TOWN AND COUNTRY PLANNING ACT 1990

SECTION 78 APPEAL

APPEAL by **Mr W CONNOR** against the failure of **Basingstoke and Dean Borough Council** to determine a s73A planning application 17/00653/RET for **"Change of use of land to residential caravan site comprising 13 plots including day rooms and construction of hardstanding and access road"** within the prescribed period in respect of **Land Adjacent to and Rear of Culhams Mill, Little London Road, Silchester, Hampshire.**

PINS reference:	APP/H1705/W/18/3194978
LPA Reference:	17/00653/RET

STATEMENT OF CASE OF THE LOCAL PLANNING AUTHORITY

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1. INTRODUCTION

1.1 This Statement of Case sets out in some detail the background to the case and the circumstances relating to the site's original – intentional – occupation, along with subsequent Injunctive proceedings undertaken by the LPA. There are also issues with regard to the accuracy of the plans and lack of evidence provided in the application in respect of: personal circumstances; traffic impact; noise and odour impact; and impact on the SSSI.

1.2 This SoC therefore follows the following format:

- A brief description of the appeal site and its surroundings;
- A summary of relevant planning policy;
- Details of the application, the subject of this appeal;
- A summary of the injunctive proceedings and in particular the High Court judgement of His Honour Judge Bidder QC dated 12 January 2018; and,
- A summary of the case of the LPA based on the deemed reasons for refusal.

Injunction

1.3 An interim injunction was granted to the Council by the High Court on 21st February 2017. The injunction ordered that further development shall not occur at the site, including precluding occupation of the site for residential purposes.

1.4 An application to vary the terms of the order to allow occupation was subsequently declined on 12th January 2018 by the High Court. Following this judgement the occupation of the site ceased and at the time of preparing this SoC the site remains unoccupied although the unauthorised works remain in situ.

Ownership

1.5 Certificate A has been submitted with the application, which declares that the Applicant is the sole owner of the site. Land registry records identify different land owners. Therefore, the certificate submitted with the application is incorrect. Notice should have been served upon the owners.

Plan Accuracy

1.6 The submitted application plans are not accurate, with dimensions scaling differently between plans. An earlier plan had previously been submitted by the now Agent, but before they had formally taken on the application from the original named Agent. That plan had not been accepted as part of the application given that there was an outstanding request for further

information (with an expectation of a holistic submission), and that no explanation of inaccuracies between plans had been provided.

1.7 An amended layout plan was submitted on 1st February 2018 on the same day as the Appeal against non-determination. This was not therefore considered, or consulted upon. Further amended plans, correcting the above identified inaccuracies, were not provided, nor has explanation been provided as to which plan is correct. The planning application has therefore been considered on the basis of thirteen plots, with commentary in respect of the planned amendments where relevant.

1.8 The inaccuracy of the plans has been brought to the attention of the appellant's agent on a number of occasions and most recently by email from the planning consultant acting on behalf of the Council, Stephen Jupp, on 2 May 2018. It is essential that the matter of plan accuracy is addressed by the appellant or his agent.

2 DESCRIPTION OF SITE

2.1 The appeal site is located at Silchester. It is accessed from an access track, which is also the route of Silchester Footpath 3. The site is bounded to the north, and east by woodland. The wooded area beyond the eastern boundary of the application site is covered by TPO TPO/BDB/0645. The woodland to the north is part of the wider Pamber Forest and Silchester Common wooded area, which is formed of Ancient and Semi-Natural Woodland and Ancient Replanted Woodland. Beyond the application site boundary, to the west, is the Silchester Brook, with a Thames Water Waste Water Treatment works beyond this. The boundary is wooded between sites. To the south, is the access to the site from the public right of way, and a factory with planning permission for the manufacture of fibreglass mouldings, together with an associated outside yard area.

2.2 The landscape character of the area (North Sherborne Landscape Character Area) is defined in the Basingstoke and Deane Landscape Assessment, 2001. This is set out in full below. This refers to a mix/patchwork of farmland and woodland, including noting extensive areas of woodland, and notes the quite rural character and effect of near larger settlements. It is explained that despite its diversity, the overall effect is a unified and balanced landscape, with the low-lying and gently undulating landform linking the various landscape types into one distinct character area.

2.3 The land comprising the red and blue areas on the submitted block plan has been divided internally into a number traveller plots, which have been formed following the clearance of trees and vegetation, level changes, and importation of hard standing and the erection of fencing. Not all works have been completed [due to the serving of the injunction] with the result that works to the southern end of the land have not been completed.

2.4 The northern part of the site is within the Pamber Forest and Silchester Common Site of Special Scientific Interest (SSSI). This extends, broadly, to the north, west, and south west.

2.5 An electricity power line runs across western part of the site in a north to south direction.

2.6 The planning application site forms the majority part of the area where unauthorised development has occurred. There is an area to the west where work has occurred which is not within the planning application boundary. This area is within an area at an increased risk of flooding, whereas the planning application is not. There is however local evidence that this water meadow land floods.

3 PLANNING POLICY

3.1 This section sets out the relevant planning policy issues, primarily in relation to the adopted Local Plan (2011 – 2029), the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS) as amended in August 2015.

Local Planning Policy

3.2 The Basingstoke and Deane Local Plan 2011-2029 is a recently adopted plan [adopted May 2016] and should be afforded full weight.

3.3 Policy CN5 of the Local Plan is specific to Gypsies, Travellers and Traveling Showpeople and states, inter alia:

> *The council will make provision for 16 additional gypsy and traveller pitches and 3 temporary stopping places to meet the accommodation needs of Gypsies, Travellers and Travelling Showpeople in the borough, as indicated in the most recent Gypsy and Traveller*
> *Needs Assessment.*
>
> *The council will meet the identified need for Gypsies, Travellers and Travelling Showpeople through the provision of plots and/or pitches as part of Greenfield allocations as set out in policies SS3.9, SS3.10, SS3.11 and SS3.12.*
>
> *If planning proposals for accommodation sites for Gypsies, Travellers and Travelling Showpeople are received for sites other than those set out in policies SS3.9, SS3.10, SS3.11 and SS3.12, they* ***will only be permitted*** *where:*
>
> *a) There is an identified need for the pitch provision;*
> *b) There is no adverse impact upon local amenity and the natural and historic environment;*
> *c) The site is located within a reasonable distance of local services with capacity, including education establishments, health and welfare services, shops and community facilities;*
> *d) There is safe and reasonable access to the highway, public transport services and sustainable transport options;*
> *e) Adequate on-site facilities are provided for parking, storage, play and residential amenity and appropriate essential services;*
> *f) The potential for a mix of uses on the site has been demonstrated, where required; and*
> *g) The potential for successful integration between travelling and settled communities has been demonstrated.* [my emphasis]

3.4 As has been referred to above, this policy sets out the council's strategy for providing pitches on the largest housing allocations sites, but it does

also allow for other sites to come forward but only when they satisfy **all** of criteria listed. It will also be necessary to assess the proposal against other relevant policies, such as EM1 and CN9, and consider the proposal in relation to other relevant material considerations.

3.5 Transport is the subject of Policy CN9 with promotion of transport choice, and with development seeking to minimise the need to travel; development will be permitted that does not compromise highway safety among other considerations. Policy EM1 on landscape requires proposals to be sympathetic to the character and visual quality of the area concerned; respect, enhance and not be detrimental to the character or visual amenity of the landscape likely to be affected, paying particular regard to various criteria. High quality development is the aim of Policy EM10.

3.6 The adopted LP contains at Appendix 3 – Glossary - a definition of 'isolated' albeit in the context of new residential development in the countryside. It states:

> *In the context of new residential development in the countryside where there is a significant separation between the proposed dwelling and the nearest settlement. Additionally, a dwelling is considered to be isolated if it is not well served by public transport (e.g. within 500m of a bus stop or train station) or well served by services and facilities (e.g. within 1km of an SPB, which generally contains facilities such as schools, post offices, doctors surgery, etc).*

3.7 Policy EM4 relates to 'Biodiversity, Geodiversity and Nature Conservation' and seeks to ensure that there is no harm to biodiversity / geodiversity interests. Policy EM7 seeks to manage flood risk. Policy EM12 relates to pollution and makes clear that development sensitive to pollution will only be permitted where there would be no detrimental impact on quality of life as a result of existing or nearby land uses and activities or where adequate remedial or mitigation measures are proposed and can be implemented.

<u>The National Planning Policy Framework [NPPF]</u>

3.8 The LPA will also make direct reference to the following sections of the Framework:

- Achieving Sustainable Development
- Section 4 (Promoting sustainable transport)
- Section 6 (Delivering a wide choice of high quality homes)
- Section 7 (Requiring good design)
- Section 8 (Promoting healthy communities)
- Section 10 (Meeting the challenge of climate change, flooding and coastal change)
- Section 11 (Conserving and enhancing the natural environment)
- Annex A: Decision Taking

The LPA is aware that the latest indication is that the new NPPF will be published in July 2018 so the LPAs proofs of evidence will refer to the new Framework, once published.

The DCLG letter of 31 August 2015

3.9 Part of this letter sets out changes to national planning policy to make intentional unauthorised development a material consideration. The letter introduces a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. This policy applies to all new planning applications and appeals received from 31 August 2015.

'Planning Policy for Traveller Sites' [PPTS]

3.10 The latest version of the PPTS was issued in August 2015. It sets out the Government's planning policy for traveller sites and needs to be read in conjunction with the Framework.

3.11 Paragraph 13 requires LPAs to ensure that traveller sites are sustainable economically, socially and environmentally.

3.12 Policy C makes clear that when assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.

3.13 Policy H is specific to determining planning applications for traveller sites and makes clear that they should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies on the Framework and in the PTTS.

3.14 Paragraph 24 sets out a number of relevant issues that must be considered:

a) the existing level of local provision and need for sites
b) the availability (or lack) of alternative accommodation for the applicants
c) other personal circumstances of the applicant
d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites
e) that they should determine applications for sites from any travellers and not just those with local connections

3.15 Paragraph 25 is specific to open countryside and states:

*Local planning authorities should **very strictly limit** new traveller site development in **open countryside that is away from existing settlements** or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas **respect the scale of, and do not dominate**,*

the nearest settled community, and avoid placing an undue pressure on the local infrastructure. [my emphasis]

3.16 Paragraph 26 makes clear that weight should be attached to:

a) effective use of previously developed (brownfield), untidy or derelict land
b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness
c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children
d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community

3.17 Paragraph 27 deals with the situation where the LPA cannot demonstrate an up-to-date 5-year supply of deliverable sites. This should be a significant material consideration when considering applications for the grant of temporary planning permission. However, one exception is when the proposal is on SSSIs.

3.18 Finally, Annex 1 of the PPTS amends the definition of "gypsies and travellers" and now only allows temporary cessation of travelling, not permanent.

Gypsy Pitch Supply

3.19 The technical adjustment to the Framework under a parliamentary written statement made on 22 July 2015 by Baroness Williams of Trafford which followed the High Court judgement of *Wenman v Secretary of State* is relevant. This statement makes clear that with regard to paragraph 49 those persons who fall within the definition of 'traveller' under the Planning Policy for Traveller Sites, cannot rely on the lack of a five-year supply of deliverable housing sites under the NPPF to show that relevant policies for the supply of housing are not up to date. Such persons should have the lack of a five-year supply of deliverable traveller sites considered in accordance with the PPTS.

3.20 The latest GTAA of April 2017 reflects the new PPTS definition and provides an identified need up to 2032 for 9 pitches and this includes an allowance of one additional plot to allow for some households that could not be contacted. Within the first five years the need is identified as being 5 pitches.

4 DETAILS OF THE APPLICATION, THE SUBJECT OF THIS APPEAL

Introduction

4.1 The application proposes a change of use of land to a residential caravan site comprising thirteen plots including day rooms and construction of hardstanding and an access road. It is a part retrospective application (importation of material and demarcation of some plots has occurred).

4.2 The application is supported by a Flood Risk Assessment and a Design and Access Statement.

Consultation Responses

4.3 Silchester Parish Council – Objection

Silchester Parish Council provided a very detailed letter of objection to the application, a copy of which has been forwarded with the appeal questionnaire.

4.4 BDBC Biodiversity – Objection

- Harm caused to Pamber Forest and Silchester Common SSSI. The site has been levelled and woodland, grassland and native scrub habitat destroyed which are designated under the citation for this particular SSSI. It has been replaced by a surface of hardcore. Also, an issue of dumping of waste and incursion from the site further into the SSSI which it now immediately borders.
- Harm may also be caused by the risk of foul and surface water runoff into the adjacent SSSI.
- Mitigation could be undertaken. This would require the removal of the area of land within the northern part of the site under SSSI designation from the curtilage of the site and the restoration of this area; a 15m restored buffer – as per the Landscape and Biodiversity SPD to prevent impacts; access to the SSSI should be restricted and a native hedgerow installed to create a natural boundary to restrict tipping.

4.5 BDBC Environmental Health – Objection

Insufficient information to form a view as to whether the location is suitable for residential use:

- An odour impact assessment which assesses odour nuisance from the Sewage Treatment Works and factory
- A noise assessment which assesses noise associated with the operation of the Sewage Treatment Works and factory
- Recommend conditions to assess risks to future site users from imported material.

4.6 BDBC Highways – Comments

Unable to make a favourable response at this stage

- the existing conditions and in particular the general absence of supporting highways and transport information, unable to conclude that these development proposals would successfully integrate into the existing movement networks; provide safe, suitable and convenient access for all potential users; and not result in unacceptable or "severe" impacts upon highway safety.
- Request a Transport Statement to demonstrate that the proposals would fully accord with BBDC Local Plan Policy CN9 (Transport) and not result in unacceptable or "severe" impacts.

4.7 BDBC Landscape – Objection

The Landscape Officer advises that:

- It is difficult to imagine a more jarring and incongruous scene in the immediate rural surrounds, one which lends itself well to the unspoilt, rural character described in the landscape assessment. Though there are other urban elements nearby with the sewage works and Culhams Mill, these are relatively visually well contained and as such their visual impact is limited.
- The unsightly nature of the existing caravan site represents a very significant adverse effect on visual amenity for those using the nearby public right of way and for users of the woods along its northern and eastern faces. The scale of the visual impact of the site far outweighs the impact of the existing Culhams Mill and Silchester Sewage Treatment Works.
- The presence of such an impenetrable urban landscape in the woods is entirely in contrast with the general landscape character. There is no doubt that there has been a massive amount of habitat and landscape destruction with no attempts to mitigate or repair any damage to the woods or the environment.
- The general perception is of a landscape that has been very badly and recklessly damaged. The impact on the immediate landscape character is very large. No attempt whatsoever has been made to mitigate the effects of the plots or integrate development with the surroundings.

4.8 BDBC Parks and Open Spaces Officer – Minor Amendment Required

- Provision of on-site amenity green space for communal use.

4.9 BDBC Policy – Comments

- Based on the information which is currently available, it is considered that the proposal would conflict with policy CN5. The submission does not specifically establish the need for the proposed pitches, and therefore would involve new supply of 13 pitches. This would both exceed the pitch requirement in the current GTAA (9, 5 over the first 5 years), meaning that implicitly there is no identified need for many of these pitches, and it would also clearly undermine

the council's strategy by providing all of the pitch requirement (and indeed more) on a non-allocated site as opposed to it being spread over the largest strategic housing allocations.

- The proposal currently fails to accord with policy CN5. The need for the pitches would have to be clearly established by the applicant in order for the proposal to have any potential to comply with the relevant requirement of policy CN5 (clause a, concerning identified need).

4.10 BDBC Trees – No objection

4.11 Environment Agency – No objection

4.12 Forestry Commission - Refer to joint standing advice with Natural England

4.13 Hampshire and Isle of Wight Wildlife Trust – Objection

- The works have led to the destruction of part of the Pamber Forest and Silchester Common SSSI. Biological SSSIs are notified at national level since they represent the best examples of significant areas of natural habitat or populations and/or assemblages of priority species. These sites are under tremendous pressure from increases in recreational activity. It is crucial that development proposals, within the vicinity of SSSIs, are planned strategically and with sufficient open space to ensure that new residents will not seek out these sensitive nature conservation sites as primary sites for their recreation.
- It is also crucial that sufficient buffer zones are in place to ensure that impacts associated with residential developments, such as fly-tipping, where garden waste is dumped into areas which are perceived by residents to be of little or no value, general vandalism and damage to sensitive features and land grabbing do not occur. Typically, a minimum 15m buffer would be required.
- There is no supporting ecological information, no assessment of potential impacts, including on the partly destroyed SSSI, and no mitigation measures aimed at minimising or eradicating identified impacts or compensating for them if they cannot be mitigated.
- We are concerned that, if permitted, it would set a dangerous precedent that could see other unplanned development proposals come forward and lead to the destruction of sites that are designated at national level for their nature conservation value.

