

STATEMENT OF CASE

REFUSAL OF PLANNING PERMISSION

Land: Land south of Normandy Way, adjacent to 12 Newquay Close, Hinckley, Leics

Appellants: D. WINTER

LPA: HINCKLEY AND BOSWORTH BC

LPA ref: 24/00016/FUL

APPLICATION SUBMITTED: 8.1.2024

APPLICATION REFUSED:19.4.2024

My ref: J 20-2023

Prepared by: Heine Planning Consultancy

May 2024

Alison T Heine B.Sc, M.sc, 10 Whitehall Drive, Hartford, Northwich, Cheshire CW8 1SJ

Tel: 01606 77775 **e-mail:** heineplanning@btinternet.com

1. INTRODUCTION

1.1 This statement is prepared and submitted by Mrs Alison Heine MRTPI. I am a sole trader with over 30 years experience of Development Management issues. I specialise in Gypsy-Traveller case work and have assisted Gypsy-Traveller clients with planning applications, appeals and local plan work for over 20 years throughout England and Wales.

1.2 The application the subject of this appeal was submitted in January 2024 and refused April 2024. It was a resubmission of a previous application (LPA ref23/00655/ful) which was refused on 25/8/2023. The 2024 application relied on the same plans but was supported by a Planning Statement prepared by Heine Planning and Transport Statement provided by Mr M. Lennon of Lennon Transport Planning Ltd. In addition the County Highway Authority requested a Road Safety Audit which was also commissioned and submitted. The aim of the resubmitted application was to address the reasons for refusal of this first application.

1.3 The land is located on the south side of Normandy Way. The decision letter prefers to refer to it as land adjacent to 12 Newquay Close Hinckley. As the site has an existing access from Normandy Way and has no access from Newquay Close, I consider Normandy Way to be a more accurate description of the address.

1.4 The previous (2023) application was refused for the following 3 reasons:

1. The proposal results in significant harm to the intrinsic value, beauty, open character, and landscape character of the countryside, in principal and by virtue of the domestication and urbanisation of the site. Consequently, this scheme also fails to protect the role and function of the designated Hinckley/Barwell/Earl Shilton/Burbage Green Wedge, which also detrimentally affects its character. Ultimately, it is considered that these adverse impacts significantly and demonstrably outweigh the benefits of the scheme in these site-specific circumstances. Therefore, the development is contrary to, and in conflict with, the Good Design Guide, Policies DM4, and DM10 of the adopted Site Allocations and Development Management Policy Development Plan Documents (2016), Sections 6, 18, and 20 of the adopted Core Strategy, as well as Section 15 and the overarching principles of the National Planning Policy Framework (2021).

2. This proposal results in an intensification of vehicular movements turning onto and off the A47 Normandy Way, which is a busy high-speed road, where the turning manoeuvres are likely to be an additional source of danger to road users, As a result, the residual cumulative impacts of the development are considered to be serve contrary to, and in conflict with Policy DM17 of the adopted Site Allocations and Development Management Policy Development Plan Documents (2016), Policy 23/00655/FUL IN5 of the Leicestershire Highway Design Guide and Paragraphs 110 and 111 of the National Planning Policy Framework (2021).

3. The Applicant has failed to demonstrate that an appropriate and safe vehicular access can be provided for the proposed development contrary to, and in conflict with Paragraphs 110 and 111 of the National Planning Policy Framework (NPPF) (2021).

1.5 The 2024 resubmitted application (this appeal) was refused for two reasons. The third reason listed above was dropped. The two reasons for refusal are:

1. The development results in permanent and significant adverse impacts to the rural character and undeveloped nature of the application site, the wider Burbage Common Rolling Farmland Land Character Area, the Hinckley/ Barwell/ Earl Shilton/ Burbage Green Wedge, and the intrinsic value, beauty, open character, and landscape character of the countryside. As a result, the development fails to protect the role and function of the designated Green Wedge. Ultimately, it is considered that the significant adverse impacts of the development significantly and demonstrably outweigh the benefits of the scheme in these site-specific circumstances. Consequently, the development is contrary to, and in conflict with, the Good Design Guide (2020), Policies DM4 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), Sections 6, 18 and 20 of the adopted Core Strategy (2009), as well as Sections 12 and 15 and the overarching principles of the National Planning Policy Framework (December 2023).

2. This proposal, if permitted, would lead to an intensification of vehicular movements turning onto and off the A47 Normandy Way, which is a busy high-speed road, where the turning manoeuvres could be an additional source of danger to road users, which is not in the interests of highway safety. As a result, the residual cumulative impacts of the development

are severe, which is contrary to Policy 17 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016), Policy IN5 of the Leicestershire Highway Design Guide, and Paragraphs 114 and 115 of the National Planning Policy Framework (NPPF) (December 2023).

1.6 Whilst the Council refer to and rely on adopted development plan policies and NPPF they found not conflict with policy guidance in Planning Policy for Traveller Sites (PPTS) which is the national policy guidance for the proposed used.

1.7 I attach a copy of the delegated officer report at **Appendix 1**. This is very detailed and thorough and I will try not to repeat its contents.

1.8 The delegated report lists the many objections raised by members of the public. Most of these concerns are not relied on by the Council to support the reasons for refusal and the case officer has responded to the most relevant points raised.

1.9 There are issues with the delegated report and assumptions contained within it. These are discussed below.

1.10 There appear to be inherent tensions between adopted development plan policies and with national policies for Travellers.

1.11 It will be argued that if there is conflict with adopted policies, there are other material considerations which would outweigh these conflicts.

2. REASONS FOR REFUSAL

Reason 1

Discussion of policies

2.1 Reason 1 concerns harm to the Green Wedge and countryside. The Green Wedge is a local designation. Permission was refused with reference to two Site Allocations and Development Management Policies 2016 DM4 and DM10 and policies 6,18 and 20 of the adopted Core Strategy 2009.

2.2 I attach at **Appendix 2** a copy of the Hinckley and Burbage Policies Map in the Reg 19 Local Plan Review. The appeal site is in the NE edge of the settlement just south of the A47 which is the main road leading from Hinckley in an easterly direction off the top of the plan. This Policies map shows various housing allocations on the edge of the town. Significantly it demonstrates how few opportunities exist for urban infilling and how reliant the Council is on urban fringe locations to meet future housing needs. As discussed below, permission was granted in 2024 for a large housing development on the northern edge of Hinckley on the north side of the A47 on land that was not identified as an allocated site in the Reg 19 local plan consultation process.

DM4 Safeguarding the Countryside and Settlement Separation

2.3 Policy DM4 of the DPD relates to safeguarding the countryside and settlement separation. It states:

“To protect its intrinsic value, beauty, open character and landscape character, the countryside will first and foremost be safeguarded from unsustainable development.

Development in the countryside will be considered sustainable where:

- a) It is for outdoor sport or recreation purposes (including ancillary buildings) and it can be demonstrated that the proposed scheme cannot be provided within or adjacent to settlement boundaries; or
- b) The proposal involves the change of use, re-use or extension of existing buildings which lead to the enhancement of the immediate setting; or
- c) It significantly contributes to economic growth, job creation and/or diversification of rural businesses; or
- d) It relates to the provision of stand-alone renewable energy developments in line with Policy DM2: Renewable Energy and Low Carbon Development; or
- e) It relates to the provision of accommodation for a rural worker in line with Policy DM5 - Enabling Rural Worker Accommodation.

and:

- i) It does not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside; and
- ii) It does not undermine the physical and perceived separation and open character between settlements; and

- iii) It does not create or exacerbate ribbon development;
- iv) If within a Green Wedge, it protects its role and function in line with Core Strategy Policies 6 and 9; and
- v) If within the National Forest, it contributes to the delivery of the National Forest Strategy in line with Core Strategy Policy 21.”

