

The investigation of a complaint by Mr O against
Brecon Beacons National Park Authority and Powys County Council

A report by the Public Services Ombudsman for Wales

Case: 200801193 and 200801194

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Introduction

This report is issued under section 16 of the Public Services Ombudsman (Wales) Act 2005.

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as Mr O.

Summary

1. Mr O, a property developer, complained that in July 2008 Powys County Council moved a family of Gypsies onto land adjacent to his own within the Brecon Beacons National Park and developed it without planning consent from the National Park Authority and without a development licence from the Welsh Assembly Government. He said that the unauthorised development had had a detrimental effect on his company's efforts to market its own development. He was concerned that enforcement action was not taken by the Authority and that there was a delay until April 2009 before a retrospective planning application made by the Council, which led to temporary consent for the site, was determined by the Authority. He also felt that information provided by the Authority's planning officers about the prospects of another permanent site had unfairly influenced the planning committee's decision to approve the temporary site for the family's use in the meantime.

2. The Council said it had urgently needed to move the family from a lorry park site in Brecon to the land available to it adjacent to Mr O's property while it sought to identify and develop a more suitable permanent site for them. Whilst the Ombudsman recognised the need to move the family from the lorry park site he upheld the complaint as he considered that sufficient information was available to the Council for it to have prepared a planning application for the temporary site in advance of the move. As it was, a retrospective application was made but it was not considered and approved until eight months later because of staffing shortages at the Authority. That delay was unacceptable and the Ombudsman considered that it would have caused uncertainty for Mr

O and his company who were keen to develop and market its own site. Both bodies agreed to pay £250 each to Mr O to reflect those difficulties.

3. In the same period the Council had identified a suitable permanent site for the family which required planning consent before it could be developed. The Ombudsman was satisfied that this information was properly made available to the Authority's planning committee when it considered the application for the temporary site. He did not uphold the complaint that the committee had been unfairly influenced into thinking that the proposed site would definitely be available to the family. The Ombudsman later learnt that consent to develop the proposed site had been refused. He therefore urged the Council to promptly consider alternative measures and suitable sites for the family to avoid ongoing long-term use of the temporary site.

THE COMPLAINT

1. Mr O who is a property developer complained that in July 2008 Powys County Council (the Council) moved a family of Romany Gypsies onto an agricultural smallholding (site C) which was on land located adjacent to his own. Mr O complained about the fact that the Council moved the family to the site and developed it as a Gypsy/Traveller site without obtaining planning consent from Brecon Beacons National Park Authority (the Authority) which was the Local Planning Authority for this area, and without obtaining a development licence from the Welsh Assembly Government (WAG). Mr O was aggrieved that he had been required to obtain both from the Authority when he wanted to develop a number of barns for residential purposes on his own site which he had originally purchased from the Council. Mr O complained that the unauthorised development by the Council had had a detrimental effect on his company's efforts to market their own development.

2. Mr O also complained about a failure by the Authority to take enforcement action against the Council for the breach of development control. He further complained that following the submission of a retrospective planning application by the Council in July 2008, the Authority failed to consider the matter until April 2009. He also complained about the decision by the Authority's planning committee to grant temporary consent for the site to be developed as a Gypsy and Traveller site. Mr O considered that the information provided by the Authority's planning officers to the committee had unfairly influenced the decision.

MY INVESTIGATION

3. Letters setting out the matters under investigation were initially issued to Mr O, the Council and the Authority on 12 September 2008. The Council and Authority responded to the complaint on 2 and 16 October 2008 respectively. My Investigator has subsequently received further information from the Council, the Authority and Mr O and examined the Council and the Authority's files in addition to viewing the application site. My investigator has also interviewed both Council and Authority Officers and has spoken with Mr O and the relevant local member. I have also taken into account advice from one of my Professional Advisers on planning matters, Mr Jim Griffiths, a former planning inspector, who also visited the site. I have not put into this report every detail investigated, but I am satisfied that no matter of significance has been overlooked. All those involved in the investigation have been given an opportunity to comment on a draft of the report.

THE RELEVANT LAW / GUIDANCE / POLICY

4. Section 225 of the 2004 Housing Act sets out Local Authorities' responsibilities to meet the accommodation needs of Gypsies and Travellers. Section 225 confirms that Local Authorities' duties include a requirement to carry out an assessment of the accommodation needs of Gypsies and Travellers, residing in, or passing through, their district. They are also required to prepare a strategy to meet such accommodation needs. This section stipulates that local housing authorities must take the strategy into account in exercising their functions as a Local Authority. For the purposes of the Act "Functions" includes functions exercisable otherwise than as a local housing authority. This section also confirms that "accommodation needs"

includes needs with respect to the provision of sites on which caravans can be stationed.

5. In December 2007 WAG issued circular 30/2007 entitled “Planning for Gypsy and Traveller Caravan Sites”. This circular provides guidance to Local Authorities on finding sustainable sites for Gypsies and Travellers. Paragraph 13 of the circular states:

“Advice on the use of temporary permissions is contained in paragraphs 108-113 of Welsh Office Circular 35/95, “The Use of Conditions in Planning Permissions.” Paragraph 110 advises that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission. In cases where there is:

- unmet need;
- no available alternative Gypsy and Traveller site provision in an area; and
- a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need;

local planning authorities should give consideration to granting a temporary permission where there are no overriding objections on other grounds.”

6. In December 2007, the Council received a report from the University of Birmingham entitled “Gypsy and Traveller Accommodation Assessment” which it had commissioned in conjunction with 3 adjacent local authorities in England. This report confirmed that it was known there was a current need for the provision of a Gypsy/Traveller site for a large extended family (the Family Group). The report confirms that a proposal was being considered which would provide a site for the extended family comprising at least 12 pitches.

7. Policy ES31 of the National Park’s Unitary Development Plan (UDP) sets out the Authority’s policy for the provision of Gypsy/Traveller sites. It states:

“Gypsy and Travellers’ caravan sites will be permitted where:

- i) the proposed development will not adversely affect wildlife, habitats, landforms, archaeological and cultural features;
- ii) the proposed development will not adversely affect the character, amenity and natural beauty of the National Park and shall be designed in local materials and be adequately screened;
- iii) the proposed development will not adversely affect the amenity and privacy of existing buildings, or the utility and security of neighbouring buildings and land uses;
- iv) the proposed site will be provided with a satisfactory level of services; and
- v) the proposed site will have an adequate means of access, and traffic to or from the site will not adversely affect highway safety.”

8. Policy G3 of the Authority's Local Plan states that all proposals for development or change of use of land or buildings in the National Park must comply with a number of criteria, where they are relevant to the proposal. These criteria include the requirement "that the proposed development does not have an unacceptable impact on, nor detract from or prevent the enjoyment of, the special qualities, natural beauty, wildlife and cultural heritage of the National Park." It is also a requirement that the proposed development lies within the "white areas" of settlements as shown on the Proposals Map, with the exception of those developments covered by policies which enable development in the countryside. (Note – Site C does not fall within a "white area" nor apparently is it covered by a policy that enables development in the countryside).

9. The Conservation (Natural Habitats & c.) Regulations 1994 (as amended) protects the Great Crested Newt and their breeding sites and resting places making it an offence to deliberately kill, injure or capture Great Crested Newts; to deliberately disturb Great Crested Newts and; damage or destroy Great Crested Newt breeding sites or resting places. No development should take place on such sites until a European Protected Species Licence is obtained from the Welsh Assembly Government.

