

**Item 1**                      **11/00484/COU**

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

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

**Proposal**                      **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**

**Location**                      **Heath Paddock, Land 65M South Of 3 Olde Stoneheath Court (bounded By M61 and Hut Lane) Hut Lane Heath Charnock Lancashire**

**Applicant**                      **Mr Mike Linfoot**

**Consultation expiry: 20 September 2011**

**Application expiry: 23 August 2011**

**Recommendation: Refuse Full Planning Permission**

## **PROPOSAL**

1. The land in the vicinity of the application site is undulating gradually rising up towards Rivington Pike. Hut Lane crosses the M61 motorway at an elevated level. The area is characterised by hedgerows and stone walling around field parcels in agricultural use. Next to the site is a residential housing estate on a former hospital site surrounded by a stone wall and mature trees.
2. This application relates to a triangular shaped area of land of approximately 0.25 hectares 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.
3. The application is in part retrospective as there are currently 6 touring caravans for residential purposes plus a horse trailer and a box van converted to be a kitchen in addition to a steel container and 2 small metal sheds sited on the land. The utility building previously on site remains together with the formation of a second vehicular access to the site.
4. The scale of the development proposed differs from the development previously refused and dismissed at appeal. The number of static caravans remains the same, the number of touring vans is reduced from 14 to 4 plus 2 vans when

working away from home, there is the addition of a double stable block and the storage of two horse trailers.

5. There will be occasions when there are 6 touring vans and two horse trailers will be on the site compared to up to 14 touring vans. This is a reduction in the scale of the development however the addition of a double stable block must be taken into account.

## **RECOMMENDATION**

6. It is recommended that this application is refused.
7. The development is a departure from the Development Plan in that it involves development inappropriate in the green belt. This would significantly prejudice the implementation of the Development Plan's policies and proposals. The application should therefore be referred to the Secretary of State for the Environment if the Council is minded to approve it.

## **MAIN ISSUES**

8. 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 the planning permission being granted.

## **COMMENTS OF THE HEAD OF GOVERNANCE**

9. It is recommended, given the history to this site, and the specific issues that relate to it, that members of the committee review the planning application (including the supporting documentation) and the representations received from third parties (both "for" and "against" the application). This is to ensure members have a clear view of the objections made to this application, and do not carry preconceptions relating to the earlier matters.

## **REPRESENTATIONS**

10. **A total of 135 objections have been received:**
  - a) Wish to reiterate the same points made against the previous application – the principle is still the same, even though the scale may be reduced
  - b) Previous application was refused, the appeal was dismissed and enforcement notices were upheld, and the high court challenge failed. The Council should not entertain this application – waste of money/resources – and should take further action to evict the families and restore the site.
  - c) The claim of having nowhere else to go is disputed, as the enforcement notices were modified to allow the families to leave the site, and some of those families have left; occupants have had ample time to leave the site/find legal accommodation
  - d) This is a sham to realise a residential consent and realise the uplift in land value
  - e) If approved, it would lead to ribbon development on Hut Lane
  - f) Existing development on Hut Lane is not a precedent
  - g) Total absence/no chance of/no prospect for integration between the settled and traveller community, based on initial and sustained deception, flagrant disregard for planning law and green belt policy, continuing/prolonged intimidation (some objectors say low level) and confrontation towards local residents, prosecution by Environment Agency for illegal import of controlled waste and criminal conviction; and now in breach of enforcement

notice(s); gross manipulation of planning system to unlawfully extend occupation.

- h) The site is still in the green belt, it is still inappropriate development, and very special circumstances have not been demonstrated – it should be dismissed out of hand; there is no revised argument beyond that already considered and rejected; site is an open wedge between M61 and Olde Stoneheath Court and the elbow of the motorway bridge, and cannot be effectively screened
- i) Green belt in Heath Charnock is renowned for its beauty and the district has typically been subject to strict planning rules which have underpinned the area's ability to maintain its excellent reputation for controlling development in a way which is harmonious with the stunning natural environment
- j) Need cannot be demonstrated by breaking the law, and transgressions by caravan groups are casual
- k) Scale, appearance, design, impact on visual amenity, overlooking
- l) Very serious adverse impact/harm:
  - Negative impact upon character and countryside; detracts from beauty of surrounding area;
  - Negative impact on visual and residential amenity; visual impact is marked from Back Lane from Autumn through to Spring when leaves not in leaf; caravans do not blend into natural and wooded surroundings and cannot be effectively screened; caravans and associated development stands out and is incongruous and unsympathetic to green belt
  - Site has degraded standard of life for local residents
  - Site is an eyesore
  - Traffic concerns – safety of walkers/pedestrians on Long Lane, history of accidents, impact of cars and commercial vehicles on road safety and roadside verges, traffic noise & disturbance, including from commercial vehicles; entrance on NW corner is unsafe and not allowed on the stable consent – the additional entrance should be closed
  - Negative impact on wildlife, tree & hedgerow removal; site was previously a haven for wildlife including birds and deer, but this has been destroyed by hardcore/import of controlled waste and felling of trees
  - No lighting is included in the application, but the site is continually lit by temporary arc lighting; an application for lighting is likely to follow
- m) The application states that the stable consent has been implemented with the tethering of horses and removal of hardcore, but this is misleading/is not true/has not been fully implemented - caravans are still present; vehicles are stored overnight (contrary to conditions of the stable consent which require machinery, vehicles, horse boxes and trailers not to be left on site overnight); proposed stable block was built as a toilet block and washroom and remains in situ; there have been recent remediation works but these are not in accordance with stable consent; second entrance and cess pool still remain
- n) The turf and ponies are an attempt to try to give credence to this application. Two ponies were recently introduced on 17 June 2011 and are regularly tethered to telegraph posts outside the site. Is the two horse stable block and exercise area large enough when surrounded by caravans, vehicle parking and a toilet block?
- o) Application appears to build on past attempts to use the site unlawfully to justify this application; Applicant's claim that this was a fly-tipping hot spot has been clearly disproved by photo evidence

