Eastleigh Borough Council

Town and Country Planning Act 1990 – Section 78

Statement of Local Planning Authority

Planning Inspectorate Reference No: APP/W1715/A/13/2194816

Name and Address of Appellant:

Mr M Kempster
Bay Farm
Grange Road
Bursledon
Southampton
SO31 8GD

1.0 Particulars of the application/Appeal

1.1 This appeal relates to planning application F/13/71899 which was made valid 19 December 2012, seeking permission for the construction of single storey 3 to 4 bed dwelling, following demolition of existing mobile home & outbuilding.

2.0 Reasons for Refusal

2.1 The application was refused by delegated decision on 13th February 2013 for the following reasons:

2.2 (1) The proposed development does not involve the replacement of an existing dwelling. The introduction of a new permanent dwelling is not necessary for agricultural, forestry or horticultural purposes and would physically and visually diminish the Southampton - Hedge End/Bursledon/Netley strategic gap. As such the proposed development is contrary to Saved Policies 1.CO, 2.CO and 14.CO of the adopted Eastleigh Borough Local Plan (2001-2011) and Policies S8(ii) and DM26 of the Pre-Submission Eastleigh Borough Local Plan 2011-2029.

2.3 (2) The proposal would result in the loss of a site reserved for gypsies as defined in section 24(8) of the Caravan Sites and Control of Development Act 1960 (as amended) the retention of which is necessary to ensure sufficient provision is retained for gypsies. The scheme is therefore contrary to the objectives of Saved policy 87.H of the Eastleigh Borough Local Plan (2001-2011), and emerging local plan policy DM30

2.4 (3) Contrary to the provisions of Saved Policies 101.T, 147.OS and 191.IN of the Eastleigh Borough Local Plan Review (2001-2011), Policy DM37 of the Pre-Submission Consultation Eastleigh Borough Local Plan 2011-2029, the Council's 'Planning Obligations' Supplementary Planning Document and the

requirements of Regulation 122 of the Community Infrastructure Regulations, the proposed development fails to make provision for developers' contributions towards sustainable transport measures, community infrastructure and off-site public open space provision in the local area, the need for which would increase as a result of the proposed development.

3.0 The Appeal Site and Surroundings

3.1 The site is generally level and quite open in its appearance with no trees of note on the site. The majority of the site boundaries are fencing and hedging, which is to a height of approximately 3m.

3.2 The site is split into three main areas, the applicant's mobile home that was allowed at appeal in 1999, with its day room, barn and garden are all located within the southern part of the site. To the north is an area used for caravan storage and a polytunnel and beyond this is the site recently approved for the change of use of land to accommodate 3no. mobile homes, 3no. touring caravans and 3 day rooms.

3.3 During the 1999 appeal, found in Appendix 1, the Inspector in allowing the appeal, added conditions that restricted the use of the caravan site solely to those defined as gypsies, not more than 1 mobile home used for habitation and 1 caravan used for touring to be stationed here and not more than 2 commercial vehicles and trailers to be parked on site. As the development was not visually intrusive to the strategic gap and in the light of the need to provide for gypsy accommodation, the appeal was approved and conditioned.

3.4 The application site is within designated countryside and is within the strategic gap. The site is located 450m along a metalled track accessed off Grange Road. Along this track are two other sites for gypsy families, an industrial site used in association with the marine industry and three houses.

3.5 To the north is land associated with Pickwell Fruit Farm, whilst to the south are paddocks beyond which is the residential area of Netley.

3.6 The local planning authority (LPA) do not dispute that Mr and Mrs Kempster and their family are Gypsies as defined in Annex 1 of the Planning policy for traveller sites 2012 document.

4.0 Planning History

4.1 F/10/66559 - Change of use of land to gypsy caravan site accommodating 3no. mobile homes, 3no. touring caravans and 3 day rooms – Approved 21/02/2012

4.2 35996/002 – Retention of ancillary amenity building – Approved 21/06/2001

4.3 35996/001 - Retrospective application for use of land as gypsy caravan site for one family (one twin mobile home) – Refused 21/09/1999, allowed at appeal 07/12/1999

5.0 **Planning Policies**

5.1 National Planning Policy Framework (NPPF)

5.2 Paragraph 14 of the NPPF sets a presumption in favour of sustainable development. For decisions on planning applications this means:

- Approving development proposals that accord with the development plan without delay;

- Or, where the development plan is absent, silent or relevant policies are out of date, granting permission unless the adverse impacts of the development would outweigh the benefits, or specific policies in the Framework imply development should be restricted.

