APP/X5210/X/18/3198526

**NORTH FAIRGROUND SITE, VALE OF HEALTH,
LONDON NW3 1AU**

**CLOSING SUBMISSIONS
on behalf of the
Local Planning Authority**

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1. INTRODUCTION

1.1. In spite of the long adjournments and changes/additions of personnel at the Inquiry, the main issue remains as articulated by the Inspector in his Pre-Inquiry Note of 8 February 2019. The Note frames the issue as follows:

> *"Whether refusal of the LDC application would have been well founded. To succeed, the appellant will need to prove on the balance of probability that use of land as a site for the stationing of seven static caravans for the purposes of human habitation would not have involved a material change of use, if begun on 31 July 2017 (the date of the application). This necessitates consideration of the existing lawful use at that date."*

1.2. At the outset, the advocates and (then) representative of the Societies were invited to consider whether they agreed with that formulation of the main issue and there was no dissent.

1.3. The Inspector's formulation reflects that of the LPA as set out in the Delegated Report:

> *"The issues to consider here are to establish what the current and lawful use of the site is, based on the last 10 years of usage, and whether the proposed use for 7 residential static caravans is materially different from that."*[1]

1.4. In relation to the Report's first question – lawful use as at 31 July 2017 – the primary focus for assessment is on the period 31 July 2007-2017[2].

1.5. The materiality question is one of fact and degree, not involving any judgment as to the desirability or otherwise of the proposed use or development of land.

1.6. There are some differences of approach between the parties as to the lawful use and materiality questions. The differences between the LPA and the City of London/Societies are not fundamental because whether the July 2017 use is regarded as TSS use alone or use as, in part, TSS and, in part, residential caravan site use unrelated to TS, the submission of all three objecting parties is that the proposed change would be material. The LPA's case, however, involves consideration of the legal principles governing changes from mixed to single uses.

2. LEGAL CONTEXT AND QUESTIONS

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1 Delegated Report para 1.6

2 As the Inspector pointed out during O'Neill's evidence in chief, it may be relevant to consider the years leading up to 2007; that is plainly right as a matter of law, but the Appellant's evidence in relation to that period is even weaker than the later material. In particular, there is a clear benchmark in the form of the enforcement investigation, 2004-March 2006, the result of which was that no action was taken as the officer formed the view that no breach of planning control had occurred and the site was still in use solely as a TSS.

2.1. In assessing materiality, it is landuse factors which matter. Both on and off-site incidents of the use must be considered and it is the landuse character of such effects which is determinative, not their inherent environmental desirability; hence, 'de-intensification', eg. by reference to changes in the number or type of vehicle trips or noise levels generated[3] by the use, does not mean that the proposed change would not be material – indeed it might indicate the reverse, depending on the nature of such variations in impact. There are suggestions in the Appellant's materials that a reduction in the number of caravans and traffic movements (if, indeed the latter were to eventuate, as to which there is no evidence) would preclude a finding of change of use or a material one. The LPA's case remains as put to the Inspector orally on Day 1, i.e. that what matters is difference, not whether or not environmental effects might be preferable or reduced. If the pattern of landuse effects, taken overall, would be materially different, then a CLOPUD should not be granted. The notional question of whether or not it might be expedient to enforce in the event of a breach of planning control is wholly separate and is irrelevant under s.195 TCPA 1990.

2.2. MR for the Appellant argues that *"in land use terms it matters not who occupies the caravans, the residential occupation of a caravan by a member of the travelling community is no different to that of a member of the settled community."* In the LPA's submission, MR's statement is an oversimplification, as is his characterisation of the Council's approach to the lawful use of the Site

