examination hearings were held between 16-18 & 23-25 February,
9-11 & 16-18 March 2021

File Ref: PINS/G1630/429/2

Forthampton

62. Forthampton is a small, dispersed village with few services and facilities and therefore not classified by the JCS as a Service Village suitable for significant development. Despite this, the submitted TBP includes a housing allocation for 10 dwellings to support the vitality of the village on the basis of community support for such a proposal. However, in itself this is insufficient justification for an allocation and it would now seem from the views of the Parish Council that community support is not clear cut in any event. In the circumstances housing allocation FOR1 is not justified and **MM6** is necessary to delete the allocation. The policies map should be amended accordingly. Any proposals for the village can be considered under the enabling Policy RES4.

Omission of settlement boundaries

63. A number of substantially built-up areas are not included within settlement boundaries on the policies map as submitted. Amongst other implications, this would mean Policy RES3 applies rather than RES2, and EMP4 rather than EMP3, which would not be justified. These areas should therefore be included within defined settlement boundaries. There is no reason why boundaries should only be defined for recognised settlements in the JCS hierarchy, for an effective plan they should distinguish more widely between built up and countryside areas so that the geographic coverage of the policies in the TBP is justified and effective. **MM7** is therefore necessary to explain the inclusion of settlement boundaries for built-up areas on the edge of Gloucester and Cheltenham. Boundaries are also necessary for Northway and Ashchurch to the east of Tewkesbury to reinstate those in the 2006 plan adjusted to reflect subsequent planning permissions and to include the intensively built-up part of the MOD land. The policies map should be updated accordingly.

Conclusion

64. In conclusion, subject to **MMs1-7** and **MM24**, the housing allocations and settlement boundaries in the TBP are justified and consistent with national policy and the site-specific policies for the allocations are effective.

Issue 3 – Whether the TBP provides the pitches and plots for Gypsies, Travellers and Travelling Showpeople required by the strategic policies of the JCS.

65. Based on the Gypsy and Traveller Accommodation Assessment carried out in 2017, the supporting text to JCS Policy SD13 sets out the number of pitches and plots that are required in each district between 2016 and 2031, both for those that meet the definition in the Planning Policy for Traveller Sites (PPTS) and those that do not. Contrary to the Council's view in EXAM027, the needs of the latter group should also be provided under the requirements of JCS Policy SD11 and the Housing and Planning Act 2016, albeit there is no need to demonstrate five years supply of deliverable sites for those that do not meet the definition.

66. The overall requirement for the Borough is 78 pitches for Gypsies and Travellers of which 20 are for those who either definitely or are likely to meet the definition. With 23 pitches granted permission since 2016, in numerical terms the PPTS requirement figure has already been met, but there is no means of ensuring that those who met the definition are accommodated first. 55 pitches still need to be provided, and in practice some of these will be for those meeting the definition. Following a call for sites and consideration of public land, the TBP as submitted includes allocations for a further 25 pitches, but this includes 8 pitches on land adjacent to Fieldview at The Leigh, a site which is no longer available. The provision for a further 17 pitches therefore leaves 38 still to be identified in the period to 2031, a challenging figure.
67. Whilst satisfied that few suitable sites have come forward and the Council has generally taken a proactive approach to site finding, one existing site providing seven pitches at Brookside Stables, Badgeworth has not been allocated despite meeting the site selection requirements for inclusion in the Preferred Options Consultation in 2018. The previously developed site has been in continuous use since 2002, initially unauthorised but subsequently with the benefit of a series of temporary permissions. Notwithstanding its location in the Green Belt, the reasons for excluding the site following the consultation are unconvincing. The site is suitable for allocation for permanent use which would reduce the remaining shortfall against the JCS requirement to 31 pitches. These will need to be provided in due course through individual planning applications assessed against the criteria in JCS Policy SD13. For the TBP to be positively prepared, **MM16** is necessary to allocate the Brookside Stables site and for effectiveness to delete the site adjacent to Fieldview at The Leigh which is no longer available. The policies map should be updated accordingly.
68. In conclusion, subject to **MM16** and further sites being brought forward under JCS Policy SD13, the TBP provides the pitches and plots for Gypsies, Travellers and Travelling Showpeople required by the strategic policies of the JCS.

Issue 4 – Whether the TBP provides for the quantity and distribution of employment land required by the strategic policies of the JCS, whether the employment allocations are justified and consistent with national policy and whether the general employment policies in the plan are positively prepared, justified, effective and consistent with national policy.

69. JCS Policy SP1 sets a requirement for a minimum of 192 ha additional B-class employment land across the JCS area to contribute towards the delivery of about 39,500 new jobs. 112 ha of employment land will be delivered in the JCS strategic allocations (JCS Table SA1), leaving at least 80 ha to be provided on non-strategic sites. 6 ha is allocated in Cheltenham and 31 ha either allocated or proposed in Gloucester, leaving a minimum 43 ha of further land to be identified in Tewkesbury Borough.
70. The amount of undeveloped land on existing employment sites being carried forward in the TBP totals 43 ha (EXAM041). With planning permission granted for a 3.5 ha extension to Ashville Business Park and on 5.9 ha adjacent to Bamfurlong Industrial Park, scope for a 2.2 ha extension at Malvern View

Appendix 5



FW: Enquiry regarding Planning policies and land supply for Gypsy and Traveller Sites

[REDACTED]
[REDACTED] 24 March 2014 14:30

[REDACTED]
[REDACTED]
Subject: RE: Enquiry regarding Planning policies and land supply for Gypsy and Traveller Sites
Date: Mon, 24 Mar 2014 14:20:32 +0000

Dear Keli

As promised I attached the National Planning Policy for Traveller Sites (deals with both plan making and planning applications). The list of current Local Plan Policies 1995 that are still in force are set out below;

S4, S6,

E10, E13, E14,

H9, H12, H13, H14, H15,

R3, R6, R9,

T16, T18, T19, T20, T21, T23, T27, T28, T33, T34,

DL1, DL4,

RT14, RT15, RT16, RT17, RT18, RT19,

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C1, C2, C3, C4, C5, C7, C11, C12, C13, C14, C15, C16, C17,

V1, V2, V4, V5,

B1, B3, B5, B6, B7, B8, B9, B10, B11, B12, B13, B14, B16,

CF5, CF6, CF11, CF12,

TC2,

Appendices 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21.

These saved policies and appendices will be replaced by the Development Management Development Plan document that is currently being prepared.

As I mentioned at our meeting, the Local Plan Review 2004 maps and policies do not hold any force although sometimes planners may use some of the contents for general guidance. Local policy in Dartford is set in the Core Strategy 2011 and the saved policies of the Adopted Local Plan 1995(as set out above). In addition the Council has to take into account the National Planning Policy Framework and National Planning Policy for Traveller sites (where relevant).

As we discussed this morning there is no open countryside in Dartford which is outside of Green Belt designation, and in addition green spaces in the north of the borough are mostly either safeguarded as green space for residents or remain undeveloped due to them continuing to "gas" after landfill has taken place. Now that a new GTAA has been completed, the next stage is for the council to identify sites for future gypsy and traveller accommodation. There is no fixed timetable for this work and it is likely that the council will have to look at a number of different options for future delivery of sites.

Regards

Tania Smith

██████████am

██████████ouncil

██████████

[REDACTED]

[REDACTED]

[REDACTED]



Final Planning Policy for Traveller Sites March 2012.pdf

131K