4.14 HCC Archaeology – No objection, subject to conditions

4.15 HCC Highways – BDBC Highways to comment

4.16 HCC Local Lead Flood Authority – Advise objection

- Insufficient information to be able to comment on the Surface Water Management Scheme. Unable to ascertain if this development will cause significant flooding.

4.17 HCC Rights of Way Officer – Objection

- 13 caravan plots at this location will generate significant additional vehicle movements over the footpath. Pedestrians may expect minimal vehicular use of the public right of way, but not commensurate with the movements associated with 13 residential units. This would represent a significant increase in traffic and would have an adverse impact upon highway safety.
- Additional vehicle movements will increase air and noise pollution, require children and dogs to be kept under closer supervision, and inconvenience walkers. These factors will reduce the enjoyment of this route for walkers.
- May withdraw objection if a suitable mitigation contribution towards enhancing the local rights of way network is agreed.
- There are no recorded public vehicular rights over Silchester Footpath 3. Under Section 34 of the Road Traffic Act 1988 it is an offence to drive over a public footpath without lawful authority. The applicant should satisfy themselves that they have this authority (either by owning the land over which the right of way runs, or alternatively having been granted permission by the landowner).

4.18 Natural England – Objection

- Natural England considers this retrospective application has already destroyed supporting habitat of the interest features for which Pamber Forest and Silchester Common Site of Special Scientific Interest (SSSI) is notified and would prevent the future restoration of the area affected leading to a permanent loss to the SSSI and damage to retained habitats.
- Natural England may remove its objection subject to the following:
- The area of destroyed habitat is removed from the curtilage of the proposal site and is restored under agreement with the Natural England SSSI officer for the site.
- The boundary between the proposal site and the SSSI is reinstated that prevents direct access from the application site onto the SSSI.
- The proposals should include provision for a hedge along the SSSI boundary to create a suitable buffer in order to avoid impacts on the SSSI through the tipping of garden waste etc.
- Natural England advises these measures are secured via planning condition(s).
- Natural England would also require the following information:
- Further information is provided regarding the provision for liquid waste on the site (foul and surface run-off) and how impacts on the SSSI will be avoided

4.19 Ramblers Association – No comment

4.20 Thames Water – Objection

- The applicant must include an assessment of potential impacts on amenity for future occupiers of the proposed development. This should include an appraisal of existing odour, noise and lighting from the Sewage Asset and its potential impact on future occupiers of the proposed development.
- Odour can be a particular issue at our sewage assets. It is important to ensure that development which might be sensitive to the odour environment in the vicinity of existing assets is not permitted to take place unless: it can be located or designed in such a manner as not to be sensitive to such odour; or that funding is made available by the applicant for the installation of odour treatment apparatus sufficient to overcome any conflict.
- If the odour assessment is considered acceptable by the local planning authority and Thames Water, then we would request that any proposed mitigation is controlled via a planning.

4.21 Atomic Weapons Establishment (AWE)

- The proposal is outside the current Detailed Emergency Planning Zone and therefore the proposal would have limited impact on the AWE Aldermaston Off-Site Emergency Plan. This is confirmed by the Civil Contingencies Manager, West Berkshire.
- The Civil Contingencies Manager, West Berkshire, has, in consultation with the relevant regulators, advised that, *"…due to the distance the impact on those using the premises should be limited based on the information I have with respect to risk and mitigations"* and that none of the unauthorised external discharges from the AWE would have discharged towards Silchester sewage works. The expert opinion provided is that there is no reason for development not to go ahead having regard to the AWE site.

Third Party Representations

- Objections were also received from the following third parties:
- The Calleva Society – Objection
- Woodland Trust – Objection
- 242 Letters – Objection
- County Councillor Vaughan
- District Cllr Gardiner – Objection

These objections were forwarded with the appeal questionnaire.

Consideration of the Application by the LPA

4.22 The LPA has been concerned with the lack of information supporting the application from an early stage.

4.23 A summary of the main emails sent to the original agent and then to Mr Woods of WSPA are set out below:

- Email to Woods 2/11 chasing response to emails of 4/10 and 6/10 to Macleod in respect of progress of application.
- Email to Woods 6/11 advising of highway objection and what is required
- Email to Woods 7/11 requesting an extension of time and request as to when additional info will be provided
- Email Woods 15/11 requesting a broad indication as to when he will respond to matters raised:

  "importantly to narrow issues where they can be narrowed, particularly in areas where no detail has been provided with the application (for example, planning statement, drainage assessment, personal circumstances statement, treatment plant details, biodiversity assessment, landscape and visual impact appraisal, odour assessment, noise assessment, and highways statement)?"
- Woods response email 15/11 indicating extension of time until end of December was agreed, that an amended plan would be submitted and that would seek instructions from clients on reports
- LPA email to Woods 22/11 with details of objection from Hampshire Rights of Way and also comments of tree officer

4.24 Insofar as the planning application is concerned, none of the requested information was submitted. In particular, there has been no evidence on the personal circumstances of any intended occupiers of the site.

4.25 Following the appeal being lodged against the failure of the LPA to determine the application the Council resolved, under delegated powers, that had it had the power to determine the application it would have REFUSED planning permission for the following 7 reasons:

1. *From a strategic perspective, the proposal is for the change of use of land to a residential caravan site comprising 13 traveller plots within the countryside, in an unsustainable and isolated location. The adopted Local Plan strategy is to spread pitch provision across the largest strategic housing allocations. The proposal would undermine this strategy, exceeding the overall pitch requirement for the whole Borough until 2032 (as identified in the recent Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (GTAA) (2017)). The proposal is contrary to Policies SD1, SS1, SS6, and CN5 of the Basingstoke and Deane Local Plan 2011-2029, the National Planning Policy Framework (March 2012), and Planning Policy for Traveller Sites (2015). The merits of the application, including the current inability to demonstrate a five year deliverable supply of traveller sites, and consideration of personal circumstances, the best interests of children and their families and Human Rights considerations do not overtop the harms, and do not justify a departure from the Development Plan, including a temporary consent.*

2. *On a site specific basis, the proposed development would result in an isolated, unsustainable and inappropriate form of development in the open countryside for a gypsy and traveller site which would not be within a reasonable distance of local services, would not result in the*

successful integration of the site with, and would dominate the settled community, and as such is contrary to the National Planning Policy Framework (March 2012), and paragraph 25 of the 'Planning Policy for traveller sites' (2015) and Policy CN5 of the Basingstoke and Deane Local Plan 2011-2029.

3. *The intentional unauthorised development has resulted in very substantial environmental damage to the natural environment, including an important landscape/which is a valued landscape. The works, which have included the significant removal of trees, and laying of hardstanding (creating an open area intended for occupation by caravans and domestic paraphernalia) are not sympathetic to the character and visual quality of the area, do not respect or enhance, and are detrimental to the character of visual amenity of the landscape. The proposal is contrary to policies EM1, EM10 and CN5 of the Basingstoke and Deane Local Plan 2011-2029, the National Planning Policy Framework, and the 'Planning Policy for traveller sites' (2015).*

4. *The intentional unauthorised development has resulted in very substantial environmental damage to the natural environment, including the biodiversity interests of the Pamber Forest and Silchester Common Site of Special Scientific Interest (SSSI). The works have destroyed part of the SSSI supporting habitat of the interest features for which the SSSI has been notified. The proposed amended layout shows no plots within the SSSI, however, given the intentional unauthorised development that has occurred, no details (including any programme) of any remedial works, or mitigation or compensation measures or biodiversity assessment to inform any such measures, or planting, or barriers to prevent access, or drainage/hydrological impacts are provided. The proposal is contrary to policies EM1, EM10 and CN5 of the Basingstoke and Deane Local Plan 2011-2029, the National Planning Policy Framework, and the 'Planning Policy for traveller sites' (2015).*

5. *As a result of the existing conditions, and the lack of supporting information with the application (including a Transport Statement/Assessment, together with any proposed mitigation measures), it has not been demonstrated that the proposal; can be lawfully accessed by vehicle (it is an offence to drive over a footpath without authority); can successfully integrate into the existing movement networks; provide safe, suitable and convenient access for all potential users; and not result in unacceptable or severe impacts upon highway safety. The application is therefore contrary to policy CN9 of the Basingstoke and Deane Local Plan 2011-2029, the National Planning Policy Framework.*

6. *The site is located in close proximity to a Sewage Treatment Works and a commercial premises with a rear yard. Insufficient information, in terms of an odour impact assessment, and noise impact assessment, has been submitted with the application to allow assessment as to whether the site provides a suitable living environment for residents in*

terms of odour and noise. The application is therefore contrary to policy EM12 of the Basingstoke and Deane Local Plan 2011-2029, the National Planning Policy Framework, and the 'Planning Policy for Traveller Sites' (2015).

7. *Insufficient surface water management information has been provided with the application to be able to ascertain whether the development will be at risk of flooding from surface water flooding, or will result in flood risk to neighbouring sites. It has therefore not been established whether the site is a suitable living environment, and whether drainage will result in harm to the adjacent watercourse or SSSI. The application is contrary to policy EM1, EM7, EM10 and CN5 of the Basingstoke and Deane Local Plan 2011-2029, the National Planning Policy Framework, National Planning Practice Guidance, and the 'Planning Policy for Traveller Sites' (2015).*

4.26 Following the receipt of the appeal a Bespoke Timetable was agreed with the appellant's agent. This included a requirement for them to provide an updated Statement of Case by 17th April 2018. This requirement was suggested to them in an email of 9th March 2018 which stated: *"I have included an additional line to allow for an updated Statement of Case from yourselves/or an addendum to it, to allow for the detail sought at J.2.4 of the PINS Procedural Guide: Planning Appeals - England (dated 26th January 2018), and then for the Council to consider this information in its own Statement of Case (J.3.3)."* At the time of completing this SoC [15 May 2018] the LPA have still not received an updated SoC from the appellant's agents. The LPA remain of the view that it is critical that this information is provided at an early stage in order that the issues in this case can be narrowed as far as is reasonable practicable. Failure to provide this information promptly could lead to the Council incurring unnecessary expense.

4.27 Finally, on the matter of the plan inaccuracy a further email was sent to the appellant's agent on 2 May 2018 requesting that the inaccuracies be addressed as a matter of urgency. At the time of completing this SoC [17 May 2018] the LPA have not received a response to this request.

5 INJUNCTIVE PROCEEDINGS

5.1 This case was listed before His Honour Judge Bidder QC, pursuant to the order of Mrs Justice Whipple of 19th September 2017, for the trial of an application by the Third and Fourth Defendants to vary Clause 4 of the order of Mr Justice William Davis of the 21st February 2017 which was an ex parte injunction under section 187B of the 1990 Act.

5.2 Although the Injunction Order was made to preserve the status quo pending trial, the hearing in late 2017 essentially comprised the substantive trial. The injunction provides that the Defendants be restrained from doing five actions. Paragraphs (1), (2) and (5) relate to depositing further hardcore, lopping chopping or removing further trees and hedgerows and constructing any day room respectively. Paragraphs (3) and (4) provide as follows:

> *"(3) the Defendants, by their servants agents or otherwise, be restrained from causing or permitting entry onto the land of any caravans, touring caravans or mobile homes;*
> *(4) the Defendants, by their servants or agents or otherwise, be restrained from causing or permitting the use of any caravans, touring caravans or mobile homes currently present on the land."*

5.3 His Honour Judge Bidder QC handed down his judgement on 12th January 2018 and a copy is attached to this Statement of Case.

5.4 The judgement is highly material to the appeal since one question the judge may consider – in broad terms - was *"the degree of environmental damage resulting from the breach, the urgency or otherwise of bringing it to an end, and may have in mind the possibility of the authority itself coming to a different judgement in the case"* [paragraph 39(vii)]; and, at paragraph 88 *"I am entitled to form a view as to whether the prospects of success in an application and in an appeal from any refusal are sufficiently strong to provide a factor of real weight weighing the balance in favour of granting a variation of the injunction pending the outcome of any appeal."*

5.5 Paragraph 27 in respect of the initial works:

> *It is, therefore, in my judgment, an incontrovertible inference and one I confidently draw that one or more defendants had planned the move on to the site well in advance and intended to steal a march on the local planning authority and any residents or interested parties in the local area who might object to planning permission.*

5.6 An important factor in the judgement was whether the works were intentionally unauthorised and at paragraph 87 His Honour concluded:

> *I accept Mr Lintott's submission that the Defendants (both called and uncalled) plainly appreciated the importance of being able to say that they were living on the site at the time when the injunction was obtained. They were, I judge, particularly in the light of the*

most obvious fact that the whole operation was carefully planned to catch the planning authority by surprise, forensically aware.

5.7 His Honour also found that they were not living on the site at the time the injunction was served, contrary to the evidence of the individuals.

5.8 The conclusions reached on the personal circumstances of the defendants are set out in paragraphs 129 and 130 and 144 to 148.

5.9 His Honour did make a comment about the absence of any statement of personal circumstances on the planning application at paragraph 98(iii), stating *"…this is remarkable for its absence. Much criticism has been made at the hearing and in submissions of the limited assessment by the Council of the personal circumstances of the Defendants and their families. I do not consider that to be justified criticism at all."*

5.10 It is important to note that detailed evidence was submitted in these proceedings and live evidence was called with witnesses being cross examined.

5.11 It is material to note that His Honour agreed that there was no suitable alternative accommodation and that would have been the case before the defendants moved onto the site. [paragraph 135].

5.12 In paragraph 110 His Honour set out his conclusions on the planning evidence submitted to him by both sides, commenting:

I do not consider it is necessary (or desirable given the current length of this judgment) for me to set out the planning issues between the parties in any greater detail. I found the evidence of Mr Jupp to be careful, considered and fair. For those reasons and for the reasons I have outlined above dealing with specific planning points I accept his evidence, supported as it is by Nicola Williams' statement. I do not consider that it is probable that planning permission will be granted for this site or that an appeal against a refusal will be successful and I do not consider I should attribute substantial weight to the defendants' prospects of successfully obtaining retrospective planning permission.

5.13 In paragraph 136 His Honour then considered the prospects of planning permission being granted and stated:

I accept this is not a green belt site. It is a site, however, in the countryside and isolated from the nearest settlement. I do not consider that it has been established on a balance of probabilities that there are good prospects of retrospective planning permission being obtained. The unlawfulness of the initial occupation is an important factor of substantial weight in the unlikelihood of planning permission being obtained

5.14 He then concluded in paragraph 146 that *"There has, in this case, been very substantial environmental damage and there is urgency in the need to bring this unauthorised occupation to an end."*

6 THE CASE OF THE LPA

6.1 Based upon the deemed reasons for refusal as set out at paragraph 4.37 above the LPAs case comprises the following:

- The Principle of the Development;
- The Isolated Location of the Site;
- The Visual Impact of the Development;
- The Environmental Damage to the Natural Environment;
- The absence of Supporting Information on Highway Impacts;
- The absence of Odour and Noise Impact Assessments;
- The Lack of Information on Surface Water Management;
- The Planning Balance.

Each issue is dealt with in turn below.

Issue 1 - Principle of Development

6.2 The PPTS and the NPPF require applications for planning permission, including for gypsy and traveller sites to be assessed and determined in accordance with the presumption in favour of sustainable development. This has regard to the economic, social and environmental roles which collectively address matters of sustainability. Paragraph 152 of the NPPF states that significant adverse impacts on any of the three dimensions of sustainability should be avoided.

6.3 In accordance with the NPPF and the PPTS, Local Planning Authorities are required to make their own assessments on the need for gypsy/traveller sites in their area and to ensure that there is a supply of deliverable sites to meet locally set targets. For sites to be considered as 'deliverable', these should be available now, offer a suitable location for development, and be achievable with a realistic prospect that development will be delivered on the site within five years.

6.4 Policy CN5 of the Local Plan sets out that provision will be made for 16 additional gypsy and traveller pitches and three temporary stopping places to meet the needs of gypsies, travellers and travelling show people over the plan period. However, since the adoption of the Local Plan the Council commissioned an update to the Gypsy and Traveller Accommodation Assessment (GTAA) 2015 which had formed the basis of the Local Plan. The GTAA (2017), which takes account of the new definition of gypsies and travellers (as defined by Government) concludes that there remains a need for nine pitches over the Local Plan period which should be provided in accordance with the strategy outlined within Policy CN5 of the Local Plan.

6.5 Policy CN5 states that the Council intends to meet identified need through the provision of pitches as part of delivering four strategic housing sites allocated within the Local Plan, namely East of Basingstoke, Manydown, Basingstoke Golf Course and Hounsome Fields. Outline planning

permission granted for Hounsome Fields in September 2017 included provision for two pitches. An outline planning application for Manydown proposes gypsy and traveller pitches and is currently under consideration. Additionally, an Appeal at Pelican Road, Pamber Heath [APP/H1705/C/17/3166670], for two pitches, has been allowed since the GTAA (2017).