[3] See below for submissions on the evidential aspect; this paragraph deals with the legal principle

as one which regards the site as having *"a mixed residential use"* [4] (emphasis added). In fact, the LPA has classified the use of the site as having *"a mixed use of (a) showpersons' site with some dependents and some fair workers and of (b) other unrelated residents, rather than a predominantly residential caravan site with ancillary showpersons' site as winter quarters and storage…….the site still has a mixed use character and appearance. Although in 2017 the southeastern corner appears entirely residential with a regular row of parked caravans, the other areas have a fluctuating mobile and adhoc mix of permanent and temporary caravans for showpeople and fairworkers, storage, equipment, rides and refreshment trailers"*.[5] The putative decision notice is also clear in specifying that *"the proposed use of the site for 7 static caravans for residential occupation would constitute a material change of use from the current lawful mixed use of the site comprising a 'showpersons' site' use and a residential caravan site use."* That 'notice' rightly focuses attention on the difference between the baseline circumstances of the site as it was in mid 2017 and the use and circumstances proposed in the application.

2.3. Our position on the law was set out in opening and is repeated here for convenience. The distinct and particular nature of Travelling Showpersons' Sites ("TSS") is recognised in law and Central Government policy. It is also acknowledged in Policy H11 of the adopted Camden Local Plan 2017[6], which aims to secure and protect a sufficient supply of sites for *"Travellers"*, defined to mean *"TS"* as well as *"gypsies and travellers"*. Whilst a recognised form of landuse, it is, as pointed out by the Inspector, a sui generis use.

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4 MR Opening Submissions on behalf of the Appellant, paras 3 and 4
5 Delegated Report paras 2.17, 3.7
6 Thuaire Appx 15

2.4. In Winchester CC v SoSCLG and Others [2013] EWHC 101 (Admin)[7] Philip Mott QC, sitting as a Deputy Judge of the High Court, recognised that Central Government Circulars pointed to the conclusion (amongst others) that *"there is a distinction, significant in planning terms, between the use of land for travelling showpeople and its use as a residential caravan site"*, and that *"a travelling showpeople's site may be a significant and separate landuse in planning terms"*. He went on to hold that the express planning permission at issue in that case *"was not the grant of permission to use the land as a residential caravan site ... It was the grant of permission to use the land as a travelling showpeople's site which is a distinct and narrower use ..."* (emphasis added). [8]

2.5. For completeness, it should be noted that the Court of Appeal affirmed Mr Mott QC's first instance decision but did not add anything in relation to his reasoning on the nature of the use. Clearly the Court of Appeal considered that there was a question to be resolved on redetermination as to whether there had been a material change of use from the permitted use as travelling showpeople's site.[9] It follows, therefore, that the Court of Appeal did not take the view that, as a matter of law, it must be the case that occupation by a TS is indistinguishable from occupation by somebody else. The fact that MR thinks this decision to be wrong (as he said on Day 2 of this Inquiry) is irrelevant. It is a binding decision of the Court of Appeal in which the judgment of the Court, as it happens, was given by an extremely experienced and respected planning judge. Laister admitted that he could not point to any legal authority or appeal decision where

7 City of London Statement of Case, Apx 4
8 Op. cit. paras 40-41
9 See paras 19 and 27 of CA Judgment appended to submissions.

it has been held or found by judge or inspector that there is no material difference between a mixed use of the character in question in this case and residential caravan site use[10]. He also accepted that, in the only inspector's decision on this specific site, the TSS use was regarded as a sui generis use, by reference to the then Government Circular.[11]

2.6. Planning law and policy therefore identify a distinction between use as a TSS and other kinds of residential caravan site use.

2.7. Statute distinguished between TS and others of nomadic habit of life from the inception of specific planning legislation governing caravans.[12] This distinction is carried through into the Town and Country Planning (General Permitted Development) Order 2015, which allows, as permitted development ("pd"), any development required and specified as a condition of a site licence.[13] TSS (winter quarters), however, are exempt from licensing requirements and therefore do not benefit from the pd rights.[14] As Thuaire explained in XX, this distinction points to a fundamental difference in the way in which the law treats these uses.

