

Brough Hill Fair Community Association

Chairman: Billy Welch. Secretary: Bill Lloyd [REDACTED]
[REDACTED]

PC 1.3 Brough Hill Fair - The Applicant

Cumbria CC and Eden DC in their response [REP2-028] to the Applicant's ISH2 post Hearing Submissions [REP1-009], note that "Cumbria CC has been asked by the Applicant to consider taking on responsibility for future management of the Brough Hill Fair. The Council is not willing to take on this responsibility and it understands that the A66 Dualling Project - Examining Authority's Written Questions 21 Ministry of Defence is unwilling to continue in this role." Clarify for the proposed site for the Brough Hill Fair who will be taking on its management.

1. Although this question is addressed to The Applicant, we would like to point out that since time immemorial the Fair has been self-managed. At no time have councils or the landowner (MOD) taken any active role in its management. Eden District Council now provide Portaloos free of charge, whereas at one time the MOD dug a trench to create army style latrines, but no authority or landowner has ever taken rent, stewarded the event, or imposed any rules, regulations, conditions or other requirements for managing the event, which our evidence shows has been done by the Gypsy and Traveller people themselves since 1951.
2. It has been made clear that neither Cumbria County Council nor the M o D wish to take on responsibility for management in the future. We submit that our proposal for the road should follow a different route to the north, supported by our case for an overriding interest in the land in the form of a Prescriptive Easement, would solve this problem. No change would then be required in the management of the Fair, which would continue as it has done since time immemorial.
3. If necessary, in the public interest, The Brough Hill Fair Community Association (BHFA) could be incorporated as a Community Interest Company, with responsibility for management, but we would only do this on the existing site, and with the road moved to the north. This CIC could include representatives of Warcop Village and Parish Council, neighbouring farmers and elected councillors. The CIC could arrange sanitation, rubbish collection, stewarding and security. Any management undertaking would need to be agreed with the Landowner but should be independent of the Prescriptive Right to hold the Fair, which is a right in favour of the public at large and not any particular group or organisation.
4. If the road is built as has been proposed however, whilst we will continue exercise our ancient right to hold and attend the fair, we are not legally or organisationally prepared to continue to take managerial responsibility for it on the alternative site and under the conditions that are proposed. The clear dangers that are presented by the location and nature of the site, and the proposed new road create liabilities that we cannot reasonably accept. It must be the bodies who have been responsible for creating clear, predictable and avoidable danger who must take responsibility for ensuring that it does not have the consequences we foresee, and to be answerable when it does.

Brough Hill Fair Community Association

Chairman: Billy Welch. Secretary: Bill Lloyd [REDACTED]
[REDACTED]

Cultural and Heritage Assets

5. In addition to the safety concerns about a horse fair sharing a boundary with a dual carriageway, we would like to take this opportunity to set out why this Fair is so culturally important and to explain why we are seeking to retain the existing site and the essential elements which make it important.

6. As the majority of roadside stopping places have been closed to us over the whole country, and recent legislation has criminalised the stopping on roadside verges and waste ground, the nomadic characteristics which are central to our culture are being taken from us. Gypsy and Traveller people are now mostly settled on official sites where they can raise their families and access public services like everyone else, but travelling round the country for work is still the central part of the Gypsy and Traveller economy. This distinctive traditional way of life manifests itself not only in the importance of the extended family, and in our entrepreneurial economy, but also in nomadism. This is because we specialise in working on the land on seasonal work, and in doing jobs which only need doing occasionally in any given area. When the trees have been felled and the paving stones or tarmac laid in one area, we move to another area. Fruit picking, hedge laying, ditching and ground works, and horse trading, all require travelling for continuous work, and as our traditional stopping places are closed, the Gypsy Fairs become more important to maintain this nomadic lifestyle.

7. At Brough Hill Fair, and other Horse Fairs around the country, we can meet up with our extended families and camp in particular locations as we have done for centuries. These landscapes are best described as sacred to us. When we sit round the fire, in the same spot, using the same fire-irons and the same pans and kettles that our grandparents used, we feel close to our ancestors. When we look at the moon rising over a particular hill as our ancestors did, and sing the same songs that our ancestors did, it sustains us in our sense of ourselves and our history, and the long road we have come to reach this day, when another year is done. When we sit around our fires, we have a sense that our ancestors are present, as if they are with us, sustaining us and encouraging us. These considerations may be seen as romantic by non-Gypsies, but for us they are not romantic dreams, but an essential part of who we are. This relationship with the land and the place cannot be transferred in a legal document, and the special character of family gatherings round a campfire cannot survive intact if it is next to a river of heavy traffic moving at 70 – 80 miles an hour, just a few yards away, even with a noise-reduction fence in place. Building this road next to the Fair would be insensitive and destructive.

8. We believe that the removal of the traditional site which has been in use by our people for longer than anyone can remember will damage that heritage, at a time when it is already under threat from many sides.

