

ANGUS COUNCIL

DEVELOPMENT MANAGEMENT REVIEW COMMITTEE – 26 SEPTEMBER 2019

LAND 125M WEST OF NORTH MAINS CROFT, LOGIE, KIRRIEMUIR

REPORT BY THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

ABSTRACT:

The Committee is asked to consider an application for a review of the decision taken by the planning authority in respect of the refusal of planning permission for change of use of vacant land to form a chalet/caravan pitch (principal chalet and one touring caravan), formation of hardstanding, erection of 1.8m high fences and amenity block (in part retrospect), application No 19/00023/FULL, at Land 125m West of North Mains Croft, Logie, Kirriemuir.

1. RECOMMENDATIONS

It is recommended that the Committee:-

- (i) review the case submitted by the Planning Authority (**Appendix 1**);
- (ii) review the case submitted by the Applicant (**Appendix 2**);
- (iii) review the confidential information submitted by the Applicant (also submitted as part of the original planning application) (**Appendix 3**); and
- (iv) consider whether the new information submitted as part of the application for review meets the statutory requirements in terms of Section 4 below and if it is considered that yes the requirements have been met, then to review the confidential information submitted by the Applicant (**Appendix 4**).

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN

This Report contributes to the following local outcomes contained within the Angus Local Outcomes Improvement Plan 2017-2030:

- Safe, secure, vibrant and sustainable communities
- An enhanced, protected and enjoyed natural and built environment

3. CURRENT POSITION

The Development Management Review Committee is required to determine if they have sufficient information from the Applicant and the Planning Authority to review the case. Members may also wish to inspect the site before full consideration of the appeal.

4. NEW INFORMATION

The Planning Review Statement submitted by the applicant's agent includes information which was not raised in the first instance to the planning authority when the application was determined.

The Town & Country Planning (Scotland) Act 1997 clearly states as follows:-

43B Matters which may be raised in a review under section 43A

- (1) In a review under section 43A(8), a party to the proceedings is not to raise any matter which was not before the appointed person at the time the determination reviewed was made unless that party can demonstrate –

- (a) that the matter could not have been raised before that time, or
- (b) that its not being raised before that time was a consequence of exceptional circumstances.

Accordingly, the applicants must not raise new matters unless those matters could not have been raised before or exceptional circumstances explain which matters were not raised before.

The applicant's agent explains the reasons for the new information in the review statement.

The Committee requires to determine if the foregoing statutory requirements have been met. Should the Committee decide that the requirements have not been met, then the Committee must not take those new matters into account when determining the Review.

5. FINANCIAL IMPLICATIONS

There are no financial implications arising directly from the recommendations in the Report.

6. CONSULTATION

In accordance with Standing Order 48(4), this Report falls within an approved category that has been confirmed as exempt from the consultation process.

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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- Appendix 1 – Submission by Planning Authority
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- Appendix 4 – Confidential New Matters raised

ANGUS COUNCIL'S SUBMISSION ON GROUNDS OF REFUSAL

APPLICATION NUMBER – 19/00023/FULL

APPLICANT- MR JOHN TOWNSLEY

CHANGE OF USE OF VACANT LAND A CHALET/CARAVAN PITCH (PRINCIPAL CHALET AND ONE TOURING CARAVAN), FORMATION OF HARDSTANDING, ERECTION OF 1.8M HIGH FENCES AND AMENITY BLOCK (IN PART RETROSPECT) AT LAND 125M WEST OF NORTH MAINS CROFT LOGIE KIRRIEMUIR

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Angus Council

Application Number:	19/00023/FULL
Description of Development:	Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in Part Retrospect)
Site Address:	Land 125M West Of North Mains Croft Logie Kirriemuir
Grid Ref:	337962 : 753027
Applicant Name:	Mr John Townsley

Report of Handling**Site Description**

The application site measures approximately 1200sqm and is located in the countryside 350m to the southwest of the Kirriemuir Development Boundary. The application site is laid throughout in hardcore and is occupied by a touring caravan and a chalet. An authorised caravan pitch is located to the south and open ground to the north, both of which are in the applicant's ownership. The site is bound by a dark green 1.8m high fence to the south, east and west and by a 1.2m high dark green fence to the north. High trees line the east and west of the site beyond the timber fences. There is a residential property directly to the east of the site and core paths 253 and 254 are adjacent to the southern and western boundaries. The site is served by an existing access track taken from North Mains Road.

Proposal

The application seeks part retrospective planning permission to allow the siting of a chalet and one touring caravan, the formation of hardstanding and the erection of a 1.8m high fence and an amenity block. The chalet would have a footprint of approximately 40sqm. The amenity block, which would provide laundry and toilet facilities, would have a footprint of 18sqm and a height of 2.9m. The proposal includes the erection of a dark green 1.8m high fence to the north of the site (there is currently a 1.2m high timber fence along this boundary). The site has been topped with aggregate. The proposal would be connected to the public water supply and foul drainage networks and SUDS provision would be made for surface water drainage. The site would be served by an existing access track.

The application has not been subject of variation.

Publicity

The application was subject to normal neighbour notification procedures.

The application was advertised in the Dundee Courier on 25 January 2019 for the following reasons:

- Neighbouring Land with No Premises

The nature of the proposal did not require a site notice to be posted.

Planning History

Application 13/00969/PPPL for Planning Permission in Principle for Erection of Dwellinghouse & Garage was "Refused" on 20 December 2013.

The site forms part of a wider area which measures approximately 0.6ha in area and is subject to an

on-going Enforcement Case ref: 16/00165/UNDV. An Enforcement Notice was served by the Council on 19 August 2016 requiring the removal of caravans, drainage and services and reinstatement of the channels which have been dug; removal of rubble, hard core and the earth bund with restoration of the site to a greenfield condition.

The Enforcement Notice was subject of an appeal on the grounds that that the steps required by the notice were excessive and less onerous steps would remedy the breach and that the time allowed to comply with the notice was too short. The appeal was upheld by the Scottish Government on 23 November 2016 who recommend "remove the rubble, hard core and earthen bund at the site..." be substituted with "Remove the rubble and hard core from the site, level the earthen bund...". The periods for compliance were varied to remove the caravans from the site on or before 3 August 2017 and to complete the remaining steps on or before 3 September 2017.

Application 16/00738/FULL to the south of the site for 'Change of Use of Vacant Land to allow siting of a Chalet and two Touring Caravans, Erection of Amenity Block and Boundary Wall, Formation of Car Parking, Alteration of Ground Levels and Associated Infrastructure' was refused under delegated powers on 6 January 2017 for the following reasons:-

1. *The application is contrary to Policy TC6 of the Angus Local Development Plan (2016) as there are existing authorised sites with capacity to accommodate the applicant and his family, as the proposal would not contribute to satisfying a local need in a formulated manner, as the proposal could set a precedent or open up other areas for similar development.*
2. *The application is contrary to Policy PV20 of the Angus Local Development Plan (2016) as the development would not preserve prime agricultural land or be related to a rural business, support delivery of the development strategy or relate to renewable energy development.*
3. *The proposal is contrary to policy DS1 of the Angus Local Development Plan (2016) because it is contrary to other policies of the local development plan, namely Policies TC6 and PV20.*

The proposal was subject of a review to the Council's Development Management Review Committee on 21st of August 2017 who allowed the review and granted planning permission subject to conditions. Those conditions required:

1. *That within 3 months of the date of this permission full details, including technical approval from Scottish Water, of the proposed foul drainage system shall be submitted to and approved in writing by the Planning Authority. This shall include the route of the proposed foul drainage connection. The approved scheme shall be thereafter be carried out within 6 months of the date of this permission.
Reason: In order to allow the Planning Authority to consider the foul drainage arrangements and ensure suitable connections are made in a timely manner.*
2. *That within 3 months of the date of this permission full details of the proposed surface water drainage arrangements shall be submitted to and approved in writing by the Planning Authority. The approved scheme shall thereafter be carried out within 6 months of the date of this permission.
Reason: In order to allow the Planning Authority to consider the surface water drainage arrangement and ensure suitable provision is made in a timely manner.*
3. *That the number of caravans on the site shall not exceed one static caravan and two touring caravans.
Reason: In order that the Planning Authority may regulate the number of caravans on the site, in the interests of the amenity of the area.*
4. *That within 9 months of the date of this permission the amenity block, as per drawings named and numbered Floor Plan & Elevations no.16-15/0093-046 and Proposed Plot Layout no.03, shall be completed.
Reason: In order to ensure the development is in accordance with the approved proposal and in order to ensure the site is fit for human habitation.*

A Breach of Condition Notice was issued with regards to this permission on 12 December 2017 because conditions 1 and 2 had not been discharged within the 3 month timeframe from the date of approval. Information was submitted to discharge condition 2 relating to surface water drainage arrangements at

the site on 18 June 2018. This was approved on 21 June 2018. The agent has indicated that the approved surface water drainage arrangements have been implemented. At this time Condition 1 has not been discharged although an application for connection to the public sewer has now been submitted to Scottish Water. The agent has advised Scottish Water has recently requested further information regarding this connection.

Following the approval of application ref: 16/00738/FULL for 'Change of Use of Vacant Land to allow siting of a Chalet and two Touring Caravans [...]' on the southernmost section of the site, the initial Enforcement Notice was withdrawn and a second Enforcement Notice was issued on 24 August 2017. The second notice related to the land north of the approved caravan site and required the removal of all caravans trailers and other vehicles, wooden fences and drainage services, and the rubble and hardcore from the site, and to level the bund - all within 3 months of the notice. The Enforcement Notice was still in effect and further action was delayed pending the outcome of applications ref: 17/01016/FULL and 17/01017/FULL.

Application 17/01016/FULL to the north for 'Change of Use of Vacant Land for Storage of 12 Vehicles, Erection of Fencing and Formation of Hardstanding (in part retrospect) was withdrawn on 4 April 2018.

Application 17/01017/FULL for 'Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in part retrospect)' on the current site was refused under delegated powers on 13 April 2018 for the following reasons:-

1. *The application is contrary to Policy TC6 of the Angus Local Development Plan (2016) as there are existing authorised sites with capacity to accommodate the applicant and his family, and as the proposal could set a precedent or open up other areas for similar development.*
2. *The application is contrary to Policy PV20 of the Angus Local Development Plan (2016) as the development is located on prime agricultural land and as it does not meet the criteria for development of prime agricultural land identified in that policy.*
3. *The proposal is contrary to Policy DS1 of the Angus Local Development Plan (2016) because it is contrary to other policies of the local development plan, namely Policies TC6 and PV20.*

This application was subject of a review to the Council's Development Management Review Committee on 11 September 2018, who dismissed the review for the same reasons given within the delegated refusal.

The Development Standards Committee of 11 November 2018 agreed direct action be instigated to secure compliance with the terms of the Enforcement Notice and to recover costs from the owner or lessee of the land in respect of any direct action taken. Preparation for direct action is on-going.

Applicant's Case

The following supporting documentation has been provided:

A Planning Policy and Design Statement - this document provides a summary of the layout and design of the site, the personal circumstances of the applicant, associated planning history, the need and demand of the Gypsy/Travelling community in Angus and legislation relating to the Gypsy/Traveller community and the current proposal. The statement highlights limitations in dealing with unauthorised encampments, the positive impact of site provision and considers the proposal against the relevant national and local planning policy; concluding the proposal would be in general compliance with SPP and the Angus Local Development Plan.

The statement goes on to suggest a number of material planning considerations such as the Equalities and Human Rights Commission Report (EHRC) 44 (2015), social, economic and environmental justifications, Human Rights and the Equality Act 2010. The statement states that at present there are two unsuitable Gypsy/Travellers sites in Angus and there has been a lack of progress by the Council to find suitable accommodation, making reference to the Angus Council Local Housing Strategies 2012-2017 and 2017-2022. It suggest that as a consequence an unaddressed need has been created and the development plan policies relating to Gypsy/Travelling sites allows a justification to be submitted for

private, permanent sites. The statement notes the approach by the Applicant has provided a step towards resolving the Council's accommodation needs for Gypsy/Travellers at no cost to the public purse.

The statement makes reference to the Development Management Review Committee (DMRC) decision on application 16/00738/FULL for the applicant's Gypsy/Traveller pitch to the south of the current site. The statement indicates the DMRC decision to approve the adjoining site is a binding material consideration in the determination of the current planning application and suggests the Council places greater weight on the refusal and subsequent Local Review dismissal of application ref: 17/01017/FULL which sought retrospective permission for this same development.

The statement goes on to rebut the reasons for refusal of application ref: 17/01017/FULL, noting the current proposal would not set an undesirable precedent and that the authorised site at Petterden is not suitable. It indicates that the application site is not suitable for agriculture and the proposal cannot be considered as a permanent loss of land as the land can be reinstated in the future due to the nature of the proposal. The statement also makes reference permission ref: 14/00992/FULL for the siting of caravans at a site outside Forfar which was approved on prime quality land, noting that if the Council can set aside policy requirements for 171 caravans for economic reasons then it can surely take a similar approach, in this case, to meet a pressing social need.

The statement goes on to note that case law is clear that there are occasions where exceptions should be made when considering personal circumstance and that the personal circumstances of the applicant should be taken into account in the consideration of this application. The health issues and personal circumstances of the Applicant's extended family are of particular relevance as is the lifestyle and culture of the Gypsy/Travelling community where family bonds are important to this ethnic minority group. The statement concludes that with the lack of suitable accommodation the Applicant's daughter and her husband need somewhere to stay and the remaining land in the ownership of the Applicant is a suitable location. It is submitted that the aforementioned social and economic arguments must carry significant weight. They are of paramount importance, particularly when considered against the requirements of Human Rights and Equality legislation, when determining this planning application.

Correspondence from the agent, dated 22 January 2019, containing two letters from the applicant's daughter's doctor confirming she is subject to a number of medical conditions. The doctor notes an understanding that the applicant's daughter currently resides at the application site and that it would be beneficial for her health to remain at this address.

Correspondence from the agent, dated the 3 March, notes that that the dimensions of the amenity block are: 2.9m high, 5.5m long and 3.2m wide. Various photographs of the proposed amenity block have also been submitted.

Full copies of the supporting documentation can be viewed via the Public Access portal.

Consultations

Scottish Government - There was no response from this consultee at the time of report preparation.

Angus Council Housing Service - Has advised the travelling site at Balmuir Wood has 20 individual pitches (of which approximately 50% are currently vacant). Although within Angus this site is managed by Dundee City Council but Angus Council have access to the site through the Site Liaison Officer. Angus Council are entitled to nominate travelling people and their families for allocation of pitches at this site, provided vacant pitches are available. Dundee City Council shall accept such nominations provided they are in accordance with Dundee City Council's letting procedures. St Christopher's is located within Angus and managed by Angus Council. This has 18 pitches; all of which are currently occupied and there is a waiting list for stances at this site. The Needs Assessment [carried out in association with TAYplan] indicates a small shortfall of accommodation for Gypsy/Travellers in Angus. On review this mainly relates to demand in the North HMA and to a lesser extent in the West HMA.

Angus Council Environmental Health - Offers no objection to the proposal in terms of amenity but advises a Caravan Site Licence would be required.

Angus Council - Countryside Access - Offers no objection to the proposal subject to conditions to regulate landscaping and access due to proximity to core paths 253 and 254.

Community Council - There was no response from this consultee at the time of report preparation.

Angus Council - Roads - Offers no objection to the proposal.

Scottish Water - Has advised that there is sufficient capacity at the local waste water treatment works for foul drainage but they are unable to confirm capacity at the local water treatment works for water supply.

Representations

There were no letters of representation.

Development Plan Policies

Angus Local Development Plan 2016

Policy DS1 : Development Boundaries and Priorities
Policy DS3 : Design Quality and Placemaking
Policy DS4 : Amenity
Policy TC6 : Gypsies and Travellers and Travelling Showpeople
Policy PV3 : Access and Informal Recreation
Policy PV6 : Development in the Landscape
Policy PV7 : Woodland, Trees and Hedges
Policy PV15 : Drainage Infrastructure
Policy PV20 : Soils and Geodiversity

TAYplan Strategic Development Plan

The proposal is not of strategic significance and policies of TAYplan are not referred to in this report.

The full text of the relevant development plan policies can be viewed at Appendix 1 to this report.

Assessment

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.

The application site is located in the countryside, outwith a Development Boundary. The site is not allocated or safeguarded for any particular use in that Angus Local Development Plan (ALDP). Policy DS1 in the ALDP states that outwith development boundaries, proposals will be supported where they are of a scale and nature appropriate to the location and where they accord with other relevant policies in the ALDP.

The primary policy test in this instance is Policy TC6 which relates to sites for Gypsies and Travellers and Travelling Showpeople. The first statement in this policy notes that Gypsies and Travellers and Travelling Showpeople will be encouraged to stay at authorised sites which will be protected from alternative uses. Proposals for new or extended permanent sites and temporary "short stay" sites for Gypsies and Travellers will only be supported where the site will contribute to satisfying a local need identified in the Local Housing Strategy and is consistent with Angus Council's strategy for meeting the accommodation needs of these client groups; the development is designed and located to minimise adverse effects on the landscape, established amenity, character and built or natural heritage interests of the surrounding area; the proposed site will provide a good residential amenity for residents and has adequate access to community, education and health services and facilities; and the proposed development would not set a precedent or open up other areas for similar development.

The policy clearly identifies that Gypsies and Travellers and Travelling Showpeople will be encouraged to stay at authorised sites. There is currently one authorised site in the control of Angus Council, St Christopher's at Tayock which is fully occupied. There is also an authorised site at Balmuir Wood which is managed by Dundee City Council, but is within the Angus Council boundary. Balmuir Wood has 20 pitches, approximately 10 of which are currently vacant. The Balmuir Wood site is around 14 miles from the application site. Angus Council has access to the Balmuir Wood site through the Site Liaison Officer and is entitled to nominate travelling people and their families for pitches at this site, provided vacant pitches are available. Dundee City Council is required to accept such nominations provided they are in accordance with Dundee City Council's letting procedures. The Balmuir Wood site has capacity to accommodate the additional caravans proposed by this application without development of agricultural land.

Policy TC6 indicates that proposed sites must contribute to satisfying a local need identified in the Local Housing Strategy. The supporting information submitted makes reference to The Angus Council Local Housing Strategy 2012-2017 (superseded) and the Angus Local Housing Strategy 2017-22, dated November 2016. The current Local Housing Strategy 2017-22 indicates (amongst other things) that in 2016 Angus, Dundee, Perth & Kinross and Fife Councils commissioned Craigforth Research to undertake a joint Gypsy Traveller and Travelling Showpeople Needs Assessment which was finalised in January 2017 [Needs Assessment]. The research indicates that across the TAYplan area there is sufficient accommodation for Gypsy/Travellers. The findings suggest *a small shortfall in permanent provision may emerge in Angus over the next five years, attributed to demand in the northeast and to a lesser extent in the west of the area..... The projected shortfall is not considered significant enough to justify provision of additional sites at this time..... [and] at present there is no identified need for accommodation for Travelling Showpeople in Angus.* The LHS indicates that the Council will continue to monitor the position across Angus and consider opportunities to improve and extend existing provision.

It is relevant to note that in the period since that Needs Assessment was finalised, a caravan site license has been granted (11 April 2017) for 16 pitches at the Thrums site in Maryton, located 0.75 miles from the current application site. The supporting statement indicates that the applicant has previously resided at that site. The Maryton site was not included in the Needs Assessment but offers potential to supplement supply and contribute towards addressing need.

Development plan policy does not support a proposal for extension of a small private site on previously undeveloped land in circumstances where there is capacity at existing sites.

Policy TC6 also requires that proposals do not set a precedent or open up other areas for similar development. The applicant has planning permission for a caravan pitch to the south of this site (ref: 16/00738/FULL). At the time the application was assessed, concerns were expressed regarding the potential for further development on land to the north (including the current application site) which was in the applicant's ownership. The supporting statement submitted alongside that application indicated that there was no intention of developing this land.

Since then, the caravan pitch to which the current application relates has been formed without requisite planning permission and in direct breach of the terms of an Enforcement Notice. In addition, the applicant has also formed an area of hardstanding to the north of the current application site. This has also been done without the requisite planning permission and in breach of the terms of an Enforcement Notice. The applicant also owns additional ground to the north of this application site. Further expansion of the existing site through the grant of this planning permission would make it difficult to resist proposals for similar development further to the north.

The proposal does not give rise to significant issues in terms of the remaining criteria of the policy but on the basis of the above assessment the proposal is contrary to Policy TC6.

Policy PV20 Soils and Geodiversity notes that development proposals on prime agricultural land will only be supported where they support delivery of the development strategy and policies in this local plan; are small scale and directly related to a rural business or mineral extraction; or constitute renewable energy development and are supported by a commitment to a bond commensurate with site restoration requirements.

Information submitted in support of the application makes reference to a Development Management Review Committee (DMRC) decision on application 16/00738/FULL (which relates to the authorised caravan pitch to the south of the current site). The DMRC decision notes *the small scale and nature of the site would not fit with the designation as prime quality agricultural land and could be supported within the context of Policy PV20*. The proposal suggests that is a material consideration in the determination of the current application and the planning authority's argument that the land comprises prime quality agricultural land should be set aside and the site should be considered rural brownfield. The 2016 application is of a similar scale (in terms of area) as the site. However the current application relates to a different proposal. Furthermore, regardless of the previous applications and the DMRC conclusion it is a matter of fact that the application site is classified as Class 2 prime agricultural land as assigned by the James Hutton Institute. In addition, the last lawful use of the site was for agriculture and that position was accepted by the Reporter who determined the Enforcement Notice appeal. The terms of the Enforcement Notice require the site to be returned to a greenfield condition. The condition of the site, which has largely been created by the actions of the applicant, does not justify approval of the current application.

The supporting information also makes reference to planning permission 14/00992/FULL for the siting of caravans at Lochlands, Forfar on prime quality agricultural land as part of the case to justify the use of this area of prime quality land. The applicant's supporting statement accepts that the current application would not provide the economic benefits which contributed to justifying the approval of an extension of an existing caravan site for holiday purposes at Lochlands. In any case, the 2014 application at Lochlands was considered against different policies and a different development plan (the superseded Angus Local Plan Review 2009) and is of limited relevance in the determination of a proposal for a different form of development on a different site. It is also noted that the Lochlands application was restricted for short stay tourism use and did not allow for permanent residential accommodation to be formed.

The proposal does not comply with any of the criteria identified in Policy PV20 that would allow development of prime quality land.

Policy DS4 deals with amenity and indicates that development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties. Policy PV3 states that new development should not compromise the integrity or amenity of existing recreational access opportunities including access rights, core paths and rights of way.

The site is reasonably well screened from neighbouring property by virtue of existing trees but those trees are not subject of any statutory protection and their long-term retention could not be secured by planning condition. Notwithstanding that, the use of the site for residential occupation would be broadly consistent with neighbouring land uses and careful siting of any caravans and associated structures should ensure no significant impact on the amenity of those that live in the immediate area. The site is accessed from a narrow rural track which extends approximately 350m west from the junction of Sunnyside and South Street to the application site. The track, which forms part of Kirriemuir Path Network (Core Paths 253 and 254), has limited opportunities for passing and is finished a loose metal with potholes. The Roads Service offers no objection to the proposal and it is not considered that the use of the track by an additional household would have a significant detrimental impact on users of the core path(s). There is no suspected land contamination at the site and the proposal would not give rise to other significant amenity impacts.

Policy PV15 relates to drainage infrastructure and states that development proposals within Development Boundaries will be required to connect to the public sewer where available and proposals outwith areas served by public sewers should meet the requirements of SEPA and/or Building Standards (Scotland) Regulations. The policy goes on to state that all new developments (except single dwelling and developments that discharge directly to coastal waters) will be required to provide Sustainable Drainage Systems (SUDS) to accommodate surface water drainage.

The application from states that SUDS provision would be made for surface water drainage and the development would be connected to the public foul drainage network. Following advice from Scottish Water there is no reason to conclude this would not be achievable and the public sewer is understood to be located approximately 50m to the south of the applicant's landholding. Whilst a connection to the public foul drainage network would be acceptable, a similar arrangement was approved as part of the

earlier planning permission for 'Change of Use of Vacant Land to allow siting of a Chalet and two Touring Caravans' (ref: 16/00738/FULL). Conditions were attached to that permission requiring details of the proposed foul drainage system including the submission of evidence of technical approval by Scottish Water. Evidence of technical approval by Scottish Water is yet to be provided and that permission is subject of a Breach of Condition Notice. Scottish Water has reviewed the current proposal and has advised they are unable to confirm capacity at the local water treatment works to supply the proposal. It would be undesirable from a public health and environmental protection perspective to have additional development in the area where there is uncertainty about the ability to connect to the public foul drainage and water supply network.

Policy PV6 seeks to protect and enhance the quality of the landscape in Angus and provides a number of tests against which development which has adverse landscape effects will be assessed against. PV6 indicates that proposals should be considered in the context of the Tayside Landscape Character Assessment (TLCA). The site sits within an area defined as Broad Valley Lowland in the TLCA but the proposal raises no issues against the landscape guidelines for this landscape unit contained within the TLCA. The proposal would not have significant adverse effects on the landscape.

In terms of other material considerations, the supporting statement makes reference to the human rights and equalities legislation. However, it is a well-established principle that the lawful operation of the planning system will not result in a breach of that legislation. The applicants desire to provide family accommodation is appreciated but no compelling information has been provided to demonstrate that existing sites cannot meet that need.

Planning relates to the use of land rather than to the user. The general rule is that personal circumstances or attributes of the applicant should be ignored by the authority. However personal circumstances may be taken into account in exceptional cases where refusal of planning permission would cause an applicant great hardship. The supporting information notes the applicant's daughter who resides at the application site has a number of health issues and needs to remain at the site which is considered safe and secure with the best possible facilities, and in close proximity to her family who will provide support. These factors have been considered. There is no evidence to suggest that the applicant's daughter would be less capable of keeping in contact with family or medical services if she was to reside away from the site. There is no pressing need for additional permanent gypsy caravan sites in this area and the justification for an additional site for the purposes of residing at this specific location or in close proximity to the extended family does not carry overriding weight. The applicant has taken deliberate unauthorised action to form a caravan pitch at the site in breach of planning control. The weight that can be attached to the personal circumstances of the applicant in this context is limited. It is considered that the relocation of the applicant's daughter to another authorised site in Angus would not result in a significant hardship and there is no evidence to suggest that the applicant's daughter would be less capable of keeping in contact with family or attending doctors or hospital appointments.

The supporting statement also makes reference to other cases, including court cases and appeal cases. Account has been taken of those matters. However, in this case there is no compelling justification for the site selected by the applicant and there is an existing authorised site that has capacity to accommodate the family.

As noted above there is an extant enforcement notice which relates to this site and although an attempt has been made to secure planning permission for the unauthorised development, that notice is still in effect and provides for restoration of the site to a greenfield condition. The use of the site has been initiated without the necessary planning permission despite that fact that the applicant could be in no doubt that planning permission was required. Case law notes that wherever an occupier seeks to rely upon the very fact of his continuing use of land to support their case it must be material to recognise the unlawfulness of that use as a consideration which weakens their case. Where the use has been persisted for many years despite being enforced against and the land owner has failed to reinstate the balance of the site to a greenfield condition as required by the Enforcement Notice, this is a wilful and deliberate breach of the Notice and planning control generally. The Development Standards Committee authorised the instigation of direct action to secure removal of the caravans that are located on-site on the 11 November 2018 and preparation for this is continuing in the meantime.

In conclusion, the proposal is contrary to policies of the Angus Local Development Plan. The personal

circumstances of the applicant's family have been taken into account but are not considered to justify approval of the application, particularly when there are existing authorised sites that have capacity to accommodate the caravans. There are no material considerations which justify approval of planning permission contrary to the development plan.

Human Rights Implications

The decision to refuse this application has potential implications for the applicant in terms of his entitlement to peaceful enjoyment of his possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report justifying the decision in planning terms, it is considered that any actual or apprehended infringement of such Convention Rights, is justified. Any interference with the applicant's right to peaceful enjoyment of his possessions by refusal of the present application is in compliance with the Council's legal duties to determine this planning application under the Planning Acts and such refusal constitutes a justified and proportionate control of the use of property in accordance with the general interest and is necessary in the public interest with reference to the Development Plan and other material planning considerations as referred to in the report.

Equalities Implications

The issues contained in this report fall within an approved category that has been confirmed as exempt from an equalities perspective.

Decision

The application is refused.

Reason(s) for Decision:

1. The application is contrary to Policy TC6 of the Angus Local Development Plan (2016) as there are existing authorised sites with capacity to accommodate the applicant's family, and as the proposal could set a precedent or open up other areas for similar development.
2. The application is contrary to Policy PV20 of the Angus Local Development Plan (2016) as the development is located on prime agricultural land and as it does not meet the criteria for development of prime agricultural land identified in that policy.
3. The proposal is contrary to Policy DS1 of the Angus Local Development Plan (2016) because it is contrary to other policies of the local development plan, namely Policies TC6 and PV20.

Notes:

Case Officer: Stephanie Porter
Date: 7 March 2019

Appendix 1 - Development Plan Policies

Angus Local Development Plan 2016

Policy DS1 : Development Boundaries and Priorities

All proposals will be expected to support delivery of the Development Strategy.

The focus of development will be sites allocated or otherwise identified for development within the Angus Local Development Plan, which will be safeguarded for the use(s) set out. Proposals for alternative uses will only be acceptable if they do not undermine the provision of a range of sites to meet the development needs of the plan area.

Proposals on sites not allocated or otherwise identified for development, but within development boundaries will be supported where they are of an appropriate scale and nature and are in accordance with relevant policies of the ALDP.

Proposals for sites outwith but contiguous* with a development boundary will only be acceptable where it is in the public interest and social, economic, environmental or operational considerations confirm there is

a need for the proposed development that cannot be met within a development boundary.

Outwith development boundaries proposals will be supported where they are of a scale and nature appropriate to their location and where they are in accordance with relevant policies of the ALDP.

In all locations, proposals that re-use or make better use of vacant, derelict or under-used brownfield land or buildings will be supported where they are in accordance with relevant policies of the ALDP.

Development of greenfield sites (with the exception of sites allocated, identified or considered appropriate for development by policies in the ALDP) will only be supported where there are no suitable and available brownfield sites capable of accommodating the proposed development.

Development proposals should not result in adverse impacts, either alone or in combination with other proposals or projects, on the integrity of any European designated site, in accordance with Policy PV4 Sites Designated for Natural Heritage and Biodiversity Value.

*Sharing an edge or boundary, neighbouring or adjacent

Policy DS3 : Design Quality and Placemaking

Development proposals should deliver a high design standard and draw upon those aspects of landscape or townscape that contribute positively to the character and sense of place of the area in which they are to be located. Development proposals should create buildings and places which are:

- o Distinct in Character and Identity: Where development fits with the character and pattern of development in the surrounding area, provides a coherent structure of streets, spaces and buildings and retains and sensitively integrates important townscape and landscape features.
- o Safe and Pleasant: Where all buildings, public spaces and routes are designed to be accessible, safe and attractive, where public and private spaces are clearly defined and appropriate new areas of landscaping and open space are incorporated and linked to existing green space wherever possible.
- o Well Connected: Where development connects pedestrians, cyclists and vehicles with the surrounding area and public transport, the access and parking requirements of the Roads Authority are met and the principles set out in 'Designing Streets' are addressed.
- o Adaptable: Where development is designed to support a mix of compatible uses and accommodate changing needs.
- o Resource Efficient: Where development makes good use of existing resources and is sited and designed to minimise environmental impacts and maximise the use of local climate and landform.

Supplementary guidance will set out the principles expected in all development, more detailed guidance on the design aspects of different proposals and how to achieve the qualities set out above. Further details on the type of developments requiring a design statement and the issues that should be addressed will also be set out in supplementary guidance.

Policy DS4 : Amenity

All proposed development must have full regard to opportunities for maintaining and improving environmental quality. Development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties.

Angus Council will consider the impacts of development on:

- Air quality;
- Noise and vibration levels and times when such disturbances are likely to occur;
- Levels of light pollution;
- Levels of odours, fumes and dust;
- Suitable provision for refuse collection / storage and recycling;
- The effect and timing of traffic movement to, from and within the site, car parking and impacts on highway safety; and
- Residential amenity in relation to overlooking and loss of privacy, outlook, sunlight, daylight and overshadowing.

Angus Council may support development which is considered to have an impact on such considerations, if the use of conditions or planning obligations will ensure that appropriate mitigation and / or compensatory measures are secured.

Applicants may be required to submit detailed assessments in relation to any of the above criteria to the Council for consideration.

Where a site is known or suspected to be contaminated, applicants will be required to undertake investigation and, where appropriate, remediation measures relevant to the current or proposed use to prevent unacceptable risks to human health.

Policy TC6 : Gypsies and Travellers and Travelling Showpeople

Gypsies and Travellers and Travelling Showpeople will be encouraged to stay at authorised sites (publicly or privately owned and managed). Existing authorised Gypsies and Travellers and Travelling Showpeople sites will be protected and there will be a presumption against their redevelopment or conversion to other uses unless it can be demonstrated to the satisfaction of Angus Council that there is a surplus of accommodation to meet identified needs.

Proposals for new or extended permanent sites and temporary "short stay" sites for Gypsies and Travellers will only be supported where:

- o the site will contribute to satisfying a local need identified in the Local Housing Strategy and is consistent with Angus Council's strategy for meeting the accommodation needs of these client groups;
- o the development is designed and located to minimise adverse effects on the landscape, established amenity, character and built or natural heritage interests of the surrounding area;
- o the proposed site will provide a good residential amenity for residents and has adequate access to community, education and health services and facilities; and
- o the proposed development would not set a precedent or open up other areas for similar development.

Policy PV3 : Access and Informal Recreation

New development should not compromise the integrity or amenity of existing recreational access opportunities including access rights, core paths and rights of way. Existing access routes should be retained, and where this is not possible alternative provision should be made.

New development should incorporate provision for public access including, where possible, links to green space, path networks, green networks and the wider countryside.

Where adequate provision cannot be made on site, and where the development results in a loss of existing access opportunities or an increased need for recreational access, a financial contribution may be sought for alternative provision.

Policy PV6 : Development in the Landscape

Angus Council will seek to protect and enhance the quality of the landscape in Angus, its diversity (including coastal, agricultural lowlands, the foothills and mountains), its distinctive local characteristics, and its important views and landmarks.

Capacity to accept new development will be considered within the context of the Tayside Landscape Character Assessment, relevant landscape capacity studies, any formal designations and special landscape areas to be identified within Angus. Within the areas shown on the proposals map as being part of 'wild land', as identified in maps published by Scottish Natural Heritage in 2014, development proposals will be considered in the context of Scottish Planning Policy's provisions in relation to safeguarding the character of wild land.

Development which has an adverse effect on landscape will only be permitted where:

- o the site selected is capable of accommodating the proposed development;
- o the siting and design integrate with the landscape context and minimise adverse impacts on the local landscape;

- o potential cumulative effects with any other relevant proposal are considered to be acceptable; and
- o mitigation measures and/or reinstatement are proposed where appropriate.

Landscape impact of specific types of development is addressed in more detail in other policies in this plan and work involving development which is required for the maintenance of strategic transport and communications infrastructure should avoid, minimise or mitigate any adverse impact on the landscape.

Further information on development in the landscape, including identification of special landscape and conservation areas in Angus will be set out in a Planning Advice Note.

Policy PV7 : Woodland, Trees and Hedges

Ancient semi-natural woodland is an irreplaceable resource and should be protected from removal and potential adverse impacts of development. The council will identify and seek to enhance woodlands of high nature conservation value. Individual trees, especially veteran trees or small groups of trees which contribute to landscape and townscape settings may be protected through the application of Tree Preservation Orders (TPO).

Woodland, trees and hedges that contribute to the nature conservation, heritage, amenity, townscape or landscape value of Angus will be protected and enhanced. Development and planting proposals should:

- o protect and retain woodland, trees and hedges to avoid fragmentation of existing provision;
- o be considered within the context of the Angus Woodland and Forestry Framework where woodland planting and management is planned;
- o ensure new planting enhances biodiversity and landscape value through integration with and contribution to improving connectivity with existing and proposed green infrastructure and use appropriate species;
- o ensure new woodland is established in advance of major developments;
- o undertake a Tree Survey where appropriate; and
- o identify and agree appropriate mitigation, implementation of an approved woodland management plan and re-instatement or alternative planting.

Angus Council will follow the Scottish Government Control of Woodland Removal Policy when considering proposals for the felling of woodland.

Policy PV15 : Drainage Infrastructure

Development proposals within Development Boundaries will be required to connect to the public sewer where available.

Where there is limited capacity at the treatment works Scottish Water will provide additional wastewater capacity to accommodate development if the Developer can meet the 5 Criteria*. Scottish Water will instigate a growth project upon receipt of the 5 Criteria and will work with the developer, SEPA and Angus Council to identify solutions for the development to proceed.

Outwith areas served by public sewers or where there is no viable connection for economic or technical reasons private provision of waste water treatment must meet the requirements of SEPA and/or The Building Standards (Scotland) Regulations. A private drainage system will only be considered as a means towards achieving connection to the public sewer system, and when it forms part of a specific development proposal which meets the necessary criteria to trigger a Scottish Water growth project.

All new development (except single dwelling and developments that discharge directly to coastal waters) will be required to provide Sustainable Drainage Systems (SUDs) to accommodate surface water drainage and long term maintenance must be agreed with the local authority. SUDs schemes can contribute to local green networks, biodiversity and provision of amenity open space and should form an integral part of the design process.

Drainage Impact Assessment (DIA) will be required for new development where appropriate to identify potential network issues and minimise any reduction in existing levels of service.

*Enabling Development and our 5 Criteria (<http://scotland.gov.uk/Resource/0040/00409361.pdf>)

Policy PV20 : Soils and Geodiversity

Development proposals on prime agricultural land will only be supported where they:

- o support delivery of the development strategy and policies in this local plan;
- o are small scale and directly related to a rural business or mineral extraction; or
- o constitute renewable energy development and are supported by a commitment to a bond commensurate with site restoration requirements.

Design and layout should minimise land required for development proposals on agricultural land and should not render any farm unit unviable.

Development proposals affecting deep peat or carbon rich soils will not be allowed unless there is an overwhelming social or economic need that cannot be met elsewhere. Where peat and carbon rich soils are present, applicants should assess the likely effects of development proposals on carbon dioxide emissions.

All development proposals will incorporate measures to manage, protect and reinstate valuable soils, groundwater and soil biodiversity during construction.

From:ClarkPR
Sent:Wed, 16 Jan 2019 15:36:37 +0000
To:PLNProcessing
Cc:PorterSG
Subject:Consultation response 19/00023/full

I refer to you consultation regarding planning application 19/00023/FULL - Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in Part Retrospect).

The site is adjacent to core path 254 (Herdhill to Low Road). The core path is rural path which primarily serves a recreational function. It is therefore desirable to protect the existing rural character and amenity value of the path.

The site is also close to core path 253 (Westmuir Low Road to Kirriemuir). This path also primarily serves a recreational function. This recreational use is shared with moderate levels of vehicular access to adjacent mainly residential properties. It is desirable that the existing character and amenity value of this path is also protected.

The proposed development is not likely to affect public passage over core path 254. Built development at this location will however erode the existing rural character and amenity value of the route. If approved, I suggest that the following measures should be put in place to help protect the amenity value of the path:-

- The belt of trees bordering the path should be retained to provide a buffer and visual screen between the path and the development. Consideration should also be given to the long term viability of the trees and their future protection/replacement.
- Any screen fencing should be located on the eastern side of the trees.
- There should be no new vehicular accesses onto core path 254.

Vehicular access associated with the proposed development is not in itself likely to significantly impact on recreational use of core path 253. Incremental increases in vehicular use resulting from multiple developments in the area are however likely to have a negative impact on the suitability of the path for recreational access.

Paul Clark, Countryside Access Officer

Place, Angus Council, Angus House, Orchardbank Business Park, FORFAR, DD8 1AN

18th January 2019

Angus Council
County Buildings Market Street
Forfar.
DD8 3LG



Development Operations
The Bridge
Buchanan Gate Business Park
Cumbernauld Road
Steps
Glasgow
G33 6FB

Development Operations
Freephone Number - 0800 3890379
E-Mail - DevelopmentOperations@scottishwater.co.uk
www.scottishwater.co.uk

Dear Local Planner

**DD8 Kirriemuir Croft Logie Land 125M W Of N Mains
PLANNING APPLICATION NUMBER: 19/00023/FULL
OUR REFERENCE: 771823**

**PROPOSAL: Change of Use of Vacant Land to Form a Chalet/Caravan Pitch
(Principal Chalet and One Touring Caravan), Formation of Hardstanding,
Erection of 1.8m High Fences and Amenity Block (in Part Retrospect)**

Please quote our reference in all future correspondence

Scottish Water has no objection to this planning application; however, the applicant should be aware that this does not confirm that the proposed development can currently be serviced and would advise the following:

Water

- This proposed development will be fed from Whitehillocks Water Treatment Works. Unfortunately, Scottish Water is unable to confirm capacity at this time so to allow us to fully appraise the proposals we suggest that the applicant completes a Pre-Development Enquiry (PDE) Form and submits it directly to Scottish Water. The applicant can download a copy of our PDE Application Form, and other useful guides, from Scottish Water's website at the following link
www.scottishwater.co.uk/business/connections/connecting-your-property/new-development-process-and-applications-forms/pre-development-application

Foul

- There is currently sufficient capacity in the Kirriemuir Waste Water Treatment Works. However, please note that further investigations may be required to be carried out once a formal application has been submitted to us.

The applicant should be aware that we are unable to reserve capacity at our water and/or waste water treatment works for their proposed development. Once a formal

connection application is submitted to Scottish Water after full planning permission has been granted, we will review the availability of capacity at that time and advise the applicant accordingly.

Surface Water

For reasons of sustainability and to protect our customers from potential future sewer flooding, Scottish Water will not normally accept any surface water connections into our combined sewer system.

There may be limited exceptional circumstances where we would allow such a connection for brownfield sites only, however this will require significant justification from the customer taking account of various factors including legal, physical, and technical challenges.

In order to avoid costs and delays where a surface water discharge to our combined sewer system is anticipated, the developer should contact Scottish Water at the earliest opportunity with strong evidence to support the intended drainage plan prior to making a connection request. We will assess this evidence in a robust manner and provide a decision that reflects the best option from environmental and customer perspectives.

General notes:

- **Scottish Water asset plans can be obtained from our appointed asset plan providers:**

Site Investigation Services (UK) Ltd

Tel: 0333 123 1223

Email: sw@sisplan.co.uk

www.sisplan.co.uk

- Scottish Water's current minimum level of service for water pressure is 1.0 bar or 10m head at the customer's boundary internal outlet. Any property which cannot be adequately serviced from the available pressure may require private pumping arrangements to be installed, subject to compliance with Water Byelaws. If the developer wishes to enquire about Scottish Water's procedure for checking the water pressure in the area then they should write to the Customer Connections department at the above address.
- If the connection to the public sewer and/or water main requires to be laid through land out-with public ownership, the developer must provide evidence of formal approval from the affected landowner(s) by way of a deed of servitude.
- Scottish Water may only vest new water or waste water infrastructure which is to be laid through land out with public ownership where a Deed of Servitude has been obtained in our favour by the developer.

- The developer should also be aware that Scottish Water requires land title to the area of land where a pumping station and/or SUDS proposed to vest in Scottish Water is constructed.
- **Please find all of our application forms on our website at the following link <https://www.scottishwater.co.uk/business/connections/connecting-your-property/new-development-process-and-applications-forms>**

Next Steps:

- **Single Property/Less than 10 dwellings**

For developments of less than 10 domestic dwellings (or non-domestic equivalent) we will require a formal technical application to be submitted directly to Scottish Water or via the chosen Licensed Provider if non domestic, once full planning permission has been granted. Please note in some instances we will require a Pre-Development Enquiry Form to be submitted (for example rural location which are deemed to have a significant impact on our infrastructure) however we will make you aware of this if required.

- **10 or more domestic dwellings:**

For developments of 10 or more domestic dwellings (or non-domestic equivalent) we require a Pre-Development Enquiry (PDE) Form to be submitted directly to Scottish Water prior to any formal Technical Application being submitted. This will allow us to fully appraise the proposals.

Where it is confirmed through the PDE process that mitigation works are necessary to support a development, the cost of these works is to be met by the developer, which Scottish Water can contribute towards through Reasonable Cost Contribution regulations.

- **Non Domestic/Commercial Property:**
Since the introduction of the Water Services (Scotland) Act 2005 in April 2008 the water industry in Scotland has opened up to market competition for non-domestic customers. All Non-domestic Household customers now require a Licensed Provider to act on their behalf for new water and waste water connections. Further details can be obtained at www.scotlandontap.gov.uk.
- **Trade Effluent Discharge from Non Dom Property:**
Certain discharges from non-domestic premises may constitute a trade effluent in terms of the Sewerage (Scotland) Act 1968. Trade effluent arises from activities including; manufacturing, production and engineering; vehicle, plant and equipment washing, waste and leachate management. It covers both large and small premises, including activities such as car washing and launderettes. Activities not covered include hotels, caravan sites or restaurants.

If you are in any doubt as to whether or not the discharge from your premises is likely to be considered to be trade effluent, please contact us on 0800 778 0778 or email

TEQ@scottishwater.co.uk using the subject "Is this Trade Effluent?". Discharges that are deemed to be trade effluent need to apply separately for permission to discharge to the sewerage system. The forms and application guidance notes can be found using the following link <https://www.scottishwater.co.uk/business/our-services/compliance/trade-effluent/trade-effluent-documents/trade-effluent-notice-form-h>

Trade effluent must never be discharged into surface water drainage systems as these are solely for draining rainfall run off.

For food services establishments, Scottish Water recommends a suitably sized grease trap is fitted within the food preparation areas so the development complies with Standard 3.7 a) of the Building Standards Technical Handbook and for best management and housekeeping practices to be followed which prevent food waste, fat oil and grease from being disposed into sinks and drains.

The Waste (Scotland) Regulations which require all non-rural food businesses, producing more than 50kg of food waste per week, to segregate that waste for separate collection. The regulations also ban the use of food waste disposal units that dispose of food waste to the public sewer. Further information can be found at www.resourceefficientscotland.com

If the applicant requires any further assistance or information, please contact our Development Operations Central Support Team on 0800 389 0379 or at planningconsultations@scottishwater.co.uk

Yours sincerely

Angela Allison

Angela.Allison@scottishwater.co.uk

ANGUS COUNCIL

PLACE PLANNING

CONSULTATION SHEET

PLANNING APPLICATION NO

19/00023/FULL

Tick boxes as appropriate

ROADS

No Objection

Interest

(Comments to follow within 14 days)

Date

22	01	19
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**PLEASE DO NOT TAKE AWAY THE LAST SET OF PLANS WHERE POSSIBLE COPIES
WILL BE PROVIDED ON REQUEST**

ELECTRONIC SUBMISSION DRAWINGS TO BE VIEWED VIA IDOX

From: [Maxwells](#)
To: [PLNProcessing](#)
Cc: [PorterSG](#)
Subject: Consultation - 19/00023/FULL
Date: 24 January 2019 13:32:12
Attachments: [image001.png](#)

Hi,

As requested please find following a consultation response regarding application ref. 19/00023/FULL

Consultation Response:

The site at Balmuirwood has 20 individual pitches and currently 50% of individual pitches are vacant. This site is managed by Dundee City Council although Angus Council have access to the site through the Site Liaison Officer. The minute of agreement states – ‘Angus Council shall be entitled to nominate travelling people and their families for allocation of pitches at the site, provided vacant pitches are available and Dundee City Council shall accept nominations provided they are in accordance with Dundee City Council’s letting procedures.’

St Christopher’s has 18 individual pitches, all of which are currently occupied. At present there is also a waiting list for stances at this site.

The needs assessment indicated a small shortfall of accommodation for Gypsy/Travellers in Angus. On review this mainly related to demand in the North HMA and to a lesser extent in the West HMA.

Please do not hesitate to contact if any other further information is required.

Many thanks,

Sean

Sean Maxwell, Housing Policy Officer (Enablement), Angus Council, Angus House, Orchardbank Business Park Forfar DD8 1AN. Tel. 01307 474716

From: PLNProcessing
Sent: 16 January 2019 13:39
To: AffordableHousingTeam
Subject: 19/00023/FULL

Hi,

For the above application a consultation is required for traveller sites.

Regards

David Moore : Clerical Officer : Angus Council : Planning Service : Angus House
: Orchardbank Business Park, Forfar, DD8 1AN : Tel: 01307 473308



www.angus.gov.uk/angusdesignawards

From: [GrahamIH](#)
To: [PorterSG](#)
Cc: [ThomsonSD](#)
Subject: 19/00023/FULL - Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences At Land 125M West Of North Mains Croft Logie Kirriemuir
Date: 21 February 2019 14:25:16

Steph

Thank you for consulting me on the above application. I understand that the current proposals are identical to those that formed a previous application 17/0107/FULL when the following comments were provided by this Service:

"I refer to the above application and would advise that I have looked at the submitted information and undertaken a site visit.

The applicant is seeking approval to accommodate 2 caravans on a site adjacent to an existing caravan site. I am satisfied that the current proposal will not give rise to any significant impacts affecting existing amenity levels in the vicinity and as such I would not offer any objection to the application proceeding.

It should be noted that the original site does not currently benefit from having a Caravan Site Licence in place, however I understand from discussions with the agent that an application will be lodged with Angus Council shortly."

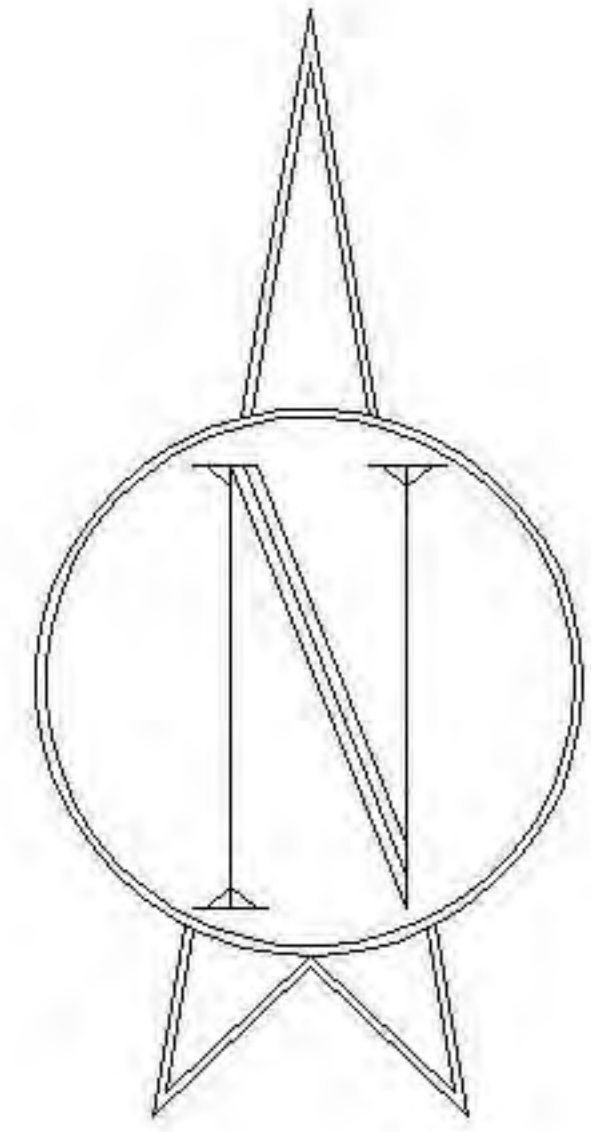
I would advise that the above comments remain valid in respect of the current application although it should be noted that to date I am not aware of any application for a Caravan Site Licence being submitted.

I trust you find this response satisfactory.

Regards

Iain

Iain Graham | Environmental Health Officer | Angus Council - Place | Housing, Regulatory and Protective Services | Angus House, Orchardbank Business Park, Forfar, DD8 1AN | 📞01307 473347



Refused

Refused

Refused

PRISM
ENGINEERING



31 Gardner Crescent, Leven, Fife, KY8 4FD
tel: 07977 507185
e: scott@prismeng.co.uk
w: www.prismengineering.co.uk

Client:

John Townsley

Project:

Proposed Development
Land West of North Mains Croft
Kirriemuir

Drawing:

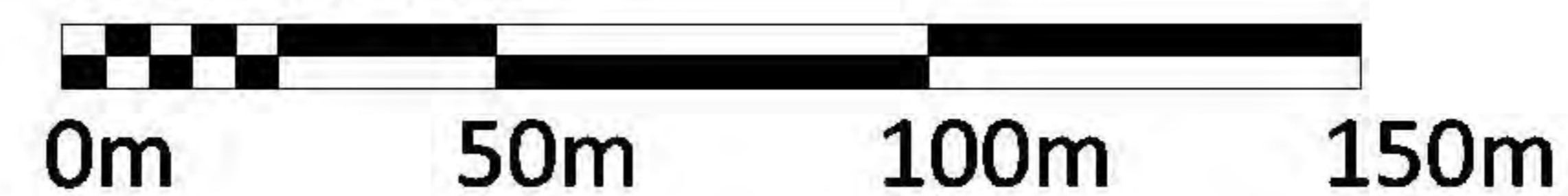
Location Plan

Date:	Scale:	Job No:
02.11.2017	1:1250 @ A2	2017-065

Grid:	Datum:	Dwg No:
Local	OSBM Newlyn	02

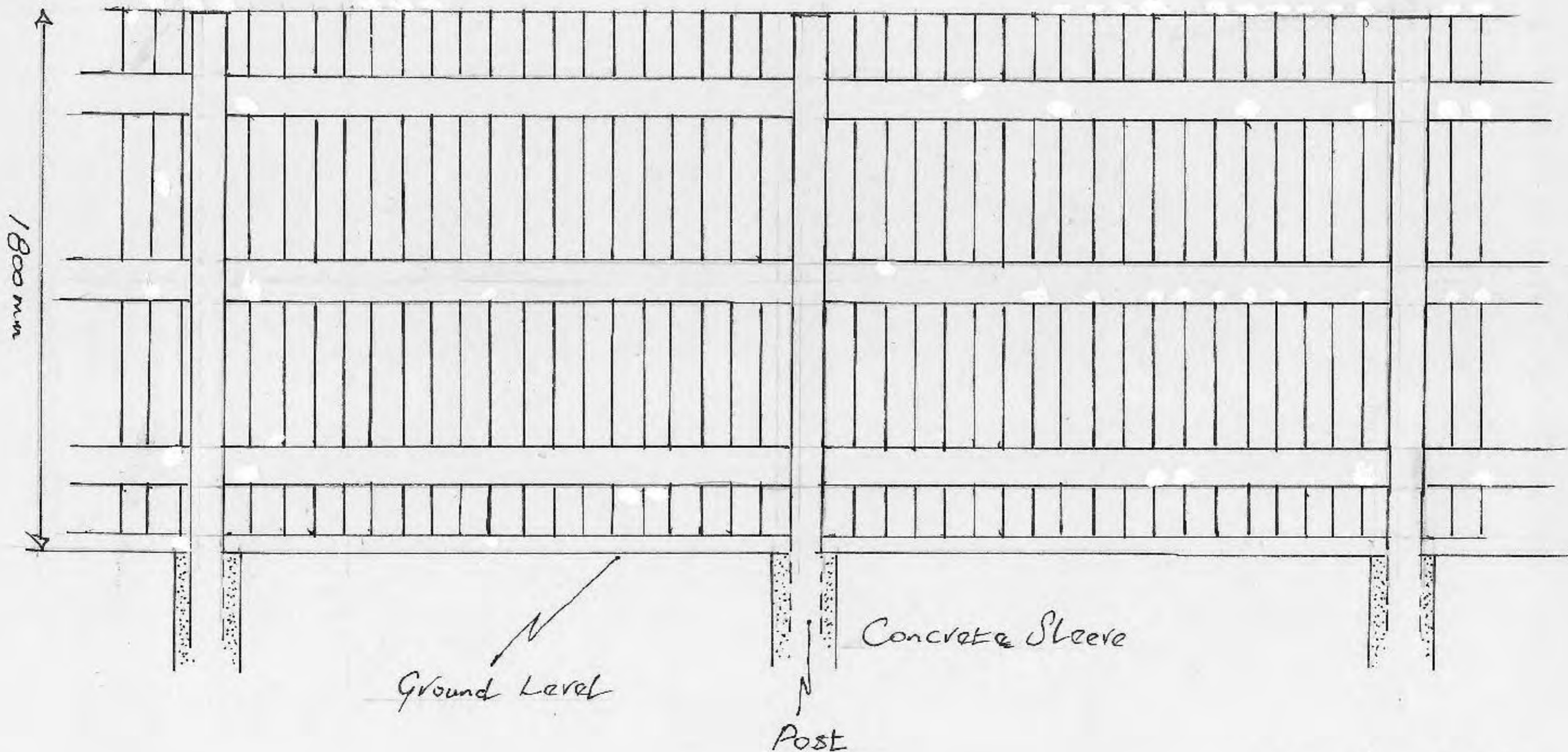
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Scale 1:1250



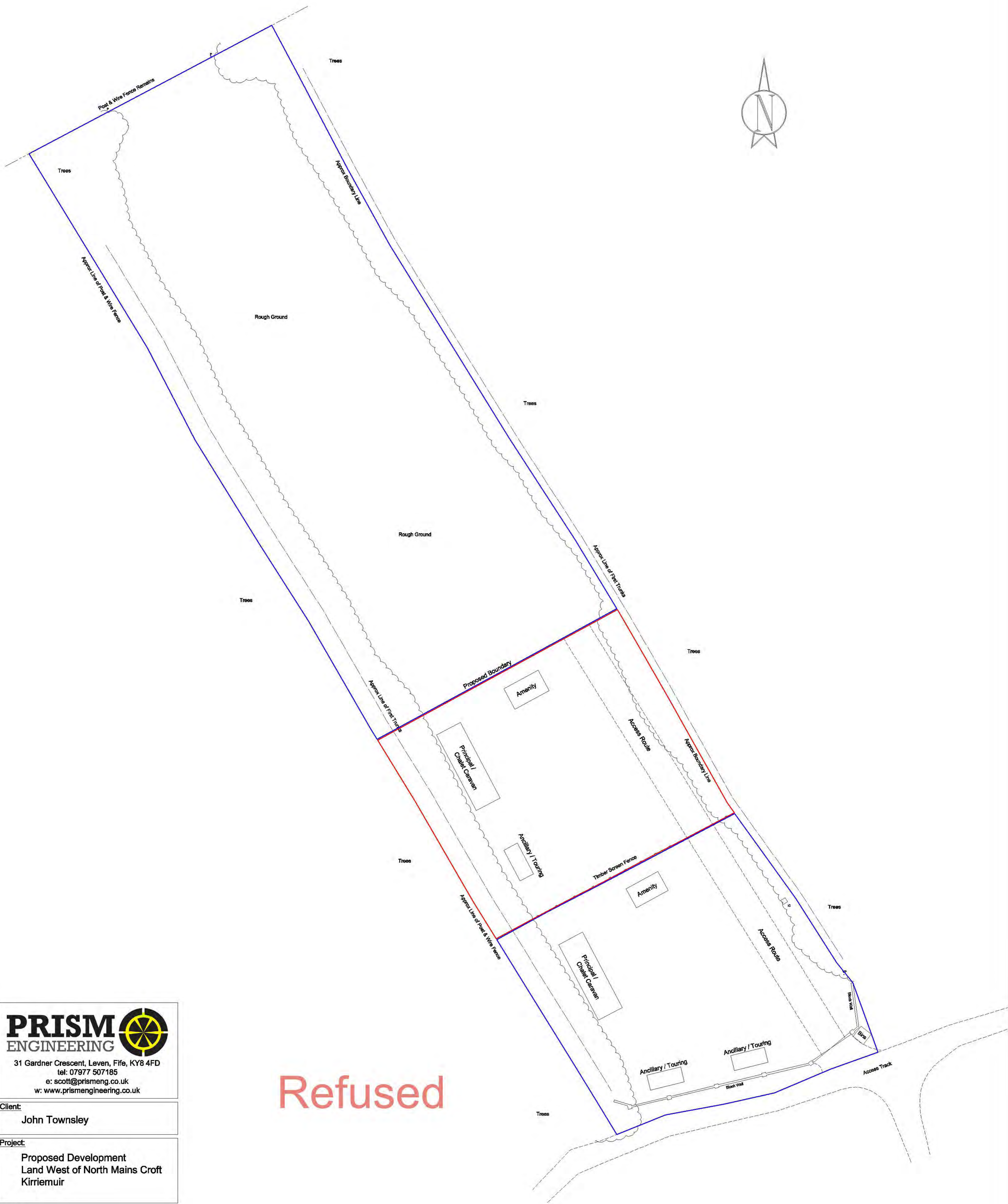
Refused

1800mm High Close Board Fence Detail



Scale 1:20

Refused



Refused

PRISM ENGINEERING



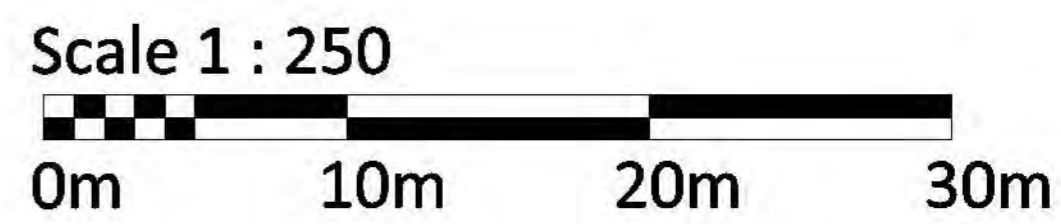
31 Gardner Crescent, Leven, Fife, KY8 4FD
 tel: 07977 507185
 e: scott@prismeng.co.uk
 w: www.prismengineering.co.uk

Client:
 John Townsley

Project:
 Proposed Development
 Land West of North Mains Croft
 Kirriemuir

Drawing:
 Proposed Plot Layout

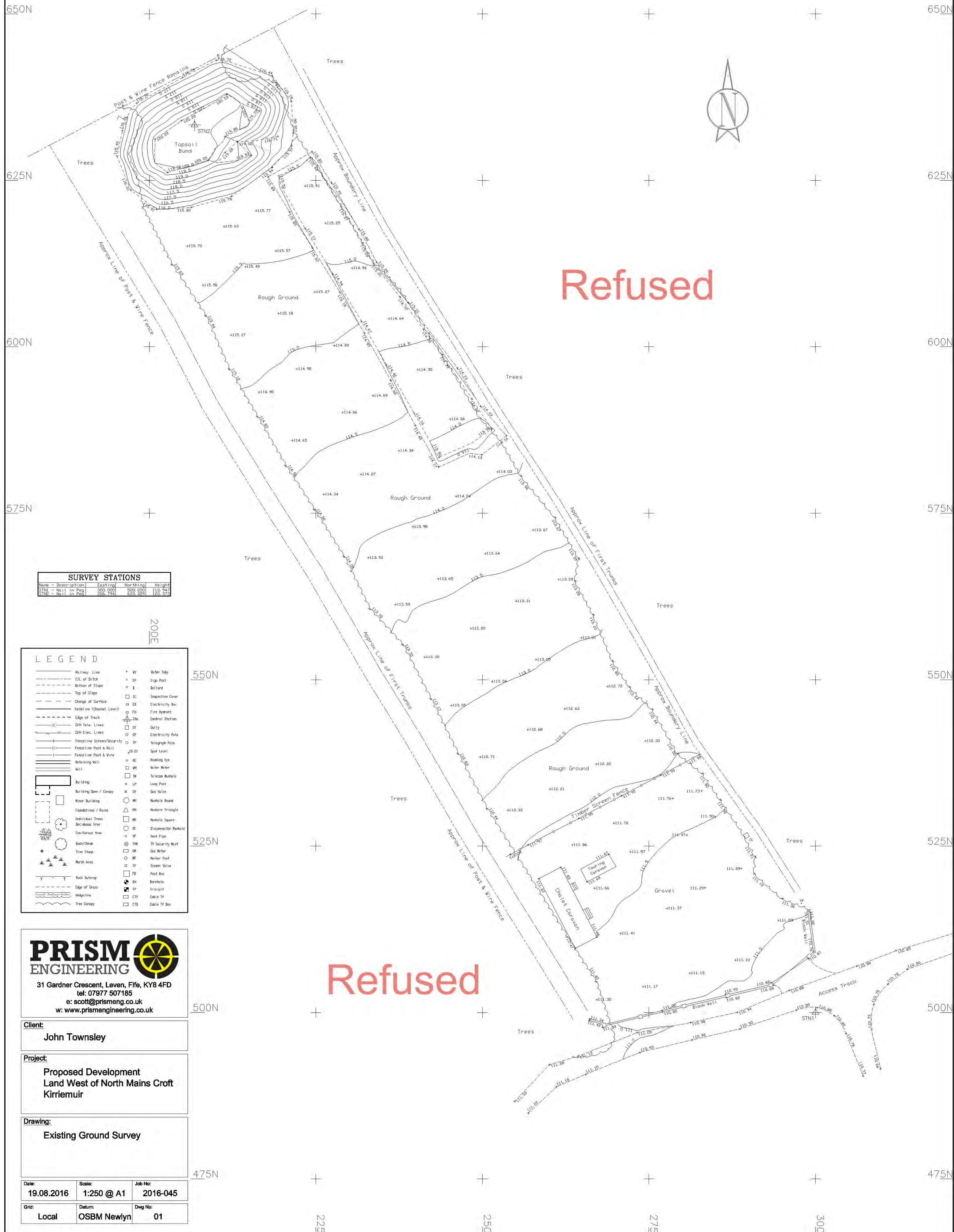
Date: 02.11.2017	Scale: 1:250 @ A1	Job No: 2017-065
Grid: Local	Datum: OSBM Newlyn	Dwg No: 01



Refused

Refused

Refused



SURVEY STATIONS

Name	Description	Easting	Northing	Height
STN1	Nail in Peg	200.000	500.000	110.947
STN2	Nail in Peg	205.794	533.359	110.373

LEGEND

—	Railway Line	W	Water Tolly
- - -	DL of Ditch	SP	Sign Post
- - -	Bottom of Slope	I	Island
- - -	Top of Slope	IC	Inspection Cover
- - -	Change of Surface	EB	Electricity Box
- - -	Kerbline (Channel Level)	FB	Fire Hydrant
- - -	Edge of Track	CS	Control Station
- - -	DM Tele. Lines	GT	Gully
- - -	DM Elec. Lines	EP	Electricity Pole
- - -	Fence Line Screen/Security	TP	Telegraph Pole
- - -	Fence Line Post & Rail	SL	Spot Level
- - -	Fence Line Post & Wire	RE	Reading Eye
- - -	Retaining Wall	VM	Water Meter
- - -	Wall	TM	Telecom Manhole
- - -	Building	LP	Lamp Post
- - -	Building Open / Canopy	GV	Gas Valve
- - -	Minor Building	MB	Manhole Round
- - -	Foundations / Ruins	MT	Manhole Triangle
- - -	Individual Trees	MS	Manhole Square
- - -	Deciduous tree	DC	Disconnector Manhole
- - -	Coniferous tree	VP	Vent Pipe
- - -	Bush/Strub	TM	TV Security Mast
- - -	Tree Stump	GM	Gas Meter
- - -	Marsh Area	MP	Marker Post
- - -	Rock Outcrop	SV	Screen Valve
- - -	Edge of Grass	FB	Post Box
- - -	Hedge Line	BH	Borehole
- - -	Tree Canopy	TP	Tripoint
- - -		CTV	Cable TV
- - -		CTB	Cable TV Box

PRISM ENGINEERING

31 Gardner Crescent, Leven, Fife, KY8 4FD
 tel: 07977 507185
 e: scott@prismeng.co.uk
 w: www.prismengineering.co.uk

Client:
John Townsley

Project:
Proposed Development
Land West of North Mains Croft
Kirriemuir

Drawing:
Existing Ground Survey

Date: 19.08.2016	Scale: 1:250 @ A1	Job No: 2016-045
Grid: Local	Datum: OSBM Newlyn	Dwg No: 01







A small, beige, gabled shed with horizontal siding and a dark roofline. It is elevated on a stone foundation. A small vent is visible on the front wall.

Two red propane tanks standing upright on the ground. The tanks have "CALOR" and "47 Lb Propane" printed on them.

A white van parked on a gravel surface to the left of the shed.

A small utility vehicle or trailer parked behind a wooden fence to the right of the shed.

A white utility box mounted on a wooden fence post, with various wires connected to it.

A wooden fence running along the right side of the property, separating the shed area from the rest of the yard.

A gravel and dirt area in the foreground, scattered with fallen leaves and some debris.

A dense line of tall, thin trees forming a natural backdrop for the shed.





TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
(AS AMENDED)
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(SCOTLAND)
REGULATIONS 2013

PLANNING PERMISSION REFUSAL
REFERENCE : 19/00023/FULL

To Mr John Townsley
c/o Seath Planning Consultancy Ltd
Alan Seath
88 Scott Road
Glenrothes
KY6 1AE

With reference to your application dated 15 January 2019 for planning permission under the above mentioned Acts and Regulations for the following development, viz.:-

Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in Part Retrospect) at Land 125M West Of North Mains Croft Logie Kirriemuir for Mr John Townsley

The Angus Council in exercise of their powers under the above mentioned Acts and Regulations hereby Refuse Planning Permission (Delegated Decision) for the said development in accordance with the particulars given in the application and plans docqueted as relative hereto in paper or identified as refused on the Public Access portal.

The reasons for the Council's decision are:-

1. The application is contrary to Policy TC6 of the Angus Local Development Plan (2016) as there are existing authorised sites with capacity to accommodate the applicant's family, and as the proposal could set a precedent or open up other areas for similar development.
2. The application is contrary to Policy PV20 of the Angus Local Development Plan (2016) as the development is located on prime agricultural land and as it does not meet the criteria for development of prime agricultural land identified in that policy.
3. The proposal is contrary to Policy DS1 of the Angus Local Development Plan (2016) because it is contrary to other policies of the local development plan, namely Policies TC6 and PV20.

Amendments:

The application has not been subject of variation.

Dated this 30 April 2019

Kate Cowey - Service Leader
Planning & Communities
Angus Council
Angus House
Orchardbank Business Park
Forfar DD8 1AN

Planning Decisions – Guidance Note

Please retain – this guidance forms part of your Decision Notice

You have now received your Decision Notice. This guidance note sets out important information regarding appealing or reviewing your decision. There are also new requirements in terms of notifications to the Planning Authority and display notices on-site for certain types of application. You will also find details on how to vary or renew your permission.

Please read the notes carefully to ensure effective compliance with the new regulations.

DURATION

This permission will lapse 3 years from the date of this decision, unless there is a specific condition relating to the duration of the permission or development has commenced by that date.

PLANNING DECISIONS

Decision Types and Appeal/Review Routes

The 'decision type' as specified in your decision letter determines the appeal or review route. The route to do this is dependent on the how the application was determined. Please check your decision letter and choose the appropriate appeal/review route in accordance with the table below. Details of how to do this are included in the guidance.

Determination Type	What does this mean?	Appeal/Review Route
Development Standards Committee/Full Council	National developments, major developments and local developments determined at a meeting of the Development Standards Committee or Full Council whereby relevant parties and the applicant were given the opportunity to present their cases before a decision was reached.	DPEA (appeal to Scottish Ministers) – See details on attached Form 1
Delegated Decision	Local developments determined by the Service Manager through delegated powers under the statutory scheme of delegation. These applications may have been subject to less than five representations, minor breaches of policy or may be refusals.	Local Review Body – See details on attached Form 2
Other Decision	All decisions other than planning permission or approval of matters specified in condition. These include decisions relating to Listed Building Consent, Advertisement Consent, Conservation Area Consent and Hazardous Substances Consent.	DPEA (appeal to Scottish Ministers) – See details on attached Form 1

Notification of initiation of development (NID)

Once planning permission has been granted and the applicant has decided the date they will commence that development they must inform the Planning Authority of that date. The notice must be submitted before development commences – failure to do so would be a breach of planning control. The relevant form is included with this guidance note.