2.4 The key aim of this policy is to safeguard the countryside from unsustainable development. What the delegated report fails to point out is that in January 2024 consent was granted on appeal for up to 475 houses on land on the north side of Normandy Way (A47) between the Road to Barwell and the roundabout for Stoke Road. An outline application is being reported to the May 2024 Committee and I attach the report at **Appendix 3**. This notes at para 8.9 that there is conflict with Policy DM4 and at 8.45 that this can be considered an urban edge location, overlooked and enclosed by existing residential development and commercial built form on Normandy Way, and can be considered part of the transition from urban edge to the wider open countryside rather than an isolated rural site. As such, the site and its immediate context was not considered to have ‘strong rural qualities’ when compared the parts of the wider character area. This view is repeated at para 8.49 and at para 8.50 it is argued that a large development of up to 475 houses on land designated countryside and not allocated in the Reg 19 Local Plan, would not have a detrimental impact on landscape character similar to this appeal site, sufficient to warrant refusal. If permission can be granted for up to 475 homes on land on the edge of Hinckley, separated from the urban area by the A47, it will be for the Council to explain why a much smaller scale of development on the urban edge which also meets a housing need, can not be considered to offer clear benefits to the public and have limited detrimental impacts to landscape character and from a visual perspective.

2.5 At para 8.8 of the delegated report the Council state that outside defined settlements boundaries, the countryside is not regarded as a sustainable location for new developments. It goes on to refer to Section 15 of the NPPF an para 180 (B) and the need to conserve and enhance the natural and local environment. This overlooks and fails to have proper regard to the provisions of PPTS. A presumption in favour of sustainable development is at the heart of the Framework, which includes PPTS. Sustainable development has three dimensions – economic, social and environmental. It is not solely concerned with the natural and local environment. As with the general provision of housing, the provision of additional accommodation for travellers has an inherent element of social

sustainability – especially if it reduces the pressure on unauthorised sites. Moreover, as a settled base enables the appellants to work as sole traders there is also some element of economic sustainability in the proposal. Given that use is made of a small paddock that is not recognised or designated for its landscape or wildlife interests and as the site is located on the edge of a settlement, with excellent cycle and walking routes into Hinckley where a full range of services and facilities can be accessed without reliance on the motor car, it can also be considered environmentally sustainable. As the proposed development complies with PPTS it can be considered sustainable.

2.6 Policy DM4 policy was adopted in 2016 and post dates guidance in PPTS which is supportive of Gypsy Traveller sites on land outside settlement boundaries. Policy C PPTS concerns sites in rural areas and the countryside. Policy D PPTS concerns Rural Exception Sites, Policy E PPTS makes clear Traveller sites will be inappropriate development in the green Belt but not in other parts of the countryside. Policy H para 25 PPTS states quite clearly that new sites should be very strictly limited in open countryside that is away from existing settlements and goes on to explain that sites in rural areas should respect the scale of local communities. Despite all these references to Gypsy Traveller sites in rural areas in PPTS, Policy DM4 lists the types of development that are considered sustainable in the countryside and does not include mention of Travellers and fails to explain why they are excluded. Criteria a)-e) are however just examples of the types of development considered sustainable. Whilst the proposed development does not fall within the type of development listed, this is not a closed list of permissible development in the countryside.

2.7 There is clear tension between DM4 adopted 2016 and with adopted Policy 18 Provision of sites for Gypsies etc of the Core Strategy 2009 which clearly states that permission will be granted for new sites within or adjacent to the settlement boundary of named towns and of key rural centres/ rural villages ie outside settlements. No where in Policy 18 does it state that it does not apply to areas of Green Wedge yet this use was not included as an exception listed in Policy 6 Hinckley Green Wedge of the same Core Policy nor is it mentioned anywhere in the policy of the supporting text. No explanation is provided as to why the Core Strategy is supportive of Gypsy Traveller sites outside settlement boundaries yet fails to acknowledge this in other policies for the Green Wedge (CP6) or countryside (DM4).

2.8 As the proposed development conflicts with criteria a-e in so far as it is not included in the list of sustainable development in the countryside as set out in DM4, there is no need to then have regard to the further criteria i-v which are linked by the preposition 'and' and clearly relate and apply to the uses listed in the first part of the policy. Yet at para 8.11 the delegated officer report has regard to these five further requirements and does so at para 8.44 onwards. The principle of Gypsy-Traveller sites in countryside locations adjacent to settlement boundaries and within a reasonable distance of local services and facilities even if the site is not directly adjacent to the settlement boundary is accepted by adopted Policy 18 as supported by PPTS (which is the most up to date policy guidance) .

2.9 Furthermore, the policy approach in DM4 was retained in Policy HO07 of the Regulation 19 Hinckley and Bosworth Local Plan 2020-2039 published February 2022 but which is now suspended **(see Appendix 4)** .

DM10 Development and Design

2.10 Policy DM10 provides the context for development and design. The policy states:

“Developments will be permitted providing that the following requirements are met:

- a) It would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, including matters of lighting, air quality (including odour), noise, vibration and visual intrusion;
- b) The amenity of occupiers of the proposed development would not be adversely affected by activities in the vicinity of the site;
- c) It complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features;
- d) The use and application of building materials respects the materials of existing, adjoining/neighbouring buildings and the local area generally;
- e) It incorporates a high standard of landscaping where this would add to the quality of the design and siting;
- f) It maximises opportunities for the conservation of energy and resources through design, layout, orientation and construction in line with Core Strategy Policy 24;
- g) Where parking is to be provided charging points for electric or low emission vehicles are included where feasible;

- h) An appropriate Sustainable Drainage Scheme is submitted to and approved by the relevant Authority. Schemes should incorporate wildlife areas, ponds, swales and permeable paving where appropriate;
- i) It maximises natural surveillance and incorporates the principles of Secured by Design and has considered the incorporation of fire safety measures. In exceptional circumstances where outstanding, innovative design is demonstrated (particularly where high levels of sustainability are an integral feature), applications will be considered favourably, even where this may result in some limited conflict with the above criteria.”

2.11 The Council appear to take issue with criteria (c) and the need to ensure that new development complements or enhances the character of the surrounding area. Permission is sought for a residential use on land adjoining modern housing estates on the edge of a town and fronting a busy road. This is not an area of open countryside. The development will have some impact but this is not serious and would occur to a limited extent given the retention of much landscaping and proposed landscaping. The only view will be through the site entrance which is existing and relatively small in the overall frontage of the site.

2.12 The same Council has previously justified 20 pitches on land at Dalebrook Farm also off the A47 to the NE of Earl Shilton (**See Appendix 5**). This site is in open countryside in a highly prominent and open location visible from the A47 and other roads, to the north of and clearly separate from Earl Shilton, the Council need to explain why they rely on this policy to justify refusal of a much smaller development, for a self contained site, that is well screened by mature planting and is on the settlement edge adjoining modern housing estates.