Brough Hill Fair Community Association

Chairman: Billy Welch. Secretary: Bill Lloyd [REDACTED]
[REDACTED]

Human Rights

9. We submit that our heritage and our culture is precious, fragile and unique, and worthy of protection, which is why it is protected in law by Article 8 of the European Convention on Human Rights and the Human Rights Act. The UK Government, and all public bodies working on its behalf, have a positive obligation under the Human Rights Act 1998 and the European Convention on Human Rights to facilitate the Gypsy way of life. (See '*Buckley v UK*' (1997) 23 E.H.R.R. 101; '*Chapman v UK*' (2001) 33 E.H.R.R. 18). There are also positive obligations on public bodies contained in the Equality Act 2010 to ensure that any action (or inaction) they take will not discriminate against individuals on the basis of Race, or Religion or Belief.

Intangible Cultural Heritage

10. The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, although not yet adopted in England and Wales, provides significant support for our case. The introductory text (submitted for ease of reference) recognises the clear benefits that the safeguarding of the Intangible Cultural Heritage (such as that of the Travelling Communities as briefly described above) has to offer to the international objectives of cultural diversity, environmental and social sustainability and human creativity.

11. We submit that the Cultural and Heritage assets of Brough Hill Fair fall exactly into this definition. In order to protect it, the route of the new road should be moved about 200 metres to the north, so that our traditional way of life and our historical association with this place can be preserved for future generations. If there had been a church on the site of Brough Hill Fair, or an ancient stone circle, we submit that there would have been little argument that the new road should not go right through the churchyard or intrude on to the heritage site. We submit that our heritage is worthy of the same respect.

Equality Impact Assessment.

12. Section 149 of the Equality Act 2010 requires public authorities to have due regard to equality considerations when exercising their functions. We have not seen any Equality Impact Assessment carried out by the Applicant into the effects of their proposals on Gypsy culture, but we would like to present our evidence in more detail if such an assessment can be started.

Brough Hill Fair Community Association

Chairman: Billy Welch. Secretary: Bill Lloyd [REDACTED]
[REDACTED]

Environmental Statement

We note that whilst the material elements of the Cultural Heritage of the area have been considered and discussed at Chapter 8 of the Environmental Statement, no mention has been made of the long history of the Brough Hill Fair, and the contribution that this makes to the heritage of the area.

13. Chapter 8 (Cultural Heritage) section of the Application Environmental Statement makes no mention of the history of the Brough Hill Fair site. We submit that this contravenes the stated policies in the National Policy Statement for National Networks:

5.127 The applicant should describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant Historic Environment Record should have been consulted and the heritage assets assessed using appropriate expertise.

5.140 Where the loss of the whole or part of a heritage asset's significance is justified, the Secretary of State should require the applicant to record and advance understanding of the significance of the heritage asset before it is lost (wholly or in part)

14. Similarly, the Medieval section of the Environmental Statement Chapter 8 makes no mention of the Charter of 1330 which granted the rights to the Fair, although the Bowes Charter is noted and discussed. This is a significant omission in the context that references to the Brough Charter of 1330 figure in several historical and tourist guides to the township, including *Visit Eden* and *Cumbria County History*, and *The Inn at Brough*.

Broader effects of loss of heritage assets on official definitions of identity and culture.

15. To make matters related to these proposals more pressing, the survival of the Gypsy Culture and of nomadic cultures more broadly depends on the ability of nomadic peoples to access culturally appropriate homes from which to travel, where they can live in safety and security and access the same social and economic opportunities as other citizens. There are no longer obligations on Local Councils to provide these sites. Rather, the Government seeks to meet these positive and international legal obligations by providing Planning Policy for Gypsy people and other travelling communities so that we may (in theory) provide sites for ourselves. Access to the National Policy which supports this site provision – Planning Policy for Traveller Sites – depends, explicitly, on the applicant family's ability to demonstrate that they continue to follow a nomadic habit of life. That is to say, that they travel for several weeks of the year, and that this nomadism has some economic purpose. Travelling to and from the horse fairs,

Brough Hill Fair Community Association

Chairman: Billy Welch. Secretary: Bill Lloyd [REDACTED]
[REDACTED]

and carrying on business at these fairs, now represent one of the only opportunities for families to meet the definition that will provide them with access to a safe home. Any intervention by a public body that interferes with this will be unlawful under the Human Rights Act 1998 and the European Convention on Human Rights unless it is a 'proportionate means of achieving a legitimate aim.'

16. In the light of the clear alternative to the route of the road that has been put forward by Billy Welch, which is more than capable of meeting the legitimate aim pursued by the Applicant whilst also protecting the cultural rights and heritage of the Gypsy people for generations to come - both on this land and far beyond - any decision to adopt a route which has such a clear and serious impact on the sustainability and safety of the Brough Hill Fair without robust legal and practical justification will be unlawful.

Bill Lloyd
Billy Welch
Gypsy and Traveller representatives.
14/02/2023