



## **A66 Northern Trans-Pennine Project Examination**

**Deadline 6 Submission, 4 April 2023 on behalf of the Brough Hill Fair Community Association**

**Responding to the Examination Authority's Question HE 2.1 relating to:**

**Brough Hill Fair Intangible Heritage**

**(And providing an update of our Deadline 5, Post-Hearing Submission relating to Environmental Statement, Intangible Cultural Heritage and Equality Impact Assessment)**

## **1.0 Introduction**

- 1.1 In response to the Examining Authority's Question HE 2.1 to National Highways, we are taking the opportunity to update our Deadline 5 submission relating to Environmental Statement, Intangible Cultural Heritage, and Equality Impact Assessment.
- 1.2 The Community Association formally requests the Examining Authority to require the Applicant to include the Intangible Cultural Heritage of the Brough Hill Fair in its Environmental Management Plan, as required by Legislation, and to consult with the Equality and Human Rights Commission and the Homes and Communities Agency accordingly.
- 1.3 We would invite the Examining Authority to find that relocation of the Brough Hill Fair to the Bivvy Site is unacceptable and to require National Highways to develop and appraise reasonable alternatives for the section of the A66 east of Warcop, including an alternative based on the 'Billy Welch Straight Line' alignment, retaining the Brough Hill Fair in its present location and retaining the existing A66 as a local access road.
- 1.4 While our strong preference is for moving the road alignment so that the Fair can be retained in its present location, we are not necessarily opposed to relocation, provided the alternative site for the Fair is at least an adequate replacement and, if possible, an enhancement of the existing site. We would invite the Examining Authority to require National Highways to develop and appraise reasonable alternatives for the relocation of the Fair.
- 1.5 In parallel with this Submission, we are submitting a Submission on the Draft Statement of Common Ground between National Highways and the Gypsy and Traveller Representatives. That Submission indicates that at a number of points, the Draft Statement of Common Ground misunderstands or misrepresents the Brough Hill Fair Community Association's position on behalf of the Gypsy and Traveller community.

- 1.6 Taken together this Submission and that on the Draft Statement of Common Ground establish that National Highways has substantially failed to understand and take account of the major cultural importance of the Fair, and as a consequence, has persisted in promoting an approach which is both contrary to the Infrastructure Planning (Environmental Impact Assessment) Regulations, the Design Manual for Roads and Bridges Cultural Heritage Assessment and the National Policy Statement for National Networks, and is wholly unacceptable to the Gypsy and Traveller community, as well as to the owners of Eastfield Farm, which adjoins the Bivvy site.
- 1.7 Finally, we would ask the Examining Authority not to support the inclusion of paragraph 36 (3) of the Draft Development Consent Order, allowing the Highways Authority to temporarily suspend the Brough Hill Fair rights for the purposes of the construction of the authorised development.

## **2.0 Background**

- 2.1 On behalf of the Romany Gypsy community and others who visit the Fair, the Brough Hill Fair Community Association has attempted to engage in the A66 Project process, including in regard to National Highway's (NH's) proposals to relocate the site. Its representations have focused on:
- the historic heritage of the Fair (Rep4 Representations 048 to 052 refer);
  - the legal rights to the Fair and the potential mechanisms to relocate it; and
  - promoting an alternative alignment for the road, '*the Billy Welch straight line*' which would move the road alignment to the north and allow the Fair to remain in its current location with access from the existing A66.
- 2.2 The Community Association was increasingly aware that it did not have the full range of planning, transport, environmental and legal expertise to

represent the interests of Gypsy and Traveller users of the Fair through the complex infrastructure planning process. They approached Abbie North who helped draft the Deadline 4 Submissions and contributed, together with Mr Billy Welsh, to the oral hearing on 2 March.