2.13 Para 26 (d) of PPTS implies that sites should not expect to be completely hidden, and therefore some degrees of visibility is to be expected. Nevertheless, in terms of location , nature and scale of the development, it would be mostly well screened and whilst there would be limited visual intrusion, this would not amount to harm that would undermine any of the essential aims of Policy DM10 and can be mitigated and addressed by condition by appropriate landscaping.

Core Strategy 2 Policy 6 Hinckley Green Wedge

2.14 Policy relating to the Green Wedge is provided by Policy 6 of the Core Strategy. Paragraph 4.28 of the Core Strategy, which provides the supporting text to Policy 6, states:

“The green wedge between Hinckley, Barwell and Earl Shilton protects the separation of the three settlements, helping to protect their individual identities and provides easy access from the urban areas into green spaces, contributing towards the quality of life for residents in these urban areas.”

2.15 This policy identifies three main functions for the Green Wedge

-separation

-protect individual identities of settlements

-provide easy access from urban areas to green spaces.

2.16 However, this is not what Policy 6 actually says.

Policy 6: Hinckley/Barwell/Earl Shilton/Burbage Green Wedge

Within the Hinckley/Barwell/Earl Shilton/Burbage Green Wedge uses will be encouraged that provide appropriate recreational facilities within easy reach of urban residents and promote the positive management of land to ensure that the Green Wedge remains or is enhanced as an attractive contribution to the quality of life of nearby urban residents.

The following land uses will be acceptable in the Green Wedge, provided the operational development associated with such uses does not damage the function of the Green Wedge:

(a) Agriculture, including allotments and horticulture not accompanied by retail development

(b) Recreation

(c) Forestry

(d) Footpaths, bridleways and cycleways

(e) Burial grounds

(f) Use for nature conservation

Any land use or associated development in the Green Wedge should:

(a) Retain the function of the Green Wedge

(b) Retain and create green networks between the countryside and open spaces within the urban areas

- (c) Retain and enhance public access to the Green Wedge, especially for recreation and
- (d) Should retain the visual appearance of the area

2.17 Policy 6 is concerned with providing appropriate recreational facilities within easy reach of urban residents, and promoting positive management of the land to ensure the Green Wedge remains or is enhanced as an attractive contribution to the quality of life of nearby urban residents.

2.18 This is not a landscape policy and there is no suggestion the landscape around Hinckley warrants special protection. Neither is this a policy designed to protect designated sites, habitats or green infrastructure. As such, the claim by the Council at para 8.15 that this policy is supported by para 15 and 181 of the NPPF is not accepted.

2.19 I am doubtful that this policy is compatible with the overarching principles of the Framework. It does not qualify as a specific policy where development should be restricted in the terms identified in Footnote 7 of the Framework or para 27 PPTS. In accordance with para 175 it does not attract the same weight as international and national policies designed to conserve and enhance the natural environment, such as Green Belt or classifications listed in para 176 where either substantial or great weight must be attributed to any harm.

2.20 Taking the first part of the Green Wedge's main function, to protect the separation of the three settlements, it is clear that policy does not take issue with a range of developments usually found and carried out on land outside settlement boundaries eg agricultural, forestry, burial grounds and use for nature conservation. As PPTS makes clear at paras 16, 25 and elsewhere, Gypsy Traveller sites are also considered an acceptable use of land outside settlement boundaries provided they are not in the Green Belt. This Green Gap policy is a local designation and does not carry the same weight as Green Belt policy. As an acceptable use of land outside settlement boundaries, Gypsy Traveller sites can not be considered to close the gap between settlements any more than any other appropriate use of land in the countryside.

2.21 Furthermore, as the proposed development adjoins the settlement boundary, and rounds off that settlement boundary, the provision of a four pitch Gypsy Traveller site would have no discernible impact on that function. The site would extend no further north or east beyond the

existing settlement boundary than existing development. It is contained by the A47 which retains a clear separation between Hinckley and Barwell. The proposal would not lead to any outward spread of development into the gap. It would not diminish the separation of Hinckley from Barwell physically or visually, it would have no effect on the integrity of the gap. It would read as a minor extension of Hinckley and would have no impact on the individual identities of Hinckley and Barwell.

2.22 Whilst the proposal would fail to provide any appropriate recreational facilities, I doubt agriculture and burial grounds could claim to do so either. But nor would development of this land result in the loss of any recreational facilities existing or proposed. It would not impact on the need to provide access from urban areas to green spaces. It is not even clear what green spaces exist within this part of the Green Wedge that are open to the public as most of the land along the A47 appears to be private farmland or allotments. There are no public rights of way or access to or within the site. P27 of the Core Strategy 2009 has a plan of the main access routes in and around Hinckley/Barwell and none (proposed or existing) cross the site or pass close to the site. The closest route is some distance to the east where a right of way crosses the A47 from Barwell in the north to Barwell Lane on the edge of Hinckley. This passes nowhere near to the appeal site. The proposal would not obstruct the cycle path or pavement along the A47.

2.23 The only and closest public green space I am aware of is the small play area next to the entrance to the Dorothy Goodman Upper School which is accessed from Barwell Lane from within the housing estates without any need for users to follow the busy A47 passed this site. As such, I fail to see how development of this site would serve to prevent access to green spaces in the Green Wedge.

2.24 The proposed development for a residential use adjoining other residential uses in modern housing estates. It is separated from houses by mature hedgerows and a vacant field. It would not result in any undue impact on the quality of life of adjoining urban residents. No properties directly overlook the land which is well screened by high mature vegetation from adjoining houses. At para 8.15 the Council claim that the Green Wedge serves as a 'green lung' to maintain habitats and green infrastructure. The appeal site adjoins the busy A47 which most would not describe as a 'green lung'. The consultation response from the LCC ecologists notes that environmental records only record the presence of bats in the area and there are no objections to the proposal subject to appropriate standard conditions.

2.25 It is therefore overtly clear that the Green Wedge's functions would not be harmed in any way by this development.

2.26 Policy 6 then lists the land uses that will be acceptable in the Green Wedge. It lists 6 categories but this is not an exhaustive or closed list. It does not exclude other uses or state that only the 6 categories listed will be considered acceptable. It fails to say what would not be permitted. The categories are very general. Policy is not cross referenced with Policy 18 for Gypsy Travellers which clearly states that sites adjacent to the settlement boundary of Hinckley are considered suitable for Traveller sites. There is no mention in Policy 18 for Gypsy Travellers that it does not apply with the areas of Green Wedge and no reason to believe that such a use is unacceptable or inappropriate in areas of Green Wedge. This point was raised in the planning statement submitted with the resubmitted application and remains unanswered by the Council.

2.27 The final part of Policy 6 lists the requirements for 'any land use or associated development' in the Green Wedge. It does not restrict consideration to the land uses listed in a)-f) above. As argued above, the proposed development would retain the function of the Green Wedge. It would also retain and indeed strengthen the green networks between the countryside and the urban edge although it is not clear how open spaces within urban areas are expected to be connected to the Green Wedge. The proposal does not impact on public access to the Green Wedge. As the development is relatively small, self contained, adjacent to modern housing estates, in an essentially edge of settlement location fronting the A47, would retain existing landscaping and increase planting on the site, the visual appearance of the area will not be unduly harmed.