5.3 Paragraph 17 sets out the core planning principles that underpin plan-making and decision taking. Included within these core principles is a requirement that planning should recognise the intrinsic character and beauty of the countryside.

5.4 The document 'Planning policy for traveller sites' published March 2012 sets out the Government's planning policy for traveller sites and should be read in conjunction with the NPPF.

5.5 <u>Eastleigh Borough Local Plan Review (2001-2011)</u>

5.6 A number of saved policies within the Eastleigh Borough Local Plan Review (2001-2011) are relevant in this instance and are set out below.

5.7 Saved Policy 1.CO outlines the types of development considered appropriate for countryside locations, which includes development necessary for agricultural, forestry or horticultural purposes, outdoor recreational uses, public utility services, extensions to education or health facilities. It also requires any development to meet the other relevant policies and criteria of the local plan. The siting of the dwelling in this instance is not for any of the above stated purposes.

5.8 Saved Policy 2.CO relates to strategic gaps and states that planning permission will only be granted for appropriate development which cannot be acceptably located elsewhere and which would not physically or visually diminish a local gap. This is a strategic gap between Southampton – Hedge End/Bursledon/Netley.

5.9 Saved Policy 8.CO allows the replacement of existing dwellings in the countryside which enjoy a lawful residential use provided (i) the dwelling is not as a result of a temporary permission; (ii) its appropriate in design,

respects the countryside, not disproportionate to neighbouring properties, no greater physical or visual impact on the countryside; (iii) includes removal of existing dwelling; and (iv) no additional units of accommodation are created.

5.10 Saved Policy 18.CO relates to landscape character and states that 'Development which fails to respect, or has an adverse impact on the intrinsic character of the landscape, will be refused.'

5.11 Policy 59.BE of the Local Plan requires development to take full and proper account of the context of the site including the character and appearance of the locality and be appropriate in mass, scale, materials, layout, design and siting. It also requires a high standard of landscape design, have a satisfactory means of access and layout for vehicles, cyclist and pedestrians, make provision for refuse and cycle storage and avoid unduly impacting on neighbouring uses through overlooking, loss of light, loss of outlook, noise and fumes.

5.12 Saved Policy 87.H specifically relates to proposals for Gypsy sites and states that site will be considered acceptable provided they meet three criteria:

i. they are within a reasonable distance of schools, medical services, shops and other facilities;
ii. they should make appropriate provision for access and parking; and
iii. they should not have an unacceptable impact on the character or appearance of the countryside.

5.13 <u>Pre submission Eastleigh Borough Local Plan 2011-2029</u>

5.14 The emerging Local Plan is a material consideration however as this has not yet been through examination the weight of these policies are limited.

5.15 The LPA has not allocated new gypsy sites within the draft local plan although it is likely there will be a need for some transient and permanent pitches during this new plan period. The draft local plan does contained a criteria based policy (DM30) related to Gypsies and Travelling Showman that states proposals for Gypsy sites will be permitted which:

i. are able to accommodate both residential use and where necessary the range of economic activities and vehicles associated with residents mobile lifestyles without unacceptable impact on local amenities, road safety, heritage, landscape or biodiversity interests;
ii. have safe and convenient access to services and facilities to serve the residents, including education, health facilities and shops;
iii. have or can be provided with utility services; and
iv. have vehicular access to and from the strategic road network adequate to accommodate mobile residential units and any vehicles/machinery associated with residents working activities.
v. The scale of the site should not dominate the nearest settled community.

5.16 S8 – Presumption against new development subject to consideration of other policies and identification of countryside gap. Permission will be granted for development related to (ii) accommodation for gypsies (Policy DM30) but not for development in countryside gaps that will physically or visually diminish the gap or have an urbanising effect detrimental to the openness of the gap, the character of the countryside or separate identities of the adjoining settlements. In permitting development in the countryside, the council will seek wherever possible to (a) avoid impacts on rural character, intrinsic character of the landscape and biodiversity of the area; (b) secure long-term beneficial management practices that will enhance the landscape and biodiversity of the countryside.

5.17 DM1 – reflects much of that set out in saved policy 59.BE

5.18 DM26 – allows the replacement of existing dwellings in the countryside which enjoy a lawful residential use provided (i) the dwelling is not as a result of a temporary permission; (ii) the dwelling is not disproportionate to neighbouring properties or its plot, (iii) includes removal of existing dwelling and the new dwelling is on the same footprint as the existing and (iv) no additional units of accommodation are created. The Policy states that permission for the replacement of mobile homes with permanent dwellings will not be allowed. The Policy also goes on to state that permission will not be given for the extension or replacement of rural workers dwellings that exceed the original size or the replacement of mobile homes with permanent dwellings.