- 2.3 In drafting the Deadline 4 Submissions Abbie North became aware, contrary to the requirements of the Infrastructure Planning (Environmental Impact Assessment) Regulations, that the Environmental Statement failed to identify the likely significant effects of the proposed road scheme on the Brough Hill Fair site and how those likely significant effects could be avoided, prevented, reduced or offset. She became aware that the cultural significance of the Fair for the Gypsy and Traveller community raised Equality Act and Human Rights considerations, which had not been addressed in the Development Consent Order process. She raised these issues orally at the session on 2 March (Minutes 40.0, 41.45, 42.21 refer) and made the point that cultural heritage and Equality Impact are closely related and should complement and reinforce each other.
- 2.4 Following the oral hearings, we were appointed to articulate those concerns on behalf of the Community Association. This representation expands on the points in the Deadline 4 Submissions and that Abbie North made orally.
- 2.5 Reflecting the late stage in the process when we became involved and the complex documentation, our Deadline 5 Submission represented an interim position, and in the three weeks since Deadline 5 we have developed a greater understanding of some of the issues, and visited the area. On that basis we have taken the opportunity to use this Submission to update our Deadline 5, Post-Hearing Submission relating to Environmental Statement, Intangible Cultural Heritage and Equality Impact Assessment

### **3.0 Legal and Procedural Requirements**

## **The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009**

- 3.1 Regulation 3 provides, at Schedule 3, a list of *'persons prescribed for the purposes of section 42(a).'* These include the Equality and Human Rights Commission, and the Homes and Communities Agency, whose objectives include to *'contribute to the creation, regeneration or development of communities in England or their continued well-being'*<sup>1</sup> and to *'contribute to the achievement of sustainable development and good design'*<sup>2</sup> with a view to *'meeting the needs of people living in England.'*<sup>3</sup>
- 3.2 Regulation 5(2)(a) requires that applications for an order granting development consent must be accompanied by *'the environmental statement required pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulation 2009 and any scoping or screening opinions or directions'*

### **3.3 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017**

#### Environmental statements

14. (1) An application for an order granting development consent for EIA development must be accompanied by an environmental statement.

(2) An environmental statement is a statement which includes at least—

(a) a description of the proposed development comprising information on the site, design, size and other relevant features of the development;

(b) a description of the likely significant effects of the proposed development on the environment;

(c) a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;

(d) a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and

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<sup>1</sup> S2(c) Housing and Regeneration Act 2008

<sup>2</sup> S2(d) Housing and Regeneration Act 2008

<sup>3</sup> S2 Housing and Regeneration Act 2008

an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;

(e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and

(f) any additional information specified in Schedule 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected.

(3) The environmental statement referred to in paragraph (1) must—

(a) where a scoping opinion has been adopted, be based on the most recent scoping opinion adopted (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion);

(b) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment; and

(c) be prepared, taking into account the results of any relevant UK environmental assessment, which is reasonably available to the applicant with a view to avoiding duplication of assessment.

(4) In order to ensure the completeness and quality of the environmental statement—

(a) the applicant must ensure that the environmental statement is prepared by competent experts; and

(b) the environmental statement must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of such experts.

### 3.4 **Design Manual for Roads & Bridges LA106 Cultural Heritage Assessment, Revision 1, 2019**

At page 6 of the LA106 Guidance cultural heritage is defined as: '*Historic monuments, historic groups of buildings and/or **historic sites**.*' A cultural heritage resource is defined as '*A **building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest.***' (Our emphasis). The Guidance is explicit that these resources may be designated or undesignated.