EVENTS LEADING TO THE COMPLAINT

Historical context leading up to the Council's setting up of an unauthorised Gypsy Traveller caravan site

10. A family of Romany Gypsies (the Family Group) had been occupying a lay-by on a trunk road some 4 miles from Brecon (Site A) since 2005. In late 2007, because of acts of criminal damage, harassment, anti-social behaviour and racism the family relocated, with the agreement of a local landowner to agricultural land also some four miles from Brecon (Site B). Unfortunately because of poor drainage conditions and general lack of facilities which led to illness in the family they moved briefly to another site and then, with the assistance of the Council to a lorry/coach park within Brecon Town in December 2007. However it was acknowledged that this site was also unsuitable and therefore efforts continued to find the family a suitable site. Following a number of attacks, both verbal and physical, on its members, the Family Group informed the Council that they would not be prepared to stay in the lorry / coach park during the period of the annual Brecon Jazz Festival which was due to take place in early August 2008.

The Gypsy - Traveller Working Group

11. In the run-up to the issuing of the report by Birmingham University which the Council had jointly commissioned with other local authorities, the Council had accepted there was a need to provide a Gypsy/Traveller site in South Powys specifically for the Family Group who were at that time located at Site A. The Gypsy and Traveller Joint Working Group (the Working Group) had therefore already been set up to identify possible sites for the Family Group in advance of the issuing

of the report. The Working Group included representation from the Council, the Authority, the Family Group and the Police as well as input from other agencies including the Welsh Assembly Government (WAG). Whilst the Working Group was set up initially with the remit of trying to find a suitable site for the Family Group, its role also included the consideration of more general provisions for Travellers and Gypsies. A member of staff from the Council's property services department (the Assistant Valuer) was also tasked with trying to identify suitable sites to locate the family. This process had begun in the Autumn of 2006 and an initial tranche of 8 possible sites was initially considered by the Working Group with a further 20 or so sites being considered over the next 18 months (Note – I have seen that the sites themselves were considered but I do not identify them in this report. I have not done so because of a request by the Council for the precise location of the sites to be kept confidential as this information is of a sensitive nature). For varying reasons such as flood risk or location, these sites were deemed unsuitable by the Working Group. Of particular importance also was the Family Group's need to remain within a specific area, with Brecon Town being the focus. Therefore the potential area for identifying sites was relatively limited. Consequently a considerable proportion of the sites identified were located within the Authority's boundaries and it is noted that the Authority's representatives felt that these sites were unacceptable because it was considered to be development in the open countryside.

12. By May 2008 the Council had started on a project to try to develop Site B as a permanent Gypsy/Traveller site specifically for the use of the Family Group. For this project to be successful a number of hurdles needed to be overcome such as undertaking site surveys and feasibility

studies, the development of the site and the provision of drainage both of which required significant grant funding from the WAG; the lease of the site needed to be negotiated with the landowner; environmental and ecological studies needed to be completed and finally planning consent needed to be obtained. By the time the Family Group informed the Working Group that they would not remain on the lorry park during the Jazz Festival it had already been identified that the Family Group would need to be relocated to a temporary site for 12-18 months. It was not until a meeting of the Working Group on 22 May 2008 that a further site, Site C was mentioned as a possible solution although the minutes of the meeting give no indication that this site was being seriously considered. In a further meeting of the Working Group on 27 June the minutes indicate that with respect to Site C “feasibility (was) still ongoing”.

Chronology of the actions the Council took in relocating the Family Group to Site C

26 June 2008 – an e-mail was sent from the Assistant Valuer to the Environmental Health Officer (the Environmental Health Officer) who had been liaising with the Family Group. This e-mail set out a number of factors which would need to be considered if the Council planned to use Site C to accommodate the Family Group. These included issues such as sewerage and agricultural access. There was also a query raised in relation to the need for planning consent from the Authority.

1 July 2008 – the minutes of the Council’s Board included a reference to a briefing given to the Board by the Executive Director for Organisation and Regeneration on a proposal to relocate the Family Group from

Brecon to Site C. The Board were informed that the relevant portfolio holders would be visiting the site later the same day prior to making any decision. The minutes of the meeting also included a later note of the decision taken by the three individual portfolio holders (Housing and Public Protection, Equalities and Corporate Property) who visited the site (along with the local member and Council officers). The portfolio members agreed to the relocation of the Family Group to Site C. The note accompanying the decision made reference to the Council's responsibility to find a site for the Family Group and that the Lorry/Coach park in Brecon was not suitable because of health and safety issues. The note also minuted the proposal to site the Family Group's caravans within the curtilage of the buildings that comprised the smallholding and not within the open countryside. It was considered that this measure would minimise the impact on the surrounding countryside. It was also noted that retrospective planning permission would need to be obtained from the Authority.

3 July 2008 - a member of staff from property services received contact from two neighbours of Site C complaining about the Council's proposed use of the site and raising concerns about the effect it would have on Great Crested Newts and the fact the Council were acting beyond their powers in taking action without planning consent.

7 July 2008 - the Council's biodiversity officer wrote to the Assistant Valuer setting out the requirements of the regulations. The biodiversity officer explained that there was a possibility that a European Protected

Species was present at Site C and that any disturbance that did occur could be deemed to be reckless and “may constitute a criminal offence”.

10 July 2008 - a planning officer with the Council wrote to the Assistant Valuer apparently responding to a request for advice on the Council’s plans to develop Site C as a Gypsy/Traveller site. The planning officer addressed the issue of whether the Council could proceed to develop the site under existing permitted development rights. The planning officer was not definite that the Council could proceed without planning consent. He added that any enforcement action proposed by the Authority would normally be stalled if the Council submitted a planning application. In relation to this the planning officer added “I do wonder given the comments attributed to the Chief Executive [of the Authority] whether they would advise that it is not worth our while submitting an application, although the danger for them there, (as indeed with the comments already made) is that they would be seen to be pre-determining a position prior to any balanced consideration of any merits of a proposal”.

16 and 18 July 2008 - it appears from Council file notes that local protestors disrupted the Council’s efforts to start preparing the ground at Site C for development.

17 July 2008 - a letter was sent via e-mail by the then Chief Executive of the Authority to the Chief Executive of the Council. The contents of his letter included the following:

“The proposed relocation of the ... family to [Site C] would result in a breach of planning control (as defined by Section 171A of the Town and Country Planning Act 1990) by virtue of an unauthorised development – in this case *inter alia* the unauthorised material use of land.

If this unauthorised change of use of land at [Site C] takes place, Brecon Beacons National Park Authority will consider enforcement action to be expedient, with regard to this breach of planning control and would expect to use all available powers within the Town and Country Planning Act 1990 to resolve this unlawful act by your authority.

Further to this, any retrospective planning application received by the Authority will need to be considered by the Authority’s Planning Committee. However, I should stress that the use of this land for the purpose of accommodating a Gypsy Travellers site is contrary to policies G3 and H16 of the Brecon Beacons National Park Local Plan;

G3 and ES31 of the Brecon Beacons National Park Unitary Development Plan 2007; as well as being contrary to the advice provided by the Welsh Assembly Government Circular 30/2007 ...”

25 July 2008 - the Council's Head of Housing and Public Protection (the Head of Housing) submitted a planning application on behalf of the Council for the change of use of a part of the small holding at Site C for use as a Gypsy/Traveller site to accommodate 12 caravans for a period of 2 years. An application was also submitted to the WAG for a development licence under Conservation (Natural Habitats &c.) Regulations 1994.

29 July 2008 - the Chief Executive and the Executive Director – Organisation and Regeneration of the Council held a public meeting with local residents to explain their proposals.

30 July 2008 - the Family Group moved themselves onto Site C. The Council were unaware of this relocation since the Council had made arrangements to relocate the family to the site the following day.