6.6 The policy continues by confirming that proposals for sites in locations other than within the allocated housing sites will also be permitted where these meet certain criteria as set out within the policy. The first criteria addresses whether there 'is an identified need for the pitch provision'. The updated GTAA identified that there is still an unmet need for pitches within the Borough and that there is a lack of alternative accommodation available.

6.7 Progress is being made in providing permanent pitches within the Borough, with the grant of two pitches (outline only) in September 2017 with a further application under consideration since the determination of the appeal, and with the Pamber Heath allowed appeal, however there remains an outstanding local need for pitches and the Council remains unable to demonstrate a 5-year supply of pitches.

6.8 The unmet need is of weight in favour of the proposal. However, the need to establish a five year supply of sites is for only three pitches within the next five years (reduced from the five identified in the 2017 GTAA given the Pelican Road appeal). The submission does not include any details of intended occupants (whilst the Council are aware through Court proceedings of a number of plot owners, this has been changeable and does not account for all plots) and does not seek to establish the need for the proposed pitches, and therefore would involve new supply of 13 pitches. It is considered that this would undermine the Local Plan strategy, exceeding the five-year supply requirement significantly, and also exceeding the overall pitch requirement for the whole Borough until 2032 (as identified in the 2017 GTAA) at one site only. The proposal is contrary to policy CN5 (a) of the Basingstoke and Deane Local Plan 2011-2029 in this respect.

6.9 Paragraph 27 of the PPTS states that if a LPA cannot demonstrate an up-to-date five year supply of deliverable gypsy and traveller sites, this should be a significant material consideration and be given weight in any subsequent planning decision when considering applications for the grant of temporary permission. Stated exceptions to this include sites that are within SSSIs, as this site is in part. The scale of the proposed development which would deliver thirteen temporary pitches, is such that this would deliver substantially more than the very modest number of pitches needed. It should also be clarified that it would not be appropriate to consider granting temporary consent in this instance, as granting temporary consent would not overcome the very substantial harmful effects which have already been caused to the character of the area and local environment, and are hence comparable with that of a permanent planning permission.

6.10 In addition to the considerations of policy CN5 the PPTS additionally sets out alternative accommodation, and other personal circumstances as considerations.

6.11 The Local Planning Authority accepts that there is an outstanding local need for pitches and that the Council is unable to demonstrate a 5-year supply of pitches to meet this need at this time, although given the location of the site partly within a SSSI this is not deemed to be a significant material consideration in considering applications for a temporary permission; nor is it a significant consideration for the grant of planning permission given the relevant circumstances that the LPA have set out. The Local Planning Authority is also not in a position to identify or offer an alternative site or sites to meet the needs of gypsies and travellers within the Borough as an alternative to the site at Silchester. The Council does however have a strategy for providing sites within the plan period and the recent decision at the Hounsome Fields application is an example of that strategy being progressed successfully. The lack of available alternative accommodation at this particular time does however carry weight in the consideration of this application.

6.12 No statement of personal circumstances has been submitted with the planning application. It is not set out anywhere within the application as to who the occupants of the site are intended to be. Only the applicant is named on the forms. On this basis, it could be assumed that the application is not for any specific named persons.

6.13 Following the High Court hearing, where the judge declined the application to vary the terms of the injunction at the site, thus confirming the preclusion of residential occupation during the planning process, the Council is aware, of the circumstances of some of the intended occupants. A report by the Traveller and Romani Advice and Information Network ("TRAIN") into the best interest of the children living at the site at the time of the report was submitted to the High Court by the defendants. The Council has undertaken its own welfare assessments, including visits following the judgement.

6.14 The occupation of the site for residential purposes whilst the planning process is on-going is specifically precluded by the High Court order. Any occupation would be in breach of the order, and would be in contempt of Court, which is punishable by imprisonment. A consideration of refusing the application is not therefore that it would have the effect of displacing persons occupying the site/a direct loss of homes, as such occupation would be unlawful (in contempt of Court).

6.15 In considering personal circumstances in determining whether to vary the order to allow the continued occupation of the site, and in declining to do so, the High Court judgement set out, in concluding, that;

> *"In my judgment, the Claimant has made an appropriate assessment of the proportionality of continuing to oppose the*

application to vary and to preserve the injunction taking into account the defendants' and other residents' circumstances including the best interests of the children as a primary consideration. Not only have they made an appropriate assessment but, having considered all the evidence, I am satisfied that that assessment is correct." [para 148]

6.16 It remains unclear as to who might occupy the site (or full extent of it) if permission were granted. The dismissal of the appeal would not be in the best interests of children or families who would otherwise reside on site and may have no alternative site to go to. This is a factor of primary importance, and adversely affects article 8 rights of children and adults.

6.17 It has been established through case law that the best interests of a child must be a primary consideration and no other consideration can be treated as inherently more significant. However, a child's interest is not determinative of the planning issue and may be outweighed by one or a combination of other material considerations.

6.18 The provision of a settled base from which some of the intended occupants, including children, could access education and health services adds weight in favour of the proposal.

6.19 On 31 August 2015, the Department of Communities and Local Government (DCLG) published a planning policy statement on Green Belt protection and intentional unauthorised development. The policy states that the government is concerned about the harm caused where development of land is undertaken in advance of obtaining planning permission. It notes that in such cases there is no opportunity for appropriate mitigation of the harm that has already taken place. It also notes that such development can lead to the local planning authority having to take expensive and time consuming enforcement action.

6.20 In this case harm has been caused as a result of the development to the nature conservation value of the site, to highway safety and to the landscape and visual amenity. To the extent that the harm might have been susceptible to mitigation, there has been none. Very substantial environmental damage has already taken place. In addition, the Council has had to undertake injunctive proceedings which have been time-consuming and expensive. These are the matters which the government is seeking to address in adopting the policy.

6.21 The development is *"intentional development"* within the meaning of the 31 August 2015 planning policy statement. That is a material consideration which weighs very significantly against granting planning permission.

Issue 2 – Isolated Location of Site and Community Cohesion

6.22 Paragraph 13 of the PPTS requires LPAs to ensure that sites are sustainable economically, socially and environmentally. Paragraph 25 states that LPAs should very strictly limit new traveller site development in open countryside that is away from existing settlement. Policy CN5 also requires the application site to be located within a reasonable distance of local services with capacity, including education establishments, health and welfare services, shops and community facilities. In addition paragraph 5.45 of the supporting text for Policy CN5 defines 'sustainability of the location' and the Local Plan also provide a definition for 'isolated' (although in the context of new residential development in the countryside) as detailed in paragraph 3.6 above.

6.23 There is a significant separation distance between the application site and Silchester, which is the nearest village. Silchester does not have a settlement policy boundary (SPB), and is not considered to provide a sustainable location. The nearest settlement with a SPB is Pamber Heath, which is 2.5km distant. Additionally, the nearest bus stop is approximately 630 metres from the site.

6.24 The proposed development would result in an isolated, unsustainable and inappropriate form of development in the open countryside for a gypsy and traveller site which would not be within a reasonable distance of local services, would not result in the successful integration of the site with the settled community and as such would be contrary to the NPPF; paragraph 25 of the PPTS and Policy CN5 of the Local Plan.

6.25 The character of housing in the locality is one of individual houses on large plots. It is considered that the provision of thirteen pitches dominates the nearest settled community, namely the sporadic housing in the vicinity including along the access track, and along Little London Road.

6.26 In parallel with the need to avoid dominance, Policy CN5 encourages integration and interaction with Gypsy and Traveller sites and the local community. Paragraph 13 of the PPTS also states that LPA's should promote peaceful and integrated co-existence between the site and the local community. In addition, paragraph 26 (d) states that LPA's should attach weight to proposals that do not *"enclose a site with so much hard landscaping, walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community."*

6.27 The site has, through intentional unauthorised development, been cleared of trees, and laid to hard standing. Plots are arranged (and proposed to be arranged) in a cul-de-sac arrangement, accessed from a single drive, with plots having been fenced and the entrance gated. The cul-de-sac arrangement, access arrangement, cleared vegetation, and fencing, are such that the site has a notable sense of enclosure and isolation. It is not considered that there would be successful integration between the travelling and settled community.

Issue 3 - Impact upon the character and appearance of the area

6.28 The need to have regard to the intrinsic character and beauty of the countryside is supported by the core principles of the NPPF. This requirement is reflected locally within Policy EM1 of the Local Plan which requires proposals to be sympathetic to the character and visual amenity of the landscape, paying particular attention to the qualities of an area as identified within the Council's landscape character assessment and CN5(b) where there must be no impact on the natural environment.

6.29 The application seeks to facilitate a residential use of the site. There has been significant removal of trees, and importation of material to facilitate this. The site has been divided internally through close boarded fencing to create plots and the access to them. In addition to mobile homes and touring caravans, day rooms would be constructed. 13 plots were originally proposed. A submitted amended plan shows this reduced to 11 plots. The situation on site does not replicate either layouts, expanding outside of the red edge of the application site. It is, additionally, not possible to confirm the exact intention in respect of the proposed layout given that inconsistencies in dimensions between plans exists.

6.30 A Landscape and Visual Impact Assessment (LVIA) has not been submitted with the application. Such an assessment had been requested, but has not been provided. The application site lies within the North Sherborne landscape character, as defined in the Basingstoke and Deane Landscape Assessment, 2001. The LPA will present a full LVIA as part of its evidence, which will describe the overall landscape character and its key characteristics, as well as the site's visual environment.

6.31 To the south of the site there is a public right of way footpath that runs west-east along the access track connecting to the nearby Pamber Forest with views north to the site. The Silchester Sewage Treatment Works to the site's east is visually separated by mature spinney planting and the Culhams Mill Building. To the site's north and east are extensive mature woodlands and beyond this, to the east, is the arable landscape described in the landscape character assessment above.

6.32 The holistic picture is one of the destruction of grassland and forest replaced by a caravan site dominated by hard standing, fencing, mobile homes, touring caravans, vehicles, and domestic paraphernalia. Some planting is shown on an amended plan, but this is limited and insufficient detail is provided to form an opinion on its impact in any case.

6.33 The intentional unauthorised development has resulted in very substantial environmental damage to the natural environment, which is a valued landscape. The works, which have included the significant removal of trees, and laying of hardstanding (creating an open area intended for occupation by caravans and domestic paraphernalia) are not sympathetic to the character and visual quality of the area, do not respect or enhance, and are detrimental to the character of visual amenity of the landscape. The proposal is contrary to policies EM1, EM10 and CN5 of the

Basingstoke and Deane Local Plan 2011-2029, the NPPF and the PPTS.

Issue 4 - Environmental Damage to the Natural Environment

6.34 The application site is within a (BDBC) Habitat area, is adjacent to Ancient Woodland to the north east and west of the site, and is partly within the SSSI of Pamber Forest and Silchester Common. The boundary of the SSSI transects the northern part of the application site, it has a southwest/northeast alignment which cuts through an overhead power line. The SSSI boundary then runs along the northern boundary of the application site.

6.35 The application includes retrospective works (including tree removal, and importation/laying of hard standing), which are considered to constitute intentional unauthorised development. This has resulted in very substantial environmental damage, including to the SSSI within the application site. No biodiversity impact assessment has been submitted with the application, and therefore the works that occurred appear to have been undertaken without any regard to biodiversity interests, and relevant legislation.

6.36 Natural England, the Council Biodiversity Officer, and the Hampshire and Isle of Wight Wildlife Trust [HIWWT] all confirm that the works at the site have already destroyed supporting habitat of the interest features for which Pamber Forest and Silchester Common Site of Special Scientific Interest (SSSI) has been notified. Natural England advise that:

> *"This retrospective development has resulted in a direct loss of grassland / scrub and woodland habitat that supports features for which the site is notified as a SSSI. The change of use to residential may lead to further encroachment into the SSSI (e.g. through garden extension) and/or damage to SSSI habitat through tipping of garden and other waste"*

6.37 For clarity, we understand that 'supporting habitat' is that habitat which supports flora and/or fauna for which the SSSI was notified. These features are described on Natural England's citation for the SSSI and include for example a rich and diverse invertebrate fauna, and ground-nesting birds such as woodlark and nightjar.

6.38 Natural England did though advise within their initial consultation response that their objection may be removed, subject to the area of destroyed habitat being removed from the curtilage of the proposal site, and restored under agreement with Natural England; the boundary between the site and the SSSI being reinstated to prevent direct access, and; the provision of a hedge along the SSSI boundary to create a buffer to avoid impacts on the SSSI through residential incursion. Natural England, HIWWT, the Woodland Trust, and the Council Biodiversity Officer all also recommend the provision of a 15m restored buffer between the SSSI/woodland and the site, in accordance with the Council Landscape

and Biodiversity SPD, so as to further prevent impacts on the woodland habitat. If amended in this way, Natural England confirm that their objection could be removed, and these matters secured through condition.

6.39 Natural England also require additional information with regard to the provision for liquid waste on the site (foul and surface run-off) and how impacts on the SSSI will be avoided or mitigated. Details of a drainage strategy were recommended by Natural England.

6.40 The LPA is also aware that the part of the application site outside the SSSI boundary may perform the necessary function of supportting some of the species for which the SSSI was notified. Some of these species may rely on habitats within the SSSI and supporting habitat to complete their life-cycle, so the supporting habitat is crucial to maintain the SSSI features. One of many possible examples could be woodlark which might nest in the SSSI but rely on the supporting habitat for part of its foraging needs.

6.41 There may be other protected species or those listed as Species of Principal Importance in England under the provisions of Section 41 of the Natural Environment and Rural Communities Act 2006 on the part of the appeal site where development has taken place, and there may be these species elsewhere within undeveloped parts of the appeal site. There may have been habitat recognised as Priority habitat under the NERC Act on the part of the appeal site where development has taken place, and there may be these habitats elsewhere within undeveloped parts of the appeal site. The habitats and species could be, or could have been, suitable to have been selected as a Site of Interest for Notification by SINCs Advisory Panel comprising Hampshire County Council, Natural England and the Hampshire & Isle of Wight Wildlife Trust.

6.42 Although consultees focused on the damage to SSSI, the LPA is mindful of its planning policies to biodiversity in addition to SSSIs, and is mindful of its NERC Act 2006 duty to have regard to conserving biodiversity as part of policy or decision making. Had the application been made before development commenced, the LPA would have asked for adequate and proportionate information to enable a proper assessment of the implications for biodiversity and geodiversity, under Local Plan policy EM4. No information has been provided for undeveloped parts of the appeal site.

6.43 An amended site layout plan indicating development being removed from the SSSI, and showing a buffer of approximately 15m was provided on the same day as an appeal against non-determination was submitted. No barrier (fencing or planting) is shown. No further details were submitted with the amended plan. It is not clear that the amended plan is accurate (as set out under general comments above).

6.44 The intentional unauthorised development has resulted in very substantial environmental damage to the natural environment, including the biodiversity interests of the Pamber Forest and Silchester Common SSSI. The works have destroyed part of the SSSI supporting habitat of the

interest features for which the SSSI has been notified. The proposed amended layout shows no plots within the SSSI, however, given the intentional unauthorised development that has occurred, no details (including any programme) of any remedial works, or mitigation or compensation measures or biodiversity assessment to understand the scale of impact and inform any such measures, or planting, or barriers to prevent access, or drainage/hydrological impacts are provided. No information has been provided to enable a proper assessment of the implications for biodiversity and geodiversity, under Local Plan policy EM4, for the developed and undeveloped parts of the site. The proposal is therefore contrary to policies EM4 and CN5 of the Local Plan, the NPPF, and the PPTS.

6.45 The LPA has a duty under S28G of the Wildlife and Countryside Act 1981 which relates to SSSIs. The duty is to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest. It would have been a breach of its statutory duty for the LPA to have permitted the development as applied for due to the damage to the SSSI.

Issue 5 - Highways and transport

6.46 The site is accessed along an existing track that also accommodates a public right of way (Silchester Footpath 3). The track also provides access to agricultural/forestry land, a Thames Water sewage treatment works, a dwelling, and a factory. HCC's Definitive Statement identifies the public footpath as having a width of approximately 3.1m. The nearest all-purpose public highway is Little London Road (the C90) located to the east of the application site. It is unlit, and has a 30mph speed limit at the point where the track meets the road.

6.47 The LPA will describe the nature of the track and Little London Road. With particular emphasis on:

- Views to the north from the track along Little London Road are significantly restricted;
- To the north of this junction, a reduction in speed is necessary due to the road layout ahead;
- Due to the existing road layout, the swept paths of vehicles leaving the track turning on to Little London Road towards Silchester are liable to over sail the centre of the carriageway and project into the path of oncoming traffic (especially long vehicles) thereby leading to vehicle interactions and potential conflicts;
- With significantly restricted intervisibility between southbound traffic and exiting vehicles from the track, additional vehicle interactions and potential conflicts also occur with vehicles exiting to the right (away from Silchester).