2.28 In summary, I fail to see how the proposed development can be considered contrary to this policy.

Core Strategy Policy 18 Provision of Sites for Gypsies, Travellers and Travelling Showpeople.

2.26 This is a criteria policy which predates PPTS.

Policy 18: Provision of Sites for Gypsies, Travellers and Travelling Showpeople

The council will allocate land for 42 residential pitches (26 up to 2012, 16 from 2012 - 2017), capacity for up to 10 transit caravans that equates to 5 transit pitches (to 2012), and up to 3

showpeople family pitches (2 up to 2012, 1 from 2012 - 2017). Beyond 2017 to the end of the plan period there is an assumed on-going increase of 3% compound growth per annum for household formation for gypsies and travellers. For travelling showpeople a growth rate of 1.5% is assumed for the period 2017 - 2026. A Gypsy & Traveller Accommodation Needs Assessment will be undertaken to confirm the need beyond 2017. Of these new pitches 6 should be socially rented, to be provided on one site and managed by an RSL.

Planning permission for new gypsy and traveller sites will be granted providing the site is:
Within or adjacent to the settlement boundary of Hinckley, Burbage, Barwell and Earl Shilton
or

Within or adjacent to the settlement boundary of any of the Key Rural Centres/Rural Villages
or

Is located within a reasonable distance of local services and facilities including shops, GP's and schools, even if the site is not directly adjacent to the settlement boundary, and

Has safe highway access, provision for parking and servicing

Can be capable of sympathetic assimilation into the surroundings and

Is appropriate to the scale of the nearest settlement, its local services and infrastructure

Will not cause unacceptable nuisance to existing neighbours by virtue of noise and other disturbance caused by movement of vehicles to and from the site

Appropriate to provide a safe and healthy environment for residents

Applications for new sites and refurbishment of existing sites must meet the design guidelines detailed in National Guidance (Designing Gypsy & Traveller Sites, Good Practice Guide).

2.29 Policy 18 states quite clearly that sites will be granted within or adjacent to the settlement boundary of Hinckley where this site is located. As such, it is unclear on what basis the Council can claim (para 8.17) that the proposed development is unacceptable in principle and does not accord with DM4, Policies 6 and 20 none of which specifically reject this land use in urban fringe locations contrary to Policy 18 and PPTS which provides the more up-to-date policy guidance.

2.30 It is presumed issue is only taken with whether the proposed site

- a) Has safe highway access, provision for parking and servicing
- b) Can be capable of sympathetic assimilation into the surroundings

2.31 The Council has dropped the third reason for refusing the 2023 application and has since agreed that the site does have a safe highway access and adequate visibility splays and that this could be controlled by condition. Issue is only taken with the intensification of traffic using the access and not the design or configuration of the access itself which is discussed below. There is also excellent provision for parking/servicing within the site.

2.32 The Council also agree that the site is an urban fringe location, adjoins modern housing estates on two sides, fronts a strategic highway, and is well screened. Given the small scale of the proposed development, existing mature screening which is all to be protected and extent of proposed additional screening, it is unclear how it could be said the proposed development would not be capable of assimilation into the surroundings. As noted above, this same Council approved a much larger site for 20 pitches at Dalebrook Farm north of Earl Shilton which was away from the settlement in a far more open and undeveloped setting (**see Appendix 5 for details**).

Policy 20 Core Strategy green infrastructure

2.33 This policy appears to rely on and duplicate Policy 6 Green Wedge in so far as the only green infrastructure identified for this area is the Hinckley, Barwell, Earl Shilton and Burbage green wedge and the need to maintain its environmental and landscape protection role. The aim is to develop it into a large scale recreational asset to service the sustainable urban extensions and residents living in North Hinckley but how precisely the Council think they can achieve this with privately owned land is unclear. Nor is it clear why adequate provision for recreation was not incorporated into housing

schemes approved by the Council. Hinckley and Bosworth Council have much explaining to do if they seriously believe this proposal would seriously compromise this policy.

2.34 The appeal site is currently used for the keeping of horses. It has little amenity/ wildlife potential. The additional planting proposed will strengthen and enhance the green infrastructure of the area.

Discussion of Reasons for Refusal

2.35 Although this was a resubmission of the 2023 application, the wording of the reason for refusal is different to that in 2023. There is reference to the fact the development would result in permanent impacts. It is clear from the delegated report that the Council failed to consider the possibility of a temporary consent which would enable the families to live in a culturally appropriate way in their caravans until the Council finally addressed the needs of Gypsy Travellers. The land could then be restored to its original condition. Failure to consider a temporary permission is a very serious omission.

2.36 Reason 1 also refers to significant adverse impacts to the rural character and undeveloped nature of the site. I can find no mention in the delegated report of what the Council regard the 'rural character' of the appeal site. At para 3.1 the site is described as a vacant agricultural field largely screened by mature vegetation. At para 8.49 we are told it is 'agricultural in nature'. The land is not in agricultural use. It is not known when it was last in agricultural use, what that use was and what farm it was part of. Locals claim they used the land to exercise their dogs. Whilst the site is secured with fencing and hedging to four sides and the entrance is gated, it was possible when the application was submitted to see where people had gained access through the front hedgerow off the A47. The field has a timber stable/horse shelter and is being used to keep horses. Land to the rear (south) is vacant and overgrown. The field to the east also appears vacant but appears to be used informally by dog walkers.

2.37 The delegated report also fails to explain what amenity or ecological value the land has or would be lost, or indeed how it serves to facilitate access from the urban areas into green spaces for there is no authorised public access into or across this site.

2.38 Section 3 the report notes this is an urban fringe location and para 3.5 correctly points out that there are residential properties (modern housing estates) to the south and west of the site. The northern boundary is formed by the A47. In short, the Council fail to explain or define what the intrinsic value is of this site, why it is considered beautiful or of open character when it is enclosed with modern housing estates to two sides and a strategic highway to a third side, or what is so special or of any value of the landscape character of the site, that justifies its retention. The Council fail to consider why a small scale development appropriate to an edge of settlement location, could not be justified and accommodated with appropriate conditions given the extent of landscaping to be retained and provided. This is a Council that appears to have permitted modern housing estates on the edge of Hinckley with little to no regard to the need for any landscape buffers to the adjoining Green Wedge or requirement for adequate open space and appears to rely heavily on nearby farm land to provide amenity space for those living in Hinckley. By comparison, the proposed Traveller site would provide a softer, single storey extension to the settlement boundary with a significant landscape buffer. It would be far better screened than the adjoining housing development and provide far more planting and opportunity for wildlife than the adjoining housing estates. It could be accommodated with minimal harm or loss to the Green Gap, its purpose and function.

2.39 At para 8.40 the delegated report erroneously claims that no soft landscaping has been proposed within the application site and at para 8.50 the delegated report wrongly claims that the 'entire site is surfaced to accommodate the new use'. The submitted plans indicate how a buffer 5-10m wide would be retained around the entire perimeter of the site to protect existing planting and additional planting is proposed on the western, northern and eastern boundaries of the site. I estimate that almost half the site would be retained for soft landscaping with significant scope for additional planting/ biodiversity gains. I fail to understand how any one to conclude that this would not greatly enhance the screening and appearance of much of the site as well as the biodiversity of this site. In addition, a small section of the developed part of the site would be set aside for a play area which could be conditioned to ensure it is retained as a grassed amenity area as intended. Almost half the site would remain undeveloped and a condition requiring details of the landscaping could be requested.

