

**Item 4a**                      **13/00385/COU**

**Case Officer**              **Peter Willacy**

**Ward**                              **Heath Charnock And Rivington**

**Proposal**                      **Change of use to a residential Gypsy and Traveller site involving the siting of 2 mobile homes, 3 touring caravans (1 of which is for storage only when not away travelling), and retention of a utility block, and access at the north west corner of the site for a temporary period of 4 years**

**Location**                      **2 Heath Paddock Hut Lane Heath Charnock ChorleyPR6 9FP**

**Applicant**                      **Mr Michael Linfoot**

**Consultation expiry:** **7 June 2013**

**Application expiry:** **24 June 2013**

## **PROPOSAL**

1. This application relates to part of a triangular shaped area of land of approximately 1,372 square metres located on the eastern side of the M61 between the motorway and Hut Lane and lying to the south of residential properties at Olde Stoneheath Court and Red Row. The site is situated between the settlement areas of Adlington and Chorley.
2. The application is for a residential Gypsy and Traveller site involving the siting of 2 mobile homes, 3 touring caravans (1 of which is for storage only when not away travelling), and retention of a utility block, and access at the north west corner of the site for a temporary period of 4 years.
3. The scale of the development now proposed differs from the development previously refused planning permission and subject to enforcement action which has been dismissed at two previous appeals. The application now relates to a reduced area of the original site with the remainder of the land now lying vacant. The number of static caravans now proposed remains the same at 2 with the number of touring caravans reduced from 6 to 3 one of which would be used for storage when not being used for travelling.

## **RECOMMENDATION**

4. It is recommended that this application is granted temporary conditional planning approval for a period of 2 years.

## **MAIN ISSUES**

5. The main issue for consideration in respect of this planning application is whether harm arising from inappropriate development in the green belt, and any other harm caused, is clearly outweighed by other considerations to the extent that very special circumstances exist to justify temporary planning permission being granted.

## **REPRESENTATIONS**

6. A total of 112 objections have been received the and can be summarised as follows:-
  - Inappropriate development in the Green Belt.
  - The land is Green Belt and there should be no building work permitted at all.
  - The development is not in keeping with the local area.

- Planning rules are there for all interests and must apply to all whether or not it suits their lifestyle.
  - Trees and services have been chopped down without permission.
  - It's not Government policy to allow caravan sites on green belt fields.
  - They run businesses from the site.
  - They are anti-social.
  - They call themselves travellers but do not travel.
  - Travellers should not be in the Green Belt.
  - Development is unlawful.
  - Visually detrimental.
  - Manipulation of the planning process.
  - Planning laws there to protect Green Belt for benefit of everyone.
  - Development has caused serious harm to the Green Belt.
  - 4 years unacceptable already been turned down at 2 Public Inquiries.
7. A total of 128 letters of support have been received and can be summarised as follows:-
- Consider site unobtrusive and out of the way and not detrimental to the area.
  - Chorley Council has been told that they have to provide for Gypsy sites.
  - Refusal would waste tax payers money while approval would save money
  - Family contribute to the community in a positive way.
  - Site was untidy previously and has been tidied up.
  - Education of children has improved since occupying the site.
  - If application refused will force them to park up illegally on road side.
  - The site meets criteria in policy 8 of Lancashire Core Strategy apart from being within the Green Belt.
  - The council has not provided a 5 year site plan for Gypsy and Traveller sites as required by the Planning policy for Traveller sites.
  - Committee should visit the site to understand location and local impact.
  - To deny the application would be a breach of human rights.
  - The Council are ignoring their duties to provide accommodation and this site will not cost taxpayers a penny.
  - All they want is a secure environment to bring up the children and be able to educate them as we all do.
  - They are valued members of the community and put more into it than those who are objecting.
  - Nimbyism.
  - Have an aversion to bricks and mortar.
  - Small development limited impact on the Green Belt.
  - Support on Human Rights grounds.
8. One letter has been received from a planning consultant acting on behalf of the residents of 22 dwellings which are in the immediate vicinity of the site. The letter confirms that the continued presence of the site is unacceptable to his clients. However, since the time of the first occupation of the site national planning policy has changed and the position now is that the absence of up to date evidence on need is a significant material consideration to be weighed in favour of granting temporary consent. On the basis that the Council is embarking upon a new GTAA with a completion date of April 2014 then it is considered that the process of delivery of sites, if required could be achieved within a 2 year period and on that basis a 4 year temporary permission would not be justified.

## CONSULTATIONS

9. **United Utilities** : No objection
10. **Highways Agency**- No objections subject to conditions.
11. **Heath Charnock Parish Council** – The council objects again to this application on the grounds that it is Green Belt, and development is not appropriate. The council believes that

the land should be restored to its original state before any planning application can be considered.

12. **Lancashire Fire and Rescue Service** – no objections to the proposed scheme provided that it is carried out in accordance with the submitted application.
13. **Waste and Contaminated Land Officer** – No objections to the development.

