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Attn. Tamara Dale, Case Officer

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Your ref: DC/20/2497

Our ref: Pulborough Gypsy site

Email: [REDACTED]

23 April 2021

Dear Sirs

Lane Top Nutbourne Road Pulborough West Sussex ("the Site") Construction of 2 No. additional gypsy site pitches (ref: DC/20/2497)

1. We write further to our previous correspondence on this matter. We have taken advice of counsel, Andrew Parkinson, Landmark Chambers
2. We have reviewed the Officer's Report recommending approval and have the following comments to make regarding the assessment of the highways impacts of the proposal.
3. Our client's other concerns (summarised in the objection letter from NJA Town Planning Ltd dated 29 March 2021) still stand.
4. The Officer's Report advises Members that because the Highway Authority has not raised an objection "*a refusal reason on the grounds of highway safety could not be justified*".
5. That is not correct.
6. First, whilst the advice of the Highway Authority is a material consideration for the Planning Committee to take into account, it is not binding. It is well established in national guidance that it is reasonable for a local planning authority to refuse an application in these circumstances, provided that its reason for refusal is not based on "*vague, generalised or inaccurate assertions about a proposal's impacts, which are unsupported by any objective analysis*" (see paragraph 49 of the Planning Practice Guidance on Appeals).
7. This guidance is not acknowledged in the Officer's Report.

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8. Plainly, if the Planning Committee refused this application, that refusal would be supported by objective analysis. In particular, our client has submitted four detailed technical notes explaining why the access is unsafe: summarised at paragraphs 3.28-3.59 of the Officer's Report.
9. The last note (dated 14 April 2021) - see paragraphs 3.54-3.59 of the Officer's Report - responds in detail to the latest position of the Highway Authority. The contents of that note are not substantively addressed either by the Highway Authority or in the Officer's Report.
10. Therefore, a refusal on highways grounds would be supported by objective analysis and would be reasonable.
11. Second, and in any event, decision-makers are entitled to apply common-sense even when dealing with a technical matter such as highway safety: see Westminster Renslade Limited v Secretary of State for the Environment [1984] 48 P&CR 255 at [261] to [263] and Catesby Estates Limited v SSCLG [2016] EWHC 593 (Admin) at [10] and [120] to [123].
12. Here, it is agreed that visibility is substandard to the west of the access (where it is 2.4m x 9m compared with the recommended 2.4m x 47.1m set out in Manual for Streets).
13. Whilst the recommended distances in Manual for Streets are recommended, as the Highway Authority points out, it is important to remember what these numbers mean. Based on normal reaction times, a car travelling eastbound along Nutbourne Lane, travelling at the accepted speed of 32 mph, and breaking in an emergency situation, would travel 25 metres between first seeing an exiting car and stopping. The achievable visibility distance from the access is just 9m.
14. Further, the departure from the recommended distances here is significant. Indeed, Mr. Bellamy says in his report dated 30th March 2021 that in his experience (dealing with thousands of planning applications dealing with Highway related matters) he has never experienced a Highway Authority or a Planning Inspector to allow development to be granted with a significantly substandard visibility splay at an access serving a site.
15. The Highway Authority has nevertheless said that it has no objection because there is no history of accidents at the site, and there is not a "*significant intensification*" of the use of the access.
16. The fact that there have been no accidents is not a decisive consideration. There are numerous appeal decisions where Planning Inspectors have found an access to be unsafe in those circumstances. For example, and this is just one example of many, in appeal decision ref: 10/00582/COU, a Planning Inspector and the Secretary of State found that a proposal to double the number of pitches on a gypsy and traveller site from 6 to 12 was unsafe because: "*...the absence of collisions does not, of itself, demonstrate the situation is safe especially as the intention is to increase the number of pitches to 12*".
17. Further, applying common-sense, the lack of accidents to date cannot be decisive. An accident relies on a combination of events happening at once (in particular, a car pulling out of the access at the same time that a car is approaching). That combination of events may not be a frequent occurrence on a lightly trafficked road.
18. However, it only needs to happen once for there to be fatal consequences. This combination of events may not have happened yet. However, there can be no doubt that when it does occur there will be a serious (and potentially fatal) accident. It would be reckless for the Council to grant planning permission in those circumstances.

19. That is particularly the case when the probability of that event occurring will increase as a result of the grant of planning permission (with a 50% increase in flows at the sub-standard access as a result of the increase in traffic of 2 pitches).
20. Finally, it is important to remember that that test is not whether the application will have a severe impact on highways safety. The Officer's Report at paragraph 6.48 says that the relevant test in national planning policy is set out at paragraph 32 of the National Planning Policy Framework ("the NPPF"). It is not. That is old policy that was superseded in 2018. The relevant test is now set out at paragraph 109 of the NPPF. The relevant test is whether the impact on safety is acceptable. Plainly, it is not for the reasons set out above.
21. The Officer's Report refers in a number of places to the "*residual cumulative impacts*" of the development not being "*severe*". That is language that was used in paragraph 32 of the NPPF, and has been retained in paragraph 109 of the NPPF. However, this severity test has nothing to do with safety. It is about the congestion resulting from a development proposal. No-one is suggesting that this proposal will lead to congestion. In reaching a judgment as to whether the safety impact of the access is acceptable, Members should disregard the question of whether the impact would be "*severe*".
22. As it was put by Mr. Rhodri Price-Lewis QC (sitting as a Deputy High Court Judge) in Mayowa-Emmanuel v Royal Borough of Greenwich [2015] EWHC 4076 (Admin) at para. 29:

"In my judgment, paragraph 32 of the National Planning Policy Framework that the Claimant relies on under this ground 2 is addressing matters of highway capacity and congestion. It is not concerned with highway safety considerations in themselves. It cannot be, because it cannot be the case that the Government considers anything other than severe impact on highway safety would be acceptable, with would be the implication of the Claimant's argument."
23. That is important not just when considering the current application, but also when considering how much weight Members can attach to the fact that it has previously granted planning permission on the site.
24. The previous approval (ref: DC/17/2564) appears to have applied the wrong test and judged whether the safety impact at the access would be severe: see para. 6.37 of the Officer's Report. In light of Mayowa-Emmanuel that was wrong.
25. In any event, it is trite law that the Planning Committee is not bound by its previous decisions: North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P & CR 137.
26. For all of these reasons, the application must be refused. This is a dangerously unsafe access and the Planning Committee is being asked to increase the amount of traffic using it by 50%. There is detailed technical evidence to justify a refusal. The achievable visibility falls well short of the recommended figure. The Highway Authority may not raise an objection, but that is not decisive. Given what is at stake here, permission should be refused, so that a Planning Inspector can consider the competing arguments in detail.

Yours faithfully


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Environmental, Planning & Public Law