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Via email only

Dear Sirs

Replacement Local Development Plan – Proposed Gypsy and Traveller Site at Llangan

Our client: Llangan Action

1. Introduction

1.1 We act for the Llangan Action Group ("LAG") and are instructed by them to submit this letter of representation objecting to the proposed allocation and expansion of the Gypsy and Traveller site at Llangan (the "Site") within the Vale of Glamorgan Replacement Local Development Plan ("RLDP"). LAG respectfully submits that the proposed allocation should be removed from the RLDP. The proposal raises serious legal and planning concerns which go to the heart of whether the RLDP can properly be considered sound.

1.2 In particular, the proposed allocation is inconsistent with the Council's previous Undertaking (defined below) concerning the Site, conflicts with the Council's own planning policy framework and evidence base and fails to satisfy the recognised tests of soundness required for inclusion within the RLDP.

1.3 This representation therefore addresses both the legal issues arising from the Council's previous Undertaking and the planning merits of the proposed allocation. LAG recognises that the Council has statutory duties in relation to the accommodation needs of Gypsies and Travellers. However, the existence of such duties does not remove the requirement for site allocations within the development plan to be appropriate, sustainable, and supported by robust evidence.

Hugh James is authorised and regulated by the Solicitors Regulation Authority (SRA Number: 303202) and is authorised and regulated by the Financial Conduct Authority. A full list of partners is available on request.

2. Background and Planning History

2.1 The Site has a long and complex planning history which is directly relevant to the Council's current proposal to allocate and expand the Site within the RLDP. In December 1994, the former South Glamorgan County Council granted planning permission to itself for the use of the Site as a Gypsy site. That decision was subsequently challenged by local residents and ultimately quashed following judicial review proceedings *in R v South Glamorgan County Council ex parte Harding* (1997).

2.2 The High Court therefore confirmed that the planning permission granted by the Council was unlawful. The judicial review proceedings were significant not only because they resulted in the planning permission being quashed but also because they led to the Council giving a formal Undertaking concerning the future use of the land.

3. The Council's Undertaking

3.1 On 1 May 1996, during the course of the judicial review proceedings, the Chief Executive of the Council gave a formal Undertaking on behalf of the Council ("Undertaking"). The Undertaking was expressed to bind the Council and all successors in office and contained two key elements.

3.1.1 First, the Council undertook to use its best endeavours to remove the occupiers from the Site, including [redacted] and any other persons occupying the Site.

3.1.2 Secondly, the Council undertook that once the Site became vacant it would remove all structures and services installed on the Site and restore the land to its original agricultural condition.

3.2 The clear intention of the Undertaking was therefore that the land should ultimately revert to its former use once the occupation had ceased. However, the RLDP now proposes to retain and expand the use of the land as a permanent Gypsy and Traveller site. This proposal is inconsistent with the Undertaking previously given by the Council.

3.3 In addition to the Undertaking given on 1 May 1996, the Council subsequently engaged in discussions with representatives of the LAG, the Community Council, and the occupiers of the Site with a view to resolving the long-standing issues relating to the Site. Minutes of a meeting held on 12 June 2017 between representatives of the

Vale of Glamorgan Council, members of LAG and the occupier of the Site record that the Council acknowledged that, if the occupier and his family were to relocate or if the Site were otherwise vacated, the Site would effectively fall away from the Local Development Plan and could be returned to community use, including as allotments through the Community Council. The minutes further record that the Council indicated that the Site could be removed from the development plan at a future review stage once the occupation issue had been resolved.

3.4 This discussion is most significant because it demonstrates that the Council itself previously contemplated a resolution which was consistent with the Undertaking given in 1996 and with the expectation that the Site would ultimately revert to community or agricultural use rather than being expanded or retained as a permanent traveller site. The current proposal within the RLDP to allocate the Site for seven pitches therefore is inconsistent not only with the original Undertaking but also with the subsequent position discussed and agreed in principle between the Council and the members of LAG in 2017.