#### **APPLICANT'S CASE**

14. The applicant has submitted the following documents in support of the application:
  - Planning Statement
  - Design & Access Statement
15. The applicant's statement has been prepared by a planning consultant and details planning history in relation to the site, current National planning policy associated with Gypsy & Traveller site provision, including Planning Policy for Traveller Sites and its objectives.
16. The statement cites the following case law in support of the application.
17. In *Basildon DC v Secretary of State and Temple* (EWHC 2004 2758 Admin) the Inspector had concluded that very special circumstances existed to grant a Gypsy family planning permission in the green belt, taking account of factors including:
  - the local authority's failure to assess the needs of Gypsies and Travellers;
  - the severe shortage of suitable and available alternative sites within the area;
  - the educational needs of the children;
  - the fact that dismissal of the appeal would force the family to choose between abandoning their traditional way of life by accepting local authority housing to keep their children at school and returning to a life on the road
18. The LPA challenged the decision arguing that very special factors could not merely be factors, which weigh in favour of planning permission, but that each factor had to be of such a quality that it could be called very special. Sullivan J disagreed, and made it clear: *'There is no reason why a number of factors ordinary in themselves cannot combine to create something very special. The claimant's approach flies in the face of the approach normally adopted to the determination of planning issues: to consider all the relevant factors in the round...'*, paragraph 10.
19. In *Wychavon DC v SSCLG and Butler* (EWCA 2008 Civ 692) the Court of Appeal quashed a judge's decision that the three factors relied upon by an Inspector together to outweigh the harm to the green belt, that is that there was to be a needs assessment, the need for sites, and the lack of available alternative sites were common place factors, which did not amount to special circumstances. Carnworth LJ held: *"...in my view the judge was wrong, with respect, to treat the words 'very special' ... as simply the converse of commonplace. Rarity may of course contribute to the special quality of a particular factor, but it is not essential, as a matter of ordinary language or policy. The word 'special' in the guidance connotes not a quantitative test, but a qualitative judgement as to the weight to given to the particular factor for planning purposes. Thus, for example, respect for the home is one sense a commonplace factor ... But it is at the same time sufficiently special for it to be given protection as a fundamental right under the European Convention.'*
20. **Need for Accommodation** - Chorley Council does not have an up to date robust assessment of need. The most recent assessments available, in fact the only ones ever carried out, are the Lancashire Sub-Regional Gypsy and Traveller Accommodation and Related Services Assessment, published in May 2007, and closely related North West Regional Gypsy and Traveller Accommodation and Related Services Assessment, also published in May 2007. It depends on those studies in keeping to the view that there is no local need for accommodation for Gypsies and Travellers.

21. Together with evidence from the appellants and their supporters I submitted a substantial body of evidence to the effect that the conclusion of the initial needs assessments that there was no local need in Chorley was incorrect. While the Inspector was not fully convinced his findings at paragraphs 26 – 28 at the very least throw doubts on the no local need conclusion of the original assessment, and underlines the need to update the accommodation needs assessment. At paragraph 34 he concluded: “.. *there remains a significant need for sites at regional or county level. On the face of it there is no clear identified need in Chorley District. The appellant’s evidence about need based on the incidences of encampments and the unauthorised occupation of the appeal site and other locations is not sufficient to demonstrate a clear need in the District. That said the lack of an up-to-date assessment of need in Chorley or the wider area, the varied approach by Councils to provision, added to the anecdotal evidence about local activity, makes the position on need and provision more uncertain than that faced by the Inspector in 2010.*” He also agreed, paragraph 28 that weight should be given to the needs of the family on the site in considering need.
22. The Judge who discharged Mr Boswell and fined Mr Linfoot in his sentencing remarks confirmed the Councils’ need to update its assessment, commenting: “*hitherto Chorley has tended to assume that rather old information going back to 2007 enables it to form the view, and it had formed that view, that there is no need locally, despite the predicament of you and your families in this case, and so other information may have to be digested and assessed by Chorley.*”
23. Contrary to the requirement of S.225 of the Housing Act 2004, the Council did not review its assessment of Traveller needs when it reviewed other housing needs. It updated its housing needs assessments in 2008 and 2011. As far as I am aware, it has no plans to update its assessment of the needs of Gypsies and Travellers, I attended a meeting with Chorley officials in August 2012. They were unable to answer my question about how the Council is approaching updating the needs assessment, but agreed to come back to me on the issue. I have never received a reply.
24. The importance of up to date Gypsy and Traveller accommodation needs assessments (GTAA’s) is shown in a number of cases where Inspectors have suspended examinations because the evidence including in regard to the GTAA was out of date, e.g. in regard to the Hull Core Strategy in June 2012, and more recently the Ribble Valley District Council Core Strategy. In his letter to the Council of 23 November 2012 the Inspector wrote:
25. The GTAA was published in 2008. It is not recent. As part of the methodology surveys were undertaken including interviews with Gypsies and Travellers. The GTAA says that this consultation is one of the most important aspects of GTAA’s. But these surveys were carried out between October 2007 and February 2008. That does not amount to up to date evidence.
26. The Lancashire GTAA on which the Council depends predated that for Ribble Valley, and did not include any interviews with Gypsies or Travellers in Chorley.
27. The initial results for the 2011 Census, published in December 2012, also suggest the assessment needs updating. Against a national picture where the census undercounted Gypsy and Traveller numbers, the census indicates a White Gypsy or Irish Traveller population of 57 in Chorley. This is a high figure given the claimed lack of Gypsies and Travellers. While many may be in houses, it implies a potential need for pitches and provides further evidence for questioning the caravan count returns, which have consistently been zero, apart from in regard to the Hut Lane site.
28. Since the Council cannot identify a five-year supply of deliverable sites, that failure is a significant material consideration in favour of the current application.
29. In our submission, based on a robust assessment of needs, there will be a requirement in Chorley for a site for the extended Bird Linfoot extended family, equivalent to 4-5 pitches. This is more than those who would be accommodated through the current temporary application. It recognises the extended family’s wish to live as a family group, and that Mrs Linfoot’s sister and her family, and her brother and his family have had to find

accommodation elsewhere because of the absence of authorised accommodation in Chorley. In addition to the needs of the Bird / Linfoot family there will also be need from Gypsies, Travellers and Travelling Showpeople, who currently live in Chorley in houses, on unauthorised sites, and unidentified, and from the Gypsies, Travellers and Travelling Showpeople in the wider area who are desperate for accommodation, but cannot stay in Chorley because of the absence of accommodation, who would welcome the opportunity to live in the district.

