

**IN THE MATTER OF APPEAL DECISIONS UNDER SECTIONS 78 AND 174 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

**Re: Land at Sandbrook Lane, North Cadbury**

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**ADVICE**

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**Introduction**

1. I am asked to advise North Cadbury and Yarlington Parish Council (“**the Parish Council**”) concerning potential grounds for legal challenge arising from two linked appeal decisions of Inspector Tim Belcher, dated 13 December 2018 (“**the Appeal Decisions**”), in which he quashes an enforcement notice concerning material change of use of Land at Sandbrook Lane, North Cadbury (“**the Site**”) and grants planning permission for change of use of the Site to “a gypsy caravan site and the retention of one mobile home, one touring caravan, one shipping container, treatment plant, hardstanding, gates and fencing.”
2. I have seen the Appeal Decisions, the objection made by the Parish Council to PINS in relation to the appeals and photograph of the close board fence around the Site.
3. For the reasons given below, in my view the Inspector deals properly with the issues of gypsy status, landscape impact and need for gypsy sites, such that no grounds of statutory appeal under section 288 or 289 of the Town and Country Planning Act 1990 (“**the 1990 Act**”) arise in relation to those matters.
4. There is one area that warrants further investigation: paragraph 25 of Planning Policy for Traveller Sites (“**PPTS**”) and whether the Site is isolated from services and amenities. In order to advise on this matter I need more information about the Site and its location. In any event, even if the Site is not well located for services and amenities, a legal challenge based on paragraph 25 of PPTS may nevertheless face difficulty, as overall the Inspector’s decision is well reasoned.

### **Strict Time Limit for Challenge**

5. It should be noted that there is a very strict time limit for making a legal challenge under sections 288 and 289 of the 1990 Act: six weeks from the date of the decision. An appeal cannot be made after the expiry of the six weeks. In the instant matter, the date of the decision is 13 December 2018, meaning that any appeal should be lodged by 23 January 2019 in order safely to be inside the six week period. Accordingly, should those instructing me wish further advice, the information requested in paragraph 16 below should be provided as soon as practicable, in order to avoid timing difficulties.

### **REASONS**

#### **Gypsy Status**

6. The Inspector deal with Mr Junge's gypsy status in paragraph 11 of the Appeal Decisions. He does so even though the Council did not raise the matter. The only reason the Inspector has positively addressed gypsy status is therefore because he is dealing with the Parish Council's representations, otherwise he would not have set out the relevant evidence.
7. As I made clear in my previous advice to the Parish Council when Mr Junge applied for retrospective planning permission (attached below), gypsy status based on "nomadic habit of life" is about travelling for work. It is not about heritage or where someone normally lives or whether they have a "permanent" residence – the case law sets out that even if someone has a permanent residence they can still fall within the definition if they travel regularly for work. The Parish Council's representation focused on Mr Junge's heritage, where he was brought up and the various rented properties in which he has lived. Those matters were not relevant to whether Mr Junge could properly claim gypsy status. The Inspector correctly records the evidence about Mr Junge's travel for work. It does not appear that there was any evidence to the contrary (as there was in the Ashford case, on which the Parish Council relied in Appendix 1 to its submissions).

