

**RE-APPLICATION FOR CHANGE OF USE OF LAND AT LOWER FIELD ASH FARM, BARNET LANE, WIGMORE, HEREFORSHIRE FROM AGRICULTURE TO A ONE FAMILY TRAVELLER SITE INCLUDING THE STATIONING OF ONE CARAVAN AND ANCILLIARY STRUCTURE for Ms Alison Cleverly.**

**SITE HISTORY**

1.1 The site is part of a larger landholding amounting to 5.2 acres called Ash Farm, acquired in 2004. Ash Farm is situated on the northern side of Barnett Lane, a minor road leading from Wigmore to Brampton Bryan on a roundabout route. Lower Field occupies the eastern boundary of this land, nearest to the village of Wigmore.

1.2 In 2007 permission was granted, on appeal, for a site on the western end of Ash Farm (the 2007 appeal). This permission was in favour of the Applicant and her then partner Mr. Wells, and was for the stationing of two caravans and storage boxes (APP/W1850/C/06/201868). Unfortunately in the period following the couple found their relationship deteriorating to the point where they were no longer able to live together. The Applicant moved her caravan away from the area. After a period of disruption, the an amicable agreement was reached and she moved to the current site

1.3 An application for temporary planning permission was made to Herefordshire Council (DCNW2008/1807) to run coterminous with the temporary permission extant for the original Ash Farm site. This was refused by the Planning Committee, despite Officer recommendations for approval, and an Enforcement Notice was issued. This was appealed but was later withdrawn by agreement. The effective date for the enforcement notice is later this month (March 2010).

**2010 CONTEXT OF THE CURRENT APPLICATION**

2.1 In the 2007 appeal the Inspector found that, although in his view the site did not conform to policy on two counts, nevertheless:

‘16. No realistic alternative site was put to me that the Appellants could go in the area, which is where they want to live, if I were to dismiss these appeals. ...they do not wish to be on a Council site.... It seems to me therefore that *dismissal of the appeals is not an acceptable approach as it would cause interference with their Human Rights under Article 8*. As there is no alternative accommodation available, the interference is all the more serious’

2.2 This determination reflected government policy in Circular 1/2006 requiring Councils to ‘increase significantly’ the number of private sites for Gypsies and Travellers with planning permission in the following 3-5 years.

2.3 During the appeal the Inspector investigated the alternative options available saying, ‘15 ...I am. also very conscious of the fact that there is a substantial shortfall in site provision in Herefordshire. The Council have set out on a Gypsy and

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Traveller Accommodation Assessment within the Sub-Regional Area... I was told at the Hearing that the Report (GTAA) was likely to be completed in November this year (i.e. 2007), and site allocation would be likely to take place next year (i.e. 2008). I am also conscious of the fact that this exercise will need to interrelate with the emerging Regional Spatial Strategy.'

2.4 The determination concluded on this point

'17 It therefore seems to me that it would be appropriate and reasonable, bearing in mind the harm that the development causes in the rural area, to grant a temporary permission for 3 years, *which should be sufficient for the Council to have prepared a list of sites which would provide an acceptable location for this family (and others), or for them to have found a suitable alternative for themselves.*'

2.5 This is now the crux of the current application (which coincides with a re-application on the original Ash Farm site – now called 'Ashfield'). The three year temporary permission expires soon but no 'list of sites' has been prepared. The GTAA investigated the size of the 'substantial shortfall in provision' and concluded that there was a need in Herefordshire for a further 83 pitches before 2012. That figure has been reduced to 68 through the discounting of 'tolerated' sites.

2.6 However the 'site allocation' promised for 2008 is now, according to the Council's timetable, not likely before 2013 when the 'Market Towns and Rural Areas DPD'. There will then be an unspecified period, probably at least 2 years, while the necessary processes of land acquisition and planning approval are gone through before for its recommendations have any chance of becoming reality. In the meantime, with an enforcement order about to take effect, *the Applicant and her child face Homelessness*, exactly the situation that government strategy was specifically intended to avoid.