2.8. It is common ground with the Appellant that the appeal site, which does not have any planning authorisation, would not currently qualify for a licence under the 1960 Act. With the CLOPUD in place, it would and Laister expected that

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10 XX (MEQC)

11 Ditto and see Thuaire Appx 5 para 10. At this stage, the use was still TSS with some elements of fairground use as opposed to the mixed TSS and residential caravan site which the Council now consider to be present, but the principle about a distinction in landuse terms still applies.

12 Caravan Sites Acts 1960 and 1964

13 Sched 2, Part 5, Class B

14 See O'Neill Response to Proof of Mr N Laister para 11 and Circular 04.2007, Thuaire Appx 17.

one would be applied for and granted[15]; this would have consequences in terms of the form of development which would be required under licensing conditions. Given Laister's evidence to the effect that he would expect a licence to be applied for and granted, it is reasonable for the Inspector to have regard to this probability when considering the materiality of change; as Laister confirmed, no limitation is sought to confine the Certificate to use of the proposed 7 units by TS and it is the Council's submission that, on the balance of probability, it is clear that this element of the current mixed use would be subsumed by general residential caravan use, thus satisfying the Wipperman test of materiality. The licensing point is related to the discussion about the relevance or otherwise of the Appellant's evidence as to the potential form of the proposed development. The licensing regime is part of the context in which the proposed development must be considered. The general form of the units which, we are told[16], the Appellant intends, in principle, to place on the site and the principles of a potential layout are relevant, not in their precise details, but as illustrative of the type of development which it is reasonable to expect, having regard to the Appellant's own evidence and the known licensing context.

2.9. Unsurprisingly, given the statutory context, national planning policy and guidance have recognised a distinction between the use of land as a TSS and its use as a residential caravan site.[17]

2.10. The current Government definition of "TS" is:

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15 XX (MEQC)

16 Eiser's Statement in Support of Application, repeated as Appeal Statement, 34th and 35th paragraphs and Eiser Proof paras 55 and 56

17 Op.Cit and Thuaire Appx 16; DCLG Planning Policy for Traveller Sites, August 2015.

> *"Members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). This includes such persons who on the grounds of their own or their family's or dependents' more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily, but excludes Gypsies and Travellers as defined above."*

Membership of the Travelling Showpersons' Guild is therefore not regarded as an essential prerequisite for the purposes of this definition, although membership does have significance for some purposes under the 1960 Act. Given the evidence about membership of the Guild not being conventional in the case of married women and its strongly dynastic basis, it is not surprising that modern planning policy adopts a potentially more inclusive approach. Therefore, Charles Abbott Jnr's highly restrictive approach to what constitutes a TS does not accord with the current Government guidance, which is more relaxed. This does not mean, however, that the fact that some people might form part of such a group but not have a need at any particular time to store and maintain equipment renders that aspect of the landuse irrelevant and indistinguishable from general residential caravan use.

2.11. The current Circular also distinguishes between *"residential pitches for 'gypsies and travellers' and 'mixed use plots for travelling showpeople', which may/will need to incorporate space or to be split to allow for the storage of equipment."*[18] MR's suggestion in XX of Thuaire that the *"thrust"* of Government and development plan policy is concern about the residential accommodation needs of TS was rightly rejected. In RX, the relevant policy materials were consulted; MR clarified that he had not meant to suggest that the sole concern of policy

[18] Thuaire Appx 16 para 5

was with the residential aspects and Thuaire confirmed that neither LB Camden's Local Plan nor the Government in the Circular (to which the Local Plan refers) places one element above the other – ie. there is no preference or weighting expressed in policy for one or other of the elements of the use. The point is that the use is a composite. On this site, it is a mixed sui generis residential/commercial storage etc. use within a mixed use which also includes general residential caravan site use.