8. Accordingly, I do not think that there is a ground of appeal arising from the Inspector's approach to gypsy status.

### **Landscape Impact**

9. The Inspector was plainly concerned about landscape impact. In fact, he determines that the current impact from the close board fencing and hardstanding is more severe than the Appellant's and the Council's experts suggested: he finds in paragraph 20 of the Appeal Decisions that there is significant landscape harm.
10. However, the Inspector is entitled to take into account, under the ground (a) appeal in the enforcement appeal and in relation to the appeal against refusal of planning permission, the amended scheme proposed by Mr Junge, which entails, amongst other things: removing the entrance fencing and gates and its replacement with post and rail fencing; removing quite extensive areas of hardstanding and replacing it with soft landscaping. It also incorporates further improvements suggested by the Council's landscape architect.
11. On the basis of the amended scheme, the Inspector concluded that there would not be harmful landscape impact and that the development would comply with the development plan. In order to secure this, in condition (8) he removed any permitted development rights concerning fencing and required the fencing scheme in Drawing No. TDA.2313.02 Rev A to be implemented. He also required by conditions (9) - (11) that the hedge be retained and hard and soft landscaping be implemented (ie the removal of parts of hardstanding). If Mr Junge fails to remove the close boarded fence and gates and the areas of hardstanding, he will be in breach of condition and can be subject to further enforcement action.
12. The Inspector's assessment of whether the significant landscape harm could be addressed by condition is quintessentially the type of planning judgment that is very difficult to challenge. I do not think landscape matters give rise to any appeal points.

### Need for Gypsy Sites

13. The Inspector sets out that the targets for the provision of gypsy sites in the District are minimum requirements: paragraph 14. This is sufficient to deal with the suggestion that there is a five year supply of sites – the mere fact that there is such a supply does not prevent planning permission being granted for a further site.

#### New Gypsy Site in the Open Countryside

14. Paragraph 25 of PPTS requires that local authorities “very strictly limit” new gypsy sites in the open countryside that is away from existing settlements or outside areas allocated in the development plan. The Inspector deals with this in paragraphs 15(b) and 25 of the Appeal Decisions. Although it is correct that this does not prohibit new gypsy sites in the open countryside, it is quite a strong limitation on such sites. The Inspector’s reasoning in paragraph 15(b) is fairly cursory. It is not clear what he means by the strict limitation not being breached “so long as the development accords with the Local Plan”. He does not discuss settlement boundaries or whether the site is away from existing settlements. He addresses “undue pressure on local infrastructure”, but does not address the key issue of access to services and amenities.
15. Although I flagged the issue of lack of access to services and amenities as key to paragraph 25 of PPTS in my previous advice, the lack of access to services and amenities was not addressed in the Parish Council’s objection. Nevertheless, it is an obvious aspect of the requirement in paragraph 25 of PPTS and the Inspector ought arguably to have addressed it if he understood paragraph 25 correctly.
16. In order to assess whether the Inspector’s decision is vulnerable to challenge on the basis of his approach to paragraph 25 of PPTS, I would need to know more about the Site and whether it is far away from services and amenities. For example, are there shops, a school and healthcare within walking or cycling distance, or within a short car journey? If not, and if these matters were not adequately addressed in Mr Junge’s planning application or evidence, there may be a basis for a legal challenge. I cannot yet comment on the likelihood of success of such a challenge, but only observe that, overall, the Inspector’s decision is clear and very

well reasoned, and the court may consider a challenge based on paragraphs 15(b) and 25 of the decision to be “forensic” and/or a thinly disguised challenge to the merits of the Inspector’s decision.

### **Conclusion**

17. In my view, the Appeal Decisions are well reasoned and there is little opportunity for legal challenge. I have summarised my advice in paragraphs 3-4 above. I would welcome further information on the Site’s proximity to services and amenities in order to advise fully on whether the Inspector’s approach to paragraph 25 of PPTS may provide a basis for legal challenge. Those instructing me should be keenly aware of the time limit for bringing a legal challenge, set out in paragraph 5 above. If further advice is sought, then the information requested in paragraph 16 above should be provided as soon as practicable.

10 January 2019

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## Estelle Dehon

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**From:** Estelle Dehon <estelled@cornerstonebarristers.com>  
**Sent:** 19 June 2017 19:00  
**To:** 'James Buxton'  
**Cc:** 'Richard Buxton'  
**Subject:** North Cadbury PC - gypsy status issue  
**Attachments:** mpn-basildon-borough-council-20170522.pdf; Landscape architect Feb 2017.pdf

Dear James

It was good to talk earlier. As discussed, my advice is below. For ease, I re-attach the two documents to which I refer.