- p) Application states that there will be no commercial use on the site, and this was also stated on the previous retrospective application, but over the last two years commercial activities have taken place include sales/presence of Christmas Trees, beds and mattresses, fast food vehicles, trade stands, with associated vehicle movements
- q) Existing hardcore base results in flooding during heavy rainfall or rapid snow melt on the NW corner. There are no surface water drains to accommodate runoff. Hardcore issue is the subject of action by the Environment Agency. The plan to link the sewage to the existing foul drain is flawed. The foul drain indicated is a pumped macerating pressure system based in a large holding tank on the corner of Olde Stoneheath Court, and the system is designed for the use of Olde Stoneheath Court only. Sewage is pumped uphill along Hut Lane and discharges into gravity tank opposite 1 Red Row.
- r) Human Rights – no wish to see the way of life others take stopped/interfered with; The Human Rights of residents also have to be addressed

**11. Supporting Representations:**

**12. Five letters of support received from families occupying the site:**

- a) After travelling and staying in this borough for over 40 years, alongside many other Roma, Gypsy & Traveller families, who are still travelling in this area, and now finding all the usual stopping places blocked, we feel the need for provision in Chorley is now greater than ever before.
- b) Due to the new protocols adhered to by Chorley Borough Council regarding roadside encampments, we realise how expensive this must be for this council, therefore would it not make economical sense to provide for this minority community, without any cost to the council whatsoever by providing a private site.
- c) It is for this reason we ourselves fully support this application, in the knowledge that it could not only ensure that Chorley is tolerating sites for the Gypsy, Roma and Traveller community, but also at no cost to the council as the development would be paid for by the Gypsy, Roma Travellers themselves.
- d) At some point it may be that the GTTA and RSS may be reinstated, or another policy put in place, wouldn't it be better to provide for the need now rather than later. At what point and to what cost do Travellers in this area become a need.

**13. A further 109 letters of support have been received:**

- a) the gypsy families have been residents for over two years and caused no harm and disturbance; site is clean and tidy; photos in Chorley Guardian prove that the site is not an eyesore
- b) Families are integrating well/have integrated well into the wider community; are becoming a valuable asset to the area in general; are worthy members of the community; admire their family values and community spirit; encourage Chorley Council to work with gypsies to help them further integrate into the community
- c) it is contrary to wider interests to refuse permission
- d) they have nowhere else to go – Chorley Council needs to recognise their needs as members of our community, and take a bold step of rising above opposition and allow them to stay; Gypsies have tried to find another site, contacting Council, estate agents and HCA, but there is no alternative site;

- to live long term on a small corner of land, giving children and ageing parents some stability and security – who can deny that basic human right when there is no alternative or suitable site offered?
- e) it is fitting to grant permission, see no better place than Hut Lane, it is out of sight, in reach of local amenities and quite suitable
  - f) is it really in the interest of the community and Chorley Borough to deny them solace and security on this piece of waste land?
  - g) Children are valued members of the school; children have regularly attended school; families are an asset to the school, where children are accessing consistent education for the first time, bringing their education up to standards appropriate for their age and gaining friends in the locality
  - h) Chorley is failing these families in not providing a site – should give temporary permission until Chorley provides somewhere or allows them to stay where they are
  - i) There are many caravan sites in Chorley used as full time residential sites , and also in green belt as are many other developments; why is it so intolerable that this particular site is a Romany Gypsy site?
  - j) Fully support as recognise the need in this area for Roma, Gypsy, Traveller community – just the same as any other community with the exception of their culture living in caravans
  - k) Not enough provision in this country, and none at all in Chorley
  - l) Our system has failed these people by not providing a place for them to live, in order to keep their children in local schools
  - m) The Gypsies should be allowed to live on their own land and have access to medical and educational facilities
  - n) Protection of the green belt is used as an objection by local residents, but real reason is drop in house values, which is not a point of consideration. Examples of resident's behaviour are cited as being in contrast to the ethos of the gypsies who look after and care for the land
  - o) Hut Lane site is tiny, well screened and hemmed by M61 and elbow of bridge, and not a rich piece of countryside that is an asset to the eco-system and the wider community
  - p) Travellers sought affordable piece of land, but non-green belt land is too expensive and they would face the same objections/prejudices;

14. **Adlington Primary School** – The head teacher wishes to put a number of points in relation to how the application may affect the education of the gypsy children:

- a) Since starting at Adlington Primary School, all the children have made exceptional progress. This is due to the hard work and commitment of the staff, the excellent working relationships with the parents and the stability of their present home life.
- b) The children have become part of our school family and have greatly added to our inclusive, tolerant and welcoming environment.
- c) All the children and their families are fully involved in our school life. Some of the children are members of our school council and also proudly represent our school in various team competitions. They have made firm friendships and our older pupils are looking forward to continuing these at high school. We are very pleased that they are looking at secondary school provision as many Travellers prefer not to continue their children's education within a school setting.
- d) Their parents have also become active members of our PTFA and the local community. They are always there to help at every school function and take great interest in their children's education. They regularly talk to the staff and attend parent's evenings and curriculum information meetings, showing a keen desire to support their children's education.

