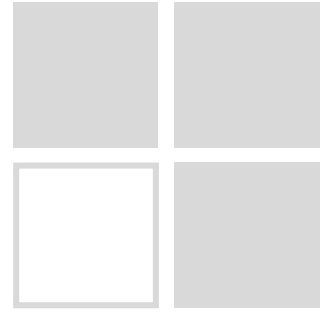


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City of York Local Plan Gypsy & Traveller Issues
Annex A to Letter of 5 December 2023
On behalf of York Travellers Trust

1. Introduction

1.1. Following the Inspectors response to documents that were obtained by YTT through an FoI request on 23rd September 2023, [EXINS44], which contained three questions; CYC produced a number of documents on 30th October.

1.2. York travellers Trust met with Leaders of the Council and Mr Ferris on the 8th November 2023 to discuss the issues, and we are grateful for the opportunity to respond.

1.3. In a context in which Leaders and Directors of the Council, senior officers of the housing management team, officers with day to day responsibilities for the smooth running of the site, and the two local parish councils have all expressed serious concerns over many years about conditions on the site; it has been extremely challenging over the past weeks to compose a response to the Councils document EX/CYC/127gi.

1.4. As the evidence has shown, there is no real disagreement between parties as to the suitability of the site for expansion. Our discussions around this issue with Leaders of the Council indicate a genuine commitment to invest significantly in services for the Gypsy and Traveller Community in York over the coming years, to start to address the consequences of decades of discrimination and neglect.

1.5. Having inherited the Draft Plan at a very late stage, the new Administration is mindful of the very long period that York has spent without a Plan, and the City's history of failure in the Examination Process. While there is a clear recognition across the Council that the plans for the expansion of the site at Osbaldwick, and by extension, Policy H5 are entirely unsustainable, Leaders consider, on the advice of senior officers, that the swift adoption of the Local Plan is in the best interests of the City as a whole.

1.6. The Council intends to proceed with the Plan as it currently exists on this basis, but has expressed a strong intention to begin work immediately on a 'review,' through which it hopes to address the many issues that persist.

1.7. This will not be possible. National Planning Policy requires that once a green belt boundary has been defined, it should endure well beyond the Plan Period, and for a minimum of 20 years. The major issues with Policy H5(b) and H5(c) result directly from the limitations of the green belt boundary. If the Plan as it currently exists is adopted, the issues that have been revealed by the fact that the *only* land available under the Plan Policy is in the worst possible location, and manifestly unsuitable for further pitches, cannot be resolved.

1.8. We note the correspondence from Inspectors Berkley and Griffiths of the 18th December 2020,¹ in which they noted that:

'Given the time that has now passed since submission and since much of the evidence supporting it was undertaken and produced ... it is important for the examination to make

¹ <https://www.york.gov.uk/downloads/file/6293/ex-ins-19-inspectors-letter-to-cyc-18-dec-2020>

swift progress in order to avoid a circumstance whereby elements of evidence lose their currency, or become unduly time-limited.'

1.9. Referring to major weaknesses in the evidence base intended to support the Councils approach to the Green Belt, and serious delays and difficulties that were anticipated with the task of addressing these within the Examination Process, the Inspectors advised that:

'it may be that withdrawal of the submitted Plan and proceeding to examination with a fresh Plan is the most appropriate way forward.'

1.10. Mr Ferris wrote to Inspectors, on the 22nd December 2020,² stating, amongst other things that:

'following discussion at the Phase 1 hearing sessions and further consideration for the delivery of gypsy and Traveller provision, a policy modification is ... proposed to Section 10 'Managing Appropriate Development in the Green Belt' to clarify that GB4 makes provision for small scale affordable sites for Gypsies and Travellers not meeting the PPTS definition of a Gypsy or Traveller, to address need that may not be accommodated on strategic sites through policy H5.'

1.11. On the 15th January he provided a response to the Inspectors letter,³ giving detailed assurances that *'the proposed Green Belt will endure for a minimum of 20 years and will not need to be altered at the end of the Plan period,'* and indicating the Councils intention to proceed with the Examination.

1.12. At paragraph 4.78 of 'Topic Paper 1: Approach to defining Green Belt (Addendum)⁴ it was repeated that:

'There are also opportunities for rural exception sites, including for Gypsy and Travellers not meeting the PPTS definition of a gypsy or traveller. These small scale developments provide affordable homes in locations where new homes would not usually be appropriate.'

1.13. A Regulation 19 Consultation conducted in May 2021,⁵ duly included the policy provision above in the Composite Modifications Schedule.⁶

1.14. In the absence of allocations of suitable, available land for Traveller Sites in the Plan, the inclusion of culturally appropriate accommodation for Gypsies and Travellers in Policy GB2, which deals with exception sites for affordable housing in the Green Belt, was the only mechanism by which the Policy in H5(b) and H5(c) could ever have been expected to function.

1.15. The Council states that it:

² <https://www.york.gov.uk/downloads/file/6294/ex-cyc-44-letter-to-inspectors-22-dec-20-re-hra>

³ <https://www.york.gov.uk/downloads/file/6312/ex-cyc-48-letter-to-inspectors-15-january-2021>

⁴ <https://www.york.gov.uk/downloads/file/6318/ex-cyc-50-topic-paper-1-approach-to-defining-green-belt-addendum-january-2021>;

⁵ <https://www.york.gov.uk/LocalPlanConsultation>

⁶ <https://www.york.gov.uk/downloads/file/6534/ex-cyc-58-composite-modifications-schedule-april-2021>

*'was unable to pursue this modification following legal advice, which stated that this approach is not in accordance with national Green Belt policy and consequently, the Plan would be found to be unsound.'*⁷

1.16. This policy was included in all documents up until the Hearings at Phase 3, where it was withdrawn, without discussion, by the Council. It is now clear, from the emails at document ex/oth/26a, that preparation for Hearings on Policy for Gypsy and Traveller Sites was consistently left to the last available moment before important Examination deadlines by the Policy Team and their Barristers.