4. **Legitimate Expectation**

4.1 The Undertaking (together the with consensus reached at the meeting on 12 June 2017) given by the Council created a clear legitimate expectation among local residents that the Site would ultimately be cleared and restored. The doctrine of legitimate expectation is well established in public law and arises where a public authority makes a clear representation or promise which it would be unfair or an abuse of power to depart from without compelling justification.

4.2 The leading authority is *R v North and East Devon Health Authority ex parte Coughlan* [2001] QB 213. In that case the Court of Appeal held that where a public authority makes a clear and unequivocal representation to a particular group of individuals, and those individuals reasonably rely upon that representation, the authority may be required to honour that promise unless it can demonstrate an overriding public interest which justifies departing from it. The Court recognised that in appropriate circumstances such representations may give rise to a substantive legitimate expectation, meaning that the authority is not merely required to consult before changing its position, but may be legally constrained from departing from the promise at all.

4.3 In the present case, the Undertaking given by the Council on 1 May 1996 was made in the context of judicial review proceedings and was relied upon by local residents when those proceedings were resolved. The Undertaking clearly indicated that the Council would use its best endeavours to remove the occupiers from the Site and would restore the land to its original condition once the occupation had ceased. Residents were therefore entitled to expect that the Council would act in accordance with that Undertaking and also the subsequent consensus reached at the June 2017 meeting.

4.4 Against that background, the Council's decision to promote the Site within the RLDP as a permanent Gypsy and Traveller allocation is inconsistent with the Undertaking previously given and may therefore amount to an unlawful frustration of the legitimate expectation created by that promise. In the absence of a compelling public interest justification, it would be difficult to reconcile the Council's current position with the principles established in *Coughlan*.

5. National Planning Policy

5.1 National planning policy contained within Planning Policy Wales ("PPW") emphasises that development should be directed to sustainable locations and that new development should minimise reliance on private car travel. PPW also emphasises the importance of ensuring that development contributes to the creation of sustainable communities.

5.2 Welsh Government guidance relating to Gypsy and Traveller sites similarly emphasises that such sites should normally be located close to services and facilities. The Site does not meet these criteria on any analysis. The Site is located in a small rural settlement with extremely limited services and facilities.

6. Conflict with Local Development Plan Policy

6.1 The proposed allocation also conflicts with the Council's own development plan policies. In particular, Policy MD18 (Gypsy and Traveller Accommodation) sets out the criteria against which proposals for Gypsy and Traveller sites must be assessed. The policy requires that such sites must be located in sustainable locations, must have safe and appropriate access, must be of a scale appropriate to their surroundings and must be capable of being adequately serviced.

6.2 These criteria are intended to ensure that Gypsy and Traveller sites are located in places where residents can reasonably access services and facilities and where development can take place without causing unacceptable impacts on the surrounding area.

6.3 The Site does not meet these requirements on any analysis. The Site is located within a small rural settlement which has extremely limited services and facilities. Essential services such as shops, healthcare facilities and other community services are not available within the village itself and are located in larger settlements some distance away.

6.4 In addition, access to the Site is via a narrow rural lane which is constrained in width and is unsuitable for the level of activity that would arise from an expanded site accommodating multiple pitches. These access constraints were previously identified during the examination of the Vale of Glamorgan Local Development Plan.

6.5 The scale of development proposed also raises significant concerns. The Planning Inspector previously concluded that the Site was suitable only for two pitches. The proposal to expand the Site to seven pitches therefore represents a substantial increase in scale which has not been adequately justified.

6.6 For these reasons, the proposed allocation fails to satisfy the criteria contained within Policy MD18 and is therefore inconsistent with the Council's own development plan policy framework.

7. Policy SP9 – Gypsy and Traveller Site Provision

7.1 Policy SP9 proposes to allocate land at Llangan for the provision of seven Gypsy and Traveller pitches. The supporting text states that the Site has capacity to accommodate seven pitches and that the principle of the Site's use as a Gypsy and Traveller site is well established.