- e) Disruption to the home life of any child can have an adverse affect on their educational development and so I hope that the children may remain in their settled situation so that they can continue to flourish.

## CONSULTATIONS

15. **The Environment Agency:** No objection in principle to the development
16. **Director for People & Places:** No objection in principle but ask that an informative is added in the event of planning permission being granted to advise the applicant that a caravan site licence will also be required.
17. **United Utilities :** No objection
18. **Lancashire County Council (Highways):** No objection to the development subject to the first 5 metres of access being paved in permanent construction.
19. **Council for the Protection of Rural England – Object -** in their view, this is a retrospective planning application for a permanent caravan site on green belt and within the West Pennine Moors and they deplore the complete ‘urbanisation’ of this greenbelt site. Any unauthorised and inappropriate development in the green belt should be refused, and the site should be restored to as near natural state once the caravans and toilets have been removed.
20. **Highways Agency:** No objection subject to conditions.
21. **Heath Charnock Parish Council – object -** it would be a development in the green belt for which no satisfactory grounds have been proved.

## APPLICANT'S CASE

22. The applicant has submitted a number of documents in support of the application:
  - Needs Statement
  - Copies of correspondence with Chorley Council
  - Site history
  - Design & Access Statement
  - The Impact of Circular 1/06 on Gypsies and Travellers in England, Dr Jo Richardson, De Montfort University, 25 April 2011
  - Fenland District Council Presentation
  - Extract showing Policy 8 Gypsy and Traveller and Travelling Showpeople Accommodation (Publication Core Strategy December 2010)
23. Need: The applicant's statement has been prepared by a planning consultant (Hargreaves), and details current planning policy associated with Gypsy & Traveller site provision, including ODPM Circular 01/2006 and its objectives, the approach to be taken where there is a clear and immediate need for gypsy site provision; and the type of evidence that should be considered before determining planning applications.
24. The statement also refers to the consultation draft “Planning for Travellers Sites” issued in April 2011, which is intended to replace the existing circular, and notes that the circular remains in force and is a material consideration; and that the draft guidance retains the principles of assessing need and increasing the number of sites to address under provision.
25. In particular, the report highlights the draft North West Partial Review of Regional Spatial Strategy (RSS), notably draft policy L6 which proposed additional pitch provision in the region (225 residential & 75 transit pitches in Lancashire, with 10 permanent pitches and 5 transit pitches for Chorley) and sought to balance the fact that the basis gypsy & traveller accommodation was concentrated in certain

parts of the region by providing additional pitches in those parts of the region where most gypsies and travellers currently live with broadening the choice available to families by providing some pitches in most parts of the north west.

26. The partial review underwent an examination in public in March 2010, and the panel report was released in August 2010 to comply with a Freedom of Information/Environmental Information Regulations request.
27. The applicant draws attention to perceived weaknesses within the Lancashire Gypsy and Traveller Accommodation Assessment (GTAA) 2007, considered in the panel report, and in particular to two areas of concern considered by the applicant to be pertinent to Chorley – the risk of undercounting gypsies and travellers in bricks & mortar who wish to move to a caravan pitch; and the difficulties of assessing needs from unauthorised encampments. Recent counts for July 2009, January 2010 and July 2010 show 12, 12 and 10 caravans respectively. It is asserted that Chorley has constrained the choices for Gypsies and Travellers, that an incentive to undercount exists and that Chorley may be a Council that undercounts the presence of Gypsies in order to show a lack of need, and that Chorley is considered a ‘non-tolerant’ council.
28. While the intention to revoke RSS (dependent on legislation) is referred to, the report comments that *“The Draft RSS and evidence that underpins it remain material considerations and the Panel Report an important and objective summary of the evidence.”*
29. The report notes that *“the existence of the caravans at this site is evidence itself of clear and immediate need, to which substantial weight should be attached”* and that *‘there is evidence of significant and persistent need in Chorley’*.
30. The Impact of Circular 1/06 on Gypsies and Travellers in England, Dr Jo Richardson, De Montfort University, 25 April 2011 – provides a history of gypsy planning policy; outlines a research methodology which analyses 405 planning cases in four time periods from 1<sup>st</sup> November 2005 to 31<sup>st</sup> December 2010 and presents findings to inform an assessment of the impact of the circular. The document also outlines recent and proposed changes in policy and funding, and makes recommendations.
31. Paragraph 1.1 of the document refers to this being part of an ongoing analysis of planning appeal data (research activity) and noted that it is intended to form the basis of a journal article; and that the initial findings and thoughts are published early in this report as part of a quick response to the consultation draft “Planning for Traveller Sites” published 10 days earlier on 13 April 2011.
32. The information contained in this document is not site specific to this site or to the application and so accordingly little weight can be attached to it.
33. Fenland District Council Presentation: this presentation outlines the steps Fenland Council has taken to provide a mix of Council and private Gypsy sites. The information contained in this document is not site specific to this site or to the application and so accordingly little weight can be attached to it.
34. Numerous letters and correspondence with Chorley Council –some of these letters are referred to in the needs statement, and this is considered later in this report.
35. Design & Access Statement: highlights the previous use(s) of the site; that an extant planning permission exists for the land to be used as stabling and exercise area; and that this is a live permission by reason of the tethering of horses and removal of some hardcore in compliance with the terms of the appeal decision 2008.