1.17. In this context, it appears that the carefully considered policy that had been provided to overcome the known limitations of the green belt to provide Gypsy and Traveller pitches was likely withdrawn from the Plan on the basis of 'spur of the moment' advice and without regard either, to the legal and policy framework within which it had been put forward, or to the consequences of its removal.

1.18. We have made considerable efforts to explore and identify means by which Policy H5 and others to which it relates might be amended to allow the progression of the Plan. This has proven impossible.

1.19. Planning Policy for Traveller Sites requires the Council, amongst other things, to:

- *Use a robust evidence base to establish accommodation needs to inform the preparation of local plans and make planning decisions*
- *Develop fair and effective strategies to meet the identified need through the identification of land for sites,*
- *Promote more private traveller site provision and reduce unauthorised development,*
- *Identify deliverable sites to provide five years' worth of accommodation against a locally set target, and*
- *Identify developable sites or broad locations for growth for the next six to ten years and where possible 11-15 years'*

1.20. The Council has failed to meet each of these standards.

1.21. The limitations of the green belt and the need to ensure that its defined boundaries will endure, at least for the plan period mean that the Council will not, as it hopes, be able to reverse the harms that would follow from adoption by an early review.

1.22. The Plan is not sound, and cannot lawfully be adopted.

1.23. As the following paragraphs will show, the Council has been compelled to try to defend a position that is demonstrably indefensible. There has been no attempt to make an assessment of the site against objective criteria, because, as the Council is well aware, the site at Osbaldwick would not withstand that scrutiny. Instead, the Council has advanced a

⁷ <https://www.york.gov.uk/downloads/file/9165/ex-cyc-123ai-main-modifications-responses-amended->; p11

circular, and inconsistent narrative in its defence, which is, even itself, unsupported by the evidence provided.

1.24. The following sections will draw out and analyse some of the themes that have emerged from the Council's reasoning.

2. Matter 1.

2.1. The Inspectors have asked the council:

Those Council Officers with oversight of the provision for Gypsies and Travellers have outlined serious doubts about the proposed expansion of the Osbaldwick site, and that Officers of the Council were well aware of the likely problems when the proposed expansion was put forward.

In the first instance, we would like an explanation as to how this situation has come about.

2.2. The Council has tried to deny, rather than explain, the situation that has been made clearly apparent to the Inspectors through the evidence provided.

2.3. The reasoning proceeds from a suggestion that the evidence that has been presented by 'an objector' may be biased, and should be seen in its proper context. For clarity, it is important to note that all of the evidence obtained through the FoI request was submitted to the examination with minimal comment ([EX/OTH/36](#)) and the Inspectors drew their own conclusions. If there are other documents that provide a fuller picture, then we have not seen them.

2.4. To place the evidence in context, the Council draws attention to the timings of particular communications, and the 'decision making structure' of the Council. Emphasis is placed on the fact that Housing Managers are not involved in, and have no responsibility for the Local Plan, and a narrative is advanced to substantiate the councils claim that more Senior Officers, with more relevant expertise and decision making powers in relation to Planning Policy have given careful consideration to the issue^[1] of whether the extension of the Osbaldwick site is justified throughout the Local Plan process. It is advanced that they have concluded, that although serious issues will need to be resolved to make the site suitable for expansion, these relate to the management of the site, and are not insurmountable.

2.5. The Council contends that the impression given by the FoI documents, that:

those Council Officers with oversight of the provision for Gypsies and Travellers have outlined serious doubts about the proposed expansion of the Osbaldwick site, and that Officers of the Council were well aware of the likely problems when the proposed expansion was put forward

is not accurate.

2.6. The Council emphasises repeatedly that it is 'important to confirm that the issue of whether the extension of the Osbaldwick site was justified had already been the subject of

*careful consideration through the Local Plan process*⁸ and it is explained at Paragraph 2.21 that senior officers recognised that:

'there were management challenges at the Osbaldwick site which needed to be resolved with additional resources.'

But that:

*The resolution of these challenges was considered to enable the proposed provision for the site to be maintained as set out in the proposed modifications, and contrary to any earlier suggestion from officers that issues with the site precluded any expansion.'*⁹

2.7. Even if, as the Council contends, the serious issues with the site and the suitability of its proposed expansion could be resolved by investing resources to address 'management issues' (which we reject); the Council itself has conceded that these are not 'matters that the Local Plan has any power to address.'¹⁰

2.8. The account that has been given of the management and decision making structure of the Council and of 'steps that have been taken so far' provides persuasive evidence to substantiate that fact, and further, to demonstrate that the Local Plan, and apparently the Council, has no power to address or reverse harms that have already been caused by the Councils own poor planning decisions in the past either.¹¹

2.9. Paragraphs 2.26 – 2.39 of the document details the steps the Council has taken to address the management issues at the site. It is made explicit that the steps taken by the council began only in February 2023. Given the clear statement of Senior Officers at paragraph 2.21 that the resolution of these challenges would be necessary to justify the allocations on the site, and the statements at paragraphs 2.10; 2.23 and 2.25 that the issue of whether the Osbaldwick Site was suitable for expansion had been subject to careful consideration throughout the process of the Local Plan, it is difficult to understand why issues were not identified and addressed much earlier in the process.

3. Decision-Making Context

3.1. Despite its stated position that the resolution of 'management issues' at Osbaldwick will be necessary to make the Plan sound, the Council contends that officers who raised concerns about the plans were rightly not involved in the development of the Local Plan, or the proposed expansion, and that their views were expressed only after the consultation began.