2.7 Meanwhile the figures evolving from the GTAA have been incorporated into the Regional Spatial Strategy where a Phase 3 Revision is currently going through its stages. The aims of the Strategy are:

- to increase significantly the number of pitches across the West Midlands in order to address existing under-provision as expressed in the sub-regional Gypsy and Traveller Accommodation Assessments;
- to ensure there are sufficient plots in the Region to meet the accommodation needs of travelling showpeople;
- to ensure that all revised gypsy and traveller and travelling showpeople policies recognise, protect and ensure their traditional travelling way of life, whilst also respecting the interests of settled communities; and
- to include fair, realistic and inclusive policies in relation to the accommodation needs of gypsies and travellers and travelling showpeople, and that the potential for them to be evicted and thereby become homeless, is avoided.

2.8 To speed up the process the West Midland Regional Assembly (WMRA) has recently issued an 'Interim Policy Statement' on the Provision of New Accommodation

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for Gypsies, Travellers and Travelling Showpeople. The aim is to inform the Local Development (LDF) Framework process and *'to increase existing rates of delivery on new pitches and plots for Gypsies, Travellers and Travelling Showpeople within national policy aimed at increasing such provision.'*

2.9 Until the Strategy for the West Midlands is completed (and the Phase 3 Revision is currently being 'expedited'), the status of this Regional Interim Policy Statement has been confirmed by Government of the West Midlands (GOWM) as having **'similar weight to a submitted draft RSS'**. Discussions with the Planning Inspectorate indicate that the Statement will 'carry weight in both Development Plan Document (DPD) examinations and Planning Inquiries'

2.10 The Regional Pitch Requirements are an 660 additional Residential pitches before 2012 and a further 278 between 2012 and 2017 (Of these total of 109 pitches are needed in Herefordshire, before 2017).

2.11 Therefore the situation with regard to alternative accommodation for this Applicant is exactly the same in March 2010 as it was at the time of the 2007 appeal. There is none. With the DPD still a very long way off, the margin of appreciation in decision making for the Council on such sites as are presented through the private application process, is narrowed. In other words sites would seem to have to be very significantly at odds with policy to justify refusal. As the High Court has put it in a recent case:

*'A case against a development advanced by a Council which relies on its own failure to advance government policy on the identification of pitches, is a significantly weaker one than a case advanced by an authority that is doing what it can to identify provision but which faces constraints in the form of infrastructure, Green Belt and so on' (Hill Gilbert in Langton and McGill v SSCLG & West Dorset DC 2008).*

## **2.12 Private Provision**

The second part of the Inspector's suggestion was that the Appellants could look for an alternative themselves. To be successful in this they would have to find affordable and well located land and then be able to secure Planning consent.

2.13 The RSS expects about 50% of the established need to be met through private applications. The GTAA (July 2008) describes the situation in Herefordshire relating to private site applications at the time of the 2007 appeal. 'In Herefordshire there have been 13 planning applications since 1999 -- the average application rate is just under 2 a year, but 8 of the applications were made in 2004-2006 giving an annual rate of almost 3 per year.' 'The overall success rate of applications, at 77%, is unusually high against the national experience'

2.14 Since the 2007 appeal (31 months) there have been another 13 applications (almost 6 a year). These have resulted in one (1) full permission (for a new owner of a site with prior - but personal - permission) and one temporary permission - a renewal of a

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previously time limited consent – (converted to full permission only on appeal). The rest have been refused. There have been no new sites given permission during this period.

2.15 While the Applicant is aware of the need to look for alternatives, the difficulties of finding affordable land of the right size, in the right locations in an increasingly competitive market for such sites, are real enough. The recent trend to almost blanket refusal of planning applications makes them almost insurmountable.

2.16 The Applicant has no desire to live on a local authority site. The nearest site is at Luston, many miles away, has two vacant pitches. The private site at Richards Castle, The Oakery, where Ms. Cleverly lived before she moved to Wigmore (after a family tragedy), has permission for a limited number of pitches (4) all of which are believed to be occupied.

### **THE CURRENT APPLICATION AGAINST UDP POLICY CRITERIA**

3.1 Policy H7(6) of the Herefordshire UDP makes an exception for Gypsies and Travellers to the general resistance to developments in open countryside outside settlements. Ms. Cleverly and her former partner were accepted by the Inspector at the appeal as satisfying the definition of 'Traveller' for planning purposes as set out in ODPM Circular 1/2006.