3.5 The Guidance states:

*1.3. 'Environmental assessments must, in line with the 2014/52/EU [Ref 3.N], identify, describe and assess the absorption capacity of sites of historical, cultural or archaeological significance; and*

*1.4 For the purposes of cultural heritage assessments, landscapes of historical, cultural or archaeological significance shall be assessed as a cultural heritage resource.*

3.6 The Assessment Methodology at Paragraph 3 requires that the scoping assessment addresses whether any heritage resource is *'in the footprint of the scheme or outside that footprint but still potentially physically affected by it?'*<sup>4</sup>; or *'in the footprint of the scheme, within the zone of visual influence or potentially affected by noise?'*<sup>5</sup> At paragraph 3.3 it requires: *'Where the response to one or more of the scoping assessment questions is 'yes', 'further assessment shall be undertaken'*. Paragraph 3.4. requires that: *'Scoping shall apply established and reliable design, mitigation and best practice measures when reporting against the scoping assessment questions.'*

### 3.7 **National Policy Statement for National Networks, 2014 (NPSNN)**

The A66 Northern Trans-Pennine Project is subject to the European Environmental Impact Assessment Directive. Paragraph 4.15 of the NPSNN states: *'The Directive specifically requires an environmental impact assessment to identify, describe and assess effects on', amongst other things, human beings, [...] the landscape [...] cultural heritage, and the interaction between them.* Paragraph 4.15 states: *'Any requests for environmental information not included in the original environmental statement should be proportionate and focus only on significant effects. In this NPS, the terms 'effects,' 'impacts' or 'benefits' should accordingly be understood to mean likely significant effects, impacts or benefits.'*

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<sup>4</sup> 3.2(1)

<sup>5</sup> 3.2(2)

3.8 Paragraph 5.127 continues: *'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'*; and *'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 applicants to record and advance understanding of the significance of the heritage asset before it is lost (wholly or in part)'*.

#### **4.0 The A66 Project and the Brough Hill Fair Site**

- 4.1 The Brough Hill Fair occupies land to the east of the village of Warcop and south of the existing A66. The site (Parcel ABR06 on TR010062-000348-3.3 Environmental Statement Figure 8.10.2) fronts onto and is accessed directly from the existing A66.
- 4.2 While during its long lifetime, the fair has occupied a number of locations, the right to hold the fair for four days in September is ancient, going back to the Charter of 1330 (Document TR010062).
- 4.3 Since 1947 the Fair has occupied its current site on Ministry of Defence (MoD) owned land. The MoD unlocks the gate, which enables the Fair to exercise its right to function for a week in September around the dates of the fair. The land is leased to a local farmer and is used for grazing the rest of the year.
- 4.4 For at least the last 150 years Brough Hill has principally been a Romany Gypsy horse fair. Until the early 1970s, it was as busy as the Appleby Fair, and, for a number of families, it remains a highpoint of their year. Although not as busy as it once was, it is of major historical and cultural importance for

the Romany and Traveller communities, comparable to the Appleby Fair. In terms of its cultural importance, it should be thought of as equivalent to a Grade 1 listed building or a major archaeological site.

- 4.5 Mr Welch makes the point that we should not judge the importance of the Brough Hill Fair by the way the numbers attending have fallen off in recent years. This is a consequence of the increase in traffic on the A66 in recent decades combined with the fact the access is through two gates neither of which provides safe access directly off the narrow, heavily trafficked existing A66. The access means getting into and out of the site when towing a caravan or a horse drawn vehicle is difficult and potentially dangerous. The fence along the road does not provide a safe barrier to prevent horses escaping onto the A66. Mr Welch believes, if we can provide a site in the countryside with safe access, which is not dominated by traffic and traffic noise, that the hunger among Gypsy people for traditional fairs in the countryside will mean people will come to Brough Hill Fair in large numbers.
- 4.6 NH's Appleby to Brough preferred route requires acquisition of more than two-thirds of the Fair site. The acquisition of the land combined with the impacts of the physical structures of the road, and of its heavy and increasing traffic will mean the Fair will not be able to continue in its current location, and a new site is required
- 4.7 NH has attempted to identify an alternative site for relocation of the Fair. It has identified that part of the Ministry of Defence 'Bivvy' site which it does not need for the road, together with the remaining sliver of the existing site not required for the road. The proposed site is shown on the attached plan 'Bivvy site from TR010062-001085'. For the reasons at paras 6.7 - 6.13, the Bivvy site would not be an acceptable relocation site. It would lead to the loss of the qualities which are valued by Gypsy people and would likely result in the death of the Fair.
- 4.8 The identification of the Bivvy site has not been carried out based on effective engagement with the Community Association. It appears the site has been