3.2. A 'Management Structure Chart' is provided at Annex A to illustrate the reporting structure of the Council, and it is explained that whilst junior officers might 'articulate their own views' within the corporate structure; decision making power in this context properly rests with the judgment of more senior officers, with direct responsibility for the Local Plan.

3.3. To illustrate this point, Mr Ferris emphasises the very limited weight that should be given to Louise Waltham's view, that the proposed expansion 'really would set us up with an unmanageable site and compound the social issues already present on site' on the basis that

⁸ Paragraph 2.23

⁹ Paragraph 2.21

¹⁰ P22

¹¹ Pp23-24

she is *'not involved in, or responsible for, the preparation of planning policy either in terms of strategic provision or allocations.'*¹²

3.4. To reinforce this position, it is noted that the officer *'had not had the opportunity to read the draft local plan until a late stage'*.¹³

3.5. Louise Waltham does not, as is stated at paragraph 2.37, *'work within the Councils Temporary Accommodation Team'* but in fact holds overall managerial responsibility for the Council's Supported Housing Service, including, Temporary Accommodation; Traveller Sites; YorHome; Housing Options and the Refugee Resettlement Programme.

3.6. YTT contacted Louise Waltham on the 23rd January 2023 following the suggestion by Neil Ferris on the 16th January that responsibility for managing the issues arising from the planned expansion of the site at Osbaldwick would be with the housing teams, and was *'not a planning issue.'*

3.7. The email provided at document ex-oth-36b shows that Miss Waltham raised concerns with Tracey Carter, Director of Housing, Economy and Regeneration on the 30th January. The Council's 'management structure chart' (EX/CYC/127a) confirms that Tracey Carter reports directly to Neil Ferris.

3.8. Another email from Laura Bartle, Strategic Planning Policy Manager on the 8th February (ex-oth-36d) refers to a phone conversation and advised Miss Waltham that Ms Bartle considered that it would be best to share the briefing note that had been requested for the meeting with YTT on the 16th February – that is after the consultation began. Miss Waltham had still not received the information on the 10th March 2023. (ex-oth-36d)

'I said I would send on some additional background info to you, but having thought about that some more I think it best I share the briefing note that I've been asked to prepare for circulation to CYC colleagues attending the meeting on the 16th.'

3.9. Despite what appears to be a deliberate strategy of keeping Officers with direct managerial responsibility for the Site in the dark about the plans, and the care that has been taken to explain that Housing Officers have no responsibility for or involvement in the Local Plan, and were made aware of the proposed expansion only after the plans were published, Mr Ferris quotes, at paragraph 2.12. and 2.13, from his own statement to the Decision Sessions of the Local Plan Working Group and the Executive on the 16th and 26th January respectively, that:

"I recognise the issues that were brought forward in terms of the management and I think that's an issue of management, and as rightly pointed out a matter for the housing officers and the housing functioning of the authority' ...

'far from those housing officers not welcoming the opportunity to build more travellers sites at Osbaldwick, it was the Housing Management team came forward and demonstrated that the site could be accommodated on the land we proposed to allocate in the LP.'

¹² Paragraph 2.8

¹³ Paragraph 2.7

3.10. Referring to significant investment that is expected to be made through s106 contributions, Mr Ferris explained that Housing Officers considered that ‘a bigger site with more resources on it would give us the best opportunity to manage it.’

3.11. At Paragraph 2.14, Mr Ferris states that this opinion was initially based on advice received from Michael Jones, Head of Housing and Asset Management in an email of 13th May 2022 and at the Hearing sessions.

3.12. The email from Mr Jones that Mr Ferris refers to¹⁴ is a response to an urgent, last-minute request from Planning Policy Officers immediately in advance of the Hearing Sessions in May 2022. Mr Jones was asked to respond on the same day to the question:

‘If we need 5 pitches rather than 3 on existing sites can we fit 2 more pitches on any of the sites or split across the sites?’

3.13. There was no mention that the Council would need to provide 10 pitches, let alone the 23 that are now proposed.

3.14. Mr Jones responded that the site at Clifton could be expanded to provide the extra pitches. There was no mention in this or any other email in that thread of an expansion of the site at Osbaldwick.

3.15. In fact, an email from Denis Southall, Head of Housing Management Services (See Annex B), to Michael Jones and others on the 19th May 2022¹⁵ about the draft job description for the proposed s106 role confirms that the preference of the Housing Team at that time was not for the expansion of existing Council sites, but for Travellers and other organisations to develop small sites themselves:

‘Given emails of today do we want to shift the emphasis to supporting people to develop sites rather than developing sites? Our preferred approach is for Travellers / other orgs to develop small sites if poss.’

3.16. Only after the release of the GTAA in July 2022, did Planning Policy Officers contact Housing Officers again, and again, they did so the day before the Hearing Statement was due to be submitted to Inspectors, to ask whether the Clifton Site could be reconfigured to accommodate 10 pitches in the first 5 years of the plan (EX/OTH/123a). Clearly under significant pressure, Site Manager Anne-Marie Douglas replied that:

‘I think 5 years to do all of that is a challenge but clearly this is something we will have to do.’

The government current guidelines around size of sites is for 12 to 15 pitches and Clifton already has 23 pitches so we would need I think to split the site as that would total 33 pitches and to be honest would make it very difficult to manage.’