2.12. MR's assertion in opening that the LPA have characterised the lawful use as *"a mixed residential"* one, as well as being an inaccurate oversimplification of the LPA's position[19], therefore, is also at odds with the way in which the Circular characterises TSS use. In fact, the LPA has repeatedly found the Site not to be in use solely as a residential caravan site. The Inspector's finding in 1997 was in line with the LPA's case that its lawful use was as a *"showperson's site"*. The same view of landuse was taken in 2006 at the conclusion of a potential enforcement investigation. Significantly, in 2011, when processing the CLEUD application (for residential caravan site use), Thuaire reported, having interviewed Charlie Abbot (now dec'd) and his son (Charles Senior), that the Abbotts, members of the Showmen's Guild, considered the Site to be primarily a showpersons' site including fairground equipment/stores, with others living there, connected to a greater or lesser extent with fairs – the Abbotts themselves considered that *"it was not solely a residential caravan site"*. That analysis was not disputed by the Appellant's original planning agent (Eiser) when making the CLOPUD application and Charles Abbott (Junior) – the

19 See para 2.2 above

witness – expressly stated in his Witness Statement that *"The range of units and the descriptions of the occupants noted in 2010 reflect my recollection of the use at the time. The site has been used in the same manner from before the 2011 survey to the present day."*[20] Eiser also agreed Thuaire's landuse survey of 2017, showing a preponderance of showpeople, their relations and people who helped out in fairs.[21] Nor was the conclusion that there was a mix of uses comprising TSS and residential caravan site disputed at the Inquiry, as MR confirmed during Laister's examination in chief.

2.13. The officers' conclusion was that the use of the Site had not materially changed. The agreed 2017 plan shows that there were significant areas used for equipment storage *"rather than just their residential caravans"*.[22] Thuaire's researches during the relevant 10 year period to July 2017 and in the immediately succeeding months[23] revealed landuse which comprised elements other than residential. Unsurprisingly, the conclusion in the Delegated Report was that *"the Site has a genuine mixed use, with well over half the site being used by 2 showpeoples' families, several fair workers and their storage of equipment and fairground facilities ... The remaining third of the Site is occupied by a number of unrelated residents' caravans, used casually through the year ..."*.[24]

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20 Witness Statement paras 5-6
21 Delegated Report, paras 2.8-2.9
22 Op.cit. para 2.14
23 The agreed plan is dated November 2017 and it has never been suggested to be unrepresentative of the previous years.
24 Delegated Report paras 2.13-14

2.14. MR's mischaracterisation of the LPA's position is important because it underlies much of what follows in terms of his legal submissions on behalf of the Appellant.

2.15. His submission to the effect that, *"in landuse terms it matters not who occupies the caravans ... residential occupation of a caravan by a member of the travelling community is no different to that of a member of the settled community"* is imprecise and erroneous; it reflects neither the established understanding of the TSS landuse in policy and caselaw nor the position on the ground at the Appeal Site.

2.16. MR and Laister alluded to the absence of an express planning permission in this case. That is different from the Winchester situation, where the baseline was formalised in a planning permission. In Thuaire's judgment, on the basis of his contemporaneous site visits, the existing lawful use comprises a mixed use, predominantly TSS but with a significant minority (c. one third) in non-TS residential caravan use. He is the only qualified town planner witness at this Inquiry to have visited the Site during the relevant period. The fact that the baseline is set in this case on the basis of long use (stretching back to before the 1950s) rather than a planning permission does not invalidate the principles about landuse[25] enunciated in Winchester.

2.17. The Appellant's team argues that as there would be a reduction in the number of caravans stationed on site there would not be a change of use, *"let alone a material change of use"*.[26] This submission overlooks two important points –

[25] Clearly the parts of that decision dealing with interpretation of planning permissions are not relevant.

[26] Opening para 9

the law relating to material changes in mixed use cases and the evidence in this case. The first was dealt with in the LPA's opening and is reproduced in the following two paragraphs for convenience.