6.48 On the basis of this assessment material increases in the quantum and type of vehicle turning movements could have the potential to result in unacceptable/severe impacts.

6.49 Due to the rural location of the site, it is likely that a high proportion of the travel to and from this site will be undertaken using motor vehicles. Previous similar proposals and observations of other existing sites have also indicated that in addition to the use of cars, regular use of larger vehicles (including commercial vehicles and towing vehicles) is also likely to occur, and the quantum of daily vehicle trips can be higher than that of typical dwellings located upon an established housing estate. It appears that a significant quantum development traffic could be generated over the life of this development.

6.50 Despite requests made, no information has been provided by the Applicant/Agent as to the safety implications of the proposed development (including existing conditions – traffic flows and speeds; anticipated development traffic details; access arrangements, including the site access and Little London Road; safety implications including injury accident information; mitigation measures).

6.51 As a result of the existing conditions, and the lack of supporting information with the application (including a Transport Statement/Assessment, together with any proposed mitigation measures), it has not been demonstrated that the proposal can successfully integrate into the existing movement networks; provide safe, suitable and convenient access for all potential users; and not result in unacceptable or severe impacts upon highway safety. The application is therefore contrary to policy CN9 of the Local Plan, and the NPPF.

6.52 In addition, the access track accommodates Silchester footpath 3 and there are concerns with the impact that the increased use of the footpath by vehicles would have upon the amenity value of the right of way in terms of noise, pollution and highway/pedestrian safety. Furthermore, Hampshire County Council Countryside Access Team advise that there are no recorded public vehicular rights over the footpath, and that it is an offence to drive over such a path without authority (either by owning the land or having the consent of the land owner). It would be for the applicant to ensure that rights of access for vehicles over the public right of way. However, it has not been demonstrated that the proposal can be lawfully accessed by vehicle. The application is therefore contrary to policies CN5(d) and CN9 of the Local Plan.

Issue 6 – Noise and Odour

6.53 The NPPF states that the planning system should contribute to and enhance the natural and local environment by preventing development from contributing to or being put at risk from unacceptable levels of pollution. Local Plan Policy EM12 also seeks to protect health and the natural environment from polluting effects as a result of existing, historic

or nearby land uses and activities.

6.54 The site is located in close proximity to a Sewage Treatment Works and a fibreglass manufacturing unit with a rear yard, which are both noise and odour generating uses. No assessment of noise or odour has been submitted with the application, despite this having been requested.

6.55 The Environmental Health Officer has raised an objection due to insufficient information having been provided in terms of an odour impact assessment, and noise impact assessment. Without such information, it is not possible to form a view as to whether the site provides a suitable living environment for residents in terms of odour and noise. An additional concern is that the Council has been made aware of large amounts of imported controlled waste including likely asbestos containing material at the site.

6.56 The application is therefore contrary to policy EM12 of the Local Plan, the NPPF and the PTTS.

Issue 7 – Surface Water Management

6.57 The application site had previously been an undeveloped site. Hard standing has been imported that will be likely to have changed the drainage characteristics of the site. As considered under the Biodiversity Section of this report, the site is adjacent to a SSSI, which will be vulnerable to any change in drainage, and any pollution incident. This is in addition to any flooding events that may affect the site as a living environment, or adjacent sites/business premises, and therefore economic development.

6.58 The Local Lead Flood Authority are the statutory consultee on such matters. Their initial consultation response had been to request that further information is provided, including through the filling out of a provided proforma (which requested details of – background information, sensitivity of discharge points, existing surface water flow paths, existing drainage network details, evidence that the proposal will follow the same path, the correct level of water treatment, any necessary infiltration tests or run off rate/volume calculations, details of maintenance and confirmation of calculation basis). As set out in the biodiversity section of this report, Natural England had also requested details of site drainage, to ensure that there would not be significant impact to the SSSI. This detail was requested from the Agent, but has not been forthcoming.

6.59 As this information was not forthcoming, the Local Lead Flood Authority had confirmed that, *"we have not had sufficient information, listed on our website and in the pro forma provided, to be able to comment on the Surface Water Management Scheme for this major development. Therefore, we are unable to ascertain of this development will cause significant flooding to the development or neighbouring sites. Therefore, we would advise that the Local Planning Authority object to this*

development on the basis of insufficient surface water management information."

6.60 It is therefore concluded that insufficient surface water management information has been provided with the application to be able to ascertain whether the development will be at risk of flooding from surface water flooding, or will result in flood risk to neighbouring sites. It has therefore not been established whether the site is a suitable living environment, and whether drainage will result in harm to the adjacent watercourse or SSSI. The application is contrary to policy EM1, EM7, EM10 and CN5 of the Local Plan, the NPPF and the PTTS.

Issue 8 – The Planning Balance

6.61 The Local Planning Authority is currently unable to demonstrate a five-year supply of gypsy and traveller sites. This matter together with the lack of alternative sites adds significant weight in favour of the proposal. The provision of a settled base from which some of the intended occupiers and their families, could access education and health services, together with the primary consideration of the best interests of a child, and their families, and Human rights considerations, adds further weight in favour of the proposal.

6.62 The proposal is contrary to a number of policies contained within the development – namely CN5, CN9, EM1, EM4, EM7, EM10 and EM12 - and does not accord with the development plan as a whole.

6.63 The provision of the quantum of pitches proposed in one location, which would exceed the overall pitch requirement for the Borough until 2032 would undermine the Local Plan strategy to spread pitch provision geographically, with provision across the largest, and sustainably located, strategic housing allocations.

6.64 The development within the countryside, where gypsy and traveller plots should be strictly resisted, is in an unsustainable and isolated location, and would not result in successful integration of the site with the settled community, dominating the settled community.

6.65 The intentional unauthorised development has resulted in very substantial environmental damage to the natural environment. This includes to the valued landscape, with works not being sympathetic to the character and visual quality of the area/landscape, and importantly to biodiversity, including the biodiversity interests of the Pamber Forest and Silchester Common SSSI, with part of the SSSI having been destroyed, with no details of any proposed remedial works having been provided.

6.66 As a result of the existing conditions, and the lack of supporting information with the application, it has not been demonstrated that the proposal can successfully integrate into the existing movement networks; provide safe, suitable and convenient access for all potential users; and

not result in unacceptable or severe impacts upon highway safety.

6.67 The site is located in close proximity to a Sewage Treatment Works and a fibreglass mould manufacturing unit with a rear yard. Insufficient information, in terms of odour and noise impact assessments, have been submitted to enable an assessment as to whether the site provides a suitable living environment for residents in terms of odour and noise.

6.68 Insufficient surface water management information has been provided with the application to be able to ascertain whether the development will be at risk of flooding from surface water flooding, or will result in flood risk to neighbouring sites. It has therefore not been established whether the site is a suitable living environment, and whether drainage will result in harm to the adjacent watercourse or SSSI.

6.69 The Secretary of State, and the Planning Inspectorate on his behalf, have a duty under S28G of the Wildlife and Countryside Act 1981 which relates to SSSIs. The duty is to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest. It would be a breach of its statutory duty if the SoS / Planning Inspectorate were to allow the appeal due to the damage to the SSSI.

6.70 The merits of the application, including the current inability to demonstrate a five-year deliverable supply of traveller sites, and consideration of personal circumstances, the best interests of children and their families and Human Rights considerations do not overtop the substantial harms identified by the Council, and do not justify a departure from the Development Plan, nor a temporary planning permission.

7 DOCUMENTATION

7.1 The following documents may be referred to in support of the Local Planning Authority's case [this is a non-exhaustive list]:

- Town and Country Act 1990 (as amended)
- Wildlife and Countryside Act 1981 (as amended)
- Natural Environment and Rural Communities Act 2006
- The Human Rights Act
- The European Convention on Human Rights
- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance
- Planning Policy for Traveller Sites (PPTS) as amended in August 2015
- The DCLG letter of 31 August 2015
- Parliamentary written statement (22 July 2015) by Baroness Williams of Trafford
- The Basingstoke and Deane Local Plan 2011-2029
- Basingstoke and Deane Landscape Assessment, 2001
- Basingstoke and Deane Landscape and Biodiversity Supplementary Planning Document
- Basingstoke and Deane Design and Sustainability Supplementary Planning Document
- Basingstoke Landscape Character Assessment SPG
- Basingstoke and Deane Landscape and Biodiversity SPD
- Basingstoke and Deane Borough Council Tree Policy
- Basingstoke and Deane Traveller and Travelling Showpeople Accommodation Assessment (GTAA) Final Report April 2017
- Planning application case file
- High Court papers
- Relevant case law and appeal decisions
- SSSI details available from the website www.magic.gov.uk

Judgement of His Honour Judge Bidder QC handed down on 12th January 2018

Neutral Citation Number: [2018] EWHC 0011 (QB)

Case No: HQ17X02461

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/01/2018

Before :

HIS HONOUR JUDGE BIDDER QC

- -

Between :

BASINGSTOKE & DEANE BOROUGH COUNCIL	**Claimant**
- and -	
(1) ALEXANDER THOMPSON	**Defendants**
(2) MR SAMPSON BLACK	
(3) MR CALLUM HURLEY	
(4) WILLIAM CONNORS	
(5) PERSONS UNKNOWN	
(6) JOHN DORAN	
(7) JIMMY LOVERIDGE JUNIOR	
(8) JOHN CONNORS	
(9) WILLIAM CONNORS	
(10) MR NOLAN	
(11) TOMMY WALL	
(12) MR LOVERIDGE (*FREDDIE LOVERIDGE JNR)*	
(13) MR LOVERIDGE (*FREDDIE LOVERIDGE SNR)*	
(14) PATRICK DORAN	
(15) REUBEN MURPHY	

- -
- -

David Lintott (instructed by **Shared Legal Services, Basingstoke and Deane Borough Council**) for the **Claimant**
Alan Masters (instructed by **Minton Morrill, Solicitors**) for the **Defendants**

Hearing dates: 29th , 30th October, 1st November, 30th November, 1st December 2017

- -

JUDGMENT

His Honour Judge Bidder QC :

1. This case was listed before me, pursuant to the order of Mrs Justice Whipple of 19th September 2017, for the trial of an application by the Third and Fourth Defendants to vary Clause 4 of the order of Mr Justice William Davis of the 21st February 2017.

2. Davis J. made on that latter date an ex parte injunction under section 187B of the Town and Country Planning Act 1990 ("the 1990 Act").

3. The Claimant is the local planning authority in respect of land known as land off Little London Road, Silchester, Reading RG7 2PP ("the land"). The land has been divided into 13 plots and Defendants (1)-(4) and (6)-(14) are Gypsies or Travellers who at the time of the hearing on 19 September 2017 were said by the Claimant to control and/or occupy those plots and/or to have carried out unauthorised operational development and/or unauthorised material change of use to the plots as shown in the plans attached to Adrian Clifford Munday's evidence dated 16th May 2017 at ACM1 (B18 of the application bundle and following). No enforcement notice has been issued in respect of what is, clearly, unauthorised development and change of user of the land.

4. Defendant 5 is “Persons Unknown”. That includes some families who only became associated with the site for the first time immediately prior to the production of the welfare report, known as the “TRAIN” report, served on behalf of the Defendants and dated 9th October 2017.

5. This hearing was originally listed for 19 September 2017 but was adjourned to this date. On the 19th September the area of the injunction was extended to include adjoining land within the Defendants' control.

6. The Injunction Order, which is set out in full at A11 was made to preserve the status quo pending a determination of the planning application by Mr Thompson. It provides that the Defendants be restrained from doing five actions. Paragraphs (1), (2) and (5) relate to depositing further hardcore, lopping, chopping or removing further trees and hedgerows and constructing any day room respectively. Paragraphs (3) and (4) provide as follows:

> *"(3) the Defendants, by their servants agents or otherwise, be restrained from causing or permitting entry onto the land of any caravans, touring caravans or mobile homes;*
>
> *(4) the Defendants, by their servants or agents or otherwise, be restrained from causing or permitting the use of any caravans, touring caravans or mobile homes currently present on the land.*"

7. The order was made ex parte and liberty to apply was given to the Defendants on 48 hours' notice in writing. That liberty to apply has never been exercised. Instead at the hearing of a committal application on 14 March 2017, Mr Justice Nicol accepted an oral application made by Defendants 3 and 4 (A16 paragraph 5) to vary paragraph 4 of the injunction.

8. The fact that the original injunction was to preserve the status quo is of considerable importance. The basis of the original application (and, fundamentally, of the amended variation) was to allow only the caravans present on the land at the time of the original injunction to remain there and the witness evidence in support of the variation relied on the fact asserted by the Defendants who served witness statements that they had been living on the land with their families prior to the grant of the injunction. The lately joined

Reuben Murphy accepts he is in a different position because he bought the plot originally occupied (he avers) by Callum Hurley and had not been living on the site at the time of the original injunction.

9. The Claimant contends, with some force, that if the status quo pertaining at the date when the injunction was granted was that nobody was living on the land then the case for variation fails.

10. As far as I could see at the outset of the hearing, the extent of the variation sought had never been particularised nor had it been put in writing. That appeared to me to be unsatisfactory, particularly as, in the skeleton argument of Mr Masters, counsel for the defendants to the Particulars of Claim, 14 in number including "persons unknown", the defendants appeared to be seeking to join further defendants to the application and to purport to ask for a much wider amendment to the injunction than I had imagined had originally been contemplated and to ask for it on behalf of all defendants.

11. That the variation application that I was to try at this hearing was to have been only on behalf of the 3rd and 4th Defendants seemed to me to be clear from the orders of Nicol J and of Whipple J., particularly the latter, who gave very detailed and helpful directions for trial of the variation application and, initially, having heard argument, I ruled that a limited application to vary was only to be tried. Mr Masters then asked for a short time to consider his position and to consider applying for an adjournment. From the submissions of both counsel following that short time for reflection, they made it clear to me that an application which was much wider than that contemplated by previous courts would assist both sides, could be accommodated by the

available evidence and would not prejudice the Claimant's position. I therefore revoked my earlier order and adjourned until the next day (we started at 2pm on 30th October) for Mr Masters to put his application for variation in writing and for him to take instructions upon an undertaking he could give on behalf of those defendants who wanted to participate in the application and who were then resident at the site. That appeared to me sensible to regularise the proceedings and the hearing of that application then continued.

12. I fear that his overnight written variation application was not satisfactory to me and I ordered him to produce a draft of an order which he sought from me as a substantial variation of the original injunction.

13. That draft order was in the following form, namely that it be ordered that:

"(1) The Defendant Mr Reuben Murphy be added as named Defendant

(2) Paragraphs (1) to (5) of the Order of 21 February 2017 be varied to read as follows:

(1) the Defendants, by their servants agents or otherwise, be restrained from causing or permitting the further deposit of hardcore or other materials upon the land marked upon the Plan annexed to this order ('the land') save that the named Defendants 1-11 are permitted to install gates within their permitted development rights at the entrance to the land so the site can be secured;

(2) the Defendants, by their servants agents or otherwise, be restrained from causing or permitting the further lopping chopping or removal of trees and hedgerows from the said land;

(3) the Defendants, by their servants agents or otherwise, be restrained from causing or permitting entry onto the land of any further caravans, touring caravans or mobile homes such that the maximum number of caravans shall not exceed 16;

(4) the Defendants, by their servants agents or otherwise, be restrained from causing or permitting the use of any caravans, touring caravans or mobile homes currently present on the said land save for the named Defendants 1-11 and their families be allowed to reside in their caravans , not exceeding 16, on the land until further order;

(5) the Defendants, by their servants agents or otherwise, be restrained from causing or permitting the taking of any steps in the construction of any day room and use thereof;

(3) Liberty to the Defendants to apply on 48 hours' notice in writing."

14. The underlined sections above indicate changes to the wording of paragraphs of the Davis J. order.

15. The application to vary is now made on behalf of 11 defendants, namely, Alexander Thompson, William Connors, John Doran, Jimmy Loveridge, John Connors, William Connors (a second William Connors), Tommy Wall, Freddie Loveridge Junior, Freddie Loveridge Senior, Patrick Doran and Reuben Murphy. Those are not identical with those defendants named on the Particulars of Claim. It is clear that it does not include Sampson Black, Callum Hurley and a Mr Nolan. I was told by Mr Masters for the defendants that Callum Hurley has moved from the site. His statement remained in the trial bundle in the Defendants' evidence section. Mr Masters said that his instructing solicitors were no longer instructed by Hurley but I was not told when they last had instructions from him. I asked that to discover whether it would have been possible to remove his statement from the bundle at an early stage. As my narration of the facts will reveal, Mr Hurley's comments to police officers who came to the site with officers of the Claimant Council were and are extremely inconvenient to the Claimants' case. I have had no explanation of when or why Mr Nolan or Mr Sampson Black ceased to participate in these proceedings. Neither Mr nor Ms Nolan were represented by Mr Masters, counsel for the other defendants.