36. The statement outlines that the proposal is to provide accommodation for the Romani Gypsy extended family for residential purposes only; that no business activities other than the parking of 'work vehicles' are proposed on the site, and only 'personal use vehicles' will access the site on a daily basis.
37. The statement identifies the proximity of the site to the village of Adlington and to Chorley (4.2km) with a farm shop closer to the site. There is also access to a bus service identified at the corner of Hut Lane and Long lane and a train service within Chorley. The statement also identifies provisions for schools and medical facilities.
38. The statement states that the applicant confirms that all occupants come from old established ethnic indigenous 'Romani Gypsy' families and all occupants have always maintained a Gypsy lifestyle and none have occupied a house or other permanent residential dwelling.

## **PLANNING HISTORY**

39. 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.
40. 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.
41. 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.
42. 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. On 13 May 2010, the appeals were dismissed and the enforcement notices upheld with variations. Further legal challenges to the inspector's decision were dismissed by the Courts and the compliance period with one of the enforcement notices expired in June this year without compliance with the enforcement notice. Legal proceedings have now been commenced for non compliance with the enforcement notice. The second notice expires in September this year.

## PLANNING POLICY FRAMEWORK

43. The Development Plan comprises the Regional Spatial Strategy (RSS); the saved policies of the Lancashire Joint Structure Plan 2005 (JSP), notably policy 29 on gypsy/traveller provision; the saved policies of the Chorley Local Plan Review 2003; and the Sustainable Resources Development Plan Document.
44. RSS adopted in 2008 sets out general principles in policy D1, which include the promotion of sustainability and environmental quality, echoed in subsequent policies DP2-9. It does not include a policy on gypsy/traveller provision, and policy 29 of the JSP was saved accordingly. Policy 29 says that where a local need has been established, Gypsy & Travellers sites will be located according to three criteria - location of services, accessibility, environmental and sustainability considerations, and states that sites should not be located in the green belt.
45. Saved policies of the local plan include policy PS14 which is a criteria based policy for caravan sites for gypsies and other travellers. The eight criteria relate to locational and site specific matters and include criterion (h), a requirement that the site is not included in the green belt.
46. Saved local plan policy DC1 Green Belt reflects the advice in Planning Policy Guidance Note 2 (PPG2) that except in very special circumstances, planning permission will not be given for development other than that falling within specific categories.
47. Both JSP policy 29 and local plan policy PS14 were prepared in the light of the advice in Circular 1/94 Gypsy Sites and Planning, which was replaced by ODPM Circular 01/2006 in February 2006, and therefore where the relevant policies are considered to be in conflict with the circular, more weight should be placed on the circular,
48. **National Planning Policy Guidance**
49. National policy relevant to this appeal includes PPS1 which seeks to achieve sustainable development and outlines the general objectives of planning; PPG2 on Green Belts; PPS3 Housing, which seeks to meet the accommodation needs of the whole community, including gypsies and travellers.
50. **ODPM Circular 01/2006** – requires (inter alia) that Gypsy & Traveller Accommodation Assessments (“GTAAs”) will inform the preparation of Development Plan Documents and RSS; and that where there is clear and immediate need, LPAs should bring forward DPDs containing site allocations in advance of regional consideration of pitch numbers.
51. The circular also details a general presumption against inappropriate development within green belts (para 43); and states that gypsy traveller sites are normally inappropriate development in the green belt; and that national planning policy on green belts applies equally to applications for planning permission from gypsies and travellers, and the settled population; and that alternatives should be explored before green belt.
52. Issues of sustainability are important in terms of transport mode, distance from services, and also the promotion of peaceful and integrated co-existence between the site and the local community; the wider benefits to education, GP and other health services; children attending school on a regular basis; the provision of a settled base that reduces the need for long distance travelling and possible environmental damage caused by unauthorised encampment; and not locating sites in high risk flood areas.
53. The circular also refers to matters concerning personal circumstances, human rights and race relations, and the approach to consideration of transitional arrangements and temporary consents.

#### 54. **Emerging Development Plan Policies**

55. The Central Lancashire Core Strategy has been through its examination stage in July 2011 but has yet to be found sound. Policy 8 sets out policy criteria relating to proposals for Gypsy & Traveller sites which will replace local plan policy PS14 when adopted. That policy has been the subject of objection, and was a matter for hearing at the examination in public in July – as such limited weight can be applied to this emerging policy.
56. Chorley's Site Allocations & Development Management DPD is at an early stage of preparation and therefore little if any weight can be applied to it. At the issues and options stage, representations were made on gypsy/traveller provision. A preferred options consultation is scheduled for September 2011, and no sites for gypsy/traveller provision have been endorsed for that stage (Full Council 19 July).