6 August 2008 – the Council received advice (following a request) from Legal Counsel regarding the legitimacy of its actions in relocating the Family Group to Site C. This advice concluded that the Council may relocate the Family Group to Site C in advance of a determination of the planning application provided it met two conditions. The first is that the Council took steps to regularise the situation by pursuing without any unnecessary delay its application for planning permission and any appeal against a refusal of planning permission. The second was to maintain an open mind as to the possibility that a better site may be found. Counsel was also of the view that the Authority's e-mail of 17 July

2008 showed a fettering of discretion which might render the Authority vulnerable to an application for judicial review.

The Authority's consideration of the Council's application for a temporary Gypsy/ Travellers site at Site C

12 August 2008 - the Authority accepted the Authority's application as valid.

24 August 2008 – the Authority sent out consultation letters, immediate neighbours were notified and site notices were erected (the application had also been publicised in the local press on 21 August 2008).

Consultation with statutory consultees resulted in objections being received from the local Community Council and the Council's Highways Officer (on behalf of the Council as the local Highways Authority). The Community Council objected on a number of grounds including:

- a temporary consent for 2 years was unacceptable
- the area containing Site C was an area of outstanding natural beauty and the habitat of Great Crested Newts
- the small-holding at Site C could provide a livelihood for a local farming family
- it was development in the open countryside
- the scheme contravened WAG circular 30/2007
- the scheme had blighted neighbouring development sites
- increased traffic flow along narrow lanes

- the site is often waterlogged
- the means of drainage/sewerage was unclear
- water supply issues
- the contravention of policy ES31 of the UDP
- the site was unsuitable for use by caravans because of severe weather

The Council's Highways Officer recommended rejection because the extra traffic generated by twelve units of accommodation would exacerbate the substandard condition of the highways in the vicinity and would be detrimental to highway safety.

Further, the Brecknock Wildlife Trust also objected to the application on the grounds that inadequate information had been provided by the developer and that the development contravened the Authority's G3 Policy (development in the National Park).

The Countryside Council for Wales (CCW) also responded to the consultation on 8 September 2008. Whilst the CCW did not object to the application it confirmed that development could only proceed under a licence issued by WAG. The CCW also confirmed it had been working with the Council and its consultants. The CCW had considered a survey and mitigation report submitted on behalf of the Council and considered the mitigation proposed within the report to be adequate. CCW did however request that two conditions be applied to the consent namely – "No works should take place on the site until a European Protected

Species Licence is obtained from the Welsh Assembly Government” and secondly that all work on the site must be carried out in compliance with the schemes set out in the report submitted by the Council’s consultants on 25 July 2008.

The Authority also received objections from neighbours including Mr O. A total of around 20 grounds for objections were raised by various individuals.

No further consideration of the application appears to have taken place from this point. The application remained in the caseload of the planning manager for the area (the Planning Manager).

February 2009 - a new planning officer (the Planning Officer) was appointed and he was asked to consider the application and to prepare a report for committee.

March and April 2009 - the Planning Officer undertook a number of further enquiries and sought information from the Council about the progress of plans to develop Site C. The Planning Officer subsequently submitted his report on the application to the Authority’s Planning, Access and Rights of Way (PAROW) Committee. I do not reproduce the Planning Officer’s report in its entirety in this report as it is a freely available public document. However I have seen that the report makes comprehensive reference to the various comments received during the

consultation exercise. The Planning Officer also made reference in his report to the various policies contained within the National Park's Adopted Local Plan and the more recent (but unadopted) UDP. The Report also made reference to various WAG Guidance including lengthy extracts from circular 20/2007 including paragraph 13.

The report also deals with a number of areas about which objections had been received including:

- Visual impact and landscaping
- Neighbouring Amenity
- Highways
- Service infrastructure
- Biodiversity

In terms of visual impact and landscaping the Planning Officer recognised that the application contained landscaping proposals in order to screen the development . He was of the view that the introduction of additional fencing and the enhancement of existing boundary hedgerows would further limit the potential impact of the scheme on the visual amenity of the area. On each of the other areas of objection, the Planning Officer argued that the proposed development was not against the Authority's relevant policies. Under a section headed "other material considerations" the report includes the following:

“Although the site was occupied in July 2008, the application was submitted to the Brecon Beacons National Park Authority in August 2008. Powys County Council has applied for a 2 year temporary consent which would effectively run to August 2010.

However, an application has been submitted to Powys County Council for a permanent Gypsy Traveller site and associated works on [Site B – where the family had stayed in 2007]. Powys County Council have intimated that the project plan timetable for the completion of this replacement scheme is the end of December, 2009 although this date is dependent on planning permission, grant funding from WAG and agreeing terms and conditions with the landowners.

It is therefore considered reasonable to allow a temporary planning permission for a 12 month period from the consent date (i.e. to April 2010) in line with paragraph 13 of WAG Circular 30/2007 which advises that a temporary permission may be justified where it is expected that the planning circumstances will change in a particular way at the end of the period of the temporary permission in cases where there is a reasonable expectation that new sites are likely to become available at the end of that period.

It is also considered that this temporary permission will not set a precedent for the determination of applications for full permission

for the use of the land as a caravan site, as advised in paragraph 14 of the Circular.

RECOMMENDATION: Permit”

21 April 2009 - the PAROW Committee met to discuss the application. The official minutes of the meeting set out objections that had been received via correspondence from both the local Community Council and the local ward member. Mr O was also allowed to address the meeting for three minutes. Mr O has subsequently indicated his contentment with the account of his statement as minuted although he made the point that the Officers’ comments were not included in the minutes. Whilst both the Head of Planning Services and the Planning Officer addressed the meeting there is no reference to this in the approved minutes. That said, my investigator has had sight of the contemporaneous note of the meeting which includes the comments of the Head of Planning Services and the Planning Officer. There was no reference to either of these two officers having used the words “pragmatic”, “absolutely certain” nor “cut and dried” in the notes. The PAROW Committee subsequently decided to permit the application as set out in the Planning Officer’s report.

WHAT THE COMPLAINANT HAD TO SAY

13. Mr O explained in his letter to the Ombudsman on 13 August 2008 that his company had purchased from the Council, a site containing eight barns which was adjacent to site C in March 2007. The barns already had planning permission for development into seven houses. Mr

O explained that since that date his company had been in negotiations with the Authority, in an attempt to make the scheme more sustainable. Mr O also commented that in addition, it had taken his company six months to obtain a Licence to carry out works on the site as it is a habitat for Great Crested Newts, which Mr O pointed out are members of a protected species under various UK and EU legislation.

14. Mr O complained that during the latter part of July 2008 they were made aware of the Council's intention to move twelve of the Family Group's caravans on to site C which was within 300 metres of their own development. Mr O was aggrieved that the Council planned to do this despite not having attempted to obtain a Newt Licence, and without applying for and receiving planning permission from the Authority.

15. Mr O pointed out that the Council were aware through previous discussions with his company that newts were present on the Travellers' site. Mr O was aggrieved that in spite of this the Council undertook works, involving the use of heavy machinery and manual labour in preparation for moving the Family Group onto the site on 30 July 2008.

16. Mr O pointed out that the Council, as a planning authority in its own right is a body entrusted with the administration of planning law and EU directives and is aggrieved that it has knowingly contravened both.

17. Mr O pointed out that the Council has claimed that, over a period of 18 months, they have looked at about 30 sites, most of which are within the National Park but that all of these sites have been rejected by the Authority. Mr O pointed out however that the Council has confirmed

that none of these alternative sites have been the subject of planning applications.