30. **Availability of Alternative Accommodation** - The evidence to the public inquiry was that Mr Linfoot had been exceptional in the thoroughness of his efforts to identify suitable alternative accommodation to which his family could move within Chorley, and the surrounding districts. He has continued with these efforts, which are bearing fruit. As the enclosed Appendix 1 confirms, a family friend with a site in Atherton has recently written to him and Mr Bird indicating that he will have four pitches which will become available around four years from January 2013, which they would be able to move to.
31. The Council has also attempted to identify alternative accommodation for the Linfoots and Birds to relocate to, but only outside its own Council area. It has tended to suggest any possibility as suitable, even in cases where pitches were only available because of acknowledged problems, which the family indicated they would not be willing to move because of safety fears.
32. In addition to the offer in the letter from Mr Harrison, the significant level of unmet need in the surrounding area, taken with the requirements of Planning policy for traveller sites in regard to assessing needs, setting targets, having a supply of deliverable and developable sites, and the Policy's positive approach to sites brought forward by the Traveller community themselves, mean we can expect an improved supply of sites to come forward in the wider area around Chorley over the next three or four years.
33. Based on the twice yearly caravan counts, there has been a significant long term increase in numbers of caravans on authorised sites, from 4,182 in the first caravan count for January 1979, to 12,375 in July 2006, the first count after Circular 1/06, and 16,255 by July 2012. The increase is overwhelmingly of private sites, provided by Gypsies and Travellers themselves, rather than public sites. Despite the big increase in caravans on authorised sites, the numbers of unauthorised sites have remained stubbornly high, reflecting local authorities' resistance to making adequate provision. There were 4,176 caravans on unauthorised sites in January 1979, 3,994 in July 2006 and 3,158 in July 2012.
34. Most local authorities are reticent to promote proposals for, or support proposals by Gypsies and Travellers. Over the last 3 or 4 years there has been something of a hiatus in making progress. The regional strategies, where relevant, and Circular 1/06 have influenced appeal decisions in regard to proposals by Gypsy and Traveller applicants, but local authorities have done little, partly because they initially expected the new policy to be less supportive towards Gypsy and Traveller development than Circular 1/06.
35. In fact Planning policy for traveller sites has similar objectives to C1/06 and in some ways puts greater pressures on local planning authorities to plan for Gypsy and Traveller needs. In response to it, and particularly the March 2013 deadline to have in place a robust assessment of needs and a 5 year supply of deliverable sites, in recent months we have seen a lot of activity by local authorities across the country in commissioning new needs assessments and reviewing policy. As a consequence, and combined with the continuing efforts by Travellers to acquire and get permission for sites, we can expect a significant improvement in the supply of sites in the wider area around Chorley over the next 3-4 years.
36. **Gypsy Status and Personal Circumstances** - The site would be occupied by Mr and Mrs Linfoot and their three boys, Mr and Mrs Bird, who are Mrs Linfoot's parents, and by Clonus Boswell, Mr and Mrs Bird's grandson.
37. The Council has always accepted the applicants claim for Gypsy status, which reflects Mr Linfoot's, Mr Bird's, and Clonus' work, and Mrs Linfoot's seasonal work, and the way they

have lived a traditional nomadic life in caravans, but with Chorley as their main base. They moved to Hut Lane from which they travel for work when they were asked to leave the private site where they when living. because of the impossibility of living safely at the side of the road, and their need for a settled safe place to live, and such factors as Mr and Mrs Bird's age, and Mrs Bird's health needs, and to provide the stability for the Linfoot's children to attend school.

38. There was a substantial body of evidence to the February March 2012 inquiry on the impacts on the appellants of being refused permission to continue living on the site, which were summarised at paragraphs 42 – 44 of the quashed decision letter. These circumstances make up much of what the Inspector was referring to in his reference at paragraph 52 to 'the considerable factors in favour'. Subsequent changes have further strengthened the weight to be given to these factors.
39. Mrs Bird, Mr Linfoot's mother-in-law had a stroke in June 2012. This adds to the weight attached to be attached to avoiding putting her and her husband at risk of being made homeless, and to keeping the extended family together with the support they give each other, and in particular that Mr and Mrs Bird get from their daughter, Mrs Linfoot. Mr Linfoot has developed diabetes. In our view it is likely that the anxiety the family has been under, and Mrs Bird's fear of being made homeless which Mr Bird spoke of in his witness statement to the inquiry, have been contributing factors to Mrs Bird's stroke, and to the deterioration in Mr Linfoot's health.
40. The Linfoot's eldest son, Michael transferred to secondary school in September. This is a material change on the basis that successful transfer to secondary school, and children remaining in school through secondary education is a key objective for raising educational standards in the Gypsy and Traveller communities.
41. **Developments in the Law** - Through the judgement in *AZ v the Secretary of State and South Gloucestershire* (EWHC 2012, 3660, December 2012) there has been a development in the law in regard to the approach decision makers must take when determining cases which affect children. The best interests of the children should be treated as a primary consideration in a decision where the refusal of planning permission would breach the European Commission on Human Rights article 8 rights of the family.
42. **Appraisal and Conclusions** - Based on the Inspector's findings in the quashed decision letter, the proposed development would meet the four criteria in Policy 8 of the Central Lancashire Core Strategy. At paragraph 50 the Inspector concluded 'that the site is economically, socially and environmentally sustainable'. There is suitable road access and sufficient space for parking and turning vehicles and the storage of equipment. The land is not contaminated. At paragraph 19 the Inspector concluded 'the development causes harm to the character and appearance of the area, but subject to additional landscaping being implemented, including more sympathetic and consistent boundary treatments, the harm would be within acceptable bounds'. He went on to note that the previous Inspector concluded the development before him caused very serious harm, but that was for a more intensive development with less scope for landscaping.
43. As acknowledged by Inspector Dakeyne, there are considerable factors in favour of the new application, which have increased since his decision letter. These include the unmet need for accommodation for Gypsies and Travellers in Chorley and the surrounding area, the impacts on the health, welfare and education of the family, the interests of the children, the implications on the family's article 8 rights, and the local authority's duty under the Public Sector Equality Duty in the exercise of its functions to advance of equality of opportunity between people who share a protected characteristic (which includes Romany Gypsies) and those who do not.
44. The harm to the green belt from inappropriate development and loss of openness carries significant weight. But the scale of the proposed development, and the extent to which openness is reduced is significantly less than the proposals before the February 2012 Public Inquiry.