2.40 In addition at para 8.42 it is incorrectly stated that the site is entirely enclosed with 1.8 high close boarded timber fencing. It is not. The entrance is formed with panel fencing to stop others

(especially dog walkers) from accessing the site. But the rest of the site is enclosed with mature shrubs/ trees, post and low timber post and rail fencing. I am unclear if the Case Officer has properly viewed the site to assess the likely impact.

2.41 Reason 1 does not rely on any policy in PPTS to justify refusal. PPTS provides specific policy guidance for Traveller sites. The development of gypsy traveller sites in the countryside is acceptable in principle, with paragraph 25 of the PPTS advising that traveller sites in the countryside should be strictly limited, but not where they are next to existing settlements in this case. It is inevitable that there would be some effect resulting from such development. There is no requirement in national policy for sites to be hidden.

2.42 At para 5.8 the delegated reports makes mention of other decisions in the Green Gap. The site at Hissar House Farm site on Leicester Road was dismissed on appeal in 2017 (**Appendix 5 Appeal decision**). This site is in the same Green Wedge on the B4668 opposite Leicester Road Stadium and just south of the roundabout with the A47. There are 2 key points to make.

1) this was not an urban fringe location. The site was considered to be in a predominantly open rural landscape. At para 29 of the Appeal Decision letter the Inspector states as follows:

'It would involve a significant public windows to attractive open, undeveloped countryside and one which contributes to the generally pleasant ambience and overall character of the surrounding area'
And was therefore considered harmful to the character and appearance of the appeal site. At para 30 the Inspector also concluded that the proposed development would not be capable of sympathetic assimilation into the surroundings. In this respect the site differs greatly to the site off Normandy Way which is viewed from the road against a backdrop on two sides by modern housing estates and from the housing estate against the backdrop of a busy strategic highway-the A47.

2) The Inspector was advised that planning permission had been granted for 20 pitches in 2013 and 2016 (further 10 pitches) at Dalebrook Farm also on the A47 just north of Earl Shilton to the east. In addition the Inspector was informed that the scheme was now being implemented 'sufficient to meet the findings of the GTAA' and photographs were submitted to show the very advanced stage of development. At para 40 the Inspector concluded that 'a significant number of pitches will shortly be available in the Borough at Dalebrook Farm. I do not know what those photos showed, but this site remains vacant. No buildings have ever been constructed. Aerial photos confirm that all that exists is the access track and an area of hard standing. At para 38 of the decision letter there is mention of a

Unilateral Understaking signed by the previous owner. This was dated 8.2.2016 and gave the County Council's Gypsy and Traveller Liaison Officer allocation rights over the pitches and pitches had to be offered to those on the County Council waiting list or those who need to or have been required to vacate existing sites (whether lawful or unlawful and whether with or without planning permission) within the area of the Council. Whilst the 2017 hearing was told that discussions were being had with the new owner to amend the wording, just 5 months later an application was received July 2017 for outline permission for up to 49 dwellings on the site. At the time there were just 2 touring caravans on the site. The new owner claimed that the 2016 planning permission could not be implemented due to the unilateral agreement which in effect meant any owner could not develop this site as a private family site and decide who occupied the pitches. This is a quite astonishing restriction. It is well known that different ethnic Travellers do not co exist easily. There are clear tensions on sites controlled by Leicester City Council where Irish Travellers and Romany/ English Gypsies share council sites. As the site at Dalebrook Farm has remained unfinished and unoccupied since 2017, there now appears little/ no prospect of this site being developed as a Traveller site and this site can not be relied on to meet the need identified in the November 2016 ORS GTAA.

2.43 At para 5.10 the delegated report refers to another appeal decision for 185 dwelling on the edge of Barwell. With respect, that is hardly comparable with the development proposed here.

2.44 The delegated reports lists, but fails to provide details for a third enforcement/s78 appeal (18/0105/full) which when I checked the Council website was for 2 shipping containers on paddock land off Dawson Lane Barwell that was dismissed on appeal (PINs ref 3222721) in April 2020. That also is of little relevance to the appeal proposal. The Inspector found that the containers were prominent within the landscape, failed to retain the visual appearance of the area and there was no justification for them to be on the land.

2.45 As noted above, the delegated report failed to report that permission had been granted on appeal for a large new housing estate on the north side of the A47 in Hinckley.

2.46 The Inspector is invited to conclude that the effect arising from the development in this case would be minor and acceptable at this urban fringe location. Any harm is more than off set by the benefits of providing a site for Gypsy Travellers in the district.

3. Reason 2 Highway issues

3.1 Reason 2 concerns intensification of the site access. At the hearing this issue will be addressed by Mr M Lennon who has addressed this issue with the resubmitted planning application. Issue is taken with Policy DM17 of the 2016 SADM and section IN5 of LCC Highway guidance.

3.2 As noted in the introduction the Council is no longer of the opinion that an appropriate and safe vehicular access would be provided as required by NPPF and reason 3 for refusal of the 2023 application has been dropped. The outstanding highway issues concerns the intensification of vehicular movements turning onto/ off the A47 and whether this will be an additional source of danger to road user contrary to guidance at IN5 of the Leicestershire Highway Design Guide (LHDG).

3.3 The A47 is described as a key strategic link between Leicester and the A5. However it is a single carriageway. It is subject to the national speed limit at the site entrance but it is located within 400m of the light-controlled junction with Ashby Road (A447/ B 4647). The reason for refusal states that is a busy high speed road. The LCC Highways speed survey in 2021 (as reported at para 8.76 of the delegated report) noted that the 85th percentile for vehicles speeds was 49.4mph westbound and 53.00 mph eastbound which is below the national speed limit of 60mph for a single carriageway such as this, and a much lower than the national speed limit for dual carriageways in other parts of the County.

3.4 Although reason 3 of the 2023 application is no longer relied on and the Council are now satisfied that appropriate and safe vehicular access can be provided, the Council still relies on Reason 2 and in refusing permission in 2024 have changed the wording of this reason for refusal. The concern of the Council is with the intensification of vehicular movements onto and off the A47 Normandy Way . In 2023 the Council said that use of the access was likely to be an additional source of danger to road users. In 2023 they said it could be an additional source of danger to road users. The Council is of the opinion the residual cumulative impacts of the development are severe contrary to policy.

3.5 Use is made of an existing vehicular access. It is agreed that the proposed development would result in an intensification of vehicle use and that many journeys will be made by car. The Council has indicated that for another 4 pitch site nearby 29-35 daily trips were recorded in June

2022. According to the 2023 delegated report this was for application 21/00560 and is a retrospective application submitted May 2021 on the B4668 Leicester Road for a site next to land where the 2017 appeal decision was dismissed (**Appendix 6**) and opposite the sport stadium. To date no decision letter has been issued despite the fact there was a highway recommendation to refuse for the same concerns raised with this appeal ie a severe residual cumulative impact due to intensification of an access on a busy classified road contrary to IN5 for a site that was already implemented and occupied. The site is more remote than this site and could not be considered an urban edge location. It is 1.2km from the edge of Hinckley and 1.5km from the edge of Earl Shilton. Whilst it is on a bus route it is to be expected the occupiers would be more reliant on motor vehicles for day to day trip. As this appeal site is served by both a footpath and cycle path and essential services are available within walking/ cycling distance including a large ASDA superstore and secondary school on Barwell Lane off Ashby Road in the housing estate to the rear of the site and bus stops on Ashby Road, scope clearly exists for some journeys to be made without reliance on a motor vehicle and vehicle use is likely to be less than the site on Leicester Road. It is indicated that a figure of 15 return trips per day could be considered a reasonable estimate.