3.2 Policy H12 of the UDP indicates the policy criteria to be applied to applications for sites by Gypsies and Travellers.

*1. The site is within reasonable distance of local services and facilities*

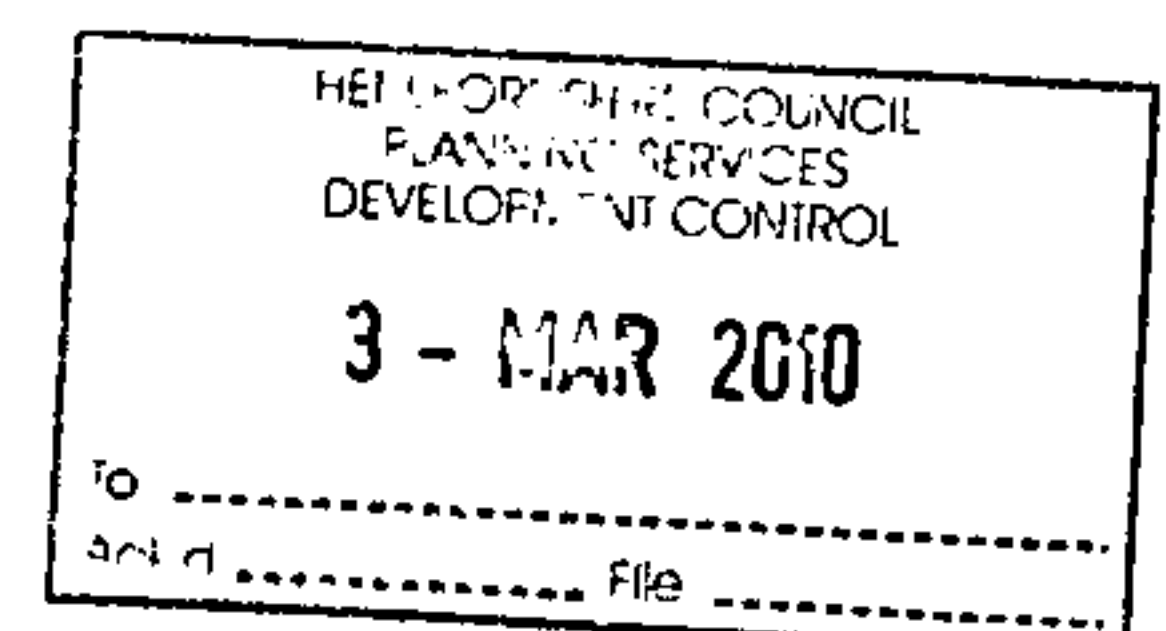
The site is approximately 0.5 mile from the village of Wigmore. The village is easily accessible by foot via a quiet, lightly trafficked road or across a footpath directly into the centre. Wigmore has a range of services; Post Office, garage, two public houses, a range of excellent schools, church, a village hall and a newly refurbished award winning shop.

3.3 The village comes 28<sup>th</sup> out of 219 villages in Herefordshire in the Summary Matrix of key services produced by Herefordshire Council 'Rural Settlement Hierarchy Background Paper.' The matrix reflects existing services and facilities. If secondary schools had been included in the matrix (a significant source of carbon emissions), the village would be higher in the scale – only 3 other villages in Herefordshire, Kingstone, Weobley and Peterchurch, have such schools.

3.4 In the 2007 appeal, the Inspector found that the site at Ash Farm 0.25m further up Barnett lane from the village of Wigmore did not meet criteria 1 in H12.

10' Firstly the appeal site is a considerable distance from local services and facilities. Wigmore is the nearest village but not within reasonable distance, for example for walking to it, and it is likely that it would involve the use of a car to visit it, particularly for shopping...

It has to be said that this finding was a surprise particularly so as the Council had not included this in its grounds for refusal. The distance from both Ash Farm sites to the



village is well within PPG13 guidelines for walking (2 km) (less than half) so it is thought that perhaps the Inspector may have been unclear as to the distances involved.

3.5 In a County where one quarter of the residents do not live within 2km of a Post Office and 32% not within the same distance of a Primary school, the site on Barnet Lane seem relatively well favoured.

3.6 Ms. Cleverly usually visits a supermarket in Leominster approximately once a month, buys milk and bread locally and eggs (to supplement those from her own chickens) from people she knows around about. She also grows her own vegetables in the summer.