Notification of completion of development (NCD)

Once a development for which planning permission has been given has been completed the applicant must, as soon as practicable, submit a notice of completion to the planning authority. Where development is carried out in phases there is a requirement for a notice to be submitted at the conclusion of each phase. The relevant form is included with this guidance note.

Display of Notice while development is carried out

For national, major or 'bad neighbour' developments (such as public houses, hot food shops or scrap yards), the developer must, for the duration of the development, display a sign or signs containing prescribed information.

The notice must be in the prescribed form and:-

- displayed in a prominent place at or in the vicinity of the site of the development;
- readily visible to the public; and
- printed on durable material.

A display notice is included with this guidance note.

Should you have any queries in relation to any of the above, please contact:

Angus Council
Place
Angus House
Orchardbank Business Park
Forfar
DD8 1AN

Telephone 01307 492076 / 492533
E-mail: planning@angus.gov.uk
Website: www.angus.gov.uk



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

The Town & Country Planning (Development Management Procedure)
(Scotland) Regulations 2013 – Schedule to Form 1

*Notification to be sent to applicant on refusal of planning permission
or on the grant of permission subject to conditions decided by Angus Council*

1. If the applicant is aggrieved by the decision of the planning authority-
 - a) to refuse permission for the proposed development;
 - b) to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
 - c) to grant planning permission or any approval, consent or agreement subject to conditions,

the applicant may appeal to the Scottish Ministers to review the case under section 47 of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The notice of appeal should be addressed to Directorate for Planning & Environmental Appeals, 4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR. Alternatively you can submit your appeal directly to DPEA using the national e-planning web site <https://eplanning.scotland.gov.uk>.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

The Town & Country Planning (Development Management Procedure)
(Scotland) Regulations 2013 – Schedule to Form 2

*Notification to be sent to applicant on refusal of planning permission
or on the grant of permission subject to conditions decided through
Angus Council's Scheme of Delegation*

1. If the applicant is aggrieved by the decision of the planning authority-
 - a) to refuse permission for the proposed development;
 - b) to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
 - c) to grant planning permission or any approval, consent or agreement subject to conditions,

the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The notice of review should be addressed to Committee Officer, Angus Council, Resources, Legal & Democratic Services, Angus House, Orchardbank Business Park, Forfar, DD8 1AN.

A Notice of Review Form and guidance can be found on the national e-planning website <https://eplanning.scotland.gov.uk>. Alternatively you can return your Notice of Review directly to the local planning authority online on the same web site.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

PLANNING

Your experience with Planning

Please indicate whether you agree or disagree with the following statements about your most recent experience of the Council's handling of the planning application in which you had an interest.

Q.1 I was given the advice and help I needed to submit my application/representation:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.2 The Council kept me informed about the progress of the application that I had an interest in:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.3 The Council dealt promptly with my queries:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.4 The Council dealt helpfully with my queries:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.5 I understand the reasons for the decision made on the application that I had an interest in:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.6 I feel that I was treated fairly and that my view point was listened to:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OVERALL SATISFACTION: Overall satisfaction with the service:

Q.7 Setting aside whether your application was successful or not, and taking everything into account, how satisfied or dissatisfied are you with the service provided by the council in processing your application?

Very satisfied	Fairly satisfied	Neither Satisfied nor Dissatisfied	Fairly Dissatisfied	Very Dissatisfied
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OUTCOME: Outcome of the application:

Q.8 Was the application that you had an interest in:-

Granted Permission/Consent	<input type="checkbox"/>	Refused Permission/Consent	<input type="checkbox"/>	Withdrawn	<input type="checkbox"/>
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Q.9 Were you the:- Applicant Agent Third Party objector who made a representation

Please complete the form and return in the pre-paid envelope provided.
Thank you for taking the time to complete this form.

Planning Policy & Design Statement

Applicant: Mr. John Townsley

Proposal: Change of use of vacant land to form a chalet/caravan pitch (principal chalet and one touring caravan), formation of hardstanding, and fences and amenity block (in retrospect)

at land 125M West of North Mains Croft,
Logie, Kirriemuir Angus

Date: 14 January 2019

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1. Background Information

Introduction

This Planning Policy and Design Statement [the Statement] is submitted in support of the planning application [the application] on behalf of Mr. John Townsley [the Applicant] who is representing the interests of his daughter and son in law.

The application seeks a change of use of land for use as one individual private permanent caravan pitch (one principal chalet and one touring caravan), erection of amenity block and 1.8 metre high fencing, formation of hardstanding and car parking (in retrospective) on land to the west of North Mains Croft, Kirriemuir [the Site]. This submission follows a response to a letter (see Appendix 1) from Angus Council as Planning Authority [the Council] confirming that a further planning application can be submitted following refusal of planning permission on the 13 April 2018. The Council's response recognised the health and wellbeing of the Townsley family as a material consideration in the determination of this case.

This Statement provides the reader with the relevant background information relating to the lifestyle and culture of the Gypsy/Traveller community and related health issues and the need for accommodation which meets minimum standards and supports family life which is important to the Travelling community.

An assessment of the reasons for refusal in the decision notice reference 17/01017/FULL (as reinforced by the Local Review decision dated 18 September 2018) is undertaken with reference made to the relevant development plan policy. Other relevant material considerations are also identified and assessed. A conclusion is reached that the proposal is in accordance with the development plan with all material considerations (including health issues) adding significant weight to the case to allow the Council to grant planning permission.

The reader is asked to note that Seath Planning Consultancy Ltd. has been employed by the NHS and the Scottish Government to undertake research which will examine the importance of the Placemaking Standards to the health and wellbeing to the Gypsy/Traveller community. This began in November 2018 with two presentations, the first to the Convenors of all the Planning Committees and the second to Heads of Planning in Scotland. NHS research will be based on case studies two of which have been completed having begun in January 2019.

It is vitally important that the reader and decision makers are aware of the content of this Statement to inform themselves and understand the issues which are of relevance; and the impacts that a negative decision will have on the Townsley family (or any other family) as Gypsy/Travellers.

Planning Background

There is one previous planning application associated with the land adjacent to this site. The Applicant was granted planning permission for the existing Gypsy/Traveller pitch under the terms of application reference 16/00738/FULL following a decision by the Development Management Review Committee [Review Committee].

The Review Committee set aside the concerns of the Planning Authority and concluded that:

“the small scale and nature of the site would not fit with the designation as prime quality agricultural land and could be supported within the context of policy PV20. As a privately owned site the DMRC felt it would not set a precedent or open up other areas for similar development and was well located to existing facilities. They

therefore considered the application to be in accordance with Policies TC6 and PV20 of the Angus Local Development Plan.”

The decision of the Review Committee remains a material consideration in the determination of this planning application.

Following the marriage of the Applicants daughter another pitch was formed to the rear of the approved pitch. A planning application was submitted for this retrospective development (reference 17/01017/FULL). This was refused and a Local Review was dismissed. The Council place greater weight on this decision ignoring the previous decision as referred to above an imbalanced approach to decision making.

The Site

The Site, which extends to 1205 sq. metres, lies on the south western edge of Kirriemuir. It is bounded by land owned by the Applicant to the north; residential properties to the east; agricultural land to the west; and the existing pitch occupied by the Applicant to the south. Mature trees surround the land to the east and west providing effective screening and privacy for residents.

A hardstanding has been formed using Type 1 material which has been watered and rolled. This creates space for car parking and manoeuvring. The individual pitches created are defined by 1.8 metre high palisade fencing (see detail submitted).

All the units on the Site fall within the definition of a caravan as stated by the Caravan Sites and Control of Development Act 1960. An amenity block is proposed (see photos submitted as part of the planning application) to serve as laundry and toilet facilities. There is connection to the main drainage system and mains water supply. An electricity supply is available. The response from Scottish Water is still awaited relating to a connection to the main drain system (in retrospect).

Access to the site is gained via North Croft Mains and a private road which currently serves three residential properties and the nearby farm. As has been proven to date the road is of a suitable width and alignment for all vehicle types including refuse and emergency vehicles.

The town's facilities are located close by with safe and convenient access available by foot, cycle and car. Public transport runs through Kirriemuir.

Design and Layout

Gypsy and Traveller sites are designed to provide land as households, which are suitable for caravans/chalets, together with space for parking and other amenities. Sites of various sizes, layouts and pitch numbers operate successfully throughout Scotland today. These sites work best when they take account of the needs and demographics of the families' who propose to reside on them. They are homes for extended families. The land at Kirriemuir is no exception.

The Site was formerly in market garden use. Polytunnels once occupied the land. The Applicant inherited an unkempt area of ground which was not in any productive agricultural use nor was it related to any farm unit. The abandonment of the former market garden use resulted in a vacant parcel of land which can be defined as rural brownfield land.

The reclamation of the first pitch included the Applicant stripping off all the overgrown vegetation which produced large volumes of green waste liberally interspersed with a variety of debris. The Applicant separated the waste and disposed of it to landfill. The land was 'riddled', to separate out some of the sticks, stones and other sundry material to make a safe environment. The earth bund created to the north has been removed.

All the work on the Site (as described above) allowed the creation of a flat developable site to allow the development of a suitable living environment for Mr Townsley and his family.

The Applicant's daughter and her husband occupies the principal chalet on Site. One touring caravan will be used for travelling. These living arrangements accord with the Gypsy/Traveller way of life.

The pitch size accords with the Scottish Government recommended space standards for such developments. The Site has been reclaimed by the Applicant and turned into an attractive living environment for his extended family. With ease of access from North Mains Croft and then via the private access track, a safe and secure home is being provided for this Gypsy/Traveller family.

The Applicant & His Family

The Applicant is representing the interests of his daughter and her husband. This application carries the full and unanimous support of all the Townsley family.

In the past, the Applicant and his family occupied various sites in the Angus area having originated from this Region. This includes the Thrums Caravan Park, Maryton (10 years), and periodically on a camp site off the A90 (near McDonalds takeaway/restaurant). When sites in Angus were unavailable the Applicant had to travel with his family outwith the Region to laces including Alyth, Perth and Kinross (next to the golf course), Kinneff, Aberdeenshire and Piper Drive, Glenrothes, Fife.

The current situation in Angus is that there is still a shortage of accommodation for Gypsy/Travellers. Unauthorised sites do not represent a sustainable option. Mr. Townsley chose the land at North Croft Mains in desperation following his experiences on the road and in other sites. Now, the intention is to avoid travelling on the road using unauthorised sites.

The Applicant's daughter lived on the land to the west of Kirriemuir on the pitch which was developed and subsequently approved for accommodation purposes. This Application Site offers an opportunity for the two adults (McKenzie family) to remain settled in the Region alongside the rest of the Townsley family, creating a home and a safe and secure base from which they can travel in accordance with their culture.

This convenient location allows this Gypsy/Travelling family to retain their rights to privacy and enjoyment of their home meeting their needs in the Angus area.

The Applicant is a well known businessman in the motor trade operating a successful company in Brechin. This is a family run enterprise with his daughter and son part of the workforce.

With the lack of action to meet the needs and demands of the Gypsy/Travelling community in the Angus area (with the exception of the decision in favour of the Applicant) as the Townsley grew older the daughter married. This occasion in family life would normally be met with celebration in the settled community and a home would be found for the couple. However, with a lack of accommodation for Gypsy/Travellers in the Angus area finding a suitable home which accords with their culture and lifestyle is very difficult. There is a need for the Applicant's daughter and her husband to have a home of her own following her marriage.

The Gypsy/Travelling community are family orientated and will always look to provide for their own. This is the case with the Townsley family. The daughter's recent marriage has placed pressure on the Applicant to find suitable accommodation.

A living environment has been created, a private, permanent pitch suitable for Mr. and Mrs. McKenzie which is the same scale, layout and design of the authorised pitch.

In effect, this proposal adds one further person to the family i.e. Mr John McKenzie.

Meeting Need & Demand in Angus

When a planning application was submitted on behalf of Mr Townsley in 2016 for the now authorised pitch there was limited guidance as to how need and demand for the Gypsy/Travelling community was to be addressed in the Angus area. This remains the case two years on.

The Angus Council Local Housing Strategy 2012–2017 [the Strategy] did make some reference to the needs of Gypsy/Travellers. On page 24 it is stated that the Council will:

“ensure there is housing provision to meet the housing need of black and ethnic communities, including other minority groups such as gypsy travellers.”

With regard to need and existing provision the Local Housing Strategy (2017- 2022) states:

“The Council recognises that private sites could contribute to meeting the projected shortfall in demand for permanent accommodation. All applications will be considered in the context of Angus LDP Policy TC6 and take into account the finalised Needs Assessment and available capacity on existing and proposed sites.”

Angus Council recognise the rights of the Gypsies/Travellers to practise a nomadic lifestyle, travelling and staying on short term sites. They seek to balance this situation with the needs of the settled community of Angus. The Council advises that it is seeking to promote a positive environment for good community relations to prevent incidents of harassment.

The adopted Local Housing Strategy recognises that Angus has always been a popular destination for Gypsies/Travellers, with an increase in unauthorised sites rising significantly in recent years. The Council states that:

“it is open to consideration of a national strategy on the provision of transit sites and cross boundary consideration of how to address the needs of the Gypsy/Traveller community.”

It is worth noting that Seath Planning Consultancy Ltd has recently reviewed a Government paper which promotes an approach to the provision of accommodation across the country. The intention is for this document to act as national guidance.

There are sites available to Gypsy/Travellers within the Angus area. These are at the Tayock Caravan Site by Montrose managed by Angus Council; and Petterden within the Angus administrative area but managed by Dundee City Council. The Tayock site remains fully occupied with little prospect of vacancies in the future. The Petterden site does not have a warden resident on site and it remains unpopular with the Gypsy/Travelling community. A conference held in August 2016, to discuss Gypsy/Traveller issues, noted the complaints about Petterden (previously referred to as Balmuir). This is addressed in more detail later in this Statement.

In summary, there remains an unmet demand in the Angus Council administrative area with no clear strategy for site provision to meet need. With the public sector experiencing financial difficulties a more innovative and proactive approach is required – a private/public partnership between the Gypsy/Travelling community and the Local Authority. The Townsley family are providing accommodation at no cost to the public purse in a suitable location.

2. Gypsy/Traveller Community: Background

Legislation

Article 25.1 of the Universal Declaration of Human Rights recognises the right to adequate housing as integral to the right to an adequate standard of living. Housing rights are enshrined in international treaties signed and ratified by the UK and therefore applicable in Scotland, including the International Covenant on Economic, Social and Cultural Rights (ratified in 1976).

From October 2010, the Act governing Equalities brought together different equality laws. The Equality Act covers discrimination for nine 'protected characteristics' - age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. **There is an equality issue to be addressed in this case which is analysed in more detail throughout this Statement.**

The starting point is recognising that Gypsy/Travellers are one of the most marginalised and vulnerable groups in society. Longstanding difficulties in the provision of private and public sites have resulted in not only the number of unauthorised encampments increasing throughout Scotland, but the marginalisation of these communities and a breakdown in relations between settled and Travelling communities.

Under the Homelessness (Scotland) Act 2003, a person is homeless if he/she has accommodation but it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation; and there is no place where he/she is entitled or permitted both to place it and to reside in it. The reader is reminded that Petherden is unsuitable and Tayock offers no real alternative due to the lack of vacancies.

Although some Gypsy/Travellers live in houses, out-with the travelling season, for many their only accommodation all year round is a caravan. They are therefore deemed homeless if they have nowhere official to site and thereafter reside in their caravan. The Applicant's daughter has nowhere else to stay in the Angus area which is suitable.

Prior to the development of the Site the Applicants daughter stayed with Mr. Townsley as part of the family unit. Before that the family stayed in various locations (see above) predominantly in the Angus area. With the need to find a permanent site and the lack of suitable alternatives the Townsley family were in effect homeless. In their desperation they have set up home and now there is a need for further accommodation as the family grows. The Application Site provides the perfect opportunity.

The Importance of Family

Scottish Gypsy/Travellers share many cultural features with European Roma communities, such as a belief in **the importance of extended family bonds and family descent**, a preference for self-employment, and a strong commitment to a nomadic lifestyle

There is a great emphasis on privacy in the Gypsy/Traveller society, which is why adult family members require separate accommodation. People tend to avoid the likes of communal showers. It is a society governed by codes of behaviour concerning everything from eating to laundry and relations between different families and within the extended family. What needs to be remembered is that Gypsy/Traveller life revolves around the family, within which children are protected to the point that many young people find it restrictive.

Couples marry young as with the Applicant's daughter. A woman in her mid-twenties is considered to be old. Marriages are not arranged, exactly, but a young man and woman will often be brought together by their respective families. The author Martyn Bennett summarised the lifestyle:

"Today, the identity of Gypsy/Travellers can take many forms: some families are constantly on the road, some only travel for part of the year and others live in 'bricks and mortar' houses. Sadly, some were even taken away from their own families in an attempt to assimilate Gypsy/Travellers into mainstream culture and destroy their community. However, regardless of lifestyle and upbringing, members of the Gypsy/Traveller community share a strong sense of cultural identity - which continues to thrive through traditional crafts and fairs, and via the oral mediums of storytelling and music."

Many of the Scottish Gypsy/Travellers, still travel and/or live together as extended family units. This close-knit community provides great support, companionship and protection for the Gypsy/Traveller population - and is not dependent on living a transient lifestyle. Their living environment is managed to include extended family. It is not well understood that there are certain families who will not live with others. This avoids any undesirable precedent for the Travelling community and others.

Even today, for many Gypsy/Traveller families, caring for relatives is not generally done outwith the family, and it is still relatively rare to see an elderly Gypsy/Traveller in a care home or a child placed in a nursery. Often girls will leave school early [at least by mainstream education standards] in order to help out with raising younger siblings, look after the home and family members.

This is seen as preparation for marriage, and as older sisters leave to start their own married lives, younger ones will step-up and take on their duties until they start a marriage and family of their own. Close family ties also extend to work; with fathers, sons, brothers and uncles often working together in a trade passed on through the generations. The Townsley family are representative of this culture and lifestyle.

The Positive Impact of Site Provision

Management and control of site provision has been proven to improve standards and conditions for all stakeholders i.e. the Gypsy/Travelling and settled communities. Well-managed, authorised Gypsy/Traveller sites will not only help meet the accommodation needs of the Travelling community but will help reduce tensions between the settled and Gypsy/Travellers as well as reduce unauthorised sites.

There are positive benefits created by the provision of authorised sites. The Site occupied by the Applicant is no exception. He has settled with his family with no complaints received. It is a land use (residential) which is compatible with adjoin land use (housing).

The benefits to the family include the ability to maintain family's links with each other and be close to community facilities, health services and sources of business. The Site for the Applicant's daughter represents an opportunity to maintain family ties and links with the settled community in Kirriemuir, to share cultures and to acknowledge diversity. It also allows the family to look after a younger family member. The overall development for the Townsley's has already proven to be an exemplar of social integration.

What has to be highlighted again is that this proposal represents an increase of one person on the site. The daughter stayed on the land before the creation of the new pitch. Approval of this Site would be yet another step toward resolving the Council's accommodation needs for Gypsy/Travellers at no cost to the public purse and no detriment to visual, environmental and residential amenity.

3. Addressing the Council's Reasons for Refusal

Introduction

The reasons for refusal which the Council relied upon in the determination of the previous planning application (reference 17/01017/FULL) are:-

1. The application is contrary to Policy TC6 of the Angus Local Development Plan (2016) as there are existing authorised sites with capacity to accommodate the applicant and his family, as the proposal would not contribute to satisfying a local need in a formulated manner, as the proposal could set a precedent or open up other areas for similar development.
2. The application is contrary to Policy PV20 of the Angus Local Development Plan (2016) as the development would not preserve prime agricultural land or be related to a rural business, support delivery of the development strategy or relate to renewable energy development.
3. The proposal is contrary to policy DS1 of the Angus Local Development Plan (2016) because it is contrary to other policies of the local development plan, namely Policies TC6 and PV20.

An interrogation of these reasons leads to the need for the following issues to be addressed:

- (i) the suitability of other sites within the Angus Council administrative area;
- (ii) the impact on prime quality agricultural land;
- (iii) the setting of an undesirable precedent; and
- (iv) The compliance with development plan policy.

The issues (i) to (iii) are now assessed in this section of the Statement; and thereafter, in Section 5 an assessment will be made against the development plan policy.

Assessment of the Issues

1. Other Suitable Sites

The Scottish Government's recent publication (2018) reports on the progress against 'Improving Gypsy/Traveller sites: guidance on minimum site standards and site tenants' core rights and responsibilities'. The document recommends that minimum standard should be applied to ensure that placemaking principles are applied to public sector sites. The minimum standards cover two broad areas:

- (i) physical facilities and fabric, including the quality of fixtures and fittings, lighting, heating, and a hot and cold water supply; and
- (ii) services provided by the site provider and how it treats site tenants.

Within these two broad areas the standards have been divided into seven parts:

- (i) Essential Fabric Standards.
- (ii) Energy Efficiency.

- (iii) Facilities and Amenities.
- (iv) Safety and Security.
- (v) Maintenance and Repairs.
- (vi) Fair Treatment.
- (vii) Consultation.

The standards are set out in detail in the Government publication and include indicators to help determine whether a standard is being met with notes on any additional issues that a site provider should consider and take into account.

The Petterden site has been visited by Seath Planning Consultancy Ltd and a Scottish Ministers Reporter. It is evident that the site:

1. Does not meet the minimum standards;
2. Is not managed on a daily basis by Dundee City Council;
3. Is not managed by Angus Council and therefore Angus Council has no overall control or influence relating to the treatment of residents;
4. Is distanced from community facilities;
5. Does not respect family values or family differences in the Gypsy/Travelling community (see above);
6. Facilities are of a basic standard; and
7. Is in shade resulting in an effect on daylight and sunlight, lowering standards of residential amenity.

The site does not meet many of the indicators set out in the 2018 Government Report. In effect, Angus Council has only one site in its overall control, at Tayock, which is at capacity with a long waiting list.

Based on this evidence it is an undisputable fact that the Council has no other suitable site to rehouse the Applicants daughter and her husband despite its claims. To suggest otherwise would only serve to reach a conclusion that the Council are denying its responsibilities; are exercising a discriminatory approach to people who are part of the Gypsy/Travelling community; and also affecting the lives and wellbeing of two people in the Townsley family.

To reinforce this argument, I once again refer to the findings of the Scottish Ministers Reporter when determining the Enforcement Appeal was asked to visit the Petterden site (known as Balmuir). During his visit he observed at **paragraph 10 of the decision letter dated 23 November 2016:**

"I understand that the St Christopher's permanent gypsy site near Montrose is generally full and was shown the only site with capacity available is the Balmuir Wood Gypsy/Traveller site which, with its concrete pitches, bathroom blocks and location next to the busy A90, gave an impression more of a transit site. I have also taken account of all the points raised in the submissions but the availability of gypsy sites, the council's gypsy housing policies, Scottish Planning Policy, the Housing (Scotland) Act 2001 and the appellants rights under the European Convention on Human Rights and the Equalities Act 2010 are all matters to be considered under the planning application and are therefore not before me in this appeal."

Therefore, the Council's reliance on Petterden as a suitable alternative to the Application Site is a flawed argument and one that ignores the human factor. It is inhumane and pedantry in its approach. It completely ignores the Human Rights and Equalities issues which apply to the Applicants daughter and her husband. Previous decisions of refusal were based on a lack of understanding of the lifestyle, culture and the importance of family life as part of the Gypsy/Travelling community and the health needs of Mrs. McKenzie.

With the lack of suitable sites elsewhere, the Council are being presented with another opportunity to meet its obligations and approve this planning application justifying the decision based on addressing part of the

shortfall in the Angus administrative area. In doing so the Council will allow close family bonds to be retained and additional accommodation for the Townsley family as part of their accommodation needs.

2. The Impact on Prime Quality Agricultural Land

Reason 2 for refusal of planning application 17/01017/FULL was based on the following conclusion:

“the development would not preserve prime agricultural land or be related to a rural business, support delivery of the development strategy or relate to renewable energy development.”

Seath Planning Consultancy Ltd. has another client in the Angus area who has obtained planning permission for 171 caravans. In the Report of Handling for the most recent extension (application reference 14/00992/FULL it was stated:

“The current application is supported by a report from the Scottish Agricultural College (SAC) which indicates the application site is not currently in agricultural production, is of small scale and awkward shape therefore it is not suited to intensive arable cropping. In addition to this due to the lack of infrastructure (irrigation, fencing, water trough, handling system etc.), its location and scale the application site is not ideally suited for livestock grazing or forage production. It is also stated in the SAC Report that the development of the site should not be considered as permanent loss of land as the land could be reinstated in the future given the nature of development proposed..... In considering this information against the main part of the Development Strategy of the ALPR (found at 1.18) relevant to this proposal it is the stated aim to provide opportunities for diversification of the rural economy. Based on the information within the Planning Statement submitted in support of the application the economic benefits which would result from the proposal are considered to be compatible with the aim of the Development Strategy to diversify the rural economy. Paragraph 2.58 also identifies the aim of increasing the variety and quality of accommodation in Angus. In this case and taking account of the SAC comments that the site could be returned to agriculture, the loss of prime agricultural land is not considered to be contrary to the aims of Policy ER30.”

In the case of the application site for the Townsley family the following conclusion can be reached:

1. The site is of an even smaller scale to that quoted for the Forfar site above;
2. It is a more awkward shape and more enclosed in nature than the Forfar site;
3. With boundary screening the Site remains unrelated to an agricultural unit;
4. It has nor did it have any site infrastructure (irrigation, fencing water trough or handling systems) in the past and therefore it was not and still is not suited to livestock, grazing or forage product;
5. The previous use was not based on agricultural practices and its disuse rendered it a vacant and derelict brownfield site in the rural environment which has been restored to a beneficial use; and
6. The development (like the caravan park at Forfar) cannot be regarded as a permanent loss of prime quality agricultural land due to the nature of the proposed development i.e. a change of use of land and not operational development as defined in planning legislation.

Although there are no economic benefits associated with Mr. Townsley's application there are distinct social benefits in relation to housing the Townsley family who are part of an ethnic minority group (Gypsy/Travellers). The Report of Handling referred to above refers to the need to increase the *“variety and quality of accommodation in Angus.”* By applying **rational and proportionality** to the planning argument, a case is submitted which seeks to gain support for the caravan pitch on the site to allow the Planning Authority to make

a **reasonable** decision.

To explain this argument further the concept of proportionality when applied allows the decision maker to assess the weight afforded to the acceptability of the development and the social disadvantage compared to the environmental harm. It is part of the criterion of fairness and justice in the planning process – a rational approach seeking solutions rather than finding problems.

There is a lack of suitable accommodation in Angus Council and the social advantage outweighs the environmental harm to the land. If the Council can set aside policy requirements for 171 caravans for the Forfar site (for economic reasons) then it can surely take a similar approach, in this case, to meet a pressing social need.

3. Setting of an Undesirable Precedent

If the conclusion of the aforementioned paragraphs (1 – 2) can be accepted then it follows that there will be no undesirable precedent.

In planning terms, the defence of the creation of an undesirable “precedent” should be based on making it difficult to resist similar proposals elsewhere. However, this should not be over-emphasised particular when there is a demonstrable social need as in this case.

Reference is made to the social context of the planning argument by applying the central Geddesian [Sir Patrick Geddes] lessons. His emphasis of the fundamental unity and interdependence of culture and nature, and his emphasis on transdisciplinary education and locally adapted direct action as a means of cultural transformation—are of profound contemporary significance in the context of the Gypsy/Travelling community.

For Geddes the role of the planner/designer was defined as two-fold:

- i) to contribute to the material adaptation of people and their livelihood to the specific opportunities and challenges of the places they inhabit, and
- ii), to affect in the transformation of culture through education.

Sir Patrick Geddes stated:

“Our greatest need today is to see life as whole, to see its many sides in their proper relations; but we must have a practical as well as a philosophical interest in such an integrated view of life.”

So, if you describe a development as undesirable then it must be considered to be harmful to the environment or the people that stay in it. To describe someone as **undesirable**, then it follows that you [the Council] do not want them or you think they are harmful. This is wholly against planning principles and certainly not in line with the Geddesian lessons.

Furthermore, when considering the relevance of the issue of precedent it should be emphasised that planning policy states that each and every application should be “treated on its merits” judged against a case made for development at that point in time. The merits of each application will usually be quite different. The uniqueness of the Application Site which is in effect ‘an infill site’ with defensible boundaries (residential properties and mature trees) means that the footprint of the pitch and the relationship to the main residence (Mr. Townsley’s pitch) should rule out any danger or possibility of “setting an undesirable precedent” as referred to in the Planning Officers’ reason for refusal. There is very little prospect of a “cumulative effect” being set from this kind of development. The Site is not big enough to sustain a large development. The Site will remain as a

family home for the Townsley's and the Applicant is aware that any further breaches of the planning legislation could lead to legal consequences.

4. Other Material Planning Considerations

Introduction

By failing to take into account of the principles of s25 and s37(2) of the Planning Acts it is submitted that the Planning Authority has, in the past, failed to arrive at the proper decision by ignoring material considerations. This section of the Statement sets out to define the material considerations and their importance in the decision making process.

Although there is no statutory definition of what constitutes a material consideration there are two main tests for deciding whether a consideration is material and relevant:

- (i) it should serve or be related to the purpose of planning. It should therefore be related to the development and use of land in the public interest; and
- (ii) it should fairly and reasonably relate to the particular application.

Material considerations can include national, European and Development Plan policies, planning history, the design of the proposed development, and the effect of the proposals on the environment, society and/or the economy.

Scottish Planning Policy July 2014 [SPP]

Scottish Planning Policy June 2014 (SPP) encourages rural development that supports prosperous and sustainable communities and businesses whilst protecting and enhancing environmental quality.

On the issue of sustainable development, the Government policy principle states:

“This SPP introduces a presumption in favour of development that contributes to sustainable development.” (Page 9 SPP).

In addition, the delivery of sustainable development is explained:

“The SPP sets out how this should be delivered on the ground. By locating the right development in the right place, planning can provide opportunities for people to make sustainable choices and improve their quality of life. Well-planned places promote well being, a sense of identity and pride, and greater opportunities for social interaction. Planning therefore has an important role in promoting strong, resilient and inclusive communities.” (Paragraph 15 SPP)

SPP also provides that:

“The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.” (Paragraph 28 SPP).

In addition, the aim of the SPP is to ensure that development and changes in land use occur in suitable as

well as sustainable locations. The planning system must also provide protection from inappropriate development. SPP's primary objectives are:

- to set the land use framework for promoting sustainable economic development;
- to encourage and support regeneration; and
- to maintain and enhance the quality of the natural heritage and built environment.

National guidance recognises that planning policies and decisions should not prevent or inhibit development unless there are sound reasons for doing so. The planning system guides the future development and use of land in cities, towns and rural areas in the long term public interest. The goal is a prosperous and socially just Scotland with a strong economy, homes, jobs and a good living environment for everyone.

It is recognised that any proposed development and other issues are not always mutually exclusive objectives. The aim in this planning application is the resolution of potential conflicts between the policy objectives and the need to manage change for the extended Townsley family. This application presents a case to allow the continued marriage of these objectives allowing the retention of a suitable and sustainable development.

The Scottish Planning Policy (SPP) 2014 also makes reference to Specialist Housing Provision and Other Specific Needs and specifically to Gypsy Travellers. SPP states:

"HONDA's [Housing Needs and Demands Assessment's] will also evidence need for sites for Gypsy/Travellers and Travelling Showpeople. Development plans and local housing strategies should address any need identified, taking into account their mobile lifestyles. In city regions, the strategic development plan should have a role in addressing cross-boundary considerations. If there is a need, local development plans should identify suitable sites for these communities. They should also consider whether policies are required for small privately owned sites for Gypsy/Travellers, and for handling applications for permanent sites for Travelling Showpeople (where account should be taken of the need for storage and maintenance of equipment as well as accommodation). These communities should be appropriately involved in identifying sites for their use."
(SPP paragraph 133)

Assessment: It is an inevitable consequence that when the family members of the Gypsy/Travelling community get older then they need separate accommodation. The same applies to the settled community and provision is made through the housing land supply to allow upward mobility in the housing market.

There is a serious breach of Human Rights and Equality legislation in Scotland created through the lack of planned accommodation for the Gypsy/Travelling community. This places an ever increasing pressure on local authorities to find more and more sites and also on the Gypsy/Travelling community to provide for their families. The effect of this situation is an unfair and unsustainable approach to meeting the accommodation needs for this ethnic minority group.

With the lack of suitable accommodation, the Applicant's daughter and her husband need somewhere stay to allow them to be independent and live in accordance with their lifestyle and culture. The remaining land, in the ownership of the Applicant, is considered to be a suitable location.

The Application Site provides a sustainable solution to the housing needs of the extended Townsley family. The assessment of Development Plan policy (see Section 5) provides evidence that the site

meets a social need for this Gypsy/Travelling family at a suitable location by providing special needs housing on the land to the south west of Kirriemuir. The development will create a suitable living environment on this rural brownfield site without detriment to natural heritage and/or countryside resources, avoiding landscape impact; and done so at no cost to the public purse. It accords with the “triple bottom line” of sustainability (social, environmental and economic factors) all in accordance with SPP.

Equalities and Human Rights Commission Report (EHRC) 44 (2015) Assessing local authorities’ progress in meeting the accommodation needs of Gypsy and Traveller communities in Scotland - Final Report

The aim of this study published in January 2015 is to provide data about the extent to which local authorities in Scotland are meeting the accommodation needs of Scottish Gypsy/Travellers.

There are two main objectives:

- To ascertain the quantity of current Gypsy/Traveller site provision, including any recent changes in provision and any imminent plans to develop sites in the future.
- To investigate the timescales of delivery to meet any accommodation shortfalls.

The Report states that despite the positive steps taken in Scotland, and although some inroads were being made into resolving the shortages of accommodation for Scottish Gypsy/Travellers, subsequent reviews identified slow progress and as a consequence little change in the life chances of Scottish Gypsy/Travellers.

Drawing on other evidence from related research and consultations, the Commission for Racial Equality (CRE) identified the primary issues relating to the accommodation needs of Scottish Gypsy Travellers as:

- The lack of a network of accessible and acceptable local authority sites.
- The poor physical condition and location of local authority sites.
- The difference in treatment experienced by Scottish Gypsies/Travellers when being housed compared with those living on local authority sites.
- The absence of a network of adequate and appropriate temporary transit sites for Scottish Gypsies and Travellers.
- The inappropriate use of powers to evict Scottish Gypsies Travellers from roadside encampments when no other appropriate provision is available.
- The widely reported harassment of Scottish Gypsies Travellers in public and private sector housing.

Assessment: as referred to throughout this Statement Angus Council has failed in its duty to provide sufficient and suitable accommodation for Gypsy/Travellers. Existing public sector sites are either at capacity (Tayock) or unmanaged and/or unpopular with the Gypsy/Travelling community

i.e. Petterden.

Evidence suggests that the needs and demands of the Gypsies and Travellers continue and are not being met with the exception of the well-informed decision of the Local Review Committee in 2017 in relation to Mr. Townsley's pitch.

The inclusion of a specific policy in the LDP (TC6) allows increased provision or an extension of private sites provided criterion are met. In this case it is submitted, once again, that all criteria are met as was the case with the previous planning application.

It is hoped that support can be given to the Applicant, through the grant of a further planning permission, in recognition of a need for accommodation in the context of the personal circumstances of the extended Townsley family as described below.

The Importance of Personal Circumstances

The personal circumstances of the Townsley family have been referred to throughout this Statement. The importance and weight to be afforded to them, in the planning decision making process, are now set out.

The personal circumstances of any Applicants and occupants of a site are usually not of relevance in the determination of a planning application unless there are exceptional circumstances. Given the inequalities faced by Gypsy/Travellers, there are cases where personal circumstances of an Applicant should be given weight in the determination of a planning application. This approach is commonplace in England and Wales with relevant case law in Scotland. In Scotland, this is now being recognised with the recent Scottish Government guidance (to be published recognising personal circumstances). Considerations may include the education of children, **ill health**, old age or other social and economic factors including **inequality in housing provision** as in Angus.

These personal circumstances are only relevant if the Council find there is potential conflict with the Development Plan. Consequently, the assessment of the need of the intended occupants of the Application Site should be taken into consideration. **Any success will be dependent upon the attitude of the Planning Authority, their interpretation of Development Plan policies and knowledge of the subject matter i.e. the lifestyle and culture of the Gypsy/Travelling community.**

Case law is clear that there are occasions where exceptions should be made. Personal circumstances of an occupier and personal hardship, as described in this Statement, are not to be ignored. It is inhuman to exclude the human factor from the administration of planning control. The human factor is always present, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should be given direct effect as an exceptional or special circumstance. It is submitted that the determination of this Planning Application is one such case when viewed against the lack of suitable and sustainable alternative sites for this the extended Townsley family (Mr. and Mrs. McKenzie) and their personal circumstances following the marriage of the daughter and the need for independent living and to cope with ill-health (see below).

It is submitted that these factors are prevalent and they need to be considered not as a general rule but as exceptions to a general rule and compliance with Development Plan policies.

The Angus Development Plan makes provision for the submission of a socio economic case under the terms of Policy TC6. The personal circumstances (the social considerations) are part of the argument that is required to be used in this case to outweigh any policy considerations if required.

It is recognised that, in such circumstances, a specific case has to be made and that the Planning Authority must give reasons for accepting personal considerations as a material consideration. This will only be necessary where it is prudent to emphasise that, notwithstanding the policy position of the Council, exceptions cannot be wholly excluded from consideration in the determination of the planning application.

Reference is made to the Great Portland Estates plc. v Westminster City Council which is a House of Lords decision. This is an English case which, in terms of planning law, has persuasive argument and that is therefore binding in Scotland and is relevant to this case. **A copy can be provided to the Council if required.** To ignore personal circumstances would not be in the interests of proper planning practice and would represent an inhumane approach.

Health

Introduction

It was this material consideration that persuaded the Council that a further planning application could be submitted. However, this evidence should be read along with all other information in this Statement. This will allow the reader to place themselves in position of the Applicant and his extended family and allow the following question to be asked - is the planning process is working for the family as part of an ethnic minority group? In Scotland we provide for other ethnic minorities, whilst we continue to fail Gypsy/Travellers to their detriment.

Health Generally

Gypsy/Travellers in Scotland - A Comprehensive Analysis of the 2011 Census [Census] provided a valuable insight into the health of this ethnic minority group. The following are extracts from the document.

In 2011 Gypsy/Travellers in Scotland, compared to the population as a whole, were more likely to report a long-term health problem or disability and were more likely to report bad or very bad general health.

The following analysis describes how the health of Gypsy/Travellers compares to other ethnic groups, and age-standardised data shows that compared to the 'White: Scottish' group Gypsy/Travellers were twice as likely to have a long-term health problem or disability (28 per cent compared to 20 per cent) despite the fact they had a much younger age profile. Within this context, they were also more likely to be limited 'a lot' by a long-term health problem or disability (16 per cent compared to 10 per cent).

Chart 14 of the Census illustrates age-standardised rates of long-term limiting health problems or disabilities in order to take into account the different age profiles of ethnic groups. In 2011 there was a wide variation amongst women from different ethnic groups. Women from three groups - Bangladeshi, Pakistani and Gypsy/Traveller - recorded higher rates of 'health problems or disabilities' than women from the 'White: Scottish' ethnic group. Gypsy/Traveller women recorded twice the rate.

Gypsy/Travellers were more likely to report long-term health conditions than the general population. Thirty seven per cent reported at least one condition compared to 30 per cent of the population as a whole. They were twice as likely to report three or more categories of condition (6 per cent compared to 3 per cent).

Only 69 per cent of Gypsy/Travellers reported 'good' or 'very good' health compared to 82 per cent of the general population. This is despite Gypsy/Travellers having a much younger age profile.

Gypsy/Travellers were three times more likely to report 'bad' or 'very bad' health compared to the general population (15 per cent and 6 per cent respectively). They were around five times more likely to report very bad health.

Chart 18 of the Census shows that the age-standardised rate of 'poor general health' for women by ethnic group followed a similar order to the 'health problem or disability' data shown in Chart 14.

Gypsy/Traveller women were most likely to report that they had 'poor general health' - this was over three and a half times the rate of the 'White: Scottish' ethnic group.

Chart 19 illustrates that the age-standardised rate of Gypsy/Traveller men with 'poor general health' was over three and a half times that of the 'White: Scottish' ethnic group. This was similar to the result for Gypsy/Traveller women shown in Chart 18.

Gypsy and Traveller communities have a higher death rate than the mainstream population. Figures show that they have the poorest life chances of any ethnic group in the UK. The nature of Traveller lifestyles increases their risk of poor health and death. Gypsies and Travellers:

- (i) have a shorter life expectancy than the mainstream population (by 10 years for men and 12 years for women);
- (ii) are more likely to experience the premature death of a child (17% compared to just under 10% of the wider population); and
- (iii) have a high suicide rate, particularly amongst young men.

It has been recognised that there is a greatly increased level of perinatal mortality and stillbirth when compared to the settled community (Hajioff and McKee, 2000; Sheffield Health Study, 2004; Matthews, 2008)

Health is one of the key areas in which Scottish Gypsy/Travellers face huge discrimination and inequality. Many find it difficult to access a decent level of health care - a basic human right which the majority of the settled community in the United Kingdom take for granted.

Issues such as a lack of fixed address and a reluctance to interact with health professionals, due to mistrust and experience of prejudice and discrimination, have led to Gypsy/Travellers suffering a range of preventable health problems - leaving them subject to a shorter life expectancy (compared with the general population). The Equality and Human Rights Commission [EHRC] reinforce the findings stated above recognising that the life expectancy for Gypsy/Travellers, both male and female, is around ten years less than the national average; and that parents are 20 times more likely to experience the death of a child than parents within the wider general population.

The absence of any real culturally tailored health care system; stress related illness as a consequence of the lack of official sites and/or continually being moved on by authorities; discrimination within the work sector; and literacy issues can all be contributing factors to physical and mental ill-health - with the latter still being a subject of fear and denial. It is also important to note that being forced into 'bricks and mortar' accommodation can itself bring its own range of issues.

Many of Scotland's health services continue to exclude Gypsy/Travellers. Some GPs surgeries refuse to register Gypsy/Travellers as patients and doctors are reluctant to visit sites. As a result, Gypsy/Travellers sometimes have no alternative but to seek care through accident and emergency clinics. Research among young Gypsy/Travellers has shown that 84% feel that access to a doctor or dentist has not improved or in fact

has got worse since 2001. Mainstream health education and preventative programmes rarely include Gypsy/ Travellers and the NHS has done little to engage directly with Gypsy Travellers about their needs and how to meet them. Until now as Seath Planning Consultancy Ltd currently leads a research programme the findings of which will hopefully address the inequalities in health provision and lead to greater wellbeing.

It is recognised that inadequate accommodation provision also has an impact on the health of Gypsy/Travellers. Living conditions have a direct impact on health e.g. over 50% of Gypsy Travellers have spent at least part of their life without access to running water. However, wider accommodation issues, such as insecurity of tenure, limited access to services and distance from extended family can also affect the health of Gypsy/Travellers. The research programme referred to above examines the Placemaking Standards and its contribution to health and wellbeing.

There has been little Scottish specific research into the healthcare needs and experiences of Gypsy/Travellers, but English data shows that Gypsy/Travellers have significantly poorer health than other UK-resident English-speaking ethnic minorities and economically disadvantaged white UK residents. Gypsy/Travellers are more likely to suffer from self-reported anxiety, respiratory problems and chest pain than other ethnic groups within the UK population. They also have one of the highest maternal death rates in the UK. Anecdotal evidence suggests that Gypsy/Travellers experience a similar level of health inequalities as their English counterparts - one Scottish GP estimates that the average life expectancy of Gypsy Travellers is only 55 years.

The Scottish Parliament's Equal Opportunities Committee 3rd Report Gypsy/Travellers and Care (September 2012) concluded:

"Our report has found that, in spite of the various reports and initiatives of recent decades, little has changed for Gypsy/Travellers. Our finding has been guided by evidence outlining repeated failures: recommendations have not been implemented, initiatives have often been small-scale or short-term and, according to Gypsy/Travellers themselves, they have been fighting the same battles for decades. Access to health and social care alongside other public services must be universal; it is clear that this is not the experience of Gypsy/Travellers living in Scotland today. We look to the Scottish Government to take the strategic lead, with speed and commitment, in making real, significant changes to the lives of Gypsy/Travellers and, by taking positive action to improve their future, to begin to earn Gypsy/Travellers' trust."

Assessment: This is a very important material consideration in the determination of this planning application. Mrs. McKenzie is unwell. [REDACTED]

[REDACTED] She needs to be close to her family who will provide support and in safe and secure site with the best possible facilities. To relocate the McKenzie family to Petterden would not serve the best interests of the extended Townsley family.

A confidential report from the family doctor is submitted in support of the application.

I would ask the planner to visit the Petterden site and compare it to the Kirriemuir site. The Scottish Ministers Reporter did and reached the conclusion stated in page 9 of this Statement.

Human Rights

The aforementioned material consideration (health) was accepted as a reason for accepting a further planning application. The European Convention of Human Rights [ECHR] makes reference to the detrimental impacts on health that is experienced by Gypsy/Travellers (see above).

In 1998, the ECHR was incorporated into UK law by the Human Rights Act 1998. The parts of the Act that are of particular relevance for the Gypsy/Traveller community as they relate to the planning issues in this case are:

- The Convention Article 6: right to a fair hearing-which is clearly relevant to the determination of the Appeal.
- The Convention Article 8: respect for private and family life - which is clearly relevant to decision that may involve the loss of accommodation, eviction proceedings or site clearance.
- The Convention Article 14: prohibition of discrimination - re-enforcing the strong position of domestic law prohibiting Discrimination.
- The Convention Article 11: freedom of assembly and association- which can be relevant in respect of the concerning the assembly of groups of people on land.
- First Protocol, Article 1: protection of property.

Article 8 regards the right to private and family life and provides that:

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights/freedoms of others.

The implications of **Article 8** are that Public Authorities are required to consider carefully the **proportionality** of their actions when making decisions, which interfere with **Article 8** rights. In practice, for the Gypsy/Traveller, this is a matter of balancing the considerations such as a pressing social need; the protection of a designated area and/or resource; and overcoming technical difficulties. In doing so they are providing for their family.

Article 14 is concerned with the prohibition of discrimination:

The enjoyment of the rights and freedoms set out in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The requirements of **Article 14** ensure protection from discrimination.

The relevant and leading case law relevant to Gypsy/Travellers is that of Chapman v UK, which is concerned with planning enforcement against ethnic Gypsy/Travellers in Hertfordshire, England. There was no question of the statutory Gypsy status of the Applicant. The ECHR held the following view:

“73 The Court considers that the applicant's occupation of her caravan is an integral part of her ethnic identity as a Gypsy, reflecting the long tradition of that minority of following a travelling lifestyle. This is the case even though, under the pressure of development and diverse policies or from their own volition, many Gypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children. Measures, which affect the applicant's stationing of her caravans,

have therefore a wider impact than on the right to respect for home. They also affect her ability to maintain her identity as a Gypsy and to lead her private and family life in accordance with that tradition.

74 The Court finds therefore that the applicant's right to respect for her private life, family life and home are an issue in the present case."

At paragraph 96 the Court found that:

"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 a positive obligation imposed on the Contracting States [in this case the Council] by virtue of Article 8 to facilitate the Gypsy way of life."

There is a positive obligation on the UK to facilitate the Gypsy way of life. It is clear that **Article 8** is a key consideration for the decision makers in this case [the Site] as it relates to the needs of the Gypsy/Travelling community.

Applying this to the determination of the planning application for the Site it is submitted that the Council must make an assessment of the facts of the case in the light of the requirements of **Article 8** and strike the appropriate balance. This would be in addition to the health issues stated above.

This is also of particular relevance if the Council is minded to refuse planning permission and act on an enforcement notice in circumstances where this Gypsy/Travelling family has no other alternative site to call their home as is the circumstance faced by the Applicant's extended family.

First Protocol to Article 1

The **First Protocol to Article 1** of the ECHR states that every person is entitled to the peaceful enjoyment of their property. No person should be deprived of their property except in the public interest and in accordance with law.

The effect of any refusal of planning permission and enforcement in this case would be to deprive the extended Townsley family of the peaceful enjoyment of their property and to affect the Applicant's daughter health. Such deprivation must be proportionate to and be compatible with ECHR findings. Given there is no suitable alternative accommodation in the area for the family and given the Applicant's recent experiences on unauthorised sites the family's rights under the **First Protocol to Article 1** must be given serious consideration.

In the case of **Chapman v UK, the European Court of Human Rights ((2001) 33 EHRR 18.)** held that a home set up without lawful authority could still be a 'home' within the terms of Article 8. When a public authority is considering whether an interference with the right to respect for home and family life is 'necessary in a democratic society', they will have to ask themselves whether:

- i) there is a pressing social need for it; and**
- ii) it is proportionate to the aim pursued.**

‘Proportionality’ brings into play other matters beyond the sometimes formulaic duty i.e. planning policies and procedures. Public authorities will need to ask themselves a number of questions in relation to the material considerations before deciding whether to take action to refuse and enforce.

The Amnesty International [AI] publication “On the Margins” Local authority service provision for Scottish Gypsy/Travellers” explains AI has been campaigning on Human Rights issues around the world for over 50 years. AI consider Scottish Gypsy/Travellers as a marginalised community that continues to be discriminated against. They constitute a group that has been prevented from fully realising their Human Right to adequate housing, which can impact on their ability to enjoy other services and rights.

As stated in Section 2 of this Statement Article 25.1 of the Universal Declaration of Human Rights recognises the right to adequate housing as integral to the right to an adequate standard of living. Housing rights are enshrined in international treaties ratified by the UK and therefore are applicable in Scotland.

The Committee on Economic, Social and Cultural Rights oversees implementation of this treaty. Its General Comment 4 describes the core components of the right to adequate housing and the resulting state obligations. These include:

Security of tenure: everyone must have secure tenure of their housing – and a legal recognition of housing which protects Gypsy/Travellers from eviction without due process.

Availability of services, materials, facilities and infrastructure: For a house to be considered adequate, it must have sustainable access to basic facilities essential for health, security and comfort.

Affordability: The costs associated with housing should not compromise or threaten the Gypsy/Travelling community

Habitability: Housing must provide adequate space and physical safety, as well as protection from threats to health.

Accessibility: Housing should be made available to all. Disadvantaged groups such as the elderly, children, people with disabilities, should be given some degree of priority in the allocation of housing.

Location: Housing must be located to allow access to health centres, schools, employment, emergency services and other services. Housing should not be located in dangerous or unhealthy places.

Cultural adequacy: The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.

As noted by a representative of the Commission for Racial Equality when giving evidence at the Equal Opportunities Committee review of progress,

‘There is one issue that I would like to raise – it sits above all the others – and that is visible leadership. Public leadership will shape attitudes and political leadership will support local delivery.’

In this case not only is the health of the Applicant’s daughter is a material consideration but so is the interests of [REDACTED] the family. The Site meets the requirements of the family and accords with the terms of the above findings. The Petterden site does not.

Equalities

The Equality Act 2010 expanded the racial equality duty in section 71 of the Race Relations Act 1976 to include other protected characteristics. As already stated above (Section 1) these include age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation (referred to in the act as protected characteristics).

Section 149 introduced the Public Sector Equality Duty [PSED]. This requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between people with a protected characteristic and people without. This Duty is imposed on Local Authorities and others.

The duty is set out to require:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to
 - (a) tackle prejudice, and
 - (b) promote understanding.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

Applying relevance to Gypsy/Traveller planning cases, it is first important to note that Scottish Gypsy/Travellers have been held to be an ethnic minority for the purposes of the PSED. The case law MacLennan v Gypsy/Traveller Education and Information Project is relevant. **A copy can be provided to the Council if required.**

Assessment: In summary, the decision maker has to have due regard to the need to advance equality of opportunity for the Townsley family as part of an ethnic minority group. The obvious point here is that when compared to the settled population the Gypsy/Travelling community is at a severe disadvantage through a lack of accommodation. There is a shortage of suitable sites to meet the specific needs of the Applicant and his family. So, it follows that there is an inequality with regard to access to accommodation for the Applicant's daughter and her husband. Given the personal circumstances (as described in this Supporting Statement) the Applicant is faced once again with a desperate situation, a need to accommodate his extended family in a place that this married couple can call their home. In doing so the family can provide the care and attention needed for the daughter [REDACTED]. The Council should consider its PSED very carefully in this case.

Summary

Based on the above evidence the Personal Circumstances of the extended Townsley family should to be taken into consideration when determining the planning application. The Site already houses an established family unit (Pitch 1) in a place that they can call their home. There is room to accommodate the extension to this family unit (Pitch 2). Proportionality needs to be applied when determining this Planning Application and if this is done then the social need outweighs any environmental harm which in itself is negligible.

The Site is safe and secure with ease of access to local facilities on foot, cycle and by car. The facilities on Site affords an excellent living environment where people live in relative comfort relative to their culture and lifestyle.

The proposed development represents an excellent use of the land – a suitable and sustainable site. In the absence of any other suitable site for the family to move to and in view of the difficulties experienced by the Applicant and his family in the past (see Section 1 above) this Site represents a safe and secure place that they can call home.

It is submitted that the aforementioned social arguments must carry significant weight. They are of paramount importance when determining of this planning application particularly when considered against the requirements of Human Rights and Equality legislation.

5. Assessment Against Development Plan Policy

Introduction

If the findings of all the aforementioned Sections of this Statement can be accepted then what needs to be assessed is the compliance with Development Plan policy.

Effective decision-making requires an understanding of people and place as well as their culture, needs and demands and how this relates to planning policy. An understanding of the plight of the Gypsy/Travelling community is required and is provided in this Statement. To do otherwise and refuse planning permission, based simply on the application of Development Plan policy, is deemed inhumane and not in the interests of proper planning practice. Policy exists to be interrogated, used as “**handrails not handcuffs**” – it guides decision making. The Review Committee decision in 2017 reflected this approach.

There is and continues to be changing economic, social and environmental circumstances with regard to the provision of Gypsy/Traveller sites in Scotland. This has the effect of influencing the decisions that need to be taken on matters related to the Gypsy/Travelling community particularly meeting their accommodation needs.

There is an absence of positive, consistent action by Local Authorities across Scotland to provide for this ethnic minority group (with a few exceptions), Gypsy/Travellers are purchasing land and looking to develop private sites to establish a home dictated by their personal circumstances and a lack of suitable sites as a consequence of a lack of action by local authorities.

The status of the Site to the south west of Kirriemuir, as it relates to planning policy, is that it lies within The West Angus Housing Market Area, in countryside situated outwith the settlement boundary of Kirriemuir. The terms of national policy and Development Plan policy and material considerations provide justification for this type of “special needs housing”.

The Local Review Committee when considering the reasons for refusal for planning application reference 16/00738/FULL dismissed the planners reasoning and approved the development relating to the Applicants pitch. Despite this the planners used the same reasoning when considering planning application 17/01017/FULL and at Review there was agreement and planning permission was refused. The paragraphs contained in Sections of this Statement serves to reinforce that there is substantive evidence to support a positive decision. This evidence is now assessed against the relevant Development Plan policies as relied upon in the reasons for refusal (see Section 3).

Angus Council Local Development Plan September 2016

The relevant policies are contained within the Angus Council Local Development Plan [LDP]. The Policy Matrix contained in this document guides developers and applicants to the policies which are relevant to their development proposal.

Development Strategy

Rural Angus is not a single homogenous area. It varies significantly in character, land use, population levels and availability of and access to a range of services and facilities. The LDP aims to maintain this diversity by supporting new development in appropriate locations and by encouraging people to live and work in rural

communities.

The Local Housing Strategy [LHS] seeks to address the accommodation needs of Gypsy/Travellers through direct liaison with these groups, provision of additional spaces and where appropriate access to housing. The LHS recognises there is a shortfall in provision.

The LDP Policy Framework, Part 1, Thriving & Connected contains the most relevant policy related to Gypsy/Travellers. It is confirmed that the Council's LHS seeks to address the accommodation needs of Gypsy/Travellers through direct liaison with these groups, provision of additional spaces and where appropriate access to housing.

While the LDP does not identify areas of search or allocate specific sites the policy related to Gypsy/Travellers is intended to establish a framework for assessing proposals to establish new or extend existing sites. The Application Site represents an extension to an existing site.

Policy TC6 Gypsies and Travellers and Travelling Showpeople provides that Gypsies and Travellers and Travelling Showpeople will be encouraged to stay at authorised sites (publicly or **privately owned** and managed). Existing authorised Gypsies and Travellers and Travelling Showpeople sites will be protected and there will be a presumption against their redevelopment or conversion to other uses unless it can be demonstrated to the satisfaction of Angus Council that there is a surplus of accommodation to meet identified needs. Proposals for new or **extended permanent sites** and temporary "short stay" sites for Gypsies and Travellers will only be supported where:

- the site will contribute to satisfying a local need identified in the Local Housing Strategy and is consistent with Angus Council's strategy for meeting the accommodation needs of these client groups;
- the development is designed and located to minimise adverse effects on the landscape, established amenity, character and built or natural heritage interests of the surrounding area;
- the proposed site will provide a good residential amenity for residents and has adequate access to community, education and health services and facilities; and
- the proposed development would not set a precedent or open up other areas for similar development.

Assessment: The needs of this extended Gypsy/Travelling family have been clearly set out in this Statement. There is a lack of suitable accommodation elsewhere and there are no known plans to find sites for this ethnic minority group in a Region of Scotland which is popular with the Travelling community. The grant of a further planning permission will serve to meet a continued need in accordance with the LHS.

Gypsy/Traveller appeal cases create significant material considerations in the determination of similar planning applications. The appeal decision (Reference: PPA-300-2022) on land at Doohill, Easter Coxtan, Elgin IV30 8QS (dated 8 May 2013) made reference to relevant planning policy and their relevance in the context of demand and need. When assessing the development, the Reporter had to determine whether the proposal represents an acceptable form of development in the countryside.

The Reporters conclusions on conformity with the Development Plan stated (at paragraphs 15 and 16):

"I find overall that, as the proposal fails to comply with development plan policy on development in the countryside, it is not in accord with the development plan. That said, I have found there to be no unacceptably adverse impact on the character and amenity of the countryside, or on the residential amenity of nearby residents.

Before moving on to consider other material considerations, there remains one further provision of the development plan which, for the sake of completeness, ought to be mentioned here. Policy H12: Travelling Persons Sites of the local plan, states that "The council acknowledges the needs of travelling people are taken into account and will identify sites. These sites will be considered in the context of the applicable policies in the Plan.

Despite the local plan having been adopted in 2008, the council concedes that it has, some 5 years later, failed to identify such sites. Nor has it set out how private proposals for such sites are to be assessed, although it advises that work is now underway in framing such guidance. I shall consider the implications of this matter below."

The Reporter, in his decision letter, had made specific reference to the demand and need in the Morayshire administrative area and the Council's lack of success in finding sites. The Reporter at paragraph 23 states:

"I cannot escape the conclusion that the appellants have been seriously disadvantaged by the council's failure either to identify suitable sites, which it is required to do by local plan policy, or to establish a substantive policy framework for the assessment of proposals such as this one. Drawing all of these considerations together, I find there to be a very persuasive case for concluding that the appellants' need for the proposed development outweighs the conflict with development plan policy and the quite limited harm to the countryside which I have identified."

The appeal decision is of particular relevance in the determination of this planning application. The proposed development for the McKenzie family is considered to be in accordance with Development Plan policy TC6 and other policies. With the Council failing to meet the needs of the Gypsy/Travelling community in its administrative area, the Doohill case adds weight to the argument in favour of the grant of planning permission.

The existing pitch has proven to have no adverse impacts on the landscape, the built and natural environment or residential amenity. Due to natural screening (existing tree belts) the existing site has a negligible impact. The extension to the existing pitch, creating another household for Mr. Townsley's daughter, has a natural fit within the landscape benefitting from the screening and existing infrastructure services on site.

The existing private pitch is designed in accordance with the space standards associated with pitch development for Gypsy/Travellers. It is laid out to provide all the amenities necessary for this family as a household and is tidy, pleasant and well managed. The proposed pitch is of a similar size and layout with the same level of residential amenity as the existing pitch.

It is submitted that the proposed development is in accordance with Policy TC6. The other material considerations (particularly the health of the Applicant's daughter) add significant weight to strengthen the case for approval of planning permission.

Policy PV20 Soils and Geodiversity Development proposals on prime agricultural land will only be supported where they:

- support delivery of the development strategy and policies in this local plan;
- are small scale and directly related to a rural business or mineral extraction; or
- constitute renewable energy development and are supported by a commitment to a bond commensurate with site restoration requirements.

Design and layout should minimise land required for development proposals on agricultural land and should not render any farm unit unviable. Development proposals affecting deep peat or carbon rich soils will not be allowed unless there is an overwhelming social or economic need that cannot be met elsewhere. All development proposals will incorporate measures to manage, protect and reinstate valuable soils, groundwater and soil biodiversity during construction.

Assessment: The current application is supported by evidence which confirms the Site does not affect the viability of an agricultural unit can be regarded as supporting the strategy of the Council in providing for the Gypsy/Travelling community, is of small scale and awkward shape therefore it is not suited to intensive arable cropping or any other agricultural use due to its lack of essential infrastructure (irrigation, fencing, water trough, handling system etc.). Its location and scale the application site is not ideally suited for livestock grazing or forage production. It is also stated that the development of the Site cannot be considered as a permanent loss of land as the proposals do not constitute operational development and the land can be reinstated in the future given the nature of development proposed.

When compared to the development granted planning permission for the Lochlands Caravan Park near Forfar it is accepted that there is no economic benefit which will arise from the proposals; but there are distinct social benefits in the context of the Gypsy/Travelling community. 171 caravans on the Lochlands site equates to a population equivalent of over 600 people. The Site for Applicant's daughter equates to one additional caravan and one additional amenity block with an increase of one person. Applying proportionality to the argument this proposed change of use has distinct social advantages and a negligible environmental impact.

When determining the Local Review for the existing pitch for Mr. Townsley the Committee agreed with the assessment made regarding the effect on prime quality agricultural land. The Applicant relies on this same assessment and the findings of the Review Committee. All the aforementioned is a material consideration which carries significant weight in the determination of this current planning application.

The proposed development further assists in delivering the Strategy of the LDP and its Policies by providing much needed accommodation for the Gypsy/Travelling community in accordance with Policy TC6. It is considered that the proposed development, which will not result in the permanent loss of prime agricultural land. Accordingly, the proposed development is in accordance with Policy PV20.

Creating High Quality Places

To optimise the use of existing resource capacities and to ensure the impact of development on the wider environment and landscape is minimised, the LDP provides that development proposals in the countryside should also ensure that they have investigated all possibilities of locating adjacent to existing development or groups of buildings.

Policy DS1 Development Boundaries and Priorities provides that all proposals will be expected to support delivery of the Development Strategy. The focus of development will be sites allocated or otherwise identified for development within the LDP, which will be safeguarded for the use(s) set out. Proposals for alternative uses will only be acceptable if they do not undermine the provision of a range of sites to meet the development needs of the plan area.

Proposals on sites not allocated or otherwise identified for development, but within development boundaries will be supported where they are of an appropriate scale and nature and are in accordance with relevant policies of the LDP. Proposals for sites outwith but contiguous* with a development boundary will only be acceptable where it is in the public interest and social, economic, environmental or operational considerations confirm there is a need for the proposed development that cannot be met within a development boundary.

Outwith development boundaries proposals will be supported where they are of a scale and nature appropriate to their location and where they are in accordance with relevant policies of the LDP. In all locations, proposals that re-use or make better use of vacant, derelict or under-used brownfield land or buildings will be supported where they are in accordance with relevant policies of the LDP. Development of greenfield sites (with the exception of sites allocated, identified or considered appropriate for development by policies in the ALDP) will only be supported where there are no suitable and available brownfield sites capable of accommodating the proposed development. Development proposals should not result in adverse impacts, either alone or in combination with other proposals or projects, on the integrity of any European designated site, in accordance with Policy PV4 Sites Designated for Natural Heritage and Biodiversity Value. **Sharing an edge or boundary, neighbouring or adjacent.*

Assessment: The proposed development is of a scale, layout and design which is appropriate for this countryside location and meets the needs of this Gypsy/Travelling family. It makes use of vacant rural brownfield land and in doing so meets a proven need for the Gypsy/Travelling community. It is in accordance with other relevant policies of the LDP, particularly those related to the Gypsy/Travelling community and protection of the rural environment.

There is accordance with Policy DS1 of the LDP.

6. Overall Assessment

The above paragraphs are hereby adopted in regard to the assessment of the Planning Application against the Development Plan policies and other material considerations.

The Council's central Development Plan policy on Gypsies/Travellers is set out in Policy TC6 (Gypsies and Travellers and Travelling Showpeople) in the LDP. It is considered that the Planning Application is in accordance with this core policy against for all the following reasons.

The Council will, in terms of policy TC6, approve Gypsy/Traveller sites where a newly arising need can be proven and subject to other criteria. There is an existing and continued need and demand in Angus a fact accepted by the Review Committee when determining the previous planning application

The Council accepts that Gypsy/Travellers are an ethnic minority group where there is a need to advance equal opportunity under the Equalities Act. In translating this into planning considerations the Council have accepted that a social and economic need can be demonstrated for this extended family through its previous decision for Pitch 1.

Assessing the Development against the policy criteria the following comments are submitted: -

- a) The Development will not appreciably detract from the landscape character or appearance or loss of resources in the rural area.
- b) The Development will not detract from the amenity of the rural environment and that currently enjoyed by residents in the area. It is worth noting that there was only one objection to the previous application.
- c) The Development is sympathetically located in a secure, safe and pleasant environment and provided with essential utility services.
- d) The location of the development allows access to community facilities, the main road network and public transport.
- e) The existing pitch development is properly managed. The new pitch is/will be managed in a similar way.

It is clear that the site provision allocated by the Council is inadequate and suitable sites are not being delivered despite a policy commitment by Council to allow provision. The material considerations listed and assessed in this Statement add significant weight to the case for approval of planning permission.

The health conditions which affect the life expectancy of the Gypsy/Travelling community need to be addressed. This can be done through the application of the Placemaking Standards which has proven to better health and wellbeing. The Applicant's daughter is suffering from health conditions (see confidential letter). The approval of this small extension to the existing Pitch 1 will allow the family bond to be retained (an important factor in the lifestyle of the Gypsy/Travelling community) and will serve to improve the life chances of Mrs. McKenzie [REDACTED]. In addition, such an approach will accord with the Human Rights of the family and Equalities legislation and demonstrate the Councils proper exercise of its PSED.

Therefore, the approach that the Council should take to the assessment of this Planning Application against the Development Plan and other material considerations should be reasonable one taking into account these facts and when applying proportionality taken together this will allow planning permission to be granted.

7. Conclusions

At present, in the Angus area there are two sites proving unsuitable for Gypsy/Travellers. One Council operated site at Tayock, Montrose at capacity with little prospect for accommodation vacancies in the near future. The Petterden site which is operated by Dundee City Council and therefore is outwith any management control, represents a very poor form of temporary accommodation below the tolerable standards as set out by the Scottish Government. Angus Council relies upon Policy and Procedures as the answer to the issue of providing accommodation for the Gypsy/Travelling community with the support for appropriate alternative accommodation disregarded (with the exception of the Applicant's existing pitch).

Due to the lack of progress by the Council to finding suitable accommodation, the Gypsy/Travelling community, who by the Councils own admission, find Angus a popular area, has been handed a disadvantage in this administrative area of Scotland. The terms of the EHRC Report provides evidence of the plight of Gypsy/Travellers in Scotland with Angus no exception. The health and wellbeing of the Gypsy/Travelling community as reported in this Statement provides the necessary background information to allow the Planning Authority to treat this as a material consideration. The ill-health of the Applicants daughter is submitted in a confidential letter from the family GP.

It is submitted that there is a proven need for the proposed development as accommodation for the extended part of the Townsley family (Mr. and Mrs. McKenzie). It would deliver benefits by providing much needed accommodation when no other suitable, sustainable and adequate alternatives exist. Under the terms of the Universal Declaration of Human Rights there is recognition of the right to adequate housing as integral to the right to an adequate standard of living. The Petterden site does not accord with this provision. Evidence has been submitted and accepted by the Local Review Committee, in the past, that there will be no detrimental impact on prime quality agricultural land and a case has been made submitted in this Statement that there will be no undesirable precedent if planning permission is granted.

There has been careful consideration of the of the planning policies and these have been assessed particularly those most applicable to this case i.e. Policy TC6, Policy PV20 and Policy DS1 of the LDP. The decision of the Local Review Committee earlier in 2017 accepted the policy assessment. This remains an important material consideration which carries significant weight in the determination of this planning application. It is submitted that there is accordance with LDP policies.

The compliance with Development Plan policy is reinforced by the significant weight of other material considerations. The health issues and personal circumstances of the Applicant's extended family are of particular relevance. These issues have got to be assessed within the context of the lifestyle and culture of the Gypsy/Travelling community as described in this Statement. Family bonds are important to this ethnic minority group and of significance in this case when the health of Mrs. McKenzie is factored into the planning considerations. She relies of close family ties.

To ignore these factors would be both inhumane and pedantry. Applying proportionality allows the decision maker to avoid such an approach by assessing the weight afforded to the acceptability of the development and the social disadvantage compared to the environmental harm which in this case is negligible. This is part of the criterion of fairness and justice in the planning process – a rational approach seeking solutions rather than finding problems. It will allow the Council to reach a positive decision which factors in Human Rights and Equality issues.

Having assessed the planning application against the Development Plan, with the benefit of all the evidence,

it is submitted that the proposed development is in accordance with the Development Plan; and that the material considerations add significant weight to allow the grant of planning permission. If the Council can set aside policy requirements for 171 caravans for the Forfar site (for economic reasons) then it can surely take a similar approach in this case to meet a pressing social need.

It is submitted that planning permission should be granted subject to reasonable and necessary conditions.

Appendix 1

SPC Seath Planning Consultancy Ltd.

Date: 21 November 2018

Ms. K. Cowey,
Service Leader Planning & Communities,
Angus Council,
Orchardbank,
Orchardbank Business Park,
Forfar,
DD8 1AN

Our ref: AS/071
Your Ref:

Dear Ms. Cowey

Subject: Planning Proposals Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in part retrospect) at Land 125M West of North Mains Croft Logie Kirriemuir for Mr John Townsley

This letter is an updated version of the one I sent to Mr. Hunter earlier this week.

As you will be aware recently the Local Review Body [LRB] of the Council refused planning permission for a small extension (Pitch 2) to the Gypsy/Travellers site (Pitch 1) approved last year. There is enforcement action pending to remove Mr. Townsley's daughter and her son in law from the site which in effect will break up the family unit.

The reasons for refusal related to two principal issues:

That the application is contrary to Policy TC6 of the Angus Local Development Plan (2016) as there are existing authorised sites with capacity to accommodate the applicant and his family, and as the proposal could set a precedent or open up other areas for similar development.

That the application is contrary to Policy PV20 of the Angus Local Development Plan (2016) as the development is located on prime agricultural land and as it does not meet the criteria for development of prime agricultural land identified in that policy.

As a consequence, the proposal is deemed as contrary to Policy DS1 of the Angus Local Development Plan (2016) because it is contrary to other policies of the local development plan, namely Policies TC6 and PV20.