identified on the basis the land could be made available, rather than by a serious attempt to understand what is important to Gypsy people about the Fair and the site that it accommodates it. National Highways appears to have assumed that any site that is big enough will be good enough. That failure to understand the cultural importance of the site is resented by Gypsies, but is all too typical of non-Gypsy bodies. A central part of our case is that the Bivvy site, together with the remaining sliver of the existing Fair site, will not provide an appropriate or acceptable location and environment for the Fair.

4.9 A central part of the Community Association's submissions has been the promotion of an alternative alignment. That alignment, known locally as the Billy Welch straight line, would shift the road some 100m to the north and away from the Fair site. It would allow the Fair to remain in its existing location with access from the existing A66. The approximate route of Mr Welch's alternative alignment is shown on the drawings in the Community Association's response to the Examining Authority's question PC1.1. In its response to question PC1.1 NH dismisses the Billy Welch alignment, but also makes clear that it has not carried out the necessary technical work to develop and properly assess Mr Welch's proposal.

## **5.0 Why NH's Approach to Environmental Impact Assessment is Flawed and Unlawful**

5.1 Paragraph 9.1.3 of the Scoping Report, TR010062 states: '*The methodology used will follow the requirements of DMRB LA 106 Cultural Heritage Assessment*', (the LA 106 Guidance).

5.2 The site of the Brough Hill Fair is a '*cultural heritage resource*' within the meaning of the Guidance. As the Applicant's own evidence shows, the Brough Hill Fair is of major cultural significance to the Gypsy and Traveller communities, and requires consideration in the application for a Development Consent Order.

- 5.3 The record of consultation with the Brough Hill Fair Committee shows that the Applicant was aware of the significance of the Fair to the Community from an early stage. Document TR010062, dated 7<sup>th</sup> June 2022 provides a 'Draft Statement of Common Ground' with the Gypsy and Traveller Representatives. This includes, at paragraph 2, a 'Record of Engagement' with the Brough Hill Fair Committee which shows 32 separate communications with Mr Lloyd and Mr Welch in relation to the Brough Hill Fair beginning as far back as 3 February 2021.
- 5.4 The 1<sup>st</sup> Revision of the Outline Heritage Mitigation Strategy, Document TR010062, dated 13 June 2022, which post-dates the beginning of these communications by some 5 months, includes, at p10, specific reference to 'The Appleby Horse Fair and other Romani heritage.' The 1<sup>st</sup> Revision of the Draft Consent Order, also dated 13 June 2022 includes, at Article 36, provision for the undertaker to '*transfer the Brough Hill Fair rights to the replacement Brough Hill Fair site*'.
- 5.5 Given that the Applicant was clearly aware of the importance of the Brough Hill Fair to Gypsy and Traveller communities, and of the relevance of this kind of event to the Cultural Heritage of the area through which the proposed road expansion proceeds; it is clear that the Applicant identified the Brough Hill Fair site as a ***site, place, area or landscape [...] having a degree of significance meriting consideration in planning decisions, because of its heritage interest.*** (p.6 LA106 Guidance).
- 5.6 Given the Applicant's early acknowledgement of the issue, it is difficult to understand why the Brough Hill Fair was not considered in the Scoping Report, as clearly it ought to have been.
- 5.7 We note that Historic England was consulted on the Scoping Report, but that Brough Hill Fair was not referenced in the documents for their assessment. In the context of its Report of July 2020; '*Advising on Historic England's Future Engagement with Intangible Cultural Heritage*' Historic England may have

been well placed to advise NH on the need to assess the issues and provide effective mitigation.