16. Mr Murphy was not amongst the original defendants on the Particulars of Claim and the first application to vary the Davis J. order is to add Mr Murphy as a defendant to the action which application I grant, largely to ensure that he, currently resident with his wife and young child on the Silchester land, has a voice in these proceedings. His was an articulate voice and, upon my allowing a late application to allow him to rely on a lately served witness statement, he and Mr Loveridge gave evidence to me. I have in the title to this judgment made some minor amendments to the names of the various defendants as they are set out in the Particulars of Claim for clarification purposes and I order that the Statements of Case and court papers be amended accordingly. There are 2 William Connors.

17. The other amendments represent a fundamental alteration in the effect of the injunction order and while further development of the site is stayed, up to 16 caravans and families are permitted to remain living on the land. It is obvious that Davis J. understood there to be no one living on the land at the time of his injunction which was granted to prevent that happening and to prevent further development of the land, which was then in a nascent state. There is no time scale in what, of course, is still an incomplete and inadequate draft order but it was clear from Mr Masters' skeleton that his aim on behalf of his clients was that the land should remain an occupied Gypsy/Traveller site until at least when the planning application was finally dealt with.

18. The application to vary is made on behalf of Defendants, 1, 4, 6, 7, 8, 9 and 11 to 15 inclusive.

19. The injunction proceedings arose out of the occupation of and development of the land made by the Defendants and other Romany Gypsies and Irish Travellers who have now created an extensive area of hard standing on the site and have stationed caravans on it. The site was purchased by 2 Travellers, namely Jade Nolan and Freddy Loverage (as it is spelled in the register) on 10th November 2016 for £240,000 with the land having been registered to them on 19th April 2017 (see Office Copy of register of titles, B456). The Defendants want to create a site for Gypsies and Travellers there, with proper facilities for all, including safe facilities for children, with one of the main intentions being to introduce some needed stability into the children's lives and encouraging their education and ensuring good healthcare.

20. The land comprised agricultural fields and lies to the North of Little London Road, Silchester, Reading. It lies outside any settlement boundary as defined by the Proposals Map of the adopted Basingstoke and Deane Local Plan. The land is protected from development and in particular residential development on the basis that it is outside the settlement boundaries and within open countryside. The Claimant contends that the site lies within a Hazardous Substance Authority (HSA) Zone, within the Basingstoke and Deane Borough Council Habitat Area and adjacent to Ancient Woodland. Their case is that it is within an SSSI (Site of Specific Scientific Interest) Impact Risk Zone and, at least in part, the SSSI of Pamber Forest and Silchester Common.

21. On Saturday 18th February 2017 the Claimant was informed by police that Travellers had entered the land and were cutting down trees, carrying out other operational development and works and had placed a number of caravans on

the land. The evidence of the Defendants is that that work began on Friday 17th February, 2017.

22. As of Monday 20th February 2017 the Defendants (1)-(5) had, according to the evidence from the Claimant (mainly comprised in the statements of Mr Adrian Munday, the Senior Officer in the Claimant's Planning Enforcement and Compliance Department) carried out various breaches of planning control including unauthorised operational development comprising the increase in the level of the land by depositing of imported builders waste and other materials and laying of hardcore and the creation of an access and pitches.

23. Importantly to the Claimant's case, it is the evidence of Mr Munday that as at the 21 February 2017 no Defendant (even an unnamed one) had commenced the use of any of the derelict caravans placed on the land. No planning permission has been granted for any of the above development and none of the operational development relates to the use of the land for agricultural purposes.

24. On Monday 20th February (I accept, on the evidence before me), a planning application dated 17th February 2017 was received by the Claimant in respect of the land. The application seeks permission for the establishment of "a residential caravan site comprising 13 plots." The named applicant is the 4th Defendant, William Connor and the application states that a new vehicle access is proposed along with a septic tank, a day room and space for 26 cars. The application states that no "building, work or change of use" had started. The Claimant says that the application incorrectly asserts that the land does

not lie within an area at risk of flooding and that there are no trees or hedges on the site.

25. At the very least, therefore, some of the now named defendants and the originally named defendants started developing the site at Silchester on the very date that the application for planning permission was dated, before it could possibly have been considered by the planning authority and even before the title to the land of Mr Loverage (or Loveridge) Senior and Jade Nolan had been registered.

26. There is uncontroverted evidence that works of development on the site involved from their commencement heavy lorries, earth moving equipment and also the employment, apparently especially to work on this site, a minimum of 4 Romanian workmen.

27. It is, therefore, in my judgment, an incontrovertible inference and one I confidently draw that one or more defendants had planned the move on to the site well in advance and intended to steal a march on the local planning authority and any residents or interested parties in the local area who might object to planning permission.

28. I accept the contention of the Claimant in Mr Lintott's skeleton that the ex parte injunction was intended to preserve the status quo until trial.

29. What was the position in relation to service of that injunction? A contested committal application was made on 13th March 2017 against all 4 then named defendants and against persons unknown and judgment was given on the 14th March. The application against the First Defendant was withdrawn, he not

appearing. It appears it was withdrawn after Nicol J. had given his judgment. The applications against the 3rd and 4th Defendants were dismissed. Service of the injunction order was in issue. William Davis J. had ordered alternative service on Mr Hurley and on defendant 5, namely "persons unknown", "on the said land…to be initially effected by service of a PDF copy of the order".

30. The judgment of Nicol J. is in the trial bundle. He was not satisfied that service of the original order was served in accordance with that order in that he was not satisfied that placing the order on a jeep which was on the land was service "on the land" and, because of the absence of evidence from the Claimant, neither was Nicol J. satisfied that the order had been served as soon as reasonably practicable. He accepted, on the evidence presented to him by the Claimant, that planning controls had been "flagrantly ignored by someone" and he ordered that personal service of the original injunction order be dispensed with and that the Claimant was permitted to serve documentation, including his order of 14th March 2017 (TB A14 to 17) on the then Defendants and on any person on site by affixing copies to at least 3 permanent places on site. He specifically confirmed to the Defendants before him that the original injunction remained in force (as it had done from the date it was given or made – see CPR 40.7) from 21st February 2017. Mr Lintott, for the Claimant, correctly submits that order has been in force ever since that date.

31. I accept the evidence of Mr Munday that immediately following the hearing before Nicol J. on 14th March 2017 the Claimant has ensured that the injunction was affixed to at least 3 permanent places on the land (see his witness statement at page B488, evidence that was not challenged). As at the

21st February, a copy of the injunction was affixed to a tree on the land (see exhibit ACM/3 at B109 and Munday's statement at B92). On the 22nd February 2017 I accept from Mr Munday's evidence at B93 that he affixed the injunction to a fence on the land (ACM/4 – B111). Mr Taylor saw copies of the injunction fixed to telegraph poles on the 2nd May, 31st August and 11th October 2017 (his witness statement pages B578 and 579 – not challenged). There is also unchallenged evidence that persons on site were handed copies of the injunction.

32. As far as those who may have been associated with the site from 20th to 22nd February, I accept the evidence of Mr Munday for the Claimant that he read out aloud the injunction on the site on 22nd February. It is inconceivable to me that after that had happened that any adults associated with the site at that period could have been unaware of the existence of the injunction.

THE LEGAL FRAMEWORK TO THE INJUNCTION

33. Section 187B of the Town and Country Planning Act 1990 provides:

> *"(1) Where a local planning authority consider it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers in this Part.*
> *(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the breach.*
> *(3) Rules of court may provide for such an injunction to be issued against a person whose identity is unknown.*
> *(4) In this section 'the court' means the High Court or the county court."*

34. In *South Bucks District Council v Porter [2003] 2 AC 558* the House of Lords considered the interrelationship between section 187B, section 6(1) of the

Human Rights Act 1998 and the Convention for the Protection of Human Rights and Fundamental Freedoms scheduled to that Act. The headnote to the Appeal Cases report states that section 187B conferred on the court an original and discretionary, not a supervisory, jurisdiction, to be exercised with due regard to the purpose for which it was conferred, to restrain actual or threatened breaches of planning control; that it was inherent in the injunctive remedy that its grant depended on the court's judgment of all the circumstances of the case; that, although the court would not examine matters of planning policy and judgment which lay within the exclusive purview of the authorities responsible for administering the planning regime, the court was not obliged to grant relief because a planning authority considered it necessary or expedient to restrain a planning breach; that the court would have regard to all, including the personal, circumstances of the case, and, since section 6 of the 1998 Act required the court to act compatibly with a Convention right (as so defined), and having regard to the right guaranteed in article 8, the court would only grant an injunction where it was just and proportionate to do so.

35. Each of the 3 cases before their Lordships involved occupation of land by Gypsies or Travellers. In each, the planning position was uncertain.

36. Lord Bingham identified in his judgment the rudiments of the then current planning regime and one common and important feature of the regime, then and now, is that applications are made to, and, in the ordinary way, determined by local planning authorities democratically elected and accountable and the responsibility of the local community for managing its own environment is integral to the system.

37. However, there were and are, as Lord Bingham recognised, important restrictions on local planning authorities. As he said at paragraph 11 of his judgment:

> "*But the local planning authority's decision is not final. An appeal against its decision lies to the Secretary of State, on the merits, which will be investigated by an expert, independent inspector empowered to hold an inquiry at which evidence may be received and competing interests heard before advice is tendered to the Secretary of State. The final decision on the merits rests with the Secretary of State, a political office-holder answerable to Parliament. The courts have no statutory role in the granting or refusing of planning permission unless, on purely legal grounds, it is sought to challenge an order made by the local planning authority or the Secretary of State: in such event section 288 of the Act grants a right of application to the High Court. In addition, there exists the general supervisory jurisdiction of the High Court, which may in this field as in others be invoked to control decisions which are made in bad faith, or perversely, or unfairly or otherwise unlawfully. But this is not a jurisdiction directed to the merits of the decision under review*"

38. Lord Bingham also noted the history of failure of Gypsies to obtain planning permission and the long term lack of capacity of sites authorised for occupation for Gypsies to meet their needs. He notes the impact of section 23 of the Caravan Sites and Control of Development Act 1960 which gave local authorities power to close commons to Travellers and Gypsies and which they used with a vigour that was absent from their use (or rather lack of it) of the concomitant power under section 24 of the same act to open dedicated sites for them.

39. Lord Bingham endorses the judgment in the Court of Appeal of Lord Justice Simon Brown and quotes from it extensively. The House of Lords was in full agreement in the Porter case and, therefore, it seems to me that it will be right to regard as having been approved the guidance of Lord Justice Simon Brown which I hope I may accurately summarise as follows:

i) that the judge on a section 187B application was not required, nor even entitled to reach his own view of the planning merits of the case;

ii) that the judge should not grant injunctive relief unless prepared to commit for breach;

iii) that the judge must consider all questions of hardship for a defendant and his family, that family's health and education and the availability of suitable sites;

iv) that the judge must also consider the need to enforce planning control in the general interest and the planning history of the site, as well as the degree and flagrancy of the postulated breach of planning control;

v) the length of occupation may be relevant;

vi) also relevant will be the extent to which the authority in making the decision to seek an injunction have had regard to all material considerations and to have properly posed the article 8(2) questions as to necessity and proportionality;

vii) in deciding whether or not to grant an injunction and whether or not to suspend it or for how long, while the court is not to question the correctness of the current planning status of the land, it may consider, in broad terms, the degree of environmental damage resulting from the breach, the urgency or otherwise of bringing it to an end, and may have in mind the possibility of the authority itself coming to reach a different planning judgment in the case;

viii) Finally, the assessment of proportionality requires that not only should the injunction be appropriate and necessary for the safeguarding of the environment but it must not impose an excessive burden on the individual, here, the Gypsy or Traveller, whose private life, home and the retention of his ethnic identity are at stake.

40. To that list, it is plain that I should add, as a primary factor, but not one that overtops all others, the best interests of any children who may be affected by the injunction.

41. Lord Bingham also said at page 579 A:

> "*Where it appears that a breach or apprehended breach will continue or occur unless and until effectively restrained by the law and that nothing short of an injunction will provide effective restraint (City of London Corpn v Bovis Construction Ltd [1992] 3 All ER 697, 714), that will point strongly towards the grant of an injunction*."

42. Additionally, at 580 F he said:

> "*When application is made to the court under section 187B, the evidence will usually make clear whether, and to what extent, the local planning authority has taken account of the personal circumstances of the defendant and any hardship an injunction may cause. If it appears that these aspects have been neglected and on examination they weigh against the grant of relief, the court will be readier to refuse it. If it appears that the local planning authority has fully considered them and none the less resolved that it is necessary or expedient to seek relief, this will ordinarily weigh heavily in favour of granting relief, since the court must accord respect to the balance which the local planning authority has struck between public and private interests. It is, however, ultimately for the court to decide whether the remedy sought is just and proportionate in all the circumstances, and there is force in the observation attributed to Václav Havel, no doubt informed by the dire experience of central Europe: "The Gipsies are a litmus test not of democracy but of civil society" (quoted by McCracken and Jones, counsel for Hertsmere in the fourth appeal, "Article 8 ECHR, Gipsies, and Some Remaining Problems after South Buckinghamshire" [2003] JPL 382, 396, fn 99)*."

43. The balancing exercise which the Court undertook under section 187B in accordance with the principles which their Lordships had laid down would, in Lord Bingham's considered view, mean that it was questionable whether article 8 of the Convention had any bearing on the Court's decision but their Lordships considered the decision of the ECHJ in *Chapman v United Kingdom 33 EHRR 399* and I have also borne it very much in mind. It is to be noted that the ECHJ in Chapman confirmed that article 8 did not give a right to be provided with a home and rejected an 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 constituted a violation of article 8.

44. Lords Steyn and Clyde in their judgments in Porter both stressed that the grant of an injunction, even under section 187B, was an equitable remedy and, therefore, discretionary.

45. Although the Porter case contains the overarching guidance for the approach to a section 187B injunction, the Claimant here relies heavily on 2 practical examples of that guidance in operation.

46. In *Mid Bedfordshire District Council v Brown [2005] 1 WLR 1460*, the Claimant Council, alerted to the fact that unauthorised works were being carried out on land, obtained an interim injunction under section 187B of the Town and Country Planning Act 1990 to restrain its use for residential purposes. In breach of that injunction the defendants moved their caravans onto the land. They subsequently submitted an application for planning

permission for a change of use to a gipsy residential site. The judge granted a final prohibitory order but suspended it pending the determination of the planning application on the ground that the interests of the safety and stability of the young children on the site overrode the objective of safeguarding the environment. The Court of Appeal allowed the council's appeal. In the judgment of the Court, at paras 24-28, Lord Justice Mummery said:

> "*24. On the issue of the justice and proportionality of granting an immediate injunction the judge considered the countervailing factors, which, applying the principles laid down in South Bucks District Council v Porter [2003] 2 AC 558, he thought were against the grant of an immediate injunction: although the council had indicated that the permission was unlikely to be granted, the judge placed little weight on a view which he thought had been expressed without detailed consideration, and there was a possibility that the council would make a different planning decision, the time for making a decision expiring on 27 October 2004; although the judge found that there would be some environmental damage caused by the breach of planning control, it would not be serious and the injunction would not remove it; there were no alternative local official or private sites to which the defendants could move; and there would be hardship if the defendants were required to move, as that would affect the safety and stability of the defendant's small children. He thought that an injunction would not bring the defendant's unlawful activities to an end.*
>
> *" Conclusion*
>
> *"25. In our judgment, the judge's decision to suspend the injunction pending the determination of the planning application did not take proper account of the vital role of the court in upholding the important principle that the orders of the court are meant to be obeyed and not to be ignored with impunity. The order itself indicated to the defendants the correct way in which to challenge the injunction. It contained an express provision giving the defendants liberty to apply, on prior notice, to discharge or modify the order. The proper course for the defendants to take, if they wished to challenge the order, was to apply to the court to discharge or vary it. If that failed, the proper course was to seek to appeal. Instead of even attempting to follow the correct procedure, the defendants decided to press on as originally planned and as if no court order had ever been made. They cocked a snook at the court. They did so in order to steal a march on the council and to achieve the very state of affairs which the order was designed to prevent. No explanation or apology for the breaches of the court order was offered to the judge or to this court.*
>
> *"26. The practical effect of suspending the injunction has been to allow the defendants to change the use of the land and to retain the*

> *benefit of occupation of the land with caravans for residential purposes. This was in defiance of a court order properly served on them and correctly explained to them. In those circumstances there is a real risk that the suspension of the injunction would be perceived as condoning the breach. This would send out the wrong signal, both to others tempted to do the same and to law-abiding members of the public. The message would be that the court is prepared to tolerate contempt of its orders and to permit those who break them to profit from their contempt.*
>
> *"27. The effect of that message would be to diminish respect for court orders, to undermine the authority of the court and to subvert the rule of law. In our judgment, those overarching public interest considerations far outweigh the factors which favour the essential suspension of the injunction so as to allow the defendants to keep their caravans on the land and to continue to reside there in breach of planning control.*"

47. In *Broxbourne Borough Council v Robb and Others [2011] EWCA Civ 1355* the Court of Appeal considered an application to vary an injunction in circumstances where the respondent local authority had obtained a without notice injunction prohibiting the stationing and occupation of residential accommodation, mobile homes or caravans on plots of land within a leisure park. The Appellant later purchased one of the plots in ignorance of the injunction. He and his family permanently occupied the plot in a mobile home structure and caravan. The local authority's planning compliance officer advised him of the injunction and gave him 14 days to comply with it but he maintained that he had nowhere else to go and had become settled. Cranston J refused to vary the Injunction. The Court of Appeal held that Cranston J *([2011] EWHC 1626 QB*) had correctly determined that such an application to vary was governed by the principles set out not only in *Porter* , but also in *Brown*. Therefore, there had to be a consideration of planning issues (including whether the prospects of success were sufficiently strong to provide a factor of real weight weighing the balance in favour of granting a variation of the injunction pending the outcome of the appeal), personal circumstances

(including the implications of Article 8 of the European Convention of Human Rights and the best interests of the children), and the overarching public interest in ensuring that court orders are respected and obeyed.