7.2 However, the planning history demonstrates that the Site has been the subject of legal challenge and that the Council itself gave an undertaking requiring the land to be restored once the occupation ended.

7.3 In those circumstances, the assertion that the principle of the Site's use is well established is difficult to reconcile with both the legal history and the Undertaking previously given by the Council.

8. Policy GT1 – Gypsy and Traveller Accommodation

8.1 Policy GT1 sets out the criteria against which proposals for new Gypsy and Traveller sites, or extensions to existing sites, are to be assessed. The purpose of the policy is to ensure that any such sites are located in appropriate and sustainable locations and that development does not give rise to unacceptable impacts on surrounding communities or the environment.

8.2 The policy requires, amongst other matters, that sites must be reasonably accessible to essential services and facilities such as healthcare, education, employment opportunities and public transport. The intention behind this requirement is to ensure that residents of Gypsy and Traveller sites are able to access everyday services and participate fully in community life without being heavily dependent on private car travel.

8.3 The Site does not satisfy this requirement. Llangan is a small rural settlement with extremely limited services and facilities. The nearest town providing a wider range of services is Cowbridge, which lies approximately 7.5 kilometres from the Site. Public transport provision serving the area is limited and there are few local facilities within walking distance of the Site. As a result, residents would inevitably be heavily dependent on private vehicles in order to access essential services such as healthcare, education and employment.

8.4 Policy GT1 also requires that safe and appropriate vehicular access can be provided from the highway network and that the Site layout allows for adequate provision for parking, turning, servicing and emergency vehicles. These requirements reflect the need to ensure that Gypsy and Traveller sites can operate safely and effectively without creating highway safety concerns.

8.5 In the case of the Site, access is obtained via a narrow rural lane which is constrained in width and alignment. These access constraints were previously identified during the examination of the Vale of Glamorgan Local Development Plan. In that examination the Inspector concluded that access and drainage works would need to be improved for the Site to meet Welsh Government guidance. Those concerns remain relevant and it is not clear from the RLDP evidence base how they have been addressed.

8.6 Policy GT1 further requires that development should not have unacceptable impacts on the character and appearance of the landscape and should be sensitively designed

to mitigate any impact on its surroundings. The Site lies within a designated Special Landscape Area and is located adjacent to the Llangan Conservation Area. These designations reflect the importance of protecting the landscape character and historic setting of the area.

8.7 The proposed expansion of the Site therefore raises significant concerns in relation to the potential impact on the surrounding landscape and the setting of the conservation area. The scale of the proposed development is likely to intensify activity at the Site and may therefore give rise to impacts which are inconsistent with the objectives of Policy GT1.

8.8 For these reasons, the proposed allocation of the Site fails to satisfy several of the key criteria contained within Policy GT1 and is therefore inconsistent with the policy framework set out in the RLDP.

9. Previous Inspector's Findings

9.1 The Inspector who examined the Vale of Glamorgan Local Development Plan previously considered the suitability of the Site in the context of the Council's earlier development plan process. The Inspector's report, which forms part of the evidence base for the adopted Local Development Plan, identified a number of concerns regarding the physical constraints affecting the Site.

9.2 In particular, the Inspector concluded that:

"It is clear that access and drainage works would need to be improved for the site to meet Welsh Government guidance."

9.3 The Inspector's conclusion is significant because it recognises that the Site is affected by fundamental infrastructure constraints which must be addressed before the Site could reasonably be considered suitable for development. Those concerns related in particular to the adequacy of the highway access serving the Site and the drainage arrangements necessary to support residential occupation.

9.4 These issues remain unresolved. The RLDP documentation does not clearly explain how the access and drainage concerns identified by the Inspector have now been addressed or how the necessary improvements would be delivered in practice. In circumstances where the Inspector previously identified these constraints as matters requiring improvement, it is incumbent upon the Council to demonstrate clearly that

those issues have been satisfactorily resolved before relying upon the Site as a deliverable allocation within the RLDP.