3.6 The delegated report details the exchange of views on this matter and is not repeated. IN5 of LHDG is not adopted policy but guidance. This is a standard policy objection. IN5 of the Leicestershire Highway Design Guide (LHDG) states amongst other things that on A and B Class roads, the LHA will NORMALLY (my emphasis) apply restrictions on new accesses for vehicles and the increased use of existing accesses on roads with a speed limit above 40mph (that is 50mph, 60mph or 70mph) or where measured speeds are in excess of 40mph. In this case use is made of an existing access. The inclusion of the phrase 'normally' infers that there is flexibility and/ or discretion in how this guidance is to be interpreted and applied and one would certainly expect dual carriageways subject to 70mph to be subject to different criteria to roads where, as in this case, they are single carriageways with 85% speeds less than 53mph especially as the A47 is not essentially rural in nature, it does not have capacity issues and there is no existing problem with road safety at this access. As the delegated report notes at para 8.86 there has been only one recorded Personal Injury Collision within 500m of the site access in the last 5 years. Given the volume of traffic using the A47 that is not significant and does not mean that the slight increase in use made of this access compared to the existing volume of traffic on the A47 will be detrimental to highway safety.

3.7 IN5 is not compliant with the Framework. The Framework confirms that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road would be severe and no simply because there would be increased use of an existing access. Therefore, the site-specific context must be considered.

3.8 When the first application was considered LCC Highways were content to rely on their own speed surveys for this location and based on this they recommended the appropriate visibility splays. The Highway Report submitted with the resubmitted application demonstrated that these could be provided and there is no reason to suggest that the 2021 speed survey is in need of updating. The submitted Highway Assessment demonstrated that the required visibility splays of 2.4 x 160 can be exceeded in each direction within the public highway.

3.9 Having satisfied LCC that adequate visibility splays could be provided the Applicants were then asked to prepare a Stage 1 Road Safety Audit (the Audit). This raised four issues. It was agreed that solutions can be found for 3 of these and that because the additional traffic likely to be generated by the development would be minimal, there was no need for a dedicated right turn. There is existing central hatching in the centre of the A47 between the running carriageways which provides space for vehicles to wait in the highway.

3.10 As it is agreed the additional traffic generated would be minimal (ie no more than the required visibility standards can be met and exceeded, as there is a central hatching in the A47, as the width and junction radii on the access drive would accord with the requirements in the LHDG , as adequate space exists within the site for vehicles (including bin lorries) to park/ turn and exit in forward gear clear of the footway/ cycle path and the concerns of the Council could be addressed by condition it is argued that there is no justification to reject the proposed development for reasons detailed in IN5 and there is no evidence to suggest the residual cumulative impacts of the development would be severe. Conditions could be attached to ensure the access point would be provided in accordance with these details.

3.11 Policy DM17 Highways and Transportation is a criteria policy which states as follows

Development proposals will be supported where they:

- a) Seek to make the best use of existing public transport services and, where appropriate, provide opportunities for improving and sustaining the viability of those services;
- b) Seek to ensure that there is convenient and safe access for walking and cycling to services and facilities;
- c) Demonstrate that there is not a significant adverse impact upon highway safety; and in the case of development that generates significant movement
- d) That the development is located where the need to travel will be minimised and the use of sustainable transport modes can be maximised;
- e) Where it can be demonstrated that the residual cumulative impacts of development on the transport network are not severe.

Where appropriate, improvements will be required to be undertaken to the highways and transportation network to limit any significant impacts arising from the development (taking into account cost effectiveness).

All proposals for new development and changes of use should reflect the highway design standards that are set out in the most up to date guidance adopted by the relevant highways authority

3.12 There does not appear to be a policy requirement for all 5 criteria to be met but criteria c) is linked to criteria (d). No issues appears to be taken with criteria a). The site is close enough to Ashby Road for occupiers to use bus services on this road. The site clearly complies with criteria b) in so far as there is a wide pavement and dedicated cycle lane outside the site on the south side of the A47 with direct access from the site. The Council has agreed that the site access complies with policy. The proposal would not generate significant vehicle movements but interestingly if it did, it would comply with criteria d) in so far as the development is located where the need to travel is minimised and use of sustainable transport modes (walking, cycling, public transport) can be maximised. The only issue appears to be with criteria (e) and whether the residual cumulative impacts of development on the transport network would be severe. Given that there is no issue with criteria a-d it is unclear what residual cumulative impacts the Council is concerned with, why they can not be addressed by suitable conditions, and how they can be considered severe.

3.13 Based on the evidence, the Inspector is invited to conclude that the development would not result in an unacceptable impact on highway safety and could be made safe with appropriate conditions. In that regard, it would comply with the requirements for all new development to meet highway requirement in adopted policy, Leicestershire Highway Design Guide and the requirements in the Framework to ensure that the development would provide safe and suitable access. As such it is considered that the impact of the proposed development would not be severe and there is no reason why the proposal should be resisted on transport and highway grounds which would be contrary to National Policies

4. Other Material Considerations

4.1 It is argued that the Appeal Proposal is capable of complying with national policy, adopted policy and guidance, and some of the policies relied on by the Council are either not relevant or should carry limited weight, but if this is not accepted there are other material considerations to be taken into account.

4.2 As an application for a Gypsy Traveller site regard must be had to national guidance in PPTS which is supportive of sites in locations on the edge of settlements where the land is not subject to any national or international designations or restrictions. This is a sustainable location for a Gypsy Traveller site and as previously noted, issue is taken with the statement at para 8.8 of the delegated report where the Council states that

‘Outside the defined settlement boundaries, the countryside is not regarded as a sustainable location for new development’

As that is clearly not applicable for this type of development and contrary to the very clear and specific advice in para 25 PPTS for Traveller sites.

4.3 Nor is it accepted that all land outside settlements has intrinsic character and beauty that needs to be protected from unsustainable development. Core Strategy Policy 18 is supportive of new sites within and adjacent to the settlement boundaries of Hinckley, Burbage, Barwell and Earl Shilton so appears to accept that such locations are suitable for caravan sites. Yet Policy 6 of the same document for Green Wedges failed to list such uses as acceptable within the Green Wedge which is found adjacent to the same settlement boundaries. Whilst the aim of Green Wedges is to guide

certain development to other areas with the less environmental or amenity value, it does not necessarily mean that all land within these locally designated areas have any significant environmental or amenity value.

4.4 The Council accept that their adopted policy for Gypsy Travellers is largely superseded by PPTS (para 8.31) and the targets for residential pitches in Policy 18 of the adopted Core Strategy are out of date. In 2009 they Council agreed to allocate land for 42 pitches by 2017 with 3% compound growth per annum. They failed to do so.

4.5 The Council also agree that their 2016 GTAA is out-of-date and that since 2016 limited additional Traveller accommodation has been granted but this is not quantified or listed (para 8.32). There was criticism of this study at para 34 of the 2017 Appeal Decision Letter for the site at Leicester Road Hinckley (**Appendix 6**) and as noted above, there is an application pending for a site occupied in 2021 on land adjoining this 2017 appeal site.