The case submitted when Mr. Townsley's application was determined (Pitch 1) was based on the facts that:

- i) the site is not in productive agricultural use;
- ii) due to its physical characteristics the site is too small and of a secluded nature (surrounded by mature tree belts) and therefore not suited to arable use; and

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Company Registration No. SC557070

email: a_seath@sky.com

Telephone: 01592 304188 or Mobile: 07731690473

- i) given the scale and nature of the use it does not represent the permanent loss of agricultural land as defined.

In addition, the planning case submitted determined that the site relied upon by Angus Council for Gypsy/Traveller accommodation at Petterden (previously referred to as Balmuir) was inadequate and unsuitable as a permanent home. This was reinforced by the Scottish Ministers Reporter in his decision relating to an Enforcement appeal in which he observed at **paragraph 10 of the decision letter dated 23 November 2016:**

"I understand that the St Christopher's permanent gypsy site near Montrose is generally full and was shown the only site with capacity available is the Balmuir Wood Gypsy/Traveller site which, with its concrete pitches, bathroom blocks and location next to the busy A90, gave an impression more of a transit site. I have also taken account of all the points raised in the submissions but the availability of gypsy sites, the council's gypsy housing policies, Scottish Planning Policy, the Housing (Scotland) Act 2001 and the appellants rights under the European Convention on Human Rights and the Equalities Act 2010 are all matters to be considered under the planning application and are therefore not before me in this appeal."

The LRB agreed and approved permission for Mr. Townsley's pitch.

However, the same reasons for refusal were used for Mr. Townsley's daughter's proposals when refusing Pitch 2. At Review these reasons were upheld and permission refused. In effect one more person would be on site and two more caravans to allow this family unit to remain together.

I have another client in the Angus area who has obtained planning permission for 171 caravans. In the Report of Handling for the most recent extension it was stated:

"The current application is supported by a report from the Scottish Agricultural College (SAC) which indicates the application site is not currently in agricultural production, is of small scale and awkward shape therefore it is not suited to intensive arable cropping. In addition to this due to the lack of infrastructure (irrigation, fencing, water trough, handling system etc.), its location and scale the application site is not ideally suited for livestock grazing or forage production. It is also stated in the SAC Report that the development of the site should not be considered as permanent loss of land as the land could be reinstated in the future given the nature of development proposed. This new information was not submitted as part of the earlier application on this site (13/01037/FULL) and is material to the assessment of this proposal. In considering this information against the main part of the Development Strategy of the ALPR (found at 1.18) relevant to this proposal it is the stated aim to provide opportunities for diversification of the rural economy. Based on the information within the Planning Statement submitted in support of the application the economic benefits which would result from the proposal are considered to be compatible with the aim of the Development Strategy to diversify the rural economy. Paragraph 2.58 also identifies the aim of increasing the variety and quality of accommodation in Angus. In this case and taking account of the SAC comments that the site could be returned to agriculture, the loss of prime agricultural land is not considered to be contrary to the aims of Policy ER30."

Although there are no economic benefits associated with Mr. Townsley's application there are distinct social benefits in relation to housing the Townsley family who are part of an ethnic minority group (Gypsy/Travellers). There is a lack of suitable accommodation in Angus Council.

In addition, the most recent publication by the Scottish Government publication (Improving Gypsy/Travellers Sites - May 2018) refers to minimum standards on Gypsy/Travellers sites. It is noted that Angus Council is listed as having one site in their administrative area and Petterden is in fact owned by Dundee City Council. Having visited this site (as has the Reporter – see above) it is considered to be below minimum standards and with a lack of investment it will remain in such a condition.

One further issue is the health condition of Mr. Townsley's daughter which can be evidenced by doctors' letters [REDACTED]. There is planning case law which has persuasive argument to suggest that there is a need for local authorities to take account of considerations of common humanity and to carry out welfare enquiries before deciding whether to evict Gypsy/Travellers from their land; and that personal circumstances are a material consideration as documented in the Westminster v Great Portland Estates case. This states that it is inhumane to exclude the human factor from the administration of planning control.

I write to ask if the Council would accept another planning application for Mr. Townsley's family for Pitch 2 based on:

1. Further information and a justification from SAC;
2. Evidence based on an assertion that the accommodation at Petterden is below tolerable minimum standards unsuitable for private accommodation for Gypsy/Travellers; and
3. The health conditions of Mr. Townsley's daughter.

The founding principle of s39 of the Planning Act is that the Council retain discretion on matters above all else and any others in the decision to accept a revised planning application. I would refer you to the Richmond decision (an English case which has a persuasive legal argument in Scotland); and/or the decision of the Inner House in *Noble Organisation Ltd v. Falkirk District Council* 1993 SC 221. Copies can be sent to you if requested.

Both of the abovementioned aspects (1. and 2.) would represent material considerations justifying the submission of a fresh application. There is a precedent for doing so given that the tourist development referred to above was approved following a refusal and the submission of additional information.

I look forward to receiving your reply.

Yours sincerely,

A solid black rectangular box used to redact the signature of Alan Seath.

Alan Seath DipTP MRTPI

cc: Mr. Alan Hunter



AC12



AC12



DEVELOPMENT MANAGEMENT REVIEW COMMITTEE

APPLICATION FOR REVIEW

**CHANGE OF USE OF VACANT LAND TO FORM CHALET/CARAVAN
PITCH, FORMATION OF HARDSTANDING, ERECTION OF 1.8M HIGH
FENCES AND AMENITY BLOCK (IN PART RETROSPECT) AT LAND
125M WEST OF NORTH MAINS CROFT, LOGIE, KIRRIEMUIR**

APPLICATION NO 19/00023/FULL

APPLICANT'S SUBMISSION

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ITEM 9	Relevant Extracts from Scottish Planning Policy (2014)	
ITEM 10	Relevant Extracts from Angus Council Local Housing Strategy 2017-2022	
ITEM 11	Extracts from the Equalities and Human Rights Commission Report 2015	
ITEM 12	Extracts from the Equality Act 2010	

- ITEM 13** Great Portland Estates plc v Westminster City Council
(Summary)
- ITEM 14** Extracts from the ECHR
- ITEM 15** First Secretary of State and Others v Chichester Borough
Council 2004
- ITEM 16** Executive Summary



Angus House Orchardbank Business Park Forfar DD8 1AN Tel: 01307 473360 Fax: 01307 461 895 Email: plnprocessing@angus.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100173535-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	<input type="text" value="Seath Planning Consultancy Ltd"/>		
Ref. Number:	<input type="text"/>	You must enter a Building Name or Number, or both: *	
First Name: *	<input type="text" value="ALAN"/>	Building Name:	<input type="text"/>
Last Name: *	<input type="text" value="SEATH"/>	Building Number:	<input type="text" value="88"/>
Telephone Number: *	<input type="text" value="07731690473"/>	Address 1 (Street): *	<input type="text" value="Scott Road"/>
Extension Number:	<input type="text"/>	Address 2:	<input type="text"/>
Mobile Number:	<input type="text"/>	Town/City: *	<input type="text" value="Glenrothes"/>
Fax Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
		Postcode: *	<input type="text" value="KY6 1AE"/>
Email Address: *	<input type="text" value="a_seath@sky.com"/>		

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text"/>
First Name: *	<input type="text" value="John"/>	Building Number:	<input type="text" value="88"/>
Last Name: *	<input type="text" value="Townasley"/>	Address 1 (Street): *	<input type="text" value="Scott Road"/>
Company/Organisation	<input type="text" value="Appellant"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Glenrothes"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="KY6 1AE"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text"/>		

Site Address Details

Planning Authority:	<input type="text" value="Angus Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text"/>
Post Code:	<input type="text"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="753008"/>	Easting	<input type="text" value="337972"/>
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Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in Part Retrospect)

Type of Application

What type of application did you submit to the planning authority? *

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? *

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

See Statement of Case

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

Yes No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

An additional letter from the GP dated 18 April 2019 provides additional information related to the health and wellbeing of the Appellant's daughter

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

See Appendix 1 in supporting statement

Application Details

Please provide details of the application and decision.

What is the application reference number? *

19/00023/FULL

What date was the application submitted to the planning authority? *

15/01/2019

What date was the decision issued by the planning authority? *

30/04/2019

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

Yes No

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

Yes No

Is it possible for the site to be accessed safely and without barriers to entry? *

Yes No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

Access to be arranged with the owner

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. *

Yes No

Have you provided the date and reference number of the application which is the subject of this review? *

Yes No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

Yes No N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

Yes No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

Yes No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr ALAN SEATH

Declaration Date: 21/07/2019

Local Review

Statement of Case

Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fence and Amenity Block (in retrospect)

At: Land 125M West of North Mains Croft Logie, Kirriemuir

Appellant: Mr. John Townsley

Date: 21 July 2019

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1. The Local Review

Introduction

A planning application for the proposed development (in retrospect) was submitted by Mr. John Townsley and registered by Angus Council, as Planning Authority on the 15 January 2019 under application reference number 1900023/FULL. The application form, location plan, pitch layout, survey plan, fence detail, photographs of the amenity block and the Planning Policy and Design Statement are submitted as **Documents AS1A, AS1B, AS1C, AS1D, AS1E, AS1F, and AS1G** respectively.

This application was invited by the Planning Authority following the submission of a letter to the Head of Planning (21 November 2018) setting out the exceptional circumstances surrounding the Appellants daughter related to her health condition. A response was received from the Council (dated 4 December 2018) accepting the case set out. **Documents AS2A and AS2B** refer. This remains an important material consideration in the determination of the planning application.

I would ask the Development Management Review Committee to note that the Planning Authority rejected the health of the Appellant's daughter and the care needed for the new born child as an important consideration. It remains a fact that the Appellants daughter is unwell. She has a new born baby requiring and receiving health care and family support. In the context of the known statistics of health in the Gypsy/Travelling community (see Section 6) she wants the best possible life chances for her and the child. She needs to be close to her family who will provide support in safe and secure site with the best possible facilities. To relocate this family to Petterden would not serve the best interests of the daughter, the child and other members of the extended Townsley family.

Three confidential letters from the family doctor are submitted in support of the application. The most recent letter dated 18 April 2019 was written in direct response to the Council's decision to refuse planning permission, seen as an inhumane and uncaring act contrary to the interests of the health and wellbeing of the Appellant's daughter and child. Documents AS3A AS3B and AS3C refer.

The Planning Application is a Local Development as defined under the terms of The Town & Country Planning [Hierarchy of Developments] [Scotland] Regulations 2009. The Councils Scheme of Delegation dictated that the application should be determined using delegated powers. The planning officer refused the proposed development ignoring the health of the daughter and the new born child. **Documents AS4A and AS4B** comprise the Report of Handling and the Decision Notice dated 13 April 2018.

This Local Review [the Appeal] is submitted by Seath Planning Consultancy Ltd on behalf of the Mr John Townsley [the Appellant]. This is in response to the delegated decision to refuse planning permission for a development described by the Planning Authority as:

"Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block."

It was refused for the following reasons:

1. The application is contrary to Policy TC6 of the Angus Local Development Plan (2016) as there are existing authorised sites with capacity to accommodate the applicant's family, and as the proposal could set a precedent or open up other areas for similar development.

2. The application is contrary to Policy PV20 of the Angus Local Development Plan (2016) as the development is located on prime agricultural land and as it does not meet the criteria for development of prime agricultural land identified in that policy.
3. The proposal is contrary to Policy DS1 of the Angus Local Development Plan (2016) because it is contrary to other policies of the local development plan, namely Policies TC6 and PV20.

This Statement of Case [the Statement] comprises the Grounds of the Appeal providing an assessment of the proposals in the context of the Site and surrounding area, taking into consideration the rural land uses and the local community. The Statement sets out the reasons why it is considered that this development is consistent with National Policy, the Development Plan, with particular reference to the relevant Local Development Plan policies; and why other material considerations (exceptional circumstances) reinforce the case for planning permission to be granted. This Statement should be read in conjunction with **Document AS1G**.

A full list of Documents, which the Appellant intends to reply upon in support of the Appeal, is included in this statement at **Appendix 1**.

2. Planning Background

Introduction

The Appellant and his family have lived on the North Mains Croft Site for approximately 3 years and have lived in the Angus area most of their lives. They have done so integrating into the community. The Appeal Site offers an opportunity for five adults and one new born child to remain settled, maintaining a safe and secure home and a base from which they can travel, all in accordance with their culture and lifestyle.

Site & Surrounding Area

The Site, which extends to 1205 sq. metres, lies on the south western edge of Kirriemuir. It is bounded by vacant land owned by the Appellant to the north; residential properties to the east; agricultural land to the west; and the pitch occupied by the Appellant to the south.

Access to the Site is gained via North Croft Mains a private road which currently serves three residential properties, the existing pitch [pitch1] and a farm. This road is of a suitable width and alignment for all vehicle types including refuse and emergency services.

Gypsy/Traveller Site Design and Layout

To address the challenge of housing shortage for Gypsy/Travellers the UK Government recognise the importance of ensuring that there is sufficient land to meet need and demand. The Scottish Government has reinforced their position in relation to need and demand and this is covered in more detail in Sections 6 and 7 of this Statement. There is a requirement to ensure that all sites:

- Are sustainable, safe and easy to manage and maintain.
- Are of a decent standard, equitable to that which would be expected for social housing in the settled community.
- Support harmonious relations between Gypsies and Travellers and the settled community.

It is recognised that it will not be possible to meet all aspects of the guidance on every site relative to design and layout. As a consequence, local authorities will need to take decisions on design on a case by case basis, taking into account local circumstances such as the size, geographical location and other characteristics of any site including the particular needs of the residents and their families.

Gypsy and Travellers Sites, small private sites are designed to meet the individual and personal preferences of the owner and family members. They may contain elements which are not appropriate or popular for wider application in respect of social provision elsewhere but they suit the Gypsy/Traveller community who live with their extended families. The design and layout of sites are addressed in more detail in this Statement.

Guidance on site provision is also related to demographics wherein sites accommodate family units, in this case the Townsley family. They live on two pitches, forming households, required due to changing family circumstances (the marriage of the Appellants daughter) and health issues of the Appellants daughter and the new born child as described in this Statement.

As stated in the previous Local Review (related to the Appellants own pitch) normally each household contains:

- (i) a principal caravan/chalet;
- (ii) one or two ancillary caravans which are used for living accommodation for grown up children; or touring in line with their culture and lifestyle;
- (iii) an amenity block (toilet and washing facilities);
- (iv) parking and a turning area.

Walls and fencing are an integral part of any Gypsy/Traveller site defining pitch boundaries. Attractive entrances are also common created as a welcoming entrance feature.

The Proposed Development

Sites of various sizes, layouts and pitch numbers operate successfully throughout Scotland today. These sites work best when they take account of the needs and demographics of the families' proposing to reside on them. The Site at Kirriemuir is no exception.

The Appeal Site and land, in the ownership of the Appellant, was formerly in market garden. Polytunnels once occupied the Site. The Appellant inherited an unkempt area of ground which was not in any productive use. The abandonment of the former market garden use resulted in a vacant parcel of land which, for the purposes of this planning case, can be defined as rural brownfield land.

The reclamation of the Appeal Site required the Appellant to strip off all the overgrown plant material, and the understory of vegetation. This produced large volumes of green waste which was liberally interspersed with a variety of debris. The Appellant separated the waste and disposed of it to landfill. Sticks, large stones and other sundry material were separated out to make a safe environment.

Following this work a topographical survey was commissioned to map the land. The survey plan submitted as **Document AS1D** illustrates the current levels.

Thereafter, a properly managed build began. Drains were installed, as was a water supply, with hardstanding (Type 1) creating parking, maneuvering and access. Service connection to electricity has been made. This formed Pitch 1 the Appellants home.

All this work allowed the formation of an additional pitch on the Appeal Site to accommodate the Appellants daughter, her husband and new born child. The siting of a principal chalet, one touring caravan with associated car parking, turning area and another amenity block (toilets and laundry room) was built all forming another a suitable living environment (pitch 2). Fencing was erected to separate pitches 1 and 2.

The Appellant's daughter and her husband occupies the principal chalet. One touring caravan remains to allow the couple to exercise their rights to travel. The pitch size is similar to the existing and authorised pitch 1 occupied by Mr. Townsley.

The remainder of the land to the north of the Appeal site is in the Appellants ownership and remains unoccupied.

Planning History

Three planning applications and two Local Reviews related to this development type have been submitted for this Site as follows:

Application Ref. No. 16/00738/FULL Change of Use of Vacant Land to allow siting of a Chalet and two Touring Caravans. Erection of Amenity Block and Boundary Wall. Formation of Car Parking, Alteration of Ground Levels and Associated Infrastructure at Land 125M West of North Mains Croft Logie Kirriemuir

Application Refused.

Local Review (Application Ref 16/00738/FULL) Change of Use of Vacant Land to allow siting of a Chalet and two Touring Caravans. Erection of Amenity Block and Boundary Wall. Formation of Car Parking, Alteration of Ground Levels and Associated Infrastructure at Land 125M West of North Mains Croft Logie Kirriemuir

Review Upheld

Application Ref. No. 17/01017/FULL Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in part retrospect)

Application Refused

Local Review (Application Ref. No. 17/01017/FULL Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in part retrospect).

Review Dismissed

The Local Review (16/00738/FULL) is of particular relevance to this case as it demonstrates the Councils understanding of the subject matter i.e. the Gypsy/Travelling community and the way they live as well as the status of prime quality agricultural land. **Document AS5** comprises the Minute of the Angus Council Development Management Review Committee dated 3 July 2017. This will be assessed in detail later in this Statement.

Representations

No letters of representation were received in relation to the proposed development.

3. Addressing the Reasons for Refusal

Introduction

It is recognised that this approach has been tried and tested twice before at Local Review with success and failure. The same arguments are submitted in this case in the hope that they are accepted once again.

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997, as amended by the Town and Country Planning (Scotland) Act 2006, requires that planning decisions be made in accordance with the Development Plan unless material considerations indicate otherwise.

For the purposes of this Section of the Review the focus will be on the Development Plan policies contained in the Angus Council Local Development Plan (2016) [hereinafter referred to as the LDP]. **Document AS6** contains relevant extracts from the LDP. However, a point must be reinforced that this Review is more about people rather than policy an approach justified by the Walsall case referred to in Section 9 of this Statement.

The status of the Site to the south west of Kirriemuir, as it relates to planning policy, is that it lies outwith but contiguous to the settlement boundary of Kirriemuir. The terms of SPP and Development Plan policy provide justification for an addition to the already consented special needs housing for this Gypsy/Traveller family (Pitch 1).

The focus of the Planning Authority's refusal is based on the premise that the site is prime quality agricultural land; that there are **other sites available** to accommodate this family; and the grant of planning permission will create a precedent to open up other areas for similar development. These issues have been considered as part of a previous Local Review and the Planning Authority's reliance on the same reasons for refusal as before is without justification and unreasonable. They have failed to take into account the findings of the Development Management Review Committee in 2017 (see **Document AS5**), which is an important material consideration in the determination of this Appeal; and have adopt an inhumane and prederentary approach to people who reside in their area. The Review Body has the opportunity to address the inequality of approach.

The Reasons for Refusal

This assessment begins with the analysis of the Appeal Site in the context of the Gypsy/Traveller policy.

Sites for Gypsy/Travellers

If the Development Management Review committee accepts the above arguments and that the accommodation needs of the Townsley family outweigh any perceived environmental impact then this takes the argument on to examining the justification for the nature of the use on the Appeal Site by this Gypsy/Traveller family.

The decision of the Development Management Review Committee in 2017 established that the use of the land was suitable for a Gypsy/Travellers site and that no precedent would be set. Developments such as those being considered by the Review Body represent a very special circumstance where the general rule do not normally apply and where an exception to the rule does. This is where the development fits with the Policy TC6 as confirmed by the Development Management Review Committee in 2017.

A case for special needs housing for Gypsy/Travellers is set out in law:

“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 a positive obligation imposed on the Contracting States [in this case the Council] by virtue of Article 8 to facilitate the Gypsy way of life. (Chapman v UK 2001 case).

The Council has already recognised the importance of this ruling with the permission granted for Pitch 1. Policy TC6 establishes a pathway for accepting a greater need as the change in family circumstances evolves and the health condition of the Appellants daughter becomes an important consideration. The most recent decision by the Planning Authority for the Appeal Site demonstrates a continued lack of understanding with regard to the needs and demands of this Gypsy/Traveller family as well as their culture and lifestyle as well as the importance placed on keeping the family unit together. The later Sections of this Statement are submitted (again) to create an understanding and make a plea to the Review Body for clemency and a planning decision which focusses of people not policy.

A lack of understanding led to the Council reason for Refusal 1 stating:

“The application is contrary to Policy TC6 of the Angus Local Development Plan (2016) as there are existing authorised sites with capacity to accommodate the applicant and his family, and as the proposal could set a precedent or open up other areas for similar development.”

The needs of this Gypsy/Travelling family have been clearly set out in this Statement. There is a lack of suitable and adequate private accommodation with the Tayock site at capacity and the Petterden site unsuitable for permanent living due to its location, condition and lack of facilities (see below). There are no known plans to find other sites for this ethnic minority group in a Region of Scotland which is popular with the Gypsy and Travelling community.

To rely on one site (Petterden) a site operated Dundee City Council with standards well below those set by Angus Council at Tayock, does not provide sufficient choice of accommodation. The Petterden site is in a remote rural location, near to the A90 where noise and disturbance are evident and it is 2/3 miles from community facilities. It is a cold and a bleak site underused and it is not popular with the Gypsy/Travelling community. The Reporter when determining the Enforcement Appeal was requested to visit the Petterden site. He did so and observed at **paragraph 10 of the decision letter dated 23 November 2016 (Document AS7)**:

“I understand that the St Christopher’s permanent gypsy site near Montrose is generally full and was shown the only site with capacity available is the Balmuir Wood Gypsy/Traveller site which, with its concrete pitches, bathroom blocks and location next to the busy A90, gave an impression more of a transit site. I have also taken account of all the points raised in the submissions but the availability of gypsy sites, the council’s gypsy housing policies, Scottish Planning Policy, the Housing (Scotland) Act 2001 and the appellants rights under the European Convention on Human Rights and the Equalities Act 2010 are all matters to be considered under the planning application and are therefore not before me in this appeal.”

Before making a decision, the planner was asked to visit the Petterden site and determine if she found it suitable as a home for the daughter and new born child. It is not clear if she did so. I ask that the Development Management Review Committee visit the Petterden site and make up their own mind whether Petterden is a better alternative to the family home and the support therein created on the Kirriemuir site.

The proposed development has no adverse impacts on the landscape and has no impact on the built and natural environment.

This private site is designed in accordance with the space standards associated with pitch development for Gypsy/Travellers. It is laid out to provide all the amenities necessary for this family as a household and is tidy, pleasant and well managed. It is close to community facilities.

The existing pitch is residential in its nature and therefore compatible with the neighbouring land use (housing). An extension to this pitch for the Townsley family would also be compatible with the existing approved Pitch 1. There have been no objections to the development.

This Reason for Refusal 1 challenges the rights of the family to live and enjoy their land (see reference to Human Rights in Section 7. The Council is providing a range of housing stock for the settled community with a choice in all tenures (public, private and affordable). The Council's obligations are to provide for the accommodation needs of everyone in their administrative area.

It is submitted that the Council's reliance on Petterden as a suitable alternative to the Appeal Site is a flawed and inhumane argument. As this site is not under their control they cannot commit investment to bring it up to a standard similar to the excellent Tayock site. With the lack of suitable sites elsewhere, the Council are being presented with another opportunity to meet its obligations and permit additional accommodation for the Townsley family. The grant of planning permission will serve to meet need and demand in accordance with the Local Housing Strategy which identifies a small shortfall in permanent site provision (see Section 7 of this Statement).

As a supplementary comment it needs to be asked what is the purpose of Policy TC6? This implies the establishment of private Gypsy/Travellers sites subject to the criteria specified. With evidence submitted that demonstrates compliance with this Policy then approval of planning permission is surely justified. However, the Council will still rely on the Petterden site to undermine the intent of Policy TC6.

For all the reasons set out above it is submitted that the proposed development is in accordance with Policy TC6 with other material considerations (see Sections 4 – 10) adding significant weight to strengthen the case for approval of planning permission.

Prime Quality Agricultural Land

The **loss of prime quality agricultural land** is once again an issue of concern raised by the Council relying on **Policy PV20** of the LDP. This matter was considered by the Development Management Review Committee when determining the previous Review for Pitch 1 in 2017. Members reached a decision which included the statement that:

“the proposed development was not located on prime agricultural land” (see **Document AS5**).

The Agricultural Land Classification provides a framework for classifying land according to the extent to which its physical or chemical characteristics (biophysical) impose long-term limitations on agricultural use. The limitations can operate in one or more of four principal ways:

- (i) they may affect the range of crops which can be grown;
- (ii) the level of yield;

- (iii) the consistency of yield; and
- (iv) the cost of obtaining it.

The classification is well established and needs to be well understood as part of the planning system and this is where the decision of the Planning Authority has failed. The land classification provides an appropriate framework for determining developments within the physical as well as the biological quality of the land. It is recognised that when a broad classification is applied (as has been in the LDP) then it is not all parcels of land that meet the criteria to be classified as prime quality.

Due to:

- (i) the previous use on the Appeal Site;
- (ii) the proximity of coniferous trees (shading the land and extracting goodness from the soil),
- (iii) the length of time which the land has been out of agricultural use; and
- (iv) the land has not been part of any recognised field pattern or agricultural unit;

the land does not fall within the defined classification by reason of all the aforementioned. It is a secluded parcel of land which exists within the broad classification of prime quality agricultural land.

Secondly, what needs to be clarified is the definition of “**temporary**” in terms of land use. The Caravan Sites and Control of Development Act 1960 [the Act] defines what constitutes a caravan (including chalets by definition in the Act). They are temporary structures by their very nature i.e. capable of being constructed in sections and/or located and dismantled/moved accordingly. These types of proposals are not operational development. The units can be removed from the Site and therefore they are a temporary use. Even if the Council remained concerned about the loss of land given the temporary nature of the development the land can be recovered. It will not be lost to “**operational development**”.

The planning application considered by Angus Council (reference 15/00135/FULL) provides justification in this regard. The report considered by the Development Standards Committee (dated 15 August 2015) states:

“As noted the caravans are temporary in nature and do not have any impact on the fabric or setting of the listed structure. There would be no permanent loss of prime agricultural land because this is a temporary proposal which would assist the operational efficiency of the farm unit.”

This precedent set by the Council states clearly that caravans are temporary in nature and the proposal is temporary in terms of land use. Proportionality was applied in relation to environmental harm. So why not in this case?

In addition, the Council considered it appropriate to grant planning permission for a large tourist development outside Forfar at Lochlands. If it is appropriate for development of 171 caravans on prime quality agricultural land for tourists then it should be considered appropriate for Gypsies and Travellers if there is a reasoned justification; and in this case there is.

If proper interrogation was undertaken at the outset then the proposed development, by reason of its scale and temporary nature could have been determined as not being contrary to the terms of Development Plan Policy as the land:

- (i) Was and is in private ownership and unrelated to any farm unit.

- (ii) It has been unrelated to a farm unit for a considerable period of time evidenced by the maturity of the trees.
- (iii) The abandonment of the previous use (market garden) left the site in an unkempt state not in beneficial agricultural use i.e. a rural brownfield site.
- (iv) The development of the land has brought about improvements and provide a social need at this location i.e. accommodation for this Gypsy/Traveller family.
- (v) Due to the temporary nature of the development the land can be returned to its former state as vacant land.
- (vi) The application of proportionality would dictate that the social advantages outweighed the environmental harm.
- (vii) There is a need and demand to be met for the Townsley family as members of the Gypsy/Travelling community.

If this can be accepted then the terms of the criterion led **Policy PV20** needs further assessment. In the text associated with the policy it is stated:

*“Design and layout [of development] should **minimise** land required for development proposals on agricultural land and should not render any farm unit unviable.”*

Applying proportionality to the Interpretation of **Policy PV20** leads to a conclusion that the proposed development on the Appeal Site results:

- (i) in a negligible if any impact of prime quality agricultural land due to the physical characteristics of the site;
- (ii) in a minimal amount of land being taken for development purposes;
- (iii) in improvements to an unkempt area of vacant land;
- (iv) in limited harm to the environment;
- (v) no impact on the viability of a farm unit as it remains in private ownership. It was never part of the farm Unit or has never been for some years.

If the case submitted for the loss of land to development on the Appeal Site can be accepted along with the case made for compliance with Policy TC6 then this leads on to the assessment of Policy DS1.

Development Boundaries and Priorities (Policy DS1)

This leaves an assessment of the last Policy DS1 Development Boundaries and Priorities (Reason 3) which is predicated on the refusal based on Policies PV20 and TC6.

This Policy provides that all proposals will be expected to support delivery of the Development Strategy. The focus of development will be sites allocated or otherwise identified for development within the Angus Local Development Plan, which will be safeguarded for the use(s) set out.

Proposals for alternative uses will only be acceptable if they do not undermine the provision of a range of sites to meet the development needs of the plan area. The following content of this Policy needs to be considered:

“Proposals for sites outwith but contiguous* with a development boundary will only be acceptable where it is in the public interest and social, economic, environmental or operational considerations

confirm there is a need for the proposed development that cannot be met within a development boundary.

Outwith development boundaries proposals will be supported where they are of a scale and nature appropriate to their location and where they are in accordance with relevant policies of the ALDP.

In all locations, proposals that re-use or make better use of vacant, derelict or under-used brownfield land or buildings will be supported where they are in accordance with relevant policies of the ALDP.

Development of greenfield sites (with the exception of sites allocated, identified or considered appropriate for development by policies in the ALDP) will only be supported where there are no suitable and available brownfield sites capable of accommodating the proposed development.

Development proposals should not result in adverse impacts, either alone or in combination with other proposals or projects, on the integrity of any European designated site, in accordance with Policy PV4 Sites Designated for Natural Heritage and Biodiversity Value.”

The proposed development will not result in development on greenfield land. It was a derelict/unkempt area of vacant ground unrelated to any farm unit, a private site made good by the Appellant. The proposed development makes use of this rural brownfield land to provide much needed Gypsy/Traveller accommodation. There will be no permanent loss of land due to the temporary nature of the proposals, as described above. Accordingly, the proposed development is in accordance with Policy PV20, TC6 and as a consequence it complies with Policy DS1.

The site is accessible; on the periphery of Kirriemuir yet close enough to allow ease of access to services; is not allocated for other uses; and does not detrimentally affect the rural environment or residential amenity.

The single pitch and amenity block are screened by mature trees and the existing Pitch 1 with the low lying structures on the Site rendering the impact to a negligible level.

The level of traffic associated with the Site does not and will not impact significantly on the public and private roads. There is safe and convenient access with no detriment to road safety. The site is well maintained and well managed.

If planning permission is granted **consideration could be given to a temporary planning permission for the Appeal Site**. This would:

- (i) add a degree of certainty for the Appellant and his family; and
- (ii) demonstrate to the Council and local residents that it can be operated and managed in an appropriate manner.

4. Material Planning Considerations

Introduction

Although there is no statutory definition of what constitutes a material consideration there are three main tests for deciding whether a consideration is material and relevant:

- (i) It should serve or be related to the purpose of planning.
- (ii) It should therefore be related to the development and use of land; and
- (iii) It should fairly and reasonably relate to the particular planning application.

Generally, a material consideration is a planning issue which is relevant to any planning application. It can include national, European and Development Plan policies, the design of the proposed development, and the effect of the proposals on the environment, society and/or the economy. It can also include the site history which, in this case, is of particular relevance and in some cases personal circumstances i.e. where a social objective is being met.

It is acknowledged that planning legislation and guidance does not infer that the status of any person(s) as Gypsy/Traveller means that, for the purposes of granting planning permission, this should be the only consideration. However, what needs to be acknowledged is that the needs, demands health, culture and lifestyle of this ethnic minority group requires to be factored into the decision making process along with other material considerations including the provisions of the Development Plan.

Along with other factors these are deemed as exceptional circumstances, most of which are set out and described in the Planning Policy and Design Statement which accompanied the original planning submission.

The approach adopted by Angus Council as Planning Authority in this particular case fails to apply the tests set out in s25 of the planning acts i.e.

“planning decisions be made in accordance with the Development Plan unless material considerations indicate otherwise”.

The Planning Authority has simply relied upon the terms of planning policy with a decision based on a lack of understanding of the subject matter and the impact that their decision will have on the Townsley family as part of the Gypsy/Travelling community. In 2017 the Development Management Review Committee did the opposite.

To simply open the Local Development Plan and quote a policy or policies (or part thereof) does not represent proper planning practice. A closer interrogation of all the factors is required. The Planning Authority has failed to do so when taking decisions on this and previous planning applications on the Appeal Site.

The recent decision taken by the Planning Authority fails to acknowledge other material considerations including the health of the Appellants daughter and her reliance on her family unit in a stable environment as a means of her long terms care. Instead their approach simply relies on the regurgitation of the Council's planning policies ignoring the social need and lack of environmental impact. This approach is a statement of intent which represents a blinkered approach to planning policy with a lack of proper interrogation against

related material considerations as required by the s25 of the Planning Act. It can be interpreted as indirect discrimination against the Gypsy/Travelling community.

As a consequence, conclusions of this nature carry with it the inherent danger of not achieving a properly thought out planning decision and as a consequence can deny the Townsley family the right to a fair hearing (the planning process) under Article 6 of Human Rights legislation. A lack of knowledge and understanding about the facts of the case as it relates to Gypsy/Travellers and related material considerations appears to be at the heart of the decision making process.

Planning needs to be practiced so it reflects the **best interests of people (in this case a Gypsy/Traveller family)**, the economy and the environment – a sustainable approach. In addition to the relevant planning policies in the adopted LDP there are other material considerations – beyond the Development Plan - that are relevant to the determination of this application. These are now identified and assessed in the following Sections of this Statement.

5. The Scottish Government: A Drive for Change

Introduction

It is important to set out the changes that are taking place in Scotland at national level. The Scottish Government in its publication “***Delivering for Today, Investing for Tomorrow***” has made a commitment to getting key decisions right in order to tackle poverty and inequality effectively. They have introduced the “***Fairer Scotland duty***” in April 2018 stating:

“The duty is a new legal responsibility on national and local government, our NHS and other public bodies to actively consider what more can be done to reduce inequalities of outcome, caused by socio-economic disadvantage, when making strategic decisions. We will continue to monitor progress on implementing the new duty over the next year.”

Making specific reference to Gypsy/Traveller families in its 2018 document the Government has made a commitment to:

“strengthening our work to improve the wellbeing and protect the human rights of Gypsy Traveller families in Scotland. We are supporting greater opportunities for the voice of the Gypsy Traveller community to be heard in decisions that affect their lives.”

However, the Government recognise that there is still a need to overcome prejudice and discrimination stating:

“Scotland is a diverse, multicultural and tolerant place and we encourage our communities to be strong, resilient and cohesive. However, there is still work to be done to tackle the prejudices and attitudes that fuel intolerance and a key aspect of this is developing modern laws that show there is no place for hate crime.”

Parliamentary debates in 2018 demonstrated the intention of the Scottish Government and other political parties with commitments being carried through to 2019 through the following actions.

The Planning Bill

The Scottish Government introduced the Planning (Scotland) Bill to Parliament in December 2017 as part of the continuing programme of reform. This is another attempt at simplifying the planning system and to support inclusive growth as well as providing confidence for investors and communities. Following passage of the Bill through the Parliament, the Government’s intention is to focus on delivering the changes needed to make the Planning system work for everyone.

It is also recognised that the Bill and other related changes represents an opportunity to strengthen the contribution of planning policy to Scotland’s overall ambitions for improving Scotland’s health and addressing inequalities.

Whilst there is no current statutory requirement on planning authorities to engage with the Gypsy/Traveller community, the Planning Bill includes provisions to ensure that planning authorities properly involve Gypsy/Travellers in the planning process regarding the future of their places as part of further improvements to engagement in development planning.

A Ten Point Plan

A 10-Point Plan is a strategic management tool to support advocacy, liaison with and between government agencies, and promote work with other stakeholders in any planning process as it relates to Gypsy and Traveller engagement. The Scottish Government has written a draft Plan which contains the following 10 points:

1. We will consider bringing forward an amendment to the Planning Bill (this has been done).
2. We will require all planning authorities to notify us of any planning decisions for Gypsy/Traveller sites.
3. We will invite a Gypsy/Traveller community to work with us on a pilot local place plan for their area.
4. We will commit additional resources to PAS.
5. We will progress research to establish how the planning system addresses need and demand.
6. We will update (as required) and adopt PAS advice as Scottish Government planning guidance.
7. We will meet with the conveners of local authority planning committees to raise awareness.
8. We will raise awareness of the need to provide accommodation for Gypsy/Travellers with Heads of Planning Scotland.
9. We will look at how we can improve the way we Plan for Gypsy/ Traveller sites Including the role of Housing Need and Demand Assessments (HNDA) and Local Housing Strategies.
10. We will have a wider conversation on Gypsy/Traveller sites and the National Planning Framework.

Ministerial Working Group

The Group's remit is to drive forward cross-government actions which will improve the lives of Scottish Gypsy/Traveller communities. Critical to this will be the alignment of other strategies/policy areas.

The Ministerial Working Group has as its objective to work in order to address inequalities experienced by the Gypsy/Traveller communities in housing, education, health; employment; and any cross-cutting issues such as community cohesion.

The Group's remit will also consider how to improve engagement with Scotland's Gypsy/Traveller community and their participation influencing and shaping policy; and engage in dialogue with key organisations working with Gypsy/Travellers. It also recognises that there is a need to explore further steps to tackle discriminatory portrayals of the community by the media.

The Group intends to publish a report in 2019 setting out their achievements and progress to date in implementing the priorities for action that it identifies.

Planning Guidance

In its early stages of drafting this paper seeks to reflect, once again, the Scottish Government's commitment to setting a robust framework to ensure that the needs and demands of the Gypsy/Travelling community are properly assessed and effectively met at a local level. To help achieve this, the Ministerial Working Group on Gypsy/Travellers (see above) has as its remit to drive forward cross-government actions which will improve the lives of Gypsy/Traveller communities. This includes the preparation of planning guidance designed to inform all stakeholders of the culture and lifestyle of the Gypsy/Travelling community as well as its needs and demands for accommodation throughout the country.

Cross Party Working Group

The purpose of this Cross Party Working Group is to provide a forum for discussion and information sharing information on issues related to and faced by the Scottish Gypsy/Traveller community; and where appropriate, create proposals and recommendations for actions which can be taken to tackle these issues.

The Scottish Government view the planning system as an important delivery mechanism and the changes and actions undertaken as described above are aimed at making Council's more accountable for their actions. They are regarded as part of a much needed sustainable solution to the plight of the Gypsy/Travelling community in Scotland.

The author of this Statement is involved in all the aspects of change and the approach of Angus Council, as it relates to the Kirriemuir Site, has been highlighted as a failure in the decision making process in the planning system.

6. The Gypsy/Travelling Community

Introduction

In all planning cases a good understanding of the subject matter is required to allow informed decisions to be made. The following paragraphs in this Section of the Statement are drafted to inform the reader and the Development Management Review Committee of the background to the Gypsy/Travelling community and the importance of creating private accommodation to ensure improved health and wellbeing.

The Lifestyle of Gypsy/Travellers

Discrimination against Gypsy/Travellers in Scotland

There is a growing body of evidence around the levels of discrimination faced by the Gypsy/Traveller community in Scotland. The findings from the Scottish Social Attitudes Survey on discrimination (2015) concluded that Gypsy/Travellers, as a group, are the subject of **'fairly widespread discriminatory attitudes'**.

In 2012, the Scottish Parliament's Equal Opportunities Committee reported in its inquiry (Gypsy/Travellers and Care) that:

"despite various reports and initiatives since devolution very little has been achieved to improve the lives of Gypsy/Travellers".

In its subsequent inquiry "Where Gypsy/Travellers Live" (2013) the Equal Opportunities Committee found evidence that Gypsy/Travellers experience 'extreme difficulties' in accessing many services. This was found to be partly due to site locations often making local amenities difficult to access. Other key barriers to the Gypsy/Traveller community accessing services are the stigma of living on a site leading to discrimination and the transient nature of their lifestyle making consistent access to services difficult when on the road. **This is applicable to the Townsley family as locations and/or availability of other sites relied upon by the Council are unsuitable i.e. Petterden.**

Family Life

Scottish Gypsies/Travellers embrace a belief in the importance of extended family bonds and family descent; a preference for self-employment; and a strong commitment to a nomadic lifestyle whilst retaining a right to privacy.

There are strong and distinctive family and clan relationships amongst those who share a common heritage. These social ties are very important to many Gypsy/Travellers who often prefer to live and work in extended family groups as do the Townsley family. Families do not normally mix as is allowed at Petterden.

This strong sense of group identity and travelling culture shared by Gypsy Travellers is not always well understood or accepted within the wider settled population and can, in some cases, result in clashes of cultures and social tension between groups. For Gypsy Travellers and settled populations, this can be accentuated when other factors such as changes in land use, demographics and employment patterns create new points of contact.

The Townsley family fit into this stereotypical cultural identity. They are proud of who they are and how they want to live. The family unit on the Site offer the best support for each other and in particular for the daughter and the new born child.

The Personal Circumstances of the Appellant: An Emphasis on Family & Kinship

In the past the Appellant and his family has occupied various sites in the Angus area. This includes the Thrums Caravan Park, Maryton (10 years), and periodically on a camp site off the A90 (near McDonalds takeaway/restaurant). When sites in Angus were unavailable the Appellant had to travel outwith the Region to sites in Alyth, Perth and Kinross; Kinneff, Aberdeenshire; and Piper Drive, Glenrothes, Fife.

The Appellant is a well-known businessman in the motor trade operating a successful company in Brechin. This is a family run enterprise with his two daughters and his son part of the workforce. They make a valuable contribution to the local economy.

The current situation in Angus is that there is a shortage of accommodation for Gypsy/Travellers. Unauthorised sites do not present a sustainable option for the Townsley family particularly when his daughter suffers ill-health and there is a new born baby to care for.

The Appellant acquired the land at North Mains Road with the desire to develop a home for him and his family. He wanted to create a pleasant, safe and permanent living environment, a private household for the family.

The Appellant has represented the interests of all of his family as occupiers of the Site all of whom are seeking to establish Pitches 1 and 2 as their home. Site occupancy in 2017 totalled 4 persons. Mr. Townsley's daughter has married and a new addition to the family has arrived. With land available, a further pitch was developed to house 6 people (including the baby). By doing so this would ensure the strong family bonds were maintained and support provided for the baby and her mother.

In the settled community there are circumstances where sons or daughters get married and have to live with family members due to the lack of suitable accommodation, lack of finance and/or lack of opportunities in the housing market. The situation on the Appeal site is no different with the Appellants daughter presented with an opportunity to live with her family in the early years of her marriage. This convenient location allows this Gypsy/Travelling family to retain their rights to privacy and enjoyment of their home as protected by Human Rights legislation. The Appeal Site meets the needs of this Gypsy/Traveller family in the Angus area.

It is understood that lifestyle and family bonds in themselves do not justify the grant of planning permission. However, without an understanding of how Gypsies and Travellers live then "**proportionality**" cannot be applied to this case as it was done during the previous Review in 2017.

Case law is clear that there are occasions where exceptions should be made. In the case of **Doncaster Metropolitan Borough Council v First Secretary of State and another** the Inspector considered the accommodation and personal circumstances of the site occupants: including their ties with the area, the fact that most of the children of primary school age had secure school places (none having previously had more than a very small amount of schooling), and that, since moving onto the site the families had been able to register with GPs and dentists, often for the first time in their lives.

The Inspector said at para 32 of her decision:

"The site occupants' need for a suitable site on which to live and from which they can have a normal family life with access to education and health care and the ability to integrate into the local community is an important consideration which has to be given considerable weight."

Therefore, personal circumstances of an occupier and personal hardship, as described in this Statement, are not to be ignored. It is inhuman to exclude the human factor from the administration of planning control. The human factor is always present, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should be given direct effect as an exceptional or special circumstance. It is submitted that the determination of this Planning Application is one such case when viewed against the lack of suitable and sustainable alternative sites for this the extended Townsley family (Mr. and Mrs. McKenzie) and their personal circumstances following the marriage of the daughter and the need for independent living and to cope with ill-health and a new born baby.

Health

The Scottish Government Report Gypsies/Travellers in Scotland: Summary of the Evidence Base (2013), provides a valuable insight into the health of Gypsy/Travellers as an ethnic minority group.

Reports suggest that Gypsies/Travellers have significantly poorer health than other UK residents, English speaking ethnic minorities and economically disadvantaged white UK residents. They are also more likely to suffer from miscarriages, still births, and the death of young babies and older children.

The Equality and Human Rights Commission (EHRC) has estimated that in Britain:

- Life expectancy for Gypsy/Traveller men and women is 10 years lower than the national average; and
- Gypsy/Traveller mothers are 20 times more likely than the rest of the population to have experienced the death of a child.

Health records in Scotland have been linked to 2001 Census records to obtain more and complete health information by Ethnic Group. However, as a 'White Gypsy/Traveller' was not a separate ethnic group in the 2001 Census, information on this group could not be obtained. **The issue in this case is related to the recognition that there is a lack of information and in this context how can Angus Council reach a conclusion that there is limited demand in their administrative area.**

In Scotland, the Government's Equality Outcomes and Mainstreaming Report (2017) highlights that the health issues and life expectancy related to Gypsy/Traveller is due to the lack of accommodation, access to health services and a lifestyle plagued by discrimination. Local Authorities have a duty to address this issue.

Based on this information there is a need to cater for the Gypsy/Travelling community in a similar way in which the Council provides opportunities for those in the settled community.

Placemaking and Its Contribution to Health and Wellbeing

The Scottish Government is aware that the places where we live, work and play can have a major impact on our health, wellbeing and prosperity. It recognises that the planning system can support the development of high quality, well-designed places and communities. There is a commitment to expand support for community-led design, building upon the successful use of the Place Standard Tool [the Tool] to ensure early involvement by communities in shaping development in their area. This includes the Gypsy/Travelling community.

The inequalities in health and well-being in the Gypsy/Travelling community has its roots in a lack of suitable places to stay. The problem is that public sector sites are not really a home and apply minimum standards whereas the settled community benefit from Place Standards. The aspirations of the Gypsy/Travelling community are like others in this country, to find their own land and create a home for their extended family.

In Angus the two existing sites are polarised one being suitable and managed by the Council with no vacancies and the other very unsuitable due to poor standards and is not managed by Angus Council. They are not viable options.

The First Ministers statement in the Scottish Parliament in 2018 were welcomed as they relate to addressing the inequalities in health and education in the Gypsy/Travelling community. Work being undertaken including the NHS research, being finalised by the author of this Statement, will be regarded as valuable contributions to the agenda of meaningful change and will inform the Government's drive for change as described in Section 5 of this Statement.

The outcomes place an emphasis on the importance of place as a solution to health issues and finding suitable accommodation for Gypsy/Travellers. The way a place looks, functions and feels is all important to anyone and can contribute to improved health and wellbeing. It is seen as a prevention rather than a cure. By failing to recognise this important fact planners deny their responsibilities resulting in a failure to address this vitally important part of the job – delivering social justice.

The existence of known sites allows the NHS [and others] to address health issues and dedicate outreach services to the known Gypsy/Traveller population. The problem is when people are "on the road" without access to sites or when people are on private sites they are either not known or are reluctant to approach the NHS due to fear of rejection [as has been known to happen. Permitting suitable accommodation will allow barriers to be broken down and hopefully provide the NHS access to a greater amount of the Travelling population. Therefore, it is important planning decisions are based on an understanding of this issue and consideration is given to granting planning permission to suitable sites.

Gypsy/Travellers have their own Placemaking Tool which provides space on site to live and play something that does not exist on public sector sites. There are some excellent examples around Scotland which illustrate how this has been done and where people in the Gypsy and Travelling community benefit from health and wellbeing as a consequence an improved lifestyle. The Site at Kirriemuir is another excellent example.

A family home has been built which focuses on the importance of Place, the creation of a home based on their own Placemaking approach. This family, if permitted to live on the periphery of Kirriemuir, can benefit from the same principles of design that other mainstream housing sites benefit from. They have:

1. Created a Place of Character and Identity;
2. Created a Place of Quality;
3. Created a Safe and Pleasant Space; and
4. Created a Place that is Spacious and Easy to Move Around;

all in accordance with the family's culture and lifestyle.

The facts stated in Section 1 of this Statement are repeated. The Appellants daughter is unwell. She has a new born baby requiring health care and family support. In the context of the known statistics she wants the best possible life chances for her and the child. She needs to be close to her family who will provide support in safe and secure site with the best possible facilities. To relocate the

McKenzie family to Petterden would not serve the best interests of the daughter and other members of the extended Townsley family.

Three confidential letters from the family doctor are submitted in support of the application. The most recent letter dated 18 April 2019 was written in direct response to the Council's decision to refuse planning permission, seen as an inhumane and uncaring act contrary to the interests of public health. Documents AS3A AS3B and AS3C refer.

I would repeat my request that Members of the Review Body visit the Petterden site and compare it to the home created by the Townsley's at Kirriemuir. The Scottish Ministers Reporter visited the Petterden site and reached the conclusion stated in page 7 of this Statement.

7. Other Relevant Legislation and Guidance

Scottish Planning Policy (2014)

The Scottish Government recognises that Gypsy/Travellers are a particularly discriminated against and marginalised group. The Government are committed to ensuring equality of opportunity for this community.

The Government set out the principal planning policies of the Scottish Ministers relevant to the provision of Gypsy/Traveller sites under the Scottish Planning Policy 2014 at Paragraph 133 which states:

“133. HNDA’s will also evidence need for sites for Gypsy/Travellers and Travelling Showpeople. Development plans and local housing strategies should address any need identified, taking into account their mobile lifestyles. In city regions, the strategic development plan should have a role in addressing cross-boundary considerations. If there is a need, local development plans should identify suitable sites for these communities. They should also consider whether policies are required for small privately-owned sites for Gypsy/Travellers, and for handling applications for permanent sites for Travelling Showpeople (where account should be taken of the need for storage and maintenance of equipment as well as accommodation). These communities should be appropriately involved in identifying sites for their use.”

On the issue of sustainable development SPP states:

“The SPP sets out how this should be delivered on the ground. By locating the right development in the right place, planning can provide opportunities for people to make sustainable choices and improve their quality of life. Well-planned places promote well-being, a sense of identity and pride, and greater opportunities for social interaction. Planning therefore has an important role in promoting strong, resilient and inclusive communities.” (Paragraph 15 SPP).

The policy principles state:

“This SPP introduces a presumption in favour of development that contributes to sustainable development.” (Page 9 SPP).

SPP also provides that:

“The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.” (Paragraph 28 SPP).

This Statement demonstrates that Angus Council as Planning Authority has failed to address the shortfall referred to in the Local Housing Strategy (see below) and not brought forward suitable sites for Gypsy/Travellers in the Angus administrative area. The Petterden site remains an inappropriate form of private accommodation and Tayock remains very popular and is at capacity. With the occupancy rate of the Petterden site remaining low and not a preferred option for the Gypsy/Travelling community, there is still a pressing need to address the shortfall. The Appeal Site provides the potential to address this need. The Appellant’s daughter (an unwell woman with a new born baby) has no other suitable place to go.

The Appellant contends that the proposed development meets the needs of his family as Gypsy/Travellers and is a sustainable form of development within the meaning of SPP. It provides suitable accommodation for people, at no cost to the Council, with no detriment to the environment. The site is suitable for the extended part of his family.

Document AS8 comprises relevant extracts from SPP 2014.

Angus Council Local Housing Strategy 2017 – 2022 [the Strategy]

The Strategy makes some reference to the needs of Gypsy/Travellers. On page 65 and 66 need and demand is summarised (see **Document AS9**).

Angus Council operates a permanent Gypsy/Travellers site at Tayock, Montrose. The site is currently fully occupied and has been for years. Dundee City Council also operates a site at Petterden, by Tealing, which lies within the Angus local authority boundary. The site currently operates at around 65% capacity, although this is subject to seasonal fluctuation.

The findings of the Craigforth Research Study indicate a small shortfall in permanent provision may emerge in Angus overtime, attributed to demand in the northeast and to a lesser extent in the west of the area. The Study states that **where new sites are established or existing sites in the area improved or extended, this could help to address the local shortfall in provision which is anticipated to develop. The site at North Mains Croft falls into this category.**

The Strategy recognises that the levels of unauthorised encampment activity have steadily increased across Tayside over the last three years. In Angus there was a significant rise in activity between 2015 and 2016. To evict any family from a well-run site such as that at North Mains Croft would only serve to exacerbate the level of unauthorised encampments.

The Council recognises that private sites could contribute to meeting the projected shortfall in demand for permanent accommodation. The Strategy states that all applications will be considered in the context of the Angus LDP Policy TC6, taking into account the finalised Needs Assessment and available capacity on existing and proposed sites.

Assessment: The Appeal Site is established and serves to meet need and demand for the Townsley family. A case has been submitted which demonstrates that it could be accepted as being in accordance with the terms of the LDP Policy TC6.

Equalities and Human Rights Commission Report (EHRC) 44 (2015) Assessing local authorities' progress in meeting the accommodation needs of Gypsy and Traveller communities in Scotland - Final Report [the Study]

The aim of the study published in January 2015 (**Document AS10**) is to provide data about the extent to which local authorities in Scotland are meeting the accommodation needs of Scottish Gypsy/Travellers.

There are two main objectives:

- To ascertain the quantity of current Gypsy/Traveller site provision, including any recent changes in provision and any imminent plans to develop sites in the future.
- To investigate the timescales of delivery to meet any accommodation shortfalls.

The Study states that despite the positive steps taken in Scotland, and although some inroads were being made into resolving the shortages of accommodation for Scottish Gypsy/Travellers, subsequent reviews identified slow progress and little change in the life chances of Scottish Gypsy/Travellers.

Drawing on other evidence from related research and consultations, the Commission for Racial Equality [CRE] identified the primary issues relating to the accommodation needs of Scottish Gypsy/Travellers some of which are:

- **The lack of a network of accessible and acceptable local authority sites.**
- **The poor physical condition and location of local authority sites.**
- **The difference in treatment experienced by Scottish Gypsies/Travellers when being housed compared with those living on local authority sites.**

As referred to already in this Statement Angus Council has failed in its duty to provide sufficient and suitable accommodation for Gypsy/Travellers. They only operate one site with the other operated by Dundee City Council at a lesser standard when compared to the Tayock site.

Existing public sector sites are either at capacity (Tayock) or unmanaged and unpopular with the Gypsy/Travelling community (Petterden). Evidence suggests that the needs and demands of the Gypsies and Travellers continue to be unmet. The inclusion of a specific policy in the LDP (TC6) allows for increased provision encouraging the use of privately owned sites provided that criterion is met.

It is hoped that a trend can be created with further support given to the Appellant, through the grant of planning permission. This can be done in recognition of a need to provide accommodation in the context of the family's change of personal circumstances, including the daughter's health conditions and the existence of a new born baby and the need for a stable living environment close to health services.

Equalities

The Equality Act 2010 expanded the racial equality duty in section 71 of the Race Relations Act 1976 to include other protected characteristics. As already stated above these include age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation (referred to in the Act as protected characteristics).

Section 149 introduced the **Public Sector Equality Duty [PSED]**. This requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between people with a protected characteristic and people without.

It is recognised that compliance with the duties may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act. Applying proportionality to this case will allow the Development Management Review Committee to permit the development in favour of this Gypsy/Travelling family. This is covered in more detail below in Section 8.

In summary, the decision maker has to have due regard to the need to advance equality of opportunity for this ethnic minority group. The obvious point here is that when compared to the settled population the Gypsy/Travelling community is at a severe disadvantage through a lack of accommodation. There is a shortage of suitable and adequate sites to meet the specific needs of the Appellant's family. So, it follows that there is an inequality with regard to accessing accommodation. Given the change in personal circumstances (as described in this Statement) the Appellant was faced with a desperate situation, a need for a site for his family and a place that they can call their home. The Angus Council can discharge its PSED properly through a positive decision by the Development Management Review Committee.

Relevant extracts from the Equality Act 2010 is submitted Document AS11.

8. Importance and Weight of Material Considerations

Introduction

The importance of material considerations and the weight to be attached to them are founded on three principles:

- (i) Change in circumstances;
- (ii) Proportionality; and
- (iii) Unreasonableness.

The conceptual meaning of these principles and how they relate to the decision making process is now described. Before doing so this Section will begin with the way the Committee applied such methodology in its previous decision relating to pitch 1.

Previous Local Review Decision

The Development Management Review Committee at its meeting on the 3 July 2017 considered the submissions of the Appellant and the case submitted by the Planning Authority. The minute of the meeting (**Document AS5**) describes the outcomes.

The Committee agreed that, having considered the relevant information and having given full consideration to the case submitted by the Development Management Section of the Communities Directorate and the Applicant, it was the Committee's view that application Ref. 16/00738/FULL be granted planning permission as the proposed development was:

- (i) **not located on prime agricultural land;**
- (ii) **on a privately owned site that would not set a precedent or open up other areas for similar development;** and
- (iii) **in compliance with Policies TC6 and PV20 of the LDP.**

The Review was upheld and the application approved, subject to conditions.

This decision is undoubtedly a very important material consideration with the policy position of the Planning Authority reviewed and the foundation of the refusal critiqued and discussed.

Despite these findings the Planning Authority, in reaching their decision to refuse the development on the Appeal Site, has blatantly ignored the decision of Members of the Development Management Review Committee. They have used the same reasons for refusal as before. It remains the case that:

1. The site is not prime quality agricultural land.
2. The proposed development is a desirable outcome with the family still remaining on site including the Appellants daughter and new born baby who require access to health services husband.
3. The proposed development is in accordance with the Development Plan policies for the reasons stated in Section 3 of this Statement.

Change in circumstances (Personal Circumstances)

The plight of the Gypsy/Travelling community is well documented. They have suffered from a lack of accommodation for decades. Their circumstances are reflected in the current Scottish Government's drive to address this inequality.

The Appellant is seeking to address his family's change in personal circumstances as described in this Statement. Having established a home for his family Mr. Townsley found himself with a dilemma. Options were to look elsewhere in Angus, the place of their birth; or, with ample room on the site develop available land as part of a well screened compact small scale site. With the options for accommodation elsewhere in Angus extremely limited and unsuitable the Appellant chose to have his family close to him believing that the previous decision of the Development Management Review Committee would assist in supporting in the development of an extended family home.

Given the inequalities faced by Gypsy/Travellers, there are cases where these change in personal circumstances should and have been given significant weight in the determination of any planning application and/or appeal (see **Document AS12**).

This case law extract (The Great Portland Estates v Westminster City Council) describes how it is inhumane to exclude the human factor from the administration of planning control. Planning is about people and is one of the founding principles in the original Planning Act of 1947 following the Health Acts. The human factor is always present, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should be given direct effect as an exceptional or special circumstance. It is submitted that the determination of this Appeal is one such case.

It is submitted that these factors are prevalent and they need to be considered not as a general rule but as exceptions to a general rule and compliance with Development Plan policies. The Angus Development Plan makes provision for the submission of a socio-economic case under the terms of Policy TC6. The change in personal circumstances (the social considerations) are part of the argument that requires to be used in this case (and has been used in case law) to outweigh any policy considerations if required.

The Great Portland Estates plc. v Westminster City Council is a House of Lords decision relating to personal circumstances as a material consideration. These change in circumstances are an important consideration in the determination of the Appeal.

Proportionality

Taking this argument one step further the concept of proportionality needs to be applied i.e. the weight afforded to the acceptability of the development and the social disadvantage compared to the environmental harm. It is part of the criterion of fairness and justice in the planning process.

This concept applies logic to the decision making process with the intention of assisting in discerning the correct balance between any restriction imposed (in this case the denial of an addition pitch for the Townsley family) and the severity of the nature of the prohibited act as described above and its impact on the environment.

Proportionality essentially means the decision should meet a legitimate policy goal and should not go further than necessary to achieve that goal. It must be appropriate and necessary to achieve its intended aim taking into consideration any change in circumstances and how unreasonable the restriction will be i.e. to deny planning permission.

A view of what is or is not proportionate should be formed according to the importance of the rights involved. A greater intensity of review should be taken where Human Rights are engaged, as in this case. This is particularly relevant because Human Rights bring their own specific rules of interpretation, which means the decision makers (the Development Management Review Committee in this case) should look at whether any action or decision infringes Human Rights and is proportionate. The right to private and family life is being denied in this case (Article 8) particularly important when health issues are factored in to the decision making process.

The principle of proportionality needs to be applied in this case as was done for Pitch 1. The Council is looking at a breach of Human Rights because of the decision to deny occupancy when proportionality suggests otherwise. The Council are now dealing with an Article 8 violation (right to private and family life) which involves them, as the decision-maker, interfering in a disproportionate manner especially with the small scale site for the Townsley family being well established and their conclusion at the last Review that the land is not prime quality agricultural land.

Taking into consideration the change in personal circumstances and factoring in proportionality it is submitted that the Council place importance on the Applicants Human Rights, need for accommodation and the negligible impact on the environment as referred to in this Statement. Relevant extracts from ECHR are submitted as **Document AS13**

In support of this claim I would draw the Council's attention to case law *First Secretary of State and Others v Chichester Borough Council*, 2004 [EWCA Civ 1248] - **Document AS14** - which refers to Human Rights and proportionality. Although this is an English planning case as with other cases referred to in this Statement its principles have "*persuasive argument*" in the Scottish planning system.

The Inspector conducted **proportionality** analysis as required by Article 8. He weighed what he considered the limited harm to the environment caused by the development against the harm caused by the Planning Authority's failure to recognise and provide for the needs of Gypsy/Travellers in its District by granting planning permission for sites. The Inspector found that interference was not justified under Article 8(2) ECHR. The enforcement notices were quashed and planning permission was granted.

Unreasonableness

Taking this argument to the third stage it needs to be recognised that when different reasonable people are given the same set of facts, it is perfectly possible for them to come to different conclusions. As in the previous Review (2017) the Members of the Review Committee disagreed with the Planning Authority's decision to refuse planning permission. A reasonable decision was taken with the Development Management Review Committee applying proportionality and exercising discretion reflecting good planning practice and approving Pitch 1 for the Townsley family.

However, when reaching its decision to refuse planning permission for the Pitch 2 on the land the Planning Authority has failed to take into consideration the findings of the Members of the Development Management Review Committee and other relevant material considerations.

There are sound planning reasons for the Development Management Review Committee to take a reasonable and fair decision and approve planning permission based on accordance with Development Plan policy and other material considerations as listed and assessed in this Statement. By doing so, the wider public interests will not be affected; nor will there be any policy implications; nor will any undesirable precedent be set.

It is submitted that the Planning Authority has been unreasonable in their approach to decision making by refusing planning permission. **What is being asked for, in this Review, is that the same understanding of all the issues, demonstrated by Development Management Review Committee in 2017, leading to a decision to approve planning permission is repeated.** It is submitted that the Review should be upheld reflecting a reasonable approach to land use planning and the needs and demands of people requiring accommodation, in this case the Townsley family as Gypsy/Travellers.

9. Case Law: An Example of Proper Planning Practice

An example of proper planning practice is provided in the Planning Appeal: reference APP/K3415/W/17/3181654 relating to land on south side of Walsall, Staffordshire [the Walsall case]. Although this is an English case again it has “*persuasive argument*” in Scotland. It relates to a case in the green Belt where a higher degree of protection is afforded to the rural environment but demonstrates how a positive decision can be taken in the context of Development plan policy and other material considerations.

In this case the appellant’s family and two other families would occupy the site. Lichfield District Council issued an enforcement notice to the Appellant against the change of use of the land to a residential Gypsy/Traveller caravan site, which included the stationing and residential occupation of three caravans on the land.

The Council refused planning permission for the development.

When determining the appeals the Inspector did not dispute that the development would be inappropriate given its location in the Green Belt but **assessed the effect it would have on the openness and purposes of the Green Belt, and the effect on the character and appearance of the area. The Inspector also considered personal circumstances, human rights and the best interests of children.**

The inspector said the proposed hardstanding would have “little effect” on openness, but that the presence of mobile homes, touring caravans, an amenity building, fencing and related vehicles, and domestic items “*would significantly reduce openness*”.

The Inspector continued:

“There would also be a conflict with the Green Belt purpose of assisting in safeguarding the countryside from encroachment,” said Williams, adding though that the extent of this would be limited to a degree because of the “*modest extent of the land on which the caravans would be stationed*”. In addition, the inspector found that planning policy in the Local Authority’s Local Plan was not consistent with the National Planning Policy Framework and therefore attributed moderate weight to this conflict.

The inspector noted that one of people living on the site has significant medical conditions and relies on easy access to a local health centre. Should the appeals fail, said the Inspector, the families would probably have to leave the site and he concluded:

“This would result in an interference with their human rights with regard to Article 8 of the European Convention on Human Rights. It encompasses respect for family life and the home.”

Williams felt that that any decision would be influenced by the Best Interests of the Child living on the site and the expected child and that they should remain and for it to be developed as proposed. The Inspector also states that although similar benefits, such as access to healthcare and education, might be found on another settled site, a suitable site has not been identified. A prolonged absence of a settled site would lead to disruption to the access of such benefits for these children. “These matters weigh in the appellant’s favour,” said the inspector.

Williams concluded that any harm to the Green Belt and the character of the site “would be clearly outweighed by other considerations”.

“Taking into account in particular the best interests of the children in this case I find that **there are very special circumstances** which would justify the granting of planning permission in both appeals subject to appropriate conditions.”

In addition, the Inspector founded his case of the lack of positive action taken by the Council in relation to meeting the needs of the Gypsy/Travelling community an issue which has already been highlighted in the case for the Brown family (see Planning Policy and Design Statement). The inspector stated in his decision letter dated 7 August 2018:

“I conclude on this issue that a robust and up to date assessment of the need for Gypsy and Traveller sites is not in place. On the basis of the information available there is an unmet need for sites for Gypsies and Travellers in the area. This development would go some way to meeting that need. There is also the personal need for a settled site and there is no evidence of any suitable alternative site being available. Other than the single pitch at Bonehill Road, Mile Oak further allocations are unlikely until at least 2020. The failure of the Council to put in place effective policies for delivering adequate provision of sites over a long period also carries weight in the appellants’ favour.”

In the Walsall case the enforcement notice was quashed and planning permission was granted with conditions.

10. Overall Assessment

The above Sections of this Statement are hereby adopted with regard to the assessment of the reasons for refusal.

It is once again submitted that the development on the site, extending the family accommodation, is not on prime quality agricultural land by reason of its physical characteristics. This opinion was reinforced by the Development Management Review Committee during consideration of the previous Review in 2017 relating to the Pitch 1 (see **Document AS5**).

The Council has made it clear that it will, in terms of Policy TC6, approve Gypsy/Traveller sites where a newly arising need can be proven and subject to other criteria. The Appellant's proposals are a newly arising proven need.

Assessing the Development against the criteria of Policy TC6 the following conclusions are reached: -

- a) By reason of its small scale and nature the Development does not appreciably detract from the landscape character or appearance or result in a loss of resources in the rural area. It is a natural extension to the existing Pitch 1 which forms a compact low lying development which is well screened by mature tree belts.
- b) the Site was a previously developed rural site which benefitted from clearance of debris. It is an isolated parcel of land with no prospects of agricultural use now or in the future. Its use as a caravan site, involving temporary structures (caravans) will mean that the land can be recovered unaffected by "*operational development*". The Council has approved other similar uses on similar land in its area in the past.
- c) The Development does not unacceptably detract from the amenity currently enjoyed by residents in the area. There are no objections to the proposed development. There appears to be an acceptance by the community of this development (existing and proposed).
- c) The Development is sympathetically located creating a secure, safe and pleasant environment and it is served by essential utility services.
- d) The location of the development allows safe and convenient access to community facilities and the public road network.
- e) The Development (existing and proposed) is and will be properly managed.
- f) The Development will not set an undesirable precedent elsewhere given the sites defensible boundaries. Undesirable relates to something that is not wanted or undesirable because it may be harmful, objectionable, or unpleasant. The proposed development is neither of these.
- (g) There is an unmet, proven need and demand in Angus as referred to in the LHS. The Townsley family, as extended, requires somewhere to stay. It meets the needs and demands of the extended Townsley family as a result of their change in personal circumstances.
- (h) A precedent has been established for development on this Site (not elsewhere) through the grant of planning permission for the existing Pitch 1. The land is capable of absorbing the proposed development without detriment.

It is submitted that all the above factors are prevalent and they need to be considered not as a general rule but as exceptions to a general rule and compliance with Development Plan policies with material considerations adding considerable weight to the argument.

The approach that the Council should take to the assessment of this Appeal against the Development Plan should be a reasonable one applying the principles of proportionality as demonstrated in the Walsall case.

11. Conclusions

It is these set of exceptional circumstances as described in this Statement that applies and are submitted in support of the Townsley family. The Planning Authority's decision on the planning application has:

- i) Failed to recognise the needs and demands of the Gypsy/Travelling community in the context of a lack of effective land supply and suitable site for this family as Gypsy/Travellers part of an ethnic minority group;
- ii) Failed to recognise the material considerations. They have simply placed an emphasis on planning policy simply being selective in the interpretation of the rural development policy and ignoring material considerations which represent exceptional circumstances;
- iii) Failed to recognise that the condition of the Site (prior to development) as previously developed land and the resultant change of use which does not affect the openness and purposes of the rural area; and the negligible effect on the character and appearance of the area i.e. there is an improvement to the overall condition of the land;
- iv) Failed to acknowledge the health issues of the Appellant's daughter and the new born child inherent in this case and ignored the role of planning and urban design which is meant to deliver good places for everyone using decision making as prevention of health issues rather than a cure all in the public interest;
- v) Failed to take into consideration the Rights afforded to the Townsley family under Article 8 of Human Rights legislation; their personal circumstances and their applicability to this case; and the Best Interests of the Child (see Planning Policy and Design Statement).

A strict interpretation of the Council's planning policy would allow a conclusion to be reached that the development would be inappropriate at this location. However, the assessment of rural development policy must be proportionate and take into account material considerations in order to reach a rational, reasonable and informed decision.

The exceptional circumstances described throughout this Statement must be factored in to the interrogation of planning policy. This is why the policy should be used as "*handrails*" not "*handcuffs*" i.e. not used to automatically mean the prevention of development.

The environmental betterment brought about by this retrospective change of use together with the small scale temporary nature of the development i.e. caravans are not operational development; the lack of impact on the rural environment; and the other exceptional circumstances referred to in this Statement allows the Review Body to set aside the strict terms of planning policy relied upon by the Planning Authority. The Walsall case (see Section 10) is a demonstration as to how this can be done without setting an undesirable precedent and in doing so meet a social need in the Angus

administrative area. The Review Body has done so in the past and can do so now and in doing so deliver social justice.

This Statement provides a reasoned justification to allow the decision makers (who have to have due regard to the need to advance Equality of Opportunity for Gypsy/Travellers) reasons to grant planning permission. By taking account of the change in personal circumstances of the Townsley family, applying proportionality to the decision making process, a reasonable approach to decision making can be found. By granting conditional planning permission Angus Council can continue to make a difference to the lives of this Gypsy/Traveller family.

It is submitted that planning permission should be granted for this development subject to appropriate and reasonable planning conditions. If a temporary planning permission is deemed desirable the Appellant has advised he would accept this.

An Executive Summary of this Statement of Case is submitted as **Document AS15**.