Supplementary Planning Documents/Guidance

Supplementary Planning Document: Quality Places
Supplementary Planning Document: Planning Obligations
Supplementary Planning Document: Residential Parking Standards
Supplementary Planning Document: Environmentally Sustainable Dev

6.0 Council's statement of case

6.1 Reason 1

6.2 Principle – replacement dwelling

6.3 The principle of a new residential dwelling in the countryside is contrary to the Policies of the adopted and draft local plans. In particular the development is contrary to Policy 1.CO as the development is not necessary for agricultural, forestry or horticultural purposes, outdoor recreational uses, public utility services, extensions to education or health facilities. As highlighted previously, the LPA do not dispute that the appellants are Gypsies.

6.4 The applicant's mobile home was allowed at appeal in 1999 where the inspector concluded that the change of use of land for one gypsy family and retention of the mobile home and day rooms would not materially physically or visually reduce the strategic gap in this location or its effectiveness in separating settlements. The appeal site is within reasonable distance of

facilities and there was a demonstrable need for a gypsy caravan site in this locality. In granting approval, the Inspector added conditions that restricted the use of the caravan site solely to those defined as gypsies, not more than 1 mobile home used for habitation and 1 caravan used for touring to be stationed here and not more than 2 commercial vehicles and 2 trailers to be parked on site.

6.5 A relevant enforcement appeal decision in 2003 at Pulmore Water Codicote (APP/X1925/C/02/1094102), found in Appendix 2, considered the removal of an unauthorised brick built dwelling house intended to replace the original mobile home for a gypsy family. The Inspector considered that in line with the relevant plan policies for that area, replacement dwellings in Green Belt areas were acceptable. However, in the case of the dwelling the subject of the appeal the dwelling would replace a mobile home which was not regarded as a permanent dwelling (paragraph 7). During this appeal the appellant argued that a neighbouring development that allowed the conversion of a utility block to a dwelling had set a precedent. The Inspector considered that as the neighbouring site, a former utilities block was already permanent in its form, its conversion to a dwelling thus added nothing in the way of permanent buildings. In contrast the bungalow the subject of the Codicote appeal was a new building on a site where the lawful use is for the siting of a mobile home (paragraph 14).On this basis the Inspector concluded that the development was inappropriate in the green belt.

6.7 Taking this appeal decision into account the criteria of Policy 8.CO does not apply to this appeal site as the mobile home that is sought to be replaced is not classed as a 'dwelling' which benefits from lawful use. The 1999 appeal decision for this site approved the land for residential use for a gypsy family and not the mobile home.

6.8 The applicant's justification within the planning application submission for the development is that the mobile home is 'falling into disrepair' and as such a rebuild offered the most sustainable and economically viable option. Mobiles homes are temporary in nature and therefore it is expected that there will be a need for repair work or a replacement with a new mobile home. The Council would not object to a suitable replacement mobile home but considers that there is no justification why the mobile home must be replaced with a permanent structure. On this basis, there is considered insufficient reasoning in allowing an exception to policy as this does not outweigh the harm for allowing the construction of a new residential dwelling in this countryside location.

6.9 <u>Visual impact</u>

6.10 As well as being contrary to Policy 1.CO due to the principle reason set out above, Policy 2.CO states that planning permission will only be granted for appropriate development which cannot be acceptably located elsewhere. Whilst the Inspector concluded that the retention of the mobile home and day rooms would not materially physically or visually reduce the strategic gap in this location or its effectiveness in separating settlements, the siting of a

permanent and larger structure is considered to have an urbanising and detrimental impact on the openness of the gap. The Inspector considered the mobile home to form part of the enclave of existing development, not being distinguishable as an isolated feature unrelated to other buildings and land uses (paragraph 22 of the appeal decision). However the proposed dwelling is considerably larger in its appearance than the mobile home and visually would appear incongruous and unrelated to the surrounding agricultural and caravan structures.

6.11 A relevant appeal decision in 2008 (APP/W1525/A/07/2052012) at The Willows, Cumming Road, Downham, Billercicay, found in Appendix 3, Essex for the construction of a bungalow following the removal of a double mobile home raised similar issues to this appeal under consideration. The proposed dwelling within a Green Belt would have a significantly greater gross floor area and increase in height. Although the Inspector concluded that public views of the building would be limited, the additional height and bulk would inevitably further reduce the openness of the Green Belt. The Inspector concluded that the harmful impact on the openness through a dwelling to be permanent (paragraph 8).