3.7 Bus services from Wigmore exist to Hereford, Ludlow and Leominster but are limited. (see appendix 1)

3.8 Government Advice in its Circular 'Planning for Gypsy and Traveller Caravan Sites' 1/2006 asks that Planning Authorities be '*realistic about the availability, or likely availability of alternatives to the car in accessing local services*' and that '*Issues of sustainability are important and should not only be considered in terms of transport mode and distance from services*'.

It then lists 5 other factors that should be taken into account

3.9 As the clear intention of this criterion (as of the UDP and the emerging LDF) is to promote sustainability in the wider sense, the Applicant's very low energy lifestyle must also be material to the assessment. Ms. Cleverly is a model of sustainability. She lives with very limited demand on fossil fuels, with no running water (she collects rain water for watering animals and plants), no electricity and very little gas.

3.9 Issues of Climate Change have become an even greater pre-occupation at the international as well as the local level since 2007. Despite the considerable rhetoric surrounding sustainability appraisals and the LDF process there is still a significant lack of action in Herefordshire where CO2 emissions are still said to be rising.

3.10 In the wider context, 'sustainability' clearly has economic and social aspects as well as 'distance from services'. Paragraph S1(10) of the UDP policy on Sustainable Development is relevant:

*Seeking more equitable access for all sectors of the community to opportunities for homes and livelihoods, natural and historic resources, health, recreation, amenity, education and facilities and services*'.

The preamble to policy S1 at paragraph 3.7.10 says; 'The UDP can also influence greater social inclusion by helping to equalise access for *all* sectors of the community to the essentials of life and to various services and facilities'.

3.11 PPS7 Sustainable Development in Rural Areas has as its first key principle  
(i) *Decisions on development proposals should be based on sustainable development principles ensuring an integrated approach to the consideration of:*

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- *social inclusion, recognising the needs of everyone*
- *effective protection and enhancement of the environment*
- *prudent use of natural resources and maintaining high and stable levels of economic growth (emphasis added)*

*Sites for settled occupation should be small.*

3.12 The site is considered to be small. The field is relatively large but the area covered by the development and by related indicators of domesticity is small and has been reduced further in the present re-application.

*Adequate screening and landscaping is included within the proposal in order to ensure that the proposal does not result in an adverse impact upon the character of the area and amenity of the landscape.*

3.13 The property is not especially prominent in the landscape. The caravan and the minimal related items of domesticity are sited in the north eastern corner of the field where the land is lowest and where there is a substantial screen, even in winter, provided by a mix of conifers and high native hedge. It is thereby well screened from views from the north and the east. The site is not easily visible from Wigmore village or the castle area even in winter. The flatness of the land restricts views from the south and the west. Views into the site are restricted to glimpse views through the gate.

3.14 It is accepted that there is minor visual intrusion into the character of the landscape but its wider impact is very limited indeed. All the hedgerows and boundaries are intact and unchanged and there has been additional planting so the development does not impact significantly on the character or the amenity of the landscape. In any provision for Travellers in a rural County such as Herefordshire there is bound to be some change in rural character (such is implied in the nature of it being an 'exception') but here it is about as limited as it could be.

3.15 In the overall audit of sustainability, Ms Cleverly's low impact lifestyle will contribute minimally to climate change, a vastly greater threat to the future of this landscape.

*The site contains appropriate levels of amenity including safe play areas for children and provides satisfactory work and storage areas.*

3.16 The site does contain adequate work and storage space and play areas..

## **PERSONAL CIRCUMSTANCES**

4.1 Ms Cleverly has been a traveller for many years but has reduced the amount of travelling she does to accommodate the educational and health needs of her family. The split in 2008 from her former partner, which caused her to resume the travelling life, was very disruptive for all parties. For Ms Cleverly there was limited security, bordering on homelessness, and unsatisfactory conditions for providing good quality access and child

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care. For Clee himself because of the unsettled life of his parents, the lack of consistency and opportunity for accessing facilities like pre-school and regular medical care, and for her former partner because it left him with long periods of largely unsupported child care.