1. I have been asked to advise North Cadbury Parish Council ("**the Parish Council**") in relation to application 16/03476/FUL, by Mr Tony Junge, for a change of use of land and the retention of a mobile home, one touring caravan, hardstanding, gate, fencing, treatment plant and shipping container at Land at Sandbrook Lane, North Cadbury ("**the Site**"). The application is to be determined by South Somerset District Council ("**the District Council**"), potentially at the end of this month.
2. I have been asked to advise by e-mail on three issues: (1) gypsy status; (2) whether any objection/refusal should focus on landscape grounds only and (3) access to information concerning children on the Site. For the reasons given below, my view is:
  - (1) It will be difficult for the Parish Council to challenge the Applicant's reliance on gypsy status and it would likely be unstrategic for the District Council to refuse the application, either partly or wholly, on the basis that the Applicant falls outside the definition;
  - (2) There are good reasons to focus on the landscape ground, which can be tied to national policy concerning gypsies;
  - (3) The District Council is right to be careful about disclosing the personal information of any children on the Site, even though that is information which is relevant to the planning decision. There are two potential options for that information to be provided to the Parish Council, both of which I canvas in detail below.

### **Gypsy Status and the Definition of "Gypsy"**

3. As the Parish Council is aware, this turns on the definition in Planning Policy for Traveller Sites (PPTS), to which the Parish Council referred in its objection dated 13 December 2016. The definition in Annex 1 to PPTS includes "persons of nomadic habit of life, whatever their race or origin", but was amended in 2015 to exclude anyone who has permanently ceased travelling.
4. The case law specifies that a "nomadic habit of life" relates specifically to travelling for work, so anyone who has retired, for example, will no longer be able to claim gypsy status. However, if someone does identify as a gypsy and travels from place to place for work, even if they have a "permanent" residence somewhere, they will likely fall within the definition – the High Court reaffirmed this in *R(XY) v Maidstone BC* [2016] EWHC 1436 (Admin).
5. I am aware that Mr Junge may have a permanent residence or a number of residences, including a "bricks and mortar" residence. However that does not disqualify him from claiming gypsy status,

so long as he travels regularly for work or has only temporarily stopped travelling for work. I understand that Mr Junge deals in used cars and spare parts and that he does travel to the North-East for work, although it is unclear how often that travelling occurs. It is unlikely that he has a settled business premises from which he conducts his work.

6. I have reviewed recent appeal decisions in which gypsy status has successfully been challenged. There are very few. This is partly because evidence as to status generally depends on the evidence of individuals as to their lifestyle and travel for work, which is difficult to challenge. The two appeal decisions where there was a successful challenge involved a partly retired couple who had a settled business premises and where their travel for work was limited (APP/E2205/C/15/3136399; 7 June 2016) and involved individuals who had retired completely from work (APP/J3530/A/14/2225118; 1 March 2016).
7. On the basis of this review and given the factual position concerning Mr Junge, my view is that it will be difficult for the Parish Council to challenge the applicant's gypsy status, and also for the District Council to defend on appeal a decision partly based on a finding that Mr Junge does not have gypsy status.
8. In any event, even if Mr Junge were found not to have gypsy status, it would still be open to him to progress the application as seeking planning permission for a gypsy site, to be used by someone falling within the definition. This has been a very effective technique used in other applications and on appeal, which essentially sidelines the question of the applicant's gypsy status, but still permits reliance on the relevant gypsy policies and the need for gypsy provision in the local area.
9. Accordingly, my view is that there is little strategic advantage in the Parish Council objecting to the application on the basis of Mr Junge's status. Should the District Council refuse permission in reliance on Mr Junge falling outside the definition in PPTS, that may in fact weaken the District Council's position on appeal, unless there is very clear evidence indeed that neither Mr Junge nor anyone else living on the Site travels for work. Even in that scenario, on appeal Mr Junge may simply seek a permission for a gypsy site, and so disassociate the application from his specific status.