2.18. Caselaw has clearly established the correct approach to material change of use when the base use is a dual or mixed one (though none deals with the specific instance here of a dual TSS/residential caravan use). In the leading case of Wipperman v Barking LBC[27] (1966) 17 P&CR 225, the Divisional Court held that where there was a composite use of land for more than one component activity, the cessation of one of the component activities would not by itself amount to a material change of use, but there could be a material change of use if one component use had absorbed the entire site to the exclusion of the other. It must be noted that this was a case where the two 'base' uses were storage of building/fencing materials and car breaking and the car breaking had ceased. On the facts as found by the Minister, however, not merely had car breaking ceased, but storage had spread over the whole site. Lord Widgery's statement about the cessation of one element of a composite use ceasing, however, must be read in context. In the case of the very particular, recognised mixed use nature of a TSS Site, the loss of its distinctive characteristics – storage, repair/maintenance/testing of kit and its fluctuating and seasonal nature – to be replaced solely by residential use would fall into the Judge's concept of 'absorption'.

2.19. Despite numerous attempts by the Inspector to engage Laister (and MR) with the Wipperman point during the former's examination in chief, they simply did

[27] Appended

not deal with the obvious fact that this is a clear case where absorption of one element of the mix of uses would follow implementation of the development proposed in the Certificate sought. It is irrelevant to consider hypotheses whereby use of the land by TS might occur without any storage etc. element. The reasons why such a scenario is irrelevant are:

a) because of the clear recognition in policy and caselaw that TSS use is of a mixed character; and

b) because the fact is that, as of July 2017, there had clearly been more than 10 years' use of a character which Laister described as looking like *"a classic TS site"*[28]*;* it is quite clear from the evidence that the site looked like a TSS because that was its predominant use.

2.20. As noted above, it is not, in fact, in dispute between the LPA and the Appellant that the land enjoys, in part, an established, lawful TSS use. This is the baseline for the purposes of assessment. What might happen in the future, if the Appeal is dismissed, and what the enforcement consequences of that might be are not in point. They are mere hypotheses which should not be taken into account for the purposes of the exercise of applying law to facts, as required by s.195 TCPA 1990.

2.21. The application seeks a Certificate in respect of 7 mobile homes which would occupy the entire site. The illustrative layout gives an idea of what is proposed and would, if the CLOPUD were granted, be stationed on the land, subject to

[28] Laister XX (MEQC)

any necessary operational permission[29]. There is also clear evidence to the effect that *"it is the appellant's intention that if granted* ***the storage uses would cease*** *and this is how the application has been considered……This indicative layout showed seven caravans* ***with no other uses****. The* ***intention of the appellant is not to operate the commercial storage and storage of fairground equipment on the site*** *and there has been no attempt to disguise this longterm intention."* (Emphasis added) Despite MR's attempts to shut out consideration of this element of his client's evidence, Laister did not disagree that this would be the likely outcome. The Council's submission is that a sole or total residential use would have characteristics and incidents materially different from the current composite use which it would have supplanted. Contrary to the position taken in the Appellant's planning proofs, it is not the case that there is no material change of use on account of there not being any general or specifically quantified requirement to store equipment nor any specified proportion of TS to non-TS occupants. This argument is akin to the one run unsuccessfully before the High Court and Court of Appeal in Winchester where the suggestion was that, in the absence of a planning condition requiring occupation to be by TS only, there could be no breach of planning control. Logically, the effect of such an argument is to deny the existence of a distinct TSS landuse with its own particular characteristics. That submission was rejected by both courts and the variant version of the argument should be rejected in this case.

[29] The material submitted with the CLOPUD Application to illustrate the proposed development suggests a requirement for operational development. This would require planning permission, whether under Part 3 of the Act or as permitted development under the GPDO: Thuaire proof para. 5.57 and O'Neill Response to Mr N. Laister para. 11.

3. MATERIALITY OF CHANGE

3.1. Thuaire's contemporaneous plans from March 2011 and November 2017 with their areas of active equipment/rides/storage and related fair equipment, as well as spots rendered vacant by absences at fairs, may be contrasted with the plan in the Application supporting statement. Whilst this is only an "*illustrative example*", the statement itself points out that *"the visual appearance of the site would be altered through the removal of the commercial vehicles and fairground equipment"*.[30] As noted above, it is clear from the Appellant's Planning Proof that the intention is for all such storage to cease.[31] Such a change would satisfy the Wipperman test of materiality because the resultant situation would be one in which residential mobile home use would have absorbed the entire site to the exclusion of the other.