6.12 With regards to the current appeal at Bay Farm, for the Kempster family, the measurements provided on the site plan section of the planning application are considered to be the most comparative measurements as the proposed dwelling is highlighted in relation to the existing buildings to be removed (twin mobile home and outbuilding). The proposed dwelling, an 'L' shaped building measures 18m both across the front and rear elevations, 18m along the side elevation and 9m along each end of the building to a ridge height of 6.4m. The existing mobile home measures 12.2m by 6m with the outbuilding measuring 4m by 10.9m. The height of the existing structures is not provided on the drawing. The photographs submitted and taken during an officer site visit indicate that the mobile home and outbuilding to be significantly lower in height dictated by the shallow pitch of the outbuilding and flat roof sections of the twin mobile home unit. The increase in floorspace for the new dwelling (243sm) would more than double the size of the mobile home and outbuilding (116.8sm) to be demolished. From public vantage points, namely the public footpath running across the field to the south east of the site, the agricultural and stable buildings are clearly visible but the mobile home is obscure in parts although sections of its roof can be seen from certain view points. The proposed dwelling would be significantly larger in its overall size and increase its visibility from public view points as well as reducing the openness of the strategic gap resulting in permanent harm. On this basis, the development would physically and visually diminish the strategic gap.

6.13 Guidance within the recent 2012 'Planning policy for traveller sites' paragraph 24 b) states that sites should be well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness.

6.14 The character of the area is drawn from the openness of the countryside, its agricultural activities and the contrast provided by the development in the vicinity of and including the appeal site. Surrounding development is

generally comparable to the appeal site with a number of mobile homes or agricultural buildings occupying neighbouring sites. The mobile homes approved under the recent 2012 permission (F/10/66559) to the rear of the site due to their scale and nature were not considered harmful to the character and objective of the strategic gap. The bungalow approved on the neighbouring site at Pennywise Farm was originally allowed at appeal as a mobile home for a rural workers dwelling. The policies (6.CO) of the adopted Eastleigh Borough Local Plan (2001-2011) and pre-submission (DM27) Eastleigh Borough Local Plan (2011-2029) support the provision of rural workers dwellings in rural areas provided compliance with a number of criteria. On this basis it is considered that the bungalow at Pennywise Farm is not comparable to the proposals under consideration with this appeal which is for the replacement of a mobile home which does not benefit from a lawful residential use. Ultimately it is the view point of the LPA that development within this area would need to be balanced against the need to protect the physical and visual character of the strategic gap. The mobile home is considered to meet the objectives of the countryside and strategic gap. The site and land could be easily accommodated by other gypsy families or restored to its former use should the accommodation no longer be required.

6.15 Reason 2

6.16 Loss of a site reserved for gypsies

6.17 Paragraph 4 of the 2012 Traveller's Guidance highlights a number of key aims in respect of traveller sites, which include the maintenance of an appropriate level of supply. Paragraph 22 a) goes on to states that consideration be given to the existing level of local provision and need for sites.

6.18 In allowing the retention of the mobile home, the Inspector stated that should the Kempster family leave, the site would continue to contribute to the stock of gypsy sites in the locality for which there is a general need. This approach has continued with the recent 2012 permission to the north and west of the site through the application of conditions restricting occupancy to those defined as gypsies. Concerns are raised with regards to the replacement of the mobile home with a permanent dwelling as it would result in the loss of the gypsy site and set a dangerous precedent for similar development in the Borough if allowed. The nature of gypsy sites is transient and therefore a permanent structure is not considered to support the ability of other gypsy families accommodating the site in the future. The Local Planning Authority acknowledges that a gypsy family may choose at times to live in a traditional house but Court decisions have established that even in these situations the gypsy heritage remains. It may be that Mr Kempster and his family wish to live in a traditional dwelling but this is not considered sufficient justification to allow a dwelling on the above site as this could be delivered through the existing housing stock within the area. The mobile home was allowed on the basis that the appellant wanted to be located close to his family and was able to access day to day necessities, services and facilities from this location. Although the inspector considered an urban site could be found to house the

family, at the time it was considered to be a costly option that was not compatible with the commercial element of the appellant's lifestyle. On this basis, it is argued that should there now to be a desire to live in a brick dwelling, then this could be met by the existing housing stock.