48. The Court of Appeal held that Cranston J had correctly dealt with personal circumstances noting the judgment of the ECHJ in Chapman. He had also correctly noted, again, from Chapman, that when considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully. If the home was lawfully established this factor would self-evidently be something which would weigh against the legitimacy of requiring the individual to move. Conversely, if the establishment of a home in a particular place was unlawful, the position of the individual objecting to an order to move would be less strong and the court would be slow to grant protection to those who, in conscious defiance of the prohibitions of the law, establish a home on an environmentally protected site. For the court to do otherwise would be to encourage illegal action to the detriment of the protection of the environmental rights of other people in the community. Cranston J. found there were no health issues though he found there was self-evident interference with the home and family life were they to be obliged to move. But on the other side of the balance, in considering proportionality, he put the planning laws and their enforcement. Although the father's flouting of the law could not be visited on the children their interest as a primary consideration did not mean that it could not be outweighed by other factors in the balance so that interference with their Article 8 rights was proportionate. The Court of Appeal noted that Cranston J., having dealt with planning

matters and personal circumstances, decided that to vary the injunction so as to permit the very action that it was designed to prevent would fail to acknowledge the force of the injunction. The Court found that where there was a continuing breach of an existing injunction, and the application is to vary it for the future, so as to allow a person to continue to do the very act which the injunction prohibits, "the need to uphold the authority of the court is of overarching importance in the exercise of the court's discretion".

49. It should be noted that the applications before me are for variations of the original ex parte injunction granted by Davis J. Thus, the factual matrix is similar to that considered by Cranston J. in *Broxbourne*.

50. The evidence before me called by the Defendants was very clearly selective and it is impossible for me to ignore that, as far as the Defendants themselves were concerned, of the 15 Defendants, only 4 were called before me to give evidence. No explanation was given to me as to why others were not called. It is, in my judgment, remarkable that the owners of the land, Freddie Loveridge Snr (to take the spelling of the name in the Particulars of Claim) and Ms Nolan (who Mr. Lintott for the Claimant correctly points out are recorded in the land register title as living elsewhere) were not called, given that there has been evidence from called defendants that they had paid very substantial sums of money to Mr Loveridge and Ms Nolan for plots on the land. As remarkable is the fact that William Connors (the 4th Defendant) who was the person who made the planning application, was not called to give evidence. Neither was Mr Hurley (the 3rd Defendant), who said, according to evidence called by the Claimant, which is not contradicted by Mr Hurley, that

all caravans originally moved on to the land were for storage only and were not fit to live in. The person who accepted he organised the whole operation (which acceptance is supported by other evidence before me), namely Mr Thompson, the 1st Defendant, was also not called. There is evidence from the Claimant (not now contradicted by Mr Thompson) that Mr Thompson said that on the 20th February 2017 that the women and children were "on standby". There are witness statements from Freddie Loveridge Snr, William Connors (the 4th Defendant – unsigned and undated) , Mr Wall and Callum Hurley and while I give them some weight, it is not as much weight as I could give them had they given oral evidence on oath which was tested before me. There is no witness statement from Mr Thompson or Mr Wall.

51. In the absence of any explanation for the failure to call these various witnesses, and while I am always cautious about drawing any conclusions adverse to parties from a failure to call witnesses, the pattern here, I am clear, is of very selective calling of witnesses and a tactical decision not to call witnesses who were potentially damaging to the case for the variation applied for. 11 defendants did not give evidence. There was, therefore, no evidence on oath from them that they were living on the site when the Davis injunction was granted or that, when they moved on to the site, that they were unaware of the injunction or its terms.

OCCUPATION OF AND RESIDENCE ON THE SITE

52. It is clearly an important issue from the point of view of whether this is a case which resembles *Broxbourne* or *Brown* and whether I should vary an injunction that was, on both parties' cases, intended to preserve the status quo,

as to whether, when the injunction was originally granted by Davis J. any of the defendants or their families were living on the land.

53. It is a reasonable inference from paragraph 4 of the order made by Davis J. on the 21st February 2017 that he acted on the basis that there was no one in residence on the site. The notice of application for the ex parte injunction is not in the trial bundle and there is no reference to any statement or evidence that was before His Lordship at that hearing which was simply attended by counsel for the Claimant. It would have been incumbent on the Claimant, through their counsel, to notify His Lordship had they believed there was anyone resident on the site. It can be inferred from the same paragraph 4 that His Lordship was told that there were one or more caravans present on the site.

54. When the matter came before Nicol J. on 13th March 2017 he had evidence from Callum Hurley and from William Connors, the 4th Defendant. Mr Hurley told his Lordship that he lived on the site and used a caravan or mobile home then on the site as his home. He did not tell his Lordship that he lived there with any family of his. Mr William Connors told the Judge that he had brought his own caravan on to the site on 17th February 2017. He told him that it was his home and that he was one of 4 people on the site called William Connors, one of which was his son. In a careful judgment, Nicol J. did not say that he had been told by Mr Connors that his family had been living with him on the site. Mr Hurley told him that he was illiterate. He said that Council representatives sometimes came to the site and told those on the site that they needed to take a paper. However, he said he had been brought up not to take

papers when he did not know what they said. That was described by Nicol J as showing "a cavalier approach to court proceedings and potential obligations to the court". Nicol J. did not find that the alternative service ordered by Davis J. had been exactly complied with by the Claimant which is why he did not order committal. That is a very different matter from a finding that they did not know of the terms of the injunction. He was not called upon to determine if those 2 defendants were living on the site as at the 13th March. Neither of those defendants have given evidence before me.

55. Freddie Loveridge Jnr. gave evidence on oath to me. I was told he could not read or write but during the course of his evidence he also told me that he could read numbers and was numerate. His statement is at C93 and in it he says that he moved on to the land on either the 15th or 16th February 2017. He refers to photographs exhibit FL1 which he says show the site from the moment they moved on. The photographs do not bear dates as those produced by the Claimant do. The next sentence in his statement reads "There were 13 caravans on the land and there is a caravan on my plot and my father's plot." It is not clear from his statement that he meant by that there were 13 caravans on the site from the 15th or 16th of February but that was clarified in supplementary questions asked by Mr Masters who asked him how many caravans were on the land when he moved on. He said he thought 18 and Mr Masters then pointed out to him that in his statement he had said 13. It was, therefore, clear that he meant that from the 15th or 16th February there had been 18 caravans on the site. Those caravans are not shown in the photographs he produces and which are exhibited to his statement nor in the photographs exhibited to Mr Munday's statements which photographs were

taken over a number of days beginning on the 20th February. Mr Munday's diagram at B19 which represents the positions of caravans on the 20th February, shows 9 caravans marked.

56. C 99 (the second of FL1) shows Mr Loveridge sitting in one of 3 white plastic chairs in front of a large touring caravan with a distinctive dragon like design to the left of the door to the caravan. The caravan is sitting on what appears to be rough hardcore. There appears to be a cable running from one end of the caravan to what looks like a portable red generator which is near to another caravan in the background of the photo. Photo C100 shows another caravan, also apparently stationed on hardcore with an estate car in front of it and a flat back lorry and a van and a trailer nearby. Beyond a wooden fence can be seen the top of another caravan. The land around those vehicles is either flattened out hard core or has some finer material spread over it. There is no person visible in the 3rd photograph.

57. In supplementary questions by Mr Masters he said that when he arrived in February he arrived with his family in the one caravan that he owned. He said he had given his father the money for his plot. His father, of course, was one of the 2 purchasers of the entire land.

58. He said that when they first started developing the site his caravan and family were in the Reading motorway service but in answer to Mr Master's next question, namely, "where were they when work was done in the day?" he said that his wife and child were on the site and that from the moment work started he considered the site to be his home. There were, however, after February, a number of periods, from a couple of weeks up to a month, when he, his family

and his caravan were away from the site with no caravan having been left on his plot.

59. In cross examination he said he knew Mr Thompson, the first defendant. Mr Lintott then put to him Mr Munday's conversation with Mr Thompson (see B4 and 5) on the 20th February in which Mr Munday asked Mr Thompson "are there any ladies, children or families living on site?" to which the response was "yeah, they're not here because of all the machines on site, but they're on standby." He then altered his original evidence to say that when they "all" moved in his wife and children went in the car to the shops and in the night time stayed on the site. He agreed Mr Thompson was organising the work and directing traffic on the site. He maintained that although Mr Thompson knew him he could not have been aware that Mr Loveridge's family were on the site.

60. He confirmed that his plot was, he said, plot number 3 but he then was asked to look at Mr Munday's diagram of the layout of the site on 20/2/17 at B19, ACM 1. That diagram was one of a series of diagrams produced as a compendious exhibit ACM1 to Mr Munday's witness statement of the 16th May 2017. The diagrams were prepared (it appears from paragraph 18 of that statement) from his examining photographs and videos taken from police body worn video cameras. He was not cross examined by Mr Masters as to the accuracy of those sketch plans and no one has asked me to watch the videos and so I take those sketch plans to be accurate. They are diagrams which are dated and which show different numbers of caravans from day to day.

61. In any event, Mr Lintott put to Mr Loveridge that on the Munday diagram for 20/2/17 there was no caravan on plot 3, marked as a Loveridge plot, next to another Loveridge plot on which there was a caravan marked. Indeed, Mr Lintott put to him that there were no caravans of any kind on that plot up to March. Mr Loveridge then said his caravan was on plot 9 in the top left corner of the diagram. He agreed that that was not where he was living at the date of the TRAIN report (see pages C109 and 110 for confirmation of that) but was where William Connors was living. Mr Lintott put to him part of Mr Munday's statement at B 6 in which he describes on plot 9 on his first visit to the site on 20th February an unlevelled caravan which was insecure and rocked easily and with no generator, water container or gas canisters. He made no comment. Mr Lintott also put to him what Callum Hurley had told Mr Munday (see page B5) namely, that the condition of all the caravans on site that day was irrelevant as they were all storage caravans and would never be used as living accommodation. Mr Loveridge agreed with Mr Lintott that he did not suggest that anyone would live in a caravan such as that described by Mr Munday. Mr Lintott then repeated to him that the caravan described was on plot 9, the plot on which he had said he had placed his caravan, whereupon Mr Loveridge said that he thought Mr Lintott had meant the plot on which he was now living. He maintained that despite the diagram Mr Munday had drawn on 20th February which showed no caravan on plot 3 he had had his caravan on plot 3.

62. Mr Lintott also put to Mr Loveridge what Mr Munday saw on the police body worn video taken on the evening of 21st February when he nailed a copy of the injunction to a fence. He described the Travellers as "getting ready to go

home" and that there were no lights on the site and the site conditions were atrocious with dangerous objects protruding from the very uneven ground. Mr Loveridge said that "we never left the site that day so that there were no people going home". Again there has been no suggestion that Mr Munday's description of what was shown on the video was inaccurate. To my question he said (as is described by Mr Munday as being heard on the video) he had not heard an official looking man shouting out about a court order.

63. Mr Lintott also put to Mr Loveridge the contents of Mr Munday's statement at B8 paragraph 20 in which he states that on 25th February the body worn police video details a visit by him and the police to the site when the police were intent on obtaining the details of everyone on site. Mr Munday says that the police were satisfied there was no one on site apart from 3 Romanians who were working for the Travellers and whose names were taken by the police. Despite that evidence he maintained that he was on site on that day and that the police officers must be mistaken.

64. He was then shown Mr Munday's site plan for 25th February (B21) which again showed no caravan on plot 3. He said the plan must be in error but in the same breath said that they had to move caravans around while they were levelling the ground. It was put to him that despite Mr Munday's frequent visits to the site, Mr Munday had never seen him – Mr Loveridge said he had seen Mr Munday.

65. Later in his evidence he said he had moved his caravan from plot 3 to plot 9. In re-examination, in answer to leading questions put to him by Mr Masters he said he had been on the site during all the day on the 25th February and that his

wife and child would join him at night. There might have been times during the day when he went to the toilet or went to get food.

66. Mr Loveridge was, I am afraid, in my judgment, a very inconsistent and unsatisfactory witness.

67. Mr John Doran also gave evidence on oath. He, too, could neither read nor write and his statement was summarised for him at my suggestion before he was asked supplementary questions. He clarified his paragraph 2 (C13) by stating that he moved on to the land the same day as the work started, namely, the 17th February. In his statement he is careful to stress that that was before the injunction was brought to the site. He said that when work started his caravan was kept in the lane leading to the land because there was not much room due to the work on the land but that it was moved on to the land as soon as it was tidy enough.

68. That seems to me to reflect the realities of what was happening in the early days of the unauthorised development of the site, when heavy earth moving equipment and lorries were levelling the land and spreading rough hard core followed by a finer top mix.

69. Mr Doran said that caravans were getting moved around a lot because work was necessary in particular places. It must be obvious that caravans which were the homes of the Travellers were at real danger of substantial damage as a result of the earthworks.

70. Despite his saying that his caravan was initially kept in the lane, in questions by Mr Masters supplementing his witness statement (and Mr Doran had been

in court while earlier evidence had been given) he said that caravans of plot owners were all on the land. He intended that his family would live on plot 10 and he said that his family were living with him at night and that he himself was living on the site during the period of working.

71. Inconsistently with his earlier evidence he then said that he knew work started on 16th February and he was asked by Mr Masters whether between that date and the 20th February when the council visited he had travelled away from the site (another of several leading questions asked by Mr Masters). He said yes (unsurprisingly) but said he was not sure of the dates but he had gone to the mission and attended church quite a lot and took his van and family. I am afraid I regarded that evidence as quite obviously tailored to avoid what Mr Doran knew was the evidence of an absence of lived in caravans on the site when Mr Munday and police officers attended the site. Given that it is very obvious that all the defendants who made statements realised the importance of "living" on the land as early as possible (and I have no doubt, having read and heard the defendants' evidence that they were all "forensically aware") it is striking that that important qualification to his evidence was not contained in his witness statement. Adding to his list of leading questions, Mr Masters then asked "Is it possible that council officials were there and your caravan was not?" to which the quite worthless answer "Yes" was inevitably given.

72. It is relevant to the overall circumstances and the article 8 considerations that Mr Doran said that between February and September 2017 he often ("quite a lot") travelled away for work from the site and estimated he was 4 to 5 months away.

73. He said that he had paid Alex Thompson for his plot but would not tell me how much he had paid. While I appreciate that most of the defendants are illiterate and that written documentation may not be a traditional part of the Gypsy/Traveller culture , many are numerate and none of those who gave evidence to me struck me as naïve. Yet there is no supportive evidence and certainly no written evidence of payments for the plots, not even in the form of confirmatory evidence of those who received money for the plots. It is, therefore, very difficult for me to accept the oral evidence of the defendants who gave evidence to me of having paid substantial sums for their plots which they would be unable to find again if they were unable to develop this site as a Gypsy/Traveller site.