3.17. Far from the Housing Management Team ‘coming forward’ to propose that allocations should be made on the Osbaldwick site, on the basis that ‘a bigger site with more resources

¹⁴ at EX/OTH/123a

¹⁵ Email 19th May – Annex B

on it would give us the best opportunity to manage it'; as was explicitly stated to members of the LPWG and the Executive in January, and is reproduced in Document EX/CC/127gi, the documentary evidence the Council seeks to rely on demonstrates clearly that:

1. the expansion of the Osbaldwick site was not discussed at all at this time;
2. the allocations that *were* discussed were at a different site, and in response to last minute urgent requests by the Planning Policy Team in advance of the hearing Sessions, rather than any positive, considered proposal by housing managers,
3. Housing managers in fact stated a preference for Travellers or other organisations to provide sites, rather than the Council, and, relatedly,
4. Officers responsible for managing the Clifton site anticipated significant challenges with providing the required number of pitches there within 5 years, and serious difficulties with managing the site thereafter.

3.18. Mr Ferris states, at Paragraph 2.14 that the advice from Michael Jones was given both, in the documentary evidence detailed above, and at the Hearing Sessions for Matter 9 Phase 3. It is repeated, at p18, that *'submissions made by the Council during the hearing session evidenced the site's 'deliverability' in accordance with the PPTS definition'¹¹ and 'provided detail on the approach being taken to tackle management issues.'¹⁶*

3.19 The evidence contradicts these statements. Mr Jones was specifically asked by Michael Hargreaves at the Hearing Session:¹⁷

Is it the case that the Council is actively considering land adjoining or within the other two sites to identify the capacity for these ten pitches (other than Clifton).?'

3.20 Mr Jones, the Council's 'Professional Housing Officer Lead on Local Plan answered:¹⁸

'No. No active work has been undertaken to look at the other two sites at this moment in time. We don't have the capacity. As described before, the intention is to bring in a specific role that can assess the three sites

3.21. The role that Mr Jones refers to had been intended by the Council to be funded through the s106 contributions from major development,¹⁹ and has been heavily relied on in the Council's submissions since around April 2022. ²⁰

3.22. The Council states, at paragraph 2.34 EX/CYC/127gi that: *'the remit for the post has been established in consultation with York Travellers Trust.'*

¹⁶ P22

¹⁷ 11.50 - <https://www.youtube.com/watch?v=xbs6QwBifaM>

¹⁸ 12.20 - <https://www.youtube.com/watch?v=xbs6QwBifaM>

¹⁹ 9.3.4 To support delivery, a new post is being created in the Council's Housing Delivery team, funded through S106 revenue. (CYC Hearing Statement Phase 3 Matter 9); email from Michael Jones; Neil Ferris 16th and 26th January.

²⁰ See, for examples, paragraphs 2.34 – 2.36, and p22.

3.23. As is shown in Annex E, YTT expressed strong reservations about the draft job description. We raised specific concerns about the fact that it appears to incorporate two distinct and incompatible roles, and about the use of s106 contributions to fund it.

3.24. Mr Jones said at the Phase 3 Hearing in July 2022 that ‘we aim to have that post recruited to this year.’²¹ We are now at the end of 2023. The post has not yet been advertised.

3.25. Given the very heavy reliance that the council places on the anticipated Gypsy and Traveller Accommodation Officer to carry out the vast majority of the work required to make the Plan sound, including, apparently, resolving the well documented and long-term social and environmental issues at the Site in order to justify the allocations there whilst both assessing their capacity for and delivering their expansion within the next five years;²² recruitment to the role seems extremely urgent.

3.26. The Council states, at paragraph 2.34 of the Document that

*The Council is not waiting for the capital investment report to invest additional resources into progressing with the employment of a new formal Gypsy and Traveller Accommodation Project Officer within the Council’s Asset Management Building Services team
[...] **Approval to finance the new post was given on 14 March 2023 at an Executive Member Decision Session (Annex F).** This decision allows the post to be established and for formal recruitment to commence.*

3.27. Annex F is the minutes for a Decision Session of the Executive Member for Transport, and is related to a petition about an unauthorised encampment at Noddle Hill, occupied by a family who were evicted from the Osboldwick site in 2019.²³ They have been roadside homeless in the area since that time.

3.28. As is shown in Annex F, the decision that was made in March 2023 was ‘to commence the process to stop up the Noddle Hill layby.’ No decision was made to finance the Gypsy and Traveller Accommodation Officer Role at that meeting. Rather, the decision that was made, which would involve evicting a family from their only available stopping place, was justified on the basis of assurances that the delivery of the Local Plan would lead to an increase in the amount of Gypsy and Traveller accommodation.

3.29. The Executive member:

Noted the establishment of a Project Manager post by the Corporate Director of Place in Consultation with the Executive Member for Housing in regard to already committed S106 funds and to commence early engagement with the developers of strategic sites and commence planning for the provision of additional pitches;

3.30. We wrote to Leaders of the Council on the 25th November 2023 to enquire about the use of s106 Contributions to fund the role, and whether any formal decision has been made to finance it, and received the following answer from Mr Ferris:

²¹

<https://www.youtube.com/watch?v=5wvY2qpMJE&list=PLCefwpD2Fea2hQhdnL7T4EK7o0j1tyEUUV&index=87>

²² see, for examples, paragraphs 2.34-2.36; p22; p28; and Phase 3 Hearing Sessions

²³ See doc: ex-oth-36b

You cannot top slice any S106 project to manage the S106 cash so in that respect Abbie is correct that you cannot just employ staff from a S106. However clearly S106 capital programmes cannot be delivered without employing staff to deliver the capital scheme itself so when Members receive the report on the overarching GRT capital programme (to come soon) I expect this role will become the project manager for the capital delivery phase paid from Capital which will include S106 and the Council Capital if Members agree to supplement the s106 which will be the officer recommendation.²⁴

3.31. Paragraph 2.33 of EX/CYC/127gi states that:

The report to which Neil Ferris refers regarding a Gypsy and Traveller Strategy has been progressed. This is anticipated to be reported to Executive by Tracey Carter, Director for Economy, Regeneration and Housing after the Local Plan confirms the scale of investment that the authority is required to make. The Local Plan adoption is required to provide a specific rationale for the scale of investment decision proposed.