12. Appendix 1: List of Documents

- Document AS1: Planning Application reference 19/00023/FULL**
 AS1A Planning Application Form
 AS1B Location Plan
 AS1C Pitch Layout
 AS1D Survey Drawing
 AS1E Fence Detail
 AS1F Proposed Amenity Block (Photographs)
 AS1G Planning Policy and Design Statement
- Document AS2A: Letter to the Head of Planning dated 21 November 2018**
- Document AS2B: Councils response dated 4 December 2018**
- Document AS3A: Letter from GP dated 18 December 2018**
- Document AS3B: Letter from GP dated 16 January 2019**
- Document AS3C: Letter from GP dated 18 April 2019**
- Document AS4A: Report of Handling for planning Application 19/00023/FULL**
- Document AS4B: Decision Notice Ref 19/00023/FULL dated 30 April 2019**
- Document AS5: Minute of the Angus Council Development Management Review Committee dated 3 July 2017**
- Document AS6: Relevant extracts from the Angus Council Local Development Plan.**
- Document AS7: DPEA Decision Notice Reference ENA-120-2007 dated 23 November 2016.**
- Document AS8: Relevant extracts from SPP (2014)**
- Document AS9: Relevant extracts from the Angus Council Local Housing Strategy 2017 – 2022**
- Document AS10: Extracts from the Equalities and Human Rights Commission Report (EHRC) 44 (2015)**
- Document AS11: Extracts from The Equality Act 2010**
- Document AS12: The Great Portland Estates plc. v Westminster City Council (Summary)**
- Document AS13: Extracts from the ECHR**
- Document AS14: First Secretary of State and Others v Chichester Borough Council, 2004 [EWCA Civ 1248]**
- Document AS15: Executive Summary**



Angus House Orchardbank Business Park Forfar DD8 1AN Tel: 01307 473360 Fax: 01307 461 895 Email: plnprocessing@angus.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100145905-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

- Application for planning permission (including changes of use and surface mineral working).
- Application for planning permission in principle.
- Further application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions.

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in part retrospect)

Is this a temporary permission? *

Yes No

If a change of use is to be included in the proposal has it already taken place?

Yes No

(Answer 'No' if there is no change of use.) *

Has the work already been started and/or completed? *

No Yes – Started Yes - Completed

Please state date of completion, or if not completed, the start date (dd/mm/yyyy): *

01/08/2017

Please explain why work has taken place in advance of making this application: * (Max 500 characters)

See previous decisions and supporting statement

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	Seath Planning Consultancy Ltd		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	ALAN	Building Name:	
Last Name: *	SEATH	Building Number:	88
Telephone Number: *	07731690473	Address 1 (Street): *	Scott Road
Extension Number:		Address 2:	
Mobile Number:		Town/City: *	Glenrothes
Fax Number:		Country: *	Scotland
		Postcode: *	KY6 1AE
Email Address: *	a_seath@sky.com		

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	Mr	You must enter a Building Name or Number, or both: *	
Other Title:		Building Name:	The Oaks
First Name: *	John	Building Number:	
Last Name: *	Townsley	Address 1 (Street): *	North Mains Road
Company/Organisation	Applicant	Address 2:	
Telephone Number: *		Town/City: *	Kirriemuir
Extension Number:		Country: *	Scotland
Mobile Number:		Postcode: *	DD8 5PG
Fax Number:			
Email Address: *			

Site Address Details

Planning Authority:

Angus Council

Full postal address of the site (including postcode where available):

Address 1:

Address 2:

Address 3:

Address 4:

Address 5:

Town/City/Settlement:

Post Code:

Please identify/describe the location of the site or sites

Northing

753011

Easting

337966

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

Yes No

Pre-Application Discussion Details Cont.

In what format was the feedback given? *

Meeting Telephone Letter Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) * (max 500 characters)

Revised planning application to be accepted

Title:

Ms

Other title:

First Name:

Stephanie

Last Name:

Porter

Correspondence Reference Number:

17/01017/FULL

Date (dd/mm/yyyy):

04/12/2018

Note 1. A Processing agreement involves setting out the key stages involved in determining a planning application, identifying what information is required and from whom and setting timescales for the delivery of various stages of the process.

Site Area

Please state the site area:

1205.00

Please state the measurement type used:

Hectares (ha) Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: * (Max 500 characters)

Caravan pitch

Access and Parking

Are you proposing a new altered vehicle access to or from a public road? *

Yes No

If Yes please describe and show on your drawings the position of any existing. Altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any change to public paths, public rights of way or affecting any public right of access? *

Yes No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application Site?

3

How many vehicle parking spaces (garaging and open parking) do you propose on the site (i.e. the Total of existing and any new spaces or a reduced number of spaces)? *

3

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, cycles spaces).

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? *

Yes No

Are you proposing to connect to the public drainage network (eg. to an existing sewer)? *

- Yes – connecting to public drainage network
 No – proposing to make private drainage arrangements
 Not Applicable – only arrangements for water supply required

Do your proposals make provision for sustainable drainage of surface water?? * (e.g. SUDS arrangements) *

Yes No

Note:-

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? *

- Yes
 No, using a private water supply
 No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

Assessment of Flood Risk

Is the site within an area of known risk of flooding? *

Yes No Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? *

Yes No Don't Know

Trees

Are there any trees on or adjacent to the application site? *

Yes No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

Waste Storage and Collection

Do the plans incorporate areas to store and aid the collection of waste (including recycling)? *

Yes No

If Yes or No, please provide further details: * (Max 500 characters)

See layout plan

Residential Units Including Conversion

Does your proposal include new or additional houses and/or flats? *

Yes No

All Types of Non Housing Development – Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

Yes No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013) *

Yes No Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

Yes No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATION 2013

One Certificate must be completed and submitted along with the application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? *

Yes No

Is any of the land part of an agricultural holding? *

Yes No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate A

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate A

I hereby certify that –

(1) - No person other than myself/the applicant was an owner (Any person who, in respect of any part of the land, is the owner or is the lessee under a lease thereof of which not less than 7 years remain unexpired.) of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding

Signed: ALAN SEATH

On behalf of: Applicant

Date: 14/01/2019

Please tick here to certify this Certificate. *

Checklist – Application for Planning Permission

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

Yes No Not applicable to this application

b) If this is an application for planning permission or planning permission in principal where there is a crown interest in the land, have you provided a statement to that effect? *

Yes No Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major development (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

Yes No Not applicable to this application

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

Yes No Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

Yes No Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

Yes No Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

Site Layout Plan or Block plan.

Elevations.

Floor plans.

Cross sections.

Roof plan.

Master Plan/Framework Plan.

Landscape plan.

Photographs and/or photomontages.

Other.

If Other, please specify: * (Max 500 characters)

Provide copies of the following documents if applicable:

A copy of an Environmental Statement. *

Yes N/A

A Design Statement or Design and Access Statement. *

Yes N/A

A Flood Risk Assessment. *

Yes N/A

A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). *

Yes N/A

Drainage/SUDS layout. *

Yes N/A

A Transport Assessment or Travel Plan

Yes N/A

Contaminated Land Assessment. *

Yes N/A

Habitat Survey. *

Yes N/A

A Processing Agreement. *

Yes N/A

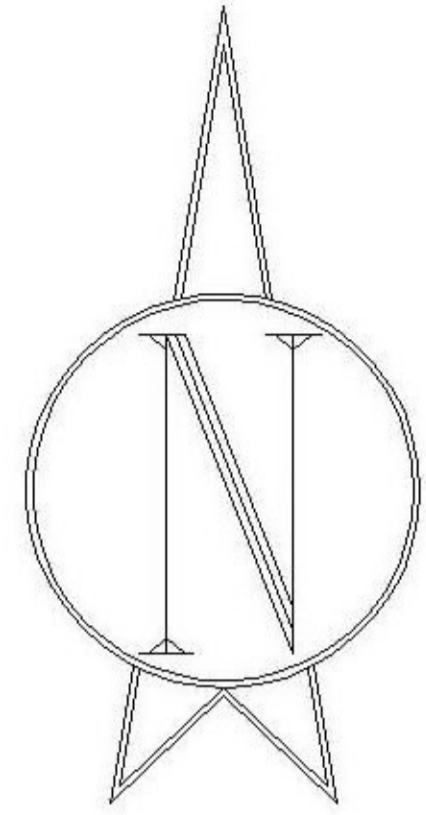
Other Statements (please specify). (Max 500 characters)

Declare – For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying Plans/drawings and additional information are provided as a part of this application.

Declaration Name: Mr ALAN SEATH

Declaration Date: 14/01/2019



Refused

Refused

Refused

PRISM
ENGINEERING



31 Gardner Crescent, Leven, Fife, KY8 4FD
tel: 07977 507185
e: scott@prismeng.co.uk
w: www.prismengineering.co.uk

Client:

John Townsley

Project:

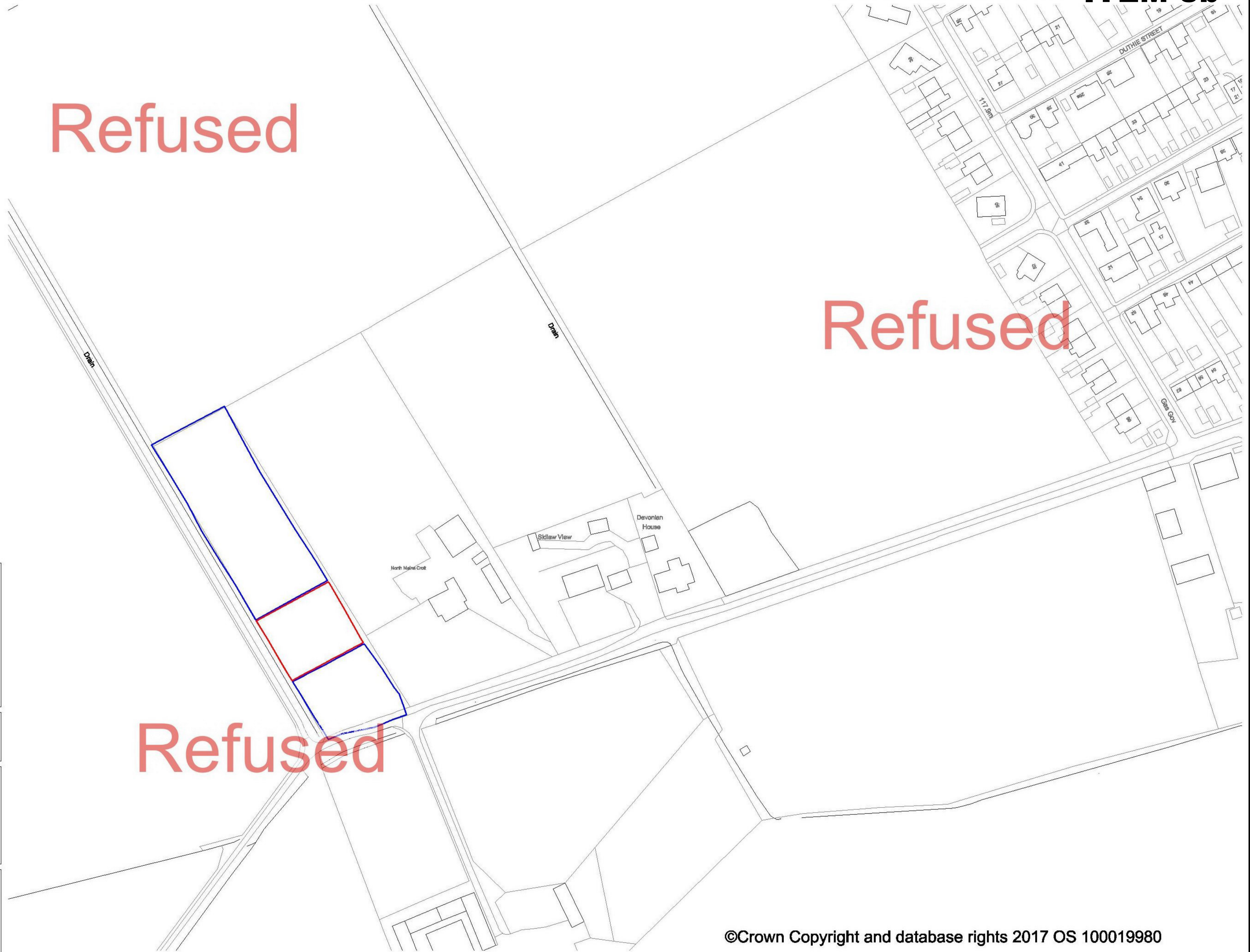
Proposed Development
Land West of North Mains Croft
Kirriemuir

Drawing:

Location Plan

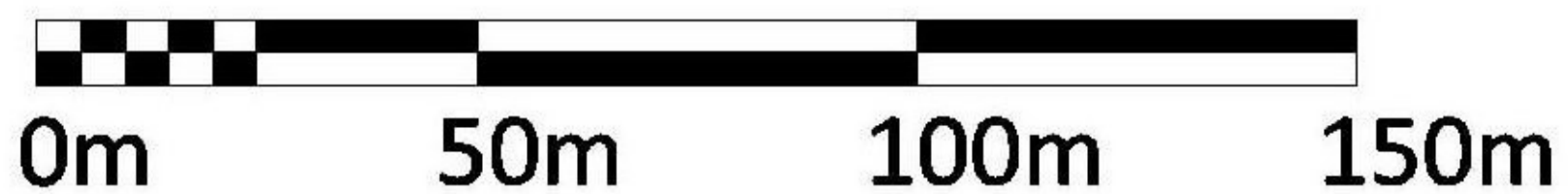
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02.11.2017	1:1250 @ A2	2017-065

Grid:	Datum:	Dwg No:
Local	OSBM Newlyn	02

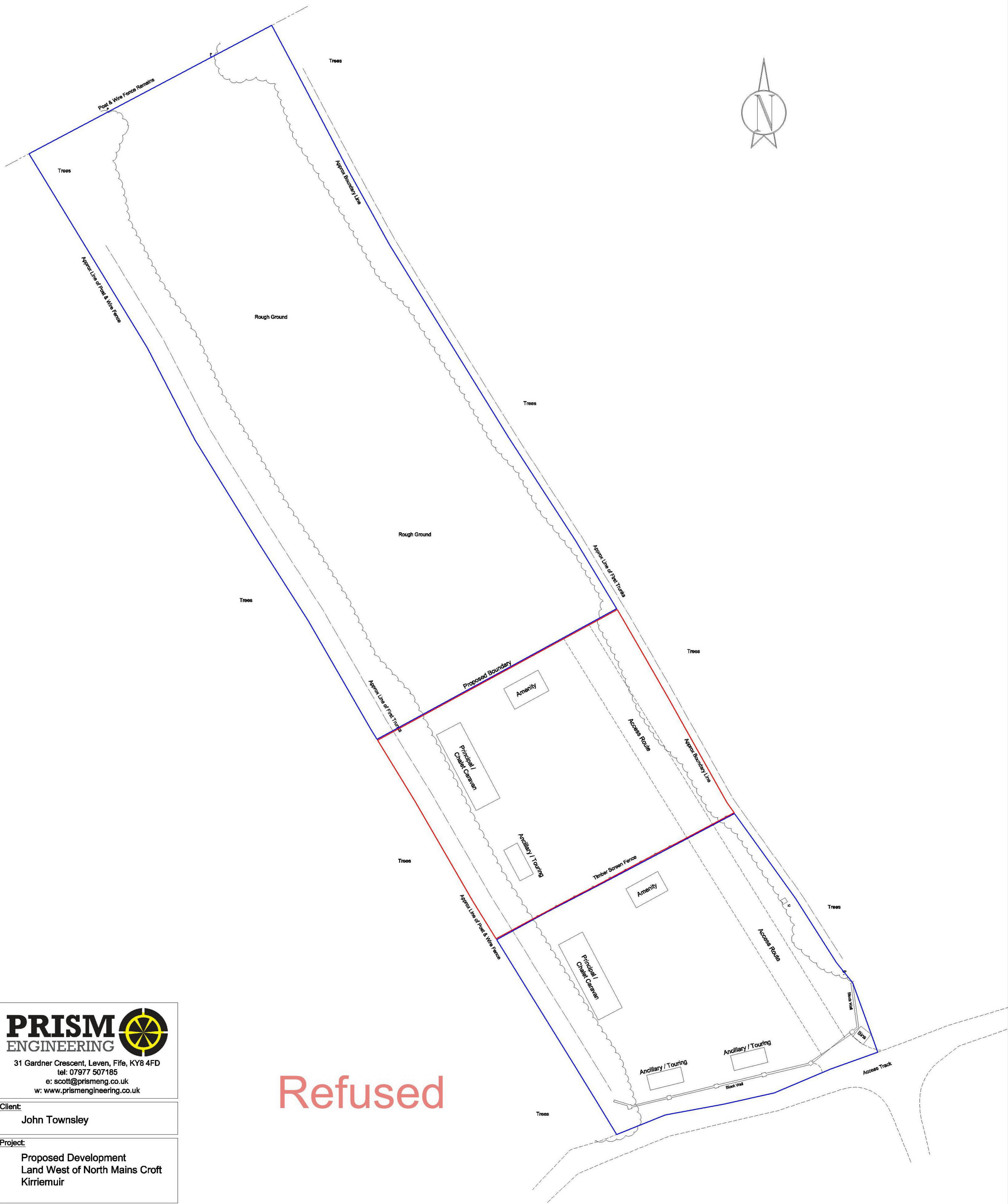


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Scale 1:1250



Refused



Refused

PRISM ENGINEERING

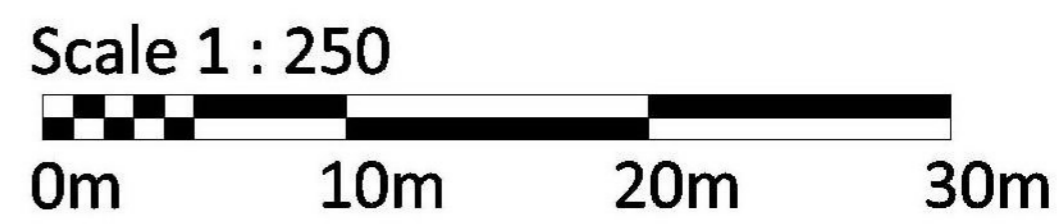
31 Gardner Crescent, Leven, Fife, KY8 4FD
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Client:
John Townsley

Project:
Proposed Development
Land West of North Mains Croft
Kirriemuir

Drawing:
Proposed Plot Layout

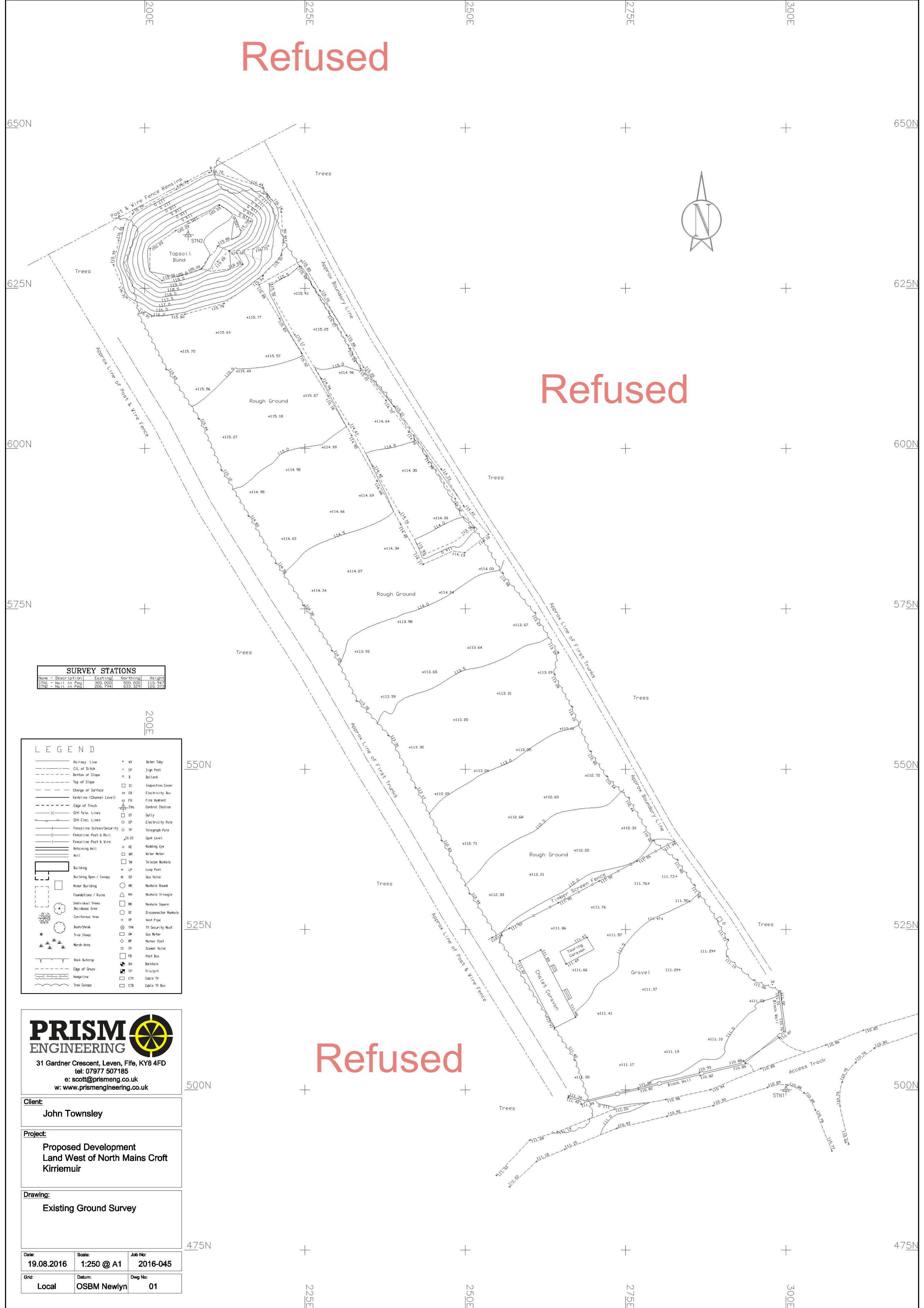
Date: 02.11.2017	Scale: 1:250 @ A1	Job No: 2017-065
Grid: Local	Datum: OSBM Newlyn	Dwg No: 01



Refused

Refused

Refused



SURVEY STATIONS

Name	Description	Easting	Northing	Height
STN1	Nail in Peg	200.000	500.000	110.947
STN2	Nail in Peg	205.794	533.359	110.373

LEGEND

—	Railway Line	W	Water Tolly
- - -	DL of Ditch	SP	Sign Post
- - -	Bottom of Slope	I	Island
- - -	Top of Slope	IC	Inspection Cover
- - -	Change of Surface	EB	Electricity Box
- - -	Kerbline (Channel Level)	FH	Fire Hydrant
- - -	Edge of Track	CS	Control Station
- - -	DH Tele. Lines	GT	Gully
- - -	DH Elec. Lines	EP	Electricity Pole
- - -	Fence Line Screen/Security	TP	Telegraph Pole
- - -	Fence Line Post & Rail	SL	Spot Level
- - -	Fence Line Post & Wire	RE	Robbing Eye
- - -	Retaining Wall	WM	Water Meter
- - -	Well	TM	Telecom Manhole
- - -	Building	LP	Lamp Post
- - -	Building Open / Canopy	GV	Gas Valve
- - -	Minor Building	MH	Manhole Round
- - -	Foundations / Ruins	MH	Manhole Triangle
- - -	Individual Trees	MH	Manhole Square
- - -	Deciduous tree	DC	Disconnector Manhole
- - -	Coniferous tree	VP	Vent Pipe
- - -	Bush/Shrub	TSM	TV Security Mast
- - -	Tree Stump	GM	Gas Meter
- - -	Marsh Area	MP	Marker Post
- - -	Rock Outcrop	SV	Screen Valve
- - -	Edge of Grass	FB	Post Box
- - -	Hedge Line	BH	Borehole
- - -	Tree Canopy	TP	Tripoint
- - -		CTV	Cable TV
- - -		CTB	Cable TV Box

PRISM ENGINEERING

31 Gardner Crescent, Leven, Fife, KY8 4FD
 tel: 07977 507185
 e: scott@prismeng.co.uk
 w: www.prismengineering.co.uk

Client:
John Townsley

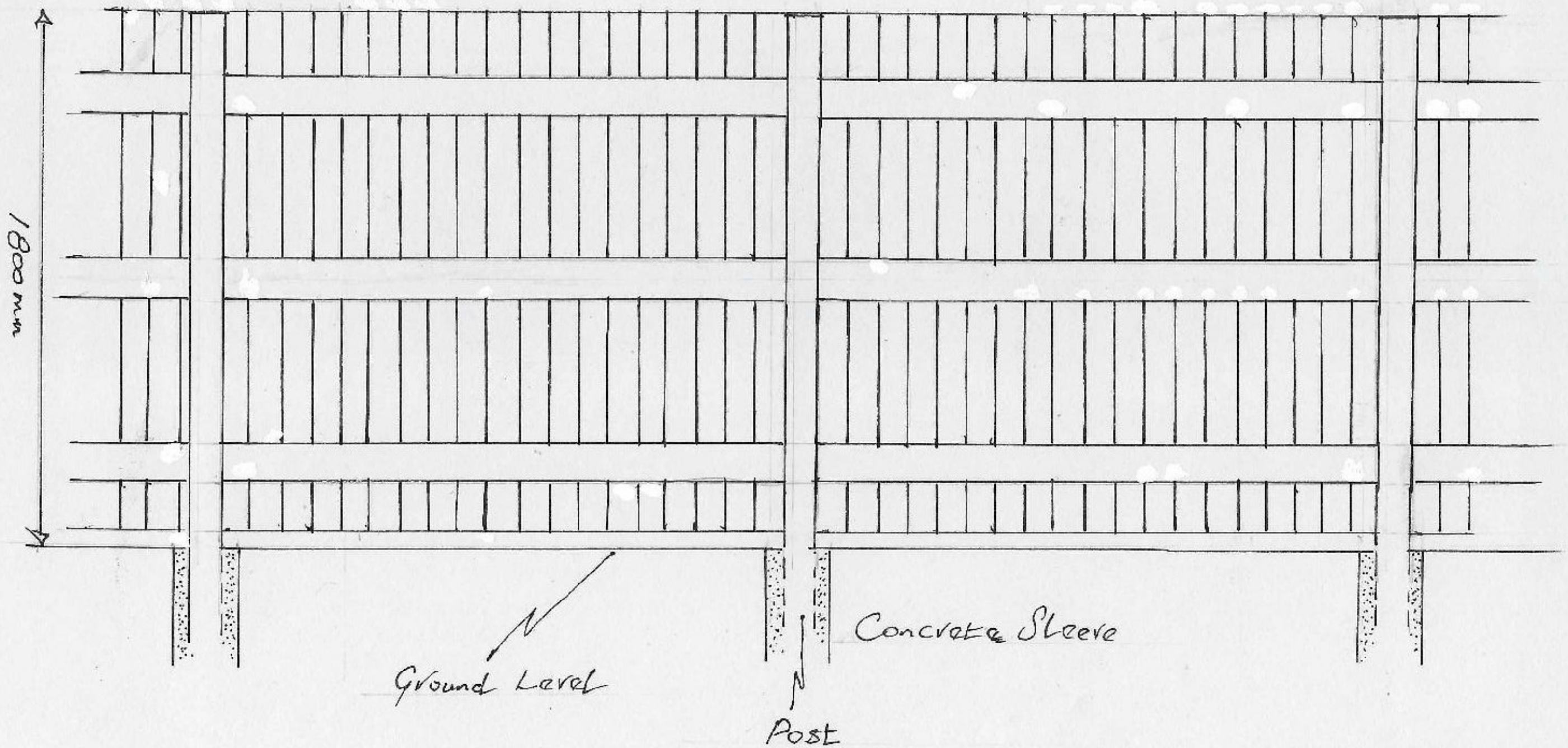
Project:
Proposed Development
Land West of North Mains Croft
Kirriemuir

Drawing:
Existing Ground Survey

Date:	Scale:	Job No:
19.08.2016	1:250 @ A1	2016-045
Grid:	Datum:	Dwg No:
Local	OSBM Newlyn	01

Refused

1800mm High Close Board Fence Detail



Scale 1:20

ITEM 3f





26448



SPC Seath Planning Consultancy Ltd.

Date: 21 November 2018

Ms. K. Cowey,
Service Leader Planning & Communities,
Angus Council,
Orchardbank,
Orchardbank Business Park,
Forfar,
DD8 1AN

Our ref: AS/071

Your Ref:

Dear Ms. Cowey

Subject: Planning Proposals Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in part retrospect) at Land 125M West of North Mains Croft Logie Kirriemuir for Mr John Townsley

This letter is an updated version of the one I sent to Mr. Hunter earlier this week.

As you will be aware recently the Local Review Body [LRB] of the Council refused planning permission for a small extension (Pitch 2) to the Gypsy/Travellers site (Pitch 1) approved last year. There is enforcement action pending to remove Mr. Townsley's daughter and her son in law from the site which in effect will break up the family unit.

The reasons for refusal related to two principal issues:

That the application is contrary to Policy TC6 of the Angus Local Development Plan (2016) as there are existing authorised sites with capacity to accommodate the applicant and his family, and as the proposal could set a precedent or open up other areas for similar development.

That the application is contrary to Policy PV20 of the Angus Local Development Plan (2016) as the development is located on prime agricultural land and as it does not meet the criteria for development of prime agricultural land identified in that policy.

As a consequence, the proposal is deemed as contrary to Policy DS1 of the Angus Local Development Plan (2016) because it is contrary to other policies of the local development plan, namely Policies TC6 and PV20.

The case submitted when Mr. Townsley's application was determined (Pitch 1) was based on the facts that:

- i) the site is not in productive agricultural use;
- ii) due to its physical characteristics the site is too small and of a secluded nature (surrounded by mature tree belts) and therefore not suited to arable use; and

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email: a_seath@sky.com

Telephone: 01592 304188 or Mobile: 07731690473

iii) given the scale and nature of the use it does not represent the permanent loss of agricultural land as defined.

In addition, the planning case submitted determined that the site relied upon by Angus Council for Gypsy/Traveller accommodation at Petterden (previously referred to as Balmuir) was inadequate and unsuitable as a permanent home. This was reinforced by the Scottish Ministers Reporter in his decision relating to an Enforcement appeal in which he observed at **paragraph 10 of the decision letter dated 23 November 2016**:

“I understand that the St Christopher’s permanent gypsy site near Montrose is generally full and was shown the only site with capacity available is the Balmuir Wood Gypsy/Traveller site which, with its concrete pitches, bathroom blocks and location next to the busy A90, gave an impression more of a transit site. I have also taken account of all the points raised in the submissions but the availability of gypsy sites, the council’s gypsy housing policies, Scottish Planning Policy, the Housing (Scotland) Act 2001 and the appellants rights under the European Convention on Human Rights and the Equalities Act 2010 are all matters to be considered under the planning application and are therefore not before me in this appeal.”

The LRB agreed and approved permission for Mr. Townsley’s pitch.

However, the same reasons for refusal were used for Mr. Townsley’s daughter’s proposals when refusing Pitch 2. At Review these reasons were upheld and permission refused. In effect one more person would be on site and two more caravans to allow this family unit to remain together.

I have another client in the Angus area who has obtained planning permission for 171 caravans. In the Report of Handling for the most recent extension it was stated:

“The current application is supported by a report from the Scottish Agricultural College (SAC) which indicates the application site is not currently in agricultural production, is of small scale and awkward shape therefore it is not suited to intensive arable cropping. In addition to this due to the lack of infrastructure (irrigation, fencing, water trough, handling system etc.), its location and scale the application site is not ideally suited for livestock grazing or forage production. It is also stated in the SAC Report that the development of the site should not be considered as permanent loss of land as the land could be reinstated in the future given the nature of development proposed. This new information was not submitted as part of the earlier application on this site (13/01037/FULL) and is material to the assessment of this proposal. In considering this information against the main part of the Development Strategy of the ALPR (found at 1.18) relevant to this proposal it is the stated aim to provide opportunities for diversification of the rural economy. Based on the information within the Planning Statement submitted in support of the application the economic benefits which would result from the proposal are considered to be compatible with the aim of the Development Strategy to diversify the rural economy. Paragraph 2.58 also identifies the aim of increasing the variety and quality of accommodation in Angus. In this case and taking account of the SAC comments that the site could be returned to agriculture, the loss of prime agricultural land is not considered to be contrary to the aims of Policy ER30.”

Although there are no economic benefits associated with Mr. Townsley’s application there are distinct social benefits in relation to housing the Townsley family who are part of an ethnic minority group (Gypsy/Travellers). There is a lack of suitable accommodation in Angus Council.

In addition, the most recent publication by the Scottish Government publication (Improving Gypsy/Travellers Sites - May 2018) refers to minimum standards on Gypsy/Travellers sites. It is noted that Angus Council is listed as having one site in their administrative area and Petterden is in fact owned by Dundee City Council. Having visited this site (as has the Reporter – see above) it is considered to be below minimum standards and with a lack of investment it will remain in such a condition.

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One further issue is the health condition of Mr. Townsley's daughter which can be evidenced by doctors' letters and the fact that she is also pregnant. There is planning case law which has persuasive argument to suggest that there is a need for local authorities to take account of considerations of common humanity and to carry out welfare enquiries before deciding whether to evict Gypsy/Travellers from their land; and that personal circumstances are a material consideration as documented in the *Westminster v Great Portland Estates* case. This states that it is inhumane to exclude the human factor from the administration of planning control.

I write to ask if the Council would accept another planning application for Mr. Townsley's family for Pitch 2 based on:

1. Further information and a justification from SAC;
2. Evidence based on an assertion that the accommodation at Petterden is below tolerable minimum standards unsuitable for private accommodation for Gypsy/Travellers; and
3. The health conditions of Mr. Townsley's daughter.

The founding principle of s39 of the Planning Act is that the Council retain discretion on matters above all else and any others in the decision to accept a revised planning application. I would refer you to the Richmond decision (an English case which has a persuasive legal argument in Scotland); and/or the decision of the Inner House in *Noble Organisation Ltd v. Falkirk District Council* 1993 SC 221. Copies can be sent to you if requested.

Both of the abovementioned aspects (1. and 2.) would represent material considerations justifying the submission of a fresh application. There is a precedent for doing so given that the tourist development referred to above was approved following a refusal and the submission of additional information.

I look forward to receiving your reply.

Yours sincerely,



Alan Seath DipTP MRTPI

cc: Mr. Alan Hunter

From: PorterSG <PorterSG@angus.gov.uk>
Subject: Change of Use of Vacant Land to Form a Chalet/Caravan Pitch at Land 125M West Of North Mains Croft, Logie, Kirriemuir (Last Ref: 17/01017/FULL)
Date: 4 December 2018 at 13:55:15 GMT
To: "a_seath@sky.com" <a_seath@sky.com>

Dear Mr Seath,

I write in response to your recent correspondence submitted in relation to the above site, as received by this Service on the 23rd of November 2018.

In response to the matters you have raised I would note that the Local Review Body had regard to the first two matters you have raised; the proposals impact on agricultural land and capacity of existing authorised sites, during the review process. However the health conditions of Mr Townsley's daughter have not be considered and as such the Council would not decline to determine another application for this site.

I trust this proves helpful.

Kind Regards

Stephanie Porter | Planning Officer | Place | Planning | Angus Council | Angus House | Orchardbank Business Park | Forfar, DD8 1AN | (01307 473365)



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Angus Council

Application Number:	19/00023/FULL
Description of Development:	Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in Part Retrospect)
Site Address:	Land 125M West Of North Mains Croft Logie Kirriemuir
Grid Ref:	337962 : 753027
Applicant Name:	Mr John Townsley

Report of Handling

Site Description

The application site measures approximately 1200sqm and is located in the countryside 350m to the southwest of the Kirriemuir Development Boundary. The application site is laid throughout in hardcore and is occupied by a touring caravan and a chalet. An authorised caravan pitch is located to the south and open ground to the north, both of which are in the applicant's ownership. The site is bound by a dark green 1.8m high fence to the south, east and west and by a 1.2m high dark green fence to the north. High trees line the east and west of the site beyond the timber fences. There is a residential property directly to the east of the site and core paths 253 and 254 are adjacent to the southern and western boundaries. The site is served by an existing access track taken from North Mains Road.

Proposal

The application seeks part retrospective planning permission to allow the siting of a chalet and one touring caravan, the formation of hardstanding and the erection of a 1.8m high fence and an amenity block. The chalet would have a footprint of approximately 40sqm. The amenity block, which would provide laundry and toilet facilities, would have a footprint of 18sqm and a height of 2.9m. The proposal includes the erection of a dark green 1.8m high fence to the north of the site (there is currently a 1.2m high timber fence along this boundary). The site has been topped with aggregate. The proposal would be connected to the public water supply and foul drainage networks and SUDS provision would be made for surface water drainage. The site would be served by an existing access track.

The application has not been subject of variation.

Publicity

The application was subject to normal neighbour notification procedures.

The application was advertised in the Dundee Courier on 25 January 2019 for the following reasons:

- Neighbouring Land with No Premises

The nature of the proposal did not require a site notice to be posted.

Planning History

Application 13/00969/PPPL for Planning Permission in Principle for Erection of Dwellinghouse & Garage was "Refused" on 20 December 2013.

The site forms part of a wider area which measures approximately 0.6ha in area and is subject to an

on-going Enforcement Case ref: 16/00165/UNDV. An Enforcement Notice was served by the Council on 19 August 2016 requiring the removal of caravans, drainage and services and reinstatement of the channels which have been dug; removal of rubble, hard core and the earth bund with restoration of the site to a greenfield condition.

The Enforcement Notice was subject of an appeal on the grounds that that the steps required by the notice were excessive and less onerous steps would remedy the breach and that the time allowed to comply with the notice was too short. The appeal was upheld by the Scottish Government on 23 November 2016 who recommend "remove the rubble, hard core and earthen bund at the site..." be substituted with "Remove the rubble and hard core from the site, level the earthen bund...". The periods for compliance were varied to remove the caravans from the site on or before 3 August 2017 and to complete the remaining steps on or before 3 September 2017.

Application 16/00738/FULL to the south of the site for 'Change of Use of Vacant Land to allow siting of a Chalet and two Touring Caravans, Erection of Amenity Block and Boundary Wall, Formation of Car Parking, Alteration of Ground Levels and Associated Infrastructure' was refused under delegated powers on 6 January 2017 for the following reasons:-

1. *The application is contrary to Policy TC6 of the Angus Local Development Plan (2016) as there are existing authorised sites with capacity to accommodate the applicant and his family, as the proposal would not contribute to satisfying a local need in a formulated manner, as the proposal could set a precedent or open up other areas for similar development.*
2. *The application is contrary to Policy PV20 of the Angus Local Development Plan (2016) as the development would not preserve prime agricultural land or be related to a rural business, support delivery of the development strategy or relate to renewable energy development.*
3. *The proposal is contrary to policy DS1 of the Angus Local Development Plan (2016) because it is contrary to other policies of the local development plan, namely Policies TC6 and PV20.*

The proposal was subject of a review to the Council's Development Management Review Committee on 21st of August 2017 who allowed the review and granted planning permission subject to conditions. Those conditions required:

1. *That within 3 months of the date of this permission full details, including technical approval from Scottish Water, of the proposed foul drainage system shall be submitted to and approved in writing by the Planning Authority. This shall include the route of the proposed foul drainage connection. The approved scheme shall be thereafter be carried out within 6 months of the date of this permission.
Reason: In order to allow the Planning Authority to consider the foul drainage arrangements and ensure suitable connections are made in a timely manner.*
2. *That within 3 months of the date of this permission full details of the proposed surface water drainage arrangements shall be submitted to and approved in writing by the Planning Authority. The approved scheme shall thereafter be carried out within 6 months of the date of this permission.
Reason: In order to allow the Planning Authority to consider the surface water drainage arrangement and ensure suitable provision is made in a timely manner.*
3. *That the number of caravans on the site shall not exceed one static caravan and two touring caravans.
Reason: In order that the Planning Authority may regulate the number of caravans on the site, in the interests of the amenity of the area.*
4. *That within 9 months of the date of this permission the amenity block, as per drawings named and numbered Floor Plan & Elevations no.16-15/0093-046 and Proposed Plot Layout no.03, shall be completed.
Reason: In order to ensure the development is in accordance with the approved proposal and in order to ensure the site is fit for human habitation.*

A Breach of Condition Notice was issued with regards to this permission on 12 December 2017 because conditions 1 and 2 had not been discharged within the 3 month timeframe from the date of approval. Information was submitted to discharge condition 2 relating to surface water drainage arrangements at

the site on 18 June 2018. This was approved on 21 June 2018. The agent has indicated that the approved surface water drainage arrangements have been implemented. At this time Condition 1 has not been discharged although an application for connection to the public sewer has now been submitted to Scottish Water. The agent has advised Scottish Water has recently requested further information regarding this connection.

Following the approval of application ref: 16/00738/FULL for 'Change of Use of Vacant Land to allow siting of a Chalet and two Touring Caravans [...]' on the southernmost section of the site, the initial Enforcement Notice was withdrawn and a second Enforcement Notice was issued on 24 August 2017. The second notice related to the land north of the approved caravan site and required the removal of all caravans trailers and other vehicles, wooden fences and drainage services, and the rubble and hardcore from the site, and to level the bund - all within 3 months of the notice. The Enforcement Notice was still in effect and further action was delayed pending the outcome of applications ref: 17/01016/FULL and 17/01017/FULL.

Application 17/01016/FULL to the north for 'Change of Use of Vacant Land for Storage of 12 Vehicles, Erection of Fencing and Formation of Hardstanding (in part retrospect) was withdrawn on 4 April 2018.

Application 17/01017/FULL for 'Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in part retrospect)' on the current site was refused under delegated powers on 13 April 2018 for the following reasons:-

1. *The application is contrary to Policy TC6 of the Angus Local Development Plan (2016) as there are existing authorised sites with capacity to accommodate the applicant and his family, and as the proposal could set a precedent or open up other areas for similar development.*
2. *The application is contrary to Policy PV20 of the Angus Local Development Plan (2016) as the development is located on prime agricultural land and as it does not meet the criteria for development of prime agricultural land identified in that policy.*
3. *The proposal is contrary to Policy DS1 of the Angus Local Development Plan (2016) because it is contrary to other policies of the local development plan, namely Policies TC6 and PV20.*

This application was subject of a review to the Council's Development Management Review Committee on 11 September 2018, who dismissed the review for the same reasons given within the delegated refusal.

The Development Standards Committee of 11 November 2018 agreed direct action be instigated to secure compliance with the terms of the Enforcement Notice and to recover costs from the owner or lessee of the land in respect of any direct action taken. Preparation for direct action is on-going.

Applicant's Case

The following supporting documentation has been provided:

A Planning Policy and Design Statement - this document provides a summary of the layout and design of the site, the personal circumstances of the applicant, associated planning history, the need and demand of the Gypsy/Travelling community in Angus and legislation relating to the Gypsy/Traveller community and the current proposal. The statement highlights limitations in dealing with unauthorised encampments, the positive impact of site provision and considers the proposal against the relevant national and local planning policy; concluding the proposal would be in general compliance with SPP and the Angus Local Development Plan.

The statement goes on to suggest a number of material planning considerations such as the Equalities and Human Rights Commission Report (EHRC) 44 (2015), social, economic and environmental justifications, Human Rights and the Equality Act 2010. The statement states that at present there are two unsuitable Gypsy/Travellers sites in Angus and there has been a lack of progress by the Council to find suitable accommodation, making reference to the Angus Council Local Housing Strategies 2012-2017 and 2017-2022. It suggest that as a consequence an unaddressed need has been created and the development plan policies relating to Gypsy/Travelling sites allows a justification to be submitted for

private, permanent sites. The statement notes the approach by the Applicant has provided a step towards resolving the Council's accommodation needs for Gypsy/Travellers at no cost to the public purse.

The statement makes reference to the Development Management Review Committee (DMRC) decision on application 16/00738/FULL for the applicant's Gypsy/Traveller pitch to the south of the current site. The statement indicates the DMRC decision to approve the adjoining site is a binding material consideration in the determination of the current planning application and suggests the Council places greater weight on the refusal and subsequent Local Review dismissal of application ref: 17/01017/FULL which sought retrospective permission for this same development.

The statement goes on to rebut the reasons for refusal of application ref: 17/01017/FULL, noting the current proposal would not set an undesirable precedent and that the authorised site at Petterden is not suitable. It indicates that the application site is not suitable for agriculture and the proposal cannot be considered as a permanent loss of land as the land can be reinstated in the future due to the nature of the proposal. The statement also makes reference permission ref: 14/00992/FULL for the siting of caravans at a site outside Forfar which was approved on prime quality land, noting that if the Council can set aside policy requirements for 171 caravans for economic reasons then it can surely take a similar approach, in this case, to meet a pressing social need.

The statement goes on to note that case law is clear that there are occasions where exceptions should be made when considering personal circumstance and that the personal circumstances of the applicant should be taken into account in the consideration of this application. The health issues and personal circumstances of the Applicant's extended family are of particular relevance as is the lifestyle and culture of the Gypsy/Travelling community where family bonds are important to this ethnic minority group. The statement concludes that with the lack of suitable accommodation the Applicant's daughter and her husband need somewhere to stay and the remaining land in the ownership of the Applicant is a suitable location. It is submitted that the aforementioned social and economic arguments must carry significant weight. They are of paramount importance, particularly when considered against the requirements of Human Rights and Equality legislation, when determining this planning application.

Correspondence from the agent, dated 22 January 2019, containing two letters from the applicant's daughter's doctor confirming she is subject to a number of medical conditions. The doctor notes an understanding that the applicant's daughter currently resides at the application site and that it would be beneficial for her health to remain at this address.

Correspondence from the agent, dated the 3 March, notes that that the dimensions of the amenity block are: 2.9m high, 5.5m long and 3.2m wide. Various photographs of the proposed amenity block have also been submitted.

Full copies of the supporting documentation can be viewed via the Public Access portal.

Consultations

Scottish Government - There was no response from this consultee at the time of report preparation.

Angus Council Housing Service - Has advised the travelling site at Balmuir Wood has 20 individual pitches (of which approximately 50% are currently vacant). Although within Angus this site is managed by Dundee City Council but Angus Council have access to the site through the Site Liaison Officer. Angus Council are entitled to nominate travelling people and their families for allocation of pitches at this site, provided vacant pitches are available. Dundee City Council shall accept such nominations provided they are in accordance with Dundee City Council's letting procedures. St Christopher's is located within Angus and managed by Angus Council. This has 18 pitches; all of which are currently occupied and there is a waiting list for stances at this site. The Needs Assessment [carried out in association with TAYplan] indicates a small shortfall of accommodation for Gypsy/Travellers in Angus. On review this mainly relates to demand in the North HMA and to a lesser extent in the West HMA.

Angus Council Environmental Health - Offers no objection to the proposal in terms of amenity but advises a Caravan Site Licence would be required.

Angus Council - Countryside Access - Offers no objection to the proposal subject to conditions to regulate landscaping and access due to proximity to core paths 253 and 254.

Community Council - There was no response from this consultee at the time of report preparation.

Angus Council - Roads - Offers no objection to the proposal.

Scottish Water - Has advised that there is sufficient capacity at the local waste water treatment works for foul drainage but they are unable to confirm capacity at the local water treatment works for water supply.

Representations

There were no letters of representation.

Development Plan Policies

Angus Local Development Plan 2016

Policy DS1 : Development Boundaries and Priorities
Policy DS3 : Design Quality and Placemaking
Policy DS4 : Amenity
Policy TC6 : Gypsies and Travellers and Travelling Showpeople
Policy PV3 : Access and Informal Recreation
Policy PV6 : Development in the Landscape
Policy PV7 : Woodland, Trees and Hedges
Policy PV15 : Drainage Infrastructure
Policy PV20 : Soils and Geodiversity

TAYplan Strategic Development Plan

The proposal is not of strategic significance and policies of TAYplan are not referred to in this report.

The full text of the relevant development plan policies can be viewed at Appendix 1 to this report.

Assessment

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.

The application site is located in the countryside, outwith a Development Boundary. The site is not allocated or safeguarded for any particular use in that Angus Local Development Plan (ALDP). Policy DS1 in the ALDP states that outwith development boundaries, proposals will be supported where they are of a scale and nature appropriate to the location and where they accord with other relevant policies in the ALDP.

The primary policy test in this instance is Policy TC6 which relates to sites for Gypsies and Travellers and Travelling Showpeople. The first statement in this policy notes that Gypsies and Travellers and Travelling Showpeople will be encouraged to stay at authorised sites which will be protected from alternative uses. Proposals for new or extended permanent sites and temporary "short stay" sites for Gypsies and Travellers will only be supported where the site will contribute to satisfying a local need identified in the Local Housing Strategy and is consistent with Angus Council's strategy for meeting the accommodation needs of these client groups; the development is designed and located to minimise adverse effects on the landscape, established amenity, character and built or natural heritage interests of the surrounding area; the proposed site will provide a good residential amenity for residents and has adequate access to community, education and health services and facilities; and the proposed development would not set a precedent or open up other areas for similar development.

The policy clearly identifies that Gypsies and Travellers and Travelling Showpeople will be encouraged to stay at authorised sites. There is currently one authorised site in the control of Angus Council, St Christopher's at Tayock which is fully occupied. There is also an authorised site at Balmuir Wood which is managed by Dundee City Council, but is within the Angus Council boundary. Balmuir Wood has 20 pitches, approximately 10 of which are currently vacant. The Balmuir Wood site is around 14 miles from the application site. Angus Council has access to the Balmuir Wood site through the Site Liaison Officer and is entitled to nominate travelling people and their families for pitches at this site, provided vacant pitches are available. Dundee City Council is required to accept such nominations provided they are in accordance with Dundee City Council's letting procedures. The Balmuir Wood site has capacity to accommodate the additional caravans proposed by this application without development of agricultural land.

Policy TC6 indicates that proposed sites must contribute to satisfying a local need identified in the Local Housing Strategy. The supporting information submitted makes reference to The Angus Council Local Housing Strategy 2012-2017 (superseded) and the Angus Local Housing Strategy 2017-22, dated November 2016. The current Local Housing Strategy 2017-22 indicates (amongst other things) that in 2016 Angus, Dundee, Perth & Kinross and Fife Councils commissioned Craigforth Research to undertake a joint Gypsy Traveller and Travelling Showpeople Needs Assessment which was finalised in January 2017 [Needs Assessment]. The research indicates that across the TAYplan area there is sufficient accommodation for Gypsy/Travellers. The findings suggest *a small shortfall in permanent provision may emerge in Angus over the next five years, attributed to demand in the northeast and to a lesser extent in the west of the area..... The projected shortfall is not considered significant enough to justify provision of additional sites at this time..... [and] at present there is no identified need for accommodation for Travelling Showpeople in Angus.* The LHS indicates that the Council will continue to monitor the position across Angus and consider opportunities to improve and extend existing provision.

It is relevant to note that in the period since that Needs Assessment was finalised, a caravan site license has been granted (11 April 2017) for 16 pitches at the Thrums site in Maryton, located 0.75 miles from the current application site. The supporting statement indicates that the applicant has previously resided at that site. The Maryton site was not included in the Needs Assessment but offers potential to supplement supply and contribute towards addressing need.

Development plan policy does not support a proposal for extension of a small private site on previously undeveloped land in circumstances where there is capacity at existing sites.

Policy TC6 also requires that proposals do not set a precedent or open up other areas for similar development. The applicant has planning permission for a caravan pitch to the south of this site (ref: 16/00738/FULL). At the time the application was assessed, concerns were expressed regarding the potential for further development on land to the north (including the current application site) which was in the applicant's ownership. The supporting statement submitted alongside that application indicated that there was no intention of developing this land.

Since then, the caravan pitch to which the current application relates has been formed without requisite planning permission and in direct breach of the terms of an Enforcement Notice. In addition, the applicant has also formed an area of hardstanding to the north of the current application site. This has also been done without the requisite planning permission and in breach of the terms of an Enforcement Notice. The applicant also owns additional ground to the north of this application site. Further expansion of the existing site through the grant of this planning permission would make it difficult to resist proposals for similar development further to the north.

The proposal does not give rise to significant issues in terms of the remaining criteria of the policy but on the basis of the above assessment the proposal is contrary to Policy TC6.

Policy PV20 Soils and Geodiversity notes that development proposals on prime agricultural land will only be supported where they support delivery of the development strategy and policies in this local plan; are small scale and directly related to a rural business or mineral extraction; or constitute renewable energy development and are supported by a commitment to a bond commensurate with site restoration requirements.

Information submitted in support of the application makes reference to a Development Management Review Committee (DMRC) decision on application 16/00738/FULL (which relates to the authorised caravan pitch to the south of the current site). The DMRC decision notes *the small scale and nature of the site would not fit with the designation as prime quality agricultural land and could be supported within the context of Policy PV20*. The proposal suggests that is a material consideration in the determination of the current application and the planning authority's argument that the land comprises prime quality agricultural land should be set aside and the site should be considered rural brownfield. The 2016 application is of a similar scale (in terms of area) as the site. However the current application relates to a different proposal. Furthermore, regardless of the previous applications and the DMRC conclusion it is a matter of fact that the application site is classified as Class 2 prime agricultural land as assigned by the James Hutton Institute. In addition, the last lawful use of the site was for agriculture and that position was accepted by the Reporter who determined the Enforcement Notice appeal. The terms of the Enforcement Notice require the site to be returned to a greenfield condition. The condition of the site, which has largely been created by the actions of the applicant, does not justify approval of the current application.

The supporting information also makes reference to planning permission 14/00992/FULL for the siting of caravans at Lochlands, Forfar on prime quality agricultural land as part of the case to justify the use of this area of prime quality land. The applicant's supporting statement accepts that the current application would not provide the economic benefits which contributed to justifying the approval of an extension of an existing caravan site for holiday purposes at Lochlands. In any case, the 2014 application at Lochlands was considered against different policies and a different development plan (the superseded Angus Local Plan Review 2009) and is of limited relevance in the determination of a proposal for a different form of development on a different site. It is also noted that the Lochlands application was restricted for short stay tourism use and did not allow for permanent residential accommodation to be formed.

The proposal does not comply with any of the criteria identified in Policy PV20 that would allow development of prime quality land.

Policy DS4 deals with amenity and indicates that development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties. Policy PV3 states that new development should not compromise the integrity or amenity of existing recreational access opportunities including access rights, core paths and rights of way.

The site is reasonably well screened from neighbouring property by virtue of existing trees but those trees are not subject of any statutory protection and their long-term retention could not be secured by planning condition. Notwithstanding that, the use of the site for residential occupation would be broadly consistent with neighbouring land uses and careful siting of any caravans and associated structures should ensure no significant impact on the amenity of those that live in the immediate area. The site is accessed from a narrow rural track which extends approximately 350m west from the junction of Sunnyside and South Street to the application site. The track, which forms part of Kirriemuir Path Network (Core Paths 253 and 254), has limited opportunities for passing and is finished a loose metal with potholes. The Roads Service offers no objection to the proposal and it is not considered that the use of the track by an additional household would have a significant detrimental impact on users of the core path(s). There is no suspected land contamination at the site and the proposal would not give rise to other significant amenity impacts.

Policy PV15 relates to drainage infrastructure and states that development proposals within Development Boundaries will be required to connect to the public sewer where available and proposals outwith areas served by public sewers should meet the requirements of SEPA and/or Building Standards (Scotland) Regulations. The policy goes on to state that all new developments (except single dwelling and developments that discharge directly to coastal waters) will be required to provide Sustainable Drainage Systems (SUDs) to accommodate surface water drainage.

The application from states that SUDS provision would be made for surface water drainage and the development would be connected to the public foul drainage network. Following advice from Scottish Water there is no reason to conclude this would not be achievable and the public sewer is understood to be located approximately 50m to the south of the applicant's landholding. Whilst a connection to the public foul drainage network would be acceptable, a similar arrangement was approved as part of the

earlier planning permission for 'Change of Use of Vacant Land to allow siting of a Chalet and two Touring Caravans' (ref: 16/00738/FULL). Conditions were attached to that permission requiring details of the proposed foul drainage system including the submission of evidence of technical approval by Scottish Water. Evidence of technical approval by Scottish Water is yet to be provided and that permission is subject of a Breach of Condition Notice. Scottish Water has reviewed the current proposal and has advised they are unable to confirm capacity at the local water treatment works to supply the proposal. It would be undesirable from a public health and environmental protection perspective to have additional development in the area where there is uncertainty about the ability to connect to the public foul drainage and water supply network.

Policy PV6 seeks to protect and enhance the quality of the landscape in Angus and provides a number of tests against which development which has adverse landscape effects will be assessed against. PV6 indicates that proposals should be considered in the context of the Tayside Landscape Character Assessment (TLCA). The site sits within an area defined as Broad Valley Lowland in the TLCA but the proposal raises no issues against the landscape guidelines for this landscape unit contained within the TLCA. The proposal would not have significant adverse effects on the landscape.

In terms of other material considerations, the supporting statement makes reference to the human rights and equalities legislation. However, it is a well-established principle that the lawful operation of the planning system will not result in a breach of that legislation. The applicants desire to provide family accommodation is appreciated but no compelling information has been provided to demonstrate that existing sites cannot meet that need.

Planning relates to the use of land rather than to the user. The general rule is that personal circumstances or attributes of the applicant should be ignored by the authority. However personal circumstances may be taken into account in exceptional cases where refusal of planning permission would cause an applicant great hardship. The supporting information notes the applicant's daughter who resides at the application site has a number of health issues and needs to remain at the site which is considered safe and secure with the best possible facilities, and in close proximity to her family who will provide support. These factors have been considered. There is no evidence to suggest that the applicant's daughter would be less capable of keeping in contact with family or medical services if she was to reside away from the site. There is no pressing need for additional permanent gypsy caravan sites in this area and the justification for an additional site for the purposes of residing at this specific location or in close proximity to the extended family does not carry overriding weight. The applicant has taken deliberate unauthorised action to form a caravan pitch at the site in breach of planning control. The weight that can be attached to the personal circumstances of the applicant in this context is limited. It is considered that the relocation of the applicant's daughter to another authorised site in Angus would not result in a significant hardship and there is no evidence to suggest that the applicant's daughter would be less capable of keeping in contact with family or attending doctors or hospital appointments.

The supporting statement also makes reference to other cases, including court cases and appeal cases. Account has been taken of those matters. However, in this case there is no compelling justification for the site selected by the applicant and there is an existing authorised site that has capacity to accommodate the family.

As noted above there is an extant enforcement notice which relates to this site and although an attempt has been made to secure planning permission for the unauthorised development, that notice is still in effect and provides for restoration of the site to a greenfield condition. The use of the site has been initiated without the necessary planning permission despite that fact that the applicant could be in no doubt that planning permission was required. Case law notes that wherever an occupier seeks to rely upon the very fact of his continuing use of land to support their case it must be material to recognise the unlawfulness of that use as a consideration which weakens their case. Where the use has been persisted for many years despite being enforced against and the land owner has failed to reinstate the balance of the site to a greenfield condition as required by the Enforcement Notice, this is a wilful and deliberate breach of the Notice and planning control generally. The Development Standards Committee authorised the instigation of direct action to secure removal of the caravans that are located on-site on the 11 November 2018 and preparation for this is continuing in the meantime.

In conclusion, the proposal is contrary to policies of the Angus Local Development Plan. The personal

circumstances of the applicant's family have been taken into account but are not considered to justify approval of the application, particularly when there are existing authorised sites that have capacity to accommodate the caravans. There are no material considerations which justify approval of planning permission contrary to the development plan.

Human Rights Implications

The decision to refuse this application has potential implications for the applicant in terms of his entitlement to peaceful enjoyment of his possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report justifying the decision in planning terms, it is considered that any actual or apprehended infringement of such Convention Rights, is justified. Any interference with the applicant's right to peaceful enjoyment of his possessions by refusal of the present application is in compliance with the Council's legal duties to determine this planning application under the Planning Acts and such refusal constitutes a justified and proportionate control of the use of property in accordance with the general interest and is necessary in the public interest with reference to the Development Plan and other material planning considerations as referred to in the report.

Equalities Implications

The issues contained in this report fall within an approved category that has been confirmed as exempt from an equalities perspective.

Decision

The application is refused.

Reason(s) for Decision:

1. The application is contrary to Policy TC6 of the Angus Local Development Plan (2016) as there are existing authorised sites with capacity to accommodate the applicant's family, and as the proposal could set a precedent or open up other areas for similar development.
2. The application is contrary to Policy PV20 of the Angus Local Development Plan (2016) as the development is located on prime agricultural land and as it does not meet the criteria for development of prime agricultural land identified in that policy.
3. The proposal is contrary to Policy DS1 of the Angus Local Development Plan (2016) because it is contrary to other policies of the local development plan, namely Policies TC6 and PV20.

Notes:

Case Officer: Stephanie Porter
Date: 7 March 2019

Appendix 1 - Development Plan Policies

Angus Local Development Plan 2016

Policy DS1 : Development Boundaries and Priorities

All proposals will be expected to support delivery of the Development Strategy.

The focus of development will be sites allocated or otherwise identified for development within the Angus Local Development Plan, which will be safeguarded for the use(s) set out. Proposals for alternative uses will only be acceptable if they do not undermine the provision of a range of sites to meet the development needs of the plan area.

Proposals on sites not allocated or otherwise identified for development, but within development boundaries will be supported where they are of an appropriate scale and nature and are in accordance with relevant policies of the ALDP.

Proposals for sites outwith but contiguous* with a development boundary will only be acceptable where it is in the public interest and social, economic, environmental or operational considerations confirm there is

a need for the proposed development that cannot be met within a development boundary.

Outwith development boundaries proposals will be supported where they are of a scale and nature appropriate to their location and where they are in accordance with relevant policies of the ALDP.

In all locations, proposals that re-use or make better use of vacant, derelict or under-used brownfield land or buildings will be supported where they are in accordance with relevant policies of the ALDP.

Development of greenfield sites (with the exception of sites allocated, identified or considered appropriate for development by policies in the ALDP) will only be supported where there are no suitable and available brownfield sites capable of accommodating the proposed development.

Development proposals should not result in adverse impacts, either alone or in combination with other proposals or projects, on the integrity of any European designated site, in accordance with Policy PV4 Sites Designated for Natural Heritage and Biodiversity Value.

*Sharing an edge or boundary, neighbouring or adjacent

Policy DS3 : Design Quality and Placemaking

Development proposals should deliver a high design standard and draw upon those aspects of landscape or townscape that contribute positively to the character and sense of place of the area in which they are to be located. Development proposals should create buildings and places which are:

- o Distinct in Character and Identity: Where development fits with the character and pattern of development in the surrounding area, provides a coherent structure of streets, spaces and buildings and retains and sensitively integrates important townscape and landscape features.
- o Safe and Pleasant: Where all buildings, public spaces and routes are designed to be accessible, safe and attractive, where public and private spaces are clearly defined and appropriate new areas of landscaping and open space are incorporated and linked to existing green space wherever possible.
- o Well Connected: Where development connects pedestrians, cyclists and vehicles with the surrounding area and public transport, the access and parking requirements of the Roads Authority are met and the principles set out in 'Designing Streets' are addressed.
- o Adaptable: Where development is designed to support a mix of compatible uses and accommodate changing needs.
- o Resource Efficient: Where development makes good use of existing resources and is sited and designed to minimise environmental impacts and maximise the use of local climate and landform.

Supplementary guidance will set out the principles expected in all development, more detailed guidance on the design aspects of different proposals and how to achieve the qualities set out above. Further details on the type of developments requiring a design statement and the issues that should be addressed will also be set out in supplementary guidance.

Policy DS4 : Amenity

All proposed development must have full regard to opportunities for maintaining and improving environmental quality. Development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties.

Angus Council will consider the impacts of development on:

- Air quality;
- Noise and vibration levels and times when such disturbances are likely to occur;
- Levels of light pollution;
- Levels of odours, fumes and dust;
- Suitable provision for refuse collection / storage and recycling;
- The effect and timing of traffic movement to, from and within the site, car parking and impacts on highway safety; and
- Residential amenity in relation to overlooking and loss of privacy, outlook, sunlight, daylight and overshadowing.

Angus Council may support development which is considered to have an impact on such considerations, if the use of conditions or planning obligations will ensure that appropriate mitigation and / or compensatory measures are secured.

Applicants may be required to submit detailed assessments in relation to any of the above criteria to the Council for consideration.

Where a site is known or suspected to be contaminated, applicants will be required to undertake investigation and, where appropriate, remediation measures relevant to the current or proposed use to prevent unacceptable risks to human health.

Policy TC6 : Gypsies and Travellers and Travelling Showpeople

Gypsies and Travellers and Travelling Showpeople will be encouraged to stay at authorised sites (publicly or privately owned and managed). Existing authorised Gypsies and Travellers and Travelling Showpeople sites will be protected and there will be a presumption against their redevelopment or conversion to other uses unless it can be demonstrated to the satisfaction of Angus Council that there is a surplus of accommodation to meet identified needs.

Proposals for new or extended permanent sites and temporary "short stay" sites for Gypsies and Travellers will only be supported where:

- o the site will contribute to satisfying a local need identified in the Local Housing Strategy and is consistent with Angus Council's strategy for meeting the accommodation needs of these client groups;
- o the development is designed and located to minimise adverse effects on the landscape, established amenity, character and built or natural heritage interests of the surrounding area;
- o the proposed site will provide a good residential amenity for residents and has adequate access to community, education and health services and facilities; and
- o the proposed development would not set a precedent or open up other areas for similar development.

Policy PV3 : Access and Informal Recreation

New development should not compromise the integrity or amenity of existing recreational access opportunities including access rights, core paths and rights of way. Existing access routes should be retained, and where this is not possible alternative provision should be made.

New development should incorporate provision for public access including, where possible, links to green space, path networks, green networks and the wider countryside.

Where adequate provision cannot be made on site, and where the development results in a loss of existing access opportunities or an increased need for recreational access, a financial contribution may be sought for alternative provision.

Policy PV6 : Development in the Landscape

Angus Council will seek to protect and enhance the quality of the landscape in Angus, its diversity (including coastal, agricultural lowlands, the foothills and mountains), its distinctive local characteristics, and its important views and landmarks.

Capacity to accept new development will be considered within the context of the Tayside Landscape Character Assessment, relevant landscape capacity studies, any formal designations and special landscape areas to be identified within Angus. Within the areas shown on the proposals map as being part of 'wild land', as identified in maps published by Scottish Natural Heritage in 2014, development proposals will be considered in the context of Scottish Planning Policy's provisions in relation to safeguarding the character of wild land.

Development which has an adverse effect on landscape will only be permitted where:

- o the site selected is capable of accommodating the proposed development;
- o the siting and design integrate with the landscape context and minimise adverse impacts on the local landscape;

- o potential cumulative effects with any other relevant proposal are considered to be acceptable;
- and
- o mitigation measures and/or reinstatement are proposed where appropriate.

Landscape impact of specific types of development is addressed in more detail in other policies in this plan and work involving development which is required for the maintenance of strategic transport and communications infrastructure should avoid, minimise or mitigate any adverse impact on the landscape.

Further information on development in the landscape, including identification of special landscape and conservation areas in Angus will be set out in a Planning Advice Note.

Policy PV7 : Woodland, Trees and Hedges

Ancient semi-natural woodland is an irreplaceable resource and should be protected from removal and potential adverse impacts of development. The council will identify and seek to enhance woodlands of high nature conservation value. Individual trees, especially veteran trees or small groups of trees which contribute to landscape and townscape settings may be protected through the application of Tree Preservation Orders (TPO).

Woodland, trees and hedges that contribute to the nature conservation, heritage, amenity, townscape or landscape value of Angus will be protected and enhanced. Development and planting proposals should:

- o protect and retain woodland, trees and hedges to avoid fragmentation of existing provision;
- o be considered within the context of the Angus Woodland and Forestry Framework where woodland planting and management is planned;
- o ensure new planting enhances biodiversity and landscape value through integration with and contribution to improving connectivity with existing and proposed green infrastructure and use appropriate species;
- o ensure new woodland is established in advance of major developments;
- o undertake a Tree Survey where appropriate; and
- o identify and agree appropriate mitigation, implementation of an approved woodland management plan and re-instatement or alternative planting.

Angus Council will follow the Scottish Government Control of Woodland Removal Policy when considering proposals for the felling of woodland.

Policy PV15 : Drainage Infrastructure

Development proposals within Development Boundaries will be required to connect to the public sewer where available.

Where there is limited capacity at the treatment works Scottish Water will provide additional wastewater capacity to accommodate development if the Developer can meet the 5 Criteria*. Scottish Water will instigate a growth project upon receipt of the 5 Criteria and will work with the developer, SEPA and Angus Council to identify solutions for the development to proceed.

Outwith areas served by public sewers or where there is no viable connection for economic or technical reasons private provision of waste water treatment must meet the requirements of SEPA and/or The Building Standards (Scotland) Regulations. A private drainage system will only be considered as a means towards achieving connection to the public sewer system, and when it forms part of a specific development proposal which meets the necessary criteria to trigger a Scottish Water growth project.

All new development (except single dwelling and developments that discharge directly to coastal waters) will be required to provide Sustainable Drainage Systems (SUDs) to accommodate surface water drainage and long term maintenance must be agreed with the local authority. SUDs schemes can contribute to local green networks, biodiversity and provision of amenity open space and should form an integral part of the design process.

Drainage Impact Assessment (DIA) will be required for new development where appropriate to identify potential network issues and minimise any reduction in existing levels of service.

*Enabling Development and our 5 Criteria (<http://scotland.gov.uk/Resource/0040/00409361.pdf>)

Policy PV20 : Soils and Geodiversity

Development proposals on prime agricultural land will only be supported where they:

- o support delivery of the development strategy and policies in this local plan;
- o are small scale and directly related to a rural business or mineral extraction; or
- o constitute renewable energy development and are supported by a commitment to a bond commensurate with site restoration requirements.

Design and layout should minimise land required for development proposals on agricultural land and should not render any farm unit unviable.

Development proposals affecting deep peat or carbon rich soils will not be allowed unless there is an overwhelming social or economic need that cannot be met elsewhere. Where peat and carbon rich soils are present, applicants should assess the likely effects of development proposals on carbon dioxide emissions.

All development proposals will incorporate measures to manage, protect and reinstate valuable soils, groundwater and soil biodiversity during construction.



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
(AS AMENDED)
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(SCOTLAND)
REGULATIONS 2013

PLANNING PERMISSION REFUSAL
REFERENCE : 19/00023/FULL

To **Mr John Townsley**
c/o Seath Planning Consultancy Ltd
Alan Seath
88 Scott Road
Glenrothes
KY6 1AE

With reference to your application dated 15 January 2019 for planning permission under the above mentioned Acts and Regulations for the following development, viz.:-

Change of Use of Vacant Land to Form a Chalet/Caravan Pitch (Principal Chalet and One Touring Caravan), Formation of Hardstanding, Erection of 1.8m High Fences and Amenity Block (in Part Retrospect) at Land 125M West Of North Mains Croft Logie Kirriemuir for Mr John Townsley

The Angus Council in exercise of their powers under the above mentioned Acts and Regulations hereby **Refuse Planning Permission (Delegated Decision)** for the said development in accordance with the particulars given in the application and plans docqueted as relative hereto in paper or identified as refused on the Public Access portal.

The reasons for the Council's decision are:-

1. The application is contrary to Policy TC6 of the Angus Local Development Plan (2016) as there are existing authorised sites with capacity to accommodate the applicant's family, and as the proposal could set a precedent or open up other areas for similar development.
2. The application is contrary to Policy PV20 of the Angus Local Development Plan (2016) as the development is located on prime agricultural land and as it does not meet the criteria for development of prime agricultural land identified in that policy.
3. The proposal is contrary to Policy DS1 of the Angus Local Development Plan (2016) because it is contrary to other policies of the local development plan, namely Policies TC6 and PV20.

Amendments:

The application has not been subject of variation.

Dated this **30 April 2019**

Kate Cowey - Service Leader
Planning & Communities
Angus Council
Angus House
Orchardbank Business Park
Forfar DD8 1AN

Planning Decisions – Guidance Note

Please retain – this guidance forms part of your Decision Notice

You have now received your Decision Notice. This guidance note sets out important information regarding appealing or reviewing your decision. There are also new requirements in terms of notifications to the Planning Authority and display notices on-site for certain types of application. You will also find details on how to vary or renew your permission.