3.2. The Appellant's assertion that redeveloping the site in the way proposed in the application would continue the non TS residential element on the site but not displace the TS element of the mixed use is not credible. It does not begin to grapple with the *"pushing out"* of the other element of the mixed use, to use a phrase in one of the Inspector's questions during Laister's XX. His answer was that restricting the number of mobile homes to 7 would not exceed the number of non TS occupants of the site. Even if one accepts that occupancy of 7 caravans by non TS during the relevant period has been established by the Applicant's evidence, this is no answer to the *"pushing out"* point. What it means

30 P.8
31 Paras 37-38

is that the non TS residential caravan site element of the overall mix of uses on the site would have ousted the TSS mixed use element, subsuming the entire planning unit.

3.3. Finding material change on the basis of the Wipperman principle does not depend on reaching a conclusion on MR's separate point about the identity of future caravan occupiers being irrelevant (a submission which is considered separately below).

3.4. Not only would the physical appearance of the Site dramatically change, but other important characteristics of the use would also be fundamentally different. In essence, the TS way of life, with the active members of the Abbott/Hayes family departing in the early spring until late November and storage/maintenance/repair/cleaning of equipment and rides being carried out on site, would disappear from the land. A fluctuating landuse, in which people came and went and caravans and other objects were moved around at will to accommodate equipment[32] would give way to a markedly different, settled form of residential occupation. The pattern and type of vehicular use would be likely to change, although the Appellant produced no traffic survey or projection to substantiate the assertion that vehicle movements would reduce. Open air activities such as cleaning bouncy castles and breaking up old vehicles would cease because there would be no planning rights to carry out such activities within land entirely occupied by a residential caravan site, as proposed. Eiser's

[32] Abbott XX (DA); see also the evidence of Abbott X, XX, RX and under XX (DA) on Winter Wonderland, as well as Thuaire's evidence in X as to what he was told about the WW / Cy Abbott area inside the pink square on the November 2017 agreed plan

proof, as has been noted, makes this abundantly clear. Laister agreed[33] that these aspects of the use had been *"noticeable"* both on and offsite, as the City's photographs and Mrs Kerr's evidence demonstrated. Complete removal of these elements and replacement by sole use caravan residence without storage etc. would be material changes.

3.5. In terms of landuse characterisation, many distinctive features of the existing landuse would be lost: the storage, repair/maintenance/testing of kit, with the different activities this entails and the fluctuating and seasonal nature of the use revealed by O'Neill's photographs[34]. Those photographs and the agreed site survey plans evidence a situation which has much in common with the description of TSS use in the 2007 Circular. Although this document has now been superseded, the description is still apposite.

3.6. As to physical appearance, comparison may be made between the somewhat diffuse collection of different forms, sizes and functions of objects in the 2011 and 2017 layout plans, the aerial photographs appended to the Appellant's Planning Proof and the photographs taken from neighbouring property appended to the City's evidence, as opposed to the uniform, regimented layout shown on the illustrative example in the Application Statement. The illustrative photographs accompanying the example layout, whilst caravans for the purpose of the 1960 Act, are very different in character and appearance from the collection of touring and static caravans, lorries, camper vans and assorted

33 XX (MEQC)

34 The reference to the Forest of Dean case at para 5.51 of Thuaire's proof is not as clear as it might be but the case demonstrates that seasonality of occupation may be relevant to materiality of changes between different sorts of residential caravan use (in that case, holiday use and permanent use).

fairground rides/games/equipment shown in the City of London's photographs.[35] Charles Abbott Jnr. confirmed that the photographs were a fair, representative picture of the parts of the site portrayed; although Mr Dark's area (NW corner) was not shown, he agreed that no major bits of the site were omitted.[36] In his Witness Statement he confirmed the accuracy of Thuaire's 2017 Survey and in XX he said that it had been drawn up following their conversation in the presence of the Appellant's then planning representative. Laister agreed that there was no evidence to suggest that the situation in November 2017 had changed materially from that at the relevant date of 31 July 2017.[37] Apparently Charles Abbott Junior and his parents, Charles Senior and Olga, had moved to Royston at Easter that year, but that was right at the end of the period and there is no evidence to suggest that their plots or caravans were taken over by non TS subsequently. Incidentally, although Charles Senior and Olga were said to be retired, in one of his answers to CD, Charles Abbott Junior said that his mother helps out at shows from time to time.