9.5 In the absence of such evidence, the concerns previously identified by the Inspector remain relevant and cast doubt on the suitability and deliverability of the proposed allocation.

10. **Sustainability and Location**

10.1 Llangan is a small rural settlement with extremely limited services and facilities. The village does not contain the range of services that would normally be expected to support new residential development of the scale proposed within the RLDP.

10.2 The nearest settlement providing a wider range of services and facilities is Cowbridge, which lies approximately 7.5 kilometres from the Site. Essential services such as healthcare facilities, shops and employment opportunities are therefore located some distance away from the Site.

10.3 Public transport provision serving the area is extremely limited and there are no regular or convenient public transport connections serving the village of Llangan itself or linking the Site to Cowbridge or other nearby settlements. The nearest bus service operates along the A48, approximately 1.7 miles from the village. The nearest rail connections are located at Pencoed, approximately 4 miles (6.3km), Bridgend railway station, approximately 4.5 miles (7.3km) away, and Llantwit Major railway station, approximately 8 - 9 miles (13 – 15km) away. Distances are by road from the Site.

10.4 In practical terms, this means that residents of the proposed development would be required to travel some distance in order to access even basic public transport services. Access to those services is further constrained by the nature of the local road network. Pedestrian routes connecting the village to the wider transport network are limited and, in places, involve walking along rural roads which lack pavements and street lighting. These characteristics are typical of rural and relatively isolated locations and have been identified in various studies and reports examining accessibility issues affecting rural communities.

10.5 The absence of accessible public transport, together with the lack of safe and convenient pedestrian routes, means that residents of the proposed development would be heavily dependent on private vehicles in order to access employment, education, healthcare and other essential services. This raises concerns regarding

the sustainability of the location when assessed against the relevant planning policy requirements.

10.6 As a result, residents of the proposed development would inevitably be heavily dependent on private vehicles in order to access everyday services and facilities. This level of reliance on private car travel is inconsistent with the RLDP's stated objectives of promoting sustainable communities and reducing reliance on private vehicles.

10.7 The lack of accessible services is also directly relevant to Policy GT1, which requires Gypsy and Traveller sites to be reasonably accessible to essential services and facilities such as healthcare, education, employment and public transport. In circumstances where such services are not readily available, it is most difficult to conclude that the Site satisfies this requirement.

10.8 Access to the Site is provided by a narrow, single-lane track known as Waterston Lane. The lane is constrained in width and operates effectively as a single-file access route to the Site. The surrounding land is also known to be prone to flooding and waterlogging, which contributes to persistently damp conditions in the immediate area. These environmental conditions are relevant when considering the suitability of the Site for residential occupation.

10.9 During discussions held in 2017, the current occupier of the Site indicated that the damp conditions associated with the Site had resulted in respiratory health problems affecting members of his family. This observation highlights the potential implications of the Site's environmental conditions for the health and wellbeing of those living there.

10.10 In circumstances where the Site is known to experience damp and waterlogged conditions, careful consideration should be given to whether the Site provides an appropriate and sustainable environment for residential use, particularly if the scale of occupation is increased as proposed within the RLDP.

11. Scale of Development

11.1 The Planning Inspector examining the Vale of Glamorgan Local Development Plan previously concluded, after considering the available evidence, that the Site was suitable only for two pitches.

11.2 The proposal within the RLDP to expand the Site to seven pitches therefore represents a substantial increase in scale when compared with the level of development previously considered appropriate for the Site.

11.3 This represents a significant intensification of development which has not been supported by clear evidence demonstrating why such an increase is now considered acceptable.

11.4 The scale of the proposed development must also be considered in light of Policy GT1, which requires that the scale of a Gypsy and Traveller site should be proportionate to both the evidenced needs of the occupiers and the surrounding area.