4.2 With the couple resolving some of the more serious difficulties between them and Ms Cleverly being able to move her caravan back onto Ash Farm, Clee, the couple's only child, could spend time with both parents maintaining the important relationships and at the same time enjoying the stable environment, continuity of care and access to services that children need in order to thrive.

4.3 During the last 18 months or so, the whole family has recovered from the traumas of separation, rebuilt their lives and seem to be flourishing. The child, Clee, has started at Wigmore School (in September 2008) and seems to have settled in well (a report from the school has been asked for and will hopefully be sent on). With concern at national level about poor educational attainment amongst the Travelling minority, the importance of stability during these early school years, when the foundations for further success in education are being laid, cannot be over-emphasised.

4.4 Ms Cleverly has been susceptible to health problems in the past which have at times been incapacitating. However with the increasing security of an independent base, she has regained her health and her confidence. With this she has been able to participate successfully within the community of Wigmore. She has taken a part time job at one of the local pubs and established a new relationship with a local person. She has begun supplying vegetables from her garden in the summer months and has become economically independent. Ms Cleverly is a very spirited and sociable person who enjoys considerable community support in the village.

## 5 Human Rights

5.1 Circular 1/2006 states' 70. *The provision of the European Convention on Human Rights should be considered as an integral part of local authorities decision making including the approach to what are material considerations in planning cases.*

5.2 The requirements of Article 8 of the European Convention on Human Rights, as a material consideration, were a critical element in the determination of the 2007 Appeal. Article 8 gives everyone the right 'to respect for a persons private and family life, his home and his correspondence'. And along with this, the right 'to be free from interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

5.3 In the interpretation of this the European Court (in the case of Chapman v UK 33RHR 399) has come to the conclusion that Gypsies and Travellers should be seen as vulnerable minority whose needs deserve 'special consideration'.

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5.4 If this application were to be refused, with an Enforcement Notice already in place, the family would be in danger of losing their home. There would be an immediate threat to their private and family life. This requires the decision maker to consider issues of 'proportionality'. Does the protection of the landscape of Wigmore from the slight (temporary) loss of rurality and visual intrusion that this development brings with it, represent a 'pressing social need'? Compared with the harm caused to members of 'a vulnerable minority' by their having nowhere to set up their independent life and the associated and wider negative effects of homelessness?

5.5 It was this issue which led the Inspector in the 2007 appeal to decide that '*dismissal of the appeal is not an acceptable approach*'. He gave the Council time to find an alternative location. As yet it has been unable to do so.

5.6 The current site has been notably successful and the fears expressed in the past by objectors including the Wigmore Parish Council about the likely consequences of granting the application: 'others would be attracted to the site... and we will have a settlement on our hands', 'numbers of caravans would increase,' 'the site will become a scrap yard', there would be regular 'parties' causing 'general disturbance to adjoining residents', there would be 'further retrospective applications' etc - after nearly 6 years of occupation, can be seen to be exaggerated.

5.7 The lack of foul drainage was another objection and one of the Grounds for Refusal put forward at the meeting of the Planning Committee on 14<sup>th</sup> November 2008. This has been addressed and a compost toilet has now been set up, using a well-tried method, 'a safe and effective way to reduce resources and prevent pollution'.

5.8 Finally extensive research carried out on behalf of the Equalities and Human Rights Commission (EHRC) into 'Inequalities Suffered by Gypsies and Travellers' concluded, 'The lack of secure accommodation for nomadic groups remains the lynchpin of a plethora of other inequalities.' This Application is believed to show the benefits of the reverse, of inclusion, where with relatively secure accommodation, lives can be transformed.

5.9 Herefordshire Council are respectfully requested to allow this application. Alternatively, since no permission has been secured on this site to date, a temporary permission could be considered, in line with Circular 1/2006 (para 45/46) '*Where a local planning authority is preparing its site allocations DPD... local planning authorities are expected to give substantial weight to the unmet need in considering whether a temporary planning permission is justified*'

#### **APPENDIX 1**

##### **Bus Services from Wigmore**

802/491/498 - to Hereford - 3 services in the morning in and 2 in the afternoon back to Wigmore. Services run on Wednesdays and College days

489 - Leominster - one morning service and one in the afternoon back - Tuesday/Fridays

490 - Ludlow - one morning service and one afternoon return service on Mondays.

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