18. Turning to the actions of the National Park, Mr O was aggrieved that they had failed to take any measures to stop the Council taking what Mr O considered to be an illegal course of action. In commenting on a draft of this report he said he was very concerned to learn that there was a “Gentleman’s agreement” between the two bodies regarding this issue. He considered this improper and that it might have had an inappropriate bearing on the decisions already taken. He was also concerned about what would happen when the temporary permission for site C expired.

19. In terms of the injustice to him and his company, Mr O stated that the Council’s actions have seriously jeopardised his company’s development. Mr O emphasised that they had experienced no difficulty whatsoever with the Family Group since they were relocated to Site C. However Mr O maintained that the presence of an adjacent Gypsy/Traveller site has deterred a number of potential purchasers for his company’s properties. Mr O added that the one purchaser they had sold one of their developments to prior to the Council relocating the Family Group to Site C had indicated that he would not have bought the property had he known that the Traveller site would be developed next door. Mr O added that it was not only the problems they had experienced in trying to market their development with the Traveller site next door, but also the uncertainty that was being caused by the fact that a temporary site remained and whether the site would be reinstated at the end of the consent period or whether it would become permanent. Mr O suggested that the presence of the Gypsy/Traveller site will clearly

have an adverse effect on his company's ability to market and sell the remaining properties.

20. Mr O argued that in proceeding as they have done the Council, whilst being concerned for the welfare of the Family Group, have acted to the detriment of his family business. Mr O added that at the time of writing it was difficult to quantify his company's potential losses, but this will become more apparent, depending on the outcome of the situation. He pointed out that his company would also incur additional interest charges, and if purchasers continue to be deterred, work may have to stop on the site and that the actions of the Council could have "dire and disastrous consequences for our business and its employees".

21. Initially, at the time of making the complaint Mr O argued that the Council should remove the Family Group from the site until the Council had pursued the change of use of the site through the appropriate and legal planning channels, and obtained the necessary licence for the newts, in accordance with the appropriate directives. Mr O argued that this would enable him and his company to exercise their right to make representations regarding any planning application. Additionally, Mr O argued that the Authority should serve a stop notice for the unauthorised use of the site and/or take out a legal injunction.

22. Mr O wrote to the Ombudsman again following the decision by the PAROW Committee to grant a temporary 12 month consent for the provision of a Gypsy/Traveller site for the Family Group at Site C. He complained that an unreasonable period of over eight months had elapsed between the validation of the Council's application for a Gypsy/Traveller site at Site C and the application being brought before

the PAROW committee. Mr O pointed out that the statutory period for determining such an application was 8 weeks.

23. Turning to the events at the PAROW meeting of 21 April 2009. Mr O confirmed that he had been allocated 3 minutes to address the meeting which he felt was totally inadequate. He confirmed that the only others that had addressed the meeting had been the Planning Officer and the Head of Planning Services who had interjected on a number of occasions in response to members' questions.

24. At interview Mr O said that he had two particular concerns about what the Authority's Planning officers said to the members during the committee meeting. The first issue of concern was comments made by the Planning Officer, to the members in response to a question about the application by the Council for a Gypsy/Traveller site at Site B. Mr O recalled that the Planning Officer had said that the decision "was cut and dried" implying that the decision had already been made. Mr O questioned the appropriateness of this statement since at that time the Council had not arrived at a decision in relation to the application on Site B.

25. Mr O said that he was also concerned about what the Head of Planning Services had stated at one point, when members had asked about the development being in breach of the Park Authority's policies. The Head of Planning Services had said that whilst the development contravened the Authority's policies, members had to be "flexible", thereby implying that they had to grant permission even though it was not acceptable in terms of policy.

26. Mr O was able to provide an account, in the form of an e-mail, from a witness, who had been an agent (the Agent) attending the meeting on other matters. Whilst the Agent's statement touched on the issue of the status of the Council's efforts to develop Site B there is no reference to either of the Authority's officer's using the phrase "cut and dried". The Agent's statement made no reference to the use of the phrases "pragmatic" nor "flexible". However he indicated that the Head of Planning Services informed members that there was no alternative measure available to them which would ensure the removal of the site other than requiring compliance upon the expiry of the temporary consent.

27. Mr O also indicated at interview that the local member on the Council had also been present during the PAROW meeting of 21 April 2009, although not being a member of the Authority he had not been able to participate in the meeting itself. An account of the information provided by the local member is included later in this report.

WHAT THE LOCAL MEMBER SAID

28. My investigator interviewed the local ward member for Site C. He told my investigator that he was not informed by the National Park Authority of the impending PAROW meeting nor was he afforded the opportunity to address the meeting. Furthermore the local member was also unhappy that despite assurances by senior officers at the Authority, including the former Chief Executive, that the development was against the Authority's planning policies and would not be approved, the planning department recommended that consent be granted.

29. The local member also said that he was unhappy at the comments which were made by two of the planning officers from the Authority who attended the PAROW committee meeting. He was unhappy that the Planning Officer informed members that the application for a Gypsy/Traveller site at Site B would be approved when in fact, at that time this was entirely a matter for the Council's planning process and was something which that planning authority would decide in due course. He was also of the view that the Council would not have been in a position to determine the matter at that time.

30. The Local Member also pointed out that the Head of Planning Services had confirmed to members when questions were raised, that the development did breach the Authority's policies. The Local Member was aggrieved that the Head of Planning Services also told members that they had to be flexible and in order retain control over the development would have to approve the temporary planning consent. The Local Member felt that this comment in effect was trying to influence members to disregard their Authority's policies in order to resolve the situation in a favourable manner.

WHAT THE COUNCIL HAD TO SAY

31. In its initial response to the complaint the Council stated that it had little choice but to relocate the Family Group to Site C. It explained that the coach/lorry park in Brecon had been considered unsuitable and unsafe, and that steps had to be taken to find a more suitable site to safeguard the Family Group, many of whom were considered vulnerable. The Council said it had previously investigated in excess of 30 potential sites many of which were in the Authority area but all were considered to be unsuitable. Accordingly the Council was left with no alternative other than to utilise the Council owned site at Site C on a temporary basis. In response to specific queries the Council confirmed on 2 October 2008 that it did not propose to use Site C as a Gypsy/Traveller site beyond the temporary period of the 2 years it had applied for in July 2008 and that in all likelihood the site would revert back to agricultural use thereafter. The Council also confirmed at that time that subject to a feasibility study and detailed costs, its board had agreed in principle to develop an alternative site as a permanent Gypsy/Traveller site as a result of the need identified by the University of Birmingham report. The Council also confirmed that in developing Site C as a Gypsy/Traveller site it had not undertaken social, environmental and economic impact assessments of the site although indicated that information relating to these factors was contained in the planning application it submitted to the Authority.

32. During interviews with officers in July 2009 they confirmed that the Council and the Authority had formed a Gypsy/Traveller working group to find a site for the Family Group and this group had been trying (unsuccessfully) to find a suitable site for them for about 3 years. The

Family Group had occupied a number of sites in the area around Brecon, most of which were within the Authority's planning boundaries. By December 2007 the Council had relocated them to a lorry park in Brecon and the Council were supporting them there whilst continuing to identify a permanent site. By January/February 2008 Site B had been identified as a possible site although considerable work would be required to bring the site up to standard. An application for WAG funding was submitted and approved eventually in the Autumn of 2008. Officers confirmed that on 26 March 2008, Site C came available to the Council following the death of the tenant farmer the previous January.

33. Officers explained that the Family Group then told the Council that because of the harassment and attacks they had experienced they were not prepared to stay on the Coach/Lorry park whilst the Brecon Jazz Festival took place. Officers could not be sure when the Family Group first said this but it appears that by 22 May 2008 the Council and the Authority would have been aware that the family did not wish to occupy the site over the period of the festival.