3.32. Far from the funding of the role having been agreed by the Executive in March 2023, as is unambiguously stated at paragraph 2.34, or provided through s106 contributions, as has been repeatedly suggested; it now emerges that the funding of the role that is evidently relied on by the Council to carry out the entirety of the work required to demonstrate that the plan is sound, is in fact dependent not only on the adoption of the plan, but on finance that has not yet been either justified or secured.

4. Site Resourcing

4.1. Having diminished the relevance of the views of the existing site management team in relation to the development of the local plan, the council now recognises the need to make ‘a clear commitment ... to ensuring the effective management of Gypsy and Traveller sites is improved, in general.’²⁵ The same team whose managers were asked to assist urgently with major policy decisions immediately before Hearings during the examination stages,²⁶ and then excluded from the discussions which led to the proposed expansion of the site are required to ‘maintain positive day-to-day relationships with the Gypsy and Traveller Community’ to manage the consequences of the plans.

4.2. Quoting from the statement of Neil Ferris at the Local Plan Working Group in January 2023 (Annex B) and his email of 20 February 2023, the Council refers to “our ongoing resourcing of support for the G&T provision from expanded revenues as the City grows.”

4.3. It is public knowledge that the Council has recently announced a need for dramatic cuts to services, stating that the city is in “a very difficult financial position.”²⁷ It is clear at p22 that the capital funding which is expected to be invested in the site is dependent on a report to the Executive, which is, in turn, dependent on the adoption of the Local Plan and cannot, in any case, be used to fund management costs. Rather, ‘it is anticipated that management will be an ongoing Council cost recovered through rent receipts.’²⁸

²⁴ See Annex C

²⁵ Paragraphs 2.32 – 2.33

²⁶ Document ex/oth/36a

²⁷ <https://www.bbc.co.uk/news/uk-england-york-north-yorkshire-66683798>

²⁸ p22

4.4. The Council claims that *'further expansion of the Officer team'* in the form of the anticipated 'Gypsy and Traveller Accommodation Officer' *'is underway'* but as is set out above, agreement for the financing of this role has not been agreed, as stated at paragraph 2.34, but is dependent on an anticipated report to the Executive which will follow the adoption of the Local Plan. Regardless, our understanding has been that the role is not intended to be related to the day to day management of the site, but the delivery of new pitches.

4.5. The record will show that the delivery of new pitches at Osbaldwick will not assist with improving the management of the site. The Council's commitments to the 'improved management' of the site that were necessary to obtain permission for the previous expansion in 2013 have proven impossible to meet.

4.6. As was reported by the Site Manager at the time, serious concerns were raised with regards to the management of the existing site. Officers responded with clear commitments to improvement, stating that *'if permission were granted for the additional pitches, this would allow for better management of the site.'*²⁹

4.7. As it later emerged, and as is now proposed again, the funding for the improvement of management issues - an outcome the Council committed to in order to obtain planning permission for the expansion - was intended to be provided at least in part through a rent increase applied to residents across the Council sites.

4.8. That rent increase was imposed without consultation with site residents, and without reference or adherence to the provisions of the Mobile Homes Act 1983. Residents objected on the grounds that they were made liable for the increased management costs arising from 'improvements' that they had not been consulted on and did not recognise. Inevitably, the issue had a detrimental impact on relationships between site residents and the Council. Neither the site expansion nor the rent increases that helped to pay for the consequences of it has improved conditions on the site.

4.9. The evidence that the Council refers to to support its frequent references to *'the approach being taken to tackle management issues'*³⁰ does not at any stage detail the impact the plans will have on the day to day management of the site, or the response that will be expected of site managers. Instead, it refers consistently to the proposed 'Gypsy and Traveller Accommodation Officer,' for whom recruitment cannot yet begin.

4.10. The Council's contention that site managers have no responsibility for the Local Plan does not stand up to scrutiny. Rather, it is clear that site managers will be made *entirely* responsible for the consequences of the plans. The Council's expectation that the increased costs associated with the expansion of the site will be met with rent receipts is disconcerting. YTT would strongly oppose any raise in pitch fees that is proposed to meet these costs, and would expect thorough and effective consultation with site residents.

5. Dust Pollution

5.1. The reasoning that has been advanced to explain why senior officers proceeded with the plans despite serious concerns with conditions on the site on the basis that they considered

²⁹ <https://democracy.york.gov.uk/documents/g7642/Public%20reports%20pack%20Tuesday%202005-Nov-2013%2017.30%20Executive.pdf?T=10>

³⁰ P22

the issues at the site to be insurmountable ‘*management issues*’ is circular and inconsistent, and is not, in any case, supported by the evidence provided.

5.2. The inescapable fact is that issues that are caused by the location of the Site on the edge of an industrial estate, without reasonable access to services and facilities, and adjacent to a waste management centre *are* insurmountable. The account given at paragraphs 2.27 – 2.31 of the Council’s efforts to address just one of the issues related to the location of the site provide evidence of this fact, and reveals a deeper set of issues in relation to the role of the Council as both site owner, and planning decision maker.

5.3. The Council states, at paragraphs 2.27 and several times elsewhere in the Document that ‘*no formal complaints have been recorded*’ in relation to this issue, and that it has only been raised by YTT during the Local Plan Decision Sessions in January.