#### **MATERIAL CONSIDERATIONS**

57. ***Intention to revoke Regional Spatial Strategy*** - The Secretary of State has announced an intention to revoke RSS, and this has been the subject of challenge in the courts. For development control purposes, the intention to revoke RSS is a material consideration. However, given that the adopted RSS does not contain any specific policies in relation to gypsies or travellers, it is considered that the Secretary of State's intention to revoke RSS is of little relevance to the particular circumstances of this application.
58. ***Planning for Traveller Sites - April 2011***. The Secretary of State has announced an intention to withdraw ODPM Circular 01/06 and in April 2011 published this consultation document in which he explains a new approach to planning for Gypsy and Traveller sites, and the consultation period for responses has been extended to October 2011, in line with the deadline for comments on the National Planning Policy Framework.
59. Whilst the current Circular has yet to be revoked, the substance of the consultation document gives a clear indication as to the government's intended direction and is a material consideration. However, the consultation exercise may prompt amendments to the draft guidance and therefore only limited weight can be attached to the consultation draft.
60. ***National Planning Policy Framework – July 2011***. The Secretary of State has published this consultation draft with comments invited by 17 October. The draft seeks to replace the current series of national policy statements with a single shorter document. The presumption against inappropriate development in the green belt is maintained in this draft. However, the consultation exercise may prompt amendments to the draft guidance and therefore only limited weight can be attached to the consultation draft.
61. ***North West Regional Spatial Strategy Partial Review – July 2009*** – Prior to the formation of the present government, progress had been made on a partial review of RSS concerning gypsy/traveller provision and car parking standards, with an examination in public held in March 2010. Draft policy L6 proposed 10 permanent and 5 transit pitches for Chorley.
62. Regional arrangements have since been dismantled in the light of the present government's intention to revoke RSS and the localism agenda. There is therefore very little, if any, prospect of the RSS Review being reinstated. Although never formally published, the panel report was released in August 2010 in response to a freedom of information request, and is annotated as "undated - not issued", with an important note explaining that the report is issued for information

only, and the content does not represent the views of government and does not form any part of the planning system.

63. The regulations at the time of the report would require the responsible regional authority to receive the panel report and decide how to take it forward, and consider a response, and for the Secretary of State to issue any proposed changes for consultation before finalising and publishing the Partial Review. In the light of the intention to revoke RSS, the dismantling of regional administration, and the pending Localism Bill, there is no reasonable prospect of the Secretary of State formally considering the panel report (even assuming that it is ever issued in substantially the same form as that released under the FOI request), nor responding to it formally, nor of the policies within the RSS partial review being amended to address any panel recommendations. It can therefore be afforded very little weight.
64. **Previous Appeal Decision & High Court Challenge**
65. The appeal decision against the previous refusal by Chorley Council for the siting of two mobile homes and up to 14 touring caravans for a temporary period of 3-4 years is considered to represent an relatively recent consideration of the development plan and material considerations in respect of the application site, with the decision issued on 13 May 2010. Account will need to be taken of and new or intended changes to the policy framework since that time, alongside any new material considerations. The decision letter is appended to this report. The inspector's decision was subject to judicial review with a judgement in the Secretary of State's favour on 23 September 2010.

## **ASSESSMENT**

### Green Belt

66. The development is for a mixed use of both residential caravans and associated infrastructure and stabling and exercise area for horses. 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 given in Policy DC1 of the Chorley Borough Local Plan Review or in PPG2. The use of the land as a caravan site is by definition therefore inappropriate development. It is for the applicant to show whether there are any 'very special circumstances' which outweigh the presumption against such development. Circular 01/2006 makes it clear that such development is normally inappropriate development in the green belt and alternatives should be explored before green belt locations are considered. It should be noted that the consultation regarding the replacement Circular 01/06 intends to change the emphasis of the acceptability of Gypsy sites within the green belt by removing the phrase 'normally' from the document such that the Circular would read that such development is inappropriate in the green belt. The Inspector in the previous appeal decision determined that the development of this site for a temporary period was inappropriate development.
67. In terms of the provision of stabling and an exercise area for horses this would be appropriate development in the green belt. It should be noted that there is a permission for stabling on the site that the applicant contends has been implemented. However there is doubt about the fact of implementation and the Council has not formally accepted that the permission for stabling has been implemented.
68. The stables permission was for a single access point with a small hardstanding and the stable building was in a different location to the as built utility block. Whilst some works to remove hardcore and soil and grass areas of the site have taken place the approved area of hardstanding has been mostly removed by the

site occupiers. There was limited weight attached to the fall back position by the Inspector at the last appeal.

69. 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.
70. Landscaping, that exists and existed when the inspector previously considered the appeal proposals, would not outweigh the harm that is caused to the green belt by virtue of inappropriateness and the concept of "openness" in green belt terms means freedom from development, which is only partly concerned with the degree of visibility. Additional landscaping to which the agent refers, to mitigate this harmful impact does not overcome the inherent policy failings that the development is by definition inappropriate.
71. 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. As detailed at paras 3 to 5 there are 6 touring vans on site currently, the application seeks two statics in addition to 6 touring vans plus two horse boxes (only one on site currently) and the addition of a stables building. The proposed development, whilst a reduction on the numbers considered at appeal seeks to locate the caravans and the majority of the on site development close to the motorway boundary and in areas where harm to the openness would be at the most significant and cannot be fully mitigated.
72. It has not been evidenced why additional weight should be attached to the potential implementation of the stables permission, above that applied at the previous appeal.
73. Impact of the Site
74. Prior to the unauthorised development, the site was open in nature and had been covered with trees/undergrowth. The approval of planning permission for stables in 2008 would have had a neutral effect on the site's openness and was a form of development appropriate to the green belt.
75. The development subject of this application has an urbanised 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.
76. Existing vegetation outside of the application site serves to screen the development during the summer months from some vantage points and in recent months 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. Furthermore during winter months when there is no leaf cover the impact of the development would be more obvious within the locality and more damaging visually to the rural landscape. This fact was considered by the Inspector during the consideration of the appeal and the Inspector could have imposed conditions to require further planting if planting alone would have made the development acceptable which it clearly did not in the mind of the Inspector.
77. The proposed numbers of residential caravans are shown to be reduced compared to the previous appeal however taking the proposed development as a whole the position of the proposed caravans and the scale of the development as a whole remains a visible development during both summer and winter that would

be very difficult to screen. The harm that the Inspector identified at the appeal remains albeit reduced by the reduction in numbers of vans but not to a degree that would make the development acceptable.