34. Officers explained that Site C was therefore considered as a possible location because it had a number of advantages over the other sites which the Working Group had previously considered. Of particular importance as well was the fact that Site C was owned by the Council and for that reason they would be able to take action quickly to make the site suitable for occupation given the imminence of the Jazz Festival. Officers confirmed that Site C had been mentioned to the Working Group as a possible site for consideration on two separate occasions and that representatives from the Authority's planning department had been present at these meetings. The Head of Housing also confirmed

that the Working Group was not informed of the decision to move the Family Group to Site C until the move had taken place. The Head of Housing explained that because the situation had become urgent there had been no time to consult with the Working Group before the move took place. The Head of Housing said that the final decision to move the family to Site C was taken following a meeting involving three of the Council's relevant portfolio holders and his executive director. Officers had convened this meeting in order to invite the members to make a decision about what to do about the Family Group's situation. Because of the urgency of the situation there had been no time to report to a full meeting of the Board and therefore the approval of the three portfolio members was deemed suitable. The three members also visited the site and had the rationale for the proposal explained to them. The members decided to approve the relocation of the Family Group and it was agreed that a planning application would be submitted as soon as possible.

35. The Head of Housing said that the alternative to moving the Family Group to Site C was to move them elsewhere and there were no suitable sites available. In the event the planning application was submitted before the family moved onto the site although some preparatory work had commenced prior to submitting the application. The Head of Housing explained that the Council had to take the decision to move the family onto the site and to make the application as soon as possible. He explained that this was done because on the face of it, this was the best option available. The Head of Housing accepted that the Council were fully aware that their actions in developing the site as a temporary Gypsy/Traveller site were unauthorised and that the Council as a planning authority in its own right had responsibilities to set an example. However the Head of Housing made the point that the Council was

“between a rock and a hard place” and had not been in a position to apply for consent earlier because Site C had not become available as a possibility until quite late.

36. The Head of Housing confirmed that the Council had sought Counsel’s advice on their action. The Head of Housing confirmed too that he had not considered applying to the planning inspectorate for a decision on the application because of a non-determination by the Authority within the statutory 8 week determination period. He felt there may have been on-going dialogue between the Council and the Authority regarding the application. The Head of Housing was not however able to identify any contact between the Council and the Authority following the initial request for information necessary to validate the application in August until the request for information in March 2009.

37. Turning to the issue of the new application for a permanent site at Site B, the Head of Housing confirmed that a number of objectives had already been achieved in order to progress the development at Site B. A feasibility study of the site had been undertaken which had concluded that the site was suitable for development as a Gypsy/Traveller site. Permission to progress the project had been given by the Council. Furthermore a grant of 75% of the total cost of the work had been secured from WAG for the project within the 2009/10 financial year. The other 25% contribution from the Council had also been agreed. The agreement of the landowners involved had also been secured.

38. The Head of Housing explained that the final hurdle that needed to be overcome was planning consent from the Council itself for the development. He confirmed that the planning application had been submitted and that the planning department was awaiting the outcome of some final consultations. The Head of Housing confirmed that if planning consent was turned down, there was no “Plan B” at present and he did not know how the Council would deal with the matter if consent was not forthcoming. The Council might have to consider options such as compulsory purchase but the Head of Housing commented that any such measures would take time. He expressed concern that if the planning application failed and the money from WAG could not be drawn upon the Council may have lost the opportunity to develop the site because it had been “ahead of the game” in making the current funding application since they already had a needs assessment in train when WAG guidance was released and the funding opportunity had come up.

39. The Head of Housing concluded by saying that this had been a difficult process. A family of Gypsies were living in appalling conditions and the Council had been trying to find them a suitable temporary or permanent site. A potential permanent site had been located and now everything was in place to develop this site subject to planning consent. In the meantime the family had been moved to Site C because that was the only option available to the Council at the time.

40. At interview the Council’s Highways Officer confirmed her view that the highway network serving Site C was sub-standard and that she had recommended when formally consulted, that the application should be refused. She explained that her specific concerns about the road were that the width, alignment and gradients of the roads leading to the site

were substandard and that they were unsuitable for significant volumes of additional traffic.

41. The Highways Officer did not disagree with the comments of the Planning Officer who had stated in his report to the PAROW committee that the road was not heavily used since this comment was subjective. She suggested however that this comment was incompatible with a later comment by the same officer that the use of this land as a Gypsy/Traveller site will not significantly exacerbate the existing sub-standard highway conditions. She explained that if the traffic passing along the highway was light the introduction of additional highway traffic would have a greater impact on the safety of the highway in percentage terms than introducing a similar number of vehicles onto a heavily used highway would have had. She reiterated her view that the introduction of additional vehicles onto the highway as a result of the Gypsy/Traveller site is likely to have a significant effect on highway safety. The Highway Officer also explained that the fact that the permission was a temporary one did not have any impact on the highway safety issue because the risk was in place whilst the permission was in force.

WHAT THE AUTHORITY HAD TO SAY

42. The Authority responded formally to the complaint on 15 October 2008. The Authority explained in its response that its officers had expressed their concerns to the Council about the unilateral action the Council had taken to relocate the family to Site C. The Authority also told me that it had considered issuing a stop notice on the Council and also considered an injunction. However the Authority pointed out that both of these courses of action are discretionary and that after considering the

implications of such actions it had decided against either course of action. The Authority explained that its own enforcement procedures state in relation to judicial injunctions that “Such action would only normally be sought if the breach was particularly serious or protracted and was causing, or likely to cause, exceptional harm to the local environment.” The Authority also pointed out that it also had to bear in mind not only cost implications of such remedies but also the fact that the action would be taken against another public authority and that this could be objected to on the grounds of an unjustified expenditure of public funds when there were other remedies available. With regard to taking enforcement action, the Authority commented that the Council had submitted a planning application and that enforcement action would be considered only if the planning consent were refused.

43. The Planning Manager who had responsibility for the area in which Site C was located confirmed that he had accepted the planning application from the Council and that he had been responsible for validating the application in August. He had also issued the consultation letters and arranged for the various notifications to be issued. The Planning Manager confirmed that as a consequence the case stayed with him in name. The Planning Manager confirmed that following the consultation process the case was not progressed until the Authority was able to appoint the Planning Officer (who commenced in post in February 2009).

44. The Planning Officer confirmed that following his appointment he was asked to progress the Council’s application for Site C. Initially he needed to obtain information from the Council about the status and

progress of the Council's application for a new Gypsy/Traveller site at Site B.

45. As a result of these enquiries, he received confirmation that the completion date for the project was December 2009. This reassured him that there was a definite timescale in place for the alternative permanent site to be ready for occupation.

46. By the time the PAROW Committee considered the application the Planning Officer confirmed that the only outstanding issue for the Council to address in order to progress the alternative site was the planning consent. The Council had already spent a significant amount of money on a feasibility study of the site and had secured a substantial grant from WAG to undertake works on the proposed site and also had the relevant consent from the landowner who was in agreement with the proposals.

47. The Planning Officer confirmed that in terms of a permanent site the development at site C was contrary to planning policy. However the development was permissible in this case because the consent being sought was a temporary one. Furthermore the Planning Officer explained that WAG guidance emphasises that temporary consent of this nature does not set a precedent. He said that he had emphasised this to the members at the PAROW Committee meeting because they were concerned about such a precedent being set in the National Park. He emphasised that the Authority would not consider a permanent Gypsy/Traveller site at Site C and would take enforcement action if the site was not re-instated at the end of the period of consent.