5.4. It is difficult to know what is meant by ‘formal’. The Council’s complaints policy³¹ states that complaints:

‘can be accepted verbally. Customers making any of the 4Cs in person or by telephone must not be told that they have to write in or complete a form. However you can use the Have Your Say form on the council website to capture all the information needed and send it onto the CGT.’

5.5. The evidence of Louise Waltham, at document ex-oth-36b, confirms that Officers were aware of the issue considerably earlier than is suggested: ‘*there are other issues around the site being located on an industrial estate, over the dry weather in summer we had to seek input from environmental health and public health as the dust from brick crushing on one of the units was causing people problems with breathing and was covering washing etc.*’

5.6. YTT’s own records show that the issue was raised by email multiple times between September - November 2022, with site managers Anne-Marie Douglas and Wayne Martin; Jane Mowatt, the Head of Community Safety; and with Officers at the Environment Agency.

5.7. The five paragraphs devoted to this issue provide no reassurances that the issue is likely to be satisfactorily resolved, concluding, ultimately, that ‘*no further action is required*’.³²

5.8. The sum of the Councils achievement in relation to this issue is detailed at paragraph 2.28, where it is stated (extremely vaguely) that Officers ‘*spoke to the site manager about increasing the height of bunds adjacent to local residents and ensuring stockpiles are kept at more reasonable levels in the future*’ and that the business has been requested to provide a dust management plan.

5.9. At p24, the Council rejects our contention that permission was granted to the waste company in 2016 to increase the height of the waste piles, and refers to the original application for the site, at ref: 07/01243/FUL. We stand corrected.

5.10. The issue is not, as we thought, that permission was granted to raise the waste piles from 2 – 5m in 2016 (this application was for a different part of the waste management site), but instead, that permission was granted in 2007 for the extension of the existing waste processing business onto land immediately adjacent to the Traveller site, incorporating waste

³¹ Available here - <https://www.york.gov.uk/form/HaveYourSay>

³² Paragraph 2.31

piles of that greater height of 5m from the outset. As the conditions to the planning permission (set out on p24) confirm, permission was granted by the Council not only to crush, process and store waste immediately adjacent to the Site, but to operate working hours of 7am-6pm throughout the week, and 7am – 1pm on a Saturday. The reasons given for this condition were: *'to protect the amenity of local residents.'*

5.11. Presumably, the owner of the site, when they were *'spoken to about increasing the height of the bunds and keeping the piles of waste at more reasonable levels in future'* will have drawn the officers' attention to the planning permission and waste licences under which the business is operating.

5.12. The Officer Report for application 07/01243/FUL³³ shows that the officer responsible for assessing and granting that application was the same Michael Jones whose 'advice' Mr Ferris now seeks to rely on to justify the Council's position that the expansion of the site is acceptable.³⁴

5.13. It is impossible to see how Officers came to the conclusion that the terms of the permission granted in 2007 would be sufficient to protect the amenity of adjoining residential neighbours. Neither the site residents nor the Housing Management Team were consulted during the processing of the application, and their views were not taken into account. The primary consideration that seems to have informed the decision is that *'the applicant has stated that they could work within a maximum storage height of 5m. This seems reasonable considering the location of the site on the border of a business industrial estate and that the bunding around the site would be approximately 3m in height.'*

5.14. According to the Officer Report for the 2007 waste site application,³⁵ the adjacent Traveller site was *'considered to be over 100m away'* at that time. The Officer Report recommending permission for the expansion of the Traveller site in 2013 referred to the adjacent land use, but concluded that *'whilst the character of the area (including the access to the site) is far from ideal it has not deterred residents from living there.'* No independent Environmental or Air Quality Report was commissioned or considered in the application, and permission was granted to develop new pitches immediately adjacent to the boundary with the waste company. For new residential development next to a waste transfer station, we would expect to see a full independent environmental report.

5.15. The steps that have been taken by the Council in relation to this issue have only revealed the inescapable fact that previous planning decisions have allowed incompatible land uses on adjacent sites without regard to the health, welfare or amenity of residents, and that the Council now has no power to reverse the harm caused. Instead, it has been left with no option but to try to satisfy itself, and the Inspectors, that it is acceptable.

6. Role of the Council as Owner and Decision-Maker

³³ Available here - https://planningaccess.york.gov.uk/online-applications/files/7F47C40E945B7B526AFFDF042AD089C1/pdf/07_01243_FUL-DELEGATED_REPORT-342460.pdf

³⁴ At paragraph 2.14

³⁵ https://planningaccess.york.gov.uk/online-applications/files/7F47C40E945B7B526AFFDF042AD089C1/pdf/07_01243_FUL-DELEGATED_REPORT-342460.pdf

6.1. The Council has presented its response to the issues set out at Section 8 of our Consultation Response on pp14 – 28. For ease of reference, we have provided a copy of the relevant section of the Consultation Response at Annex D. We would draw the Inspectors attention to the fact that the responses the Council has given do not respond effectively even to the sparse summary that it has itself made of the points that we raised, let alone their detailed content.

6.2. Paragraphs 8.7 - 8.13 and 8.30 – 8.38 relate to the chronic social exclusion experienced by residents of the site as a result of a combination of the manifestly inappropriate location of the site and decades of institutional discrimination in the form of poor planning.³⁶

6.3. We set out the multiple harmful consequences of the location of the site, and noted that the Council has acknowledged these, but has excused itself from the requirement to assess the site against the criteria set out in Local or National Planning Policy in relation either to the previous expansion of the site or the one proposed through the Local Plan on the basis, explicitly, that the intended occupants of the site will be Travellers:

‘the existing site has been occupied by travellers for at least 20 years and is overcrowded. This suggests that whilst the character of the area (including the access to the site) is far from ideal it has not deterred residents from living there.’