Please read the notes carefully to ensure effective compliance with the new regulations.

DURATION

This permission will lapse 3 years from the date of this decision, unless there is a specific condition relating to the duration of the permission or development has commenced by that date.

PLANNING DECISIONS

Decision Types and Appeal/Review Routes

The 'decision type' as specified in your decision letter determines the appeal or review route. The route to do this is dependent on the how the application was determined. Please check your decision letter and choose the appropriate appeal/review route in accordance with the table below. Details of how to do this are included in the guidance.

Determination Type	What does this mean?	Appeal/Review Route
Development Standards Committee/Full Council	National developments, major developments and local developments determined at a meeting of the Development Standards Committee or Full Council whereby relevant parties and the applicant were given the opportunity to present their cases before a decision was reached.	DPEA (appeal to Scottish Ministers) – See details on attached Form 1
Delegated Decision	Local developments determined by the Service Manager through delegated powers under the statutory scheme of delegation. These applications may have been subject to less than five representations, minor breaches of policy or may be refusals.	Local Review Body – See details on attached Form 2
Other Decision	All decisions other than planning permission or approval of matters specified in condition. These include decisions relating to Listed Building Consent, Advertisement Consent, Conservation Area Consent and Hazardous Substances Consent.	DPEA (appeal to Scottish Ministers) – See details on attached Form 1

NOTICES

Notification of initiation of development (NID)

Once planning permission has been granted and the applicant has decided the date they will commence that development they must inform the Planning Authority of that date. The notice must be submitted before development commences – failure to do so would be a breach of planning control. The relevant form is included with this guidance note.

Notification of completion of development (NCD)

Once a development for which planning permission has been given has been completed the applicant must, as soon as practicable, submit a notice of completion to the planning authority. Where development is carried out in phases there is a requirement for a notice to be submitted at the conclusion of each phase. The relevant form is included with this guidance note.

Display of Notice while development is carried out

For national, major or 'bad neighbour' developments (such as public houses, hot food shops or scrap yards), the developer must, for the duration of the development, display a sign or signs containing prescribed information.

The notice must be in the prescribed form and:-

- displayed in a prominent place at or in the vicinity of the site of the development;
- readily visible to the public; and
- printed on durable material.

A display notice is included with this guidance note.

Should you have any queries in relation to any of the above, please contact:

Angus Council
Place
Angus House
Orchardbank Business Park
Forfar
DD8 1AN

Telephone 01307 492076 / 492533
E-mail: planning@angus.gov.uk
Website: www.angus.gov.uk



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

The Town & Country Planning (Development Management Procedure) (Scotland) Regulations 2013 – Schedule to Form 1

*Notification to be sent to applicant on refusal of planning permission
or on the grant of permission subject to conditions decided by Angus Council*

1. If the applicant is aggrieved by the decision of the planning authority-
 - a) to refuse permission for the proposed development;
 - b) to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
 - c) to grant planning permission or any approval, consent or agreement subject to conditions,

the applicant may appeal to the Scottish Ministers to review the case under section 47 of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The notice of appeal should be addressed to Directorate for Planning & Environmental Appeals, 4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR. Alternatively you can submit your appeal directly to DPEA using the national e-planning web site <https://eplanning.scotland.gov.uk>.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

The Town & Country Planning (Development Management Procedure) (Scotland) Regulations 2013 – Schedule to Form 2

*Notification to be sent to applicant on refusal of planning permission
or on the grant of permission subject to conditions decided through
Angus Council's Scheme of Delegation*

1. If the applicant is aggrieved by the decision of the planning authority-
 - a) to refuse permission for the proposed development;
 - b) to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
 - c) to grant planning permission or any approval, consent or agreement subject to conditions,

the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The notice of review should be addressed to Committee Officer, Angus Council, Resources, Legal & Democratic Services, Angus House, Orchardbank Business Park, Forfar, DD8 1AN.

A Notice of Review Form and guidance can be found on the national e-planning website <https://eplanning.scotland.gov.uk>. Alternatively you can return your Notice of Review directly to the local planning authority online on the same web site.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

PLANNING

Your experience with Planning

Please indicate whether you agree or disagree with the following statements about your most recent experience of the Council's handling of the planning application in which you had an interest.

Q.1 I was given the advice and help I needed to submit my application/representation:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.2 The Council kept me informed about the progress of the application that I had an interest in:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.3 The Council dealt promptly with my queries:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.4 The Council dealt helpfully with my queries:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.5 I understand the reasons for the decision made on the application that I had an interest in:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.6 I feel that I was treated fairly and that my view point was listened to:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OVERALL SATISFACTION: Overall satisfaction with the service:

Q.7 Setting aside whether your application was successful or not, and taking everything into account, how satisfied or dissatisfied are you with the service provided by the council in processing your application?

Very satisfied	Fairly satisfied	Neither Satisfied nor Dissatisfied	Fairly Dissatisfied	Very Dissatisfied
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OUTCOME: Outcome of the application:

Q.8 Was the application that you had an interest in:-

Granted Permission/Consent	<input type="checkbox"/>	Refused Permission/Consent	<input type="checkbox"/>	Withdrawn	<input type="checkbox"/>
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Q.9 Were you the:- Applicant Agent Third Party objector who made a representation

Please complete the form and return in the pre-paid envelope provided.
Thank you for taking the time to complete this form.

AGENDA ITEM NO 3**ANGUS COUNCIL**

MINUTE of MEETING of the **DEVELOPMENT MANAGEMENT REVIEW COMMITTEE** held in the Town and County Hall, Forfar on Monday 3 July 2017 at 12.17 pm.

Present: Councillors GAVIN NICOL, RICHARD MOORE, BILL DUFF, ALEX KING and BOB MYLES.

Councillor NICOL, Convener, in the Chair.

1. APOLOGIES/SUBSTITUTES

There were no apologies intimated.

2. DECLARATIONS OF INTEREST

There were no declarations of interest made.

3. MINUTE OF PREVIOUS MEETING

The minute of meeting of this Committee of 20 June 2017 was approved as a correct record and signed by the Convener.

4. LAND 125M WEST OF NORTH MAINS CROFT, LOGIE, KIRRIEMUIR

With reference to Article 4 of the minute of meeting of this Committee of 20 June 2017, there was submitted Report No 231/17 by the Head of Legal and Democratic Services detailing an application for a review of the decision taken by the planning authority in respect of the refusal of planning permission for change of use of vacant land to allow siting of a chalet and two touring caravans, erection of amenity block and boundary wall, formation of car parking, alteration of ground levels and associated infrastructure, application No 16/00738/FULL, at land 125m west of North Mains Croft, Logie, Kirriemuir.

The Committee noted that an unaccompanied site visit had taken place earlier that day. The Committee then confirmed that they had sufficient information to consider the review at this meeting.

Following discussion, the Committee agreed that, having considered the relevant information and having given full consideration to the case submitted by the Development Management Section of the Communities Directorate and the applicant, it was the Committee's view that application No 16/00738/FULL be granted planning permission as the proposed development was not located on prime agricultural land and as the privately owned site would not set a precedent or open up other areas for similar development and it was therefore in compliance with Policies TC6 and PV20 of the Angus Local Development Plan.

The review was accordingly upheld and the application approved, subject to the appropriate conditions being submitted to the next meeting of this Committee for member's consideration.

5. 4 TEMPLEHALL PLACE, NEWBIGGING, MONIFIETH

With reference to Article 5 of the minute of meeting of this Committee of 20 June 2017, there was submitted Report No 232/17 by the Head of Legal and Democratic Services detailing an application for a review of the decision taken by the planning authority in respect of the refusal of planning permission for proposed alterations and extension to dwellinghouse (re-application), application No 16/00742/FULL, at 4 Templehall Place, Newbigging, Monifieth.

The Committee noted that an unaccompanied site visit had taken place earlier that day. The Committee then confirmed that they had sufficient information to consider the review at this meeting.

COUNCILLOR KING, SECONDED BY COUNCILLOR MOORE, MOVED THAT THE SERVICE MANAGER'S (PLANNING) DECISION BE ENDORSED AND THE REVIEW DISMISSED AS THE DECISION TO REFUSE THE APPLICATION WAS IN ACCORDANCE WITH THE COUNCIL'S LOCAL PLAN POLICY.

Councillor Myles, seconded by Councillor Nicol, moved as an amendment, that the Appeal be upheld and the application granted planning permission as the proposed development would not result in an unacceptable impact on the privacy and amenity of the garden areas of 2 and 3 Cunmont Farm and was therefore in compliance with Policies TC4 and DS4 of the Angus Local Development Plan.

On a vote being taken, the members voted:-

For the motion:-

Councillors Moore, Duff and King (3).

For the amendment:-

Councillors Nicol and Myles (2).

The motion was declared carried resulting in the review being dismissed and the Service Manager's (Planning) decision being endorsed.

ANGUS LOCAL DEVELOPMENT PLAN

September 2016



THE STRATEGY

will allocate small-scale development sites for housing in these locations to help to support and maintain services and facilities, and reduce the need to travel. To support and maintain population levels the ALDP makes provision for development of up to 50 houses in each Rural Service Centre over the life of the plan.

In pursuing a strategy promoting development in accessible locations in settlements with access to a range of services and facilities, the Local Development Plan does not allocate sites for residential development outwith the seven towns and four Rural Service Centres. Below Rural Service Centre level appropriate infill or redevelopment proposals will be supported in those settlements and villages with development boundaries, and on appropriate sites in the open countryside.

At Ballumbie, Letham Grange and Piperdam, a substantial number of houses have been developed alongside and in support of golf course, leisure and tourist based developments. Although larger than many settlements, these standalone developments include no community infrastructure (e.g. shops, primary school, health care facilities) requiring residents to travel for virtually all their needs. Further residential development at Ballumbie and Piperdam would promote an unsustainable pattern of development and is therefore not supported. At Letham Grange additional housing development will only be considered where it is required to cross-subsidise tourism and recreation development. This is outlined in statements for these settlements.

The Angus countryside is divided into Category 1 and 2 Rural Settlement Units. In Category 1 areas (which are areas that are not remote from towns) the opportunity for new development outwith settlements will be more restricted, as development should be directed towards existing settlements. In Category 2 areas (which are remote rural areas), the emphasis will be on maintaining and growing communities by encouraging diversity in the rural economy and enabling new housing development which can support important rural services.

PART 3. CREATING HIGH QUALITY PLACES

Development Principles

Angus Council has defined development boundaries to protect the landscape setting of Angus towns and villages and prevent the uncontrolled spread of development. These development boundaries provide the definition between built up areas and the open countryside and may include peripheral areas of open space that are important to the settlement's setting and character. Although sites within development boundaries are the preferred location for most development, this does not mean that all land within boundaries has development potential.

New land allocations made in the ALDP have been accommodated within development boundaries where possible. Where this has not been possible, and where it is appropriate, development boundaries have been extended to include greenfield land allocations.

The development boundaries shown on the Proposals Map have been brought forward from previous plans and have not been the subject of review apart from where significant greenfield allocations are proposed as extensions. A review of the development boundaries will be a priority in the review of the ALDP to ensure they remain robust and reflect current circumstances.

Wherever development is proposed, it is important to ensure that all opportunities are taken to re-use or re-develop brownfield land before development takes place on greenfield sites.

THE STRATEGY

To optimise the use of existing resource capacities and to ensure the impact of development on the wider environment and landscape is minimised, development proposals in the countryside should also ensure that they have investigated all possibilities of locating adjacent to existing development or groups of buildings.

Policy DS1 Development Boundaries and Priorities

All proposals will be expected to support delivery of the Development Strategy.

The focus of development will be sites allocated or otherwise identified for development within the Angus Local Development Plan, which will be safeguarded for the use(s) set out. Proposals for alternative uses will only be acceptable if they do not undermine the provision of a range of sites to meet the development needs of the plan area.

Proposals on sites not allocated or otherwise identified for development, but within development boundaries will be supported where they are of an appropriate scale and nature and are in accordance with relevant policies of the ALDP.

Proposals for sites outwith but contiguous* with a development boundary will only be acceptable where it is in the public interest and social, economic, environmental or operational considerations confirm there is a need for the proposed development that cannot be met within a development boundary.

Outwith development boundaries proposals will be supported where they are of a scale and nature appropriate to their location and where they are in accordance with relevant policies of the ALDP.

In all locations, proposals that re-use or make better use of vacant, derelict or under-used brownfield land or buildings will be supported where they are in accordance with relevant policies of the ALDP.

Development of greenfield sites (with the exception of sites allocated, identified or considered appropriate for development by policies in the ALDP) will only be supported where there are no suitable and available brownfield sites capable of accommodating the proposed development.

Development proposals should not result in adverse impacts, either alone or in combination with other proposals or projects, on the integrity of any European designated site, in accordance with Policy PV4 Sites Designated for Natural Heritage and Biodiversity Value.

**Sharing an edge or boundary, neighbouring or adjacent*

Policy DS1 SEA Implications									
Biodiversity Flora and Fauna	Population	Human Health	Soil	Water	Air	Climatic Factors	Cultural Heritage	Material Assets	Landscape
?	++	+	+/?	?	+	?	?	+/?	?

Accessibility

A key element in the creation of sustainable communities is how well new development is integrated with the existing form of development and transport networks. The ALDP Development Strategy supports development within the Towns and Rural Service Centres and allocates land for new development in locations that are well related to the existing form and pattern of development and therefore the existing transport network.

THE POLICY FRAMEWORK – PART 1

THRIVING & CONNECTED

Policy TC5 Seasonal or Transient Worker Accommodation

Proposals for the development of temporary accommodation (including residential caravans and mobile homes) for seasonal or transient workers will only be permitted where:

- there is a functional and essential economic need for the amount and type of accommodation proposed that cannot be reasonably met elsewhere in the locality;
- the accommodation is required to house seasonal or transient workers employed on the agricultural unit;
- the proposal involves the conversion, reuse or redevelopment of suitable vacant buildings or brownfield land on, or adjoining, the agricultural unit or it can be demonstrated that there are no such buildings or sites capable of accommodating the proposed development;
- the proposed site will provide a good residential environment with adequate access to facilities;
- the scale and nature of the development is in keeping with local landscape character and pattern of development; and
- there is no unacceptable impact on the built and natural environment, surrounding amenity, access and infrastructure.

Planning permission will not normally be granted for more than 5 years when the requirement for seasonal or transient worker accommodation can be reviewed. Temporary structures, including residential caravans, must be removed when the need for them ceases or the planning permission expires, whichever is sooner.

Policy TC5 SEA Implications									
Biodiversity Flora and Fauna	Population	Human Health	Soil	Water	Air	Climatic Factors	Cultural Heritage	Material Assets	Landscape
+	+	+	+	+	+	+	+	+	+

Gypsies and Travellers and Travelling Showpeople

In line with Scottish Planning Policy (SPP) (2014) Angus Council recognise the need to support the provision of appropriate sites to address the accommodation needs of Gypsies and Travellers and Travelling Showpeople through the ALDP and Local Housing Strategy (LHS). There are no known requirements in Angus for overwintering sites for Travelling Showpeople.

The current supply of permanent managed sites in Angus is limited to the local authority managed sites for Gypsies and Travellers at Tayock, Montrose and at Petterden, Tealing. There are currently no privately owned licensed sites in Angus.

While the Angus Housing Needs and Demand Assessment (HNDA) identified an under provision of pitches for Gypsies and Travellers in Angus there is currently limited understanding of the geographic distribution of need/demand for both permanent pitches and transit sites (including any cross boundary implications with neighbouring authorities). To plan for the accommodation needs of groups effectively Angus Council require to undertake additional research as part of the Angus LHS Review process to identify specific areas of need and inform development of a strategy and policy approach to meeting the complex needs of these communities.

THE POLICY FRAMEWORK – PART 1

THRIVING & CONNECTED

The Angus LHS seeks to address the accommodation needs of gypsy/travellers through direct liaison with these groups, provision of additional spaces and where appropriate access to housing.

While the ALDP does not identify areas of search or allocate specific sites the policy is intended to establish a framework for assessing proposals to establish new, or extend existing sites.

Policy TC6 Gypsies and Travellers and Travelling Showpeople

Gypsies and Travellers and Travelling Showpeople will be encouraged to stay at authorised sites (publicly or privately owned and managed). Existing authorised Gypsies and Travellers and Travelling Showpeople sites will be protected and there will be a presumption against their redevelopment or conversion to other uses unless it can be demonstrated to the satisfaction of Angus Council that there is a surplus of accommodation to meet identified needs.

Proposals for new or extended permanent sites and temporary “short stay” sites for Gypsies and Travellers will only be supported where:

- **the site will contribute to satisfying a local need identified in the Local Housing Strategy and is consistent with Angus Council’s strategy for meeting the accommodation needs of these client groups;**
- **the development is designed and located to minimise adverse effects on the landscape, established amenity, character and built or natural heritage interests of the surrounding area;**
- **the proposed site will provide a good residential amenity for residents and has adequate access to community, education and health services and facilities; and**
- **the proposed development would not set a precedent or open up other areas for similar development.**

Policy TC6 SEA Implications									
Biodiversity Flora and Fauna	Population	Human Health	Soil	Water	Air	Climatic Factors	Cultural Heritage	Material Assets	Landscape
+/?	++	?	?	?	?	0	++	?	+

THE POLICY FRAMEWORK – PART 2

PROTECTED AND VALUED

Policy PV19 Minerals

Angus Council will protect existing mineral resources within Angus which are of economic and/or conservation value from other forms of development.

Proposals for new or extended mineral workings must demonstrate that the development is required to maintain, at least a 10 year land bank for aggregates or the development is required for the local, regional and/or national market that cannot be satisfied by recycled or secondary aggregates at existing workings.

Proposals will only be supported where:

- impacts on the natural and built environment, amenity, landscape, visual amenity, air quality, water quality, groundwater resources, prime quality agricultural land, geodiversity, site access, traffic movements, road capacity and road safety are acceptable or could be satisfactorily mitigated through planning conditions, a Section 75 agreement or other legal agreement; and
- appropriate details of restoration, aftercare and after use are submitted for approval by Angus Council, recognising that ecological solutions are the preferred form of restoration. Opportunities to enhance, extend and / or link to existing green networks should be investigated. Prior to commencement of development Angus Council may require a bond to cover the cost of the agreed scheme of restoration, aftercare and after use.

Policy PV19 SEA Implications

Biodiversity Flora and Fauna	Population	Human Health	Soil	Water	Air	Climatic Factors	Cultural Heritage	Material Assets	Landscape
+	0	0	+/?	+	+	+	+	?/+	+

Soils and Geodiversity

Geodiversity is the variety of rocks, minerals, fossils, landforms, sediments and soils, together with the natural processes which form and alter them. It is increasingly recognised as the basis for plant, animal and human life and defines our physical surroundings from landscape to the quality of farmland and location of mineral deposits. The ALDP aims to protect and enhance geodiversity through a range of policies. Soils form an important part of this biodiversity and their specific protection and preservation should be addressed through the planning system.

Soils are recognised as a valuable resource in many ways – food production, carbon absorption, biodiversity, flood management. It takes millennia for soils to form but their destruction is much quicker and restoration difficult. The Scottish Government's Soil Framework; Land Use Strategy and NPF3 emphasise the importance of prime agricultural land and deep peat and carbon rich soils and this should be balanced against the need for new development and infrastructure.

The protection, storage and reinstatement of soils should be undertaken with care and in accordance with the appropriate available guidance for various types of development provided by SEPA, SNH and Scottish Government.

THE POLICY FRAMEWORK – PART 2

PROTECTED AND VALUED

Policy PV20 Soils and Geodiversity

Development proposals on prime agricultural land will only be supported where they:

- support delivery of the development strategy and policies in this local plan;
- are small scale and directly related to a rural business or mineral extraction; or
- constitute renewable energy development and are supported by a commitment to a bond commensurate with site restoration requirements.

Design and layout should minimise land required for development proposals on agricultural land and should not render any farm unit unviable.

Development proposals affecting deep peat or carbon rich soils will not be allowed unless there is an overwhelming social or economic need that cannot be met elsewhere. Where peat and carbon rich soils are present, applicants should assess the likely effects of development proposals on carbon dioxide emissions.

All development proposals will incorporate measures to manage, protect and reinstate valuable soils, groundwater and soil biodiversity during construction.

Policy PV20 SEA Implications

Biodiversity Flora and Fauna	Population	Human Health	Soil	Water	Air	Climatic Factors	Cultural Heritage	Material Assets	Landscape
0	0	0	++	++	0	0	0	+	0

Pipeline Consultation Zones

There are a number of pipelines which pass through the plan area. There are potential hazards which may arise from developing in proximity to them. Within specified distances from these pipelines there is a statutory framework for ensuring that the Health and Safety Executive is consulted on the implications which arise from development proposals which are the subject of planning applications. These pipeline consultation zones are identified on the proposals map, and the following policy will be applied to submitted development proposals within them. The Health and Safety Executive has produced a 'Planning Advice Web App' to assist developers in preparing planning applications for development proposals.

Policy PV21 Pipeline Consultation Zones

Decisions on whether to grant planning permission for development proposals within the pipeline consultation zones shown on the proposals map will be taken in light of the views and advice of the Health and Safety Executive.

Policy PV21 SEA Implications

Biodiversity Flora and Fauna	Population	Human Health	Soil	Water	Air	Climatic Factors	Cultural Heritage	Material Assets	Landscape
0	+	0	0	0	0	0	0	0	0

Planning and Environmental Appeals Division

Appeal Decision Notice

T: 01324 696 400
F: 01324 696 444
E: dpea@gov.scot



Scottish Government
Riaghaltas na h-Alba
gov.scot

Decision by John H Martin, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-120-2007
- Site address: Land 125 metres west of North Mains Croft, Logie, Kirriemuir, Angus
- Appeal by Mr John Townsley against the enforcement notice dated 19 August 2016 served by Angus Council
- The alleged breach of planning control: unauthorised clearance of top soil, formation of earthen bund; deposition of soil, rubble and hard core; digging channels for drainage and services and siting of caravans
- Date of site visit by Reporter: 8 November 2016

Date of appeal decision: 23 November 2016

Decision

I allow the appeal and correct the terms of the notice by deleting the following words from paragraph 5(3) of the notice: *“Remove the rubble, hard core and earthen bund at the site...”* and substitute therefor the following words: *“Remove the rubble and hard core from the site, level the earthen bund...”* I also vary the periods for compliance with the enforcement notice to require, under paragraph 5(1), to remove the caravans from the site on or before 3 August 2017 and, under paragraphs 5(2) and 5(3), to complete the remaining steps on or before 3 September 2017.

Reasoning

1. The appeal against the enforcement notice was made on grounds (f) and (g) as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997, namely: (f) that the steps required by the notice are excessive and less onerous steps would remedy the breach and; (g) that the time allowed to comply with the notice is too short.

2. The appeal site, which is understood to have formerly been a market garden, lies in open countryside at the end of a farm track off North Mains Road, Logie, and next to 3 detached houses that lie outwith the development boundary of the town. North Mains Farm and Equestrian Centre opposite the site also takes access off the track. The site is a level, roughly rectangular plot about 165 metres long x 37.5 metres wide bounded on each side by mature conifer trees with a wire fence enclosing the northern end. The whole site has been stripped of its top soil which has been mounded at the back as an earthen bund about 4.0 metres high while the front area, for 35 metres back from the access track, has been



laid with crushed stone on hard core as a hard standing. This has been fenced with a 1.8 metres high close-boarded fence on 3 sides and a rendered block wall with piers across the frontage. The front area forms the appellant's gypsy site on which he has sited a static caravan and two touring caravans to accommodate his family.

3. At the site inspection, I saw trailers on the north side of the fence, which I was advised belonged to the appellant, who also showed me the lines of the foul water drain to a submersible pump chamber connected to a manhole at Devonian House, and a buried electricity cable from a nearby overhead supply to a meter cabinet. I also understand that surface water drains to the adjacent ditch have been laid. These works amount to those alleged in the enforcement notice which the appellant has not disputed.

Planning history

4. The lawful use of the site is agriculture, and the submitted photographs suggest that it has lain fallow to grass since at least 2010, although the appellant claims that it was overgrown when he purchased the site. I note from the submissions that he submitted a planning application for "*Change of use of vacant land to form one caravan pitch to include a principal chalet, two touring caravans, amenity block, erection of boundary wall with associated car parking and engineering works.*" Although the application (Ref:16/0073 /FULL) was submitted on 13 September 2016, the relevant planning fee was not paid. However, the council accepts that the fee was submitted on 3 October 2016 and the issue of a reference number suggests that it has been registered as a valid application. The council point out that the application does not include the earthen bund.

The appeal on ground (f)

5. The appellant's case on this ground claims that the steps required by the notice are excessive because of the potential for the site to conform with the development plan and the very strong material considerations submitted in support of the appeal. However, since a ground (a) appeal is no longer available under section 130(1) of the Act, I am unable to consider the planning merits of the case.

6. The appellant has not disputed the engineering operations carried out as specified in the enforcement notice, which were very apparent at the site inspection. While I accept that the caravans, services, rubble and hard core are all removable and the channels can be reinstated, I question whether there is a need to "remove" the earthen bund which is simply a mound of the topsoil stripped from the site that will need to be levelled in order to reinstate the land as required by the notice. I take the appellant's point that the site may not have been in active use when he bought it, but the fact remains that the last lawful use of the land prior to the works being carried out was agriculture, and I have seen no evidence to suggest that this has since been lawfully changed. In fact, the council refer to the appellant stating that he hadn't applied for planning permission because he believed the works to agricultural land would be permitted development. I therefore conclude that the steps required by the notice should be corrected to show that the earthen bund should be "levelled" rather than "removed" and to that extent only the appeal on ground (f) succeeds and I shall correct the notice to that effect.

The appeal on ground (g)

7. The effective date of the enforcement notice was 21 September 2016, so the original requirements would have been for the appellant to remove the caravans by 21 November 2016 and to complete the remaining steps by 21 December 2016.

8. The appellant's case on this ground is that, as there are no suitable alternative gypsy sites in Angus and that there is a current planning application under consideration, the periods for compliance with the notice fall short of what should reasonably be allowed.

9. Turning to the current planning application, which has yet to be determined by the council, I note that the earliest date of registration would have been 3 October 2016, when the planning fee was paid. The council then had 8 weeks to make a decision, which expires on 3 December 2016. If the application is refused, the appellant would then have 3 months from the date of the council's decision to appeal to Scottish Ministers up to 3 March 2017, and the usual 12 weeks consideration period for the appeal would end on 3 June 2017. Bearing in mind that the appellant would have every expectation of being able to remain on the site until the planning appeal has been decided, I consider that the original 2 months for the removal of the caravans and 3 months for completion of the remaining steps should then be added. As a result, I conclude that the periods for compliance with the enforcement notice should be varied to require the appellant to remove the caravans from the site on or before 3 August 2017 and to complete the remaining steps on or before 3 September 2017. To that extent the appeal on ground (g) also succeeds and I shall vary the terms of the notice accordingly.

Other matters

10. I understand that the St Christopher's permanent gypsy site near Montrose is generally full and was shown the only site with capacity available is the Balmuir Wood Gypsy/Traveller site which, with its concrete pitches, bathroom blocks and location next to the busy A90, gave an impression more of a transit site. I have also taken account of all the points raised in the submissions but the availability of gypsy sites, the council's gypsy housing policies, Scottish Planning Policy, the Housing (Scotland) Act 2001 and the appellants rights under the European Convention on Human Rights and the Equalities Act 2010 are all matters to be considered under the planning application and are therefore not before me in this appeal.

Conclusions

11. My overall conclusions are that, under the ground (f) appeal, the enforcement notice should be corrected to show that the earthen bund should be "levelled" rather than "removed" and, under the ground (g) appeal, the periods for compliance with the notice shall be varied to allow time for the current planning application to be determined and any appeal thereon to be decided.


Reporter



Scottish Planning Policy

11. NPF3 and this SPP share a single vision for the planning system in Scotland:

We live in a Scotland with a growing, low-carbon economy with progressively narrowing disparities in well-being and opportunity. It is growth that can be achieved whilst reducing emissions and which respects the quality of environment, place and life which makes our country so special. It is growth which increases solidarity – reducing inequalities between our regions. We live in sustainable, well-designed places and homes which meet our needs. We enjoy excellent transport and digital connections, internally and with the rest of the world.

12. At the strategic and local level, planning can make a very important contribution to the delivery of Single Outcome Agreements¹⁵, through their shared focus on ‘place’. Effective integration between land use planning and community planning is crucial and development plans should reflect close working with Community Planning Partnerships¹⁶.

13. The following four planning outcomes explain how planning should support the vision. The outcomes are consistent across the NPF and SPP and focus on creating a successful sustainable place, a low carbon place, a natural, resilient place and a more connected place. For planning to make a positive difference, development plans and new development need to contribute to achieving these outcomes.

Outcome 1: A successful, sustainable place – supporting sustainable economic growth and regeneration, and the creation of well-designed, sustainable places.

14. NPF3 aims to strengthen the role of our city regions and towns, create more vibrant rural places, and realise the opportunities for sustainable growth and innovation in our coastal and island areas.

15. The SPP sets out how this should be delivered on the ground. By locating the right development in the right place, planning can provide opportunities for people to make sustainable choices and improve their quality of life. Well-planned places promote well-being, a sense of identity and pride, and greater opportunities for social interaction. Planning therefore has an important role in promoting strong, resilient and inclusive communities. Delivering high-quality buildings, infrastructure and spaces in the right locations helps provide choice over where to live and style of home, choice as to how to access amenities and services and choice to live more active, engaged, independent and healthy lifestyles.

16. Good planning creates opportunities for people to contribute to a growing, adaptable and productive economy. By allocating sites and creating places that are attractive to growing economic sectors, and enabling the delivery of necessary infrastructure, planning can help provide the confidence required to secure private sector investment, thus supporting innovation, creating employment and benefiting related businesses.

Outcome 2: A low carbon place – reducing our carbon emissions and adapting to climate change.

¹⁵ www.scotland.gov.uk/Topics/Government/PublicServiceReform/CP/SOA2012

¹⁶ www.scotland.gov.uk/Topics/Government/PublicServiceReform/CP

Principal Policies

Sustainability

NPF and wider policy context

24. The Scottish Government's central purpose is to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.

25. The Scottish Government's commitment to the concept of sustainable development is reflected in its Purpose. It is also reflected in the continued support for the five guiding principles set out in the UK's shared framework for sustainable development. Achieving a sustainable economy, promoting good governance and using sound science responsibly are essential to the creation and maintenance of a strong, healthy and just society capable of living within environmental limits.

26. The NPF is the spatial expression of the Government Economic Strategy (2011) and sustainable economic growth forms the foundations of its strategy. The NPF sits at the top of the development plan hierarchy and must be taken into account in the preparation of strategic and local development plans.

27. The Government Economic Strategy indicates that sustainable economic growth is the key to unlocking Scotland's potential and outlines the multiple benefits of delivering the Government's purpose, including creating a supportive business environment, achieving a low carbon economy, tackling health and social problems, maintaining a high-quality environment and passing on a sustainable legacy for future generations.

Policy Principles

This SPP introduces a presumption in favour of development that contributes to sustainable development.

28. The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.

29. This means that policies and decisions should be guided by the following principles:

- giving due weight to net economic benefit;
- responding to economic issues, challenges and opportunities, as outlined in local economic strategies;
- supporting good design and the six qualities of successful places;
- making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;
- supporting delivery of accessible housing, business, retailing and leisure development;

130. Plans should consider how affordable housing requirements will be met over the period of the plan. Planning and housing officials should work together closely to ensure that the phasing of land allocations and the operation of affordable housing policies combine to deliver housing across the range of tenures. In rural areas, where significant unmet local need for affordable housing has been shown, it may be appropriate to introduce a 'rural exceptions' policy which allows planning permission to be granted for affordable housing on small sites that would not normally be used for housing, for example because they lie outwith the adjacent built-up area and are subject to policies of restraint.

131. Any detailed policies on how the affordable housing requirement is expected to be delivered, including any differences in approach for urban and rural areas, should be set out in supplementary guidance. Where it is considered that housing built to meet an identified need for affordable housing should remain available to meet such needs in perpetuity, supplementary guidance should set out the measures to achieve this. Any specific requirements on design may also be addressed in supplementary guidance.

Specialist Housing Provision and Other Specific Needs

132. As part of the HNDA, local authorities are required to consider the need for specialist provision that covers accessible and adapted housing, wheelchair housing and supported accommodation, including care homes and sheltered housing. This supports independent living for elderly people and those with a disability. Where a need is identified, planning authorities should prepare policies to support the delivery of appropriate housing and consider allocating specific sites.

133. HNDAs will also evidence need for sites for Gypsy/Travellers and Travelling Showpeople. Development plans and local housing strategies should address any need identified, taking into account their mobile lifestyles. In city regions, the strategic development plan should have a role in addressing cross-boundary considerations. If there is a need, local development plans should identify suitable sites for these communities. They should also consider whether policies are required for small privately-owned sites for Gypsy/Travellers, and for handling applications for permanent sites for Travelling Showpeople (where account should be taken of the need for storage and maintenance of equipment as well as accommodation). These communities should be appropriately involved in identifying sites for their use.

134. Local development plans should address any need for houses in multiple occupation (HMO). More information is provided in Circular 2/2012 Houses in Multiple Occupation⁵³. Planning authorities should also consider the housing requirements of service personnel and sites for people seeking self-build plots. Where authorities believe it appropriate to allocate suitable sites for self-build plots, the sites may contribute to meeting the housing land requirement.

53 www.scotland.gov.uk/Publications/2012/06/4191



Angus Local Housing Strategy 2017-22

CREATING PLACES PEOPLE ARE PROUD TO CALL HOME



and continue to have a strong presence in the MARAC process to help keep victims of domestic abuse safe in their homes by enhancing security of their properties; providing housing advice to women, men and families at risk; and assisting those who cannot continue to live in their properties to access safe and secure housing.

Gypsy/Travellers

Angus Council operates a permanent Gypsy/Travellers site at Tayock, Montrose. The site is currently fully occupied and overall satisfaction levels are high. Following consultation with residents, upgrades to the amenity blocks are currently underway which will improve the facilities for site residents and energy efficiency of the blocks. Dundee City Council also operates a site at Petterden, by Tealing, which lies within the Angus local authority boundary. The site currently operates at around 65% capacity, although this is subject to seasonal fluctuation.

In 2016 Angus, Dundee, Perth & Kinross and Fife Councils commissioned Craigforth Research to undertake a joint Gypsy Traveller and Travelling Showpeople Needs Assessment. Finalised in January 2017, the research indicates that across the TAYplan area there is sufficient accommodation for Gypsy/ Travellers, although levels of satisfaction with Council provision varies.

Taking into account accommodation provision known at the time the study was undertaken, the findings indicate a small shortfall in permanent provision may emerge in Angus over the next five years, attributed to demand in the northeast and to a lesser extent in the west of the area. Where new sites are established or existing sites in the area improved or extended, this could help to address the local shortfall in provision which is anticipated to develop. The projected shortfall is not considered significant enough to justify provision of additional sites at this time. The Council will continue to monitor demand across Angus and consider opportunities to improve and extend existing provision, as addressed by LHS Outcome 2, Action I.

The Council recognises that private sites could contribute to meeting the projected shortfall in demand for permanent accommodation. All applications will be considered in the context of Angus LDP Policy TC6 and take into account the finalised Needs Assessment and available capacity on existing and proposed sites.

Levels of encampment activity have steadily increased across Tayside over the last three years. In Angus there was a reduction in activity between 2014 and 2015, which then rose significantly between 2015 and 2016. Conversely, Dundee saw significant increases between 2014 and 2015 and a reduction between 2015 and 2016 while both Perth & Kinross and Fife have seen more consistent levels of encampment during this period. This would suggest that the links between encampment activity in Dundee and Angus are stronger than with the other local authority areas and approaches to site provision and enforcement activity taken by each local authority are likely to impact on each other. The Council will continue to monitor unauthorised encampment activity across Angus and consider the requirement for provision of seasonal or temporary transit sites, with future actions and solutions investigated with partners including the private sector. The Council is open to consideration of a national strategy on the provision of transit sites and cross boundary consideration of how to address the needs of the Gypsy/Traveller community. This will be addressed by LHS Outcome 2, Action J.

At present there is no identified need for accommodation for Travelling Showpeople in Angus. The Council will continue to monitor the position.

Assessing local authorities' progress in meeting the accommodation needs of Gypsy and Traveller communities in Scotland - Final Report

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University of Salford

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Centre for Urban and Regional Studies
University of Birmingham

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Heriot-Watt University

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GLOSSARY

The following terms are used in this report.

Term	Explanation
Bricks and mortar	Permanent mainstream housing.
Caravan	Mobile living vehicle used by Scottish Gypsy Travellers. Also referred to as trailers.
Council / Registered Social Landlord (council / RSL) site	An authorised site owned by either a local authority or a Registered Social Landlord.
Private site	An authorised site owned by a private individual (who may or may not be a Gypsy or a Traveller). These sites can be owner-occupied, rented or have a mixture of owner-occupied and rented pitches.
Scottish Gypsy Traveller (as used in this report)	In this report, the term is used to include all ethnic Gypsies and Irish Travellers, plus other Travellers who adopt a nomadic or semi-nomadic way of life. It does not include occupational Travellers such as Travelling Showpeople or New Age Travellers.
Pitch	An area of land on a site / development generally home to one licensee household. It can differ in size and accommodate varying numbers of caravans.
Site	An authorised area of land on which Scottish Gypsy Travellers are accommodated in trailers / chalets / vehicles. It can contain one or multiple pitches.
Transit site	A site intended for short stays. Such sites are usually permanent, but there is a limit on the length of time residents can stay.
Travelling Showpeople	Commonly referred to as Showmen, these are a group of occupational Travellers who work on travelling shows and fairs across the UK and abroad. This report does not include the accommodation requirements of Travelling Showpeople.

Unauthorised development	This refers to a caravan / trailer or group of caravans / trailers on land owned (possibly developed) by Scottish Gypsy Travellers without planning permission.
Unauthorised encampment	Stopping on private / public land without permission (for example, at the side of the road).

EXECUTIVE SUMMARY

Background

In its 2006 report *Common Ground*, the Commission for Racial Equality (CRE) concluded that Gypsies and Irish Travellers are the most excluded groups in Britain today. Advances in social mobility and access to power made by other disadvantaged groups in Britain, such as other ethnic minority groups, have not been matched by Gypsies and Travellers. The research reported here builds on the earlier work done by the CRE.

The aim of this study is to provide data about the extent to which local authorities in Scotland are meeting the accommodation needs of Scottish Gypsy Travellers. There are two main objectives:

- To ascertain the quantity of current Gypsy Traveller site provision, including any recent changes in provision and any imminent plans to develop sites in the future.
- To investigate the timescales of delivery to meet any accommodation shortfalls.

The research is designed to explore the perspective of local authorities and, to a lesser extent, police forces in Scotland and their understanding of the accommodation needs of Scottish Gypsy Travellers. As a result there has been no direct involvement of Scottish Gypsy Traveller communities and it can therefore, of course, give one side of the picture only.

The term 'Scottish Gypsy Traveller' is used in an inclusive manner to comprise **all** ethnic Gypsies and Irish Travellers, plus other Travellers who adopt a nomadic or semi-nomadic way of life. Variants of the term (for example, Gypsy / Traveller or Gypsy and Traveller) are used where they appear in sources being referred to or quoted, for example the term Gypsy / Traveller Sites Grant is used throughout. Caravan sites specifically intended to be occupied by Scottish Gypsy Travellers are referred to as 'Gypsy Traveller sites'.

Approach to the research

The research follows a broadly similar study carried out in England for the Equality and Human Rights Commission (Brown and Niner, 2009) and used the following approaches to gather relevant information:

- An analysis of 2006-08 Caravan Count data.
- A detailed questionnaire sent to all 32 local authorities in Scotland resulting in 26 responses (81 per cent).
- A brief email survey to Police Authorities; the Association of Chief Police Officers Scotland (ACPOS) provided a collective response to this survey.

Policy framework

Accommodation issues impacting on Scottish Gypsy Travellers have been debated by Government and organisations campaigning with and on behalf of Scottish Gypsy Travellers in Scotland over many years. But in post-devolution Scotland, a clear watershed was the Inquiry into Gypsy Travellers and public sector policies by the Equal Opportunities Committee (EOC) of the Scottish Parliament in 2000/01. This Inquiry's recommendations fed into the development of housing policy and legislation, in particular the Housing (Scotland) Act 2001, and encouraged the production of thematic studies of provision of services for Gypsies / Travellers. Despite these positive steps, and although some inroads were being made into resolving the shortages of accommodation for Scottish Gypsy Travellers, subsequent reviews identified slow progress on the EOC recommendations and little change in the life chances of Scottish Gypsy Travellers. In 2006, drawing on the 2001 Inquiry, its subsequent review in 2005 and other evidence from related research and consultations, the CRE identified the primary issues relating to accommodation needs of Scottish Gypsies / Travellers as:

- The lack of a network of accessible and acceptable local authority sites.
- The poor physical condition and location of local authority sites.
- The difference in treatment experienced by Scottish Gypsies / Travellers when housed compared with those living on local authority sites.
- The absence of a network of adequate and appropriate temporary transit sites for Scottish Gypsies / Travellers.
- The inappropriate use of powers to evict Scottish Gypsies / Travellers from roadside encampments when no other appropriate provision is available.

- The widely reported harassment of Scottish Gypsies / Travellers in public and private sector housing.

The Scottish Government's Race Equality Scheme and Statement (2008) embeds Gypsy / Traveller issues in its approach to race equality and proposes future resources for services to tackle some key priorities for Scottish Gypsy Travellers by 2011. While positive, this statement comes some 10 years after the first Scottish Parliament's Equal Opportunities Committee inquiry into public sector policies, and further illustrates how slow progress in this area has been.

Caravan Count: findings

Twice Yearly Counts of Gypsies / Travellers (undertaken each year in January and July) were introduced in Scotland in 1998 by the Scottish Executive (now Scottish Government). The purpose of the Count is to establish standardised and consistent estimates as to the size and characteristics of the Scottish Gypsy Traveller community living on sites and encampments across Scotland to assist and inform the development of public policies and services nationally and locally. The Count is carried out by local authorities and reported by the Scottish Government.

The Count has been criticised for its accuracy and consistency. Most importantly it can give only a partial picture of the Scottish Gypsy Traveller community because it omits people living in housing. Despite this, it is important because it is the only source of reasonably consistent, time-series information on numbers and locations of Scottish Gypsy Travellers living in caravans and is thus useful as context. Information from the Counts cannot be used directly as a basis for accommodation needs assessment since they ignore needs arising from Scottish Gypsy Travellers in housing.

The main findings from an analysis of the Caravan Count, including a comparison with other parts of the United Kingdom, are:

- Caravan numbers in Scotland are relatively low and numbers have changed little since 2006. Unlike England, there is no clear evidence of growing numbers of Scottish Gypsy Travellers living on Council / RSL, private or unauthorised sites to support presumptions of widespread major shortfalls in pitch provision. However, there were around 100 caravans on unauthorised

sites in January 2008 suggesting a round-the-year shortfall in the current provision of authorised sites.

- The great majority of caravans on authorised sites in Scotland are on council / RSL sites; the private site sector is relatively undeveloped.
- There is a marked variation between January and July figures suggesting seasonal travelling in summer. Numbers of caravans on unauthorised sites and, to a lesser extent, on private sites rise in summer. The Counts do not indicate reasons for travelling, nor do they indicate where summer travellers spend winter – for example, in bricks and mortar housing and / or outside Scotland.

Police: findings

Police Authorities are often involved in managing unauthorised encampments and are ideally placed to offer informed views on how the accommodation situation of Scottish Gypsy Travellers is working out 'on the ground'. For this reason each of the eight Police Authorities was approached to explore their views and practice on Scottish Gypsy Traveller accommodation issues and needs. ACPOS produced a collated response to this survey. Their response acknowledged that:

- Gypsies and Travellers have an historical place in Scotland and a continuing desire to travel.
- The lack of appropriate site provision and loss of traditional stopping places leads to greater awareness of unauthorised encampments, and their impact, on the part of the settled community.
- Internal conflicts within the Scottish Gypsy Traveller communities have some impact on site use and levels of site occupancy.
- There are no simple answers given the nature of the Scottish Gypsy Traveller communities involved, the presence of entrenched views, and the complex historical context of Scottish Gypsy Traveller accommodation and travelling needs.

Questionnaire: findings

A survey questionnaire was sent to all 32 local authorities in Scotland to explore the steps that they have taken since 2006 in meeting the accommodation needs of Scottish Gypsy Travellers. Twenty-six local authorities completed the survey, representing a response rate of 81 per cent. The survey looks at how much

progress is being made in a number of different areas. The key findings for each area are given below.

Needs assessment

- Seventeen out of the 26 local authorities responding to the survey said that they had completed an assessment of the accommodation needs of Scottish Gypsy Travellers.
- Only five of the 17 local authorities with a completed accommodation assessment said that it gave them a numerical assessment of present and future pitch needs.
- A total of eight local authorities were able to provide an estimate of the number of additional residential pitches required in their area over the next five years; this ranged from zero to 50 pitches.
- Seven local authorities were able to provide an estimate for transit or short stay need for the next five years; this ranged from zero to six pitches.
- Just one local authority making an estimate for additional pitches – either transit or residential – thought that these requirements would be met.

After analysing the responses around needs assessments, two main conclusions can be drawn. These are:

- It is highly probable that there are accommodation requirements which are currently either unquantified or unacknowledged across the country.
- In comparison to England, where Gypsy and Traveller Accommodation Assessments (GTAAAs) have identified and quantified requirements virtually everywhere, Scotland is potentially less advanced in preparing for additional site provision both nationally and locally. The first step – identifying the scale of the shortfall to be met – is not yet in place.

Housing strategies

- Scottish Gypsy Travellers are referred to in the great majority of local housing strategies.
- Widespread references to general service provision, site conditions and site management suggest that Scottish Gypsy Traveller issues are embedded in wider housing policies.

- There is little apparent recognition in the strategies of any significant shortfalls in site provision, nor indications that authorities are well prepared to move towards increasing site provision.

Gypsy and Traveller sites and planning

- Just over half of responding local authorities reported that they had identified or were working towards identifying suitable locations for Gypsy Traveller sites.
- The majority of local authorities do not have approved formal planning policies on Gypsy Traveller site provision or for dealing with applications for small privately owned sites. Three main reasons were given:
 - Gypsy Traveller site provision was not identified as a priority by local authorities, and / or they had developed their planning policies before specific national guidance existed on the inclusion of Scottish Gypsy Traveller communities in this process.
 - Some local authorities thought specific planning policies around Scottish Gypsy Travellers were unnecessary as new sites were not needed and / or no planning applications had been submitted.
 - A few authorities commented that there is no need for a specific policy for dealing with applications for private sites from Scottish Gypsy Travellers because other general planning policies can be applied.

Progress on pitch provision

- The number of council / Registered Social Landlord (RSL) pitches in the responding authorities has decreased by 32 since 2006.
- 14 private pitches have been created since 2006.
- Six council / RSL pitches are currently in development (apparently transferred from the private sector) and four private pitches have planning permission but have not yet been completed.
- Overall there has been a net decrease in the number of pitches available to Scottish Gypsy Travellers since 2006 among authorities responding to the survey.

Council / RSL site quality and site occupancy

- Seventy-three per cent of responding authorities with a council / RSL site expressed at least one concern over the quality of sites in their area. The physical condition and state of repair of the sites was the issue most

frequently mentioned, followed by site management issues. These are perceptions of local authority officers and may not be matched by Scottish Gypsy Travellers living on, or familiar with, the sites.

- The majority of local authorities responding to the survey reported that some pitches were currently vacant on their sites; three sites were totally vacant or closed.
- Local authorities most often saw vacancies as evidence of a lack of demand from Scottish Gypsy Travellers for site places.

Gypsy / Traveller sites grant

- The Gypsy / Traveller Sites Grant, provided by the Scottish Government to local authorities to meet up to 75 per cent of approved costs of site development or refurbishment / improvement, has been an important driver in upgrading council / RSL sites. All but one of the responding site-owning authorities have applied for the grant. Eighty-six per cent of the authorities which have applied were successful on at least one occasion.
- A total of 321 pitches across 16 authorities have benefited from grants awarded for site upgrading or refurbishment.
- Just five local authorities have applied for grants to develop new sites and, of these, three applications were successful.
- A lack of evidence of demand for site accommodation was given as the main reason for not applying for a grant by authorities currently without a council / RSL site.

Views on progress and perceptions of barriers to progress

- The survey asked local authorities to award marks out of 10 for their progress on the provision of accommodation for Scottish Gypsy Travellers since 2006. The average assessment was 6.65.
- How 'progress' is defined is complex and relative to the circumstances and perceptions of each local authority.
- The survey suggests that local authorities' assessments of progress commonly relate to improving conditions and management on existing council / RSL sites and not to making additional provision whether in the social or private sectors.
- Local authorities noted a number of barriers to moving forward with the provision of Gypsy / Traveller accommodation. These can be grouped as:

- finding suitable land
- resistance from local communities
- lack of demand from Scottish Gypsy Travellers for accommodation
- finance
- unwillingness or opposition from Scottish Gypsy Traveller community members to site development
- complexity of the issue

Concluding comments

This study suggests that ‘progress’ in relation to Gypsy Traveller site accommodation is complex and the situation in Scotland is far more difficult to interpret, at this point in time, than that in England. The survey shows an overall decrease in the number of authorised pitches available to Scottish Gypsy Travellers since 2006. At the same time, there is a lack of emphasis on quantifying any additional pitch needs by local authorities. The data tells us that a number of pitches are currently unoccupied on council / RSL sites but the reasons for these vacancies are not well understood. As a result, it is unclear whether local authorities’ ‘progress’ on site provision has been adequate or inadequate. Pitch reductions and / or lack of pitch increases might be seen to reflect the actual level of demand for accommodation by Scottish Gypsy Traveller communities. The overarching conclusion from this study is that more work needs to be done at both a local and national level in order to better understand the current use of sites and what need (if any) there is for further site / pitch provision.

There are several other points to note from the findings:

- Given the extent of seasonal travelling in Scotland and associated unauthorised encampments, transit site provision can be seen as a more obvious priority than residential sites. Concerns have been expressed about how transit sites should be designed and managed, and local authorities might welcome guidance on these issues.
- There has been significant investment in site upgrading with the support of the Gypsy / Traveller Sites Grant, and several authorities would make further bids if the grant continues. The survey found that there are a few sites with serious and multiple problems. Apart from these extreme cases, however, local authority respondents to the survey were generally reasonably confident

about the location, design and quality of their sites. It is not clear whether these perceptions are always shared by Scottish Gypsy Travellers.

- The predominance of council / RSL sites raises issues around lack of choice for Scottish Gypsy Travellers. Greater variety of site tenure and size would potentially increase choice.
- Most needs assessments undertaken to date and local authority initiatives to involve Scottish Gypsy Travellers focus predominantly on council / RSL site residents. There is a need to engage more fully with Scottish Gypsy Travellers in housing and on unauthorised encampments, as well as on sites, if the community's needs are to be met.
- Finally, where additional sites are needed, it is difficult to find suitable land for their development. A major factor in this is resistance by local settled communities to site development. There is still hostility and fear, often based on stereotype and ignorance, to the idea of site development. Overcoming this barrier will be very important in future. Local authorities should be reminded of their general duty to promote equality of opportunity and good relations between different racial communities. This is also an area where the Equality and Human Rights Commission can take a lead.

1. INTRODUCTION

In 2006, in its report *Common Ground* (CRE, 2006a), the Commission for Racial Equality (CRE) concluded that Gypsies and Irish Travellers are the most excluded groups in Britain today. Advances in social mobility and access to power made by other disadvantaged groups in Britain, such as other ethnic minority groups, have not been matched by Gypsies and Travellers. The research reported here builds on earlier work by the CRE and looks at the steps being taken by local authorities to meet site accommodation needs of the Scottish Gypsy Traveller community in Scotland.

Aims and objectives

The aim of this study is to provide hard data about the extent to which each local authority in Scotland is identifying and meeting the accommodation needs of Scottish Gypsy Travellers. Within this there are two objectives:

- To ascertain the quantity of current Gypsy Traveller site provision, including any recent changes in provision and any imminent plans to develop sites in the future.
- To investigate the timescales of delivery to meet any accommodation shortfalls.

This research follows a broadly similar study carried out in England on behalf of the Equality and Human Rights Commission (Brown and Niner, 2009). As in that study, the main emphasis is on assessment of accommodation needs, the resulting shortfalls of pitches on caravan sites for Gypsy Traveller communities, and how / when these shortfalls will be met. Less emphasis is placed on changes occurring in the management of existing sites, or the development of general policies, approaches or initiatives under the heading of equality and diversity. The research is designed to explore the perspective of local authorities and police forces in Scotland and their understanding of the accommodation needs of Scottish Gypsy Travellers. As a result there has been no direct involvement of the Scottish Gypsy Traveller community.

Research approach

The study brings together secondary data sources and the results of a survey of local authorities across Scotland. The key activities involved in producing this study were:

- Analysing the bi-annual Caravan Count between 2006 and 2008.
- Carrying out a postal / email survey of all 32 local authorities across Scotland to establish their view of their progress on assessing, planning for and delivering accommodation provision for Scottish Gypsy Travellers. A total of 26 questionnaires were analysed – a response rate of 81 per cent. Full details of the survey methodology are in Appendix 1, and the covering letter and questionnaire used can be found in Appendices 2 and 3.
- Contacting each Police Authority with a brief e-mail survey to establish their views on accommodation shortages, uptake issues and examples of local good practice. The Association of Chief Police Officers Scotland (ACPOS) provided a collective response to this survey. Full details of this response are in Appendix 4.

Structure of the report

This report is intended to help the Equality and Human Rights Commission and others understand the steps that local authorities have taken since 2006 in meeting the accommodation needs of Scottish Gypsy Travellers. The report begins by setting out the context against which this work is happening. It then looks at the progress being made by local authorities under a number of different headings and looks at some of their views on barriers to progress and how these can be overcome. A fuller breakdown on the focus of each chapter is given below:

Chapter 2 sets out the context for the study by looking at significant and relevant publications on Scottish Gypsy Traveller accommodation issues. It also looks at other policies and support mechanisms related to the Scottish Gypsy Traveller community.

Chapter 3 analyses the Caravan Count as a background indicator of progress in site provision, and includes some comparison with other countries in the United Kingdom.

Chapter 4 reports the results of the survey of police forces.

Chapter 5 starts the analysis of the questionnaire survey of local authorities and looks at progress with the assessment of Scottish Gypsy Traveller accommodation needs and local housing strategies.

Chapter 6 considers planning policies towards Gypsy Traveller sites.

Chapter 7 reports changes in the supply of council / Registered Social Landlord (RSL) and private pitches since 2006.

Chapter 8 notes the number and nature of concerns expressed by survey respondents about existing council / RSL sites, and looks at the take-up of the Gypsy / Traveller Sites Grant and its contribution towards site improvement and development.

Chapter 9 shows the responding local authorities' assessments of their own progress on the provision of Gypsy Traveller sites since 2006. It also looks at their perceptions of the main barriers to site provision and how they are being overcome.

Chapter 10 offers some concluding remarks based on the findings of the research.

The Glossary (page iii) explains the use of terms in this report. We use the term Scottish Gypsy Traveller in an inclusive manner to comprise **all** ethnic Gypsies and Irish Travellers, plus other Travellers who adopt a nomadic or semi-nomadic way of life. It does not include occupational Travellers such as Travelling Showpeople. New Age Travellers are also not considered here. Variants of the term (for example, Gypsy / Traveller or Gypsy and Traveller) are used where they appear in sources being referred to or quoted, for example the term Gypsy / Traveller Sites Grant has been used throughout. Caravan sites specifically intended to be occupied by Scottish Gypsy Travellers are referred to as 'Gypsy Traveller sites'.

2. CONTEXT

Scottish Gypsy Travellers

Although some work was done earlier (Scottish Office, 1974), accommodation issues impacting on Scottish Gypsy Travellers have, since the late 1990s, been particularly debated by Government (Scottish Office, 1998; Scottish Executive, 2000) and organisations campaigning with and on behalf of Scottish Gypsy Travellers (Bancroft et al, 1996). In post-devolution Scotland, a clear watershed came in 2001 with the reporting of an inquiry on 'Gypsy Travellers and public sector policies' by the Scottish Parliament's Equal Opportunities Committee (EOC) and with the development of housing policy and legislation, in particular the Housing (Scotland) Act 2001.

In Scotland, Gypsy Traveller issues have been viewed, particularly since the EOC inquiry, within an equal opportunities framework despite the uncertainty of the status of Scottish Gypsy Travellers as an ethnic group under the Race Relations Act (1976). Clark (2006a) argued the cultural and legal case for Scottish Gypsy Traveller ethnicity, even though there had, at that date, been no recognition in law that Scottish Gypsy Travellers were a racial group as were Romani Gypsies after 1988 (CRE v. Dutton) and Irish Travellers from 2000 (O'Leary v. Allied Domecq). An Employment Tribunal Judgement in October 2008 concluded that the main characteristics set out in *Mandla v. Dowell Lee* had been satisfied in the case of Scottish Gypsy Travellers, confirming the protection of the Race Relations Act 1976 (Case No: S/132721/07).

The counting of Gypsy Travellers in Scotland, other than two one-off counts in 1974 and 1992, was a new development when the bi-annual Caravan Count (January and July) was introduced in 1998. Despite concerns about the methodology used and the Count's accuracy (Clark, 2006b), it is still used to underpin accommodation assessments, policies and services. The Caravan Count does not include Scottish Gypsy Travellers staying in housing and thus presents a partial picture of the Scottish Gypsy Traveller community. Scottish Gypsy Travellers themselves estimate that their community includes more than 15,000 people (CRE, 2006c).

The latest figures available are for January and July 2008. The Count Report for January 2008 identified a total of 455 households and around 1,547 people: 276

households (61 per cent) were on council / Registered Social Landlord (RSL) sites, 81 (18 per cent) on private sites and 98 (22 per cent) on roadside encampments (Craigforth, 2008:1). The Count report for January 2008 notes:

'In January 2006 for the first time a higher percentage (23 per cent) of Gypsies / Travellers stayed on unauthorised encampments rather than private sites (20 per cent). This pattern has been repeated in this latest count...' (Craigforth, 2008: 6/7)

Differences between the summer and winter Counts reflect seasonal travelling and the July 2008 Count Report records a greater number of households on sites and camps: 313 households on council / RSL sites, 162 on private sites and 269 on roadside camps. The report notes that these figures are the highest recorded for a summer Count since July 2001 but also notes the first decrease in the number of roadside camps in July for four years (Craigforth, 2009).

Nonetheless, the long-term pattern of greater numbers of caravans or households staying on roadside camps rather than on private sites suggests a lack of access to adequate and appropriate site provision for Scottish Gypsy Travellers (see Cemlyn et al, 2009).

A detailed analysis of trends from the Caravan Counts and a comparison with other countries of the United Kingdom is provided in Chapter 3.

The Scottish Parliament Equal Opportunity Committee Inquiry, 2001

Reporting in 2001, the Equal Opportunities Committee of the Scottish Parliament undertook an *Inquiry into Gypsy Travellers and Public Sector Policies*. This Inquiry examined policies relating to the provision of accommodation, education, health and social services for Gypsy Travellers. It also looked at the issues of policing and criminal justice and the promotion of good relations between the Gypsy Traveller and settled communities (Scottish Parliament, 2001a and 2001b).

The Inquiry report made 37 recommendations in total, a number of which focused on principles, such as the use of the term Scottish Gypsy Traveller. The Inquiry also recommended that legislation and policies should be framed on the understanding that Gypsy Travellers in Scotland are covered as a racial group

under the Race Relations Act and therefore should be clearly identified as a specific community of interest for the Scottish Government's Equality Strategy.

Eleven recommendations on accommodation were made. These covered local authority sites (at this time there were no sites managed by Registered Social Landlords), private sites, unauthorised camping and housing; and notably said that services for Gypsy Travellers should be included under the new single regulatory framework to be established under the Housing (Scotland) Act 2001.

While the Scottish Executive's response to the report (2001 and the updated response in 2004 – *Delivering for Scotland's Gypsies / Travellers*) may have been somewhat cautious, the implementation of the Housing (Scotland) Act 2001 certainly raised expectations of improvement to local authority provision of site services. For example, the Act required the development of local housing strategies (LHS), and the guidance on these strategies specified that Scottish Gypsy Travellers should be included in assessments of accommodation needs. An update in March 2006 reminded local authorities that:

'This guidance lists gypsies / travellers (sic) as one of the groups whose accommodation needs should be covered in the LHS. Local authorities should therefore include details of any progress they have made in assessing or meeting the accommodation needs of Gypsies / Travellers in their areas.' (Communities Scotland, 2006a)¹ .

The role of Communities Scotland as an inspection agency was extended to include local authorities in addition to Registered Social Landlords. Following a recommendation from the Equal Opportunities Committee Inquiry (Recommendation 14), an activity standard on site services was developed, alongside a range of housing and homelessness performance standards for inspection (AS6.1 Sites for Gypsies / Travellers for local authorities only) and guidance on self-assessment and good practice.

¹ Earlier guidance detailing the expectations are no longer accessible electronically.

Activity Standard 6.1, states:

‘We plan and provide or arrange good quality serviced stopping places for Gypsies / Travellers. We let pitches in a way that ensures fair and open access for all. We take Gypsies’ / Travellers’ views into account in delivering our services, and we are responsive to their needs.’

(Communities Scotland, 2002: 1)

The basis of this activity standard was developed through a thematic study of Gypsy Traveller site service provision (Communities Scotland, 2002) and was included in early Pathfinder Inspections (such as that for East Lothian Council, Communities Scotland, 2004). As in previous studies (Lomax et al, 2000; Bancroft et al, 1996), fundamental problems were identified for site quality and management. These problems were:

- Site nuisance or hazards (landfill, pylons, flooding) impacting on sites, out-of-town locations and inadequate transport; concerns about design, poor insulation of amenity chalets, layout and size.
- Costs of pitch rental, fuel costs, lack of planned maintenance and lack of secure tenancy when compared to council house costs and agreements.
- Difficulty in accessing funding for disabled facilities for adaptations and provision of accessible chalets for older and disabled residents.

Later inspection reports, after the Pathfinders, do not consider site planning and management when assessing progress by local authorities on this standard. As a result, the quality of services to Scottish Gypsy Travellers is only assessed periodically through the thematic study approach.

Policy and progress reviews

The review of progress (Scottish Parliament, 2005) following the 2001 Scottish Parliament Equal Opportunities Committee (EOC) Inquiry, found that progress in meeting a range of the Inquiry’s recommendations was slow. This was confirmed by evidence to the EOC’s own Review, including a report from a project with young Gypsy Travellers (Save the Children, 2005). Meanwhile, sites and pitches were still being lost to Gypsy Travellers on both local authority and private sites (Research Consultancy Services, 2006).

The Commission for Racial Equality (CRE, 2006b), drawing on the 2001 policy inquiry, the 2005 review and evidence from other related research and consultations, identified the primary accommodation issues as:

- The lack of a network of accessible and acceptable local authority sites.
- The poor physical condition and location of local authority sites.
- The difference in treatment experienced by Scottish Gypsies / Travellers when housed compared with those living on local authority sites.
- The absence of a network of adequate and appropriate temporary transit sites for Scottish Gypsies / Travellers.
- The inappropriate use of powers to evict Scottish Gypsies / Travellers from roadside encampments when no other appropriate provision is available.
- The widely reported harassment of Scottish Gypsies / Travellers in public and private sector housing.

(CRE, 2006b: 5)

Scottish planning policy since 2001

In 2003, government guidance for planning authorities, *Scottish Planning Policy 3: Planning for Housing (SPP3)*, referred to the role of local planning strategies in addressing the needs of Gypsies / Travellers:

‘Planning authorities should continue to play a role through development plans, by identifying suitable locations for Gypsies / Travellers’ sites where need is demonstrated, and setting out policies for dealing with applications for small, privately-owned sites.’ (Scottish Executive, 2003, p 5)

SPP3: Planning for Homes (Revised 2008a), following consultations, reiterated the previous guidance on the inclusion of Gypsies and Travellers in both housing need and demand assessments and in local housing strategies. Local authorities were also asked to identify suitable locations for sites and set out policies on applications for small, privately owned sites.

The revised SPP3 also noted ‘the existing policy framework for assessing and meeting the accommodation needs of Gypsies and Travellers’: referring back to much earlier guidance from the Secretary of State’s Advisory Committee on Scotland’s Travelling People guidance on site provision (Scottish Executive,

1997) and the Ninth Term Report 1998-99 (Scottish Executive, 2000). It also referenced the guidance from the Department of Communities and Local Government on Gypsy and Traveller Accommodation Needs Assessments (CLG, 2007a).

Accommodation needs assessments

These requirements have led to the inclusion of Scottish Gypsy Travellers in research commissioned by local and national government, such as studies undertaken to identify housing needs or access to housing services. These studies are either specifically focused on Scottish Gypsy Travellers, or alternatively Scottish Gypsy Travellers are included in studies aimed at the housing needs of ethnic minority communities more generally (Craigforth, 2007; Lomax et al., 2004; Netto et al., 2004).

The Scottish Government's *Housing Need and Demand Guidance* (2008b) makes specific reference to Gypsies and Travellers in the section on 'Minority and hard to reach groups'. The guidance notes the importance of local level research and qualitative research techniques, with directions to good practice from Communities Scotland research and community profiles (such as the profile for Gypsies / Travellers in Falkirk) and the Communities and Local Government Guidance on needs assessment (2007a).

Unlike in England, Gypsy Traveller accommodation needs assessments in Scotland have not, to date, been quantitative in approach. They provide broad indicators of need rather than precise numbers of sites and / or pitches required at the local authority level. For example, the West Central Scotland accommodation needs assessment identified a best estimate 'that there may be a need for 50 pitches across West Central Scotland over the next 5-6 years' (Craigforth, 2007: 6), identifying priority areas in Lanarkshire and West Dunbartonshire.

Other research on the accommodation needs of Scottish Gypsy Travellers

Studies of accommodation needs of Scottish Gypsy Travellers have been limited in terms of the previously collected data available to researchers. Scottish Gypsy Travellers have not been included in the UK census as a distinct ethnic group; the only opportunity to self-identify their ethnicity on the census forms was under the category 'Other'. But a new tick box 'Gypsy / Traveller' was included in the

2006 test census in Scotland (Clark, 2006b) and has been recommended as a category for Scotland's 2011 census (The Scottish Government and General Register Office for Scotland, 2008).

The Caravan Count 'Gypsies / Travellers in Scotland' undertaken in January and July each year since 1998 provide a snapshot on one day of the number of caravans, the locations of sites used and the type of site. More detailed information on households is collected but only for those living on local authority or Registered Social Landlord managed sites (Research Consultancy Services, 2006). Local authorities currently have little or no information about the needs of Scottish Gypsy Travellers from previous housing needs research in their areas (Lomax et al., 2004) whether they live in housing, on caravan sites or on roadsides. Also, as Niner (2002; 2004) has noted for England, few agencies identify this group in their record-keeping systems, including for housing management.

There is a limited amount of research which bears on Scottish Gypsy Travellers who live in bricks and mortar housing. Fundamentally, there is no authoritative estimate of numbers although there are indications that the housed population significantly exceeds those staying on sites or encampments. Some accommodation needs assessments (for example Lomax et al, 2008) include interviews with people in houses and / or with Scottish Gypsy Travellers on the roadside with a house elsewhere. For some, moving to a house is clearly a last resort when they cannot find accommodation on a Gypsy Traveller site. Some young Scottish Gypsy Travellers living in housing want to experience travelling or living on a Gypsy Traveller site. 'Latent' need for Gypsy Traveller site places is likely to exist in housing, but its extent is unknown and very difficult to assess.

Research is also very limited on Scottish Gypsy Travellers who do not travel at present, some of whom stay on Gypsy Traveller sites, as well as people in housing. Again, there is some information from needs assessment studies which reveal a range of reasons for not travelling including lack of sites and safe places to camp, and being harassed and moved on while on the roadside, as well as a desire for greater stability because of old age, ill health or children's education. For some, travelling is seen as a much too 'hard life'. There is no information to show how many Scottish Gypsy Travellers who do not travel at present would do so if more sites were available.

Scottish Gypsy Traveller accommodation and accommodation needs have proved difficult areas for study. Reflecting on the research process for a study of accommodation needs, Lomax et al. (2004) identified some limitations and made recommendations for such studies in the future, including one key lesson:

‘Sufficient time needs to be given to developing the study and ideally this would be in conjunction with Gypsies / Travellers themselves, either through representation on local liaison groups which need to be fully aware of the research in developing the remit and as it is commissioned, or through representation on a project advisory group.’ (Lomax et al., 2004, p 55)

Yet opportunities for involvement in resident or tenant participation and consultation by this community have also been limited to date, which means that finding representatives is a necessary first step in the commissioning process and in setting up a study of accommodation needs. Even when Scottish Gypsy Travellers are present at liaison group meetings, the experience of some of them is that, in practice, their views are not listened to. A review of services for Gypsies / Travellers noted that although most local authorities had arrangements for consultation, this was mainly limited to residents on sites and even here key issues were not consulted on. Not surprisingly:

‘Gypsies / Travellers spoken to expressed dissatisfaction with consultation methods.’ (Communities Scotland, 2006b, p 45)

This leaves researchers and local authorities with the challenge of convincing Scottish Gypsy Travellers that their engagement with needs assessments and participation in planning consultations might influence decisions and lead to resources to meet their accommodation needs. Qualitative research (Lomax and McPhee, 2008; Lomax et al., 2008) has provided a fuller understanding of the needs, aspirations and preferences of Scottish Gypsy Travellers and has developed an understanding of models of provision that will meet their future requirements for culturally sensitive accommodation. However, this qualitative focus in the research has resulted in a lack of precision around the exact level of accommodation shortfall arising on Gypsy Traveller sites and among the housed community.

Gypsy / Traveller Sites Grant

In June 2005, the Scottish Executive announced a site development grant of £3 million over three years for new residential or transit sites and for refurbishment of existing local authority sites. Consultations with local resident Gypsy / Traveller communities were required when putting applications together and before submission for funding. Refurbishments following grants awarded from the first applications were on site in 2007, for example in Edinburgh (where pitches were upgraded) and Perth (where the installation of twin units / chalets to replace the former caravans and amenity unit configuration was completed in 2008).

A survey of local authorities' views on the 'use and role of the site grant funding provided so far' was undertaken by the Scottish Government (2007). Questions were asked about their views on: the quality of site provision; engagement with site residents; issues in the bidding process for the grant; the relationship between site provision and local unauthorised encampment, and future priorities on-site provision. However, as yet, there has not been a full evaluation of the impact of the site grant funding on the quality of refurbishments to current sites and the extent to which the grant has improved the provision of adequate and appropriate accommodation for Scottish Gypsy Travellers.

Funding of the Gypsy / Traveller site grant has continued and £1 million has been made available each financial year in 2008/09 and 2009/10. In August 2008, local authorities were invited to submit bids for Gypsy / Traveller Site Grant funding for both 2008/09 and 2009/10. The deadline for bids was 30 October 2008.

The Site Grant has been offered for funding up to 75 per cent of the total project costs. The grant is available for developing new residential or transit sites and for improvements to existing sites. Applications were required to demonstrate that the project will meet one or more of the following criteria:

- To provide good-quality, sustainable facilities on any new residential / transit sites.
- To extend significantly the useful life of the site.
- To bring unused or underused sites back into full use.

- To improve the quality of life of residents by modernising or improving sub-standard facilities.