45. The application is for a temporary period of four years, and there is a strong probability that appropriate alternative accommodation would be available, either in Chorley or the surrounding area, at the end of the approval period. This has two important implications. The period of harm to the green belt would be limited. And on the basis that the Council does not have a robust assessment of need and a 5 year supply of developable sites, that failure is a significant material consideration in favour of the application.
46. We believe there are exceptional circumstances which together can justify the harm to the green belt. They include that the harm will only be for a temporary period with a significant likelihood that circumstances will change allowing the family to move to suitable alternative accommodation in Chorley or the surrounding area at the end of the period, because the harm will relate to a reduced site, which is not within the open countryside, and taking into account the significant factors in favour, including the Council's failure to have a robust up to date assessment of needs, the unmet needs for accommodation in Chorley and the surrounding area, the impacts on the family of being forced to leave when currently no suitable alternative accommodation is available, the impact on their Article 8 rights, and the needs of the children.
47. **Conditions** - In addition to conditions debarring commercial activity and requiring the development to be carried out in accordance with the approved plans, and the use discontinued, the caravans and utility block removed and the land restored to its former condition based on an agreed scheme of works at the end of the temporary period, the applicant would be content with a condition which restricted occupation to himself and his immediate family, and to Mr and Mrs Bird and their descendants. We have also indicated in the Design and Access Statement that we would accept appropriate conditions in regard to landscaping, the materials of the mobile home, and a connection to the mains sewer.
48. **Design & Access Statement:** sets out the location and context of the application site in relation to the surrounding area that it has an area of 1,372 square metres forming part of a larger triangular site of 2,527 square metres and describes the boundary treatments which are a combination of fencing and existing and new planting.
49. The triangle site has been owned as tenants in common by Mr Linfoot and Mr Joseph Boswell, but they are in the process of dividing the site, so that Mr Linfoot will own the south-western section, and Mr Boswell the north-eastern. (At the time of writing the position remains unchanged, hence the site location plan shows the north-eastern part of the site as also in the applicant's ownership, and the applicant has served the appropriate notice on Mr Boswell.)
50. The application reflects the changed position with the departure of the Boswells. The proposals are significantly different from those before the public inquiry held in March 2010 and the second public inquiry held in February and March 2012 in that they relate only to the south-western half of the triangle site, they leave the north-eastern half open, and they are for a reduced amount of development: two mobile homes, three touring caravans (one of which would be stored on site), and the utility block. This can be compared with two mobile homes, and up to 14 touring caravans, the utility building and six small toilet buildings in application 09/00437/ COU, and two mobile homes, six touring caravans (two of which would be stored on site) and the utility block in application 11/0484/COU.
51. Instead of the position shown on the Existing Site Plan, where the fence dividing the site has a dog leg so that the each of the two sides has access to the utility block, the Proposed Site Plan shows the applicant's proposal to move the section of fence near to the utility block so that it goes around and contains the utility block, all of which would be on his side of the site.
52. The proposed layout is shown on the Proposed Site Plan. The site is covered by wood chippings except for an area laid to grass in the north-east corner, which is primarily used as a play area by the Linfoot's children. The only change to the surface treatment proposed is to laydown concrete hardstandings for the mobile homes in the positions shown.