6.4. We noted that children living on the site have recognised that they are being separated from and treated differently to other children, and referred to s13(1) and s13(5) of the Equality Act 2010, which prohibits direct discrimination on the grounds of Race:

(1)A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(5)If the protected characteristic is race, less favourable treatment includes segregating B from others.

6.5. At paragraph 8.12 we stated that:

No assessment was made in the determination of the 2013 planning application against criteria a) or b). The waste transfer station immediately adjacent to the Site was noted, at paragraph 4.11 of the Committee Report (Appendix 9), but its impact on the health or residential amenity for occupants of the site was not further considered or assessed. Rather, the fact that people who were already chronically socially disadvantaged as a result of the ‘far from ideal’ location in which they had been, effectively, dumped, and who had nowhere else to go had not gone anywhere else was considered sufficient grounds to justify imposing the same conditions on other Gypsies and Travellers.

6.6. The email from Tracey Carter, provided at document ex/oth/36d, articulates and reinforces our concerns exactly. To quote in full (emphasis added):

Having been to the site today I was profoundly shocked by the environment surrounding a housing settlement – the place was filthy with dust, inhospitable in the extreme, difficult if not

³⁶ see paragraph 2.38 of the Council’s Response; also document EX/OTH/36b.

*unsafe to access, badly maintained road with no pedestrian access or lighting bordered by high metal fences and razor wire, and full of billowing dust - **not in my view an acceptable location for anybody to live.** I would strongly recommend that you all visit this site and that E Health undertake their own survey work on air pollution from the surrounding heavy industrial site – I had not appreciated the nature of the surrounding business area – Sorry but this has just deepened my unease with the suitability of any growth on this site. **Please look at the pictures and consider whether this is equivalent to any other housing provision that we would permit anywhere in the city?***

6.7. Taken together with the response on p28 to the question ‘*there is no realistic prospect that development will be delivered on the site within 5 years.*’ at paragraph 8.37; the Councils answers at p21 provide powerful evidence to support our position.

6.8. The Council has apparently misinterpreted Paragraph 60 NPPF and the direction in footnote 4 PPTS (See paragraph 3.4 of ex/cyc/127gi) exactly in the way we have contended, to allow it to excuse itself from assessing the site against National and Local Policy criteria on the basis that it is ‘*an existing gypsy and traveller site which benefits from planning permissions.*’³⁷ It makes clear that ‘*it has sought to assess alternative allocations but no available land that is free of constraints has been identified,*’ (p21; paragraphs 8.8-8.8) before concluding, at p26 (paragraph 8.37) that:

As landowner and manager of the site, the Council has significantly more control over its development than would otherwise be the case if the Plan relied on private sites to deliver the 5-year additional pitch requirements.

6.9. The Council contends that it is wholly appropriate to consider the Osbaldwick site for expansion, apparently on the sole basis, as expressed by Barrister Matthew Henderson at the Phase 3 Hearings that: ‘*it reflects the characteristics of the Gypsy and Traveller Community in York, both historically and presently.*’³⁸ It has not at any time provided an assessment of the site against objective criteria contained in national or local (draft) policy to demonstrate that site represents a ‘*suitable location for development*’.

6.10. It is clearly stated by Louise Waltham in her emails of the 30th January and the 10th March 2023,

*The location of Osbaldwick has contributed to challenges managing the site it’s proved difficult/impossible to get additional support from other services.... I am really worried about how (the expansion of the site) will affect Gypsies and Travellers (and our service) for the years to come.*³⁹

6.11. The adjacent waste company was recently fined £278k for health and safety breaches leading to the death of an elderly resident of the site.⁴⁰ As is evidenced by the email at ex-oth-

³⁷ P20

³⁸

<https://www.youtube.com/watch?v=5wvvY2qpMJE&list=PLCefwpD2Fea2hQhdnL7T4EK7o0j1tyEUUV&index=88> at 1:02:50

³⁹ See Docs Ex-cyc-36b and Ex-cyc-36d

⁴⁰ [https://www.yorkpress.co.uk/news/23929361.martins-york-pay-278k-death-betty-smith-73/#:~:text=\),York%20skip%20company%20ordered%20to%20pay,after%20death%20of%20woman%2C%2073&text=A%20YORK%20skip%20hire%20company,pay%20more%20than%20%2C%20A3270%2C000.](https://www.yorkpress.co.uk/news/23929361.martins-york-pay-278k-death-betty-smith-73/#:~:text=),York%20skip%20company%20ordered%20to%20pay,after%20death%20of%20woman%2C%2073&text=A%20YORK%20skip%20hire%20company,pay%20more%20than%20%2C%20A3270%2C000.)

36d; the conditions that persist at the site as a direct consequence of its location would not be considered acceptable for any other group of people.

7. Lisa Smith and the PPTS Definition.

7.1. PPTS requires the Council to:

‘Use a robust evidence base to establish accommodation needs to inform the preparation of local plans and make planning decisions’; and

Identify deliverable sites to provide five years’ worth of accommodation against a locally set target.’

7.2. The Council states at paragraph 2.22 that Miss Waltham *‘misunderstood the wider policy approach that was in fact being taken to provision at the Osbaldwick site when referencing 13 pitches to be delivered.’* At p18 it is repeated that:

‘the Local Plan does not specifically allocate 17 new pitches on the Osbaldwick site. Instead, it safeguards all three of the Council owned sites and identifies the Clifton and Osbaldwick sites as the locations for delivering the 5-year need for 9 pitches for Gypsies and Travellers that meet the planning definition.’