In total, 21 bids were received from 15 local authorities. Seventeen of the bids were for refurbishment to existing sites and three were for new site provision. From 2010/11, funding for Gypsy / Traveller sites will be rolled into the local government settlement (email communication 26 February 2009, SL / Scottish Government).

While this limited grant funding for new local authority sites and the refurbishment of current sites is available from the Scottish Government, to date there is little innovation or wider consideration of other funding mechanisms to provide support for Scottish Gypsy Travellers in accessing affordable accommodation, whether on sites or in appropriate models of housing, across different tenures.

Scottish Government Race Equality Schemes

The Scottish Executive's Race Equality Scheme (RES) 2005 *Working Together for Race Equality* commented that, at that time, not all Gypsy / Traveller communities were recognised for the purposes of the race relations legislation but acknowledged the need for protection from discrimination and abuse (section 3.43). In following up the Scottish Parliament's Equal Opportunity Committee's 2001 Report and 2005 Review, the RES notes the setting up of a short-life Gypsy / Traveller Steering Group, planned to meet through late 2005 to early 2006 and to include Gypsy / Traveller representatives. Six meetings were proposed for this group but minutes of only three meetings are available, possibly indicating that the Steering Group did not complete its work². A report back on the priorities identified by the Steering Group was due in summer 2009.

The Race Equality Statement (December 2008), drawing on the latest Race Equality Scheme (Scottish Government, 2008c), refers to people 'from minority ethnic (including Gypsy / Traveller), refugee, asylum seeker and faith communities'.

² The Scottish Government website provides minutes from three meetings of the Gypsy / Traveller Steering Group:
<http://www.scotland.gov.uk/Topics/People/Equality/gypsiestravellers/strategy>

‘We should also make very clear that we include Gypsies / Travellers in this statement. During the period of the current Spending Review, i.e. to March 2011, we will commit significant resources towards improving the position of Scottish Gypsies / Travellers where it is in our powers to do so.’ (Scottish Government, 2008d: p 4)

While acknowledging that race legislation is a reserved matter, the statement again notes recognition of Gypsies / Travellers as an ethnic group for the Scottish Government’s own work and encourages this approach from other agencies. Reference is made to the employment tribunal judgment (K. MacLennan v Gypsy Traveller Education and Information Project) as:

‘...an important step forward for this community, which is particularly marginalised and discriminated against.’ (p 4)

The Statement goes on to propose the provision of resources for education, transit sites and community development, with an unspecified number of transit sites in place by March 2011. It notes that these were priorities in the 2005 Equal Opportunity Committee Interim Report and from the Gypsies / Travellers Steering Group (from 2005-06).

Conclusions

The Scottish Parliament started well with its Equal Opportunity Committee 2001 Inquiry, the Communities Scotland thematic studies and the inspection activity standard for local authorities. Expectations from the Scottish Gypsy Traveller community for improvements in service provision were encouraged yet subsequent reviews identified slow progress on the recommendations and little change in the life chances of Scottish Gypsy Travellers (Communities Scotland, 2006; Scottish Parliament, 2005). This situation is unlikely to be resolved until Scottish policy on accommodation for Scottish Gypsy Travellers is further developed.

The Scottish Government’s Race Equality Scheme and Statement (2008) emphasises the embedding of Scottish Gypsy Travellers in its approach to race equality and proposes future resources for services to tackle some key priorities for this group by 2011, some 10 years after the first Scottish Parliament’s Equal Opportunities Committee inquiry into public sector policies.

Since the action taken by the Scottish Parliament EOC in undertaking the Inquiry on public sector policies in 2000/01, England has now 'caught up' in terms of policy and planning and overtaken Scotland in the provision of a framework of legislation and guidance requiring local authorities to assess needs and plan for the provision of appropriate accommodation.

Each local authority in England is required to produce a Gypsy and Traveller Accommodation Assessment (GTAA). These have revealed significant shortfalls in pitch numbers – around 6,000 residential pitches being required over a five-year period (Brown and Niner, 2009). Following arrangements outlined in Office of the Deputy Prime Minister Circular 01/2006 *Planning for Gypsy and Traveller Caravan Sites*, each local authority will get a target for the number of pitches it must plan for through the Regional Spatial Strategy, primarily based on needs revealed by the GTAAs. Local Plan Documents are to allocate sufficient suitable land for sites to meet these pitch targets. This framework provides a clear national, regional and local focus on the provision of additional pitches in a context of acknowledged shortage. The approach is not, however, without its drawbacks, specifically the time the formal planning process takes (Brown and Niner, 2009). In comparison, the Scottish policy framework is less directive and less oriented specifically to site provision. Gypsy and Traveller accommodation issues in England are primarily set within a planning and, to a lesser extent, a housing context with community cohesion overtones. In Scotland, the equalities framework appears potentially stronger with, arguably, more comprehensive reference to management and service issues. It remains to be seen which framework will prove more successful in achieving progress on the ground.

3. ANALYSIS OF THE CARAVAN COUNTS

In July 1998, the former Scottish Executive (now Scottish Government) introduced a series of Twice Yearly Counts of Gypsies / Travellers in Scotland (undertaken each year in January and July) to establish standardised and consistent estimates of the number of Scottish Gypsy Travellers staying on sites and encampments across Scotland. The purpose of the Count is to understand more fully the characteristics of this community and to assist and inform the development of public policies and services for Scottish Gypsy Travellers, both nationally and locally. Each local authority has responsibility for the Count within their area and this information is then submitted to the Scottish Government and a report compiled.

Caravan Counts have been criticised, and their accuracy and completeness has been challenged by groups concerned that they misleadingly understate the size of the community (Clark, 2006b). The Scottish Government has commissioned a review of the Count to be undertaken in late 2009. A significant shortcoming is the omission of Scottish Gypsy Travellers living in housing which, of course, means that the picture of the community can only be partial, leading to widely divergent estimates of population numbers – the July 2008 Caravan Count estimated a population of about 2,455 people living on sites and encampments (Craigforth, 2009) while Scottish Gypsy Travellers themselves estimate that their community includes more than 15,000 people (CRE, 2006c). Because of the omission of Scottish Gypsies and Travellers in housing, the Counts cannot be used as a direct basis for accommodation needs assessment. However, it is worthwhile to examine Count information as contextual material since it provides the only reasonably consistent, time-series information on numbers and locations of the section of the population living in caravans.

This chapter looks at the Caravan Count information for Scotland, presents this within a wider context and identifies ways in which Scotland resembles or is different from other parts of the United Kingdom. The chapter looks specifically at:

- Caravan numbers on different types of site to identify any distinctive patterns in the sites 'market'.
- Changes in caravan numbers between 2006 and 2008.

The data

There are important differences between the data collected and published in the countries of the UK, and this has implications for making cross-country comparisons:

- **England:** The Caravan Count was introduced in 1979 and has been published continuously since, albeit with some amendments over time in what is published (for example, distinguishing now between caravans on unauthorised sites on Gypsy and Traveller owned land and on other land) and the background guidance. The main units counted are caravans (including mobile homes) rather than individuals or households.
- **Wales:** The Caravan Count in Wales was discontinued in 1997 and only re-introduced in July 2006. The Count form is identical to that used in England although the style of report is different. The units counted are caravans. It may be that local authorities are still becoming familiar with local sites and populations; and this could affect the consistency of the Count. The Count return is voluntary and to date one or more authority has not submitted a return each time meaning that the count is always incomplete. Unlike in England, the Welsh Assembly Government does not impute figures for missing returns. For the analysis below, where there are missing figures these have been filled using the figures from the local authority's returns made at the same month in the next or previous year.³
- **Scotland:** The twice yearly Count of Gypsies / Travellers in Scotland is more than a basic statistical return as in England. It includes much more information on council / Registered Social Landlord (RSL) sites and site management. Most fundamentally for comparative purposes, the basic unit counted in Scotland is a 'household' and there is information about household composition on council / RSL sites. On private and unauthorised sites, the basic count is of caravans, and the household number reported assumes that households occupy a single caravan. These figures are, therefore, directly comparable with England and Wales. Pitches on council / RSL sites can accommodate up to two caravans or mobile homes. The Count does not provide figures for the number of caravans per household or pitch. The West Central Scotland needs assessment (Craigforth, 2007) comments that most

³ This affects: Wrexham and Monmouthshire (July 2007 figures used for July 2006); Powys and Monmouthshire (January 2007 figures used for January 2008); and Rhondda Cynon Taff and Merthyr Tydfil (July 2007 figures used for July 2008).

families keep more than one trailer on a pitch (no average given). As a result, comparing household numbers in Scotland with caravan numbers in England and Wales would be highly misleading. For the purposes of this analysis, it was estimated that households on council / RSL sites have an average of 1.5 caravans and all household figures on council / RSL sites have been multiplied by 1.5 in the tables below. The 1.5 multiplier is to an extent arbitrary. In England a multiplier of 1.7 caravans per pitch or household, based on empirical findings from Gypsy and Traveller accommodation needs assessments, is commonly used (CLG, 2007b). This has been reduced to 1.5 for Scotland given the contention in the Count report that, on private and unauthorised sites the assumption that one caravan is equivalent to one household will be accurate in the majority of cases suggesting that rates of caravan use may be lower than in England (Craigforth, 2009: 18).

- **Northern Ireland:** There is no regular Count in Northern Ireland, but needs assessments were carried out in 2002 and 2008 which provide some potentially similar information. There are big differences, however. The assessments include all identified Travellers in Northern Ireland, including those living in bricks and mortar. The basic unit is the household rather than 'caravan'. The differences are such that it is impossible to incorporate Northern Ireland fully into this analysis.

Caravan numbers 2008

Including the adjustment described above to convert household figures to caravans, 593 caravans were counted in Scotland in January 2008 and 901 in July 2008. This shows an extremely large difference over six months. Two factors contributed to this:

- The January 2008 Count total appears unusually low relative to previous years. On the Count's own measure of households, there were 455 households in January 2008, compared with 551 in 2007 and 525 in 2006. Fewer households were counted in 2008 on both council / RSL and private sites than in 2006 and 2007. July 2008 figures were more in line with earlier years although lower than the unusually high figure in 2007.
- There is always a significant difference in Scotland between January and July Count figures. The four-year average of published household numbers 2005-08 shows a January figure of 490 and a July figure of 756. Thus July is, on average, 54 per cent higher than January.

Table 3.1 shows caravan figures for England, Scotland and Wales for 2008.

	January 2008	July 2008
England	17,844	17,626
Scotland	593	901
Wales	813	829

Note: Scottish figures have been amended to facilitate comparisons

Caravan numbers are much higher in England than in Scotland or Wales, not only in an absolute sense, as would be expected in a larger country, but also in a relative sense. If caravan numbers (January 2008) are expressed in relation to 2008 taxable dwelling units, the following emerges:

In England there are eight caravans per 10,000 dwellings

In Wales there are six caravans per 10,000 dwellings

In Scotland there are three caravans per 10,000 dwellings

A further difference between the countries is in the relationship between January and July figures. As noted above, in Scotland, July figures are regularly significantly higher than the January figures. Despite the pattern in 2008, July figures in England have also generally been higher than January figures but to a much lesser extent. The time period available in Wales is short, but the pattern seems closer to the situation in England than in Scotland. This suggests a much more marked seasonality to caravan dwelling in Scotland than in England and Wales, perhaps attributable to the climate. Insofar as this reflects a desired pattern of living, there are implications for the type of sites to be provided. Seasonal or transit sites might be expected to be relatively more important in Scotland than in England and Wales.

Type of site: 2008

Table 3.2 shows the number and percentage of caravans (amended as described above) in Scotland on different sorts of site in January and July 2008.

	January 2008	July 2008
Council / RSL sites number	414	470
<i>Council / RSL sites %</i>	70	52
Private sites number	81	162
<i>Private sites %</i>	14	18
Unauthorised sites number	98	269
<i>Unauthorised sites %</i>	17	30
Total number	593	901
<i>Total %</i>	100	100

Note: Council / RSL figures have been amended to convert from households to caravans

In January 2008, seven out of 10 caravans were on council / RSL sites. This shows the great importance of council / RSL sites in providing for year-round caravan dwelling among Scottish Gypsies and Travellers. Only about one caravan in seven was on a private site.

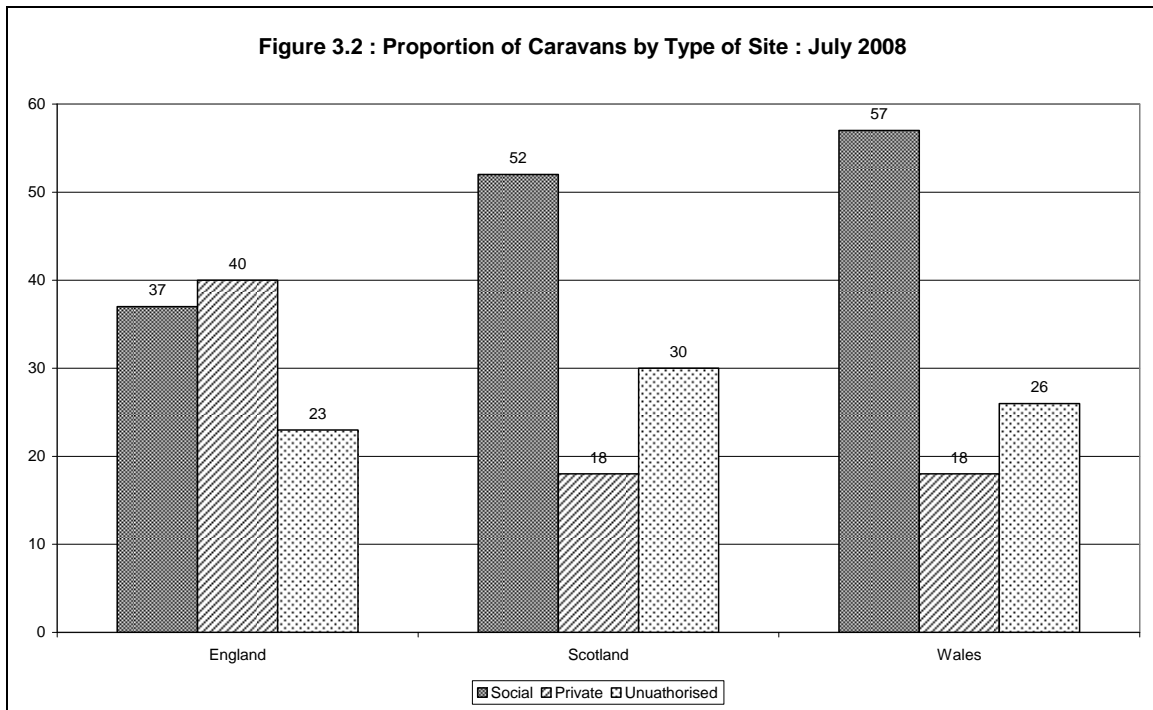
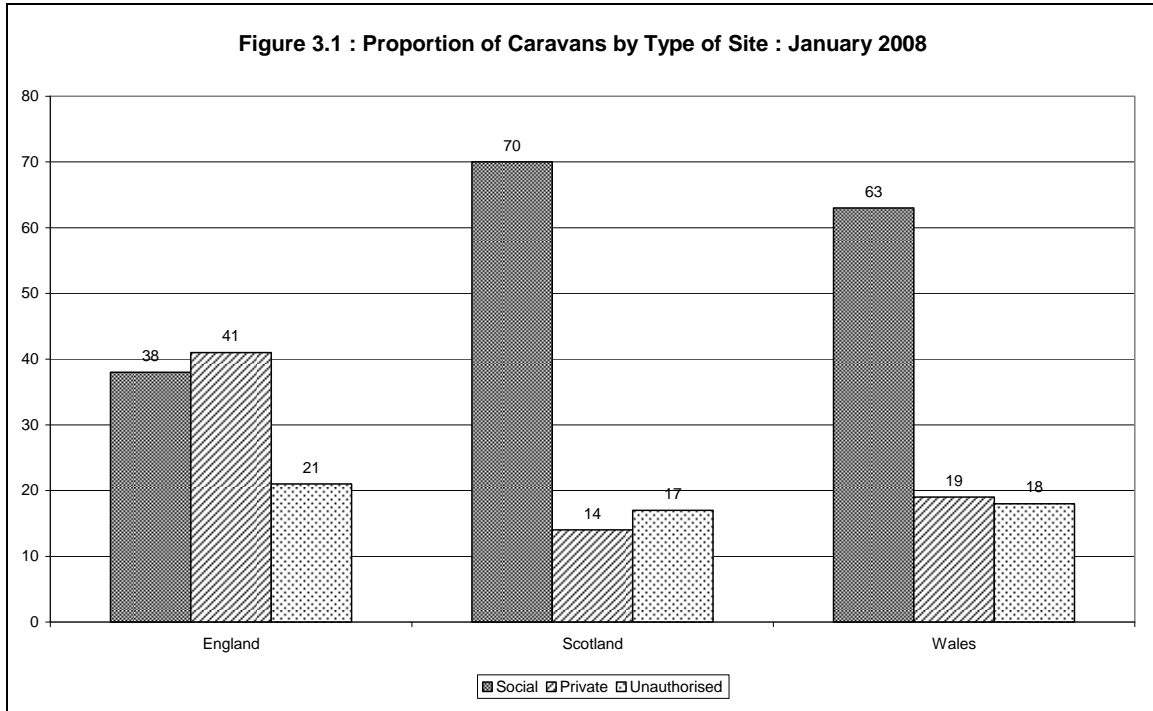
In July the picture is very different. Caravan numbers increased on all types of sites, but to a much lesser degree on council / RSL sites. Numbers on private sites doubled January to July, and on unauthorised sites they almost tripled. This appears to reflect the use of private caravan sites and, especially, the roadside to accommodate seasonal travel.

Looking at the Count figures at local authority level and averaging years between 2005 and 2008 shows that the following local authorities averaged more than 20 caravans on unauthorised sites in July:

- Fife (also relatively high in January)
- Moray
- West Lothian
- Aberdeen
- Highland
- North Ayrshire

The list includes urban and rural areas, but apart from Aberdeen does not include major population or employment centres such as Glasgow, Edinburgh and Dundee. This suggests travelling may be particularly oriented to social reasons and holidays alongside seasonal employment out of school term time.

The distribution of caravans across types of sites is different in England, Scotland and Wales. Figures 3.1 and 3.2 show the patterns for January and July respectively.



The January distributions show the clear contrast between England on the one hand, and Scotland and Wales on the other in terms of the relative importance of private sites. This is a major difference which is probably also true of Northern Ireland where a re-calculation of 2008 figures for Traveller households living on sites suggests that 72 per cent are on social sites of some kind, 12 per cent on privately owned sites and 16 per cent on unauthorised sites (a pattern quite similar to Scotland). The proportion of caravans on unauthorised sites is highest in England at 21 per cent; this probably reflects the relative importance of unauthorised developments – that is the development of private sites by Gypsies and Travellers without planning permission.

There is little difference in the pattern of site usage in England between January and July. However, in both Scotland and Wales the relative importance of social sites decreases somewhat in July and the importance of unauthorised sites increases, especially in Scotland.

It is not clear from the figures alone whether differences in preferences underlie these site tenure differences between Scotland and England. The lesser contribution of private sites could perhaps be the result of different aspirations, or planning policies, or levels of affordability. Whatever the underlying factors, however, it does suggest that there are dangers in automatically assuming that the situation in England is replicated elsewhere and that English policy approaches will necessarily work elsewhere.

Trends since 2006

Comparing caravan figures for 2006 and 2008 reveals a degree of variability in Scotland which is hard to account for. It might be dangerous to try to make too much of these variations, however, as they may be caused by the way the data has been collected. As the Count report for July 2008 notes in relation to private sites ‘while figures suggest a decline, the difficulties in collecting accurate data means that what is available can be unrepresentative of what is actually happening on these sites’ (Craigforth, 2009: 6). Difficulties are likely to include identifying and gaining access to private caravan sites and unauthorised sites where Scottish Gypsy Travellers are staying (see also Clark 2006b).

Figure 3.3 shows percentage change in caravan numbers from January 2006 to January 2008 in Scotland and England (there are no January 2006 figures in Wales). Over the period, total caravan numbers in Scotland apparently fell by -12 per cent from 675 to 593. This contrasts with an increase of 13 per cent in England. Caravan numbers were lower on every type of site in 2008 than in 2006 in Scotland, while they were higher on all types of site in England. It is easier to account for growth (through natural population increase) than for decline.

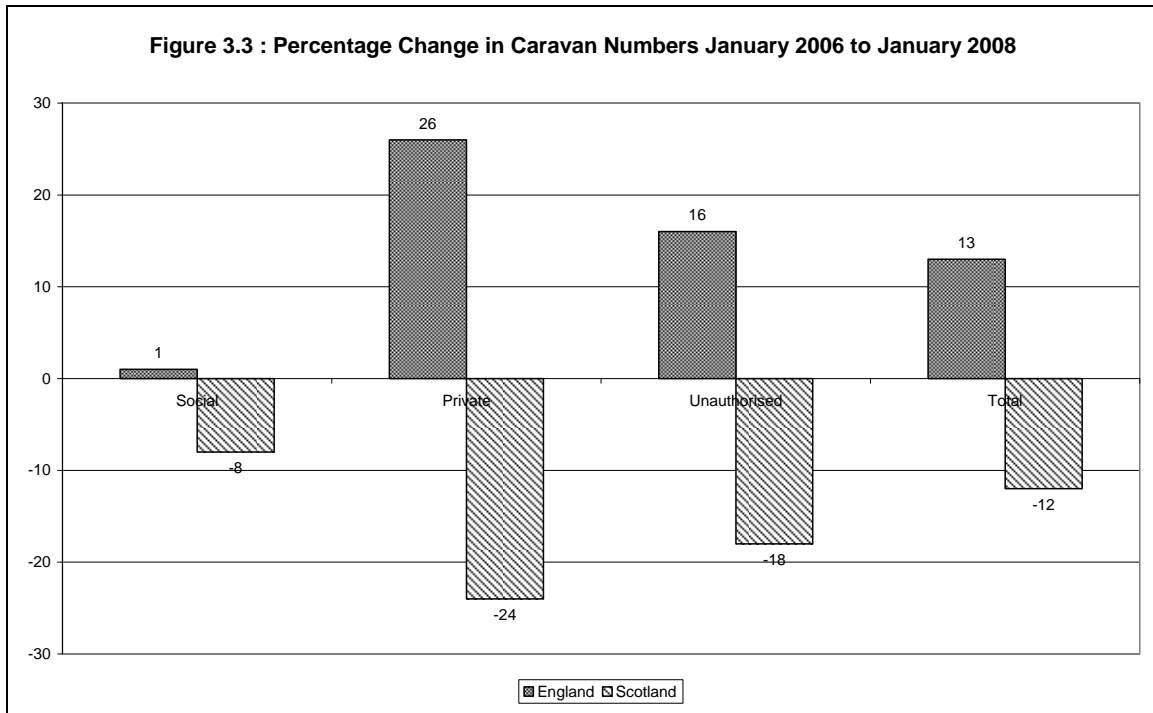
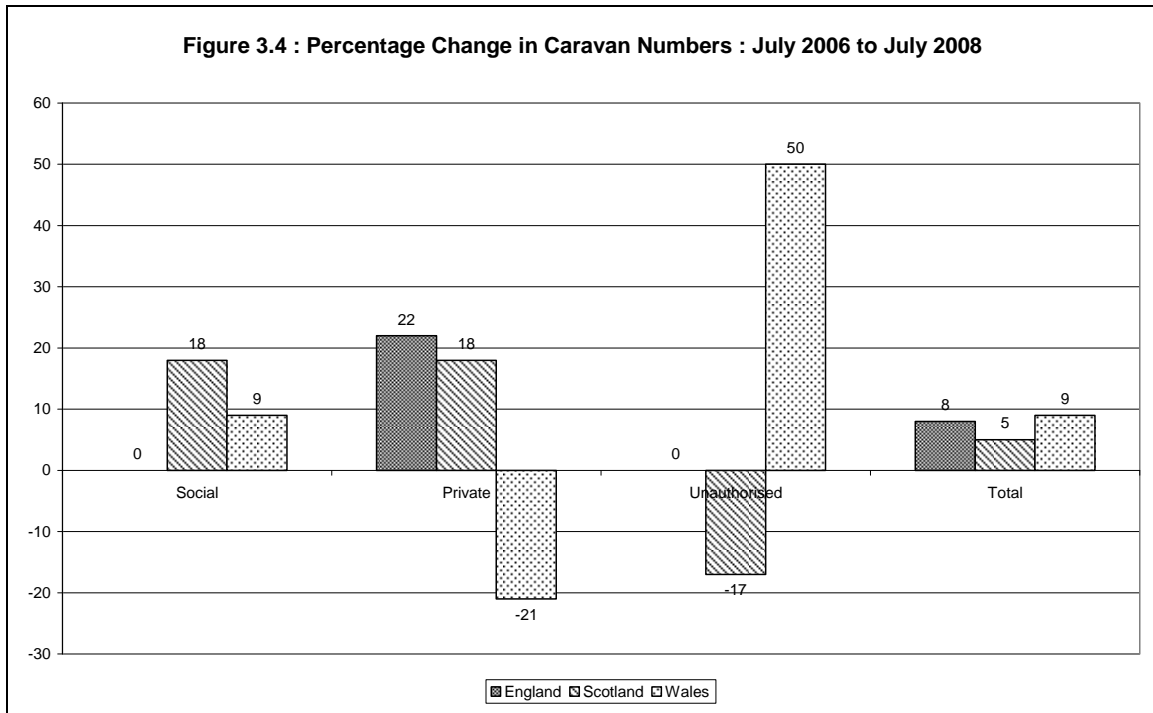


Figure 3.4 shows percentage change in caravan numbers by type of site between July 2006 and July 2008. In this case, Scottish caravan numbers increased by five per cent from 861 to 901; increases on council / RSL and private sites more than made up for a decrease on unauthorised sites. The rate of increase recorded is lower than in England or Wales.



It is not clear whether caravan numbers in Scotland are increasing or not. However, as will be seen in Chapter 7, local authorities recorded a net loss of pitches on council / RSL sites not fully offset by increases in pitches on private sites. This gives a rather different context to that of England where growth and need are widely accepted as the proper objective of policy.

Council / RSL sites in Scotland

The Scottish Count for July 2008 gave details of pitch numbers and occupancy of 32 council / RSL sites spread across 23 local authorities (Craigforth, 2009: 30). Three sites are seasonal and open only in summer.

Most local authorities have a single site only:

- No site: nine authorities
- One site: 18 authorities
- Two sites: two authorities (Dumfries & Galloway and South Lanarkshire)
- Three sites: two authorities (Argyll & Bute and Fife)
- Four sites: one authority (Highland)

While Scottish Gypsy Travellers are potentially able to live on council / RSL sites in most parts of Scotland, there is little choice of site available.

The 32 sites had a total of 499 pitches, which equates to an average size of 16 pitches. Most sites had 15 or more pitches:

One to 10 pitches: five sites
10 to 14 pitches: six sites
15 to 19 pitches: nine sites
20 pitches and over: 12 sites

There are relatively few 'small' sites among the current council / RSL site stock.

In July 2008, 70 per cent of pitches on council / RSL sites were let, 22 per cent were available for letting and eight per cent were not available. This suggests an under-use of the stock which is explored in more detail in Chapter 8.

Comment

This analysis of Caravan Count figures across the UK has highlighted distinctive Scottish features which form a backdrop to the survey of local authorities on the accommodation needs of Scottish Gypsy Travellers. The main features are:

- Relatively low caravan numbers and small and somewhat indeterminate changes in numbers since 2006. Unlike England, there is no clear evidence of growing numbers to support presumptions of widespread major shortfalls in pitch provision.
- Having said that, there were around 100 caravans on unauthorised sites in January 2008 suggesting a round-the-year shortfall in sites.
- July figures are significantly and consistently higher than January figures, suggesting seasonal travelling in summer. Simply from the Counts, the evidence for some form of transit provision is more marked than for additional residential provision. The Counts do not indicate reasons for travelling, whether for employment, social purposes or holidays. Nor do they indicate where summer travellers spend winter – for example, in bricks and mortar housing and / or outside Scotland. The nature of the areas showing a particular summer peak on unauthorised sites suggests a mix of underlying factors may be in play.
- A significant difference from England is the relative unimportance of private sites in terms of caravan numbers. It is unclear why this difference exists.

Some needs assessments (for example in Perth & Kinross) have found Scottish Gypsy Travellers prefer private family sites, as do their counterparts in England. This preference is supported by a number of planning applications for private sites reported by a small number of local authorities replying to our survey – but the survey also shows the difficulties applicants face in getting Gypsy Traveller sites approved, especially without resorting to the expense and stress of a planning appeal (see Chapter 7). There is no information to show whether Scottish Gypsy Travellers would find it more difficult to afford to buy and develop land than their English counterparts.

4. POLICING ISSUES

Police Authorities are particularly active in managing unauthorised encampments in a number of areas of Scotland and are ideally placed to offer informed views as to how the accommodation situation of Scottish Gypsy Travellers is working out 'on the ground'.

Each of the eight Police Authorities was approached to explore their views and practice via a short email survey. The Association of Chief Police Officers (ACPOS) in Scotland produced a collated response to the nine separate questions asked. The questions, together with detailed responses, are presented in Appendix 4. We also sought the views of Ian Taggart (a former police officer who is now a researcher) and these are also presented alongside those of ACPOS in Appendix 4. Main themes emerging from the responses can be summarised as follows:

- There is an acknowledgement that Gypsy Travellers have an historical presence within Scotland and have a continuing desire to travel. There was no indication that there had been an increase or a decline in numbers of Scottish Gypsy Travellers or their desire to travel.
- Features of the current accommodation situation for Scottish Gypsy Travellers across the country include a lack of appropriate site provision and the loss of traditional stopping places. This leads to greater awareness of unauthorised encampments, and their impact, on the part of the settled community.
- Tensions within and between Scottish Gypsy Traveller groups were seen to have impacted on the use of some sites and therefore on the levels of occupancy on these sites, often resulting in an increase in vacancies.
- There is a recognition that there are no simple answers given the nature of the Scottish Gypsy Traveller communities involved, the presence of entrenched views and the complex historical context of Scottish Gypsy Traveller accommodation and travelling needs.

5. NEEDS ASSESSMENT AND HOUSING STRATEGIES

'Local authorities are to consider the needs of all Gypsies and Travellers for appropriate accommodation within their housing need and demand assessment and take these into account in preparing their local housing strategies' (Scottish Planning Policy 3 *Planning for Homes*, 2008, para 83)

Chapter 2 outlined the policy approach towards the provision of accommodation for Scottish Gypsy Travellers. The first section of the questionnaire sent to local authorities examined progress made in terms of carrying out accommodation needs assessments for Scottish Gypsy Travellers, and the extent to which these are taken into account in local housing strategies as required by SPP3 (see box above). The figures in this chapter relate to the 26 survey responses (81 per cent of local authorities) received and analysed by 10 July 2009.

Accommodation needs assessments

Seventeen of the 26 responding authorities (65 per cent) said that they had undertaken an assessment of the accommodation needs of Scottish Gypsy Travellers in their area. These assessments had been completed between 2003 and 2008. One authority (Perth & Kinross) has carried out two assessments, one as part of a sub-regional study in Tayside in 2003, and a further study focusing on Scottish Gypsy Travellers on private sites and unauthorised encampments in 2007. A further six authorities (23 per cent) said that an assessment was in progress at the time of the survey; all but one of these was expected to be complete by the end of 2009.

Only three authorities (Eilean Siar, Highland and North Lanarkshire) had not embarked on an assessment. An assessment is planned to commence in Highland in 2009/10. No assessment has been carried out in Eilean Siar because of the reported absence of Scottish Gypsy Travellers, attributed to the expense of travelling to the islands. In North Lanarkshire, lack of demand for access to the existing Gypsy Traveller site in the area and the provision of support in accessing both temporary accommodation and permanent accommodation, were given as reasons for not carrying out a recent needs assessment. It is also apparent from

answers elsewhere in the survey that North Lanarkshire is planning to carry out an assessment at some point.

The great majority (94 per cent) of authorities with completed assessments had been part of a sub-regional study (West Central Scotland; Tayside; and East Lothian, Midlothian, Edinburgh and Scottish Borders). Only West Lothian had undertaken a single-authority assessment. However, four of the six studies in progress are single-authority assessments.

The 2008 revised guidance from SPP3 quoted at the head of this chapter refers to the guide *Gypsy and Traveller Needs Assessments* issued by the Communities and Local Government department in 2007 in England (CLG, 2007). However, the majority of the completed studies in Scotland pre-date this guidance and show significant differences from their English counterparts. In particular, while almost all English assessments make a quantitative estimate of requirements for additional pitches over the next five or 10 years, only five of the 17 Scottish authorities with a completed study said that it provided a numerical estimate of requirements. All were part of the West Central Scotland study which made somewhat tentative estimates of pitch requirements (50 additional pitches across the study area qualified by the need to take account of pitch turnover) and their distribution (priority areas for additional official sites in Lanarkshire and West Dunbartonshire). Three of the responding authorities from the West Central Scotland grouping that were not in these named priority areas interpreted their requirement as zero, others were apparently uncertain about what the assessment meant for their area.

Pitch requirements

In the light of the largely non-quantified nature of needs assessments in Scotland, it is not surprising that only eight authorities were able to give an estimate of the number of additional residential pitches required over the next five years. Answers were:

Zero: Argyll & Bute, Dundee, East Dunbartonshire, East Renfrewshire and South Ayrshire

20 pitches: West Dunbartonshire (from the West Central Scotland assessment)

40 pitches: Perth & Kinross (from their more recent study which recommended that there were at least 37-42 Scottish Gypsy Traveller households requiring alternative accommodation preferably residential trailers, pitches or chalets)
50 pitches: Fife (source of estimate unknown)

Only seven authorities were able to give an estimate of transit or stopping places need over the same period:

Zero: Argyll & Bute, East Dunbartonshire, East Renfrewshire, South Ayrshire and West Dunbartonshire
One pitch: Dundee (possibly one site rather than pitch intended)
Six pitches: Fife (source of estimate unknown)

Where authorities felt able to give an answer, they indicated that most of the requirements identified were for social (local authority and registered social landlord) provision rather than private provision. This may reflect the status quo in which most provision takes the form of council / Registered Social Landlord (RSL) sites rather than local authorities fully understanding what Scottish Gypsy Travellers desire or need.

Question A8 of the survey asked whether identified shortfalls would be met during the next five years. Of the authorities acknowledging a positive requirement, only Fife thought that it would probably be met. The others thought it unlikely that it would be met and gave the following reasons:

Dundee (one transit pitch/site): 'There is a shortage of suitable land to provide transit sites within Dundee City's boundaries. There are also no funds available to create a transit site.'

Perth & Kinross (approximately 40 residential pitches): 'It is very difficult to make provision for Gypsy Travellers. Local Authorities would be required to fund such provision from the General Fund which is already very stretched in maintaining Council Services. There are also many problems in getting planning provision for developments of this nature.'

West Dunbartonshire (20 residential pitches): 'The Gypsy / Travellers Action Group, who represent the residents living on the permanent site, have stated clearly that they do not want an additional site located in West

Dunbartonshire. They have advised that if the Council were to go ahead (land has been identified) the site would be either unused or destroyed.'

These answers illustrate some of the barriers to site provision explored in more detail in Chapter 9 below. The final point from West Dunbartonshire is somewhat unexpected and counterintuitive to Scottish Gypsy Traveller accommodation needs and research more widely.

The figures given in the survey for pitch requirements are hard to interpret. From eight authorities providing estimates (31 per cent of survey respondents and 25 per cent of all Scottish authorities) there is a requirement for over 100 additional residential pitches – located in just three areas. However, the general lack of numerical estimates of requirements to date suggests that it would be very unsafe to attempt to scale this figure up to make a national estimate. Two rather different conclusions can be drawn:

- It is highly improbable that requirements are confined to three areas. It is highly probable that there are requirements currently either unquantified or unacknowledged across the country.
- In comparison to England, where Gypsy and Traveller Accommodation Assessments (GTAAAs) have identified and quantified requirements virtually everywhere, Scotland is potentially less advanced in preparing for additional site provision both nationally and locally. The first step – identifying the scale of the shortfall to be met – is not yet in place.

While we have concentrated here on the (lack of) quantified elements in Gypsy and Traveller accommodation assessments, the overall usefulness of the studies must not be understated. The production of a pitch requirement figure to address accommodation shortfall is only part of the story. The studies completed so far provide a wealth of qualitative information in terms of the characteristics of Scottish Gypsy Travellers and their wider needs. There is also valuable detail about site quality and management issues and much material to assist local authorities in developing policies towards improved service provision and equalities issues for Scottish Gypsy Travellers.

Local housing strategies

The majority of authorities (65 per cent) said that there is a specific policy or action in their local housing strategy aimed at providing or facilitating the provision of accommodation for Scottish Gypsy Travellers. A further five authorities (19 per cent) said that such policies / actions were in preparation, usually with a completion date in 2009. Three of the four authorities answering 'no' (Dundee, East Renfrewshire and Falkirk) appear to have been very precise in their interpretation of the question. All their local housing strategies include references to Scottish Gypsy Travellers, including, for example, an action to assess needs, but no specific policy / action aimed at providing or facilitating the provision of accommodation for Scottish Gypsy Travellers. Very similar statements / policies / actions appear in the strategies of those authorities answering 'yes' to the question. Only Eilean Siar among the responding authorities neither makes, nor plans to make, reference to Scottish Gypsy Travellers in their local housing strategy because of the reported absence of Scottish Gypsy Travellers on the islands.

Examination of local housing strategies provided by responding authorities or from the internet suggests that most policies / actions relate to assessing needs and developing action plans in line with the findings, improving service provision, upgrading the condition and / or management of existing council / RSL sites and developing communications and consultation with Scottish Gypsy Travellers. Specific references to **additional** site provision are sparse and include:

Angus: the shortfall in transit sites is acknowledged

Fife: there is a shortfall of sites and existing sites are overcrowded

Renfrewshire: ongoing discussion with neighbouring authorities to see if joint site provision is justified

Several local housing strategies explicitly comment on the lack of need locally for (additional) site provision.

This brief consideration of local housing strategies suggests:

- Scottish Gypsy Travellers are referred to in the great majority of local housing strategies. In this regard, guidance has been followed.

- References to general service provision, site conditions and site management suggest that Scottish Gypsy Traveller issues are embedded in wider housing policies.
- There is little apparent recognition in the strategies of any significant shortfalls in site provision, nor indications that authorities are well prepared to move towards increasing site provision.

6. GYPSY TRAVELLER SITES AND PLANNING

‘Planning authorities should identify suitable locations for sites for Gypsies and Travellers and set out policies for dealing with planning applications for small privately-owned sites. Planning authorities should ensure that Gypsy and Traveller communities are involved in decisions about sites for their use.’ (Scottish Planning Policy 3 *Planning for Homes*, 2008, para 83)

This chapter looks at how local authorities are responding to the above guidance. It is based on Section B of the questionnaire completed by 26 local authorities.

Looking for locations for sites

Eleven authorities (42 per cent) said that they had identified suitable locations for sites for Scottish Gypsy Travellers. Given the apparently low acceptance of need for additional sites, in some instances at least this may include existing sites. A further four authorities (15 per cent) said that they were actively working towards identifying suitable locations.

Nine authorities (35 per cent) are not working towards identifying suitable locations (two did not answer this question). The most important reason given was lack of need beyond an existing site. For example:

‘By providing a permanent site, we have met our requirements. The accommodation needs assessment and current waiting lists would suggest that there is no need for additional permanent site provision.’
(South Ayrshire)

‘There is no identified need for additional provision.’ (South Lanarkshire)

‘Several years ago the predecessor authority (Dundee District Council) undertook an assessment of potential sites for the provision of Gypsy / Traveller accommodation within its area. Following the identification of a suitable site, approval was obtained and the site was developed. The facility has operated, apparently successfully, for many years and seems

to be meeting the local requirement for this type of accommodation. Given this situation there was not felt to be a requirement for policy guidance on additional provision.’ (Dundee)

Other authorities were awaiting the outcome of ongoing needs assessments:

‘Suitable locations have yet to be identified and will be influenced by the outcome of the planned Gypsy / Traveller Accommodation Needs Assessment and Planning Policy.’ (Highland)

A rather different form of answer was given by East Ayrshire:

‘It was found to be extremely difficult to identify and agree suitable sites for this use.’

Development plan policies

Informal working towards identifying suitable locations for sites is not necessarily reflected in formal planning policies. A minority of local authorities (eight out of 26, or 31 per cent) said that their approved Development Plan includes a specific policy relating to the provision of Gypsy Traveller caravan sites. A further authority (accounting for four per cent) said such a policy was in preparation with an expected completion date of September 2012.

Question B6 asked whether authorities have policies for dealing with planning applications for small privately owned sites for Scottish Gypsy Travellers. Only five authorities out of the 26 (19 per cent) said that they had, while a further four (15 per cent) said that such a policy is in preparation. All five with a policy also said they had specific policies relating to the provision of Gypsy Traveller caravan sites; an earlier question in Section B. Examination of the policies themselves shows considerable overlap between the general policies and those for dealing with applications for small private sites.

The most common form of policy is a list of criteria which must be met before a site will be approved. Box 6.1 provides examples of a relatively simple and a more complex policy from Angus and West Lothian.

Two Development Plan policies refer to specific sites:

East Dunbartonshire: Policy HMU5: The Council will implement a site for travelling persons at Auchenhowie Road, Milngavie for 12 pitches (which has conditional planning consent).

West Dunbartonshire: Finalised Draft of the West Dunbartonshire Local Plan is referred to in the Local Housing Strategy 2007 Update.
Policy PS3 Public Service Opportunities: The schedule of opportunity sites includes two Traveller sites:

PS 3(1) Site north of Dalmoak Farm, Renton 0.86 hectares

PS 3(2) Dennystoun Forge Caravan Park, Dalreoch, Dumbarton
0.82 hectares for extension of site

The policy says these sites will be supported by the Council for development subject to conformity with other Local Plan policies.

Neither specified new site appears to have been developed to date.

Box 6.1: Examples of Criteria-based Policies for the Approval of Gypsy Traveller Sites

Angus: Finalised Angus Local Plan Review

Policy SC13: sites for Gypsies / Travellers

Angus Council will support existing sites and consider the development of new sites for Gypsies / Travellers where they satisfy an identified local demand and:

- are compatible with surrounding land uses
- provide a good residential environment for the people living there, including the provision of public utilities for each pitch or in amenity blocks as appropriate, and
- are well located for access to the local road network.

West Lothian: West Lothian Local Plan

Policy HOU 11

Proposals to establish private sites for the accommodation of Gypsy Travellers will be supported provided that they:

- a) do not conflict with environmental protection policies ENV 2 (Local

Biodiversity Action Plan species), ENV 3 (European designated sites), ENV 4 (nationally designated sites, ENV 5 (local sites) and ENV 11 (woodland and trees)

- b) will not result in the loss of prime agricultural land (ENV 7)
- c) do not conflict with landscape protection polices ENV 19 (Areas of Great Landscape Value), ENV 21 (Areas of Special Landcsape Control), ENV 22 (Countryside Belts), ENV 26 (Rights of Way), ENV 27 (Core Paths)
- d) would not have an adverse environmental impact on neighbouring uses and, in particular, housing through an increase in noise, road traffic movements and other disturbances
- e) are not located within or adjacent to an established residential area, strategic employment land or recreational area
- f) can be made compatible with the character and appearance of the surrounding area through appropriate landscaping and screening
- g) can reasonably access local services and facilities eg shops, hospitals, schools and public transport
- h) can achieve appropriate access and parking, and
- i) do not create a danger to the health and safety of gypsy travellers.

In addition, the site must be easily accessible, but not conspicuous from any view from a major road.

The majority of local authorities do not have approved formal planning policies on Gypsy Traveller site provision or for dealing with applications for small privately owned sites. Three main reasons were given:

- Gypsy Traveller site provision was not identified as a priority and / or there was no specific national guidance at the time the approved Development Plan was produced. For example, Renfrewshire noted: 'There was no requirement, statutory or otherwise, for the provision of such policy in DP [Development Plan] at the time of the Structure and Local Plans for this area. In the preparation of the next round of Strategic and Local Development Plans due regard will be had to any relevant guidance or policy in force at that time.' This illustrates the importance of guidance in encouraging authorities to consider issues which might otherwise be accorded lower local priority.
- Perceived lack of need for a policy because of lack of need for sites and / or planning applications being submitted. For example, from South Ayrshire: 'There was no need to include it within the Local Plan, as we already provide

access to a permanent site for Gypsies / Travellers.’ Explaining why there is no policy for dealing with planning applications for small privately owned sites, North Ayrshire comments: ‘Never had any approach for such sites.’

- A few authorities commented that there is no need for a specific policy for dealing with applications for private sites because other general development control policies can be applied: ‘Any planning application would be considered within Planning Policy similar to that for new build housing or that of a new caravan park’ (South Ayrshire).

This suggests the need for action on the part of most authorities if they are to meet the guidance in Scottish Planning Policy 3 *Planning for Homes* outlined at the head of this chapter.

Involvement of Scottish Gypsy Travellers

Question B9 asked authorities to outline the steps taken to involve Scottish Gypsy Traveller communities in decisions about sites for their use. It is clear from answers that authorities vary widely in the extent to which they involve Scottish Gypsy Travellers, and in the means used. This may well be an area where perceptions of local authorities and Scottish Gypsy Travellers would diverge.

Twenty-two authorities answered the question. Five answers were to the effect that there had not, to date, been any such involvement. In the case of North Ayrshire, this was said to be because: ‘The Gypsy and Traveller communities in North Ayrshire do not want to engage with the Council in such matters.’ Two further authorities noted that the Local Plan had been subject to general consultation procedures, but that these were not specifically geared to Scottish Gypsy Traveller needs.

About two-thirds of respondents reported some means of involving Scottish Gypsy Travellers locally. A number of respondents referred to the process of carrying out the Gypsy and Traveller accommodation assessment. For example, Glasgow noted that consultation and involvement of Scottish Gypsy Traveller communities was an important element in the brief of the West Central Scotland study. North Lanarkshire, in describing their planned assessment, note:

‘It is intended, as part of the planned assessment, to conduct one-to-one interviews with gypsy travellers to gather information on their views on our

current site provision and future possible locations for site development. This will include other aspects, such as, the type of support and site facilities that they view as integral in achieving successful site development.'

Other authorities noted that they regularly involve Gypsy Traveller site residents on matters to do with the site and its management, for example:

'The Gypsies / Travellers from St Christopher's site are consulted in any decision taken by the council: allocation policies, new leases, modernisation of the site etc.' (Angus)

This has not always proved straightforward:

'We talk to the residents on the site, but have found that they do not wish to talk as representative for anyone other than their own immediate family. The improvements to the Council owned site in recent years have come from ideas and requests put forward from the site residents.' (Stirling)

Some answers suggest well-developed involvement arrangements with regular meetings and / or specific working groups. It is apparent that some authorities are in the process of developing approaches, having recognised the importance of the issue. Box 6.2 gives some examples. It is apparent that site-based Scottish Gypsy Travellers are most commonly involved in consultations rather than Scottish Gypsy Travellers in bricks and mortar accommodation or using unauthorised encampments.

Comments

It is clear that authorities do not yet fully comply with the guidance in SPP3 regarding identifying suitable locations for sites and including policies for site provision in Development Plans.

To some extent this appears attributable to uncertainties about the extent of need for further site provision and often assumptions are made around this without clear information. The following quotation sums this up. It has been edited to preserve the anonymity which was promised to respondents for the final section of the questionnaire.

‘The overwhelming reality appears to be a decline in demand for permanent gypsy / traveller site accommodation in []. . . . We are aware that this position is different from that in the south of England. There was an upsurge in demand in the 1970s and 1980s which the authority responded to by providing at one stage two sites, in different parts of the city, but the situation is different now. The fall off in demand may reflect changing needs within the community itself. Recent comprehensive national research in Northern Ireland highlighted that increasingly the community prefer settled accommodation, only a minority continue to travel and mainly during the summer months. This latter aspect fits with the pattern of unauthorised encampments experienced by [] and neighbouring local authorities.’

Box 6.2: Examples of Arrangements for Involving Scottish Gypsy Traveller Communities	
Dumfries & Galloway	
	Currently have a Travelling Person’s liaison group which includes representatives from the travelling community and meets on a quarterly basis.
Fife	
	Fife Council’s Travelling People Working Group (TPWG) involved people from the Travelling community and had representatives from Save the Children and FRAE Fife (Fairness Race Awareness and Equality), who advocated on behalf of the Travelling People. There were members from the Council’s sites’ Tenants Associations on the TPWG.
West Dunbartonshire	
	West Dunbartonshire supports the Gypsy / Traveller Action Group. Regular meetings have been held with local councillors, the MP and the MSP. There is an established history of consultation.
West Lothian	
	<ul style="list-style-type: none"> • Consultation with Travellers both on sites and on unauthorised sites when applying for funding from Scottish Government to upgrade site.

	<ul style="list-style-type: none"> • Consultation with Travellers on permanent site on individual kitchens and bathrooms. • Two volunteer consultants from Travelling Community who are involved in Focus Group, Race Forum and advising on education work with young people.
Perth & Kinross	
	<p>We are working with Planning Aid and hope to run a pilot public consultation exercise with them on hard to reach groups, including gypsy travellers.</p>
Scottish Borders	
	<p>We are looking to set up focus groups around the management of our one official site in the Borders, again only recently identified as an objective and priority, in partnership with our equality and diversity departments.</p>

7. PROGRESS ON PITCH PROVISION

Section C of the survey questionnaire deals with progress on pitch provision since the beginning of 2006. It asks first about gains and losses of council / Registered Social Landlord (RSL) pitches, then about planning applications for private pitches. The perspective is that of the local authorities. There is, for example, no information on perceptions of the planning application system or problems in negotiating its requirements held by Scottish Gypsy Travellers.

Council / RSL pitches

The survey shows that, among the 26 responding authorities, the number of pitches on council / RSL sites decreased over the period. The only report of pitches on a new residential site was from Perth & Kinross where a chalet project is being developed at Pitlochry. This is for people currently living on a site owned by a local private estate which is now leased by the Council. This 'new' site will provide six timber chalets. While representing an increase to the stock of council / RSL pitches, it presumably also represents a loss of private provision and cannot be seen as a net gain overall.

The only other reported 'positive' change is the re-opening in 2006 of four pitches on the existing site in Glasgow. These were re-occupied but have subsequently become vacant again along with the other six pitches on the Rodney Street site. The site is still available for occupation but, in view of continuing non-use, permanent closure is now under consideration.

Council / RSL site closures were reported by:

North Ayrshire: 12 pitches on the island of Aran. There was no demand for the site over a long period prior to its closure.

Scottish Borders: access to 10 pitches is no longer available to the Council following the closure of a commercial site in Galashiels in 2007/08.

Highland: five pitches were closed at Kentallen, one of the sites in Lochaber. There were a number of reasons for this decision:

- vacancy levels over a period of time
- no new demand

- certain families achieving social housing solutions in nearby rural communities
- health and safety – fences had been erected around the unused pitches, and
- site upgrade - a successful bid for the Gypsy / Traveller Site Grant 2007/2008 included the proposed demolition of the unused and inaccessible pitches. A consultation with residents was undertaken as part of the grant application submission.

Falkirk: two pitches were closed when they were damaged beyond use in 2007. These are scheduled for re-build in 2009 which will bring the site back to full capacity.

West Lothian: the chalets on two pitches were developed using funding from the Education Department to make a Resource Centre for internal/external agencies to use to deliver services to Travellers.

South Lanarkshire: one pitch has been closed to provide on-site community facilities.

In total, 32 council / RSL pitches have been lost, of which seven might be seen as contributing to site improvements, and two as temporarily lost. Beyond this, there has been a fairly significant loss of council / RSL pitch provision albeit sometimes in response to evidence of low demand for the sites in their current location and / or condition.

Change since 2006 appears to represent somewhat negative progress in regard to council / RSL site provision. The extent of loss appears to be greater than indicated by the Caravan Counts analysed in Chapter 3.

Private sites

In contrast, reported changes in provision of private pitches – while modest – are positive since 2006. Box 7.1 summarises planning applications and grants of planning permission reported by the 26 responding authorities. In total, 12 applications were received by six local authorities (23 per cent of respondents), involving at least 26 pitches. There were no applications to extend existing private sites. Only one application (four pitches) received full planning permission and one (four pitches) was given a personal planning permission limited to the applicant only. In addition, three permanent permissions were granted on appeal involving 10 pitches. The following points can be made:

- A minority of authorities received applications. Only Perth & Kinross received more than one application in the period (although two permissions fell into the period in Falkirk).
- A crude 'success' rate, calculated by expressing permissions as a percentage of applications, is 42 per cent including permissions granted on appeal and 17 per cent excluding appeal decisions.
- The appeal system is obviously very important in achieving permissions for Scottish Gypsy Travellers.
- Most permissions were full rather than personal or temporary.

Box 7.1: Details of Planning Applications and Permissions for Private Gypsy Traveller Sites since 2006	
Planning applications for site development or expansion	
	Perth & Kinross: 7 sites, 12 pitches Falkirk: 1 site, 2 pitches West Lothian: 1 site, 4 pitches South Lanarkshire: 1 site, 4 pitches Aberdeenshire: 1 site, 3 pitches Angus: 1 site, unknown number of pitches
Applications to renew temporary planning permissions	
	Nil
Permanent planning permissions granted for site development or expansion	
	Falkirk: 1 site, 4 pitches
Temporary of personal planning permissions granted for site development or expansion	
	South Lanarkshire: 1 site, 4 pitches
Permanent permissions for site development or expansion granted on appeal	
	Falkirk: 1 site, 2 pitches Perth & Kinross: 1 site, 4 pitches West Lothian: 1 site, 4 pitches
Temporary permissions for site development or expansion granted on appeal	
	Nil
Completed new residential pitches on private sites since 2006 with full planning permission	
	Perth & Kinross: 6 pitches Falkirk: 4 pitches

Completed new transit pitches on private sites since 2006 with full planning permission	
	Nil
Completed new residential pitches on private sites since 2006 with personal or temporary planning permission	
	South Lanarkshire: 4 pitches
Completed new transit pitches on private sites since 2006 with personal or temporary planning permission	
	Nil

Not all these permissions are known to have resulted in completed sites / pitches on the ground as can be seen from Box 7.1. Over the period, two sites (10 pitches) have been completed with full and one site (four pitches) with restricted personal planning permissions. These might be regarded as a net increase in provision since no local authority was aware of any loss of private Gypsy Traveller sites in their area⁴. However, the response from Perth & Kinross suggests that this conclusion may perhaps be over-optimistic since it draws attention to the fact that some caravan sites previously available to Scottish Gypsy Travellers may be catering for other groups such as migrant workers thus diminishing accommodation opportunities on sites not specifically designed for Scottish Gypsy Travellers.

Overall change

Looking at both council / RSL and private pitches suggests a decrease in national provision since 2006. The loss of 32 council / RSL pitches is not fully offset by the gain of 14 private pitches. Six council / RSL pitches were in development (but may not represent a total net gain), and a further four private pitches have permission but have not yet been completed. Pipeline developments will not offset the national loss over the period.

There has been a small qualitative change over the period since the development of small / family sites through the planning system has increased the diversity of overall provision. Some council / RSL pitch loss was associated with site improvements.

⁴ The apparent transfer of pitches from the private sector to the council / RSL sector in Perth & Kinross was not identified as a private pitch loss in the response.

8. COUNCIL / RSL SITE QUALITY AND GYPSY / TRAVELLER SITES GRANT

The Count of Gypsies / Travellers in Scotland for July 2008 (Craigforth, 2009) showed a total of 32 council / Registered Social Landlord (RSL) sites, three of which are seasonal and operate in summer only. Together they provided 499 pitches. Eight local authorities (accounting for 25 per cent) do not have a site.

All but four respondents to the survey (East Ayrshire, East Renfrewshire, Eilean Siar and Renfrewshire) had at least one council / RSL site (85 per cent). Seventeen responding authorities have a single site, two (South Lanarkshire and Dumfries & Galloway) have two, and three (Argyll & Bute, Fife and Highland) have three. Authorities with sites were asked about any concerns they have with the quality of those sites and about their occupancy. All authorities were asked about applications made for Gypsy / Traveller Sites Grant for site upgrading and / or development. Site quality is obviously an area where perceptions differ. It must be stressed again that this report looks at local authority perceptions only, and not those of Scottish Gypsy Travellers.

Concerns over quality of council / RSL sites

The survey asked about concerns respondents have over five aspects of quality of their council / RSL sites. Most respondents gave some comments under each heading, sometimes describing the site, sometimes saying that there had been a concern since remedied. Some answers were slightly ambiguous as to whether or not concern was being expressed – for example from West Dunbartonshire under the heading **neighbouring land uses and environment**: ‘The site is adjacent to a scrap yard and farm land’. A certain amount of interpretation has been made to produce the summary incidence of concerns shown in Table 8.1. As noted above, these are answers from landlords / site managers rather than residents.

The table shows that concerns over **physical condition / state of repair** are most prevalent. Concerns were expressed in different ways and levels of detail, but the answer from East Lothian is fairly typical: ‘The site now requires to be upgraded as a result of inappropriate, unsuitable and outdated facilities and general wear and tear’. In some instances, damage was said to be the result of vandalism as well as wear and tear.

Concerns over **site management issues** were next in frequency. There were two themes here: feuds between families and repeated fly tipping.

Concern	Number of local authorities (LAs)	% of LAs with a site
Physical condition / state of repair	9	41
Site layout or design	2	9
Site location /access to services	4	18
Neighbouring land uses and environment	4	18
Site management issues	6	27
Number of concerns		
None	6	27
One	11	50
Two	1	5
Three	2	9
Four	2	9

Fewer than one respondent in five identified concerns with **site location / access to services** and **neighbouring land uses and environment**. The following answers illustrate the very varied sorts of concern being expressed:

‘Set in a rural village access to services etc can be an issue.’ (Scottish Borders)

‘The site is surrounded on three sides by a river. When the river is in spate, the site is more susceptible to flooding, with four floods in the past three years. An application was submitted in October 2008 to the Scottish Government for funding to rebuild protective embankments, however this was refused due to an over-subscription to the fund. As such, the local authority is currently investigating alternative flood defence mechanisms.’ (South Ayrshire)

‘The site is bounded by commercial land, public open space and a public non-vehicular access way separates it from the seashore. Some Travellers have previously expressed concerns about privacy.’
(Aberdeenshire)

‘Location of current site may present some issues due to fraught relationships with neighbouring communities following repeat vandalism of the site.’ (North Lanarkshire)

Only two respondents expressed concern about **site layout or design**, and these were not very specific.

Several respondents took the opportunity to make positive rather than negative comments about their sites. The examples in Box 8.1 illustrate some of the considerable positives within the current stock of sites.

Box 8.1: Examples of Positive Comments Made about Council / RSL Sites	
Physical condition / state of repair	
	‘Excellent. Fully modernised in 2008.’ (Angus)
	‘Investment in upgraded amenity blocks was completed in 2006/07 and the Needs Assessment in 2007 highlighted positive feedback from residents in respect of quality and involvement.’ (Argyll & Bute)
	‘The current local authority site has recently been refurbished and provides 20, 3 bed roomed chalets for residents. All are in a good state of repair.’ (Perth & Kinross)
Site layout or design	
	‘There are 18 pitches each with an amenity unit which has a kitchen, bathroom and storage area. There is room on the pitch for 2 caravans and a vehicle for towing. There is a children’s play park with play equipment. A portacabin has been installed for use by tenants, Social Work, Health, Education, Police and other social groups. There is also a toddlers playgroup.’ (Fife)
	‘Residents on the site are very pleased with the site layout and design.’ (South Ayrshire)
Site location / access to services	
	‘Doctors, dentists, school, public transport are all accessible. Extra

	services such as Library, Police, and Health all operate from the site using the Community facility.’ (Falkirk)
	‘The site is located just outside the small town of Bathgate, West Lothian. It is located in a nice setting surrounded by woodlands. Bathgate has everything you would possibly need to live within a local community with a good range of shops, education, leisure and work opportunities.’ (West Lothian)
Neighbouring land uses and environment	
	‘The Torlochan site is well situated with no significant environmental issues or problems arising from neighbouring land use. The area is rural in nature but also adjoins a small Business Park.’ (Argyll & Bute)
	‘Idyllic setting.’ (Scottish Borders)
Site management issues	
	‘There is a published charter for the management of the site. A site manager is based on the site Monday through Friday 9am until 5pm. All new arrivals are issued with a welcome pack listing all services and telephone numbers. The manager is supported by the out of hour’s service.’ (Falkirk)
	‘None – our Site Manager produces a monthly newsletter to advise residents of issues on the site or to highlight new health, literacy or educational resources being arranged. Feedback is regularly received from residents, which is then used to improve policies and procedures. In June 2008, steps were taken to provide greater rights to the tenancy by improving opportunities to succeed and assign the tenancy at the request of residents.’ (South Ayrshire)

The second part of Table 8.1 shows the number of concerns about site quality expressed by each respondent local authority with a council / RSL site. A minority (27 per cent) expressed no concerns on any aspect of the quality of council / RSL sites in their area. Just half expressed a single concern only. The more problematic sites with more than one concern are:

- 4 concerns: Glasgow and North Lanarkshire; both these sites are either unoccupied or closed.
- 3 concerns: Argyll & Bute and Highland; each of these authorities has three sites and the concerns expressed do not focus on a single site.
- 2 concerns: Edinburgh and West Dunbartonshire.

The relatively favourable assessment of council / RSL sites given by local authorities appears to conflict rather with the less favourable comments reported in Chapter 2 (see page 7).

Council / RSL site occupancy

A majority of authorities (13 out of 22, or 59 per cent) reported that there were pitches currently vacant (not let) on a council / RSL site in their area at the time of the survey. Three sites (East Dunbartonshire, Glasgow and North Lanarkshire) were totally vacant or closed. This pattern is similar to that revealed by the July 2008 Caravan Count when 70 per cent of pitches were let, 22 per cent were vacant but available to let and eight per cent were not available to let (Craigforth, 2009).

Because site occupancy is shown to be an issue in Scotland by the Count and needs assessments, our survey asked about reasons for pitches being vacant. This was a prompted question with respondents asked to tick as many of the seven given reasons as appropriate and / or to write in other reasons. In order of importance, the reasons given by the 13 authorities with vacant pitches are:

1. Lack of demand for site places: 7 authorities
2. Catering for a transient population – vacancies are inevitable: 4 authorities
3. Poor physical condition of the pitch or site: 4 authorities
4. Friction / potential friction with other site residents: 4 authorities
5. Pitches held for major repairs or decanting: 3 authorities
6. Between lettings – expect to re-let within a month: 2 authorities
7. Lack of demand for pitches on social rented sites: 2 authorities
8. Vandalism: 1 authority
9. Poor location of site: 0 authority

Lack of demand is clearly the single most significant issue, for council / RSL sites generally. It was mentioned by Argyll & Bute, Dundee, East Lothian, Glasgow, North Ayrshire, Scottish Borders, Stirling and West Lothian. There is little clear geographical pattern. However, if taken together, issues around the appropriateness of sites for Scottish Gypsy Travellers – poor physical condition, friction with other site residents, pitches held for major repairs – are also significant. Eleven authorities cite these as reasons for pitch vacancies.

It is probably the case that low demand is sometimes exacerbated by site condition and / or friction or potential friction between site residents (a point emerging also from the ACPOS response reported in Chapter 4). Of the eight authorities referring to demand issues, three also reported either site condition or friction as reasons. However more generally, there is a clear relationship between pitch vacancies and the number of concerns expressed by respondents. The average number of concerns for authorities with vacant pitches is 1.77, compared with 0.44 for authorities with no pitch vacancies.

When asked about the steps being taken to restore site occupancy rates, several authorities referred to site upgrading or repair programmes. Where vacancies were attributed to turnover or a transient population, no action was being taken. Box 8.2 illustrates some of the more innovative steps being taken by a few authorities. Glasgow’s comments are most pessimistic:

‘In view of the negative experience following partial refurbishment, and of the assessment by Craigforth consultants, we do not think the Rodney Street site can be restored to use unless there is an unexpected upturn in demand.’

This suggests that this site, currently unoccupied, will be lost.

Box 8.2: Examples of Steps being Taken to Restore Site Occupancy Rates	
Argyll & Bute	
	In general, there is only a limited waiting list for the social rented sites in Argyll and Bute. Occupants tend to be fairly settled, long-term residents, usually comprising single, extended families on individual sites. Recently, Argyll Community Housing Association has been pro-actively engaged in promoting site occupancy rates through, for example, posters in local doctor surgeries and other service points used by Gypsies and Travellers. The Association is also considering the use of adverts in the <i>Travellers’ Times</i> . In addition, the association is currently considering the development of a specific Gypsy / Traveller’s policy.
Scottish Borders	
	Refurbishment completed April, 2009 meetings with site management around site management issues etc, meetings to continue.
Stirling	
	<ul style="list-style-type: none"> • Advert in <i>Travellers’ Times</i>.

	<ul style="list-style-type: none"> • Leaflets sent to all other local authority sites in Scotland. • Recent successful bids for funding to improve the amenities available on the site.
West Lothian	
	<ul style="list-style-type: none"> • Upgrading site. • Reviewing policies and procedures. • Developing information / leaflets. • Using Focus Group. • Volunteer consultants.

Gypsy / Traveller Sites Grant

The Gypsy / Traveller Sites Grant has been important in upgrading council / RSL sites. All but one of the site-owning responding authorities (Dumfries & Galloway; no reason given for not applying) has applied for the grant; 86 per cent of the authorities which applied have been successful on at least one application. The great majority of grant-aided work has been completed. In all, 321 pitches across 16 authorities have benefited from grants awarded for site upgrading or refurbishment.

Descriptions of the works carried out with grant aid suggest quite extensive improvement programmes, sometimes spread over several phases. Amenity units have been improved; chalets installed; hardstandings, roadways and fences improved; and play-space and / or community building introduced or extended. Box 8.3 shows examples of both extensive and less extensive works that have been carried out.

Not all the grants awarded were taken up:

‘A funding bid for improvement works was made in 2006 but funding only awarded for a play area. This did not proceed due to opposition from Gypsy / Travellers on-site.’ (East Lothian)

In the great majority of instances (82 per cent), the grant-aided work left the number of pitches unchanged. In two cases (Highland and South Lanarkshire), pitch numbers decreased by six pitches overall. In one case (Perth & Kinross),

pitch numbers for council / RSL sites⁵ increased by six suggesting that the effect was numerically neutral.

Box 8.3: Examples of Upgrading Works Carried out with Gypsy / Traveller Sites Grant	
Dundee	
	There was an extension to the site office and a children's play area which received funding in 2007. In 2008 we received funding to improve 10 utility units, and we have received funding to refurbish the remaining 10 units. Dundee City Council has match funded these grants.
East Dunbartonshire	
	CCTV installed.
Fife	
	Children's play parks with play equipment on each of the 3 sites. Upgrading and insulating and upgrading heating in amenity units. Concreted all pitches, new gates, fencing. Security camera systems, chalets for 2 families with disabled children. Five-aside football / netball court with safety base and floodlights. Portakabins on each site for use by tenants, Social work, education, health, police and other community groups.
Scottish Borders	
	General improvements, hard standing site development, refurbishment to DDA standard.
South Lanarkshire	
	<p><u>Springbank, East Kilbride:</u></p> <p>2009/10:</p> <ul style="list-style-type: none"> ▪ Upgrade of internal facilities within the amenity blocks by refurbishing kitchens and bathrooms including upgrading heating and ventilation, flooring and decoration. ▪ Upgrade bulkhead lighting and replace with low-energy bulkhead security lights. <p>2008/09:</p> <ul style="list-style-type: none"> ▪ Improve the surfaces of the pitches and the drainage of the site. <p>2007/08:</p>

⁵ This scheme appears to have involved transfer of a private site to the council / RSL sector and thus cannot be seen as an overall net gain in pitches.

	<ul style="list-style-type: none"> ▪ Landscaping. <p>2005/06:</p> <ul style="list-style-type: none"> ▪ Installation of new boundary fencing, divisional fencing and gates. <p><u>Swinhill, Larkhall</u></p> <p>2007/08:</p> <ul style="list-style-type: none"> ▪ Resurfacing pitches. ▪ Installation of boundary fencing. ▪ Traffic calming measures. <p>Upgrade work funded from other sources in 2007/08:</p> <ul style="list-style-type: none"> ▪ Upgrade of play area (Changing Places/Regeneration funding). ▪ Formation of Community Centre (funded from various sources). <p>2006/07:</p> <ul style="list-style-type: none"> ▪ Installation of CCTV. ▪ Installation of new timber doors, uPVC windows and canopies. <p>2005/06:</p> <ul style="list-style-type: none"> ▪ Upgrading of amenity blocks comprising renewal of kitchen unit, WC and wash hand basin and upgrade of electrics.
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Grants for new sites

There had been many fewer applications for grants to develop new sites. In all, five authorities had applied (Aberdeen, Fife, Perth & Kinross, Scottish Borders and South Ayrshire), of which three (Fife, Scottish Borders and South Ayrshire) had been successful. However, to date, none of these has resulted in a completed new site. South Ayrshire is planning to provide six transit pitches. In Fife:

‘The search for suitable land has been unsuccessful for different reasons. Either the land was unsafe or the Travelling People did not approve of the area and on some occasions planning permission was not available. A transit site was due to open last year but a mineshaft was identified on the grounds which, because of health and safety, prevented this from happening.’

In Scottish Borders subsequent analysis of demand was said to have shown no real need, and monies were returned.

Lack of evidence of demand was given as the main reason for not applying for the grant by authorities currently without a council / RSL site. Some councils in West Central Scotland referred to inter-authority discussions around possible transit site provision on a shared basis. East Ayrshire suggested that Scottish Gypsy Travellers arriving there might be referred to the proposed transit site in South Ayrshire.

Plans for future grant applications

The majority of respondents (18 local authorities, or 69 per cent) plan to apply for the grant in the next two years, or are considering doing so. The most frequent intention (nine authorities) is to apply to improve or refurbish an existing residential site. Four authorities (Aberdeenshire, Falkirk, Fife and Perth & Kinross) plan to apply for the grant to develop a new transit site. Eight other authorities are considering intentions in the light of needs assessments or are waiting for the position on the future availability of the grant to be clarified. In some instances, inter-authority discussions are taking place.

This suggests that, in future, grant aid may facilitate new site provision. In line with perceived requirements, transit rather than residential sites are likely to be developed.

9. PERCEPTIONS OF PROGRESS, BARRIERS TO SITE PROVISION AND HOW THEY CAN BE OVERCOME

At the beginning of the final section of the questionnaire, authorities were asked to mark themselves out of 10 in terms of how satisfactory their progress has been since the beginning of 2006 on the provision of Gypsy Traveller sites.

Respondents were guaranteed anonymity in order to encourage open answers to this section of the questionnaire. All but three responding authorities replied to the question.

Marks awarded ranged from 2 to 10, with an average of 6.65. This is higher than the average mark (5.1) self-awarded by English authorities in the comparable study (Brown and Niner, 2009). The range was as follows:

2 out of 10: 1 authority
3 out of 10: 1 authority
4 out of 10: 2 authorities
5 out of 10: 3 authorities
6 out of 10: 2 authorities
7 out of 10: 5 authorities
8 out of 10: 5 authorities
9 out of 10: 2 authorities
10 out of 10: 2 authorities

One authority pointed out the difficulties and dangers of making such an assessment, and they spelled out their reasoning:

'We are not sure that this is the most meaningful way for us to measure our progress. It is very subjective and perhaps over-simplified for what is a complex and multifarious issue. Since this is the method we have been presented with, we have given a score of 8. This is based on the following:

- We have participated in research to help us understand the accommodation needs of Gypsy Travellers.
- This research confirms that we have well-managed sites with high levels of occupancy.