74. In cross examination Mr Lintott put to Mr Doran Mr Munday's evidence (B12 – para 28) of his encounter with Mr Doran in April, when Mr Doran was with the 3rd Defendant Mr Hurley, when it appeared to Mr Munday that Mr Doran had only just moved on to the site. Although Mr Munday said that Mr Doran claimed he had been living on the site since 17th February, Mr Munday had never seen his plot top-dressed before nor his distinctive sign-written van. While speaking to Mr Doran, they were approached by William Connors, the 4th Defendant. Mr Munday asked him "Who are you and why have I not seen you on site before?" to which Mr Connors replied: "I'm the elusive Mr William Connor who you should know about Mr Munday as I'm behind all this. I've always been out to dinner whenever you've come calling." Mr Munday asked him when he started living on site and he replied: "The 17th February" at which both Mr Connors and Mr John Doran laughed out loud. Mr. Doran maintained that despite that evidence, he had indeed been on the

site since the 17th February. Mr William Connors has not been called to give evidence nor has Mr Hurley. Neither was Mr Munday specifically challenged by Mr Masters about that evidence. I accept Mr Munday's evidence about that conversation. It wholly undermines Mr Doran's inconsistent and unsatisfactory evidence about living on the site from the 17th February.

75. Indeed, Mr Doran went further in his evidence about being on the site since the 17th February and maintained that Mr Munday had come to the site on that day. That is highly unlikely to be correct as Mr Munday only received information from the police about the occupation of the land upon his coming on duty on Monday 20th February 2017 (see his second affidavit at B222). Mr Doran could not recall what Mr Munday had said on that first day but he said he could not be mistaken as he was very good with faces. Moreover he said that Mr Munday had come by himself and not with the police and he thought he might have had a dog with him.

76. That improbable evidence was supported by Jimmy Loveridge Jnr when he came to give evidence. He said he remembered Mr Munday coming to the site on the 17th February "as plain as day". It was put to him that that took place before the police had even notified the council that the Gypsies/Travellers had moved on to the site and Mr Lintott asked him if he could be mistaken about the date and he said he was sure of the date and in re-examination he added that the dog with Mr Munday was a cocker spaniel. I accept the evidence later given by Mr Munday that he does not even own a dog.

77. This was, I am afraid, evidence of collusion between Mr Loveridge Jr and Mr Doran. It undermines the evidence of both of them.

78. Mr Loveridge Jnr also gave evidence that he had moved to live on the site from the 17th February. His witness statement is at C10 and in that he says his plot is number 8 and pointed to the top right hand corner of Mr. Munday's diagram of the 20th February 2017 which indicates that there was a caravan on that plot on that day. Mr Loveridge's second paragraph dealing with his moving on to the site "before the injunction was brought to the site" is in identical terms to that in Mr John Doran's witness statement.

79. He said that when he travelled after February 2017 he would take his family, his caravan and all his possessions and there would be nothing left on the site. He pointed to photo B 355 taken on the 24th February 2017 and said that the 2 caravans in the distance just left of centre were his and were 2 touring caravans though he had now exchanged those for one larger caravan. He also identified his caravans in B 376, a close up of the 2 caravans, one being a Hobby make. Somewhat inconsistently with what he initially told me he told Mr Masters in answer to supplementary questions that when he travelled for work he left the Hobby caravan on the site. He said that when there was work going on on the site his wife could not come on to the site because there was so much machinery and one of his caravans was stationed at Bagshot and his wife would stay in that. As it is clear that there was still work going on at the site on the 24th February it is not clear to me why there are 2 of what he says are his caravans on the plot.

80. Mr Lintott put to Mr Loveridge the evidence of Mr Munday about the caravans on site on the 20th February (see B5 paragraph 16). Mr Munday said in his main and most recent statement (much of which had been derived not

only from his memory of visits to the site but from footage from police body worn cameras and photographs which are dated) that the 9 or so caravans on the site which he said had been dotted around to simulate the planning application were past their sell by date and usefulness as living accommodation. Mr Munday was cross examined at length by Mr Masters about the apparent condition of the caravans in the photographs. It was not obvious from the photographs that these were, effectively, derelict caravans, though, equally, there is no obvious sign from the photographs that they were being lived in. Mr Munday, who in supplementary questions from Mr Lintott confirmed that, despite the evidence from the defendants which he had heard, he still maintained there was no one living on the site before the 27th February, was adamant that the photographs showed dilapidated caravans, though he accepted that some appeared to have their struts lowered. He pointed out some broken windows and the absence of life around the caravans. He also pointed out that he had looked inside some of the caravans and he also pointed out that there was sharp rubble and hard core on the site which was, he said, a construction site. Mr Masters put to him that his evidence was incredible given the photographs but I am afraid I do not consider that the photographs in themselves disprove Mr Munday's evidence about the lack of any persons actually living on the site.

81. I do, however, accept that, as Mr Masters correctly put to Mr Munday in cross examination, in his first witness statement, at B91, he said in paragraph 7, having earlier named Mr Thompson, Mr Callum Hurley (who he refers to as Mr Callum) and Mr Sampson Black (none of whom have given evidence to me):

"At 13.59 hrs on the 22nd February 2017, I returned to site to personally serve the sealed order on the above named defendants *who are living on the site*."(my italics)

82. Mr Munday correctly said that the purpose of this first witness statement, made on 28th February 2017, was to prove service on the defendants. He floundered when attempting to explain what he meant, saying that it was an unfortunate choice of words if it was now misconstrued and that the defendants were "on the site but not in residence on the site in any caravans on any plot". Indeed he reiterated that they could not have been as the caravans were dilapidated and not levelled and there was no outward sign of residential use of the caravans, there being no generators or washing lines or gas bottles and he stressed that the land was a construction site. Rather stubbornly, he would not admit that the use of the words "living on the site" were, in my judgment, a simple error on his part. That stubbornness does not, however, cause me to doubt his overall credibility and his detailed description of the site from his first visit on the 20th February to the 27th February, contained in his main statement, which is unnecessary for me to detail at any further length, is supported by the photographs and was in large part taken from watching police videos. He admitted to Mr Masters that he had not been on the site every hour of the day nor had he been there at night.

83. More significant seems to me what Mr Munday says he was told on the 20th February (B5) by the 3rd Defendant Mr Hurley, namely, "that the condition of all these caravans are irrelevant as they are all storage caravans and would never be used as living accommodation".

84. Mr Lintott also put to Mr Loveridge the passage at B8, taken from the watching of police video, where, on 25th February, the Romanian workers tell the police that, they were the only persons on site. Mr Loveridge said that he was probably out somewhere at that time. I am afraid that I considered, watching him give evidence, that that was not a truthful statement. Indeed when pressed about other dates before the 15th March when 2 caravans were recorded on his plot he said that he was certainly staying on site then but must have been off site working, a convenient excuse common to the defendants. I have already mentioned that he joined in Mr Doran's patently incorrect evidence about seeing Mr Munday on site with his dog on the 16th or 17th February.

85. I am afraid that the witness statements of those defendants who did not give evidence do not persuade me that the weight of evidence in Mr Munday's main statement, the reported comments of defendants (not called) which tell against anyone living on the site between the 17th February and the 27th February, the photographs, the descriptions of conditions on site which are taken from unchallenged observations of contemporaneous police body worn video, is unreliable and I prefer the evidence of Mr Munday to that of the defendants, both called and not called.

86. I accept Mr Lintott's submission that the reliable and substantial evidence called by the Claimant drives me to the conclusion that none of the Defendants were living on the site when the injunction was obtained by the Claimant from Davis J. Mr Lintott is right to stress what Mr Hurley (not called) is recorded

on bodycam footage on 22nd February (B7 para 18) as saying when the injunction is read out to him and he is told what he can and cannot do:

"*My caravan has been damaged by a machine. I can't be staying there. There's all gas pipes and mains. I'm going to be taking that off and putting another one on there*."

87. The conditions on what was in the early days of a planned unlawful occupation of the site by a group of like-minded Gypsies/Travellers were such that I am unable to believe they would risk the caravans which they actually lived in, let alone their families, on the site. There was no lighting, there was heavy earth moving equipment, the hard core was in the process of being levelled and contained dangerous objects. I accept Mr Lintott's submission that the Defendants (both called and uncalled) plainly appreciated the importance of being able to say that they were living on the site at the time when the injunction was obtained. They were, I judge, particularly in the light of the most obvious fact that the whole operation was carefully planned to catch the planning authority by surprise, forensically aware.

THE PLANNING MERITS

88. While I am not required, nor even entitled to reach my own view of the planning merits of the case I am entitled to form a view as to whether the prospects of success in an application and in an appeal from any refusal are sufficiently strong to provide a factor of real weight weighing the balance in favour of granting a variation of the injunction pending the outcome of any appeal. I must also consider the need to enforce planning control in the general

interest and the planning history of the site, as well as the degree and flagrancy of the breach of planning control.

89. I propose to consider the application for planning permission as it stands although it is relevant for me to consider that there may be amendments to that application and further information may be put before the planning authority.

90. 2 planning experts gave evidence before me, namely Mr Woods, for the Defendants and Mr. Jupp for the Claimant.

91. It is common ground between the experts that the Claimant is unable to demonstrate a 5 year supply of Gypsy and Traveller sites and I accept that it is likely to be some time until the sites allocated within the local plan become available. Thus Mr Jupp accepts that that inability and the lack of alternative sites add significant weight in favour of the proposed development. He also accepts that the provision of a settled base from which some of the defendants and their families could access education and health services adds further weight in favour of the proposal. Each of the defendants who gave evidence to me stressed those factors.

92. I accept the evidence of Mr Jupp that the local plan is a recently adopted one and should be afforded full weight. I also accept his evidence that there is substantial adverse impact on the natural environment of the development. Neither is the site located within a reasonable distance of local services and there is no evidence that there would be successful integration between the travelling and settled communities. There has been a substantial level of objection to the application. On those bases alone there is a conflict with policy CN 5 of the local plan. Even though the site is near to a sewage works

(though it is screened from those works by a substantial copse of trees) and adjoins an industrial site, photographs in the bundle of the site before the development make it clear that the proposals as they stand are not "sympathetic to the character and visual quality of the area concerned; respect enhance and not be detrimental to the character of visual amenity of the landscape likely to be affected, paying particular regard to various criteria." I accept Mr Jupp's view that there is, therefore, a conflict with policy EM1 of the local plan. His views are supported by the planning statement of Nicola Williams in the trial bundle.

93. The current site boundaries in the plan accompanying the planning application does indeed encroach on a SSSI. Mr Woods, for the Defendants, made light of this while accepting that, while the majority of the site lay outside the SSSI there was some encroachment to the North East of the site. He contended that an amended plan reducing the boundaries of the site and allowing a 15 m buffer zone between the site and the SSSI would avoid this being a problem. However, this would mean that the entire plot layout would have to be changed because plots in that corner of the site would, effectively, disappear. Having regard to the evidence of the defendants who said they had paid substantial amounts of money for "their" plots, I cannot simply assume that this would be a simple matter. While Mr Woods said, with confidence "such a scheme can be devised", none had been devised prior to the hearing. Mr Masters, for the defendants, promised a plan during Mr Woods' evidence within 7 days. No such plan has yet been submitted despite Mr Masters' submission to the contrary in his written submission.

94. Thus, on the basis of the objection by Natural England to the scheme on the grounds of the adverse impact on the Pamber Forest and Silchester Common SSSI there is a very strong likelihood that planning permission would not be granted.

95. There is, moreover, an objection from the Hampshire and Isle of Wight Wildlife Trust not only because of the encroachment on the SSSI but because of the destroyed part of the SSSI. No Tree Preservation Orders were in force in relation to several mature trees that were felled within the boundaries of the SSSI in order to level the site. Had there been proper notice of the intention to develop the site it is very possible that steps to impose such orders would have been taken to protect those trees. This is an example of the defendants deliberately bypassing proper procedures. The retrospective application as submitted has also, according to the Natural England objection, already destroyed supporting habitat of the interest features for which the SSSI has been notified and would prevent the future restoration of the affected area leading to permanent loss.

96. The aerial photograph at B573 shows the extent of woodland removed as a result of the site works. There is no Forestry Commission objection and they have merely referred to their standing advice. However, Mr Jupp's evidence that a felling licence is required from the Commission when more than 5 cubic metres of trees are felled in a calendar quarter and calculates that to comply with that no more than 8 trees could be down. The aerial photo strongly suggests that more have been felled.

97. Although the site had, by the time of the hearing, been taken out of a flood zone area, there was factual evidence from a local resident, Mr Mahaffey, that this was an area of land, water meadows, that historically, regularly flooded. It is therefore likely that the flooding aspect will have to be reconsidered. Mr Mahaffey also provided photographs of the land before the unauthorised development. Even accepting the proximity of the factory and the sewage works, it is very strongly arguable that the development would cause, as Mr Jupp contends, "considerable harm to the character and appearance of the countryside" contrary to paragraph 109 of the National Planning Policy Framework. This is, I accept, likely to be accorded substantial weight.

98. In making my assessment of whether I should accord the prospect of the defendants successfully obtaining retrospective planning permission real weight, I cannot ignore the fact that this application is very substantially incomplete. I accept Mr Jupp's evidence that the Council has contacted Mr Woods, the planning agent for the Defendants (changed since the application was initially made) requesting a considerable number of important details missing from the application, namely:

i) A planning statement;

ii) A drainage assessment (particularly important having regard to the site's close proximity to the SSSI and its significant separation from the nearest settlement);

iii) A statement of personal circumstances – this is remarkable for its absence. Much criticism has been made at the hearing and in submissions of the limited assessment by the Council of the personal

circumstances of the Defendants and their families. I do not consider that to be justified criticism at all. I have found that when the Council applied for the injunction and when they were attempting to serve it on those on site, the defendants and their families were not living on the site. I am unconvinced that since then the defendants, other Gypsies/Travellers, and, in particular, their families, have lived for any significant time on the site. I am clear that they ensured that they were on site while the authors of the TRAIN personal circumstances report were compiling that report but the evidence from the defendants who were called before me strongly suggested to me that much of the time from February to October 2017 was spent travelling to fairs, to work or to the missions attended by the defendants. As the personal circumstances of the defendants is strongly argued before me as an important factor in my decision it appears to me not to sit well with that argument that no statement of personal circumstances accompanied the application;

iv) Bio-diversity assessment;

v) Landscape and visual impact assessment;

vi) Odour assessment – this is clearly important given the proximity of the site to the sewage works though I accept Mr Woods' evidence that Gypsy sites have, in other parts of England and Wales, often been placed near to sewage works; the evidence of odour given before me is patchy and inconsistent.

vii) Noise assessment;

viii) Highways statement.

99. On the highways and access issue, Mr Woods stressed in his evidence that it was important that there had been no highways objection. Factual, though not expert, evidence was given by Mr Mahaffey in his detailed statement of some analysis of accidents at the junction of the access lane to the site with the nearby highway. There is evidence of a blind bend in the vicinity of the access.

100. Mr Woods was correct in saying that no highways objection had been received by the authority but that had changed by the time Mr Jupp gave evidence and he was able to update me by telling me (and I accept) that a highways objection had been communicated saying that highways were unable to conclude that the development could be successfully integrated into existing movement networks, nor that safe, suitable and convenient access could be provided, nor that the development would not result in unacceptable or severe impacts on highway safety. Mr Woods contended it was unnecessary expense to produce a highways statement when there was no objection. I conclude that one will unquestionably now be necessary. The objection appears to me to support Mr Mahaffey's and local residents concerns about the access.

101. There has also, since Mr Woods gave evidence been a rights of way objection, an objection from the Woodland Trust (again related to development within the buffer zone to ancient woodland) and from Hampshire flood and water management in relation to the impact caused by surface water. There is no assessment of the latter in the application despite the fact that the development

was in, I accept from Mr Mahaffey, ancient water meadows, and now presents a substantial area of impermeable surface.

102. I was satisfied on the evidence before me that the site is too far away from the Aldermaston Atomic Weapons Establishment ("AWE") for the risk of an airborne radiation leak to be an objection to planning permission that would carry substantial weight but in his oral evidence to me Mr Mahaffey gave evidence of the fact that, according to him, the AWE had been fined for radiation leaks via sewage outfall to the sewage works some 4 times in the last 20 years. AWE has a licence to discharge limited amounts of contaminated material into the Silchester stream which runs directly adjacent to the site and between it and the sewage works and Mr Mahaffey suggested that the AWE had been subjected to special safety measures in relation to that specific risk for the last 5 years.

103. Mr Mahaffey, a parish councillor, was giving evidence on his own behalf and on behalf of residents and was not part of the Claimant team. Thus his evidence about the radiation risk (not in his statement) had not been put to or dealt with by Mr Woods. Nor, indeed had the updated material given in evidence to me by Mr Jupp, including the evidence of recent objections to the development. I therefore gave permission, with a time scale which was discussed with both sides at the end of the hearing, for Mr Woods to produce a written response and I timetabled written submissions from counsel to reflect that new material had to be produced. The timetable for the new material was missed. I extended it. The extension was missed. I was not prepared to extend the timetable further and I have not, therefore, had any response from

Mr Woods to this latest material which, in my judgment, significantly weakens the argument by Mr Woods that retrospective planning permission was likely to be granted.