48. The Planning Officer said that his report to the PAROW Committee argued that on balance, given this was a retrospective application and that the Family Group had nowhere else to move to in the immediate future, it was reasonable to grant a temporary consent. He felt that this was preferable to a refusal since by granting a temporary consent the Authority would be better placed to control the situation. The alternative would be to take a hard line, refuse the application and take enforcement action. The Planning Officer pointed out however that there was apparently a “gentleman’s agreement” between the Council and the Park Authority that the Authority would not take enforcement action against the Council. In the event of a refusal the need to consider enforcement action would have been inevitable.

49. With regard to the issue of highway safety, the Planning Officer accepted that the lane which allowed access to the application site was substandard and that there were highway safety issues in relation to this development. However having weighed up the Highway Safety concerns against the other factors he was of the view that they were not significant enough to refuse a temporary consent particularly given the low number of vehicles the Family Group possessed (4) and that no business would be carried out from the site.

50. With regard to the issue of highway safety the Head of Planning Services commented that the planning authority did not always refuse an application on the basis of advice from highways officers. He commented that highways officers are often excessively cautious when it comes to highway safety and that the planning authority has to balance such concerns against other factors. In this particular case the Head of Planning Services surmised that the Planning Officer did not find the

issue of highway safety to be significant enough to warrant a recommendation to refuse the application.

51. The Planning Officer did not recall that the Head of Planning Services had told members that there was no option other than to grant the application if the Authority wished to retain control of the development, although the issue was debated. With regard to the comments allegedly made by the Head of Planning Services that members needed to be pragmatic when it came to their policy, the Planning Officer did not recall him saying this and commented that in his experience the Head of Planning Services was normally very steadfast in his defence of the Authority's policies.

52. The Planning Officer did not recall commenting that the Council's planning application for Site B was "cut and dried". He doubted he would have said this because that was not his understanding of the situation at the time. The Planning Officer said that he would have been careful to say something like "we were satisfied that the planning circumstances would change by the time the temporary planning consent came to an end". The Planning Officer did recall informing members that the Council had already submitted an application for Site B and that plans for the new site were already at an advanced stage.

53. The Head of Planning Services confirmed that during the period in 2008 when the application was received the Planning Service was in a "parlous state" and that it had little resource in terms of planning/development control. The Head of Planning Services also explained that there was a shortfall of 4 posts in the department and that there was a lack of experienced planning officers. He confirmed that the

delay in dealing with the application had not been deliberate – it occurred as a result of difficulties the Authority found itself in.

54. The Head of Planning Services set out the changes that had taken place since October 2008. These included the recruitment of experienced planning officers such as the Planning Officer which meant they now had a full complement of staff; a restructuring of the Department; the adoption of new working procedures, including “validation best practice” since October last year. As a result the Department were now in a position where they determined 74% of applications within the statutory 8 week period as opposed to last year when they were in the low 20% range.

55. With regard to the PAROW meeting of 21 April 2009, the Planning Manager, who confirmed he had attended, said that he could not recall much of the detail of the discussion. He did not recall that the Head of Planning Services had said that members should take a pragmatic view. However the Planning Manager said that he did consider that members were entitled to take a pragmatic view given the temporary nature of the application and the personal circumstances of the family.

56. With regard to alleged comments by the Head of Planning Services, that there was no option but to grant a temporary consent if the Authority were to retain control of the development, the Planning Manager could not recall him saying this. However he did surmise that the comment might have stemmed from a discussion around what the options would be if the consent was refused. It was explained that enforcement action would have to run its course and that this could be a

long-winded process which could exceed the 12 month temporary consent that was being considered.

57. The Planning Officer's alleged comments that the Council's own planning application for a Gypsy/Traveller site at Site B was "cut and dried" was discussed. The Planning Manager could not recall the Planning Officer using this expression. The Planning Manager explained that the Authority, based on the information it had from the Council, considered that there was a reasonable expectation that an alternative site would become available.

58. The Head of Planning Services said that in his view the development at Site C did not appear to comply with a number of the Authority's policies, including in particular the fact that this was a development in what is "open countryside". Turning to policy ES31 of the UDP relating to Gypsy and Traveller sites, the Head of Planning Services commented that it was arguable that none of the five conditions that were referred to in this policy as being necessary for a Gypsy/Traveller site to be acceptable were met in this case.

59. The Head of Planning Services emphasised however that the permission being sought had been temporary for a specific period and because of the materiality of the planning circumstances and as they were trying to assist another adjacent planning authority, approval was appropriate. The Head of Planning Services pointed out that when the matter was taken to the PAROW committee, they had every expectation, based on the information provided by the Council, that the planning circumstances would change by the time the temporary consent expired. The Head of Planning Services drew attention to WAG guidance which

confirmed that a temporary consent can be appropriate, particularly in cases where there is a reasonable expectation that new sites are likely to become available.

60. The Head of Planning Services explained that the Authority had also made it clear that the consent was temporary and that if the site was not reinstated by the end of the period of the consent, enforcement action would be considered. He also stated that the fact that a temporary consent had been granted once on the site did not set a precedent and he did not envisage that the PAROW Committee would be in favour of granting such a permission again.

61. The comments which were attributed to the Head of Planning Services by witnesses who attended the PAROW Committee meeting on 21 April 2009 were put to him. The Head of Planning Services could not recall having said that members should be flexible or pragmatic in their approach although he commented that if he had made such a comment it would have been more likely to have been that members needed to be pragmatic. The Head of Planning Services commented however that this would have been appropriate in view of the fact that the family were already on the site - consent would have meant that the authority could retain control of the development and would be in a better position to deal with the enforcement issue if the site was not reinstated at the end of the period of consent. The Head of Planning Services did not recall commenting that refusal was not an option.

62. With regard to comments which the Planning Officer was alleged to have made to members, that the Council's application for the alternative site at Site B was "cut and dried", the Head of Planning

Services did not recall the Planning Officer using these words, although his understanding from a subsequent meeting he attended was that the Council was progressing the matter. The Head of Planning Services said that the Authority were justified in their expectation that the planning situation would change by the end of the consent period by virtue of a new alternative being available at Site B because the Council:

- had spent a significant amount of money on a feasibility study on the site
- had secured a significant grant from WAG to develop the site,
- the support of a willing landowner and
- was preparing a report to its planning committee with a timescale in place for the development of the new site

63. The Head of Planning Services concluded by saying that the issue of the Traveller site had been a sensitive one and felt that enforcement action would be precipitous and that in addition there had been a “gentleman’s agreement” between the Council and the Authority that the Authority would not take enforcement action against the Council. He suspected that if the planning application had been turned down, the Council would have appealed the decision and in his experience that process would have probably taken longer than the duration of the temporary consent, during which time the development would have remained unauthorised. He also made the point that the Authority had made its position clear from the outset – Site C was not suitable as a permanent Gypsy/Traveller site.

WHAT MY PROFESSIONAL ADVISER HAD TO SAY

64. I have asked my Professional Adviser on planning matters to comment on the relevant issues I include his report below:

The complaint relates to the establishment of a Traveller caravan site of 12 pitches at a vacant farmstead at Site C. The Council submitted the planning application on 25 July 2008 and eight or so caravans and their occupiers were installed at the farmstead on 30 July 2008. The planning application was validated by the Authority on 12 August 2008 and temporary planning permission (to April 2010) was granted eight months later on 21 April 2009.

The Ombudsman has asked my advice on a number of matters relating to this development. I visited the site and viewed it from the public highway on 1 September 2009.