- 5.8 Contrary to the requirements of Regulation 5 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations, 2009, neither the Equality and Human Rights Commission nor the Homes and Communities Agency are listed among the consultees at the Option Identification Stage of the Scoping Assessment.
- 5.9 At page 10 TR10062, the Environmental Management Plan Outline Heritage Management Plan acknowledges that the annual Appleby Horse Fair represents an Intangible Heritage Asset. There is a passing reference to 'Other Romani Heritage', but it is not clear what that refers to. No reference is made to Brough Hill Fair.
- 5.10 The Brough Hill Fair is of similar cultural significance as the Appleby Fair. It is difficult to understand why it has not been included within the Environmental Management Plan, given the explicit recognition by the Applicant:
- of the need to assess and provide mitigation for any harm to the Intangible Cultural Heritage caused by the proposed road within the Plan;
  - of its recognition that Appleby, which is exactly the same kind of fair as Brough Hill, does represent Intangible Cultural Heritage that should be considered within the Plan; and
  - that the relevance and importance of the Brough Hill Fair to the Gypsy and Traveller community merits consideration *of some kind* in its application for a Development Consent Order.
- 5.11 The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, although not yet adopted in England and Wales, provides support for our case. The introductory text, included with our Deadline 4 submissions recognises the benefits that the safeguarding of Intangible Cultural Heritage has in supporting cultural diversity, environmental and social sustainability, and human creativity.

- 5.12 Their nomadic character, not investing in property, but moving on to other locations for work or to meet up with family, necessarily means Gypsy people do not leave much in the way of buildings and physical remains. That does not mean the land where people have stopped does not have significance and meaning for them. Rather, because the ability to camp and live outdoors, and to meet up with friends and family is so central to the Gypsy way of life, and because many historic stopping places have been closed, those places which were visited by their parents and grand-parents where people are still able to live in a more traditional way are particularly important and valued. Sites like Brough Hill are a crucial part of the historic cultural heritage and seen by Romany Gypsies as sacred.
- 5.13 The Appleby Fair is the biggest event in the English Romany year. People converge on the town in the weeks before and move away from area in the weeks afterwards. During Appleby week people camp over a wide area of countryside around the town. The A66 is important for reaching Appleby, and you see many caravans and horse drawn vehicles travelling along it, and stopping with their horses at roadside stopping places adjoining or near to the A66. The whole area is of cultural importance to Gypsies. The Brough Hill site is a key feature of the area, as well as being of major importance in itself.
- 5.14 Paras 5 – 8 of the Community Association's response to Question PC1.3 stress how important for Gypsy people is retaining aspects of nomadism. Gypsy people resent the ever increasing barriers to travelling. They regret very much the way increasingly draconian legislation has made it more and more impossible to stop at the side of the road. They regret the disappearance of some of the fairs. They point out how the construction of earlier sections of dual-carriageway along the A66 has led to the loss of or the reduction in size of former stopping places eg at Smallways by the Rokeby Inn. Against that context, substantial weight should be attached to avoiding the loss of, or the degrading of, the Brough Hill Fair site.

- 5.15 While the Outline Heritage Management Plan makes no reference to Brough Hill Fair, by its efforts to relocate the Fair NH has effectively acknowledged the Fair's heritage importance. Similarly, while the Outline Heritage Management Plan says nothing, the Equalities Impact Assessment makes a number of references to Brough Hill Fair, including at page 15, in Tables 7, 9 & 10, and at pages 28 and 29.<sup>6</sup>
- 5.16 It is hard not to interpret the token reference to Appleby and the ignoring of Brough Hill as typical of a context where the cultural heritage and traditions of the Gypsy way of life are not understood and appropriately valued by many in the non-Gypsy population.
- 5.17 In our submission, the approach of the Environmental Management Plan Outline Heritage Management Plan in not understanding the wider significance of the area around Appleby and in ignoring Brough Hill Fair contravenes the National Policy Statement for National Networks referenced at paras 3.7 & 3.8 above.
- 5.18 It is inconsistent with the positive obligation imposed on the UK Government to protect the Gypsy way of life through Article 8 of the European Convention on Human Rights and the Human Rights Act. (See the references to the Buckley and Chapman judgements at para 9 of the Community Association's response to Question PC1.3). It risks acting contrary to the Prohibition of Discrimination under Article 14.
- 5.19 It is difficult to see how it is consistent with the Public Sector Equality Duty under s.149 of the Equality Act, which among other duties requires public bodies '*to advance equality of opportunity between persons who share a protected characteristic and persons who do not share it*'.