53. The plan and elevations of the utility block are shown on the Utility Block Plans. Its appearance would be unchanged. That is, it is made of stone blocks, with brown coloured UPVC windows and doors, and there is a very shallow mono pitch roof. As a consequence of having use of the whole utility block and able to use part of it for storage, the applicant would remove the container currently in the south-western corner of the site.
54. We are not proposing any additional changes to the landscaping and boundary treatment, although we would be willing to discuss any suggestions the Council might have. Paragraph 16 of the Inspector's decision letter in Appeal 2159688 suggests that the reference at paragraph 19 to additional landscaping is primarily referring to the other half of the site. We are not clear what is meant by the Inspector's reference to 'more sympathetic and consistent boundary treatments' in paragraph 19, but would be happy to consider any proposals the Council might have, which could be addressed through an appropriate condition.
55. Although their impact will be reduced because of the growth of the trees within the site and because of leaving the north-eastern half of the site undeveloped, certainly in winter conditions the caravans on the site are still visible from the locations noted in paragraph 14 of the May 2012 decision letter. The distances from Back Lane and above the Anglezarke reservoir mean the caravans appear as very small objects, but their pale colours increase their visibility. There are log cabin type mobile homes, or they can be clad in timber, which would significantly mitigate their visual impact. At the point when they can afford to trade up to mobile homes, the applicants would be willing to approve the materials by condition.
56. The application also differs from that considered at the 2012 public inquiry in that it is for a temporary period of four years. Reflecting the guidance in Circular 11 of 1995 the period is long enough to avoid the need for a second temporary permission. It corresponds to the point when accommodation is likely to be available for the applicant and his family on his site based on the letter from Mr Harrison. It also allows the Council adequate time to carry out a needs assessment and to bring forward a supply of deliverable and developable sites.
57. **Access and Parking** - The site would continue to be accessed from the existing entrance, close to the point where Hut Lane turns north towards Red Row cottages and Hallsworth Fold Farm. The parking area for cars and light vans is to the west of the gateway with the garden /children's play area to the east.
58. **Services** - The site is served by mains water and electricity supply. There is currently an onion shaped septic tank with a manhole in the position shown on the Proposed Site Plan, which is periodically emptied. Because the application is only for a temporary period the applicant is not proposing to make any changes to the current position, but he would be willing to connect to the main sewer system, if required. Again this could be addressed by condition.

## PLANNING HISTORY

59. During the 1990s, the land was used to store timber and wood shavings without planning permission and enforcement action was taken. An appeal against the enforcement notice was dismissed and the land was cleared of stored timber and sawdust. The land then regenerated naturally with trees and undergrowth covering the site until 2008 when the trees and undergrowth were removed. In 2008, an application was submitted to erect a stable on the land together with an exercise area for horses. The application accorded with both green belt policy and the Council's supplementary planning guidance on development involving horses and was granted planning permission.
60. In June 2009, the Council received reports that caravans had been moved onto the land and were being occupied for residential purposes. On investigation it was found that 12 caravans were being occupied for residential use on the land and that other vehicles and a catering trailer were parked on the land. The land itself had been covered with hardcore materials to form an area of hardstanding and a utility block had been erected, together with gate pillars, lighting and a new vehicular access formed. As the site lies within the green belt it was



considered expedient to issue a Temporary Stop Notice to prevent any further development taking place.

61. A retrospective planning application was submitted to the Council for consideration in respect of the development seeking temporary permission for a period of 3-4 years, and this was considered by Development Control Committee on the 18 August 2009 when members resolved to refuse the application and authorised the issue of enforcement notices in respect of the unauthorised development on the land.
70. Following the issue of enforcement notices, the notices were appealed together with the refusal of planning permission. The appeals were heard at a Public Inquiry in March 2010; the appeals were dismissed on 13 May 2010, and the enforcement notices upheld with variations.
71. Following the Inspector's notice of decision, legal challenges seeking leave to appeal the Inspector's decision were lodged with the High Court under Sections 288 and 289 of the Town and Country Planning Act 1990 and a hearing was held on the 23 September 2010 in the High Court at Leeds when leave to appeal the decision under Section 289 was refused. The right of appeal was on a point of law and could not therefore reconsider the arguments put before the planning inspector. However, the challenge under Section 288 was not heard at the same hearing and was subsequently withdrawn on 1 November 2010. As a result of the withdrawal of the challenge under Section 288 the compliance periods allowed with the Enforcement Notices began to run.
72. The first period for compliance expired on the 24 June 2011 when the caravans and other vehicles should have been removed from the land. The second compliance period expired on the 21 September 2011 when other restoration works requiring the removal of hardstanding and other operational development were required to be carried out. Following the expiry of the first period of compliance with the enforcement notice on 24 June 2011 the steps required to comply with the notice were not taken and legal proceedings were commenced. The case was finally heard at Lancaster Crown Court on the 12 November 2012 for mitigation and sentencing following guilty pleas. The court fined Mr Linfoot £400 and gave a 12 months conditional discharge to Mr Boswell the joint owners of the land.
71. On the 3 June 2011 the Council received a further planning application for the land in respect of:- "Change of use of land for the siting of 4 static caravans and 2 touring caravans for residential use, the storage of 2 touring caravans when not in use for working away, retention of double utility block, provision of double stable block, retention of reduced area of hard surface for exercising horses, retention of hard standing for 3 vehicles plus horse box trailer to north of site and provision of new hardstanding for 3 vehicles plus horse box trailer together with retention of existing access at north west corner of site". This represented a decrease in the number of caravans that were on the site when the unauthorised development originally took place.
72. The planning application was due to be determined by the 23 August 2011. . Changes made to the planning application during its consideration required further consultation on the planning application which meant that the planning application was unable to be determined until after 23 August 2011. A report on the planning application was made to the Development Control Committee meeting on the 6 September 2011 with a minded to refuse recommendation which was agreed to by committee. In other words, Council Members confirmed that, had the Council been in a position to determine the planning application, it would have refused it. The appeal was dealt with by Public Inquiry on the 7, 8 and 9 February and 23, 30 March 2012. On the 22 May 2012 the appeal was dismissed.
73. Following the Inspector's notice of decision a legal challenge was lodged by the applicant against the Inspectors decision with the High Court under Section 288 of the TCP Act 1990 and a hearing was held on the 7 November 2012 in the High Court at Manchester. The decision of the Judge was to quash the Inspectors decision and remit the case back to the Planning Inspectorate for rehearing. The challenge was successful ion the very narrow

ground of temporary permission and adequate reasoning. A date for a new Public Inquiry has been set for the 24, 25, 26 and 27 September and 1 October 2013.