4.6 According to the Reg 19 Local Plan consultation February 2022 an updated GTAA has been prepared which jsd identified a need for 53 households that meet the planning definition to 2039. I can not find this document on the Council's website or the local plan review evidence base and there is no mention of this in the delegated officer report for this application. But it is clear that the need is now very much larger than the previous 2016 GTAA which identified a need for at least 7 pitches for those who met the Planning definition in the revised PPTS 2015 and assumed this would be met by Dalebrook Farm. However field work was carried out May-June 2016 when many Travellers will be travelling. The study failed to identify the Gypsy status of 43 households and concluded that only 6 households met the planning definition and 17 did not.

4.7 The planning definition for Gypsy Travellers was revised in 2023 following the Lisa Smith judgment to include more Gypsy Travellers so it is to be expected the study prepared to inform the Reg 19 consultation in February 2022 may well have underestimated the need of those who will now comply with the Planning definition in PPTS and the actual need could be even higher and in need of further revision.

4.8 In a recent presentation for Medway Council ORS who carried out the 2016 GTAA for this council, identified a 64% increase over a previous need assessment, and revealed that this was not unusual and that they had recorded even greater increases for other Councils including:

Hambleton 525%

East Herts 378%

Havering 255%

Maidstone 247%

Winchester 241%

They suggest this increase could be due to

- more pitches even though not all pitches will generate a need for more provision
- better identification of hidden households and need from teenagers which ORS previously often discounted as not complying with the planning definition in PPTS
- higher numbers from new household formation ie acceptance that assumptions about household formation were too low.

4.9 What ORS fail to mention is that they interpreted the Planning definition in PPTS differently to many others and only took into considerations those who travelled for work and not for other purposes with an economic purpose. The Medway assessment also predated the revised PPTS definition which will now ensure that far more households will be included in such assessments. This recent admission that previous studies have underestimated need raises questions over the robustness and credibility of ORS studies, especially as so many appear to have greatly underestimated need for more pitches. But it does appear to suggest that that an increase from 7 pitches to 53 for Hinckley and Bosworth is not entirely unexpected or unusual. If this is repeated elsewhere it seems safe to assume that neighbouring authorities in Leicestershire and Warwickshire can expect similar increases in their need for more pitches.

4.10 What the Council fail to acknowledge is that the 2016 permission for 20 pitches at Dalebrook Farm was never completed yet the 2016 GTAA relied on this site stating as follows:

7.23 There are also 20 vacant pitches at Dalebrook which are understood to be available for general occupation within the first 5 years of the GTAA of which 7 have been included to offset against the need identified for 7 additional pitches.

4.11 It is also agreed at para 8.33 of the delegated report that the only Council site at Aston Firs is at capacity with additional needs.

4.12 The Council is unable to point to any suitable alternative accommodation for the four families. At para 7.29 of the Reg 19 Policy HO07, the Council report that there have been 3 formal call for sites exercise and no suitable sites were identified for Travellers. The Council say that they have commissioned further work to look at pitch delivery. I can not find this on their website. The potential to include provision as part of allocated SUE's was considered and discounted. In 2022 it was concluded that the Council would have to work with other councils and produce a separate Gypsy and Traveller Site Allocation DPD. This is a wholly unacceptable situation for a largely rural authority with little nationally designated countryside and none of the land use constraints many other Councils have to deal with. There is no reasoned justification why suitable land could not be found for Traveller pitches especially as permission has just been granted for up to 475 houses on unallocated countryside north of the A47 in Hinckley. The approach set out in the draft Local Plan was neither sound or policy compliant.

4.13 It is understood that the emerging plan stalled at the Reg 19 stage and has not progressed to examination. A revised LDS was published in February 2024 which indicates that the Council intend to pursue an alternative development strategy, extent the plan period to 2041 and carry out further consultations before submission for examination by June 2025, with adoption expected in early 2026. It is apparent there is no intention to progress the Reg 19 plan in its current form and it is to be hoped the Council will make sure allocations for Traveller sites are found to meet the updated assessment. However it is clear, no new provision is planned to meet the unpublished, unavailable, updated GTAA with a need for at least 53 pitches, as prepared to inform the Local Plan review before at least 2026.

4.14 At para 8.35 of the delegated report the Council assume that the applicants have alternative accommodation that is not considered intrinsically unsatisfactory and claim that the personal circumstances are not considered to attract significant weight. The Council does not appear to have read the statement submitted with this application or if they have done, they do not appear to understand what is appropriate accommodation for Traveller families, how the current living

accommodation is impacting on the health and education needs of these families and their Public Sector Equality Duties.

4.15 Two families are living in housing because they are unable to find a site where they can live in caravans and one of their married children is having to make use of a transit site which is not meant to be used residentially. Living in housing is contrary to their traditional way of life which the Council has a duty to facilitate. Housing is not an appropriate form of accommodation for those who have a cultural and ethnic preference to live in caravans and in the outdoors. Those living in housing often claim they can not adjust to living in accommodation over two or more floors and will not let young children sleep in first floor bedrooms. Neighbours will often object if they choose to keep and use their touring caravans on the drive or yard area. Many end up using the house as a day room for bathroom and cooking functions only and will sleep in their caravans. Families complain of feeling isolated from the rest of their community. They report how other Travellers do not choose to visit them/ call on them as there is no where for them to park/ keep their touring caravans.

4.16 The Council has failed to identify enough deliverable sites in order to meet the need for Gypsies and Travellers. There is an inequality of opportunity inherent within the local plan as there is an insufficient supply of land for Gypsies and Travellers. Yet the occupation of caravans / mobile homes is part of the traditional way of life of Romany Gypsies and Irish Travellers. In *Chapman v UK* ((2001) 33 E.H.R.R. 18) 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.

4.17 There is therefore an intrinsic link between the occupation of caravans and the ethnic minority status of Romany Gypsies and Irish Travellers. In *Thomas George Clarke v Secretary of State for the Environment transport and the regions and Tunbridge Wells Borough Council* ([2001] EWHC Admin 800 2 [2001] EWHC Admin 800 Page 6) ,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 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.

4.18 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.

4.19 Whilst the Clarke case 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 and the fact housing can not and should not be considered a satisfactory alternative as in this case.

4.20 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).

4.21 Paragraph 62 of the NPPF sets out the required approach for specialist housing:

62. 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).

4.22 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 and the personal circumstances of Gypsy applicants should be properly be taken into account as part of the material considerations. For many Gypsy Travellers bricks and mortar is not an acceptable or appropriate alternative accommodation option let alone a satisfactory option as considered by this Council. The planning system is required to respect 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.

4.23 A third family are stopping on Justin Park Market Harborough where their pitch is so small there is only room for a 16ft caravan which provides no more than 12 sq m living space . An entire family are expected to live in a space no bigger than the living room of many modern houses.