6.19 The appeal decision at The Willows, Cumming Road, Downham, Billercicay, Essex, found in Appendix 3, for the construction of a bungalow states that were the dwelling to be allowed it would then be inappropriate to restrict the occupation of the bungalow to gypsies or travellers because it would be unsuitable for most such occupiers. The development would thus result in the loss of a lawful traveller site (paragraph 12).

6.20 Regard has been given to Planning Circular 11/95: Use of conditions in planning permission, paragraph 28, provides guidance in respect of the enforceability of conditions. Taking this guidance into account, the imposition of a restrictive use condition i.e. for gypsy occupancy, would be impracticable to enforce due the difficulties in monitoring who would be residing at the property.

6.21 An appeal dismissed in 2008 (APP/P0119/A/07/2049798) at Parkfield Road, Bristol, found in Appendix 4, for the construction of a detached bungalow to replace a mobile home raised similar issues to this appeal under consideration. The Inspector acknowledged that there was a clear and immediate need for gypsy sites within the area (paragraph 11). The appellants stressed that as they had long-standing local connections and family members nearby, should the appeal be allowed then they would construct and live in the new dwelling. The Inspector stated that it would not be reasonable to impose a condition on the bungalow requiring that it only be occupied by gypsies and travellers. It was emphasised that Circular 11/95 (The Use of Conditions in Planning Permission) also indicates that a personal permission is scarcely ever justified in the case of a permanent building. On this basis in the long-run the outcome would be that a site that has been accepted for residential use by gypsies would be lost (paragraph 13). Although the Inspector did not doubt their intentions, he considered that there would be no planning controls to tie the appellants to the appeal site.

6.22 The LPA has not allocated new gypsy sites within the draft local plan although it is likely there will be a need for some transient and permanent pitches during this plan period. The pre-submission Eastleigh Borough Local Plan (2011-2029) does include a criteria based draft policy (DM30). Although there is limited reliable statistical evidence to provide a definitive number of gypsy sites required within the Borough there is no evidence to suggest that the site would no longer be required.

6.23 Reason 3

6.24 <u>Developer contributions</u>

6.25 In accordance with adopted Local Plan policies and the Council's adopted Supplementary Planning Document: Planning Obligations, the Local Planning

Authority can require developers to enter into a legal agreement under section 106 of the Town and Country Planning Act 1990, for making financial contributions towards the provision of social and recreational facilities (community infrastructure), off-site public open space works and road traffic reduction (sustainable transport) measures in the local area.

6.26 The development on this site would result in a change of use from land used as a caravan site to a permanent form of residential accommodation. During the 1999 appeal for this site the Inspector considered a change of use only and although there was not a time limit placed on the decision the land could easily be reverted back to its agricultural use. The appeal application seeks permission for a permanent dwelling and not a replacement and once built would not be demolished so the agricultural use would be lost. On this basis there would be a resulting permanent impact on facilities. In the absence of a personal permission on the site, which was not considered reasonable when the appeal was allowed in 1999, the site could be used in the future by more than one family who are defined as gypsies. On this basis there would be greater pressure on local facilities and as such securing contributions is reasonable and appropriate.

6.27 Since the appeal decision, the Council have adopted a Supplementary Planning Document: Planning Obligations (2008) and relevant detailed local plan policies for which appropriate weight has been given. As the planning obligations were not secured as part of the planning application the Council considers the proposals to be contrary to saved policies 101.T, 147.OS and 191.IN of the adopted local plan and guidance within its Supplementary Planning Document: Planning Obligations and the guidance contained within circular 05/05.

6.28 If a completed Unilateral Undertaking can be provided, the local planning authority will withdraw the third reason for refusal.

6.29 Details of the required level of contributions in respect of the proposed development are attached in Appendix 5 to this statement. Following an extended period of research, the SPD underwent full consultation in accordance with the Council's Statement of Community Involvement and was approved by Cabinet, who also considered the background paper containing the results of research. It is a statutory document for which the appropriate weight should be given. It is the Council's view, that it is not appropriate to require a Section 106 agreement by condition.

6.30 If the Inspector is minded to accept the principle of the development and agrees that contributions towards local infrastructure are required, the Council respectfully requests that the Inspector dismisses the appeal in the absence of a Unilateral Undertaking in accordance with adopted policy and guidance.

7.0 Comments on Grounds of Appeal

7.1 In response to the appellant's agent's grounds of appeal the LPA believe that this statement addresses the matters raised.

8.0 Conclusions

8.1 The LPA are of the opinion that the refusal of this application is justified for the reasons set out and amplified in this statement. The Inspector is respectfully requested to dismiss this appeal.