104. The recently adopted Development Plan (the Basingstoke and Deane Local Plan) does have a policy that is directly relevant to this development of a Gypsy/Traveller site, that is, policy CN5. That policy is set out in full at B522 and 523 in Mr Jupp's statement. Mr Jupp has assessed this unauthorised development in accordance with the criteria in the plan at paragraph 70 of his report. He finds clear and substantial conflict with policy CN5. As far as (b), (c), and (g) are concerned it seems to me unarguable on the facts that he is incorrect in his conclusions and in the absence of a highways statement, I cannot be satisfied that he is incorrect in relation to access.

105. Mr Jupp also considered paragraph 55 of the Framework, set out at his paragraph 72 (though the parties helpfully provided me with an authorities bundle which included both the Framework document and the 2015 Planning Policy for Traveller Sites ("PPTS"). Both he and Nicola Williams agree that this site, which is clearly, I find, situated in open countryside away from any settlement, is not located in a sustainable location. Mr Woods accepted that Gypsy sites are harder to establish in the green belt though he pointed out that some sites had been obtained. He accepted in cross examination that the nearest bus stop was more than 500 m away from the site and that the nearest primary school was not closer than 1.5 km from the site. However his evidence was that these factors were not conclusive. That may be but they are factors which support the conclusions of Mr Jupp and Miss Williams and I

prefer their evidence about the sustainability of the location of the site. As Mr Jupp pointed out, the Framework document does not define what is meant by isolated but the local plan does and when looking at that this site falls within that definition.

106. It is to be noted that recent guidance by the Department for Communities and Local Government (their letter of 31/8/15) introduces a planning policy, applicable to this application for planning permission, making intentional unauthorised development a material consideration to be weighed in the determination of planning applications and appeals. That is very obviously applicable here.

107. Mr Jupp also considers the application's compatibility with the PPTS as recently amended. I accept Mr Woods' arguments that the lack of provision by this authority of local provision of Gypsy/Traveller sites and the length of time that that lack has existed, and the lack of alternative accommodation are factors of significant material weight here. However, paragraph 25 of the PPTS, which relates to the siting of Traveller site development in open countryside is very obviously, in the view of Mr Jupp and Miss Williams, which view I accept and which I consider on the evidence to be very clearly established, not met by this application nor, indeed, is paragraph 26 of the PPTS.

108. I do not accept Mr Woods' argument that paragraph 14 of the Framework is engaged so as to establish a presumption in favour of sustainable development. This is not a case where the Development Plan is out of date nor do I accept that in a recent appeal the Council made any concession that the local plan was

out of date. Even if they had that would not, in my judgment, alter my view as to the engagement of paragraph 14. In the Dixon Road appeal (see paragraph 86 of Mr Jupp's statement) the council confirmed that there were sites available to accommodate additional pitches if further assessments indicate a need for a greater number of pitches and in the light of that evidence the inspector concluded there was not an ongoing failure of policy in relation to the provision of Gypsy and Traveller sites. However, the position seems to me to be put beyond doubt by the recent Parliamentary written statement of Baroness Williams of Trafford following the judgment in *Wenman v Secretary of State* that those persons who fall within the definition of "Traveller" under the PPTS cannot rely on the lack of a 5 year supply of deliverable housing sites under the Framework to show that relevant policies for the supply of housing are not up to date.

109. In any event, as it stands, this application is within an SSSI.

110. I do not consider it is necessary (or desirable given the current length of this judgment) for me to set out the planning issues between the parties in any greater detail. I found the evidence of Mr Jupp to be careful, considered and fair. For those reasons and for the reasons I have outlined above dealing with specific planning points I accept his evidence, supported as it is by Nicola Williams's statement. I do not consider that it is probable that planning permission will be granted for this site or that an appeal against a refusal will be successful and I do not consider I should attribute substantial weight to the defendants' prospects of successfully obtaining retrospective planning permission.

PERSONAL CIRCUMSTANCES OF THE DEFENDANTS AND THEIR FAMILIES

111. I have available to me the report of the 9th October 2017, by the Traveller and Romani Advice and Information Network ("TRAIN") into the best interest of the children living at the Silchester Site and I heard evidence from one of the authors of that report, Dr Allen.

112. While I accept that there is incontrovertible evidence that Gypsies and Travellers are, in comparison with the general population, more likely to suffer bad health, I note that the authors of the report found that each child that they found living on the site were in good health and up to date with vaccinations save where one family had made an "informed" decision not to take up the MMR.

113. Dr Allen reports that one of the residents, Mary Rooney, who was 17 at the date of the report, was 6 months pregnant and suffering from the stress of worrying about the planning dispute and the threat of eviction. There is no medical evidence to confirm any adverse effects, however.

114. There is no doubt that if the defendants and the other residents of the site were to be permitted to continue to live there, the children would be able to access a local surgery and local dentists and opticians. They would also have access to fresh running water.

115. While concern was noted in the report that the residents were not allowed to take rubbish to the local household waste and recycling facilities about 7 miles away from the site and so were burning refuse on site, which was a hazard to

the residents, particularly to the children, I accept the evidence of Mr Mahaffey that the residents of the site were under a mistaken apprehension as to those facilities and would be able to use them.

116. As far as education is concerned there is a very striking attainment gap between Gypsy and Traveller children and other white children. I am afraid that that was illustrated graphically by the illiteracy of 3 of the defendants who gave evidence to me and who, together with Reuben Murphy, confirmed to me that they wanted their children to have a decent education. This deficit is clearly a critical obstacle in the way of children of Gypsies and Travellers making the most of their lives and the defendants are not unaware of the fact that their culture, which is, of course, very important to them, is handicapping their children.

117. As Dr Allen explained to me, registration at a local school and continued contact with Traveller liaison staff can mitigate the problems inherent in the Traveller culture. Their children are already being supported by the local Ethnic Minority and Traveller Achievement Service who are working well with all families.

118. All these families have to cope with continued hostility based on their ethnicity and culture. The TRAIN report speaks eloquently of the fear of children of living on the roadside and the threat of eviction. Their parents genuinely wish to protect their children from those fears and from the reality of that life. Being constantly moved on lowers these children's self-esteem. It causes a loss of contact with members of their extended families. They do not have a safe place to play – that means their development is as stunted as by a

lack of continuous education. The children told Mr Allen and his colleague that they wanted a play area and above all, they wanted a trampoline.

119. The defendants who gave evidence to me and other members of this community are strongly religious and belong to an active evangelical Christian community. Attending church and their missions is very important to them. Ironically, travelling to the various missions is a factor which contributes to the disturbance of their settled living patterns.

120. A settled site would encourage the development of community and family bonds.

121. The current site, in its semi-developed state means that the children and their clothes become dirty very quickly

122. There is an undoubted deficit nationally and locally in appropriate sites. The site at Silchester is in an incomplete state and there are environmental hazards for the children there. Just about all these families will have had experience of hate crime.

123. The authors of the TRAIN report do not support the eviction of the families that they speak about in their report and see eviction as a further breach of their rights and a threat to the welfare of the children and families living on the site

124. Dr Allen was unable to give evidence (save hearsay evidence) as to the conditions that existed before October 2017. I accept his evidence that to conduct a fully welfare enquiry, the Council would have had to have spent the time and resources that he and his colleague did. However, I am entirely

satisfied that that would have been futile before the injunction was granted as no one was living on the site and I have found that there was little continuous residence on the site between February and October because of the conditions on the site and because the defendants were moving around the country working and attending fairs and missions. Before enforcement action could be taken, it would be essential for the Council to consider the interests of the children and the human rights of the families on the site and the TRAIN report is an excellent resource for the start of such consideration.

125. Dr Allen told me and it was amply confirmed by the evidence of each of the defendants who gave evidence, that the families on the site are determined to take responsibility to break the cycle of deprivation that they have been trapped in and ensure that their children have better opportunities than they have had. It will, I judge, involve them in difficult choices between their loyalty to their Traveller or Romani culture and their obligations to their families.

126. I should note that it was not part of Dr Allen's instructions, as was established in cross examination, to establish in relation to any of the families he interviewed and described when they moved on to the site.

127. Each of the defendants stressed, and I accept, that the main object of their purchasing plots on this site and seeking planning permission was to ensure a stable base for their children so that the children's health and education could be furthered. None of them were, however, prepared to give up the travelling life and each expected to spend significant periods travelling away from the site.

128. Mr Reuben Murphy moved on to the land later than other defendants, on about, according to his lately served statement, the 28th September 2017. He moved on to the plot which had been occupied and, he says, owned, by Callum Hurley being informed by him that there was an injunction in place but that it only applied to Mr Hurley and other named people and did not affect Mr Murphy or his family. He was an articulate witness, who said he had had some limited schooling and he was literate. He wanted both his wife and his children to receive decent education and although he intended to keep travelling he would, as others also said, keep Silchester as his base and keep in touch with the Gypsy liaison officer so that schools could be arranged in other areas and some home schooling supplied. He wanted a gate installed at the entrance to the site to give extra security. He said he owned a plot having made an oral agreement with Mr Hurley. He was shown by Mr Lintott photo A11 and asked him if he had seen copies of the injunction around the site but he denied he had though he was aware that copies of the injunction were posted on fence panels around the site. I am afraid I do not accept that evidence. Although he may have come to the site late, he conceded in evidence that he had known of the site since, to use his words "day dot" and knew when the site was purchased, who went on to it and what things first happened on the site. He was, I am satisfied, aware of the plans to steal a march on the planning authority. He had solicitors, he accepted. He was part of a trade association. He said his solicitors were not the sort who dealt with "very minor disputes" and he understood they "only deal with one part of the law". This was not very frank evidence and I am sure he knew very well the

extent of the injunction when he moved on. He and his family have only been living on the site since late September 2017.

129. Although I have the TRAIN report, there is no doubt that there have, even in the period of less than a year since the site was first occupied, been a series of changes of those who have occupied the site. It is very difficult to track those changes. Only 4 of the defendants have given evidence, which weakens the weight that can be given to personal circumstances. I have already said that I am not satisfied with the evidence of the payments allegedly made for the plots. It follows that I cannot, on a balance of probabilities, accept that, in the event of moving from this site, the defendants who have given evidence to me could not recover any money they have paid or pay again for land for which planning permission for another site might be sought.

130. There is no doubt that if I refuse to grant the variations of the injunction sought, the way is clear for the Council to take enforcement proceedings and evict the families currently living on the land. That is why there has been a full and extended hearing in this case. Such eviction would unquestionably be against the best interests of the children of the families resident on the site and that is a factor of primary importance. It would also adversely affect the article 8 rights of both children and adults.

SUBMISSIONS AND CONCLUSION

131. Mr Masters contends that this is not a case where the defendants have deliberately defied a court order or "cocked a snook" at the court.

132. Despite the fact that Nicol J. did not order committal because he was not satisfied that service had been precisely achieved, that does not mean that the injunction order of Davis J. somehow ceased to have effect. I have no doubt whatsoever that each of the defendants who gave evidence to me was, when he began to reside on the site and when he brought his caravan on to the site aware that he did so in breach of an injunction. I have no real doubt that all adult residents on the site were in the same position. Thus I reject his consequential submission that they have followed a proper course throughout in seeking to vary the order. Indeed there was not an immediate application to vary or discharge the ex parte order as that order permitted.

133. I reject the submission of Mr Masters that the injunction only had effect when served. That is patently not the case though it would be impossible to obtain enforcement of the order without valid service, however the Court determined that should be achieved.

134. The Council has simply been unable to make detailed welfare enquiries, first, because defendants were not resident on the site when the injunction was applied for and obtained and, second, thereafter, because of the constant flux of the defendants and their families on what is still an unfinished site.

135. I accept Mr Masters' contention that there is no suitable alternative accommodation. That would have been the case before the defendants moved on to the site.

136. I accept this is not a green belt site. It is a site, however, in the countryside and isolated from the nearest settlement. I do not consider that it has been established on a balance of probabilities that there are good prospects of

retrospective planning permission being obtained. The unlawfulness of the initial occupation is an important factor of substantial weight in the unlikelihood of planning permission being obtained

137. I accept Mr Lintott's primary submission that there is an overarching public interest in ensuring that court orders are respected and obeyed.

138. In my judgment, it was a main purpose of Parliament in creating section 187B of the Act to ensure that the system of local and democratically based planning grant was effective. The defendants, I am sure, and I exclude none of them, were all party to a plan to pre-empt that planning system and to gain an unfair advantage for their application by making it difficult and expensive for the Claimant to do other than grant their application retrospectively. Those who organised and planned the occupation of the land, an occupation that was known by all to be achieved before the planning authority could possibly even consider, let alone grant permission and without the necessary information to make a proper decision on that application, were, as I have put it earlier in this judgment, "forensically aware" and broadly familiar with the legal background to planning grants for Gypsy/Traveller sites. They have deliberately tried to steal an unlawful march on the authority.

139. I accept Mr Lintott's submissions that none of the defendants was living on the site when the injunction was obtained. I agree with Mr Lintott that the defendants appreciated the importance of being able to say they were living on the site at the time when it was obtained. Some of the comments recorded on police body cam videos show that the defendants or some of them were contemptuous of the legal process. That type of approach simply cannot be

permitted to gain an unfair advantage or the authority of the court and the democratically based planning process will be damaged beyond repair.

140. The object of Davis J. when he granted the injunction was to preserve the status quo pending the determination of the planning process. Those who moved on to the site after the injunction in this case (as far as residence is concerned, that includes all the defendants and, indeed, in my judgment, on a balance of probabilities, all the adults resident on the site) did so in "conscious defiance of the injunction" to use Mr Lintott's words.

141. Even though this is an application to vary the Davis J. ex parte injunction and not entirely to lift it, in substance, this is akin to considering on a return day inter partes, whether or not to continue an injunction. The variations sought are, effectively, sufficiently wide to render the original purpose of the injunction nugatory, that purpose being to preserve the status quo at the time of grant, which I find, did not include any residence on the site, pending resolution of grant of permission or appeal.

142. If I refuse to grant these variations, I must appreciate that it clears the ground, so to speak, for enforcement proceedings and I bear in mind that Lord Justice Simon Brown, in *Porter* in the Court of Appeal, stated that an injunction under section 187 B should not be granted unless the court was prepared to commit for breach.

143. This case, however, has far more similarities to *Brown* and to *Robb.* Indeed, in my judgment, the flagrancy of the initial planned unauthorised occupation is such that it is, in many ways, more important here than in those cases to

uphold both the authority of the court and to support the fundamental tenets of the planning system.

144. The hardship to the defendants themselves, more significantly to their families and particularly their children, who have at present no alternative site to go to and will be forced on to the side of the road again, is obvious. However, that was their situation before the injunction was granted. I am not convinced on balance that those who say they have "purchased" plots have done so and I am certainly not satisfied that they will not be able to recover any money they have spent to invest it in purchasing another site in relation to which a proper application for planning permission can be made without unauthorised development first being embarked on.

145. This is not a case, I accept, where any of the children have ill health . None of the families have lived for very long on this site. The Council had no opportunity before making the application for the injunction to assess welfare issues because there was no one in residence and their attempts since then have been thwarted by a turnover of people actually living at any one time on the site. If they determine to consider enforcement they have the TRAIN report and the evidence from the hearing before me and can, if necessary, make other enquiries before assessing the proportionality of seeking enforcement of the Davis order.

146. There has, in this case, been very substantial environmental damage and there is urgency in the need to bring this unauthorised occupation to an end.

147. I have reviewed the interests of the children. It is very clear that stability is a pressing need in their lives and their best interest lie in a stable base, and

continuous schooling and health care. However, the problems of providing that to them lie as well in the difficult decision of their parents as to whether they continue to hold by the tenets of their own culture. Moreover, while the best interests of the children must be a primary consideration they do not overtop other consideration and, similarly, while a decision not to vary the injunction may lead to interference with their and their parents article 8 rights, there are other competing interests and the court must assess proportionality.

148. In my judgment, the Claimant has made an appropriate assessment of the proportionality of continuing to oppose the application to vary and to preserve the injunction taking into account the defendants' and other residents' circumstances including the best interests of the children as a primary consideration. Not only have they made an appropriate assessment but, having considered all the evidence, I am satisfied that that assessment is correct.

149. To vary this injunction would be wholly to undermine the court's authority and the planning system and would give a green light to "strong arm" tactics designed to bypass or unfairly influence planning decisions.

150. I decline to vary the injunction and, apart from the adding of a defendant, I dismiss the Defendants' application.