4.24 Two further households are stopping on transit sites which is a land use that was never intended for residential use. Such accommodation is unauthorised and inappropriate. At present the Winter family are living in 2 touring caravans with 5 children on a transit pitch where they have to share a toilet with 10 other families. Their teenage daughter aged 17 has to share a caravan with her 19 year old brother. That is considered totally unacceptable within the Traveller community. The family have a plastic shed just 6ft x 8ft which they cook in and do all their laundry. Their accommodated is cramped, overcrowded and could not be considered intrinsically satisfactory by any measure or standard. It should come as no surprise that the family feel depressed, dismayed and let down by the second refusal by the Council to approve this application and the fact the Council is unwilling to acknowledge that their current accommodation is unsuitable or recognise their needs for suitable, appropriate accommodation.

4.25 At para 8.36 the Council state that the provision of four residential pitches is unlikely to be of significant benefit to the housing land supply within the borough and give this limited weight, but fail to explain why. They go on to state that the provision of 4 pitches is unlikely to be of significant benefit to the supply of Gypsy-Traveller accommodation within the borough. Given there is no up to date need assessment I am unclear on what basis the Council can make such a claim. I can find no policy support for such a statement. This totally ignores guidance at para 4 (e) PPTS for Councils to promote more private traveller site provision. There is nothing in Core Strategy policy 18 which states that the need for Gypsy Travellers will be met only by large sites. The Council relies totally on a dated criteria policy with no allocations. Much of the need nationally, regionally and locally is for small private family sites. These four pitches would be a huge and very significant benefit to the four applicants. Such an argument could be repeated endlessly to reject small applications. But in the absence of any site allocations by the Council or alternative provision, and the fact PPTS 4 (e) seeks to promote more private traveller site provision, it is only through the provision of many small private sites that the outstanding need is likely to be met in this district and elsewhere.

4.26 In summary, the Council has shown little to no appreciation or understanding of the needs of Travellers which may explain why so little has been done to facilitate this way of life in this district. A Local Plan review has been halted. It could be 2026 before any site allocations are found for a need identified in 2016. This is totally unacceptable and in clear contravention of national policy made worse by the fact there are no specific policies in PPTS that provide a clear reason for refusal of this appeal scheme.

4.27 Any adverse impacts arising from the proposal, carry limited or moderate weight. When compared to the range of benefits that would flow from the proposal, the harm does not significantly and demonstrably outweigh the benefits. Accordingly, it follows that the Framework, in particular the specific guidance in PPTS, supports planning permission being granted for a modest Gypsy Traveller site on the edge of Hinckley. That is an important material consideration that carries significant weight.

5. Summary and Conclusion

5.1 There are many points in favour of the proposal. It is argued that this is a sustainable location for a Gypsy Traveller site and complies with national guidance set out in PPTS. As an appropriate use

of land outside settlements it is somewhat perverse to argue that Gypsy Traveller sites would undermine policies which seek to safeguard the separation of settlements or if they did, that this could be harmful to any greater extent than any other development suitable and appropriate to a location outside settlements.

5.2 The site is in a location supported by Core Policy 18 for Gypsy Travellers. It has a strong relationship with the urban area of Hinckley, is visually contained and its setting is influenced by adjoining urban development. The A47 provides a clear break/ boundary between Hinckley and this site, and more rural areas to the north.

5.3 There is an inherent tension between the Council's spatial strategy for gypsy sites as set out in Policy 18 and Green Wedge policy 6 and SADM policy DM 4 Safeguarding the Countryside and Settlement Separation. Green Wedge Policy 6 does not specifically exclude Gypsy Traveller sites from the Green Wedge and the Council has incorrectly interpreted its own policy.

5.4 There is considerable uncertainty over when and if lawful gypsy and traveller pitches will be established in the near future. Call for sites as part of an updated Local Plan process failed to find any suitable sites. There is no published up-to-date need assessment and no reference to this in the delegated officer report, but the updated local plan reveals such a study was done. The site at Daleford Farm has not been implemented and there seems little prospect it will be implemented due largely to an onerous legal agreement which prevents any owner from choosing who can occupy the site.

5.5 The Highway Statement submitted with the resubmitted application demonstrates that the access would be safe to use with adequate design, radii and visibility splays to comply with the LHDG. The only issue is with IN5 of the guidance note and the intensification of use of an existing access. The existing access is lightly used with visits once or twice a day to check on horses. Whilst it is accepted that the proposed use would lead to an increase in traffic use, intensification of use is not in itself inherently unsafe where, as in this case, the proposed development is small scale, the additional traffic generated would be relatively low compared to the amount of traffic using the A47, the access is properly designed, there is spare capacity within the highway network and the concerns of the Council could be addressed by condition. .

5.6 There would be minimal harm resulting from impact on the visual amenity as these concerns are slight and could be addressed by condition. This is not an unsustainable location. It is on the edge of a settlement. Having regard to national policy this is not an unacceptable location for a use of land that is appropriate in the countryside. It is most unlikely any sites allocated by the Council will be in more sustainable locations as most sites within and on the edge of settlements are going to be suitable for housing and unaffordable for Gypsy Traveller sites. Substantial weight must be attributed to policy failure and the absence of any published up to date need assessment. Substantial weight should also be attached to the need for sites.

5.7 Significant weight should be attached to the personal circumstances of the families due largely to the absence of suitable available sites in this district. Three of the four families are technically homeless with no where lawful to live in their caravans in accordance with their traditional way of life. Only one family has a pitch on a caravan site but this is too small for their needs. There are adults with health issues. The appeal scheme would facilitate the establishment of a settled base for the Appellants and their families whilst they continue to pursue a nomadic lifestyle for economic purposes. The appeal scheme would allow cultural traditions to be balanced with the practicalities of modern living and would advance equality of opportunity.

5.8 Significant weight should also be given to the historic policy failure and the fact this Council has failed repeatedly to meet the needs of Travellers. Because of this failure the Council is unable to point to any suitable alternative site for this family and any future policy for meeting need is some way away. This unmet need in a largely rural district where most land is not subject to national designations, and where new housing is being permitted and allocated outside settlement boundaries in similar locations to this site, also indicates inequality in housing opportunities. The appeal scheme would help offset this in a modest way. These are important points in securing social sustainability as sought by para 13 PPTS. Dismissing the appeal would perpetuate the disadvantages currently enduring by Gypsy Travellers trying to secure suitable land to live in a district that has failed them and has no plans in place to address a need that has long been apparent.

5.7 In accordance with para 27 PPTS The absence of 5 year supply of deliverable sites should be given significant weight

5.8 Finally the concerns of the Council could be addressed by condition including consideration of a temporary permission.

5.9 The Inspector is respectfully invited to uphold this appeal and grant permission on a permanent basis with appropriate conditions. If the Inspector considers it necessary to attach weight to the personal circumstances of the Appellants a personal condition would be acceptable and appropriate. If the Inspector is of the view the proposal contravenes policy and more appropriate pitches will be found available elsewhere as part of any new Local Plan, then the Appellants would be willing to accept a temporary permission but at the date of application and refusal there were no alternative sites for this family and no prospect of sites being found.

LIST OF APPENDICES

- 1- Delegated officer report**
- 2- Hinckley and Bosworth Local Plan 2020-2039 Reg 19 Feb 2022 Hinckley and Burbage Settlement Map**
- 3- May 204 Committee report Housing scheme land north of A47 Hinckley**
- 4- Policy HO07 Gypsy policy in Reg 19 Local Plan update**
- 5- Dalebrook farm application plan and report.**
- 6- Appeal decision June 2017 Leicester Road, land adjoining Hissar Farm, Hinckley**