74. On 4 February 2013 the Council obtained an injunction against members of the Bird, Boswell and Linfoot families. As part of that process Mr and Mrs Boswell gave an undertaking, conditional on planning consent not being granted for the siting of caravans on the land, not to take up residence on the site. Mr Linfoot agreed, if the redetermination of the appeal was unsuccessful, that he would vacate the site within 3 months of such a decision.
75. On the 26 April 2013 the application subject of this report was received for consideration for a temporary permission relating to a reduced area of the site.

#### **PLANNING POLICY FRAMEWORK**

76. The Development Plan comprises the National Planning Policy Framework, Regional Spatial Strategy (RSS); the Central Lancashire Core Strategy, the saved policies of the Chorley Local Plan Review 2003; the Chorley Local Plan 2012-2026-Publication Version and Planning Policy for Gypsy and Traveller Sites.
77. **National Planning Policy Framework** - National policy advises that inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances.
78. **Planning policy for Traveller sites 2012**The Planning Policy for Traveller Sites paragraph 10 states that: 'Criteria should be set to guide land supply allocations where there is identified need. Where there is no identified need, criteria-based policies should be included to provide a basis for decisions in case applications nevertheless came forward'.
79. **Central Lancashire Core Strategy 2012** - Policy 8 of the Publication Core Strategy sets out policy criteria relating to proposals for gypsy and traveller sites. On the 7 June 2012 the Inspector's report on the Central Lancashire Core Strategy was issued with the Inspector finding the Core Strategy to be sound and the associated evidence robust. In particular he found that Policy 8: Gypsy and Traveller and Travelling Show People Accommodation was effective, justified and accorded with national policy which includes Planning Policy for Traveller Sites published on 23 March 2012.
80. **Chorley Local Plan Review 2003** - Policy DC1 of the Chorley Local Plan restricts development in the Green Belt to certain specified uses. Policy PS14 deals with Gypsy and Traveller sites and is a criteria based policy which does not permit sites within the Green Belt.
81. **Chorley Local Plan 2012-2026 – Submission version** The GTAA has found no need for sites for gypsies and travellers or travelling showpeople, no sites are allocated in the plan and any applications will be assessed against the criteria in Core Strategy Policy 8. Chorley Council will rely on this Core Strategy policy in the absence of any identified need. If at any stage in the Local Plan period a need for pitches is demonstrated then specific sites could be identified through a Local Plan review. This approach is consistent with the Government's Planning Policy for Traveller Sites, and particularly its requirement for local planning authorities to work collaboratively and to plan for sites over a reasonable timescale.

#### **ASSESSMENT**

82. **Green Belt** - The use of the land for the siting of residential caravans is not listed in any of the categories of appropriate development in the Green Belt. Such development according to the National Planning Policy Framework and Planning policy for Traveller sites is inappropriate development in the Green Belt.
83. Only appropriate uses of land, which do not harm the character, appearance, and openness of the green belt will therefore be permitted in such areas. The caravans because of their form and appearance together with other works carried out to the land are a prominent feature in this rural area and affect the openness of the green belt.

84. Such a situation would have a damaging effect on the areas of Green Belt within the Borough by facilitating a gradual erosion of the attractive open rural areas that characterise Chorley and are an integral feature of the Boroughs rural attractiveness
85. **Impact of the Site** - Prior to the unauthorised development, the site was open in nature and had been covered with trees/undergrowth.
86. The development subject of this application is urban in appearance with views of gated access points, stone pillars and caravans and vehicles on the site when seen from public viewpoints, from Hut Lane to the west and, in particular from the motorway bridge at a higher level, this has a discordant effect on the character and appearance of the area.
87. Existing vegetation outside of the application site serves to screen the development during the summer months from some vantage points and further planting has been added to the site boundaries although the nature of views into the site particularly from the motorway bridge reduce the effectiveness of any planting. During winter months when there is no leaf cover the impact of the development is more obvious within the locality and more damaging visually to the rural landscape. This fact was acknowledged by the Inspector during the consideration of the last appeal in 2012.
88. The development now proposed relates to part of the site situated next to the M61 with the remainder of the site on the eastern side lying vacant following one of the owners giving an undertaking to the Court to vacate the land. The numbers of residential caravans now proposed has been reduced since the last appeal decision. That proposed 2 No static caravans and 4 No touring caravans for residential use and the storage of 2 No touring caravans when not in use for working away making a total of 8 caravans. This application is for 2 No static caravans and 2 touring caravans for residential use and 1 caravan for storage only when not away travelling making a total of 5 caravans. Overall a reduction of 3 caravans. The utility block would be retained and because it would now be used only by one family this would free up storage space and would enable the storage container on site to be removed.
89. **Effect on Residential Amenity** - At the last Public Inquiry the Inspector considered that the effect on the outlook of No 3 Olde Stoneheath Court (the nearest property to the site) was acceptable as a result of the scale of the development having been reduced. The scale of the development now proposed is further reduced with development now located only on part of the site, thereby improving the outlook further in respect of No 3 Stoneheath Court.
90. **Changes in Policy** - Since the last appeal decision there have been changes in planning policy. The Central Lancashire Core Strategy was approved in June 2012. Policy 8 sets out the criteria when dealing with proposals with Gypsy and Traveller sites. That policy accords with the Planning Policy for Traveller Sites, which also imposes a duty on local authorities to use a robust evidence base to establish accommodation needs to inform the preparation of local plans and make planning decisions and identify and update annually, a supply of specific sites sufficient to provide five years' worth of sites against locally set targets.
91. The Chorley Local Plan 2012-2026 is currently at examination. The Inspector at the Local Plan Hearing has indicated that she does not appear to accept that the evidence contained within the 2007 GTAA is up to date (it applies until 2016) and has asked for a new GTAA to be expedited and consulted upon, and she may call a further hearing. Accordingly, a Central Lancashire GTAA is to be commissioned in July 2013. By embarking upon a new GTAA the Council has effectively accepted that the evidence is not up to date. That would be a significant material consideration at the forthcoming planning appeal particularly given that the Inspector at the last appeal said that the lack of an up to date assessment of need in Chorley together with other factors made the position on need and provision more uncertain than that facing the Inspector at appeal in 2010.
92. Whilst it is not possible to predict the outcome of the forthcoming Public Inquiry, given the comments made by the Inspector at the Local Plan Examination and at the last Public Inquiry in 2012, it is anticipated that an appeal Inspector would not find the evidence base of the