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<sup>6</sup> However, we would strongly dispute the claimed positive benefits from the relocation of the Fair to the Bivvy site at page 42.

5.17 Despite the clear knowledge of the Applicant of the importance of the Brough Hill Fair to the Gypsy and Traveller Communities, the Equality and Human Rights Commission does not appear to have been consulted in the process of this application. We request that the Examining Authority now requires the Applicant to revise the Environmental Management Plan to include the Brough Hill Fair as a part of the Cultural Heritage, and to consult with the Equality and Human Rights Commission and the Homes and Communities Agency accordingly.

## **6.0 Addressing the Deficiencies in the Environmental Statement**

6.1 All of the above means the Environmental Statement is required to describe the likely significant effects of the proposed development on the Brough Hill Fair and on the wider Appleby landscape, working closely with the Gypsy and Traveller communities and drawing on appropriate expertise; together with the features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset the likely significant adverse effects.

6.2 It would then need to identify reasonable alternatives for addressing the impacts on the Fair, and the reasons for the option chosen.

6.3 What National Highways has effectively done is to present a single option, the preferred route, together with relocating the Fair on to the Bivvy site and the remaining sliver of the existing site.

6.4 Document 7.32 Post Hearing Submission – Response to Examining Authority’s Request Under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair establishes that, although NH had considered a wider range of sites for the relocation of the Fair, that is the Option 3, Opposite Street House, Option 4, West of Warcop sites, together with Option 5, the Heron Family proposal, it rejected those alternatives on the basis of its interpretation of the needs of the Gypsy and Traveller community without

consulting the Brough Hill Fair Community Association. Subject to the caveat in the 2<sup>nd</sup> bullet to para 6.26 we broadly support the reasoning in the report for not considering Options 3, 4 or 5 suitable.

- 6.5 While Options 3, 4 and 5 are not appropriate and acceptable neither are the alternative replacement sites, Options 1 and 2 on which NH did consult the Community Association. It is apparent that they were proposed because the land could be made available, rather than because they were based on an understanding of what is what is culturally and functionally important to the Gypsy & Traveller communities about the Fair.
- 6.6 **Option 2 The 'eastern site' at Mains House, Brough.** The proposed alternative site at Brough is not suitable. It is far too small, would be dominated by the structures of the highway and its junction, and has flooding issues.
- 6.7 **Option 1, The Bivvy site.** On the basis it does not avoid, prevent, reduce or offset the likely significant effects on the Fair, the Bivvy site is not an appropriate or acceptable solution to accommodating the Fair. While it is as large as the existing site, it only achieves that size by including the remaining narrow sliver of the existing Fair site, which is not required for the road. That section may be too narrow to be useful for people towing caravans or horse drawn wagons.
- 6.8 The highway access would not be safe, including for horse drawn vehicles, because the Fair would be dependent on sharing the access road with the complex of activities linked to Eastfield Farm, including the 24 hour haulage business and concrete plant.
- 6.9 The Bivvy site would run along the new A66 and would be relatively wide, but shallow in depth. It would be dominated by the structures of the road. To its south would be the massive structures of Eastfield Farm, which accommodates industrial scale barns, housing literally hundreds of cows. The proposed noise / horse security fencing along the A66 would add to the

unattractive enclosed character of the site and would not make the site acceptable.