- We have made a number of successful applications to the Gypsy / Traveller Sites Grant to improve the sites and facilities.
- We have undertaken a number of significant improvements to the site funded from other sources, including a community centre and play area.
- We have on-site managers who can provide a range of advice and services to residents.
- We have revised our pitch allocation policy, tenancy agreement and application form.
- We are developing our methods of engagement and plan to hold consultation / information sessions on-site in the near future.'

Perhaps not surprisingly in light of the above, there is no simple relationship apparent between marks awarded and indicators of progress explored in this study (assessing needs, having policies, granting planning permission, upgrading sites and so on). Slightly above average marks were awarded by authorities currently preparing local housing strategy or Local Plan policies and thus, presumably, actively considering related issues at present. Authorities with council / Registered Social Landlord (RSL) sites awarded themselves higher marks (average 6.8) than those without (average 5.7). Among those with a council / RSL site, marks were slightly higher where there were no pitches currently vacant (average 6.9) than where pitches were vacant (average 6.7). However, perceptions of progress appear to also reflect local circumstances not revealed in the survey and local expectations. It is clear that much perceived progress relates to improving conditions and management on existing council / RSL sites and not to making additional provision whether in the social or private sectors. There are no indications, of course, as to how local Scottish Gypsy Travellers would grade their local authorities.

Barriers to site provision

Authorities were asked what, in their experience, are the main barriers to provision of Gypsy Traveller sites in their area. All but two authorities gave an answer. Again, responses have been anonymised.

Replies can be grouped into six main categories; several respondents mentioned factors in more than one of these categories.

Numerically most significant were barriers around difficulties in **finding suitable land**, especially for transit sites (mentioned by eight authorities). For example:

'[] City council has very little open space which could be utilised to provide transit sites.'

'The provision of stopover / transit sites. The search has been unsuccessful despite advertising for private landowners and farmers to make land available for rent. The planning department were active in the searches.'

Resistance from local communities and the media contributes to difficulties in finding suitable land (mentioned by five authorities):

'The Council is committed to providing sites for Gypsy / Travellers, however opposition from local communities and the media have been the main barriers.'

An interesting and potent barrier identified is **lack of demand** especially for residential sites (mentioned by four authorities):

'Present provision adequate.'

'Currently, both the Council and the site landlord, believe that the provision of social rented Gypsy / Traveller sites actually exceeds demand across the authority area. The main requirement comes from well-established and long-term settled families who are integrated within the local communities. Qualitative and anecdotal evidence suggests a decline in the level of transient Travellers seeking temporary or seasonal work in [] and consequently there is low demand for existing pitches and no demand for additional provision.'

In some answers a slight distinction appears in that under-occupied existing sites **appears** to make further provision risky:

'Low occupancy rates on Council site means it looks like there is not a need for any more sites / pitches in [].'

'The main barriers experienced in the [] area are:

- Understanding what the identified regional need means in terms of need within the [] Council area.
- Having the confidence that a site(s) provided would be well used. (This is based on past experiences within this and neighbouring authorities.)
- Resource implications given the uncertainty of the two points above.'

Three authorities mentioned barriers related to **finance** for site development. Three authorities mentioned barriers in terms of the **local Gypsy Traveller communities** themselves and their perceived unwillingness to engage with the local authority:

'The site suggested as transit site was rejected by travellers.'

'The principal barrier is the inability to communicate with the Travelling community. They are unwilling to co-operate with the Council and resist any attempts at contact.'

'The main barrier to further development is opposition from the Gypsy / Travellers themselves. The site residents would like chalets – similar to the site in Perth. They are not prepared to consider any other development options.'

Answers from three authorities illustrate barriers presented by **complexity of issues** and doubts around commitment or skills:

'There is a lack of demand for permanent sites. The main demand which could be met in theory is for transit accommodation. However, the experts in the field unanimously advise against providing a transit site which they do not believe is manageable. Hence we continue to see occasional temporary unauthorised encampments, which are managed sensitively.'

'The main barriers can include perceptions by neighbouring communities of the Gypsy Travelling Community; relationship dynamics and tensions

within the Gypsy Travelling Community itself; provision of appropriate site management to enable safe, sustainable sites, and resource implications.'

'Lack of corporate or political buy-in, lack of funding, lack of understanding on the needs and rights of ethnic minority groups specific to the gypsy travellers group, lack of quality in the management standards that currently dictate gypsy traveller provision (authorised) in [], lack of partnership understanding of all of the above.'

Finally, as a contrast to the barrier of low demand, one authority identified a barrier from **localised high demand**:

'The Research pointed to the importance of key sites across the region. The high demand area in [] is at [], which we feel has a level of provision appropriate to the population. While our involvement in the accommodation needs research is clearly positive, there are limitations in applying the housing needs analysis model to the Gypsy Traveller population and difficulty in projecting need based on a very small population. We will continue to work with other Local Authorities to consider the demand and accommodation needs of the Gypsy Traveller communities in the [] region.'

Steps being taken to tackle the barriers

Steps being taken by responding authorities reflect the nature of the barriers identified. Three authorities felt that they had no need of steps because current site provision was adequate. Among positive answers, four main themes emerge:

Gaining **greater understanding of the needs** of the Scottish Gypsy Traveller community. For some authorities, this involves carrying out a needs assessment for the first time; for others, it means refining or developing assessments.

For example:

'The Council, with [] and [] Councils are about to complete an Accommodation Needs of Gypsy / Travellers when it is hoped this will show the true needs.'

‘As above, we will continue to work with other Local Authorities to consider the needs of the Gypsy Traveller communities. Locally we will continue to develop our understanding of accommodation needs.’

The second theme is **reviewing and developing policies, procedures and protocols** including local housing strategies and management policies on existing sites.

The third theme is continuing to **search for suitable land** for sites:

‘The search continues.’

‘The search is continuing. The Travelling People Working Group is committed to finding suitable stopover / transit sites.’

‘Suitability assessments complete on all available land in the region. Consultation and good practice on working with communities for the provision of sites being adopted from English examples. Site design being based on models of good practice and taking account of planning policies. Consultation sessions to take place with existing communities to discuss proposals prior to Planning Application.’

The fourth main theme is developing better **communications and joint working** with other authorities, agencies working with Scottish Gypsy Travellers, and with Scottish Gypsy Traveller communities. For example:

‘Joint discussions with our neighbouring local authorities.’

‘Better partnership working around gypsy travellers and their needs, [], NHS, [] Police Equality and Diversity Departments. Agreed action points specific to partnership priorities and objectives that will tackle some of the issues raised in this questionnaire. Meetings agreed with current site providers around management issues and lack of rent books appropriate lease agreements etc as identified in our independent study of 2008.’

‘Continue to try and engage in dialogue. Work closely with our partners on the Gypsy / Traveller Corporate Forum.’

It is interesting that, of the five authorities referring to resistance from local communities as a barrier to site provision, only two included actions being taken to overcome this. In both instances, the approach appears indirect, beginning with the media and elected members.

‘To work with the media to give a more positive representation of the Gypsy / Travellers’ life style and culture.’

‘Awareness raising with elected members regarding responsibilities in relation to the duty to promote race equality and in assessing and making provision for Gypsy / Travellers.’

A final quote illustrates a comprehensive approach with clearly marked actions towards achieving site provision:

‘Trying to identify sites which would be suitable for transit sites. Bidding for any funds made available by Scottish Government. Researched the aspirations and need for future provision. Formulating policies to be included in Local Development Plans and Local Housing Strategy.’

10. CONCLUDING COMMENTS

In 2000/01 the Scottish Parliament, under the auspices of the Equal Opportunities Committee (EOC), brought the various needs of Scottish Gypsy Travellers up the agenda of public policy in Scotland. This was accompanied by the development of relevant housing policy and legislation, in the form of the Housing (Scotland) Act 2001, and guidance which ensured that Scottish Gypsy Travellers are included in local housing strategies and under the new single regulatory framework. A thematic study carried out by Communities Scotland increased understanding of Gypsy Traveller site planning and management and underlaid an Activity Standard in the regulatory framework. Progress towards meeting the recommendations of the EOC was reviewed in 2005. The following year, in 2006, the Commission for Racial Equality (CRE) published the report *Common Ground: Equality, good race relations and sites for Gypsies and Irish Travellers*, which made a number of recommendations aimed at improving accommodation provision for Gypsies and Travellers across Britain. Three years have now elapsed since the publication of this report, and it is useful to take stock of progress achieved thus far.

What seems clear from this study is that 'progress' is complex and multi-faceted. The situation in Scotland is far more difficult to interpret at this point in time than that in England. The reasons for drawing this conclusion are as follows. Our survey, involving all but six local authorities, has shown that provision of pitches on authorised Gypsy Traveller sites appears to have decreased since 2006, with a net loss of around 18 pitches. Although a number of private pitches have been developed, these have been outweighed by the number of council / Registered Social Landlord (RSL) pitches lost. However, there is currently no way of knowing how closely the number of pitches available matches actual need / demand for pitches because of the lack of quantification of any shortfall (or excess) in many local authority areas and the number of pitches currently unoccupied on council / RSL sites. As a result, it is unclear whether progress has been 'inadequate' – as suggested by the literature reviews in Chapter 2 and the opinions expressed by the Association of Chief Police Officers Scotland (ACPOS) (Chapter 4) – or 'adequate' in that the reduction in pitch numbers reflects actual demand as is suggested by the responses of several local authorities in the survey. The overarching conclusion from this study is that more work needs to be done at both national and local levels in order to better

understand the current use of sites and what need (if any) there is for further site / pitch provision. Further work is required to resolve the apparent lack of consensus between the literature and local authorities about the extent and nature of any shortage of site accommodation in Scotland. It is essential that Scottish Gypsy Travellers, including those currently living in housing and those involved in unauthorised sites, are fully engaged in such research and that their needs, demands and aspirations are taken into account. This is essential to supply the Scottish Gypsy Traveller perspective which is missing from our study and which is vital to the formulation of appropriate and sustainable policies.

Such research must also of course involve, and be owned by, local authorities. Only five local authorities responding to our survey were able to give a quantitative estimate of the number of additional pitches required in the future. Without a clearer view of the accommodation circumstances of Scottish Gypsy Travellers and outstanding issues concerning the number and quality of sites, it will be hard to generate the commitment needed to act. It will be particularly hard – where additional sites are found to be required – to find land and develop sites and / or work with Scottish Gypsy Travellers to help them provide for themselves. Information is an essential first step to action.

There are several other points to note from the findings:

- A distinctive feature, evident from the Caravan Count, is the extent of seasonal travelling in Scotland and associated unauthorised encampments, especially in summer. Local authorities appear to anticipate the development of transit sites as opposed to sites for residential use. In this context, and mirroring the view expressed by the CRE in 2006 (see page 7), transit sites can be seen as the main obvious provision priority. At the same time, concerns have been expressed about the design and management of transit sites. Local authorities might welcome guidance on these issues to reassure them that transit sites are feasible and likely to be effective in reducing unauthorised encampment.
- An aspect of 'progress' by local authorities considered briefly in this study is the quality of council / RSL sites. There has been significant investment in site upgrading with the support of the Gypsy / Traveller Sites Grant, and several authorities would make further bids if the grant continues. There are clearly a few sites with serious and multiple problems, and apparent lack of demand

(certainly for the sites in their current condition). Apart from these extreme cases, local authority respondents to the survey were generally quite confident about the location, design and quality of their sites. This appears to be somewhat at variance with reports referred to in Chapter 2, and there may be some divergence of perception as to the extent and nature of priority issues. This is another where the views of Scottish Gypsy Travellers are essential.

- The Caravan Count (Chapter 3) shows the relatively overwhelming importance of council / RSL sites within authorised pitch provision at present. In addition to any concerns over quality, there is perhaps an issue around relative lack of choice for Scottish Gypsy Travellers. While not quantified, several needs assessments noted a desire for small family private sites to be developed. Another aspect of lack of choice relates to site size; the great majority of council / RSL pitches are provided on sites with 15 or more pitches. Again, softer information from needs assessments suggests a desire for smaller sites which can provide variety and flexibility, and run less risk of having to accommodate incompatible families.
- The emphasis in this report, and in the needs assessments undertaken to date, is on Gypsy Traveller sites, and Scottish Gypsy Travellers who live on sites. Local authority initiatives to involve Scottish Gypsy Travellers appear to focus predominantly on site residents too. However, while numbers are unknown, it is likely that the majority of Gypsy Travellers in Scotland live in bricks and mortar housing. There is a need to engage more fully with Scottish Gypsy Travellers in housing as well as on sites if the community's needs are to be met.
- Finally it is clear that, where additional sites are needed, it is difficult to find suitable land for their development. A major factor in this is resistance by local settled communities to site development. There is still hostility and fear, often based on stereotype and ignorance, to the idea of site development and this can put pressure on officers and elected members in a planning system which involves public consultation and where councillors can lose their seats. Overcoming this barrier will be very important in future. Local authorities should be reminded of their general duty to promote equality of opportunity and good relations between people from different racial groups. The Scottish Government has a role in line with their Race Equality Scheme and Statement. Countering stereotype and ignorance of Scottish Gypsy Travellers is an area where the Equality and Human Rights Commission can also take a lead.

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APPENDIX 1: THE SURVEY METHODOLOGY

The local authority survey was the main source of primary information for the research and the findings are fully presented in this report in Chapters 5 to 9.

A questionnaire was developed, with the involvement of the Equality and Human Rights Commission (the Commission). The starting point was a recent study in England which looked at progress on needs assessment and pitch provision (Brown and Niner, 2009); the questionnaire used there was tailored to local circumstances and the policy framework in Scotland. The questionnaire has sections on:

- Assessing the accommodation needs of Gypsies and Travellers, needs identified, and specific policies / actions in local housing strategies aimed at providing or facilitating the provision of accommodation for Gypsies and Travellers.
- Policies relating to Gypsy and Traveller sites in Development Plans, and involvement of Gypsy and Traveller communities.
- Council / Registered Social Landlord (RSL) site provision and private site provision facilitated by the planning system.
- Views on the quality of council / RSL sites in the area and site occupancy.
- Gypsy / Traveller Sites Grant applications and plans.
- An assessment of local progress.
- Reported barriers to moving forward with site provision.

A copy of the questionnaire and the covering letter used are presented in Appendices 2 and 3.

In the great majority of cases (all but three authorities), the letter and questionnaire were sent by email to the officer thought to take the lead on Gypsy and Traveller issues. This contact point was established from pre-existing information held by the researchers and the Commission, and from telephone calls made to local authorities where such information was lacking. A copy of the letter, but not the questionnaire, was sent to Chief Executives for information which led to further requests for the questionnaire to be sent electronically.

The questionnaire was sent out on 26 March, with an initial deadline for return of 17 April 2009. In order to achieve as high a response rate as possible, the deadline was extended several times to facilitate chasing by the researchers and Commission. The final cut-off point for the receipt of completed questionnaires was 10 July 2009.

Response rate

Questionnaires were sent to all 32 local authorities; 26 were completed and returned – a response rate of 81 per cent. Table A1.1 shows which authorities responded.

Aberdeen City	Yes
Aberdeenshire	Yes
Angus	Yes
Argyll & Bute	Yes
Clackmannanshire	Received after final deadline; not included in analysis
Dumfries & Galloway	Yes
Dundee City	Yes
East Ayrshire	Yes
East Dunbartonshire	Yes
East Lothian	Yes
East Renfrewshire	Yes
Edinburgh City	Yes
Eilean Siar	Yes
Falkirk	Yes
Fife	Yes
Glasgow City	Yes
Highland	Yes
Inverclyde	No
Midlothian	No
Moray	No
North Ayrshire	Yes
North Lanarkshire	Yes
Orkney Islands	No
Perth & Kinross	Yes
Renfrewshire	Yes
Scottish Borders	Yes
Shetland Islands	No
South Ayrshire	Yes
South Lanarkshire	Yes
Stirling	Yes
West Dunbartonshire	Yes
West Lothian	Yes

In order to give an impression of geographical representativeness, Table A1.2 expresses the response in terms of Communities Scotland (as was) area offices.

Area office	Number of LAs	Response	% response
Glasgow	1	1	100
Grampian	3	2	67
Highland and Islands	4	2	50
Lothian, Borders and Fife	6	5	83
Argyll and Clyde	6	5	83
South West Scotland	6	6	100
Tayside and Forth Valley	6	5	83
Total	32	26	81

APPENDIX 2: COVERING LETTER FOR THE SURVEY

******EHRC HEADED PAPER******

26th March 2009

Dear Colleague

Research into Scottish Local Authority Accommodation Provision for Gypsies and Travellers – questionnaire for completion by 17 April

The Equality and Human Rights Commission Scotland has commissioned a team of researchers from the University of Salford, University of Birmingham and Heriot-Watt University to investigate Scottish Local Authority provision of accommodation for Gypsies and Travellers.

We are keen to gather this information in order to build a comprehensive picture of the Local Authority accommodation and progress towards increasing provision of accommodation for Gypsies and Travellers across Scotland. We also anticipate that the report may inform our discussions with the Scottish Government about its strategy for Scottish Gypsy Travellers, bearing in mind the commitments set out in the Scottish Government's Race Equality Statement.

This is an important study that will play a significant role in informing the work of the Commission. It represents the first co-ordinated attempt to investigate accommodation provision for Gypsies and Travellers nationally in Scotland.

We are keen to encourage a high response rate to ensure that the analysis and assessment undertaken by the researchers is as comprehensive as possible. By completing this questionnaire, you will be providing us with important information that will ensure that this research is informed by data from as many Local Authorities in Scotland as possible.

Included with this letter you will find a short questionnaire from the research team, together with details of how to complete and return it.

We would be very grateful if you could return the attached questionnaire to Pat Niner p.m.niner@bham.ac.uk at the University of Birmingham by **17 April 2009**.

The results of the survey will be analysed by the research team. The Commission will then publish the research results in a Commission research report. All local authorities in Scotland are being invited to take part in this research.

The EHRC Scotland Directorate contact for this work is Dr Suzi Macpherson. Please contact her on 0141 228 5948 if you need further information about this project.

Thank you in advance for your co-operation in assisting us with this important work, which we hope will help us to support and inform policy and funding decisions at both Scottish Government and Local Authority levels.

Yours sincerely

A solid black rectangular box used to redact the signature of Ros Micklem.

Ros Micklem
National Director Scotland

cc Chief Executive (issued with letter only)

APPENDIX 3: QUESTIONNAIRE TO LOCAL AUTHORITIES

UNIVERSITY OF BIRMINGHAM

EQUALITY AND HUMAN RIGHTS COMMISSION MONITORING PROGRESS IN MEETING GYPSY / TRAVELLER ACCOMMODATION NEEDS

The Equality and Human Rights Commission (EHRC) wishes to assess the progress that local authorities in Scotland have made in assessing and meeting the accommodation needs of Gypsies / Travellers. This survey forms an important part of the research evidence.

Details of how to complete the questionnaire are given on the next page. Please complete and return it by **Friday 17 April 2009**. Please return it by e-mail to P.M.Niner@bham.ac.uk or in hard copy by post to:

Pat Niner Centre for Urban and Regional Studies University of Birmingham Edgbaston Birmingham B15 2TT
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If you have any queries about completing the questionnaire, please contact Pat Niner (P.M.Niner@bham.ac.uk and 0121 414 5024) or Phil Brown (P.Brown@salford.ac.uk and 0161 295 3647)

Local authority	
Contact name	
Telephone number	
E-mail address	

**EQUALITY AND HUMAN RIGHTS COMMISSION
MONITORING PROGRESS IN MEETING GYPSY / TRAVELLER
ACCOMMODATION NEEDS**

INTRODUCTION AND INSTRUCTIONS

This questionnaire survey is an important element of research commissioned by the Equality and Human Rights Commission (EHRC) to monitor local authority progress in assessing and meeting the culturally-specific accommodation needs of Gypsies / Travellers.

The focus of the survey is provision of caravan sites / pitches for **Gypsies / Travellers** as defined for policy purposes in Scotland, excluding New Travellers and Travelling Showpeople.

The questionnaire is being sent to all local authorities in Scotland. Information provided in the questionnaire will be analysed, along with any available material from secondary sources including accommodation needs assessments and the Twice-yearly Count of Gypsies / Travellers in Scotland, at individual local authority level. **This will be reported to the EHRC and may appear in published reports. The EHRC will be informed which authorities have responded and not responded to the survey and a list may be published in the final report.**

In order to better understand the current position, some opinion information is requested in Section F. **Answers to these questions (Section F only) will be reported on a non-attributed basis only and the anonymity of responding authorities will be maintained.**

We have tried to keep the questionnaire as short as possible. For clarity, it is divided into sections:

- A. Gypsy / Traveller Accommodation Assessments and Local Housing Strategies
- B. Gypsy / Traveller Sites and Planning
- C. Progress on Pitch Provision
- D. Social Site Quality
- E. Gypsy / Traveller Sites Grant
- F. Views and Comments

We recognise that it may be necessary to involve planning, housing and Gypsy / Traveller officers in completing the survey.

Instructions about how to complete the questionnaire are normally in ***bold and italics***. There may be questions where the options given for answers do not adequately express your views – in such cases please write in to provide a more appropriate answer or to explain the answer you have given. Most of the questions ask for a box to be ticked – if completing this electronically use an X in the box if that is easier. Where there is a write-in answer, please provide as long an answer as you wish.

A. Gypsy / Traveller Accommodation Assessments and Local Housing Strategies

This Section asks about the assessment of accommodation needs of Gypsies / Travellers, including the extent and nature of any requirements identified. It also asks about Gypsy / Traveller policies in the Local Housing Strategy

'Local authorities are to consider the needs of all Gypsies and Travellers for appropriate accommodation within their housing need and demand assessment and take these into account in preparing their local housing strategies' (Scottish Planning Policy 3 *Planning for Homes*, 2008, para 83)

A1. Have the accommodation needs of Gypsies / Travellers been assessed in your local authority? ***Please tick one box***

Yes		<i>Go to A4</i>
No but assessment is in progress		<i>Go to A3</i>
No		<i>Go to A2</i>

A2. Why has no assessment been undertaken? ***Please write in then skip to A10***

A3. Please give details of the expected completion date and the geographical area covered by your assessment. ***Please write in then skip to A10***

Expected completion date :

Geographical area covered :

A4. Please give details of your assessment. ***Please write in***

Completion date :

Geographical area covered :

Please provide a copy of the report, or give a link for internet access

A5. Does the assessment provide a numerical estimate of pitch requirements for your local authority? ***Please tick one box***

Yes		<i>Go to A6</i>
No		<i>Go to A10</i>

A6. How many additional pitches does your authority need to provide / allocate in the first five year planning period (e.g. 2006-2011)? Please distinguish between pitches for residential (permanent) use and transit pitches or stopping places. **Note : In this section and throughout the questionnaire a 'pitch' means the area of a site occupied by a single family – broadly equivalent to a dwelling-house.**

Type of pitch	Pitches required (enter number)	Don't know (please tick)
Residential (permanent)		
Transit or stopping place		

A7. How are these requirements split between social (local authority or registered social landlord) and private provision?

Tenure of provision	Requirements (enter number or proportion)	Don't know (please tick)
Social provision		
Private provision		

A8. Will the identified shortfalls be met during the first five year planning period (e.g. by 2011)? **Please tick one box**

Yes – certainly		Go to A10
Yes – probably		Go to A10
No – unlikely		Go to A9
No – certainly		Go to A9

A9. Why not? When will the identified shortfalls be met? **Please write in**

A10. Is there a specific policy or action in your authority's Local Housing Strategy aimed at providing or facilitating the provision of accommodation for Gypsies and Travellers? **Please tick one box**

Yes		Go to A11
In preparation – please give estimated completion date below		Go to B1
No		Go to A12

A11. Please provide a copy of the Local Housing Strategy, or give a link for internet access **Now go to B1**

A12. Why not? **Please write in**

B. Gypsy / Traveller Sites and Planning

This Section asks about land use planning policies towards Gypsy / Traveller caravan sites, and the involvement of Gypsies / Travellers in decisions about sites.

'Planning authorities should identify suitable locations for sites for Gypsies and Travellers and set out policies for dealing with planning applications for small privately-owned sites. Planning authorities should ensure that Gypsy and Traveller communities are involved in decisions about sites for their use.' (Scottish Planning Policy 3 *Planning for Homes*, 2008, para 83)

B1. Does your authority's approved Development Plan include a specific policy relating to the provision of Gypsy / Traveller caravan sites? ***Please tick one box***

Yes		<i>Go to B2</i>
In preparation – please give estimated completion date:		<i>Go to B4</i>
No		<i>Go to B3</i>

B2. Please provide a copy of the Policy, or give a link for internet access ***Now go to B4***

B3. Why not? ***Please write in***

B4. Has your authority identified suitable locations for sites for Gypsies and Travellers? ***Please tick one box***

Yes		<i>Go to B6</i>
Actively working towards identifying suitable locations		<i>Go to B6</i>
No		<i>Go to B5</i>

B5. Why not? ***Please write in***

B6. Does your authority have policies for dealing with planning applications for small privately-owned sites for Gypsies and Travellers?

Yes		Go to B7
Actively working towards developing policies		Go to B9
No		Go to B8

B7. Please provide a copy of the policies, or give a link for internet access **Now go to B9**

B8. Why not? **Please write in**

B9. Please outline the steps taken by your local authority to involve Gypsy and Traveller communities in decisions about sites for their use. **Please write in**

C. Progress on Pitch Provision

This Section asks about sites and pitches developed or lost since the beginning of 2006. It includes social Gypsy / Traveller sites (local authority and registered social landlord) and private sites.

C1. How many **new** pitches have been provided on **social Gypsy / Traveller sites** (local authority and registered social landlord) in your authority area since the beginning of 2006? How many pitches on social Gypsy / Traveller sites which were closed at the start of the period have been re-opened? Please enter the number of pitches in the appropriate cell in the grid below.

If none have been provided / re-opened please tick here and leave the grid blank

None	
------	--

Please enter number of pitches affected

Type of pitch	In the planning process	In development (being built)	Work complete and let / ready to let
Residential: new site			
Residential : expanded site			
Residential : existing pitch re-opened			
Transit : new site			
Transit : expanded site			
Transit : existing pitch re-opened			

C2. How many pitches on **social Gypsy / Traveller sites** have closed or otherwise ceased to be available since the beginning of 2006, and are closed / unavailable now? How many pitches on social Gypsy / Traveller sites have been sold or transferred from social ownership since the beginning of 2006 but remain available for use by Gypsies / Travellers?

If none have been closed / lost / transferred please tick here and leave the grid blank and go to C4

None	
------	--

Please enter number of pitches affected

	Residential pitches	Transit pitches
Pitches closed / ceased to be available		
Pitches sold / transferred still available for use by Gypsies and Travellers		

C3. What were the reasons for pitch closure / loss / transfer? **Please write in**

C4. Please complete the grid below to provide information on the number of sites and pitches involved in planning applications and approvals relating to **private Gypsy / Traveller sites** since the beginning of 2006.

Please enter numbers

	Number of sites	Number of pitches
Planning applications received for site development or expansion		
Applications received to renew temporary planning permissions		
Permanent planning permissions granted for site development or expansion		
Temporary planning permissions granted for site development or expansion		
Permanent permissions for site development or expansion granted on appeal		
Temporary permissions for site development or expansion granted on appeal		

C5. How many pitches with permanent planning permission on **private Gypsy / Traveller sites** have been completed (occupied or ready for occupation) in your area since the beginning of 2006? Please include any previously unauthorised private pitches granted permanent planning permission during the period.

Type of pitch	Pitches (<i>enter number</i>)	Don't know (<i>please tick</i>)
Residential (permanent)		
Transit or stopping place		

C6. How many pitches with temporary planning permission on **private Gypsy / Traveller sites** have been completed (occupied or ready for occupation) in your area since the beginning of 2006? Please include any previously unauthorised private pitches granted temporary planning permission during the period.

Type of pitch	Pitches (<i>enter number</i>)	Don't know (<i>please tick</i>)
Residential (permanent)		
Transit or stopping place		

C7. Have any pitches on **authorised private Gypsy / Traveller sites** (i.e. with planning permission) closed or otherwise ceased to be available for use by Gypsies / Travellers since the beginning of 2006? **Please tick one box**

Yes		Go to C8
No		Go to D1
Don't know		Go to D1

C8. How many pitches have been lost?

Type of pitch	Pitches (<i>enter number</i>)	Don't know (<i>please tick</i>)
Residential (permanent)		
Transit or stopping place		

C9. Please give the background (as you understand it) to the loss of authorised private pitches for use by Gypsies / Travellers (e.g. site transferred to mobile home use or migrant workers; land sold for housing). **Please write in**

D. Social Site Quality

This Section asks about concerns about the quality of any social Gypsy / Traveller site in your area, and about pitch vacancies on social sites.

D1. Is there one or more social (local authority or registered social landlord) Gypsy / Traveller site in your area? ***Please tick one box***

Yes		<i>Go to D2</i>
No		<i>Go to E1</i>

D2. Please describe any significant outstanding concerns over the quality of any social Gypsy and Traveller sites in your area. ***Please write in in the grid below; if there is more than one site in your area, please repeat the grid for each site.***

Physical condition/ state of repair	
Site layout or design	
Site location/access to services etc	
Neighbouring land uses and environment	
Site management issues	
Other	

D3. Are any pitches currently vacant (not let rather than vacant because the occupier is travelling) on a social site in your area?

Yes		Go to D4
No		Go to E1

D4. What are the main reasons for pitches being vacant? **Please tick all that apply**

Catering for a transient population – vacancies are inevitable	
Between lettings – expect to re-let within a month	
Lack of demand for site places	
Lack of demand for pitches on social rented sites	
Poor physical condition of the pitch or site	
Poor location of the site	
Friction / potential friction with other site residents	
Other – please write in:	

D5. What steps is your authority taking to restore site occupancy rates? **Please write in**

E. Gypsy / Traveller Sites Grant

This Section asks about applications made for Gypsy / Traveller Sites Grant by your authority for refurbishment and new site development. It also asks about Grants received.

Gypsy / Traveller Sites Grant has been available since 2005/06. It is currently available for either developing new transit and residential sites or for improving existing sites.

E1. Has your authority, at any time, submitted an application for Gypsy / Traveller Sites Grant?

Yes		Go to E2
No		Go to E3

E2. Why has no application been made? ***Please write in, then skip to E11***

E3. Has your authority, at any time, made an application for Gypsy / Traveller Sites Grant to improve / refurbish and existing site?

Yes		Go to E4
No		Go to E8

E4. Was the application successful?

Yes		Go to E5
No		Go to E8

E5. What improvement / refurbishment works were undertaken? ***Please write in***

E6. Did the work involve any change in the number of pitches available on the site?
Please tick one box and write in the number of pitches involved if appropriate

		No. pitches
Pitch numbers increased		
Pitch numbers remained same		
Pitch numbers decreased		

E7. How many pitches, in all, have benefited from Grant awarded for site improvement or refurbishment?

Number	
--------	--

E8. Has your authority, at any time, made an application for Gypsy / Traveller Sites Grant to develop a new site?

Yes		Go to E9
No		Go to E11

E9. Was the application successful?

Yes		Go to E10
No		Go to E11

E10. How many pitches have been or will be created through Grant-aided site development? **Please complete the grid below**

Type of pitch	New pitches opened	New pitches planned
Residential		
Transit		

E11. Does your authority plan to apply for Gypsy / Traveller Sites Grant in the next 2 years? **Please tick as many boxes as required**

To develop a new residential site	
To develop a new transit site	
To improve / refurbish an existing residential site	
To improve / refurbish an existing transit site	
Other – please write in:	

F. Views and Comments

This Section asks about your views on progress on provision of Gypsy / Traveller sites in your area and perceived barriers to provision. Any answers provided in this Section will be treated as confidential to the research team and reported only in a generalised, non-attributed manner

F1. In your view, has your authority made satisfactory progress since the beginning of 2006 on the provision of Gypsy / Traveller sites? Please give your authority a mark out of 10, where 1 is not satisfactory and 10 is highly satisfactory.

	Mark out of 10
Authority's progress	

F2. In your experience, what are the main barriers to provision of Gypsy / Traveller sites in your area? ***Please write in***

F3. What steps are being taken by your local authority to tackle these? ***Please write in***

F4. Any other comments you would like to make about Gypsy / Traveller site requirements and/or provision. ***Please write in***

THANK YOU VERY MUCH

APPENDIX 4: POLICING ISSUES – FULL RESPONSE

1. What in your view are the main issues in relation to Scottish Gypsy Traveller (SGT) accommodation in Scotland?	
Association of Chief Police Officers Scotland (ACPOS)	<p>The main issue in relation to site provision is the loss of traditional sites used by Gypsy and Travellers, often for the development of retail / business parks. This, combined with a lack of provided pitches on Authorised sites and the absence of Interim or Stopover site by Local Authorities, leads to the necessity for Gypsy and Travellers to establish unauthorised encampments. This in turn brings the GT community into conflict with the settled community, agencies and the Police none of which enhances relationships.</p> <p>Further, there are significant levels of harassment, intimidation and violence between different family groups within the Gypsy Traveller community often meaning that many families will flee from authorised sites as a result of threats received, whereby there are a number of vacant sites in Scotland.</p> <p>The absence of definitive guidance, which places a mandatory imposition on Local Authorities to provide accommodation means that there is an inconsistent approach across Scotland. The existing Guidance from the then Scottish Executive owes its origins to work conducted in 2004 and requires to be updated.</p>
Ian Taggart (IT)	Lack of available and appropriate sites.
2. In your view, has the SGT accommodation situation in Scotland improved or become worse over the past few years? Please give a reason for your answer.	
ACPOS	It was the opinion of the members that the status quo prevails and that there has been no discernible difference in recent years in terms of accommodation provision. This picture is however somewhat distorted by the fact that there have been significant tensions between Irish / English Gypsy Travellers and Scottish Gypsy Travellers, causing vacancies within the recognised encampments. In addition, the long term imprisonment of a significant number of members from a specific family group, has caused significant power struggles and inter-family feuds again causing vacancies in recognised encampments.
IT	<p>Accommodation has become worse with a reduction in available sites.</p> <p>For national figures see The Scottish Executive. <i>Gypsies/Travellers in Scotland. The Twice Yearly Count, January 2007.</i> (The Scottish Executive, Edinburgh 2007).</p>
3. What, in your view, are the main explanations for 22 per cent of SGT households staying on unauthorised sites across Scotland?	
ACPOS	The key reasons identified in relation to the continued use of unauthorised sites were the lack of adequate site provision, intimidation within peer group and the affordability of permanent site pitches.
IT	<p>Lack of appropriate accommodation and in the case of Aberdeen, at the time of my research, the condition of the site.</p> <p>Additionally it was evident there is a substantial number of Travellers (34 per</p>

	cent of interviewees) did not use private or local authority sites and did not intend doing so for various reasons.
4. Do unauthorised encampments have an impact on the local area? In what way?	
ACPOS	Given the previous comment that many of the traditional sites have been developed into commercial parks, there are frequent tensions / conflict between both parties. Invariably, such issues are picked upon by the media and a significant level of negative press is published, which heightens tensions further. This can on occasions manifest itself in hate related types crimes and incidents towards the Gypsy Traveller Community.
IT	Yes. Inevitably there is increased inter-community tension that is undoubtedly the reason for increased prejudice towards Travellers leading to racially motivated incidents in many occasions. Increasingly environmental issues, surrounding waste originating in encampments, fuel this tension. Whilst there are occasional instances of fly tipping by the settled community around these encampments the majority originates with Travellers. Despite the provision of minimal services to these encampments in Aberdeen I was informed by word of mouth recently that when originally provided several years ago cleanups occurred in approximately 10 per cent of cases however this figure has risen to approximately 90 per cent. During my research on large encampments, Travellers often advised me that a few identified families were responsible for this on each encampment. These issues result in stereotyping with resolution lying with Travellers themselves.
5. Can the number of unauthorised encampments be reduced? If so, what in your view is the most effective means to achieve this? If not, why not?	
ACPOS	This particular issue has been of some concern to ACPOS members for a considerable period of time. Given the circumstances outlined in question 1, members were unsure that there is a readily identifiable solution. Issues proposed but not progressed, included UK-wide legislation, greater accountability imposed on Local Authorities and the introduction of more effective partnerships.
IT	Introducing appropriate planning and management techniques can reduce them. It however remains the case that a substantial number of Travellers will continue to use unauthorised encampment however this can be managed. (See Taggart, I., <i>Gypsy Travellers – A Policing Strategy: “Why don’t you just move them on?”</i> (2003).
6. What in your view encourages good relations between SGT and Travellers and non-SGT?	
ACPOS	A difficult question for the Police, given that in many instances they are called upon to address unauthorised encampments in the absence of a Local Authority representative or in circumstances where dialogue has failed and matters have escalated to the extent that Police intervention is necessary. There are many aspects of social cohesion, which may be more effectively delivered by the key partners within Local Authority structures.
IT	Awareness raising regarding Traveller culture, equalities and human rights issues.

	<p>There is also an onus on Travellers themselves to understand the settled communities' concerns and understand these. It is a two-way street effectively however at present the relationship between the settled community and Travellers is very strained to almost non-existent in some areas.</p>
<p>7. Are there challenges you face when dealing with SGT? If so, what are these and how are these challenges managed?</p>	
ACPOS	<p>The main challenge faced by the Police is that of a lack of trust on the part of the Gypsy Traveller community. The appointment of Local Police Liaison Officers has done much to improve that relationship, whilst regular engagement is necessary if the relationship is to be developed. The production of various advisory materials has proved beneficial, however the itinerant nature of the Gypsy and Traveller Community means that in reality there is little time to develop the relationship. Furthermore, the absence of any truly representative national group on behalf of Gypsy and Travellers is a barrier to developing informed policies and strategies which reflect the needs of the community.</p>
IT	<p>Personally I have had few problems if any in dealing with Travellers. Whilst commonly described as a hard to reach community, my experience has, in the great majority of cases, been very positive. I have concluded that it is the case that those that should engage with Travellers find it hard to reach out to them.</p> <p>It is however apparent that Travellers resist engagement with public bodies as they have a lack of confidence in any positive outcomes. This can be overcome.</p>
<p>8. What is your view of the role residents' groups play in managing community relations where there are SGT on authorised or unauthorised sites?</p>	
ACPOS	<p>The experiences related across Scotland are invariably negative, with a significant element of 'not in my back yard' being expressed by community groups and Elected members. The media invariably pick up on the political aspects surrounding environmental / pollution and the associated cleaning up costs.</p>
IT	<p>In my experience I have found residents groups to be very difficult to deal with regarding issues surrounding Travellers as they invariably take cognisance of the majority viewpoint taking little or no interest in Travellers issues. Some in the North East have actively engaged in anti-Traveller activities.</p>
<p>9. Are you aware of any leadership strategies being used to manage and promote good relations between SGT and long term resident communities?</p>	
ACPOS	<p>Presently ACPOS are about to launch their revised Equality and Diversity Strategy for Scotland of which a key component is effective community engagement and the development of effective networks with Gypsy and Travellers.</p>
IT	<p>The current ACPOS strategy on unauthorised encampment is holistic in nature and has been implemented fully in the North East of Scotland. It is undoubtedly resulted in improved Police / Traveller relations in this area.</p>

Contacts

England

Equality and Human Rights Commission Helpline
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Arndale House, Arndale Centre, Manchester M4 3AQ

Main number 0845 604 6610
Textphone 0845 604 6620
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Equality and Human Rights Commission Helpline
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The Optima Building, 58 Robertson Street, Glasgow G2 8DU

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Wales

Equality and Human Rights Commission Helpline
FREEPOST RRLR-UEYB-UYZL
3rd Floor, 3 Callaghan Square, Cardiff CF10 5BT

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Helpline opening times:

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www.equalityhumanrights.com

This report explores the perspective of local authorities and, to a lesser extent, police forces in Scotland and their understanding of the accommodation needs of Scottish Gypsy Travellers. There are two main objectives: to ascertain the quantity of current Gypsy Traveller site provision, including any recent changes in this provision and plans to develop sites in the future; and to investigate timescales in meeting any accommodation shortfalls for Scottish Gypsy Travellers.

Equality Act 2010
CHAPTER 15

- (b) persons who apply for employment, or
 - (c) persons the employer considers for employment.
- (8) “Trade organisation”, “qualifications body” and “relevant qualification” each have the meaning given in Part 5 (work).

PART 11

ADVANCEMENT OF EQUALITY

CHAPTER 1

PUBLIC SECTOR EQUALITY DUTY

149 Public sector equality duty

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons’ disabilities.
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) tackle prejudice, and
 - (b) promote understanding.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

- (7) The relevant protected characteristics are –
- age;
 - disability;
 - gender reassignment;
 - pregnancy and maternity;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.
- (8) A reference to conduct that is prohibited by or under this Act includes a reference to –
- (a) a breach of an equality clause or rule;
 - (b) a breach of a non-discrimination rule.
- (9) Schedule 18 (exceptions) has effect.

150 Public authorities and public functions

- (1) A public authority is a person who is specified in Schedule 19.
- (2) In that Schedule –
- Part 1 specifies public authorities generally;
 - Part 2 specifies relevant Welsh authorities;
 - Part 3 specifies relevant Scottish authorities.
- (3) A public authority specified in Schedule 19 is subject to the duty imposed by section 149(1) in relation to the exercise of all of its functions unless subsection (4) applies.
- (4) A public authority specified in that Schedule in respect of certain specified functions is subject to that duty only in respect of the exercise of those functions.
- (5) A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

151 Power to specify public authorities

- (1) A Minister of the Crown may by order amend Part 1, 2 or 3 of Schedule 19.
- (2) The Welsh Ministers may by order amend Part 2 of Schedule 19.
- (3) The Scottish Ministers may by order amend Part 3 of Schedule 19.
- (4) The power under subsection (1), (2) or (3) may not be exercised so as to –
- (a) add an entry to Part 1 relating to a relevant Welsh or Scottish authority or a cross-border Welsh or Scottish authority;
 - (b) add an entry to Part 2 relating to a person who is not a relevant Welsh authority;
 - (c) add an entry to Part 3 relating to a person who is not a relevant Scottish authority.
- (5) A Minister of the Crown may by order amend Schedule 19 so as to make provision relating to a cross-border Welsh or Scottish authority.

**WESTMINSTER CITY COUNCIL V GREAT PORTLAND
ESTATES PLC: HL 1985**

References: [1985] AC 661, [1984] 3 WLR 1035

Coram: Lord Scarman

Ratio The House was asked whether the 1971 Act permitted the relevant authorities, by resort to their development plans, to support the retention of traditional industries or was the ambit of the Act such as to permit only 'land use' aims to be pursued? The court considered also the relevance of personal considerations in planning matters.

Held: Lord Scarman considered what was a material consideration: 'The test, therefore, of what is a material 'consideration' in the preparation of plans or in the control of development (see section 29(1) of the Act of 1971 in respect of planning permission: section 11(9) and Schedule 4 paragraph 11(4)) in respect of local plans) is whether it serves a planning purpose: see *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, 599 per Viscount Dilhorne. And a planning purpose is one which relates to the character of the use of the land.'

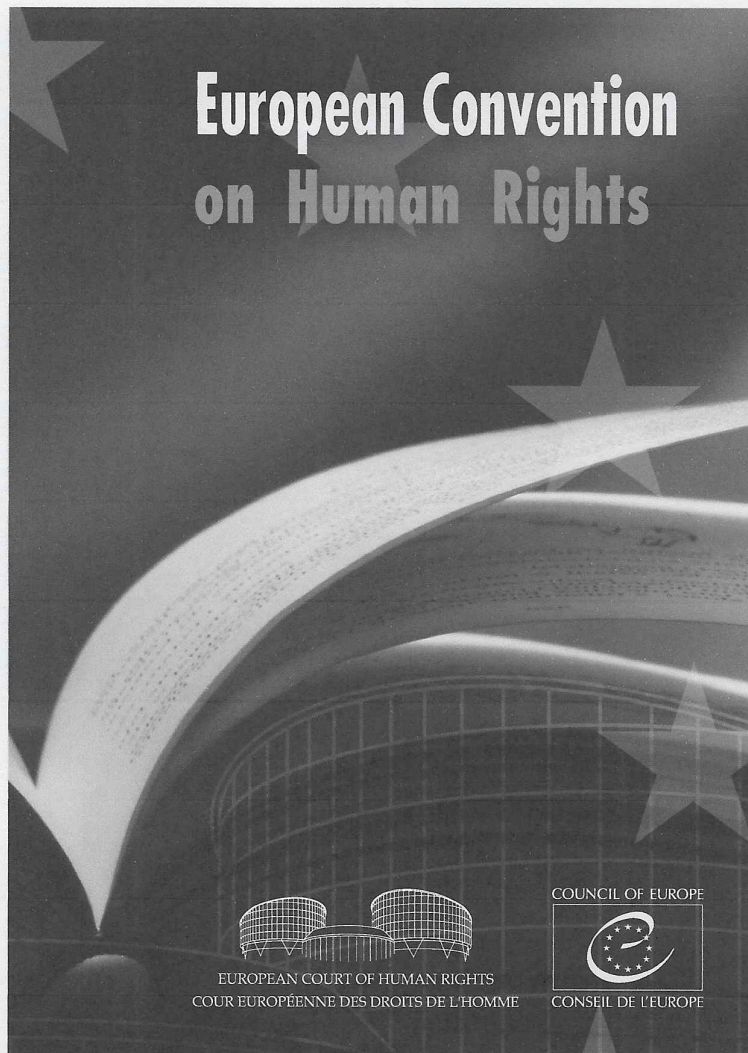
Ratio Lord Scarman drew attention to the relevance to planning decisions, on occasion, of personal considerations, saying: 'Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control.' and

However, like all generalisations Lord Parker's statement has its own limitations. Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. But such circumstances, when they arise, fall to be considered not as a general rule but as exceptions to a general rule to be met in special cases. If a planning authority is to give effect to them, a specific case has to be made and the planning authority must give reasons for accepting it. It follows that, though the existence of such cases may be mentioned in a plan, this will only be necessary where it is prudent to emphasise that, notwithstanding the general policy, exceptions cannot be wholly excluded from consideration in the administration of planning control.'

On the other hand: 'It is a logical process to extend the ambit of Lord Parker LCJ's statement so that it applies not only to the grant or refusal of planning permission and to the imposition of conditions, but also to the formulation of planning policies and proposals. The test, therefore, of what is a material consideration in the preparation of plans or in the control of development in respect of planning permission and in local plans, is whether it serves a planning purpose, and a planning purpose is one which relates to the character of the use of the land.'

Ratio Lord Scarman discussed the extent of reasons needed to be given, saying that once there is an explicit requirement on a public authority to provide reasons then they must be proper, adequate and intelligible.

If no new point however was raised by the Inspector, the reasons given by the authority may be a simple repetition of those given to the Inspector.





as amended by Protocols Nos. 11
and 14

supplemented by Protocols Nos. 1, 4,
6, 7, 12 and 13

The text of the Convention is presented as amended by the provisions of Protocol No. 14 (CETS no. 194) as from its entry into force on 1 June 2010. The text of the Convention had previously been amended according to the provisions of Protocol No. 3 (ETS no. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS no. 55), which entered into force on 20 December 1971, and of Protocol No. 8 (ETS no. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS no. 44) which, in accordance with Article 5 § 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols were replaced by Protocol No. 11 (ETS no. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS no. 140), which entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS no. 146) lost its purpose.

The current state of signatures and ratifications of the Convention and its Protocols as well as the complete list of declarations and reservations are available at www.conventions.coe.int.

Only the English and French versions of the Convention are authentic.

European Court of Human Rights
Council of Europe
F-67075 Strasbourg cedex
www.echr.coe.int

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Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the governments of European countries which are likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

ARTICLE 1

Obligation to respect Human Rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I RIGHTS AND FREEDOMS

ARTICLE 2

Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term "forced or compulsory labour" shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or wellbeing of the community;
 - (d) any work or service which forms part of normal civic obligations.

ARTICLE 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

ARTICLE 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7

No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and

in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11

Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ARTICLE 12

Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

ARTICLE 13

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

ARTICLE 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ARTICLE 15

Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

ARTICLE 16

Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 17

Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and

Neutral Citation Number: [2004] EWCA Civ 1248

Case No: C1/2003/1818

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
THE HONOURABLE MR JUSTICE BLACKBURNE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/09/2004

Before :

THE RIGHT HONOURABLE LORD JUSTICE AULD
THE RIGHT HONOURABLE LORD JUSTICE WALL
 and
THE HONOURABLE MR JUSTICE PUMFREY

Between :

	1) THE FIRST SECRETARY OF STATE 2) GRANT DOE 3) GREGORY YATES 4) PAUL EAMES	<u>Appellants</u>
	- and -	
	CHICHESTER DISTRICT COUNCIL	<u>Respondent</u>

Mr Tim Mould (instructed by **Treasury Solicitor**) for the **First Appellant**
Mr David Watkinson (instructed by **Community Law Partnership**) for the **Second, Third & Fourth Appellants**
Mr Richard Langham (instructed by **Sharpe Pritchard**) for the **Respondent**

Hearing dates : 24th March 2004

Judgment

Lord Justice Auld :

1. This is an appeal by the first defendant (“the First Secretary of State”) and the second, third and fourth defendants (“the applicants”) against an order of Blackburne J on 29th July 2003 under section 288 of the Town and Country Planning Act 1990 (“the 1990 Act”), quashing the First Secretary of State’s appointed Inspector’s decision to grant planning permission to the applicants for use of land at Clearwater, Ratham Lane, West Ashling, Chichester as a private gypsy site with mobile homes and associated outbuildings. The Inspector had also granted planning permission to similar effect to the mobile home owners on three planning applications deemed to have been made by the in accordance with section 177 of the 1990 Act in the course of enforcement proceedings taken by the claimant, Chichester District Council (“the Council”) as local planning authority.
2. The appeal raises three issues, only one of which is of any substance in the sense that it affects the outcome of the appeals, namely whether the Inspector was correct in determining that the Council, by refusal of the planning permissions and issue of enforcement proceedings, had violated the applicants’ rights under Article 8 of the European Convention of Human Rights (“ECHR”,) to respect for their private and family life and their home. The other two issues are associated, but largely academic. They are: whether the Inspector did and/or should have found that the development breached a particular policy of the applicable Structure Plan; and whether he erred in law in failing to identify and/or explain the material considerations that he found weighed in favour of the grant of planning permission to one of the applicants, Mr Eames. The Judge held that the Inspector had erred in law on all three grounds.
3. The First Secretary of State and the applicants appeal on the ground that the Judge wrongly found fault with the Inspector’s decisions on all three issues.

The site and planning policies.

4. In about 1999 one of the applicants, Mr Yates, bought the appeal site. He and the other two applicants, Mr Doe and Mr Eames, subdivided it into three main plots, and, without notification to the Council or application for planning permission, they began to lay it out with services for future residential use. Eventually, they moved their mobile homes and caravans onto the site and began to live there. The Yates and Doe families, who had a close association with the Chichester District, moved there from a County Council site where they had been experiencing difficulties. Mr Eames, who had a strong attachment to them and had travelled with them from time to time, seemingly moved there from somewhere else in West Sussex.
5. The appeal site is a triangular shaped area bounded to the east by a lane and to the west by a stream. As I have said, it is divided into three main plots, two, each housing a mobile home and a touring caravan, and the third, a touring caravan. There is a further strip of land on the site providing access to the three plots from the lane. The site lies in the countryside outside, but quite close to one or more well-defined settlement areas and with a good range of local facilities. It is reasonably well screened from distant views by various copses of trees and tall hedges, and is about 150 metres from a major road, the A27. The Inspector described it in paragraph 33 of his decision letter, as “close to few dwellings and largely hidden from view”. The site does not fall within an area subject to any special designation by reference to its landscape qualities; it is not within a Green Belt or other designation of land

where the policy is strongly to resist development; it is not in an area of recognised nature conservation value or archaeological or historic value. In short, as the Inspector described it, in paragraph 66 of his decision letter, it is “ordinary countryside afforded the least degree of protection”.

6. Consideration of the applicable National and local planning policies must take into account the move by the Government from the obligation imposed on County Councils by Part II of the Caravan Sites Act 1968 to provide caravan pitches to its replacement, as a result of amendments made by the Criminal Justice and Public Order Act 1994, to reliance on gypsies to provide their own sites assisted by national and local planning policies requiring local authorities, in the exercise of their planning function, to have regard for their special needs.

7. Departmental Circular 1/94 – “Gypsy Sites And Planning” – revised the previous guidance so as to take account of the repeal of Part II of the 1968 Act and to encourage gypsies to secure their own sites making use of the planning process where necessary and appropriate. In paragraph 6, it stated that the land-use requirements of this tiny proportion of the Country’s population “need to be met” and that local planning authorities “need to be aware of” their accommodation and occupational needs”. Paragraph 9 stated that once the statutory obligation on local authorities to provide pitches had gone, they should make adequate provision in their development plans “through the appropriate use of occupational and/or criteria-based policies”. Paragraph 14 indicated that local planning authorities might consider locations outside existing settlements, “provided that care ...[was] taken to avoid encroachment on the open countryside”. And in paragraph 22, the Circular indicated, in the case of gypsies, the balance to be drawn between traditional land-use factors and their interests:

“As with any other planning applications, proposals for gypsy sites should continue to be determined solely in relation to land-use factors. Whilst gypsy sites might be acceptable in some rural locations, the granting of permission must be consistent with agricultural, archaeological, countryside, environmental, and Green Belt policies. ... The aim should always be to secure provision appropriate to gypsies’ accommodation needs while protecting amenity.”

8. In 1997 the Department revised its PPG7, providing, in paragraph 2.3, for strict control of development in “the open countryside, away from existing settlement or from areas allocated for development in development plans” - the greater the landscape, wildlife or historic qualities of the countryside, the greater the priority to be given to the restraint.

9. The Development Plan relevant to the appeal site consisted of the approved West Sussex Structure Plan of July 1993, which preceded the change in the law removing the obligation on County Councils to provide gypsy caravan pitches, and the adopted Chichester District Local Plan, First Review of April 1999, which took into account the Circular 1/94 obligation “to make adequate provision for” gypsies in local development plan policies.

10. The Inspector, in paragraphs 21 and 22 of his decision letter, correctly identified the two main relevant provisions of the Structure Plan. The first is G1, which, consistently with

paragraph 2.3 of PPG7, requires strict control of all development outside existing or potential built up areas defined in local plans-

“Outside such areas development is to be strictly controlled, subject only to limited exceptions allowed for in other policies.”

The second was C1, which the Inspector described as the ethos of the Structure Plan policy for the countryside:

“The Planning Authorities will seek to protect the countryside for its own sake from development which does not need a countryside location, and will ensure that the amount of land taken for development is kept to the minimum consistent with the provision of high quality and adequate space within the built environment.

Development will not normally be approved outside built up area boundaries unless it is for quiet informal recreation or related to essential needs of any of: agriculture, forestry, the extraction of minerals, the deposit of waste or the implementation of policy H6 [i.e. social housing outside, but usually adjoining, built-up area boundaries where there is a proven local need].

Permission will not normally be given for the extension of isolated groups of buildings or the consolidation of linear or sporadic development.”

11. The Structure Plan makes specific provision for gypsies in Policy H7, which was still, as Mr Tim Mould, for the First Secretary of State put it, rooted in the 1968 duty on County Councils to provide pitches. It provided:

“While permission may be granted for the establishment by gypsies themselves of caravan sites in suitable locations, further provision by the Local Authorities will be considered only in the light of demonstrated need.”

The note to Policy H7 specifically referred to the impending change in the law:

5.31. West Sussex, as a designated county under the Caravan Sites Act 1968, has met the Government requirement to make provision for gypsy caravan pitches. However, Government legislation has been suggested which may change the situation, and the position will be monitored. The Council wishes sites to be in locations with convenient access to schools and health services and with a basic infrastructure available

12. The Chichester District Local Plan, First Review of 1999, only permitted development in the area in which the appeal site is situated in accordance with specified policies in the Plan, one of which is RE22 “Sites for Gypsies”. In outline, and as a reflection of the revised guidance given in Circular 1/94, in particular paragraphs 9 and 22, it permits such sites in rural areas “only when it can be demonstrated that the numbers of families who reside in or resort to the District need the number of pitches in the location sought, and provided that” a number of other criteria are satisfied. These include criterion (1) that “[t]hey do not detract from the

undeveloped and rural character and appearance of the countryside, particularly the areas of outstanding natural beauty” and: criterion (8) that “[t]hey are sited on reasonably flat land, provided that the proposals do not create visual encroachment into the open countryside.”

13. The Inspector’s decision letter of 14th January 2003 identified, in paragraph 25 two main issues before him, as agreed by the parties, namely: the effects of the development on the policy aims of protecting the character and appearance of the countryside around Ratham Lane; and if those effects would be harmful, whether such harm would be outweighed by other material considerations, including the fact that the applicants are gypsies, any need for gypsy sites in that part of West Sussex and Article 8 of the ECHR.

14. Although the Article 8 issue is by far the most important in these appeals, I consider it helpful to set the planning scene by dealing first with the other two.

Issue 1 – Effect on the character and appearance of the countryside/Whether the proposed development conflicted with planning policy

15. This issue, so far as it goes, is whether the Inspector did and/or should have found that the proposed development would breach the Structure Plan Policy C1.

16. The Inspector, at paragraphs 27 to 28 of his decision letter, found that, as the appeal site lay in the countryside and, in particular, outside built up area boundaries, it did not “technically” fall within any of the exceptions in Policy C1 of the Structure Plan. However, he found some tension between that policy, considered on its own, and the wider context, including the provision in Policy H7 for the grant of permission “in suitable locations” for private gypsy sites, stating at paragraph 28 of his decision letter:

“... Policy H7 refers only to ‘suitable locations’ for private gypsy sites, a phrase which is not defined. It is thus impossible to deduce from the policy where gypsy sites should be located, apart from some guidance in paragraph 5.31 of the supporting text. [i.e. convenient access to schools, health services and basic infrastructure]which the site plainly has. ...”

17. In terms of Government Policy, he noted the changes that had occurred since the adoption of the Structure Plan.

“Furthermore, the Structure Plan was approved at a time when Government Policy on gypsy sites was inclined very much towards local authority provision. Though paragraph 5.31 presages the changes introduced by Criminal Justice and Public Order Act 1994 and the Policy advice of Circular 1/94, the Structure Plan does not address those changes because they post-date its approval. In these circumstances, though the Council’s argument is technically correct, that the letter of Policy C1 does not allow for the establishment of gypsy sites in the rural area, that alone is not conclusive. Rather, it is the purpose behind the policy which have to be given particularly careful consideration, together with the changes to Government policy since 1994.”

18. The Inspector went on to find that in that wider context – the Development Plan as a whole and Government Policy, including Circular 1/94, paragraph 14, and PPG7 - the fact that the appeal development was strictly contrary to Policy C1 begged the question whether it should now be necessarily be seen as contrary to the ethos or underlying aim of strategic policy for the countryside. In paragraphs 29 to 31 he examined that question and concluded that, in the light of subsequent changes in government policy on the location of gypsy sites in rural areas, a proposal to locate such a site in the West Sussex countryside should not necessarily be seen as in conflict with the underlying aims of Policy C1, i.e. to limit development in the countryside to that which needs to be located there. It is clear, however, that he regarded the appeal development as a breach of the terms of Policy C1.

19. The Inspector then turned to policy RE22 in the local plan permitting the establishment of gypsy sites in rural areas where there is a demonstrated need for them, which he found reasonable as a criteria-based policy and in accord with the aim of PPG 7 of protecting the countryside for its own sake. However, he found that there was a conflict between the clear aim of that policy and the Council's operation of it in practice:

“32. ... the policy does not operate in isolation but in the context of applications by gypsies for private sites, which is the method of provision now encouraged by Government policy. According to the Council's planning witness, since the introduction of Policy RE22 some three years ago, no gypsy site has been approved within the district. That in itself is by no means conclusive of the reasonability of the policy in practice, but it was evident from the witness that the reason for this record was that all applications were in the countryside. Furthermore he considered that the only sites which could meet the criteria of the policy would be those marginal sites which would be seen as the backdrop to the built up area and which did not encroach on the countryside.

33. Thus it would appear that in practice the Council's interpretation of Policy RE22 is one where only sites close in to built up areas, or within small groups of dwellings in the countryside and not defined as SPAs are considered acceptable. Those beyond, whether in countryside with special sensitivity, such as the AONBs, or in what might be termed 'ordinary' countryside, are considered to be in breach of the policy criteria. Such an interpretation is not considered reasonable or realistic because it conflicts with the advice of paragraph 10 of Circular 1/94. ...

34. Perhaps more significantly the Council's interpretation of Policy RE22 also appears to conflict with paragraph 249 of the supporting text to the Local Plan, which is expressly referred to by the policy. That paragraph recognises that some sections of the community have special needs resulting from occupation, disability or through their chosen lifestyle. It goes on to explain that these requirements mean that in some cases exceptions have to be made to the Plan policies, for example policies relating to the general restraint of development in the rural area. ...

35. But the evidence to this inquiry appears to demonstrate that in practice there is a conflict between the Council's implementation of Policy RE22 and the expressed aims of both the Circular and the policy as adopted. Accordingly it is concluded that the criteria of RE22 should be applied to the appeal site, without any assumption that this gypsy development is inherently unacceptable in the rural area.”

20. Following that analysis of the relevant policies and his finding of the Council's operation of them, he found, at paragraphs 36-38, by reference to the criteria, including (1) and (8), of Policy RE22, that the proposed development would cause some, but little, harm to the undeveloped and rural appearance of the countryside and that such harm could, in any event, be largely mitigated by planting. In paragraph 39 of the decision letter, the Inspector drew together the various points on policy against the backdrop of the aim in PPG7 of protecting the countryside for its own sake:

“... That aim is important but it has to be seen in the context of the advice in Circular 1/94 that the needs of gypsies have to be met and that rural and semi-rural settings for sites may be appropriate. The PPG itself makes no specific reference to gypsy site provision, and given that Circular 1/94 pre-dates it, but that its advice on such sites is not amended or cancelled by PPG 7, it is concluded that the Circular advice should enjoy greater weight in these gypsy cases. Bearing that in mind, and having regard to all the above considerations, it is concluded that the development causes, and in the case of the planning appeal would cause, some harm to the character of the countryside around Ratham Lane in the light of the aims of ... Policy RE22. This harm therefore weighs against permission and accordingly it is appropriate to consider whether there are any material considerations which outweigh that harm.”

21. In the light of that finding, which is in part confirmatory of his earlier expressed view that the proposed development would breach Structure Plan Policy C1/94, it is plain that, whether he regarded it as a technical breach or of some materiality, it did not affect his threshold planning decision that the proposal would cause some planning harm.

22. The Judge found that there was a clear breach of Policy C1. He viewed the Inspector as in error for failing explicitly to note this. He regarded the Inspector's approach as a misreading of the terms of the Policy. He said, at paragraph 15 of his judgment, that the Inspector had incorrectly found that the proposed development was not a material, as distinct from a technical, breach of Policy C1

“... He was entitled to find that other material considerations (including subsequent Department of Environment policy guidance and the other factors to which he drew attention ... led to a conclusion that policy C1 should be disregarded. ... But that was not how the inspector was approaching matters. He was not acknowledging a clear breach of policy C1 but finding that it was justified by other considerations. Rather he was finding that, given what he described as ‘the underlying aims of the policy’, there was no breach. But ... he should have proceeded on the basis that the development was in breach of the policy, as in my view it clearly was. To that extent ... the inspector fell into error ...”.

23. Mr Mould submitted that the Inspector was entitled to approach Policy C1 as he did. He was obliged, by section 70(2) of the 1990 Act, to have regard to the relevant policies of the development plan and, by section 54A of the Act, to determine the appeal in accordance with the development plan unless material considerations indicated otherwise. However,

provided that he recognised the priority to be given to the development plan, the Inspector was entitled to adopt the process of analysis which seemed to him to be appropriate to the circumstances of the given case: *R v Leominster District Council ex parte Pothecary* 76 P&CR 346 at 352-353.

24. The Inspector had expressly accepted the Council's case that the appeal development was contrary to the terms of Policy C1. However, that in itself was not necessarily decisive of the merits of the development. It was necessary to consider whether there were factors that indicated that, although the appeal scheme was not among those limited categories of development specifically identified in Policy C1, there were good reasons for departing from the strict letter of the policy. On a fair reading of his decision, that is the approach adopted by the Inspector. In particular, it was plainly relevant to take account of subsequent changes in national planning policy indicating that gypsy sites may need to be located in the countryside, since it is need for a countryside location that provides the underlying rationale for the control of development imposed by Policy C1. So Circular 1/94 was logically relevant to the overall question whether, as the Council contended, Policy C1 should be read as raising an objection of principle against the appeal development. He submitted that the Inspector was entitled to base his rejection of that contention upon the contents of more recent, relevant national planning policy guidance, which is directed specifically at identifying appropriate locations for gypsy sites through the planning process and following the repeal in 1994 of the statutory duty to provide County Council sites. In other words, in applying the Structure Plan, the Inspector was entitled to take account of the fact that it did not reflect the current statutory and national policy framework; and to seek to make good that shortcoming by reference to the relevant locational guidance given in the up to date, relevant national planning policy guidance document. That is what he did. He added that, even if the Judge was right to find that the Inspector had erred in his approach to Policy C1, the Inspector's decision should be allowed to stand. The Inspector's overall conclusion that planning permission was merited in this case would have been unaffected by any more clear finding that the development was in breach of Policy C1.

25. Mr David Watkinson, on behalf of applicants, advanced much the same arguments in support of the reasoning of the Inspector in this respect. He submitted that the Judge erred in finding that the Inspector had proceeded on the basis that the proposed development would not breach Policy C1. He said that the Inspector had clearly accepted, at paragraphs 27 to 28 of his decision letter, that there would be such a breach. He added that it was important to keep in mind that the Inspector, in considering Policy C1, was doing so in the context of the first of the two broad issues he had identified, namely as to the effects of the proposed development on the character and appearance of the countryside in the vicinity of the appeal site. He said that, once the Inspector had acknowledged the breach, he was entitled to consider it in the context of the other policies and guidance as part of his consideration of all material factors.

26. However, Mr Richard Langham, on behalf of the Council, supported the Judge's view and reasoning that the Inspector erred in finding that the proposed development would not be in material, as distinct from technical, breach of Policy C1. He said that the relevance of that to the Inspector's final decision was that, it skewed his approach to the subsequent and necessary question whether other material considerations justified a material breach. Consideration of such matters should follow a correct application of the Policy itself, and the Inspector did not correctly apply the Policy. However, along with Mr Mould and Mr

Watkinson, he acknowledged that even if the Inspector had expressly found the breach of Policy C1 to be a material, it is unlikely that he would have given it much weight.

Conclusion

27. The Judge saw force in the arguments of Mr Mould and Mr Watkinson, given the directly relevant policy RE22 of the Chichester District Local Plan, which, as I have said, permits, subject to stringent criteria, the establishment of gypsy sites in rural areas of the Chichester District. It was the Inspector's clear conclusion that Policy RE22 itself raised no objection in principle to the use of the appeal site for a gypsy caravan site. Policy RE22 reflects not only the relevant policies of the Structure Plan, including Policy C1, but also the Secretary of State's more recent policy on the provision of gypsy sites as stated in Circular 1/94. In these circumstances, the Inspector's finding that the development was not objectionable in principle under the relevant Local Plan Policy would not have been affected by a finding that the County-wide Structure Plan Policy was breached.

28. In my view, and as the Judge said at paragraph 38 of his judgment, if the Inspector's view of the breach of Policy C1 had been the only issue, it could not sensibly affect the outcome of the appeal whether he regarded the breach of Policy C1 as technical or material. However he expressed himself, it is plain that he regarded the location of the proposed development in this rural area as causing only slight planning harm. I would, therefore, uphold this ground of appeal, so far as goes, directed at the Judge's finding on this issue.

Issue 2 – Personal circumstances - Mr Eames

29. This issue, again for what it is worth, is whether the Inspector clearly explained the material consideration weighing in favour of Mr Eames' case for planning permission.

30. As I have indicated, the Inspector, in his decision letter, considered both the general need for sites in the Chichester District and each of the applicants' personal circumstances. As to the former, he concluded, at paragraph 49 of his decision letter, after comparing the outcome of supply and demand analyses for gypsy sites in the Chichester District, that the evidence before him plainly demonstrated that the applicants had deployed a compelling case on the aspect of need.

31. The Inspector considered separately the extent to which each individual applicant was able to point to personal considerations that also weighed in favour of his case for planning permission. He considered the personal circumstances of each of the applicants in turn. He dealt first with Mr Yates and Mr Doe and found, at paragraphs 50 to 59 that family ties and educational/cultural factors and their close association for some years with the Chichester District weighed in favour of their appeals.

32. In relation to Mr Eames, the Inspector found, at paragraphs 61, 62, 70 and 72, that, on the evidence, such personal circumstances – family ties and cultural factors – did not apply, or not to the same extent. However, he found that, as a single man, Mr Eames would be unlikely to obtain any pitch that might become available within the County as a whole, on account of his low status in the County Council's allocations policy. He regarded that as a

factor adding weight to Mr Eames' case. This is how he summed up his position in paragraph 72 of his decision letter :

“In the case of the enforcement appeal by Mr Eames it is concluded that the material considerations of the need for gypsy sites in the District, his personal circumstances, including his gypsy status, and the interference with his Article 8 rights which would arise from the refusal of permission are sufficient to outweigh the limited harm to the aims of planning policies seeking to protect the character of the countryside arising from the stationing of his caravan on this land....”

33. The Judge, at paragraphs 30 and 31, said that he was unclear as to what exactly the Inspector had found weighed in Mr Eames' favour.

Submissions

34. Mr Mould submitted that the Inspector's approach to the issues of need and personal circumstances correctly reflects the approach of the High Court in *Hedges and Hedges v Secretary of State for the Environment and East Cambridgeshire District Council* 73 P & CR 534, per Gerald Moriarty, QC, sitting as a Deputy High Court Judge, at 545. Both were material considerations capable of adding weight to the case of planning permission. Neither Mr Mould nor Mr Watkinson could see any uncertainty in the Inspector's decision on this issue. They pointed to the clear references in the decision letter to the particular difficulties Mr Eames would have, as a single man, in obtaining a pitch, even if one was available, on a Council site in West Sussex due to allocations criteria. The distinction between the general and the personal is clear, as is the separate and complementary significance of each factor. These points are reflected in the Inspector's reasoning.

35. Mr Langham, on behalf of the Council, suggested there was considerable uncertainty as to what additional personal circumstances the Inspector was weighing in Mr Eames' favour, since, although he was part of the demand for gypsy sites, the area applicable in his case was the wider area of West Sussex rather than the Chichester District and the only "additional factor" resulting from that was the likely difficulty for him, as a single man, in obtaining a County Council pitch.

Conclusion

36. In my view, Mr Mould and Mr Watkinson are correct in their submissions that the Inspector made perfectly plain the additional consideration that he had in mind in the case of Mr Eames. In any event, as Mr Watkinson observed the Inspector identified a number of factors in favour of his application, including the shortage of gypsy sites in the District and the County and the likely difficulty for him in obtaining a pitch on a Council site in West Sussex. In my view, it follows that the Inspector explained adequately for the purpose his approach to the questions of general need and personal circumstances and why both were

material considerations weighing in Mr Eames' favour. I would reject the Judge's criticisms of the Inspector on this account and, so far as it goes, uphold this ground of appeal.

Issue 3 – Article 8 ECHR –Chapman v UK

37. The issue is whether the Judge correctly approached the question whether the Council's refusal of planning permission and issue of enforcement proceedings violated the applicants' rights under Article 8 ECHR to respect for their private and family life and home and, the effect one way or another on the balancing exercises respectively required by section 54A of the 1990 Act and Article 8.2.