Unauthorised development by the Council prior to the determination of the application

a) The property at Site C became vacant in March 2008. It was first mentioned as a possible caravan site at a meeting of the Working Party on 22 May 2008. The planning application was submitted on 25 July 2008 and the preparation and occupation of the site was carried out during the following week.

b) From the comments made by the officers involved there was an urgent need to relocate the Family Group in the Spring of 2008. However, in my view, it should have been possible to have submitted the planning application in June 2008 given that the property became available in March and was discussed in May.

c) There appears to have been more than five days' notice of the impending move and perhaps the Council should have been more diligent in anticipating this development. I believe that an application could probably have been submitted a reasonable period before the works commenced on site.

Delay in the determination - was it reasonable?

d) The temporary planning permission was granted eight months after the application was made. The consultations were completed well before the decision. The reason for the delay in reporting this application appears to be a shortage of planning case officers. There were four vacant posts in the planning department and a lack of experienced planning officers. Following the recruitment of new staff earlier in 2009, the planning application was allocated to an experienced officer and brought to committee in April 2009.

e) The delay in deciding the application was unfortunate but, in my opinion, understandable given the staffing difficulties. I consider that the Authority is not at fault in the delay in the determination of this application.

There was an objection on highway safety grounds from the Highway Authority. Was the objection handled in a proper way?

f) I saw that (the road which leads to the vicinity of Site C – which I shall call “Beech Road”) runs south from Brecon and the site is about 250 metres along an unclassified road that runs east from Beech Road. The 2 km of highway between Brecon and the site is single track in parts and elsewhere there is room for vehicles to pass with care. There are informal passing bays at intervals in the narrow sections. There are no footways. The traffic was light at the time of my visit (midday).

g) The highway authority objected to the development on the grounds that the highway network serving the site is considered unsuitable for significant volumes of additional traffic.

h) The site is a former small holding and there would have been traffic flows to and from this site prior to this development. The question for the highway authority and the planning authority to consider was whether the additional traffic arising from 12 caravan pitches over and above the former agricultural and domestic vehicle movements could be accommodated by the highway without significant detriment to highway safety.

i) I estimated that more than half the route to and from Brecon has room for vehicles to pass with care. There is reasonable forward visibility prior to the narrow sections which allows drivers to anticipate

dangers ahead. Visibility at the junction of Beech Road and the unclassified road is poor to the south but not to a degree that is unusual on rural roads where drivers are alert to such short-comings in driving conditions. Finally, the application was for a temporary consent which gives rise to different considerations on highway matters to those relating to the permanent development of this site. The occupiers of the site during the temporary period were an extended family occupying seven or eight caravans, with apparently 4 vehicles and were not intending to operate a business from the site.

j) With this in mind, I consider that there would probably not be a significant increase in traffic movements using the nearby highway network if the temporary development was allowed. I agree with the Planning Officer's report to the PAROW Committee on the application that the proposal would not raise significant highway safety concerns and, on balance, complies with Authority's policies relating to highway safety.

The development does not accord with the Authority's policies. Was the decision a reasonable one?

k) The report to committee contains a clear explanation of national guidance and advice and the Authority's policies. The report examines five issues together with a section on 'other material considerations'.

l) The report quite properly points out that the statutory requirement to determine applications in accordance with the development plan

unless material considerations indicate otherwise. From this committee members should have understood that every application does not have to comply with every development plan policy, some applications may raise relevant material considerations that indicate a determination that does not comply with one or other policy.

m) The Authority's officers acknowledged that the development at Site C does not comply with the Authority's 'open countryside' policies. However, the committee report does not frame the assessment of each topic to reflect this. Having set out the statutory requirement referred to above, the report could have argued that material considerations in this particular case justified a decision contrary to a specified policy. Instead, the report finds compliance with policy on four issues and no finding is made in relation to the Visual Impact and Landscaping issue. I consider that this is a shortcoming in the drafting of the report that undermines its authority.

n) The section on 'other material considerations' gives weight to the temporary nature of the development in support of granting permission. This approach is in line with the advice in paragraph 13 of WAG Circular 30/2007.

o) There is a lack of clarity in the appraisal of the scheme in relation to visual impact and landscape policy. However, considered as a whole, I find nothing seriously mis-guided in the committee report or the conclusions reached by the officers.

FURTHER DEVELOPMENTS

65. During the preparation of this report it has come to my attention that the Council's application to itself for planning consent for a permanent Gypsy site at Site B has been refused by its own planning committee against its own officers' recommendation. The grounds for refusal were "The proposal is contrary to Criterion No.3 of Policy HP20 of the Powys Unitary Development Plan (Deposit Draft 2004) in that the application site is located such that it is not well related to existing community, social, educational, and other services and facilities." It has been confirmed to me that the Council cannot appeal this decision. The Head of Housing has subsequently stated that that the Council's planning committee had turned down its own application for a Gypsy/Traveller site at Site B and that this had come as quite a surprise and a disappointment. The Head of Housing confirmed that recently a meeting of the Council's Board had been held to discuss the next steps following the refusal. The Head of Housing told my investigator that he could see no alternative solution becoming available in the foreseeable future. He explained that it was agreed by the Board that a new working group would be set up to firstly look at what they would do with Site C and secondly to identify an alternative site for the Family Group. He explained that it was proposed that the working group would consist of 3 portfolio holders from the Council, the local member, members and officers from the National Park and a representative from WAG. Whilst he could not say what this working group would decide, the Head of Housing expressed the view that given the temporary planning consent for Site C was due to expire in April 2010 and that this date was fast approaching with no alternative site on the horizon, there was no alternative than to submit an application for an extension of the current

temporary consent for Site C. He emphasised however that this was a decision for the working group and ultimately the Council's Board.

66. I have also seen correspondence from the Chief Executive of the Authority confirming that in light of the decision by the Council to refuse planning consent for the Gypsy/Traveller site at Site B, the Authority would be reviewing its options in relation to potential action that could be taken if Site C was still occupied after 21 April 2010. The Chief Executive also confirmed that a report would be prepared for the future PAROW Committee meeting as soon as practicable which would outline the options available to the Authority depending on the circumstances.

67. I also understand that following an application from a member of the Family Group to judicially review the decision to refuse planning permission for site B the Council agreed to quash the decision and reconsider the application. The application was recommended for approval but permission was again refused by the Council's planning committee.

CONCLUSIONS

68. There are four distinct aspects to Mr O's complaint, two of which concern the actions of the Council and two of which concern the Authority's actions. I shall deal with the role of the Council first followed by that of the Authority.

69. Mr O complains that the Council undertook unauthorised development of a site which impacted on the residential and visual amenity of t Mr O's development and through its actions prevented him

from being able to object in a timely manner to the Council's development. Mr O alleges that as a consequence this failure has had an adverse effect on his business.

70. There is no doubt that the action taken by the Council was unauthorised – this has been acknowledged by the Council's officers. The undertaking of the development itself however was not unlawful in terms of planning law. The question that I need to consider was whether or not the actions of the Council were reasonable. The Council has said that it was "between a rock and a hard place" in terms of trying to find a suitable site for the family. I am satisfied that the Working Group had for some considerable time been considering various sites to accommodate the Family Group in the Brecon area without success. For various reasons, none of the other 28 or so sites that the Working Group considered were deemed appropriate and therefore the Council were correct in my view in saying they had no alternative, at the time than to utilise site C, whilst efforts were being made to develop Site B as a permanent Gypsy/Traveller site. I am satisfied that the development of site B was not an undertaking which could have been achieved without considerable resource and planning on the part of the Council and was clearly not an option in the short term.