#### Effect on Residential Amenity

78. The properties comprising Olde Stoneheath Court are the nearest residential properties to the site and the nearest property, number 3 Olde Stoneheath Court is about 25 metres from the boundary of the application site.
79. Some of the properties because of distances and trees between them and the site are less affected by the development and in most cases it is not unduly prominent from some of the properties within Olde Stoneheath Court. However, as identified by the Inspector in the appeal decision in 2010, 3 Olde Stoneheath Court because of its relationship to the site the development dominates the outlook from that property to the extent that the enjoyment of their private space would be significantly diminished.
80. The position of the reduced numbers of caravans in relation to number 3 Old Stoneheath Court has been improved by keeping them as far from this property as possible. However it is not considered that the harm to this property has been completely removed by laying the site out as now proposed and the impact remains a material consideration.

#### Relevant Matters since the Appeal

81. Since the inspector's decision and/or the High Court judgement, the intention to revoke RSS has been tested in the courts and the current position is that RSS remains part of the development plan, while the intention to revoke is a material consideration in the consideration of planning applications.
82. The emerging core strategy has not yet been found sound. On 19<sup>th</sup> July 2011, the Full Council approved site allocations for the preferred options stage of the Site Allocations & Development Management DPD, and has not allocated any sites for gypsy/traveller provision. The preferred options document has not yet been issued for consultation, but is expected in September 2011.
83. It is therefore considered that there have been no significant changes to the development plan between the inspector's decision and the consideration of this application.
84. There are no changes that would alter the view that this rural site is not sustainable in terms of distances to services and facilities, public transport and proximity to education, health and other services.
85. The promotion of a peaceful and integrated co-existence between the site and the local community is also a relevant sustainability consideration under circular 01/2006. The nature of the representations made on this application offer some insight into the current position. Representations include allegations of intimidation and assertions that there is little or no prospect for successful integration. Whilst this may demonstrate that community integration is unlikely, at least from the perspective of local residents, members should attach limited weight to these allegations, not least because there are also supporting representations which reflect successful aspects of community integration, and this is a material consideration in favour of the applicants. It is perhaps inevitable that over the two years since the occupation of the site, the occupants have become more settled, and the possibility of successful integration is increased. Members may also wish to note the press coverage and letter to the local press which reflect opposite views within the wider community.

86. The release of the panel report in August 2010 is a significant material consideration, in that it provides information about the matters considered by the panel and their conclusions, and was released after the inspector's decision. However, given the position on RSS above, it can only be afforded limited weight. The detail of the panel report is considered later in this report.
87. In April 2011, "Planning for Travellers" was issued as a draft for consultation to replace Circular 01/2006, which remains in force. The draft indicates the direction of travel for this area of policy, and it does not represent a relaxation of the approach towards gypsy and traveller provision, and in particular seeks to strengthen policy in green belt by removing the word "normally" from consideration of gypsy and traveller sites in the green belt. However, limited weight can be afforded to a draft which is capable of revision before final issue.
88. The National Planning Policy Framework (NPPF) was also issued for consultation in late July 2011, and this has effectively extended the period for consultation on "Planning for Travellers" until 17 October 2011.
89. The evidence relating to need, including that on unauthorised encampments and caravan counts since the inquiry will also be relevant, together with any changes in personal circumstances.
90. There has been a reduction of caravans on the site as existing, with now 6 caravans remaining although it is proposed that two static caravans will be included as part of the development in addition to horse boxes and a stable block.

#### Need

91. The applicant's needs statement has sought to contend that Circular 01/06 is the most relevant policy (rather than the draft replacement for that circular); that the panel report is an 'important and objective summary of the evidence', that the GTAA 2007 is not robust and should not be relied upon as an evidence base and that the presence of caravans on the site is itself clear evidence of immediate need.
92. The appeal inspector considered Circular 01/06, the RSS Partial Review and the 2007 Lancashire GTAA in addition to the evidence of unauthorised encampments, and representations. The Inspector concludes that 'I do not consider that a current need for additional sites has been demonstrated by the submitted evidence'. In connection with the robustness of the GTAA the Inspector concluded that if the Council's objection to the RSS Partial Review was upheld, then there would be no need to identify sites within the Borough or include Gypsy sites within the site allocation DPD process.
93. The panel report addresses issues of soundness. Paragraph 1.14 of that report shows that the panel found the suite of GTAAs to be generally robust and consistent; paragraph 1.15 shows that the panel were satisfied that the preparation of the draft policies included sufficient community involvement; and paragraphs 1.16 to 1.18 deal with other aspects of soundness, found to be satisfactory subject to their recommendations. Paragraph 2.6 shows that the panel found that the background work to establish need had been done very thoroughly in the region. Paragraph 2.17 shows that overall, the panel found the GTAAs to be sound and to be a strong basis from which to assess pitch requirements.
94. Paragraphs 2.18 – 2.27 describe the panel's concerns and considerations about the soundness of GTAAs including those matters raised by the applicant, but in paragraph 2.28 the panel state that taking account of those concerns has a relatively modest effect on the regional pitch total, especially as the largest adjustment is purely a net transfer from the transit category. The panel recommended an increase of 75 pitches for the whole region, and no changes

were recommended in relation to Chorley, and a reduction of 10 units were removed for just one district in Lancashire (Blackburn with Darwen).