2007 GTAA up to date or reflective of the current position of need for Gypsy and Traveller sites. The most likely outcome being therefore that temporary planning permission would be granted.

93. The applicant has sought temporary permission for a period of 4 years, after which period he would agree by condition to remove the caravans and other infrastructure and restore the land. He has also agreed to remove a storage container from the site.

94. Based on the Council's estimated timescale for carrying out a new GTAA and progressing the outcome of the GTAA (See below). This table identifies a timetable for completing the GTAA work to adoption including identification of any sites if a need is identified. It is considered that this can be achieved within a period of 2 years including the delivery of a site if required and therefore a 4 year temporary period would not be justified and would prolong the harm caused to the Green Belt. Should need be identified but not met then the applicant may apply to renew the application. Alternatively if no need is identified then the applicant would have a reasonable period in which to vacate the site and restore it in accordance with conditions.

95.

<b>Action</b>	<b>Time Scales</b>
Agreement with Preston and South Ribble to undertake a joint GTAA	w/ending 10 May 2013.
Chorley Exec Member Sign-off to commission a GTAA	w/ending 17 May 2013.
Prepare tender brief details for Gypsy and Traveller and Travelling Show People Study. Tender process for Gypsy and Traveller and Travelling Show People Study	May/June 2013
Commission Gypsy and Traveller and Travelling Show People Assessment (6 month turnaround)	June/July 2013
Interim results of Gypsy and Traveller and Travelling Show People Study	September 2013
Completion of Gypsy and Traveller and Travelling Show People Study	November 2013
Submission of GTAA to Inspector and 6 week consultation on final study and issues and options including the identification of a potential site or sites for allocation	November/December 2013
Submission of results of consultation to Inspector	January 2014
Reconvening of Local Plan Examination	January/February 2014
Advertising of Proposed Modifications to the Local Plan	February/March 2014
Inspectors Report	April 2014
Adoption of Local Plan	April 2014

96. **Human Rights** - The application engages Article 1, Protocol 1 and Article 8 of the Human Rights Act 1998. A refusal of permission would give rise to an interference with the applicant's and occupants rights under Article 1 of the first Protocol and Article 8 of the European Convention on Human Rights. Without certainty of alternative and suitable accommodation, the occupants could be required to vacate their homes and the site, which would interfere with their homes, their private and family lives. The grant of a two year temporary permission would be justified as a proportionate interference and reasonable in the circumstances.

97. **Equalities & Race Relations** The Council has duties under the Equality Act 2010 which prohibits direct and indirect discrimination because of a relevant 'protected characteristic' - age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity (except for indirect discrimination), race, religion, belief, sex, and sexual orientation. For example, it would be unlawful to treat a person less favourably, in relation to planning matters, because that person is a gypsy, or if the Council applies a provision, criterion or

practice (PCP) which puts that person and other members of the same group at a particular disadvantage when compared to others not in the group, and the PCP has no legitimate aim and is disproportionate. It is considered that the Council's equality duty is satisfied in the consideration of the planning application.

## **OVERALL CONCLUSION**

98. Planning policy for Travellers sites states that new Gypsy and Traveller sites in the Green Belt are inappropriate development. This has to be weighed against the requirement for local authorities to identify need and provide a 5 year supply of sites.
99. With regard to the forthcoming public inquiry the probability is that the Inspector for the forthcoming appeal will be based on the circumstances which now exist namely the requirements of Planning Policy for Traveller sites and the Local Plan Inspectors direction to undertake a new GTAA, grant a temporary consent.
100. In conclusion the circumstances which now exist namely the requirements of Planning Policy for Traveller sites and the Local Plan Inspectors direction to undertake a new GTAA tip the balance in favour of granting a temporary permission.

## **PLANNING POLICIES**

National Planning Policy Framework.

Central Lancashire Joint Core Strategy: Policy 8.

Chorley Local Plan Review 2003.

Chorley Local Plan 2012-2026 – Submission version.

Planning policy for Traveller sites 2012.