11.5 In addition, earlier research undertaken for the Council, including the Fordham Research Group study on Gypsy and Traveller accommodation, indicated a preference among members of the Gypsy and Traveller community for smaller family-sized sites. The proposal to expand the Site significantly beyond its previously accepted capacity is therefore inconsistent with those findings.

12. **Landscape and Environmental Impact**

12.1 The Site lies within a designated Special Landscape Area and is located adjacent to the Llangan Conservation Area. These designations reflect the importance of protecting the landscape character and historic setting of the area.

12.2 Policy GT1 requires that development should not have unacceptable impacts on the character and appearance of the landscape and should be sensitively designed to mitigate any impacts on its surroundings. The expansion of the Site therefore raises concerns regarding the potential impact on the surrounding landscape and the setting of the conservation area.

12.3 In particular, the intensification of activity associated with a larger traveller site has the potential to introduce development which is out of keeping with the established rural character of the area.

13. **Settlement Hierarchy**

13.1 Evidence prepared by the Council as part of the Sustainable Settlements Appraisal identifies Llangan as a “Hamlet / Rural Area” within the settlement hierarchy. Settlements within this category are characterised by a limited range of services and

infrastructure and are therefore not generally considered suitable locations for significant new development.

13.2 The settlement hierarchy forms an important part of the spatial strategy underpinning the development plan and is intended to ensure that development is directed to the most sustainable locations. Allocating and expanding a traveller site within a settlement identified as a rural hamlet is therefore inconsistent with the Council's own spatial strategy.

14. Deliverability

14.1 Site allocations within the RLDP must be realistic and capable of being delivered within the plan period. In the case of the Site, significant highway improvements would be required in order to make it suitable for development.

14.2 The evidence base supporting the RLDP does not clearly demonstrate that these improvements could be delivered within a reasonable timeframe. The Council's reliance on the fact that the Site is in its ownership does not in itself demonstrate that the Site is deliverable. The key issue is whether the necessary infrastructure improvements and environmental mitigation measures can be implemented in practice.

14.3 In circumstances where the deliverability of an allocation is uncertain, the allocation cannot reasonably be relied upon as a means of meeting identified accommodation needs.

14.4 The issue of drainage infrastructure at the Site also raises significant practical and financial concerns. The Site is not connected to the mains sewer network and is instead served by a cesspit. It is understood that the cost of emptying this cesspit has historically been approximately £200 per week. During earlier discussions it appears that the Council may have assumed that these costs were borne by the Site occupants. However, the occupier of the Site has clarified that the cost of emptying the cesspit has in fact been borne by the Council.

14.5 Even on the basis of the historic figure referred to during discussions in 2017, the ongoing maintenance cost associated with the cesspit is substantial. It is reasonable to assume that this cost will have increased significantly in the years since those discussions took place. Moreover, if the Site were expanded to accommodate multiple

pitches as proposed under the RLDP, the frequency and cost of cesspit emptying would inevitably increase.

14.6 It is also understood that Welsh Water has previously indicated that connection to the main sewer network would not be feasible in rural locations such as Llangan. If that position remains unchanged, the Site will therefore continue to rely on cesspit infrastructure for the foreseeable future.

14.7 In those circumstances, the financial implications of the proposed allocation require careful consideration. If the costs associated with maintaining the drainage arrangements continue to fall on the Council, the expansion of the Site could result in a significant and ongoing financial burden on the local authority and, ultimately, on local taxpayers. The Council must therefore have regard to its duty to act in the best interests of its residents and to ensure the responsible use of public funds when assessing the appropriateness of this allocation.

14.8 Given these considerations, it would be appropriate for the Council to provide clarity regarding the current costs associated with maintaining the Site, including the ongoing cost of cesspit emptying and the extent to which those costs are borne by the Council.

15. Alternative Sites

15.1 Evidence previously produced in connection with the Local Development Plan indicates that a number of alternative sites exist which perform better when assessed against sustainability criteria. Those sites are considered to offer more sustainable locations with better access to services and infrastructure.