95. It is considered that if the panel had found the GTAA's unsound, or to suffer from significant shortcomings, it would have been open to them to recommend further work, or perhaps substantively revise pitch provision, but they did not do so. It remains the case that the 2007 GTAA provides the most recent assessment of need, and no need was found in Chorley.
96. The approach of draft policy L6 was to distribute the need for additional pitches across the region in an attempt to re-balance provision. Given that the partial review was not completed, and that it is unlikely to be taken further, no weight can reasonably be given to its draft policy. There is no other existing mechanism for redistribution, although a duty to co-operate in the delivery of sustainable development is contained in the Localism Bill.
97. The panel report has recently been considered in a recovered decision by the Secretary of State for a site on Fairfield Rd, Hardhorn in Fylde. In his decision letter of 18<sup>th</sup> August 2011, the Secretary of State stated that he "*has had regard to the unpublished submitted Draft North West Plan Partial Review. However having regard to the Inspector's statement that work on the Review has been suspended, and in the light of his intention to revoke RSSs, the Secretary of State considers it unlikely that the draft will progress to publication, and he has accorded its policies little weight.*" This view is also supported in an inspector's decision from Wyre in which the inspector says that "*following the examination in public this document has not been progressed therefore very little weight attaches to it.*"
98. The conclusion of the Fylde Inspector was that the GTAA is the best available source of information on need.
99. The applicant's position is that the panel report is that "*The Draft RSS and evidence that underpins it remain material considerations and the Panel Report an important and objective summary of the evidence.*" In the light of the above, it is considered that no weight can be applied to the Draft RSS Partial Review.
100. It is further considered that the GTAA provides the best available source of information on need, and while the panel report has no formal status, and no prospect of formal publication, it does provide an independent and objective assessment of the robustness of the GTAA, and no recommendation was made to increase provision in Chorley or Lancashire on the basis of that evidence, nor in the light of any concerns the panel considered.
101. It remains the case that the 2007 GTAA - which concluded there was no need in Chorley - remains the best available evidence of need.
102. Caravan Counts & Recent Encampments
103. The Council's property agent (Liberata) has maintained a record of unauthorised encampments since May 1999, which was considered by the inspector alongside caravan counts and police records. The inspector considered this evidence (para 20) and although he found it limited in terms of the particular circumstances (duration of stay & identity of those involved); he also found that the numbers of encampments were not great and did not demonstrate a continuing history of protracted unauthorised encampment. He did not attach significant weight to this evidence.
104. Since the inquiry in late March 2010, four unauthorised encampments have been recorded by Liberata, and five by the Police. These are significantly less than those recorded in recent years, and it is therefore considered that the inspector's conclusions on unauthorised encampments remain valid.

105. Caravan Counts at January 2009, July 2009 and January 2010 are reported as 12, 12 and 10 respectively. The only records of encampments in the twice yearly caravan count over the last five years are for the site at Hut Lane.
106. The Inspector in the previous appeal on this site concluded that the need was not demonstrated such to outweigh the presumption against granting permission, the evidence submitted with this application places weight on evidence that has previously considered by the Chorley Inspector or the appeal decisions from Wyre or Fylde. There is nothing that has been submitted with this application that is new or can carry significant weight such that a different conclusion on need could be supported.

#### Personal Circumstances

107. It has been established through case law that personal circumstances are a material consideration in addition to the question of need for gypsy accommodation and in this application matters relating to education and health are most relevant. However, no information on such matters has been submitted within the application. There is no evidence that the families have healthcare or education needs that require them to live on this particular site.
108. These matters were considered at the appeal and the Inspector determined that there were no circumstances or evidence that was of sufficient weight that would outweigh the inappropriateness of the development.
109. The inspector noted that prior to going to this site, the families moved from one encampment to another but were able with no little inconvenience to ensure that the children attended school in Bolton. At that time, he considered that the benefits of a settled base at Hut Lane had benefited their education, and they were attending Adlington Primary School.
110. The Head Teacher of Adlington Primary School has submitted a representation in regard to this application, which notes that the children have made exceptional progress. It is considered that this is further evidence of the benefits of a settled base, and is a material consideration weighing in favour of the applicants. It is not considered that further progress with education is of sufficient weight to outweigh the inappropriateness of the development.

#### Very special Circumstances

111. The proposal constitutes inappropriate development in the green belt. The main issue therefore is whether harm through inappropriateness, together with other harm caused, is clearly outweighed by other considerations such that very special circumstances exist to justify granting planning permission.
112. In accordance with PPG2, harm through inappropriateness carries substantial weight. In this case, in addition to the harm caused by inappropriateness, officers consider that there is very serious harm to the character and appearance of the area, which carries considerable weight. There is also harm to the residential amenity of neighbours, which carries moderate weight.
113. The applicant's supporting statement relies on the evidence of need, the draft partial review of the RSS and the associated panel report in order to demonstrate very special circumstances. The position in relation to need and the partial review is addressed earlier in this report, and it is considered that there is no need in Chorley.
114. The previous inspector considered the gypsy status of the occupants and the fact that they have a clear nomadic habit of life and strong local connections to this District. It remains the case that there are no alternative sites available in Chorley or the wider area, and that uncertainty would arise as to where the occupants would go if they had to leave, especially as a family group; and the benefits of

access to health and education weigh for the applicant. There is no reason to take a different view on these matters, and therefore these matters are afforded significant weight.