7.3. It is clear from paragraphs 4.5 and 4.8 of Document ex/cyc/123a and in the statement of Laura Bartle to the LPWG on 16th January 2023 (Annex b; also paragraph 2.11 EX/CYC/127gi) that the amendment to the green belt boundary at the Osbaldwick Traveller Site that was put forward for consultation in February was intended by the Council to accommodate the 13 pitches that will be delivered through s106 contributions as well as the 4 others that have been allocated there:

“the provision on the Osbaldwick site... will really only be for those sites that have benefitted from planning permission and those financial contributions agreed, or a commitment made to those...”⁴¹

7.4. The Council now seeks to rely on the distinction between those Travellers who do and those who do not meet the PPTS definition to reduce the number of pitches it is required to provide under the Plan. This is unsustainable for a number of reasons.

7.5. First, the Inspectors asked on November 2022 *‘whether the Council needs to revisit, modify, or update the GTAA (EX/CYC/88) in the light of the recent Lisa Smith judgment?’*

7.6. ‘Lisa Smith’ considered the definition of a ‘Traveller’ for planning purposes, and found that the amendment that was introduced in 2015, to the extent that it excluded those who have ceased to travel permanently on account of old age or ill health, was discriminatory. Gypsy and Traveller Accommodation Needs Assessments that are based on the 2015 definition are likely to represent a significant underestimation of need as a result.

7.7. The Council answered that:

⁴¹ See also paragraph 4.3; <https://www.york.gov.uk/downloads/file/8695/ex-cyc-121a-provision-of-gypsy-and-traveller-etc>

2.3 The GTAA clearly set out that the total need for Travellers in York is for 40 pitches. The level of need was not reduced because of the exclusion for those who had stopped travelling because of age/disability. Accordingly, the concern in Lisa Smith does not arise.

7.8. It appears from the text at paragraph 3.7 of EX/CYC/127gi that the Council has not understood the relevance of this decision, since it states, inaccurately, that:

PPTS (2015) amends the definition of travellers for the purposes of planning to exclude those Travellers that have ceased to travel permanently.

7.9. Having declined the opportunity to make a new assessment of accommodation need following the 'Lisa Smith' judgment on this basis, the Council is not entitled to rely on the 'defined need' (as previously assessed) to reduce the number of pitches required.

7.10. Secondly, as we noted in our Consultation Response, the Councils 'allocations policy' for Traveller Sites does not require applicants for the pitches to meet the PPTS definition. As the Council has noted, the Local Plan has no power to address management issues on the sites. The Council seeks to reduce the required numbers of pitch allocations with reference to 'those who meet the PPTS definition', but there is no way of safeguarding pitches on the Council sites for this group.

7.11. Finally, the council now contends that it is 'unlikely' that the 13 pitches that are expected to come through s106 contributions will need to be delivered at the Osbalwick Site, stating that it is:

*'continuing to explore its land holdings and is assessing opportunities for how it might direct contributions it receives for the delivery of pitches on alternative sites.'*⁴²

7.12. The box relating to paragraphs 8.26-8.28 of our consultation response⁴³ sets out the work that has been conducted by the Council over the past decade to identify land for the development of Traveller Sites. This has been unsuccessful. If the Council had land holdings that are suitable and Available for Traveller Sites then it ought to have identified them by now, and allocated them in the Local Plan.

7.13. The statements of Mr Jones at the Phase 3 Hearings confirm that the work that the Council will do to assess how it might direct s106 contributions has not yet begun. As set out above, this is expected to be part of the role of the new Gypsy and Traveller Accommodation Officer, who cannot be recruited until some time after the Plan is adopted.

7.14. There is no realistic basis for the Council's expectation that this Officer will be able to identify suitable available land for Traveller Sites. As is set out above, the carefully considered Policy Provision in GB2 that would have allowed Policy H5(b) to function was withdrawn by the Council's barrister at the Phase 3 hearing, apparently without consideration for the legal and policy context within which it was proposed. As stated at paragraph 4.16 of the Officer Report for Application 13/02704/GRG3,⁴⁴ the need to ensure that there are sufficient suitable available sites for Traveller pitches in the Coty, in combination with the

⁴² P19

⁴³ P26

⁴⁴ https://planningaccess.york.gov.uk/online-applications/files/B44D2584D587A0FCA83DDA07EF203981/pdf/13_02704_GRG3-MAIN_COMMITTEE_REPORT_24.10.13.-1452191.pdf

limitations that are imposed in York by the extremely tight boundaries of the green belt ‘*constitute very special circumstances that outweigh harm to the green belt.*’ Without Policy to address these limitations, the Plan cannot deliver Traveller Sites.

7.15. The Council now relies on the provisions of Planning Policy for Traveller Sites simultaneously to exclude those households who have been assessed by the Council as not having met the (pre- ‘*Lisa Smith*’) definition at Annex 1 from access to suitable, available allocations – on the basis that they are not eligible to be considered under that Policy - and to exclude them from the only Policy Provision that could conceivably have met their accommodation needs, on the basis of PPTS policy. This is discriminatory.

7.16. If the 13 pitches that are expected to come through commuted sum payments are now intended for non-PPTS Travellers, there is no justification for excluding this group from access to Policy GB2. We note, at p2 of document ex-cyc-123a(i)⁴⁵ that the Council has granted access to the policy to Boat Dwellers in the city without difficulty.

8. Conclusions

8.1. The Council’s strenuous efforts to defend a policy that is all but unanimously agreed by all parties, from Leaders of the Council to Site Residents to be entirely unsustainable have been necessitated by the fact that the Local Plan Policy for Gypsy and Traveller sites is incapable of providing either deliverable allocations for the first five years, or a rolling supply thereafter.

8.2. As a result the Plan is not sound and can not proceed to adoption.

⁴⁵ <https://www.york.gov.uk/downloads/file/9165/ex-cyc-123ai-main-modifications-responses-amended->