71. Whilst I sympathise with the difficulties the Council faced I am not convinced that there was a need for it to have developed Site C in an unauthorised manner. In my view the Council could have done more to avoid this situation arising. It has acknowledged that the site at the coach/lorry park in Brecon was unsuitable for the Family Group for the very reasons the Council sought to use to justify moving the Family Group to Site C. I have seen that Site C became available in March

2008 and yet there is no indication that this site was even brought to the Working Group's attention until late May 2008. The Council have suggested that an "urgent" situation developed because of the imminence of the annual Brecon Jazz Festival. The annual Jazz Festival was a fixed event in the calendar and by no means unforeseeable. The Council should have been aware that the Coach / Lorry park was likely to have been utilised during the Brecon Jazz Festival and that this was likely to have had a detrimental effect on the Family Group. The Council should have been alert to the fact that Site C had become available and should not have had to wait for the Family Group to bring the possible Health and Safety implications the Festival would pose to its attention. It appears to me from the evidence that I have seen that the Council or its representative was able to prepare a planning application for site C within three weeks – a commendable achievement in my view – but which could have been commenced some two to three months earlier. My Planning Adviser agrees with me in this regard. If this had happened, as far as the Council was concerned, there would have been a reasonable prospect of obtaining planning consent before Site C was developed.

72. It will be manifestly obvious from reading this report, that the likelihood that the Authority would have been able to consider this application within the statutory 8 week period was negligible given its "parlous state". That would have been an issue for the Authority and not the Council to deal with and would have made the Council's actions more acceptable given the imminence of the Jazz Festival. I also find that the Council's failure to even consider requesting a referral to the Planning Inspectorate on the grounds of non-determination in view of

their Counsel's advice to be questionable. In view of the above I uphold this aspect of the complaint.

73. Mr O is also aggrieved about the issue of the need for a development licence under the Conservation (Natural Habitats &c.) Regulations 1994 and feels that the Council has acted unreasonably in the way it dealt with the matter. The issuing of a licence by the WAG could not take place until the Authority had granted planning consent. I have seen that the Council did in fact submit an application but that the decision on the application was deferred until the determination of the application. It is not for me to determine whether the actions of the Council constituted a disturbance to a European protected species which warranted prosecution under the available legislation. In this regard I am of the view that there is no personal injustice to Mr O stemming from the actions of the Council. Accordingly I do not uphold this aspect of his complaint.

74. I turn now to the role of the Authority. Mr O has complained about the Authority's failure to apply for an injunction or stop notice against the Council. The decision as to whether or not the Authority takes such action is one that is entirely at the discretion of the Authority. In my view the Authority's rationale for not pursuing either course of action is reasonable. Similarly, I find that the Authority's decision not to pursue enforcement action against the Council until the determination of the planning application to be reasonable. However I am disappointed that the Authority took close to nine months to determine the application in question. This was totally unacceptable and I agree with Mr O that it should not have taken this long. In fact it is clear to me that when the Planning Officer was allocated the case in February/March 2009 he was

able to progress the application to the PAROW Committee within some 7 weeks. Whilst this effort on the part of the Planning Officer is commendable, it simply goes to show that the statutory period of 8 weeks for determining the application was achievable. I therefore conclude that the Authority took some six months longer to determine the application than it should have done. This delay would undoubtedly have been a source of uncertainty for Mr O and his company as, although he and others submitted objections to the planning application soon after it was made, it was some time before those objections and the application itself was formally considered and determined. That period of uncertainty while the decision was awaited may have been detrimental to his company's marketing strategy. I uphold this aspect of the complaint.

75. Mr O has expressed concerns about the decision of the PAROW Committee and the manner in which Planning Officers influenced the Committee's decision. My Planning Adviser has considered the Planning Officer's report and has told me that whilst he has certain concerns about the report he finds nothing seriously misguided in it or in the conclusions reached by the Planning Officer. I accept my Adviser's view on this matter and I have no reason to consider this report to be unreasonable.

76. I turn now to what transpired at the PAROW Committee meeting on 21 April 2009. Mr O and the local ward member indicated that the Head of Planning Service had told members they needed to be "flexible" or "pragmatic" in arriving at their decision. They also suggested that he told members that they had no alternative but to grant consent in order ensure the removal of the site when the temporary consent expired. The

Head of Planning Services and the other Planning Officers do not recall him having said this. I also note that some witnesses have suggested that the Planning Officer stated that the Council's application for Site B was "cut and dried" or expressed certainty that it would be approved. The other Planning Officers who attended the meeting cannot recall this being said. The minutes I have seen do not clarify matters. I cannot say, and have no prospect of establishing with any degree of certainty what was said at the meeting by the Head of Planning Services or the Planning Officer. I do not consider however that what the officers said at the time matters to any great extent. It is a matter of opinion as to what action would be appropriate in terms of regulating the situation and the Head of Planning was entitled to express his views in this regard. It was up to members to weigh up his advice before making their decision.

77. I also find it difficult to accept that an experienced Planning Officer told the PAROW Committee members that the outcome of another planning authority's application to itself was "cut and dried". I also find it hard to believe that members of the PAROW Committee would have accepted such an assertion unquestioningly. Furthermore, there would have been no need for the Planning Officer to have gone to these lengths because WAG guidance makes it clear that for temporary consent to be granted for a Gypsy/Traveller site there only needed to be a "reasonable expectation" that new sites are likely to become available at the end of that period. The members of the PAROW Committee will have been aware of the action the Council had already taken towards developing Site B as a Gypsy/Traveller site and this would, in my view, have indicated a "reasonable expectation" that an appropriate site was likely to become available. It is only because the members of the Council's Planning Committee have since decided to go against the

advice of their own planning officers that Site B will not now be available. In view of the above and coupled with the advice of my Planning Adviser who considers the Planning Officer's report to be reasonable I find no maladministration in the manner in which the Authority arrived at its decision to grant temporary consent for a Gypsy/Traveller site at Site C. Accordingly I do not uphold this aspect of Mr O's complaint.

Recommendations

78. In arriving at suitable redress for Mr O I need to take careful account of the injustice he has suffered. There is certainly an injustice to Mr O, in that for a period of some 8/9 months the Council was operating an unauthorised Gypsy/Traveller site development on land adjacent to the site Mr O's company was endeavouring to develop. Whilst this unauthorised development was ongoing I accept that uncertainty about the use of Site C could conceivably have impacted on Mr O's marketing strategy for his company's development. Accordingly I recommend that the Council and the Authority pay Mr O £250 each for the difficulties their actions as outlined above caused to Mr O. However whilst Mr O has indicated that during the period it took to determine the application a number of potential purchasers of his own development were deterred from proceeding, I do not consider that this constitutes an injustice to Mr O. This is because I have no reason to believe that if the Authority had determined the application in a timely manner, the outcome would have been any different. In that circumstance, the Gypsy/Traveller site would have been in place as an authorised development, albeit with temporary

consent and would more likely than not have had the same effect on potential purchasers.

79. I also considered recommending measures to address the shortcomings which led to the delay on the part of the Authority in considering the planning application. However I am encouraged by the significant steps taken by the Authority to get to grips with the shortcomings in the service which they have readily acknowledged. Accordingly I am satisfied that any recommendations that I would otherwise have made are unnecessary.

80. I turn finally to the role of the Council in this matter. It is clearly the Council's failure to secure an appropriate site for the Family Group which has directly led to the events complained about. If the Council do not now act in a proactive and positive manner to discharge their statutory obligations to the Family Group I am concerned that the events that were subject to this investigation will be repeated. I would therefore encourage the Council to take urgent action to ensure that the Family Group is provided with a suitable Gypsy/Traveller site as soon as is practically possible.

81. The Council and the Authority have seen a draft of this report and has agreed to implement the recommendation listed at paragraphs 78

Peter Tyndall

Ombudsman

31 March 2010