115. However, since the appeal a number of families have left the site, and the evidence on recent encampments since the appeal shows fewer instances of unauthorised encampments than in 2009.
116. The information provided with this application does not identify additional information or evidence of sufficient weight since the previous appeal that would give rise to any circumstances where it would outweigh the harm that arises from the inappropriateness of the development. As such, there is no reason to reach a different conclusion from that of the appeal inspector. Balancing all of the material considerations, the grant of a permanent consent is not justified.

#### Temporary Permission

117. Under Circular 01/2006, consideration must be given to temporary consent, in that a temporary consent may be justified if planning circumstances are expected to change at the end of any temporary consent. Due consideration must be given where there is unmet need but no alternative sites, but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need.
118. The previous inspector also considered this matter, but against the backdrop of the pending partial review of RSS and draft policy L6. He concluded that if Chorley's objection to L6 failed, there would be no need to consider allocating sites in a DPD. Given the matters detailed earlier in this report, there is no demonstrable case of need in Chorley, the partial review requiring pitch provision is suspended, and there are no alternative sites, then there is no reasonable prospect that a new site will become available. It is therefore considered that temporary permission should not be granted.
119. A temporary permission would mean that the harm arising would be limited in duration, the serious harm caused by this development would remain considerable, and by virtue of PPG2, the harm to green belt policy from inappropriate development is substantial. This is considered to further undermine the consideration of temporary consent.

#### **OVERALL CONCLUSION**

120. The proposal is inappropriate development in the green belt, and serious harm is demonstrated. Circular 01/2006 states that new gypsy and traveller sites in the green belt are normally inappropriate development and that national planning policy on green belts applies equally to the applications for planning permission from gypsies and travellers as to those submitted by the settled population.
121. Very special circumstances have not been demonstrated. The GTAA concludes that there is no need for additional gypsy or traveller pitches in Chorley, and other sources of evidence do not demonstrate a significant and persistent demand for sites. There have been no other planning applications received for sites. On that basis, regard has been given to the circular in considering the evidence available, and it is concluded that it does not support the granting of planning permission.
122. The applicant states that there is a lack of alternative sites and limited scope for finding suitable sites not in the green belt. The Circular states that alternatives should be explored before green belt locations are considered. The circular highlights that locations in or near existing settlements with access to local services, such as shops, doctors and schools should be preferred. No evidence has been provided by the applicants to indicate that any alternative sites have actually been considered in more appropriate locations within or adjoining

settlements. Whilst there is no requirement that the applicants should be able to demonstrate that a site search has taken place, the absence of any evidence of such does not count in favour of granting planning permission. No consultation took place with the Council before the land was purchased, as recommended in the Circular.

123. In conclusion, the applicant has failed to demonstrate sufficient grounds to justify this proposal and outweigh the harm caused to the green belt, both by reason of the development's inappropriateness and the other harm which is caused to the green belt.

### **Human Rights**

124. A refusal will 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.
125. However, this interference must be balanced against the public interest in pursuing the legitimate aims of protecting the environment under Article 8, which in this case can only be safeguarded by the refusal of both permanent and temporary consent. Such interference is outweighed in this case by the harm caused by inappropriateness and visual amenity of the green belt and the rural landscape, and takes account of the personal circumstances of the applicant and the families, and is considered proportionate and necessary in the protection of the public interest.

### **Equalities & Race Relations**

126. 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. For example, through the refusal of an application, or the enforcement of planning control in the green belt might adversely affect gypsies as compared to non-gypsies, it can be lawful for a legitimate reason, such as the maintenance of the green belt, and if it is proportionate, for example where the harm to the green belt outweighs the harm to occupants. It is considered that the Council's equality duty is satisfied if this application is refused.

## **RELEVANT PLANNING POLICIES**

National Planning Policy Statements: PPS1, PPS2, PPS3

Regional Spatial Strategy: Policies DP1-9

Chorley Local Plan Review: Saved Policies: DC1, PS14

Lancashire Structure Plan: Saved Policy 29

DPD: Sustainable Resources into New Development: Policy 1

Supplementary Planning Guidance: Sustainable Resources; Design Guide

Central Lancashire Joint Core Strategy: Policy 8

**RECOMMENDATION: Refuse Full Planning Permission**

**Reasons**

1. The site is located within the green belt and the development constitutes inappropriate development and so conflicts with Policy DC1 and Policy PS14 of the Chorley Borough Local Plan Review; Policy 29 of the Joint Lancashire Structure Plan; PPG2 and Circular 01/2006. Very special circumstances must exist therefore in order to justify planning permission being granted. In this case, the material considerations advanced in support of the application are not considered to be of sufficient weight to justify permission being granted.
2. The development by reason of its incongruous and unsympathetic appearance is visually detrimental and harmful to the rural character and appearance of the green belt contrary to PPG2.
3. The development causes significant harm to the residential amenities enjoyed by the occupiers of 3 Olde Stoneheath Court by virtue of its close proximity to the property.