## **Landscape**

10. I have seen the attached e-mail from the District Council's landscape architect. I note that Dr Ruston (the Applicant's agent) indicated in March 2017 that the Applicant would be obtaining expert evidence in response, but I understand that is yet to happen. In my view, the consultation response from the District Council's landscape architect gives a good basis for opposing the application, so long as it can properly be linked to a breach of Development Plan policies. It also emphasises that the site is divorced from the nearest settlement. This brings into play helpful elements of PPTS: paragraph 25 of PPTS requires that local planning authorities should "very strictly limit" new gypsy sites in the open countryside that are away from existing settlements or outside areas allocated in the development plan. This is put in stronger terms than the previous version of PPTS, and although there is no in principle bar to new gypsy sites in the open countryside or in the green belt, it is clear that PPTS intends such development to be "very strictly limited". This makes sense, given the need to ensure that gypsies and travellers have access to sites that are well connected to services and amenities.
11. Accordingly, it would be strategically advantageous for the Parish Council to bolster the material covered in the landscape architect's e-mail – in particular through reference to the Development Plan and PPTS – and to comment on any evidence provided by the Applicant (which the Parish Council should ask the District Council to provide to them as soon as it is received).

## **Access to information**

12. I understand that one of the elements relied on by the Applicant in support of the application is the impact on children living on the Site if permission is refused. As a result of a number of decisions, many of which are cited on pgs 11-15 of Dr Ruston's representations of 21 September 2016, the potential impact on children is a consideration which must be weighed in the balance. It is a "primary consideration", although not a paramount consideration or a trump card. This means that the District Council must weigh in the planning balance, as a material consideration to which weight must be given, any adverse impact on children which would arise from refusing planning permission. This may occur if children have no-where else to live and need to be on the Site or in the area to access services such as school; healthcare and social care (particularly if the children are disabled).
13. I am aware that the District Council has withheld the information concerning the children from publication on its website. This is in line with the recent decision of the Information Commissioner on personal and sensitive personal information in planning applications (see the attached monetary penalty notice imposed on Basildon Council).
14. That decision is not, however, an absolute bar on the District Council providing the information to those who properly wish to comment on the application. There are two potential solutions. The first is for the names and ages of the children to be redacted, and for any medical information (which would constitute sensitive personal information) also to be redacted.
15. The second would be for the District Council to permit a representative of the Parish Council to inspect the evidence/information provided by the Applicant. This is based on paragraph 28(c) of the Information Commissioner's decision in the Basildon monetary penalty, where she recognised that there is a difference between publication of information on a website and permitting individuals to inspect the information at the Council's offices.
16. The Data Protection Act 1998 (DPA) provides, in Schedules 2 and 3, various bases on which personal information can be disclosed in circumstances such as the present. In relation to the children's "personal data" – ie their names and ages, their address and any personal circumstances excluding medical information – that could be disclosed to the Parish Council on two grounds:
  - a. the disclosure fulfils Schedule 2 para 5(d) of the DPA in that it is "necessary" for the District Council in the "exercise of a public function exercised in the public interest". The District Council is required to permit the Parish Council to comment on the application, which it will be determining through exercising a public function (its planning function) in the public interest. The "necessity" derives from the fact that the Parish Council will not properly be able to comment on the application without understanding the evidence on which the Applicant relies, and the District Council is required to facilitate proper engagement by those who are directly affected by the application; and
  - b. the disclosure fulfils Schedule 2 para 6(1) of the DPA in that the disclosure is necessary for a legitimate interest pursued by the Parish Council (commenting on the application) and it is not an unwarranted infringement of the rights, freedoms and legitimate interests of the children (since the disclosure is limited to the Parish Council).
17. In relation to the children's sensitive personal data – ie any medical information – that could arguably be provided on the basis that its disclosure just to the Parish Council is necessary for the exercise of a function conferred on the District Council by an enactment (ie the Town and Country

Planning Act 1990), thereby fulfilling Schedule 3 para 6(b) of the DPA. However, this is more marginal and it may be sensible for medical information to be redacted.

18. Should anything above be unclear or should the Parish Council require any further advice, please do not hesitate to contact me.

Best  
Estelle

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