15.2 The RLDP supporting information does not adequately explain why these alternative sites have been rejected in favour of the Site. In the absence of such explanation, it is difficult to conclude that the site selection process has identified the most appropriate location for the proposed development.

16. Tests of Soundness

16.1 For a Local Development Plan to be adopted it must be considered sound.

16.2 In the context of the RLDP, this requires the plan to be justified, effective and consistent with national planning policy. The proposed allocation of the Site fails these tests of soundness.

16.3 In particular, the allocation is not justified by robust evidence, there is considerable doubt as to whether it is deliverable within the plan period, and it conflicts with national planning policy which seeks to direct development to sustainable locations.

17. Summary and Conclusion

17.1 In summary, the proposed allocation of the Site within the RLDP raises a number of serious legal and planning concerns which cast significant doubt on whether the allocation can properly be regarded as sound.

17.2 First, the allocation is inconsistent with the Council's previous Undertaking given on 1 May 1996 in the context of the judicial review proceedings in *R v South Glamorgan County Council ex parte Harding*, and the later consensus reached on 17 June 2017. Under that Undertaking the Council agreed to use its best endeavours to remove the occupiers from the Site and, once the Site became vacant, to remove the structures and restore the land to its original agricultural condition. The proposal within the RLDP to retain and expand the Site is therefore inconsistent with the Council's earlier Undertaking and gives rise to issues of legitimate expectation and potential public law unlawfulness.

17.3 Secondly, the proposed allocation conflicts with both national planning policy and the Council's own development plan policies. Planning Policy Wales emphasises that development should be directed to sustainable locations and that new development should minimise reliance on private car travel. Policy MD18 of the adopted Local Development Plan and Policy GT1 of the RLDP similarly require Gypsy and Traveller sites to be located in sustainable locations with safe and appropriate access and to be of a scale appropriate to their surroundings. The Site does not meet these criteria.

17.4 Thirdly, the Site is located in a small rural settlement with extremely limited services and facilities. Essential services such as shops, healthcare and employment opportunities are located in Cowbridge, approximately 7.5 kilometres away, and public transport provision serving the Site is extremely limited. Residents would therefore be heavily dependent on private vehicles in order to access basic services, which is inconsistent with the objectives of sustainable development.

17.5 Fourthly, the Planning Inspector examining the Vale of Glamorgan Local Development Plan previously identified concerns regarding the suitability of the Site, concluding that access and drainage works would need to be improved in order for

the Site to meet Welsh Government guidance. Those concerns remain unresolved and it is not clear from the RLDP evidence base how they have now been addressed.

17.6 Fifthly, the proposed expansion represents a significant intensification of development at the Site. The Planning Inspector previously concluded that the Site was suitable only for two pitches, yet the RLDP now proposes to expand the Site to seven pitches. No clear evidence has been provided to justify this substantial increase.

17.7 The Site also lies within a Special Landscape Area and adjacent to the Llangan Conservation Area, raising concerns regarding the impact of the proposed development on the character and appearance of the surrounding landscape.

17.8 In addition, the Council's own evidence base identifies Llangan as a "Hamlet / Rural Area" within the settlement hierarchy. Settlements within this category are not intended to accommodate significant new development and allocating a larger traveller site in this location is therefore inconsistent with the Council's spatial strategy.

17.9 Finally, there are serious concerns regarding the deliverability and justification of the allocation. Significant highway improvements would be required to make the Site suitable for development, and it is unclear how these improvements would be delivered within the plan period. Evidence previously produced also indicates that alternative sites exist which perform better when assessed against sustainability criteria.

17.10 In these circumstances the proposed allocation cannot properly be regarded as justified, effective or consistent with national planning policy and therefore fails the recognised tests of soundness required for adoption of the RLDP.

17.11 For all of these reasons, the allocation of land at Llangan for the provision of Gypsy and Traveller pitches should be removed from the RLDP on any view.

Yours faithfully