- 6.10 The cultural value of the site is closely linked to the environment it will offer, and is central to why the Bivvy site is not acceptable as a replacement site for the Fair. What people value at fairs is the ability to camp in the countryside with their horses, to meet up with family and friends, and to do that in locations they visited as children and that were visited in their turn by their parents, grand-parents and previous generations.
- 6.11 The powers granted through the Caravan Sites and Control of Development Act, 1960 allowed local authorities to exclude Gypsy people from the Common Land where they had camped for centuries and created an accommodation crisis. A significant number of local authority sites were developed following the 1968 Caravan Sites Act. Many of the sites were located on land nobody else wanted, such as adjoining factories, sewage works and major roads, and those sites still represent a significant proportion of Traveller accommodation.
- 6.12 Rather than in accordance with Gypsy people's cultural preference for sites in the countryside among green fields, the Bivvy site would provide an industrial type environment, which people which people are often seeking to escape from when visiting the horse fairs. If permission is granted to construct the road through the Fair site and to relocate the Fair onto the Bivvy site, National Highways would be replicating what happened in the 1960s and 1970s when Traveller people were corralled into local authority sites in locations not acceptable to anyone else. The qualities of the environment it will provide are why the Bivvy site will not be attractive to people, which will probably lead to the Fair's death, and to a profound further cultural loss to Gypsy people.
- 6.13 The recent site visit attended by Billy Welch together with representatives of the Heron family and National Highway's Health & Safety adviser raised issues about the health and safety risks from locating the Fair on the Bivvy site adjacent to the industrial scale operation of Eastfield Farm, and in regard

to the lack of clarity about who would be liable if there was an accident consequent on a decision to relocate the Fair onto the Bivvy site. Together with the Heron family's agent, we have written to the Examining Authority, asking them to require NH to commission a comprehensive and independent risk assessment of the Bivvy site and of reasonable alternative sites.

### **Reasonable Alternatives**

- 6.14 On the basis of the cultural heritage importance of the Fair we would invite the Examining Authority to reject National Highway's proposal to include the relocation of the Fair onto the Bivvy site in the Development Consent Order, and to require NH to develop reasonable alternatives in order to avoid, prevent or reduce and, if possible, offset the likely significant adverse effects on the Fair.
- 6.15 A road alignment based on the Billy Welch straight line with the Brough Hill Fair retained in its existing location accessed off the old A66 represents the most obvious reasonable alternative to NH's single option of the preferred route, with the Fair relocated onto the Bivvy site. However, it is clear from NH's response to the Examining Authority question PC 1.1 that it has not carried out the necessary technical work to develop and properly assess Mr Welch's proposal: *'due to its impacts on both the AONB & the operational MoD land, the Applicant did not believe this requested alternative alignment to be an achievable proposal likely to be granted Development Consent. As such the Billy Welch Straight Line was not developed or considered further.'*
- 6.16 We do not accept all of NH's criticisms of the Billy Welch alignment in its response to the examining authority's questions. That the road would extend into the AONB is a factor to which weight should be attached, but it should not be determinative. The AONB boundary would appear to have been defined by the current A66. Elsewhere substantial sections of the A66 Project will go through the AONB. The MoD has substantial land-holdings and we would ask

the Examining Authority to be convinced that making the land available for a re-routed A66 would significantly compromise the MoD's operational needs.

6.17 A full appraisal of the reasonable alternative based on the Billy Welch alignment and retaining the Fair in its current location is likely to establish that such an option has advantages, and it is for such reasons that the approach is supported by Warcop Parish Council, and most local residents and land owners. The advantages include:

- Retaining the Fair in its current location. On the basis that it has been the Fair site since 1947 the existing site has historical cultural value, which no replacement site could have;
- Locating the Fair in a rural location with views of the hills;
- The above factors will allow the Fair to flourish, which will reinforce Gypsy cultural identity and contribute to addressing inequality. It will have local economic benefits from the increased expenditure during the Fair;
- Putting the road in a cutting will help screen the road and its traffic, including as seen in views from within the AONB. A cutting may contribute to limiting noise and light pollution;
- Allowing the old A66 to be retained for local access and use by farm vehicles, cyclists, pedestrians, and horse riders. Such a route would be much more attractive, compared with NH's proposal for a combined pedestrian cycle route along the north side of the new A66, which will be inherently unattractive to walkers and cyclists.<sup>7</sup>

6.18 The above points mean our firm preference is for an alternative based on the Billy Welch alignment, and retaining the Fair in its current location.