3.7. Charles Abbott Junior in his Witness Statement also confirmed the accuracy, in general terms, of the similar plan of March 2011, drawn up following a meeting between Thuaire and his grandfather, Charlie Abbott, and his father, Charles Abbott Senior. He stated in the Witness Statement:

> *"The site has been used in the same manner from before the 2011 survey to the present day. The site is used throughout the year with the mix of activities as set out in the surveys."*

35 SoC Appx 2/O'Neill Appx PON6 (same photos in colour). (Appx PON7 comprises photos outside the relevant period but they present a similar scene)
36 XX (MEQC)
37 XX (MEQC)

The Appellant's planning agent also agreed that the 2017 plan was representative of what was on site then and appeared to be consistent with the 2010 (sic 2011?) plan and the intervening years.

3.8. Turning to the issue of occupiers' identity, MR is right to point out that this is not normally a material planning consideration. But in this instance, as the former Circular (quoted by the Deputy Judge in Winchester at first instance) makes clear, the rationale for regarding the occupier's calling as possessing planning significance is not because of who s/he is, as an individual, rather, it is because of the distinctive way of life, which has planning consequences. Hence, that person's status is accorded significance and made material by law and policy.

3.9. The proposed use need have no connection with travelling showpeople at all. The Appellant's statement in support of the Application and planning proof hypothesise about what the position might be if current site residents all gave up employment as travelling showpeople. In the light of Mr Abbott's concessions about use of the site for the relevant period, however, this is simply speculation. The LPA would have to consider such a situation if and when it arose. In the light of the evidence of Thuaire and Abbott, however, it is clear that such a hypothetical situation is not the factual baseline for determining this CLOPUD appeal. Thuaire interviewed Charles Abbott Junior in 2017, again revealing substantial usage for the purposes of seasonal residence and storage of rides and stalls by the Abbott brothers (Charles Junior and Cy) and their aunt Mrs Charlotte Hayes (sister of Charles Abbott Senior and daughter of Charlie Abbott) - active members of the Showmen's Guild, and Charlie Abbott and his wife Dolly.

3.10. Charles Abbott Junior confirmed that Charlie had managed the site until his death in 2011 and said that he would defer to his grandfather in terms of knowledge of the site and its occupants for the period up to 2011[38]. Therefore the attempts in evidence in chief to cast doubt on the accuracy of Charlie Abbott's information conveyed to Thuaire in the 'gazebo interview' were as irrelevant as they were unconvincing. The precise details of what the intermediate category of those whom Charlie said were involved in helping out at or participating in fairs in one way or another are not before the inquiry. The Appellant's team could have provided this information, had they wished, because they could have called Charles Abbott Senior and/or the surviving people concerned, but they chose not to do so. If they wanted to cast real doubt on the material provided by Charlie, who ran the site, they should have done so with evidence from somebody who really knew what they were talking about; even if Charles Abbott Junior succeeded in raising doubts about the precise details in the Inspector's mind, since the burden of proof lies on the Appellant, they needed to provide much more accurate evidence than they did.

3.11. Given that there is no dispute about the fact that there was a TSS element on the site and the irrelevance of the number 7 in the application when viewed in the context of the Wipperman absorption test, this debate was, ultimately, sterile.

38 Xx (MEQC)

4. CONCLUSION

4.1. The Inspector is therefore respectfully asked to dismiss the Appeal.

MORAG ELLIS QC