38. It is common ground that Article 8 was engaged in the sense that the applicants' right to respect for their homes and family lives was capable of becoming a material consideration, that is, it was "at issue", just as the European Court found in *Chapman v. United Kingdom* (2001) 33 EHRR 18, at paragraph 74, that Mrs Chapman's right to respect for her private family life and home was at issue. But it was not common ground that the refusal of planning permission and upholding of enforcement notices would necessarily constitute an interference with those rights, still less whether such an interference would be justified under Article 8.2.

39. The Inspector, having found, as I have said, that the proposed development would cause only slight planning harm, then considered, pursuant to section 54A of the 1990 Act, other "material considerations" arising from the evidence before him. These considerations included, in addition to an unmet need for gypsy sites in the Chichester District, the personal circumstances of the applicants, and those circumstances included their deliberate settlement on the appeal site without prior notification to the Council or seeking planning permission and the potential of the Council's decisions for rendering them homeless and possible violation of their Article 8 rights.

40. As to the former, the Inspector said, at paragraph 54 of his decision letter, that, though the applicants' conduct could not be condoned, two of the families had "a cogent reason" for leaving a County Council site and that their development of the appeal site was not "wholly in conflict with the present Government policy of encouraging private site provision by gypsies". In short, he concluded that this aspect of their personal circumstances did not weigh heavily against their case.

41. As to the impact of the Council's refusal of planning permission and upholding of the enforcement notices on the Article 8 rights of the applicants, he noted the Council's acceptance before him that it would engage Article 8.1, and found, at paragraph 65, on a balance of probabilities that "the harm arising from interfering with their right to a home could potentially affect any of the ... [applicants] and would be substantial".

42. He then immediately turned to the issue of justification under Article 8.2, which, for convenience, I set out here, before rehearsing his treatment of it:

"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

43. As the Inspector observed, it was common ground that the enforcement action taken by the Council accorded with the law. As to necessity for the interference, in this case to protect the environment from harm from the unauthorised proposed development, the Inspector described it, as I have said, as “ordinary countryside afforded the least degree of protection”, and concluded that there was, therefore, less of a pressing social need to keep it undeveloped than there would have been if it were more highly protected land. He added that such necessity for the avoidance of harm as there was would reduce if planting controls were imposed as a condition of development.

44. Finally, and importantly, the Inspector turned to the particular vulnerability and needs of the applicants as gypsies and the implications for his decision of *Chapman*, in which the Court had held, inter alia, that the public authorities are not obliged to provide an adequate number of gypsy sites. He reasoned nevertheless that, as in his view, the development would do only limited harm to the environment, and the Council had failed properly to implement its local policy RE22 to permit the establishment of gypsy sites in rural areas where there was a demonstrated need for them, the applicants’ Article 8.1 rights weighed heavily in their favour. This is how he put it in paragraphs 69 and 70 of his decision letter:

“69. Account has been taken of the Council’s argument that the judgment in *Chapman* found that the United Kingdom government was not under an obligation to provide an adequate number of gypsy sites. But paragraph 9 of Circular 1/94 says that repeal of the statutory duty of local authorities under the 1968 Act to provide gypsy sites makes it all the more important that local planning authorities make adequate gypsy site provision in their development plans. In this case the Council has not demonstrated that it has a sound statistical basis for its conclusion that there is no need for any new gypsy site, despite saying that it accepts there is a small unmet need. Furthermore the Council has not granted a single planning permission for a private gypsy site since their Local Plan was adopted in 1999, and the only private gypsy sites in the District all appear to have been granted on appeal, that is following refusal of permission in the first instance by the Council. That situation, coupled with the Council’s interpretation of the Local Plan gypsy policy, RE22, appears to have ensured that in practice there is little credible prospect of any private gypsy site being permitted by the Council. This conclusion has to be seen in the context of the need for sites in the District, Policy RE22 and paragraph 249 of the Local Plan, and the Government policy in Circular 1/94 which makes it clear that the needs of gypsies must be met.

“70. Against this background the limited harm caused to the environment, and hence to the public interest, by the appeal development has to be weighed against the serious harm to the appellants arising from the failure to recognise and provide for the needs of gypsies in the District by granting permission for sites. It is concluded that in this case that limited harm does not constitute a pressing social need for the interference with Article 8(1) rights of all the appellants which would result from the upholding of these notices. Moreover, by leading to a situation where there is a high probability that at least one of the appellants would lose their present home for a significant period, such interference would be disproportionate. For these reasons, and because the Council has not convincingly established why the interference is necessary, it is concluded that it is unacceptable. Thus the human rights arguments weigh heavily in favour of the appellants.”

45. Like the Judge, I take the last sentence of paragraph 70 of the decision letter to be a finding that to uphold the enforcement notices would constitute an unjustifiable interference with the applicants' Article 8 rights.
46. The Judge dealt quite shortly with that reasoning of the Inspector, holding that he had effectively put the Council under an obligation to exercise its planning powers to provide an adequate number of gypsy sites within its area. He said at paragraph 36 of his judgment:
- “36. ... although in paragraph 69 the inspector noted that the United Kingdom Government was not under any obligation (by virtue of article 8) to provide an adequate number of gypsy sites, he, in effect, held that article 8 carries with it a duty on the Council, as the relevant local planning authority, to exercise its planning powers to help achieve that end in its area. In my judgment the article imposes no such an obligation. The inspector was wrong to think as he did.”
47. The Judge went on to hold, at paragraphs 37 and 38, that, in a matter so fundamental as the correct approach to Article 8 and, having regard to the weight the Inspector gave to it, the Inspector's decision could not stand. He, therefore, quashed the decision and remitted the matter to the Secretary of State for reconsideration.

The issue and the submissions.

48. Mr Mould, whose submissions on this issue Mr Watkinson adopted, appears to have approached the issue on the basis that, as Article 8 was “engaged”, to refuse planning permission and uphold the enforcement notices would necessarily constitute an interference with the applicants' rights under Article 8.1 and, therefore, that the only question was and is whether the interference was, in the circumstances, justified in the terms of Article 8.2 Mr Mould submitted that the Judge, in paragraph 36 of his judgment, had wrongly credited the Inspector with holding that Article 8 obliged the Council to exercise its planning powers so as to fulfil a general obligation to provide an adequate number of gypsy sites in its area regardless of availability. He maintained that the Judge overlooked the fact that a finding of a breach of Article 8 in a particular case does not amount to an acceptance of a general duty to provide sites and that the Inspector had not so decided here.
49. Mr Mould, submitted that it is clear from paragraphs 69 and 70 of the Inspector's decision letter that he was there engaged on the only live issue under Article 8, namely one of the *Chapman* balancing exercise under Article 8.2. He maintained that the Inspector carried out the exercise in an exemplary way, deciding as a result that enforcement of planning control in the circumstances would be disproportionate. He said that, the Inspector acknowledged that an inadequate supply of sites to meet the needs of gypsies did not of itself give rise to a breach of Article 8, but nevertheless, he gave, and was entitled to give, weight to the fact that, notwithstanding Government planning policy in Circular 1/94, the Council had failed to provide for the needs of the gypsy community through the development plan process.
50. He submitted that the Government's planning policy is that land-use requirements of

gypsies should be met through the planning process and that local planning authorities, such as the Council, should seek to make adequate provision of gypsy sites through the development plan process, either through the identification of suitable sites or through criteria-based policies. He maintained that the planning policy in Circular 1/94 reflects that positive obligation towards the gypsy community in recognition of their particular land-use requirements, identified by the European Court in paragraph 96 of *Chapman* as “a positive obligation ... by virtue of Article 8 to facilitate the gypsy way of life”.

51. Mr Mould said that, in deciding whether there was an Article 8.2 justification in this case, the Inspector was entitled to take account of that planning objective and to attach weight to the fact that this Council had failed to meet it, with the result that gypsies’ accommodation needs in this district have become more pressing. That fact was a relevant consideration in deciding whether the Council had justified its interference with these gypsies’ Article 8 rights in the circumstances of this case.

52. It followed, he submitted, that the Inspector was bound to determine whether it was a proportionate interference with the applicant’s Article 8 rights for the Council to evict the applicants in all the circumstances of this case. In doing so, the Inspector was entitled to take account of the limited environmental harm caused by the presence of the caravan site in this location and to balance that limited harm against the factors that weighed in the gypsies’ favour. The latter properly included the fact that the Council had, on the Inspector’s findings, failed to fulfil its role, as local planning authority for Chichester, in pursuing the Government’s planning policy objective of seeking to meet the accommodation needs of gypsies. He submitted that, for those reasons, the Judge wrongly held that the Inspector’s approach conflicted with *Chapman*, and placed an unwarranted constraint upon the fulfilment of the Government’s positive obligation through the planning process.

53. Mr Watkinson added that the fact there is no general duty to provide a home does not mean that there cannot be particular instances in which a decision preventing the establishment or maintenance of a home through the planning process would breach Article 8. He submitted that if the Court were to uphold the reasoning of the Judge it could wrongly inhibit planning authorities and inspectors from granting planning permission in an appropriate case under threat of a challenge that, in holding that Article 8 can in such circumstances impose such a duty, they have acted contrary to *Chapman*.

54. Mr Langham prefaced his submissions on behalf of the Council with the observation that a decision-maker, in assessing whether a decision, in this case, refusal of a proposed development, would violate Article 8, must first understand the content of the Article 8.1 right before considering whether it is justifiable under Article 8.2 and proportionate. He submitted that the Inspector, in paragraph 69 of his decision letter, was dealing with Article 8.1, not 8.2. He pointed out that the Inspector began it by acknowledging that effect of *Chapman* is that public authorities are not obliged to provide an adequate number of gypsy sites, but then, without reference to matters of justification, turned it into a general obligation “that the needs of gypsies must be met”. He submitted that the Judge correctly read the Inspector’s treatment in that paragraph as contradicting *Chapman*. This is not, said Mr Langham, the language of justification of the violation by reference to particular material factors in the case, but a mistaken view of the primary Article 8 right. Given such an error, he submitted, it is not surprising that the Inspector found the justification proffered by the Council insufficient and, apparently, that Article 8 would be violated.

Conclusion

55. The first question for an inspector is to determine whether a proposal is in material breach of planning policy. If it is, he should, in accordance with section 54A of the 1990 Act, determine the matter in accordance with the plan unless other material considerations indicate otherwise. Those other material considerations may include, as here, the personal circumstances and needs of the applicants, which in turn may include any Article 8 rights bearing on the issue. However, before embarking on the balancing exercise required by section 54A of the 1990 Act and that of Article 8.2 it is necessary to identify clearly, on the one hand, whether and to what extent the proposal is not in accord with local planning policy, and, on the other, the exact content of any countervailing material factors, including in cases like these, the Article 8.1 rights, if any, capable of being interfered with. The content of the Article 8.1 right in this context is a positive obligation upon United Kingdom authorities to facilitate the gypsy way of life, by giving special consideration to their needs and nomadic lifestyle both in the regulatory planning framework and in reaching decisions in particular cases. It is not, as the Inspector appears to have concluded in paragraph 69 of his decision letter, an obligation on such authorities to make available to the gypsy community an adequate number of suitably equipped sites to meet their needs either generally or in individual cases.

56. As I have said, it was and is common ground that Article 8 was engaged in the sense that the applicants' right to respect for their homes and family lives was capable of becoming a material consideration. But it was not common ground that the refusal of planning permission and upholding of enforcement notices would necessarily constitute an interference with those rights, still less whether such an interference would be justified under Article 8.2. There is a difference between the "engagement" of Article 8 and the question whether there has been an interference with whatever form the Article 8 right takes in any individual case. Only if there is such interference, does the balancing exercise under Article 8.2 arise for consideration.

57. This three stage test was expressly acknowledged by the European Court of Justice in *Chapman*. The Court, first, in paragraphs 71 to 74 under the heading "A. As to the rights in issue under Article 8 ...", concluded that they were in issue, i.e. the Article was engaged. The Court, secondly, in paragraphs 75 to 78, under the heading "B. Whether there was an 'interference' with the applicant's rights under Article 8 ...", seemingly relied on the United Kingdom Government's acceptance that there had been such an interference as a result of the local authority's refusal of planning permission and the taking of enforcement measures, and it declined to consider in the abstract whether the framework legislation and planning policy and regulations disclosed a lack of respect for her Article 8 rights. Instead, it said, its task was "to examine the application of specific measures or policies to the facts of each individual case". And without further reasoning on those facts on this issue, it found, in paragraph 78, that, "[having regard to the facts of ...[the] case" the planning authorities' decision "constituted an interference with ... [Mrs Chapman's right to respect for her private life and home within ... Article 8.1"

58. The Court then proceeded to its third question, namely whether the interference was justified within the provisions of Article 8.2. However, it was in the context of that question, not the second, that the Court established, in paragraphs 111-113 that, on the facts of the case, the refusal of planning permission would not render Mrs Chapman homeless.

And it was in the context of the third question that the Court turned to generality in stating: 1) at paragraph 96, that gypsies are not immune from general laws intended to safeguard the environment; 2) at paragraph 98, that a decision “in itself, and without more” not to allow gypsies to occupy land where they wished” would not “constitute ... a violation [i.e. an unjustified interference] of Article 8”; 3) also in paragraph 98, that there is no general “obligation by virtue of Article 8 to make available to the gypsy community an adequate number of suitably equipped sites”; and 4) in paragraph 99 “that Article 8 does not in terms give a right to be provided with a home”.

59. So *Chapman* still leaves us with the question whether, in any individual case, refusal of planning permission and enforcement action against a gypsy caravan dweller is capable of amounting to an interference with an Article 8 right. Before deciding whether there has been such an interference, a fortiori, whether it amounts to a violation of the right in the sense of not being justifiable within Article 8.2, it seems to me vital to determine the content of the right in any individual case, something that the Court did not do, or have to do, in *Chapman*, leaving the whole issue to be swept up in an Article 8.2 balance.

60. I acknowledge that it is not always easy to identify the Article 8 right that is said to be the subject of the alleged interference, shorn of the circumstances applicable to the Article 8.2 exercise, as both Strasbourg jurisprudence and a recent decision of this Court have illustrated. See e.g. *Botta v Italy* (1998) 26 EHRR 241, ECtHR; *Dehnalova and Zchnal v Czech Republic* (14 May 2002); and *Anufrijeva & Ors v SSHD* 2003 EWCA 1406, per Lord Woolf CJ, giving the judgment of the Court, at paras 9-38. But where, as in this context, the European Court has clearly and firmly said in *Chapman*, that Article 8 does not confer an entitlement to provision of a home, planning inspectors should not effectively reverse that general proposition when considering, first, whether there has been an interference with an Article 8 right in the circumstances of the case. In my view, Mr Langham correctly submitted that the Inspector should have confined his finding in paragraph 69 of his decision letter as to the nature of the Article 8 right, namely a right of the applicants to “respect” in the sense of a qualified right not to have their existing private and family life and home interfered with. He should not have converted it into the broader proposition that the needs of gypsies “must be met”.

61. However, the exercise undertaken by the Inspector in paragraphs 69 and 70 was to draw on the United Kingdom’s policy guidance in paragraph 9 of Circular 1/94, the Local Plan Policy RE22 and his finding that the Council had seemingly failed correctly to apply that policy in other cases. He then did what the European Court in *Chapman* expressly declined to do, namely hold that “the needs of gypsies must be met”. And, in paragraph 70, he referred to the Council’s failure “to recognise and provide for the needs of gypsies in the District by granting permission for sites”. As Mr Langham put it, in those paragraphs the Inspector exaggerated or miscast the right, so as to equate shortage of gypsy sites as in itself a violation of - an interference with - some quite different and invalid notion rejected by the European Court in *Chapman*.

62. The exercise undertaken by the Inspector, in his consideration of Article 8.2, was to balance the weight of the breach of planning policy and its resultant harm to the environment – i.e. the seriousness of the planning harm - against other countervailing material, in particular the personal circumstances and needs of the applicants including any interference with any Article 8 rights and the seriousness of such putative interference. In my view, his misreading of the nature of Article 8 rights in this context put him at risk of

wrongly finding that the Council's decisions in issue interfered with the applicant's such rights, and, in any event, of wrongly placing too much weight on such interference, as he found it to be, in his Article 8.2 balance and in its effect on the balance of planning considerations required by section 54A.

63. Accordingly, I would uphold the Judge's ruling on this issue. Although I am not as confident as he was that the error of the Inspector went to the heart of his decision to grant the applicants, including Mr Eames, planning permission, the point of principle is likely to be of great general importance whenever Article 8 is brought into play in such a context. I would, therefore, direct that the matter be remitted to the First Secretary of State for him to reconsider this issue. In doing so, I may perhaps be permitted to make the following comment. In a case like this where the planning harm caused by the development is said to be weak and the countervailing material considerations, including the personal circumstances of the applicants, are said to be strong, recourse to Article 8 may add little but unnecessary complication to the balancing exercise required for the planning decision by section 54A of the 1990 Act.

Lord Justice Wall:

64. I have had the opportunity to read Auld LJ's judgment in draft. Whilst I am in full agreement with him in his conclusions on the first two issues raised by this appeal (namely; (1) The effect on the character and appearance of the countryside / Whether the proposed development conflicted with planning policy (paragraphs 15 to 28 of his judgment); and (2) The personal circumstances of Mr. Eames (ibid paragraphs 29 to 36)), I find myself in respectful disagreement with him on the third and critical issue in the appeal, namely the inspector's approach to ECHR Article 8. In my judgment; (a) the inspector did not make any error of law in his application of Article 8 to the circumstances of this case; (b) the judge was wrong to find that he did; and (c) the appeal should accordingly be allowed, and the decision of the inspector restored.

65. Save where references to them as individuals are required, I propose to refer to Messrs Doe, Yates and Eames collectively as "the Appellants" and to the First Secretary of State by that title. I will refer to Chichester District Council as "the Council".

66. I do not share Auld LJ's view that the inspector misidentified the nature of the rights enjoyed by the Appellants under ECHR Article 8 to which respect was due. The words of Article 8(1) are familiar, but bear repetition: -

Everyone has the right to respect for his private and family life, his home and his correspondence.

67. At the risk of appearing simplistic, it seems to me that the Article 8 analysis properly runs along the following lines. The caravans which the Appellants had placed on the land belonging to Mr. Yates were their homes (also, in the cases of Messrs Doe and Yates the homes of their respective wives and children and, in the case of Mr. Eames his partner's home). Under Article 8(1) the Appellants had a right to respect for their homes (leaving out of account, for present purposes, their right to respect for their private and family lives). Self-evidently, however, that right was, in the circumstances of the case, subject to the

qualifications imposed by Article 8(2). The Appellants' homes had been placed on land, which, although it was owned by Mr. Yates, did not have planning permission for the caravan dwellings placed on it. Their right to respect for their homes was, accordingly, subject to legitimate attack from the State. The State, in the form of the Council, sought to interfere with their Article 8(1) rights by enforcement notices requiring them to remove the caravans and vacate the site. That interference was plainly in accordance with the law. The Article 8 question for the inspector was, accordingly, whether or not the interference was necessary for any of the reasons identified in Article 8(2), and, if it was, whether the implementation of enforcement notices requiring the Appellants and their dependants to vacate the land was a proportionate response to the identified objective.

68. In my judgment, this analysis (which also seems to me to be the one adopted by the inspector) is entirely consistent with the decision of the European Court of Human Rights (ECtHR) in *Chapman v United Kingdom* (2001) 33 EHRR18 (*Chapman*). Mrs. Chapman was a gypsy who purchased a piece of land with the intention of living on it in a mobile home. Over a period of many years and after numerous inquiries and appeals, the course of which it is not necessary for me to catalogue, the local planning authority made a final attempt to require her to remove her home from the land. After a planning inspector had dismissed her latest appeal against the refusal of her planning application, the case reached the ECtHR. The ECtHR identified Mrs. Chapman's rights under Article 8 of ECHR in the following way: -

71. The applicant submitted that measures threatening her occupation in caravans on her land affected not only her home, but also her private and family life as a gypsy with a traditional lifestyle of living in mobile homes, which allow travelling. She refers to the consistent approach of the Commission in her own and similar cases (eg *Buckley v United Kingdom* (1997) 23 EHRR 342).

72. The Government accepted that the applicant's complaints concerned her right to respect for home and stated that it was unnecessary to consider whether the applicant's right to respect for her private and family life was **also** in issue. (My emphasis).

73. The Court considers that the applicant's occupation of her caravan is an integral part of her ethnic identity as a gypsy, reflecting the long tradition of that minority of following a travelling lifestyle. This is the case even though, under the pressure of development and diverse policies or from their own volition, many gypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate the education of their children. Measures, which affect the applicant's stationing of her caravans, have therefore a wider impact than on the right to respect for home. They also affect her ability to maintain her identity as a gypsy and to lead her private and family life in accordance with that tradition.

74. The Court finds therefore that the applicant's right to respect for her private life, family life and home are in issue in the present case.

69. This was the basis on which Article 8 was engaged in *Chapman*. The Government accepted that there had been “an interference by a public authority” with Mrs. Chapman’s right to respect for her home. This interference was identified as “the refusal of planning permission to allow her to live in her caravan on her own land and the pursuit of enforcement measures against her” (paragraph 75 of the judgment). It was common ground that the interference was in accordance with the law (paragraph 79). The Court found that the interference pursued a legitimate aim, which it identified as “protecting ‘the rights of others’ through preservation of the environment” (paragraph 82). The critical question, accordingly, was whether the interference was “necessary in a democratic society”. This, in classic human rights language, involved considering whether it answered a pressing social need and was proportionate to the legitimate aim pursued (judgment paragraph 90).
70. Whilst I see powerful arguments for distinguishing *Chapman* on the facts (apart from anything else, Mrs. Chapman had put up her caravans in the Green Belt) I see no reason for departing from the framework by means of which the ECtHR identified the constituent parts of Article 8 in that case. In my judgment, the inspector followed the *Chapman* structure in his approach to the issue, and was right to do so.

The judge’s approach to the Article 8 issue

71. In paragraph 32 of his judgment, the judge identified the issue: -
- The Council accepted that to uphold the enforcement notices would involve an interference with the appellants’ Article 8(1) rights. Instead, it argued that the circumstances of the interference and the requirement to protect the environment justified the interference under Article 8(2).
72. The judge then summarises paragraphs 64 to 69 of the inspector’s decision letter as “a careful review to determine whether, on the facts, the admitted interference with the appellants’ Article 8(1) rights constituted by the refusal of planning permission and the consequent upholding of the enforcement notices, was necessary. The judge then set out paragraphs 96 to 100 of the ECtHR’s decision in *Chapman* and paragraphs 69 and 70 of the decision letter, which Auld LJ has set out at paragraph 44 of his judgment, and which I need not repeat.
73. The paragraphs from *Chapman*, which the judge recited, dealt with the extent to which a positive obligation was imposed on Contracting States by virtue of Article 8 to facilitate the gypsy way of life. The ECtHR recognised that “the provision of an adequate number of sites which the gypsies find acceptable and on which they can lawfully place their caravans at a price which they can afford is something which ...[had] not been achieved” (paragraph 97). However, the ECtHR on to say: -

98. The Court does not, however, accept the argument that, because statistically the number of gypsies is greater than the number of places available in authorised gypsy sites, the decision not to allow the applicant gypsy family to occupy land where they wished in order to install their caravan in itself, and without more, constituted a violation of Article 8. This would be tantamount to imposing on the United Kingdom, as on all the other Contracting States, an obligation by virtue of Article 8 to make available to the gypsy community an adequate number of suitably equipped sites. The Court is not convinced, despite the undoubted evolution that has taken place in both international law, as evidenced by the Framework Convention, and domestic legislation in regard to protection on minorities, that Article 8 can be interpreted to involve such a far reaching positive obligation of general social policy being imposed on States.

99. It is important to recall that Article 8 does not in terms give a right to be provided with a home. Nor does any of the jurisprudence of the Court acknowledge such a right. While it is clearly desirable that every human being has a place where he or she can live in dignity and which he or she can call home, there are unfortunately in the Contracting States many persons who have no home. Whether the State provides funds to enable everyone to have a home is a matter for political not judicial decision.

100. In sum, the issue for determination before the Court in the present case is not the acceptability or not of a general situation, however deplorable, in the United Kingdom in the light of the United Kingdom's undertakings in international law, ***but the narrower one whether the particular circumstances of the case disclose a violation of the applicant, Mrs. Chapman's right to respect for her home under Article 8 of the Convention (my emphasis).***

74. The judge picks up on the final sentence of paragraph 70 of the decision letter. This reads: "Thus the human rights arguments weigh heavily in favour of the Appellants" and continues: -

I take the last sentence of paragraph 70 to be a finding that the upholding of the enforcement notices would indeed constitute an unjustifiable interference with the Appellants' Article 8 rights.

36. It seems to me that, as Mr. Langham submitted, although in paragraph 69 the inspector noted that the United Kingdom Government was not under any obligation (by virtue of Article 8) to provide an adequate number of gypsy sites, he, in effect, held that Article 8 carried with it a duty on the Council, as the relevant local planning authority, to exercise its planning powers to help achieve that end in its area. In my judgment, the Article imposes no such an obligation (sic). The inspector was wrong to think that it did.

75. With great respect to the judge, I do not think the inspector was doing what the judge says, or importing into Article 8 considerations outlawed by *Chapman*. To explain why I have reached that view, however, it is necessary to look once again at the whole of the inspector's decision-making process on the Article 8 issue.

The inspector's approach to the Article 8 issue

76. In what seems to me (as someone with only a limited experience of planning law) a careful, thorough, manifestly independent and well reasoned decision letter, the inspector prefaced his consideration of the Article 8 issue with these words: -

63. The Council accepted that, to dismiss these appeals so that the enforcement notices come into effect would result in the appellants losing their homes on this land and that this would constitute an interference with their right to respect for their home and private and family life under Article 8(1) of ECHR. It is therefore considered that in all three appeals, Article 8 is engaged. That being so, under paragraph 2 of Article 8, it has to be established whether that interference is, firstly, in accordance with the law, and secondly, necessary in a democratic society in the interest of the economic well-being of the country (which includes the preservation of the environment) or for the protection of the rights and freedoms of others. In the light of the judgments in *Cremieux v France* (1993) 16 EHRR 357 and *Chapman* it is acknowledged that the exceptions provided for in paragraph 2 of Article 8 are to be interpreted narrowly and the need for them in a given case convincingly established, and that the interference must correspond to a pressing social need and be proportionate to the aims pursued.

77. As a self-direction, I find that impossible to fault. My only criticism is that the inspector has a tendency to use the passive when he means himself. I take it, therefore, that when he says: "it is therefore considered that in all three appeals Article 8 is engaged" in paragraph 63 of the decision he means, "I consider that Article 8 is engaged". Similarly, I take "it is acknowledged that" later in the paragraph to mean, "I acknowledge that".

78. In paragraph 64 of the decision letter, the inspector records the fact that it was not an issue between the parties to the appeal that the taking of enforcement action by the Council was "in accordance with the law". The argument, accordingly, was about whether the interference is necessary, and whether the action proposed by the authority is proportionate. The inspector records the Appellants' argument that the effects of enforcement would be disproportionate because the harm to the extended family group would be increasingly serious, whereas the harm to the environment would not be great.

79. In the balance of paragraph 64 and in paragraph 65, the inspector discusses the appellants' circumstances and concludes that: -

... the coming into effect of the notices would, on the balance of probabilities, deprive at least one of the appellants of their homes for a significant period. The length of that period without a secure home and those who would be affected cannot

be determined with any degree of certainty. In these circumstances it is concluded that the harm arising from the interference with their right to a home could potentially affect any of the appellants, and would be substantial.

80. In my judgment, those conclusions were manifestly open to the inspector on the evidence, and I do not see how they could be challenged.

81. In paragraph 66 of the decision letter, the inspector discusses the Council's argument that the interference was necessary in order to protect the environment from the harm caused by the unauthorised and proposed development. He concludes that there will be some harm to the environment if planning permission is granted. However, he contrasts the instant case with the facts of *Chapman* and points out that the land under consideration is not subject to any special designation due to its exceptional landscape qualities. It is not in the Green Belt. He describes it as "ordinary countryside afforded the least degree of protection". He adds: -

That is not to devalue its role as open land or the policies, which seek to protect it, but to establish its place within the hierarchy of protection from development given by the planning system. Thus it is land which the public can reasonably expect to remain free from development, but on which when development permission is sought, the weight of argument which needs to be deployed to gain permission is less than in the case of other land subject to higher levels of protection. It follows that the pressing social need for the appeal site being kept undeveloped is correspondingly less than would be the case with more highly protected land.

82. Once again, speaking for myself, I find that conclusion unexceptionable. In paragraph 67, the inspector points out that the harm to the public interest can be reduced on a continuing basis by the imposition of suitable planting conditions, so that in the end the harm would be, not to the landscape itself, but only to the character of the area and the need to prevent development in the countryside. He describes these as "matters of some, but not the greatest, weight" and considers that this conclusion is not undermined by the fact that the appellants established themselves without first seeking planning permission. He refers back to *Chapman* and says: -

Firstly, as the Council pointed out, in *Chapman* the ECtHR said that it would be slow to grant protection to those who established their home on an environmentally protected site in conscious defiance of the law. But the degree of harm caused to the environment is a matter for the national authorities, as the ECtHR acknowledged, and it would seem to be reasonable to expect that, where this harm is less, the degree of protection would increase accordingly.

83. In paragraph 68 of the decision letter, the inspector turns to the position of the appellants as gypsies. He says: -

Secondly, the appellants in these appeals are members of a particular and vulnerable minority, whose needs for a home are recognised in planning policy and

Government advice. In this case both the advice in Circular 1/94 and in Policy RE22 and paragraph 249 of the Local Plan acknowledge that private gypsy sites may be appropriate in rural locations where the need for such homes can be established. Given that only about 23% of the rural area of the District is not subject to special designation, the amount of land where only limited harm would be caused by the establishment of any gypsy site is strictly limited. Thus because the appeal site occupies part of that quantum there would seem to be no reasonable prospect of another site coming forward in the rural part of the District with fewer planning constraints.

84. In paragraphs 69 and 70 of the decision letter (set out by Auld LJ in paragraph 44 of his judgment) the inspector, as it seems to me, discusses the Council's performance of its obligations under paragraph 9 of Circular 1/94 to make adequate gypsy site provision in their development plans. He finds it wanting. He concludes that, "in practice there is little credible prospect of any private gypsy site being permitted by the Council". He comments that this conclusion has to be seen in the context of a number of factors, including Government policy in Circular 1/94 which, he says, "makes it clear that the needs of gypsies must be met".
85. In paragraph 70 of the decision letter, the inspector concludes his balancing exercise. His conclusion is that the harm to the environment is outweighed by the harm to the appellants "arising from the failure to recognise and provide for the needs of gypsies in the District by granting permission for sites". Furthermore, the interference would be disproportionate. The Council has not convincingly established why interference is necessary. He concludes with the sentence: "Thus the human rights arguments weigh heavily in favour of the appellants".
86. With great respect to the judge, I simply cannot read the inspector's decision letter in general and paragraphs 69 and 70 in particular as identifying within Article 8 and thus imposing on the Council a non-existent and impermissible duty to exercise its planning powers to help achieve the end of providing an adequate number of gypsy sites.
87. The point, which stands out, to my mind, is that the context of paragraphs 69 and 70 is the Article 8(2) balancing exercise. The inspector is weighing in the balance the factors, which, on the particular facts of the case, support the Council's interference, and those, which weigh against it. Accordingly, all the inspector was doing, in my judgment, was identifying the policy considerations contained particularly in Circular 1/94 and pointing out that the Council's interpretation of the policy meant, in practice, that there was "little credible prospect of any private gypsy sites being permitted by the Council". This, in my judgment, was an entirely legitimate conclusion for the inspector to draw from the evidence, and an entirely legitimate factor for him to place in the balance when considering the relative strengths under Article 8(2) of the competing considerations of legitimate interference, proportionality and the likely hardship suffered by the appellants as a consequence of enforcement.
88. At its highest, it seems to me that what the inspector was doing, was pointing out that in his judgment, and on the evidence he had heard, the Council had not made adequate provision for gypsies in accordance with national policy, and that this was a factor which he was entitled to weigh in the Article 8 equation as pointing in the Appellant's favour. The matter can be tested by looking at the converse. Had there been an abundance of Council

sites for gypsies in the area, this would plainly have been a material factor in the Article 8(2) equation, and would have weighed strongly in favour of interference.

89. In my judgment, this assessment of the inspector's reasoning is reinforced by the language of Circular 1/94, from which the inspector is quoting. Paragraph 9 reads: -

After the proposed repeal of this duty (the duty under the Caravan Sites Act 1968 to make adequate provision for gypsies residing in or resorting to their areas) local planning authorities should continue to indicate the regard they have had to meeting gypsies' accommodation needs. Repeal of the statutory duty will make it all the more important that local planning authorities make adequate gypsy site provision in their development plans, through appropriate use of locational and/or criteria based studies

90. It is plain that the inspector thought that the Council had not followed that guidance. That was a conclusion, which was open to him. I can see no error of law in his approach. He was not stating that the Council had a duty of the kind contradicted by *Chapman*.

91. It follows that in my judgment, the First Secretary of State has made out his first four grounds of appeal, which I am content to incorporate into this judgment as part of my reasoning: -

1. The learned judge was wrong to conclude that the inspector had misinterpreted and misapplied ECHR Article 8.
2. The inspector's approach was correct and in accordance with the principles established by the ECtHR in *Chapman*.
3. The inspector was bound to determine whether it was proportionate for the Council to evict the gypsies in all the circumstances of this case, in order to decide whether the Council could justify its admitted interference with the gypsies' right to respect for their homes and private life under Article 8(2) of the Convention. He was entitled to take account of the limited environmental harm caused by the presence of the caravan site in this location; and to balance that limited harm against the factors that weighted in the gypsies' favour. The latter properly included the fact that the Council had, on the inspector's findings, failed to fulfil its role as local planning authority for Chichester, in pursuing the national planning policy objective of seeking to meet the accommodation needs of gypsies. That policy objective is set out in paragraphs 6 to 12 of Circular 1/94 "Gypsy Sites and Planning". The fact that Article 8 does not oblige the United Kingdom to accommodate every gypsy on a site of his choice does not prevent the First Secretary of State setting out the planning objective in Circular 1/94. Nor does it prevent him (through his appointed inspector) attaching weight to the fact that this particular local planning authority has failed meet that policy objective (with the result that the accommodation needs of gypsies in Chichester have become more pressing) when he decides whether the Council has justified its interference with these gypsies' rights under Article 8 in the circumstances of this case.

4. This is the correct approach following *Chapman*. The inspector took that approach and the learned judge was wrong to find fault with him for the reasons he gives in paragraph 36 of his judgment.

92. As I indicated in paragraph 66 above, the principal point at which I respectfully part company with Auld LJ is in his identification (or rather in his interpretation of the inspector's identification) of the nature of the Article 8(1) rights enjoyed by the Appellants. My understanding of Blackburne J's judgment is that the Council accepted before him that to uphold the enforcement notices would involve an interference with the appellants' Article 8 rights - see paragraph 32 of the judgment set out at paragraph 71 above. The question, therefore, was justification under Article 8(2).

93. For the reasons, which I have attempted to give, the inspector in my judgment did not, as Auld LJ suggests, convert the appellants' qualified Article 8 rights to respect for their homes into the broader proposition that "the needs of gypsies must be met". In my view, the Article 8 rights in this case are not (and were not perceived by the inspector to be) the non-existent "rights" as gypsies to be provided with a home or a site for a home by the State. The rights were to respect for the homes, which they had created – homes admittedly created in breach of planning laws. The Council's legitimate action in issuing enforcement notices was an interference with those rights, and the question for the inspector was whether, under Article 8(2) the interference was justified and proportionate.

94. As I have already stated, the fact that the Council was in breach of the Guidance with the consequence that there was little credible prospect of any private gypsy site being permitted by the Council (as the inspector was entitled to find) was, in my judgment, a factor in the Article 8(2) balance which the inspector was entitled to take into account. The inspector did not, in my judgment, elevate the Council's breach of the policy into an impermissible breach of non-existent Article 8(1) rights enjoyed by the appellants.

95. For all these reasons, I would allow this appeal.

Mr Justice Pumfrey:

96. Three challenges are advanced to the decision of the learned judge in this case.

- i) The inspector was right to take the approach that he did in the light of the decision of the ECtHR in *Chapman v United Kingdom* (2001) EHRR 18, and the learned Judge was wrong to fault him in this regard in paragraph 36 of the judgment;
- ii) The inspector was entitled to approach Mr Eames's deemed application for planning permission in the manner that he did, and in particular was entitled to take into account the fact that Mr Eames was unlikely by reason of his personal circumstances to become entitled to obtain any pitch that did become available in the county; and
- iii) The inspector was entitled to find that there were good reasons for departing from the strict letter of Structure Plan Policy C1, and the Judge should not have criticised the inspector, whose approach was consistent with that approved by this Court in *R (Potheary) v Leominster DC* (1998) 76 P&CR 346.

97. I have had the opportunity of reading the judgments of Auld LJ and Wall LJ in draft. I respectfully agree with their conclusions on the second and third issues, but in agreement with Wall LJ I consider that the learned Judge was incorrect on the Art 8 point. I shall express my reasons as concisely as I can.

The position of the individual appellants

98. The individual appellants respectively occupy Plots A, B and C at the appeal site. Plot A contains a twin unit mobile home occupied by Mr and Mrs Doe and their baby. Plot B also contains a twin unit mobile home, and is occupied by Mr and Mrs Yates and their daughter. Mrs Yates and Mrs Doe are sisters, and the families intend that the common grandparents, the Golbys, should move to a fourth proposed pitch at the site which is the subject of an appeal under section 78 of the 1990 Act. Mr Eames and his partner occupy a large touring caravan on Plot C. In addition to the mobile homes, each plot has a brick meter box, and each also contains building equipment, building materials, and one or more vehicles. Each plot is provided with hardstanding. Plot D, the last plot on the appeal site provides access. As I understand it, Mr Yates is the freehold owner of the entire site.

99. Each family went into occupation on the same day (21 December 2001) and three applications were made to the District Planning Authority for planning permission to station mobile homes and touring caravans on the land. This was, therefore, an unlawful development at its inception. The inspector found that the failure to approach the Council or apply for planning permission could not be condoned, but that there were cogent reasons for the Doe and Yates families to leave their previous site. These applications for planning permission were rejected at a meeting of the District Council's Area Development Control Committee in February 2002. Stop Notices and Enforcement Notices were issued soon after 5 January 2002, specifying compliance periods of one month. Appeals were entered against the enforcement notices on 15 January 2002 under section 174 of the 1990 Act. Further application for permission for a private gypsy site was made on 15 April 2002, and rejected under delegated powers on 21 June 2002. This application is the subject of the appeal under section 78.

100. The effect of the enforcement notices is to require the use of the site for residential purposes to cease. The notices necessarily require, therefore, that the appellants seek pitches for their mobile homes elsewhere or cease to occupy mobile homes at all, going into ordinary residential accommodation.

101. By section 70(2) of the 1990 Act, in dealing with an application for planning permission the local planning authority is required to have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations, and by section 54A the inspector's determination is required to be made in accordance with the plan 'unless material considerations indicate otherwise'. The statutory development plan in this case comprises the Approved West Sussex Structure Plan 1993 and the adopted Chichester District Local Plan First Review 1999. The 1993 Structure Plan was approved before the change in national policy affecting the provision of gypsy sites took place that is reflected in the policy advice of Circular 1/94. The Local Plan obviously was adopted after that change in national policy.

102. Policies C1 and H7 of the Structure Plan are as follows:

C1. The Planning Authorities will seek to protect the countryside for its own sake from development which does not need a countryside location, and will ensure that the amount of land taken for development is kept to the minimum consistent with the provision of high quality and adequate space within the built environment.

Development will not normally be approved outside built up area boundaries unless it is for quiet informal recreation or related to the essential needs of any of: agriculture, forestry, the extraction of minerals, the deposit of waste or the implementation of Policy H6.

Permission will not normally be given for the extension of isolated groups of buildings or the consolidation of linear or sporadic development.

...

H7. While permission may be granted for the establishment by gypsies themselves of caravan sites in suitable locations, further provision by the Local Authorities will be considered only in the light of a demonstrated need.

103. C1 is the fundamental policy. As the inspector said, its aim is to prevent development in the countryside outside the defined settlement areas and SPAs which does not need to be there. Policy H7 refers expressly to gypsy sites but gives no guidance on location. The note accompanying Policy H7 adds nothing simply referring to West Sussex's satisfaction of the requirements of the Caravan Sites Act 1968, and adding that future changes in legislation will be monitored.

104. Circular 1/94: Gypsy Sites and Planning, provides policy guidance in anticipation of the repeal of the Caravan Sites Act 1968. It provides guidance on the content of development plans (paragraph 9). The basic guidance given (paragraph 12) is that local plans and Part II of unitary development plans should wherever possible identify locations suitable for gypsy sites, but where that is not possible development plans should set out clear realistic criteria for suitable locations. Further guidance is given on the provision and location of sites, including, in paragraph 13, the general policy that it will not as a rule be appropriate to make provision for gypsy sites in areas of open land where development is severely restricted, for example, in Areas of Outstanding Natural Beauty, Sites of Special Scientific Interest and other protected areas, nor in Green Belt. In paragraph 14, a suggestion is advanced that rural sites may be appropriate, provided that care is taken to avoid encroachment on the open countryside and to ensure consistency with agricultural and countryside policies, including those set out in PPG7 on the protection of the best and most versatile agricultural land. PPG7 sets out national policy on land use planning in rural areas of England, and is a further thread in the underlying policy fabric.

105. In compliance with the need for clear criteria for suitable locations identified in Circular 1/94, Policy RE22 of the Local Plan accordingly provides a list of eight criteria for the location of gypsy sites in rural areas, echoing the suggestions of Circular 1/94:

RE22: Sites for gypsies (defined as persons of nomadic habit of life) will only be permitted in the rural area when it can be demonstrated that the numbers of families who reside in or resort to the district need the number of pitches in the location sought, and provided that:

- (1) They do not detract from the undeveloped and rural character and appearance of the countryside, particularly the areas of outstanding natural beauty;
- (2) They are not likely to cause harm to sites designated as sites of special scientific interest, nature reserves or other sites of nature conservation interest;
- (3) They are not sited within strategic gaps or on the best and most versatile agricultural land unless there are compelling circumstances;
- (4) The siting, layout and design are acceptable to the district planning authority in accordance with policies BE11, BE14 and TR1;
- (5) They have convenient and safe access to the road network;
- (6) They are convenient for schools and other community facilities;
- (7) The uses do not result in development which would be likely to cause a disturbance to neighbours by reason of noise, fumes and dust resulting from vehicular movement and the storage of machinery and materials;
- (8) They are sited on reasonably flat land, provided that the proposals do not create visual encroachment into the open countryside.

106. The inspector recognised that RE22 is the only up to date specific gypsy site development plan policy, which, as he said, accorded with national advice in PPG7 and Circular 1/94.

107. By virtue of section 54A of the 1990 Act, the inspector was bound to consider the proposed development in the light of Policy C1 of the Structure Plan and Policy RE22, interpreted in the context of a change in national policy occurring between the two. His material conclusions seems to me as follows:

- i) The aims of development plan policies are clearly towards preventing development or the consolidation of development outside settlement boundaries and SPAs in order to protect and enhance the countryside. The appeal development does not fall within any of the exceptions in Structure Plan Policy C1. (paragraphs 27 and 28 of the decision letter).
 - ii) It is not reasonable or realistic to interpret Policy RE22 as making acceptable only those sites that are close to built up areas or within small groups of buildings in the countryside and not defined as SPAs, as does the Council (paragraph 33);
 - iii) There is a conflict between the Council's implementation of Policy RE22 and the aims expressed in Circular 1/94 on the one hand and in 'the policy as adopted' on the other. I take the last phrase to mean that there is inconsistency with Policy RE22 as properly interpreted in the light of Circular 1/94 (paragraph 35);
 - iv) In the light of that conflict, Policy RE22 should be applied to the appeal site, but without any assumption that this gypsy development is inherently unacceptable in a rural area (paragraph 35);
 - v) The development causes some harm to the character of the countryside at the appeal site in the light of the aims of Policy RE22, and this harm weighs against the grant of permission.

108. In coming to this conclusion, it seems to me clear that the inspector considered that there was a breach of policy C1; that policy C1 did not stand alone, but had to be considered with

policy RE22 in the light of the underlying national policy expressed in Circular 1/94; and that the appropriate assessment of the degree of planning harm would be that which I have set out in paragraph 107.iv) above. In my judgment, in agreement with Auld LJ and Wall LJ, this was a basis for his assessment that was open to him. The principles are set out by Schiemann LJ in *R v Leominster DC ex parte Potheary* (1998) 76 P&CR 346 by reference to the speech of Lord Clyde in *Edinburgh City Council v Secretary of State for Scotland* [1997] 1 WLR 1447:

‘The section [sc. Section 54A of the 1990 Act] has not touched the well-established distinction in principle between those matters which are properly within the jurisdiction of the decision-maker and those matters in which the court can properly intervene. It has introduced a requirement with which the decision-maker must comply namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision maker. It is for him to assess the relative weight to be given to all the material considerations.

...

[The decision-maker’s] decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will be required to assess all of these and then decide whether in light of the whole Plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regards. He will then have to note which of them support the application and which of them do not and he will have to assess the weight to be given to all these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the Statute has given to it. And having weighed these considerations and determined these matters he will be required to form his opinion on the disposal of the Application. If he fails to take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse.

Schiemann LJ observes that Lord Clyde rejected the submission that inevitably in the practical application of the section two distinct stages should be identified, with these words:

The precise procedure followed by any decision-maker is so much a matter of personal preference or inclination in the light of the nature and detail of the particular case that neither universal prescription nor even general guidance are useful or appropriate.

109. I should refer also the judgment of Robert Walker LJ at 76 P&CR 359:

In his speech, Lord Clyde rejected the Secretary of State's submission that the new section always requires a two-stage approach, the first stage being for the decision-maker to decide whether or not the development plan should be given its statutory priority. This appeal shows that there are cases, of which this is a striking example, when the first stage must be for the decision-maker to decide whether the proposed development is or is not in accordance with the development plan.

Sometimes, of course, the answer to that question will be obvious (for instance, the development plan may have a bald and unqualified prohibition on open-cast mining or quarrying in a conservation area). But more often the development plan will (as in the *City of Edinburgh Council* case, and as in this case) contain exceptions, qualifications, overlapping or even contradictory policies and issues on which value judgments have to be made.

110. These statements of principle clearly indicate the limits of the court's jurisdiction to interfere in the inspector's decision. The court is ill-equipped itself to reach any factual conclusions about a particular application, or itself to make the value judgments called for in the context of a particular application.

'Other material considerations': Mr Eames

111. The inspector considered three matters under the head 'Other material considerations'. These were (i) the need for gypsy sites in the Chichester District (ii) the appellants' personal circumstances, including the personal circumstances of Mr Eames, which were distinct from those of the Yates and Doe families and (iii) human rights considerations. He held that the need for sites in the District 'weighs strongly in favour of permission'. He considered the personal circumstances of the Yates and Doe families, including the reasons they had left their previous site, the strength of the ties between the Yates and Doe (and Golby) families and the effect of separation and educational considerations. He found that 'the health, education and social welfare arguments in the context of the recognition of the cultural importance of extended gypsy families adds weight to the case for permission for the Yates and Doe families.' There is no challenge to these findings.

112. In paragraphs 60 and 61 of the decision letter, the inspector considers the position of Mr Eames. This part of the decision is challenged, but I agree with Auld LJ that the appeal on this ground should be allowed. The basis for finding a factor in favour of Mr Eames case is, I agree, clear.

Human Rights considerations

113. For ease of reference I set out Articles 8 and 14 of the Convention:

Article 8
Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 14
Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Is Article 8 'engaged'?

114. The inspector dealt with human rights considerations as his third head of 'other material considerations'. He first considered the proper approach to Art 8 ECHR and then considered the 'micro' considerations affecting this particular case. He stated the legal approach in terms that in agreement with Wall LJ I consider to be difficult to fault:

63. The Council accepted that, to dismiss these appeals so that the enforcement notices come into effect, would result in the appellants losing their homes on this land and that this would constitute an interference with their right to respect for their home and private and family life under Article 8(1) of the European Convention on Human Rights. It is therefore considered that, in all three appeals, Article 8 is engaged. That being so, under paragraph 2 of Article 8, it has to be established whether that interference is, firstly, in accordance with the law, and secondly, necessary in a democratic society in the interests of the economic well-being of the country (which includes the preservation of the environment) or for the protection of the rights and freedoms of others. In the light of the judgments in *Cremieux v France* (1993) 16 EHRR 357 and *Chapman v United Kingdom* (2001) 33 EHRR 399 it is acknowledged that the exceptions provided for in paragraph 2 of Article 8 are to be interpreted narrowly and the need for them in a given case convincingly established, and that the interference must correspond to a pressing social need and be proportionate to the aims pursued.

115. I am conscious that I am not familiar with planning law, but with great respect to Auld LJ I believe that this correctly states the content of the Art 8(1) right. 'Home' is an autonomous

concept in the law under the EHCR. In *Chapman v United Kingdom* (2001) 33 EHRR 399 the ECtHR said

73. The Court considers that the applicant's occupation of her caravan is an integral part of her ethnic identity as a gypsy, reflecting the long tradition of that minority of following a travelling lifestyle. This is the case even though, under the pressure of development and diverse policies or from their own volition, many gypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children. Measures which affect the applicant's stationing of her caravans have therefore a wider impact than on the right to respect for home. They also affect her ability to maintain her identity as a gypsy and to lead her private and family life in accordance with that tradition.

116. This is a clear statement of the Art 8(1) right in the *Chapman* case, and, it seems to me, in other gypsy planning permission and enforcement cases. The ECtHR in *Chapman* considered the issue of interference separately. It records an acceptance by the Government that there had been 'an interference by a public authority' with the applicant's right to respect for her home disclosed by the refusal of planning permission and the pursuit of enforcement measures against her, and then makes a determination (paragraph 78) which appears to follow the concession:

78. Having regards to the facts of this case, it finds that the decisions of the planning authorities refusing to allow the applicant to remain on her land in her caravans and the measures of enforcement taken in respect of her continued occupation constituted an interference with her right to respect for her private life, family life and home within the meaning of Article 8(1) of the Convention. It therefore examines below whether this interference was justified under paragraph 2 of Article 8 as being 'in accordance with the law', pursuing a legitimate aim or aims and as being 'necessary in a democratic society' in pursuit of that aim or aims.

117. It has been repeatedly emphasised that Art 8 does not confer on the citizen a right to a home, but a right to respect for a home, which is different: see *Chapman* paragraph 99 and (not cited to us, but a parallel case) the decision of the House of Lords in *LB Hounslow v Qazi* [2003] UKHL 43. In the present case the Council says, and the learned Judge agreed, that when the inspector considered the question of justification of the interference under Art 8(2) he made precisely this error.

118. Of course, it is not possible to assess whether the interference with the protected right is proportionate to the interests to be protected under Art 8(2) if one incorrectly identifies the protected right in the first place. But it is equally important, in my judgment, not to confuse considerations which naturally belong in the realm of justification with the identification of the protected right or with a finding that there is an interference with that right. My reading of paragraphs 65 to 70 of the inspector's decision letter is that he uses the framework provided by Art 8(2) to identify and balance the planning factors that he has already identified with the other factors he identifies relating to the interference to arrive at a

conclusion whether there is a pressing social need for the interference and that it is proportionate to the aims pursued. I summarise the factors as follows:

- i) If permission were refused, the evidence was that the appellants would have to look elsewhere, and more widely that in West Sussex;
 - ii) There was no evidence that any private pitches were available, and so public pitches would have to be sought, and, although the Doe and Yates families were model tenants, there was no reason to suppose that any Council pitch would be available, and the position for Mr Eames, a single man, would be worse (paragraph 64 of the decision letter);
 - iii) Further movement might well not result in finding a pitch, there being a national shortage of lawful sites, and so they would be without a secure home for an appreciable period (paragraph 65);
 - iv) The interference implicit in the foregoing considerations was said to be necessary to protect the environment, and, while the development would result in some harm to the environment, the site was not subject to any special designation due to its qualities either in a national or local context, had no recognised nature conservation value, or archaeological potential and had no declared historical value—it was ordinary countryside accorded the least degree of protection in the hierarchy of protection conferred by the planning system (paragraph 66);
 - v) Environmental harm could be further reduced by suitable conditions as to planting (paragraph 67); and
 - vi) The appellants are members of a particular and vulnerable minority whose needs for a home are recognised in planning policy and Government advice, which recognise in Circular 1/94 and RE22 that private gypsy sites may be appropriate in rural locations where a need for such homes can be established. Given that only about 23% of the rural area of the district is not subject to special designation, the amount of land where only limited harm would be caused by the establishment of any gypsy site is strictly limited.
119. Having set out these factors, the inspector concludes his analysis of the human rights issues in paragraphs 69 and 70 of the decision letter. For ease of reference, I set them out again:

69. Account has been taken of the Council's argument that the judgment in *Chapman* found that the United Kingdom government was not under an obligation to provide an adequate number of gypsy sites. But paragraph 9 of Circular 1/94 says that repeal of the statutory duty of local authorities under the 1968 Act to provide gypsy sites makes it all the more important that local planning authorities make adequate gypsy site provision in their development plans. In this case the Council has not demonstrated that it has a sound statistical basis for its conclusion that there is no need for any new gypsy site, despite saying that it accepts there is a small unmet need. Furthermore the Council has not granted a single planning permission for a private gypsy site since their Local Plan was adopted in 1999, and the only private gypsy sites in the District all appear to have been granted on appeal, that is following refusal of permission in the first instance by the Council. That situation,

coupled with the Council's interpretation of the Local Plan gypsy policy, RE22, appears to have ensured that in practice there is little credible prospect of any private gypsy site being permitted by the Council. This conclusion has to be seen in the context of the need for sites in the District, Policy RE22 and paragraph 249 of the Local Plan, and the Government policy in Circular 1/94 which makes it clear that the needs of gypsies must be met.

70. Against this background the limited harm caused to the environment, and hence to the public interest, by the appeal development has to be weighed against the serious harm to the appellants arising from the failure to recognise and provide for the needs of gypsies in the District by granting permission for sites. It is concluded that in this case that limited harm does not constitute a pressing social need for the interference with the Article 8(1) rights of all the appellants which would result from the upholding of these notices. Moreover, by leading to a situation where there is a high probability that at least one of the appellants would lose their present home for a significant period, such interference would be disproportionate. For these reasons, and because the Council has not convincingly established why the interference is necessary, it is concluded that it is unacceptable. Thus the human rights arguments weigh heavily in favour of the appellants."

120. Before the Judge, it was common ground that Art 8 was engaged, in the sense that the respondent Council accepted that 'to uphold the enforcement notices would involve an interference with the appellants' article 8(1) rights' (judgment paragraph 32). Having considered the decision letter and the judgment of the ECtHR in *Chapman*, the judge held

36. It seems to me that...although in paragraph 69 the inspector noted that the United Kingdom Government was not under any obligation (by virtue of article 8) to provide an adequate number of gypsy sites, he, in effect, held that article 8 carries with it a duty on the Council, as the relevant local planning authority, to exercise its planning powers to help achieve that end in its area. In my judgment the article imposes no such an obligation. The inspector was wrong to think that it did.

121. With great respect to the learned Judge, I am unable to find that the inspector did by implication suggest that there was such a duty on the council. If numbers of available sites are a factor to take into account in deciding whether to grant permission in a particular case, it may be difficult to indicate as a matter of language that a shortage (or as the inspector seems to have thought, a deliberate shortage) of sites is being taken into account without also suggesting that there is duty to provide more sites having regard to the paucity of existing provision. In my judgment it is clear that the nature of existing provision is highly material: this is made clear by *Chapman*:

103. A further relevant consideration, to be taken into account in the first place by the national authorities, is that if no alternative accommodation is available, the interference is more serious than where such accommodation is available. The more suitable the alternative accommodation is, the less serious is the interference constituted by moving the applicant from his or her existing accommodation.

...

111. The Court observes that during the planning procedures it was acknowledged that there were no vacant sites immediately available for the applicant to go to...

112. Moreover, given that there are many caravan sites with planning permission, whether suitable sites were available to the applicant during the long period of grace given to her was dependent upon what was required of a site to make it suitable. In this context, the cost of a site compared with the applicant's assets, and its location compared with the applicant's desires are clearly relevant...

113. The Court is therefore not persuaded that there were no alternatives available to the applicant besides remaining in occupation on land without planning permission in a green belt area...

122. For my part I would not accept that in saying (at the end of paragraph 69 of the decision letter) that Circular 1/94 makes it clear that the needs of gypsies must be met the inspector prepared the ground for the error that he is said to have made. It is, after all, paragraph 6 of the Circular that says that the land use requirements of gypsies 'need to be met', and paragraph 9 of the same document points out that repeal of the statutory duty to provide sites 'will make it all the more important that local planning authorities make adequate gypsy site provision in their development plans'. In my judgment, paragraph 70 of the decision letter sets out with sufficient clarity the balancing operation that the inspector carried out to satisfy me that he did not permit the shortage of sites to trump the planning harm that he identified. It was one of many factors which he identified in deciding that enforcement was disproportionate to the planning harm he identified.

123. For the foregoing reasons, as well as those set out by Wall LJ, I respectfully consider that the learned Judge's criticisms of the inspector's approach to the Art 8 ECHR considerations in this case are unjustified and I would allow the appeal accordingly.

Executive Summary to the Statement of Case for Local Review

Change of Use of Vacant Land to Form a
Chalet/Caravan Pitch (Principal Chalet
and One Touring Caravan), Formation of
Hardstanding, Erection of 1.8m High
Fence and Amenity Block (in retrospect)

At: Land 125M West of North Mains Croft
Logie, Kirriemuir

Appellant: Mr. John Townsley

Date: 21 July 2019

SPC Seath Planning Consultancy Ltd.

Executive Summary

This Executive Summary addresses the salient points of the Statement of Case and should be read alongside all the supporting Documents, all of which contain more detail on all of the issues.

It is acknowledged that planning policy and guidance does not infer that the status of person(s) as Gypsy/Traveller(s) means that, for the purposes of granting planning permission, this should be the only consideration. However, it is a material and important consideration when determining the needs and demands of this ethnic minority group.

There is a requirement when determining all planning applications that professional planners understand all relevant subject matters. This includes the culture and lifestyle of Gypsy/Travellers, the way they live; the importance of the extended family unit; and the way in which they travel. All of these factors (and more) require to be factored in to the decision making process along with other material considerations including the provisions of the Development Plan. Determining applications for the Gypsy/Travelling community involves assessing a complex social issue. A decision needs to be based on geographical location, demographics as well as need and demand, health and the best interests of the children. These are best known as exceptional circumstances (referred to in case law – see Statement of Case and Documents) which dictate that this subject matter should be considered differently when compared to other applications relating to accommodation needs in society.

Other sets of exceptional circumstances, most of which are described in the Planning Policy and Design Statement which accompanied the original planning submission and the Statement of Case also need to be considered. To simply open the Local Development Plan and quote policies does not represent proper planning practice and is not in line with the intentions of the planning system which focusses on people as well as the environment and the economy. This is a concept which dates back to the origins of planning as contained in the 1947 Act, legislation evolving from the Health Acts in the early 20th Century. A closer interrogation of all the important social, environmental and economic factors is required in order to reach the best sustainable solution for the Gypsy/Travelling community.

Today, in recognition of how the planning system has failed the Gypsy/Travelling community there is a drive for change by the Scottish Government as described in Section 5 the Statement of Case. Various measures are being put in place to address an issue which has seen Gypsy/Travellers being subjected to discrimination, lacking accommodation and having been failed by Local Government. There is an inequality of approach with the settled community provided with housing choice and the Gypsy/Travelling community lacking in choice. The Government proposes a monitoring process of all planning decisions and has already made changes to the up and coming Planning Bill. The first draft of Planning Guidance has been reviewed by the author of this Statement.

The current Scottish Planning Policy (2014), when referring to the Gypsy/Travelling community states:

“Development plans and local housing strategies should address any need identified, taking into account their mobile lifestyles.”

The planning decisions for this site, by Angus Council as Planning Authority, in the past, repeatedly refusing planning permission for what has to be regarded as an excellent site suitable for use by Gypsy/Travellers (the Townsley family) fails to recognise the approach set out in SPP and fails to acknowledge other material considerations as required by S25 of the Planning Acts i.e.:

“in accordance with the development plan unless other material considerations determine otherwise.”

Instead Angus Council has demonstrated a lack of understanding of the subject matter and with the lack of engagement by planning officers with the family (other than to serve enforcement notices) there has been no attempt to get to know the residents on site, their way of life and/or their needs. Their approach simply relies on a regurgitation of the Council's Development Plan policy (TC6, PV20 and DS1) relying on a case based on the existence of other sites in their administrative area for Gypsy/Travellers (in public ownership) and the impact on prime quality agricultural land rendering the proposal contrary to the Development Plan.

This represents a blinkered approach to decision making in the planning process with a lack of proper interrogation against related material considerations as required by the S25 of the Planning Acts.

The basis for understanding, as it relates to this planning case is as follows:

1. An understanding of the Gypsy/Travelling accommodation and their culture and lifestyle;
2. The importance of family and being close to family members;
3. The personal circumstances are a justifiable material consideration in the determination of any applications relating to the Gypsy/Travelling community (see **Document AS12** and reference to the Doncaster case);
4. Aspirations for upward mobility which is provided for in the settled community (housing land supply and choice of tenure) but not for the Travelling community (public sector sites where people are (in certain cases) "corralled" into sites with limited space;
5. The poor standard of accommodation at the only alternative available site at Petterden as reinforced by the Scottish Ministers Reporter, a site which is not managed by Angus Council;
6. The need for the adoption of Place Standards not Minimum Standards (the former is applied to the settled community; and the latter is imposed upon Gypsy/Travellers);
7. The condition of the site – in this case rural brownfield land. Historic evidence confirms its use for market garden purposes and the condition of the site (before the Applicant's intervention) are evidence of the claim;
8. The design and layout of sites for Gypsy/Travellers including the scale and nature of the site to house an extended family; and
9. Reference to case law as it applies to Rural Development Policy and accommodation for Gypsy/Travellers. The Walsall case is a perfect example of how proper interrogation of planning policy can lead to the right decision.

Decisions taken without the understanding carry an inherent danger of not achieving a properly thought out planning decision. In this case a refusal has denied the Townsley family the right to a fair hearing (as part of the planning process) as defined under the terms of Article 6 of Human Rights legislation.

I repeat that a lack of knowledge and understanding about the facts of the case as it relates to Gypsy/Travellers and the related material considerations (exceptional circumstances) appears to be at the heart of the decision to refuse planning permission.

The Development Management Review Committee has the opportunity to address this refusal by considering all the relevant information and granting planning permission to keep this family together. They did so in 2017 and can do so again (see **Document AS5**).

The Planning Authority consider that there are other alternative sites available for the Appellants daughter to stay. The site operated by the Council (Tayock) is at capacity with no vacancies, the other at Petterden is operated by Dundee City Council and is in a sub-standard condition. This is recognised by the Local Housing Strategy. Petterden is considered unsuitable for a young woman suffering ill-health with a new born child all of whom need the care and attention of the extended family in a safe, secure and pleasant home environment close to health services.

Before making a decision, I would request that Members visit the Petterden site to establish if they consider this facility, operated by Dundee City Council, to be a suitable alternative to the family home at Kirriemuir for the Appellants daughter.

The planning policy relating to the impact on prime quality agricultural land in the adopted Local Development Plan is PV20. The terms of this policy lists proposals which can be supported on prime agricultural land including:

- (i) the delivery of the development strategy and policies in the plan;
- (ii) sites which will not affect the viability of farm units; and
- (iii) small-scale development related to the rural environment.

The broad based zoning of agricultural does not mean that all sites comprise prime quality land. Physical characteristics and biological make-up determine the suitability of land. The Appeal Site comprises previously developed land (Market Garden) and following clearance of the land has resulted in a small scale development on an enclosed and well screened site unrelated to any farm unit. A grant of planning permission would serve to deliver the strategy of the Development Plan in relation to meeting need and demand for the Gypsy/Travelling community. The Council has already granted planning permission on prime quality land in the past including a large tourist development (171 caravans) at Lochlands near Forfar. It appears that development on prime quality land is acceptable for Tourist but not for Travellers. If a proportionate approach had been taken addressing the social need as set out in the Local Housing Strategy when compared to the negligible environmental harm then there may have been a different outcome. Instead planning policy is used as “handcuffs” when they should be used as “handrails” to guide development.

The evidence submitted in the supporting Planning and Design Statement has either not been read or, if it has, it has not been understood. The locational requirement of sites for Gypsy/Travellers require a close proximity to local services but sufficiently distanced from the settled community with safe level access and suitable site infrastructure (water drainage and electricity) and amenity space. Locational criteria in most other Local Authorities in Scotland (as they relate to private Gypsy/Traveller sites) are contained in LDP policy and Angus is no exception. However, the Council planners has used a lack of understanding of prime quality agricultural land (selectively) to allow other policies of the LDP to be factored into the decision to refuse (DS1).

It is submitted that the proposed development meets all the locational criteria of Policy TC6 and is a small scale development which fits with this rural environment with no detriment to countryside resources.

The Walsall planning case described in Section 9 of the Statement of Case provides evidence on how decisions can be reached through interrogation of all material considerations. As in any other planning case the Inspector accepted that the first planning principle has to be adopted i.e. that inappropriate development that is harmful to the rural environment should not be approved. However, he recognised that there is scope for setting aside Development Plan policy based on significant material planning considerations which form very special/exceptional circumstances. The baseline which Angus Council as Planning Authority appears to have started from is that Gypsy/Traveller sites (temporary or permanent) in the rural environment are deemed inappropriate development and do not go beyond that point by reason of the existence of Petterden.

What needs to be applied as a step on from the first principle is proper planning practice which requires an interrogation of planning policy and material considerations to ensure the best planning decision is taken based on proportionality, reasonableness and rationale. Applying proportionality allows the decision maker to take an approach assessing the weight afforded to the acceptability of the development and the social

disadvantage (in this case the need and demands of the Townsley family) when compared to the environmental harm to the countryside. If an assessment of the condition of the Site was undertaken and photographic evidence analysed a conclusion could have been reached that environmental betterment has occurred with the removal of dereliction created by the abandonment of the previous use (Market Garden) with development on rural brownfield land. Approval of the pitch for the Appellants daughter would serve a planning purpose which does not affect the public interest (there are no objections to the proposal), delivering social justice.

With the health concerns related to the daughter a material consideration as well as the best interests of the new born child (see **Documents AS3A, AS3B and AS3C**) any positive decision to approve development on the Site can be viewed as a prevention not a cure to the health issues inherent in Gypsy/Travelling lifestyle.

The evidence submitted by the General Practitioner [GP] describes the health issues of the Appellants daughter the occupier of the Appeal Site. The most recent letter dated 18 April 2019 (**Document AS3C**) along with **Documents AS3A and AS3B**) is a response from the GP to the inhumane and uncaring decision to refuse planning permission for the daughter and her new born child. They both need:

- (i) A stable living environment;
- (ii) The support of the family unit;
- (iii) Being in close proximity to health services.

The Council's alternative at Petterden, which is located many miles from the family home, lacks proper amenities and is not the answer. It is poorly managed with no warden on site and allows pitches to be let to a mix of Gypsy/Travelling families. The other alternative is putting the family onto the road which would detrimental to the health and wellbeing of the family and not in the best interests of the child (see the Walsall case). There is further justification for supporting the grant of planning permission for this small-scale development.

For the purposes of this Executive Summary it is worth repeating the case law provided as an example of proper planning practice as contained in the Walsall case. Although this is an English case in terms of its applicability to the Scottish Planning context it has what is known in legal terms as "**persuasive argument**".

At appeal the Inspector did not dispute that the development would be inappropriate given its location in the Green Belt but **assessed the effect it would have on the openness and purposes of the Green Belt, and the effect on the character and appearance of the area. The Inspector also considered personal circumstances, human rights and the best interests of children as relevant.**

The inspector said the proposed hardstanding would have "little effect" on openness, but that the presence of mobile homes, touring caravans, an amenity building, fencing and related vehicles, and domestic items "*would significantly reduce openness*".

"There would also be a conflict with the Green Belt purpose of assisting in safeguarding the countryside from encroachment," adding that the extent of this would be limited to a degree because of the "*modest extent of the land on which the caravans would be stationed*".

In addition, the inspector found that planning policy in the Local Authority's Local Plan was not consistent with the National Planning Policy Framework and therefore attributed moderate weight to this conflict.

The inspector noted that one of people living on the site has significant medical conditions and relies on easy access to a local health centre. Should the appeals fail, said the Inspector, the families would probably have to leave the site. The Inspector stated:

“This would result in an interference with their human rights with regard to Article 8 of the European Convention on Human Rights. It encompasses respect for family life and the home.”

The Inspector concluded that any harm to the rural environment “would be clearly outweighed by other considerations”.

He continued:

“Taking into account in particular the best interests of the children in this case I find that there are very special circumstances which would justify the granting of planning permission in both appeals subject to appropriate conditions.”

The inspector stated in his decision letter dated 7 August 2018:

“I conclude that a robust and up to date assessment of the need for Gypsy and Traveller sites is not in place..... there is an unmet need for sites for Gypsies and Travellers in the area. This development would go some way to meeting that need. There is also the personal need for a settled site and there is no evidence of any suitable alternative site being available.....The failure of the Council to put in place effective policies for delivering adequate provision of sitesalso carries weight in the appellants’ favour.”

Planning permission was granted with conditions. The Development Management Review Committee are being presented with a similar set of circumstances which allows them to make a similar decision in favour of the extended Townsley family recognising the need to address the health and wellbeing of the Appellant’s daughter and the best interests of the child in a small scale development. Other factors can be made to outweigh the policy considerations.

In conclusion it is submitted that it is the same set of exceptional circumstances that applies in this Review. A detailed examination of these factors is contained in the Statement of Case which has been submitted in support of the Townsley family. It is submitted that the Council response to the planning application has:

- i) Failed to recognise the needs and demands of the Gypsy/Travelling community in the context of a lack of effective land supply for this ethnic minority group;
- ii) Failed to recognise the exceptional circumstances of the Townsley family placing an emphasis on the impact on prime quality agricultural land simply being selective in its interpretation of this policy, a conclusion reached when examining other planning decisions (tourist development);
- iii) Failed to align their rural development policies with national policy (SPP 2014); and that this small scale development has no detrimental impact on the countryside;
- iv) Failed to recognise that the condition of the site (prior to development) as rural brownfield land. The resultant change of use does not impact on the rural environment to its detriment and has a negligible impact on the character and appearance of the area. There is an improvement to the overall condition of the land which remains screened from public view.
- v) Failed to take into consideration the Rights afforded to the Townsley family under Article 8 of Human Rights legislation; their personal circumstances; the best interests of the child (see Planning Policy and Design Statement) and their Public Sector Equality Duty.

The Walsall case is a demonstration of what can be achieved if proper planning practice is adopted meeting a social need all in the public interest. It represents the delivery of social justice a driving principle of the planning system since the inception of the 1947 Planning Act.

It is submitted that the aforementioned social and environmental arguments carry significant weight. It is further submitted that it would be inhumane to ignore these factors and not to give them significant weighting when determining the Review. Acknowledging the change in personal circumstances, applying proportionality, being reasonable and rationale will allow a positive decision to be made. If this is not done it would be in contravention of the Equality Act. Human Rights and the duty conferred upon the Council in relation to their Public Sector Equality Duty.

The proposed development represents an excellent use of the land. In the absence of any other suitable sites for the family to move to and in view of the difficulties experienced by the Appellant and his family in the past (see Section 1 above) this site represents suitable accommodation.

It is requested that the Development Management Review Committee considers all the evidence presented and grants planning permission for this development subject to conditions. If they consider it necessary the Appellant would accept a temporary planning permission.