## **PLANNING HISTORY**

### **Development Control**

08/00984/FUL: Erection of stables to include exercise area, midden and hardstanding,  
Decision: PERFPF Decision Date: 13 November 2008

09/00437/COU: Retrospective application for the use of land for stationing of two mobile homes and up to 14 touring caravans for residential occupation for temporary period of 3 - 4 years with associated development (hard standing, utility building, septic tank, 6 small toilet buildings, second access off Hut Lane, brick pillars and gates)  
Decision: REFFPP Decision Date: 19 August 2009

11/00351/DIS: Application to discharge condition 6 attached to planning approval  
08/00984/FUL  
Decision: WDN Decision Date: 27 April 2011

11/00484/COU: Change of use of land for the siting of 2 No static caravans and 4 No touring caravans for residential use, the storage of 2 No touring caravans when not in use for working away, retention of double utility block, provision of double stable block, retention of reduced area of hard surface for exercising horses, retention of hard standing for 3 No vehicles plus horse box trailer to north of site and provision of new hard standing for 3 No vehicles plus horse box trailer together with retention of existing access at North West corner of site  
Decision: PDE Decision Date:

11/00501/DIS: Erection of stables to include exercise area, midden and hardstanding  
Decision: WDN Decision Date: 14 June 2011

13/00385/COU: Change of use to a residential Gypsy and Traveller site involving the siting of 2 mobile homes, 3 touring caravans (1 of which is for storage only when not away travelling), and

retention of a utility block, and access at the north west corner of the site for a temporary period of 4 years

Decision: PCO Decision Date:

13/00385/COU: Change of use to a residential Gypsy and Traveller site involving the siting of 2 mobile homes, 3 touring caravans (1 of which is for storage only when not away travelling), and retention of a utility block, and access at the north west corner of the site for a temporary period of 4 years

Decision: PCO Decision Date:

### **Appeals**

09/00010/ENF: Appeal against Enforcement Notice EN622

Application No:

Decision: DISMIS

Decision Date: 13 May 2010

09/00011/ENF: Appeal against Enforcement Notice EN621

Application No:

Decision: DISMIS

Decision Date: 13 May 2010

09/00012/REFUSE: Retrospective application for the use of land for stationing of two mobile homes and up to 14 touring caravans for residential occupation for temporary period of 3 - 4 years with associated development (hard standing, utility building, septic tank, 6 small toilet buildings, second access off Hut Lane, brick pillars and gates)

Application No:

Decision: DISMIS

Decision Date: 13 May 2010

11/00024/NONDET: Change of use of land for the siting of 2 No static caravans and 4 No touring caravans for residential use, the storage of 2 No touring caravans when not in use for working away, retention of double utility block, provision of double stable block, retention of reduced area of hard surface for exercising horses, retention of hard standing for 3 No vehicles plus horse box trailer to north of site and provision of new hard standing for 3 No vehicles plus horse box trailer together with retention of existing access at North West corner of site

Application No:

Decision: DISMIS

Decision Date: 22 May 2012

**RECOMMENDATION: Permit Temporary Conditional Planning Approval for a Period of 2 Years.**

### **Conditions**

- 1. The development hereby permitted shall be carried out in accordance with the following approved plans:**

<b>Title</b>	<b>Plot</b>	<b>Drawing Reference</b>	<b>Received date</b>
<b>Location Plan</b>			<b>26 April 2013</b>
<b>Site Plan</b>			<b>26 April 2013</b>
<b>Utility Block Plan</b>			<b>26 April 2013</b>

***Reason: For the avoidance of doubt and in the interests of proper planning***

- 2. This permission shall expire on 9 July 2015; by which date the use shall have been discontinued and the land restored in accordance with the requirements specified in condition No 3 of this permission.**

***Reason: To reserve to the Local Planning Authority control over the long-term use of the land, as the use is inappropriate development in the Green Belt and not acceptable on a permanent basis.***

3. **Within 3 months of the expiry of this permission the following works shall be carried out:-**
  - a. **Excavate the hardstanding laid on the site and remove all the hardcore material laid to form the hardstanding from the land.**
  - b. **Demolish the utility block and its concrete base and remove the materials resulting from the demolition from the land.**
  - c. **Excavate the septic tank and remove the tank from the land.**
  - d. **Demolish the electricity supply housing box and remove the materials resulting from the demolition from the land**
  - e. **Demolish the entrance pillars and gates from the vehicular access in the North West corner of the application site and remove the materials resulting from the demolition from the land. Reason: To give the Local Authority control over the long term use of the land as the operations are inappropriate development in the Green Belt and not acceptable on a permanent basis.**
  
4. **The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants:**
  - a. **Mr Michael Linfoot and wife Mrs Patty Linfoot and dependent children**
  - b. **Mr Walter Bird and Mrs Sylvia Bird and grandson Clonus John Boswell (Born 1994)**

*Reason: Weight has been given to the personal circumstances of the applicant as a very special circumstance in granting permission for inappropriate development in the Green Belt*
  
5. **Within 3 months of the date of this permission the container sited in the south west corner of the application site shall be removed from the land.**

*Reason: In the interest of the amenity of the Green Belt.*
  
6. **No more than 5 caravans , as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 ( of which no more than 2 shall be a static caravan ) shall be stationed on the site at any time.**

*Reason: For the avoidance of doubt and in the interests of proper planning.*
  
7. **No commercial activities shall take place on the land including the storage of materials, plant or equipment.**

*Reason: In order to protect the amenities of the area and the residential occupiers of dwellings in the vicinity.*
  
8. **No commercial vehicles in excess of 3.5 tonnes shall be stationed, parked or stored on the site.**

*Reason: In order to protect the amenities of the area and the residential occupiers of dwellings in the vicinity.*