

<p style="text-align: center;"><b>SOUTHERN AREA COMMITTEE - 28-10-04</b> <b>SCHEDULE OF ADDITIONAL CORRESPONDENCE</b></p>
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Planslist  
Item No.

1. **S/2004/1544 - STATIONING AND RESIDENTIAL OCCUPATION OF TWO TOURING CARAVANS (RETROSPECTIVE) AT BADGERS REST, WINTERSLOW ROAD, PITTON**

**Further comments on Human Rights Implications**

In light of recent case law on Human Rights issues this section of the report has been re-written. Please disregard the Human Rights section in the original report

There are two relevant human rights likely to be engaged in this case –

**Article 1** (first protocol), which establishes the peaceful enjoyment of property and the legitimacy of controlling the use of such property in accordance with the general interest.

**Article 8** establishes the right to respect for private and family life including an individual's right to a home.

Interference in these rights is only lawful if there is a legitimate issue of public interest at stake. Further, in order to be justified, the level of interference needs to be proportionate to the public interest it is seeking to protect. Case Law has made clear that in Gypsy cases, the weighing of these issues needs to be undertaken very carefully and in considerable detail.

For the purpose of planning, the gypsy status of applicants for planning permission is relevant to the question of whether they are entitled to a more relaxed regime of planning control than is generally applicable to others. National and Local policies accord a positive obligation towards the gypsy community in recognition of their special land requirements to facilitate a gypsy way of life.

The Salisbury District Local Plan accords this positive obligation towards the gypsy community by way of Policy H34, which gives specific criteria against which land required to facilitate a gypsy way of life, must be considered.

A gypsy is a person of 'nomadic habit of life'. A person can be a gypsy even if they are nomadic only seasonally or periodically. Courts have upheld that a gypsy may remain a gypsy even if for reasons beyond their control such as illness or the education of their children they are unable to travel. A permanent base does not automatically deprive a person of gypsy status. However, the courts have upheld the view that if a gypsy retires permanently from traveling for whatever reason - illness, ill health, age etc they no longer have a 'nomadic habit of life' and are no longer a gypsy.

The issue of gypsy status is therefore fundamental to consideration of this particular case. Ms Smith who occupies the site with her school age children has stated that she is a Gipsy and comes from a traditional gypsy background and though currently she and her children do not have a nomadic lifestyle, she considers that it may be possible that she would resume a nomadic lifestyle once the children have completed their education and she would not wish to live in conventional housing to which she has a cultural aversion.

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Whilst it is a matter of fact and degree as to whether Ms Smith and her children are gypsies; the reason for settling at this site is primarily because the land was available and provided a settled place where the

children could benefit from the local education facilities. The three children now attend local schools namely Farley Primary School, Wyvern and St Joseph's Secondary Schools in Salisbury. The schools attended by the children have confirmed that children attend school on a regular basis. They are benefiting from a stable, continuous educational environment and it would be detrimental to their education if their schooling were to be disrupted by their having to move elsewhere. It would appear clear from recent case law that ceasing to travel whilst the children are completing their education does not prevent a person from being legally a gypsy.

Policy H34 refers to 3 criteria, which must be considered when considering the planning arguments in making this determination. The site under consideration is not within one of the designated categories in criteria (i) and as the report above indicates, the officers' consider that the development is acceptable in landscape terms (criteria ii) and that the site is not remote from a settlement (criteria iii)

As in this particular case as the report above indicates there is in the officers' opinion little or no harm to the landscape by the development and the site is situated close to a settlement as specified in policy H34, if planning permission is granted, there would be no adverse public impact because the proposal would be in accordance with policy.

In the event of planning permission being refused, there would be an interference with the occupier's rights to a home (Article 8) and Article 1 (first protocol)

It is the officers' view that as a matter of fact and degree Ms Smith and her school age children have gipsy status for the reasons outlined above. The reason for settling on this site was to provide a settled place where the children could benefit from the local education facilities. Their schools have confirmed that it would be detrimental to the children's education if their schooling were to be disrupted by their having to move elsewhere.

If the Committee were minded to overturn the recommendation the effect on the occupiers' human rights would need to be weighed very carefully against any planning harm arising in connection with the criteria listed in H34 of this particular development. The public interest overall seeks protection of the countryside by preventing unnecessary development and development harmful to the landscape and H34 safeguards this protection whilst at the same time recognizing the Council's obligation towards the gypsy community. In this particular case, in the officers' opinion, it would be difficult to justify a refusal based upon harm to the countryside or to the local environment for the reasons outlined above.

Overall, it is the officers' view that the balance of the considerations in this particular case is that a temporary and personal consent, would by allowing the children to complete their education safeguard the Human Rights of the occupiers of the site in line with their gypsy status, would accept the Council's obligation towards the gypsy community as expressed in policy H34, whilst protecting the appearance of the Special Landscape Area in the long term.

**2. S/2004/2086 - LOFT CONVERSION AT 21 GREAT CROFT, FIRSDOWN**

Firsdown Parish Council - No Objections – but if neighbours were being overlooked that any objections made by the neighbours on such grounds should be taken into consideration.