6.19 At the same time, we recognise there may be reasons for confirming the Preferred Route on the current alignment. While emphasising that a relocated

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<sup>7</sup> In the time available we have had difficulties reading all the plans. If we have interpreted them correctly, the retained A66 would be able to provide a pedestrian, cycle and pedestrian route all the way into Brough. If this is or can be made the case, it would add substantially to the advantages of the alternative we favour.

site would not have the same historic cultural value of the existing site, we are not necessarily opposed to relocation of the Fair, provided the alternative site is at least an adequate replacement and, if possible, an enhancement of the existing site.

- 6.20 Mr Welch has confirmed that a suitable site would meet the following criteria:
- a) Within reasonable distance, perhaps 1 mile, of the existing location, or of Brough itself;
  - b) With a usable area of at least the size of the existing site (5.4 acres), or larger, to allow for the future growth of the Fair;
  - c) Well drained, not liable to flooding and reasonably level for the siting of caravans;
  - d) With safe highway access, including for horse drawn vehicles from a road that is not subject to heavy traffic or heavy goods vehicles;
  - e) In the countryside with views of the hills, that is to say a site that provides a comparably attractive environment to the existing site as it was before the major growth in traffic of recent decades on the A66 reduced the site's attractiveness;
  - f) Not dominated by the structures of a major highway and not requiring a solid fence barrier to reduce noise and to keep horses from escaping onto the highway;
  - f) Provided with water supply.

6.21 The above criteria are similar to those at para 3.1.2 of 7.32, NH's Response to the Examining Authority's Request under Agenda Item 10: Replacement Sites Considered for Brough Hill Fair. The main differences are:

- We would be open to considering a site to the east of Brough;
- We do not agree that land within the MoD training range and camp should necessarily be excluded;
- We do not agree that land within the AONB should necessarily be excluded; and
- While desirable, the site we do not agree that site identification should be limited to land that can be acquired by agreement.

- 6.22 Our approach to locations east of Brough, MoD land, land in the AONB, and land which might need to be compulsorily purchased will increase the area from which National Highways can identify acceptable sites. This is urgent because the Development Consent Order is required to ensure the retention of the Fair on an acceptable site. If this is not be achieved by shifting the road (our first preference), an acceptable relocation site needs to be found, and the Bivvy site is not acceptable.
- 6.23 In relation to the MoD land, land within the AONB, and land which might need to be compulsorily purchased, we would make the point that all that is required is a grassed site for the four days a year of the Fair, plus two days before to set up, and two days afterwards to take down. The MoD will be able to confirm that the Community Association is punctilious in ensuring the land is cleared of any rubbish and in good condition after the Fair. On that basis, any harm to the AONB would be minimal, the burden of proof to establish exceptional circumstances would be very low, any disruption to MoD activity could be programmed for, and the land could remain in its normal use for the rest of the year. For most potential sites stock grazing is likely to be the default use.
- 6.24 The current site of Brough Hill Fair was purchased by the Ministry of Defence by a conveyance from Veteripont Estates in 1947. The First Schedule of that conveyance included several other land parcels, in addition to the current site. The Third Schedule of that Conveyance stated that the whole of the property, i.e., all the other parcels listed in the First Schedule, was transferred subject to the right of holding the Brough Hill Fair. The Conveyance was not specific as to the Rights being attached to any single parcel, and the Rights reserved in Schedule Three therefore apply to all the parcels listed in Schedule 1.
- 6.25. Three points follow from this:

- a. Without prejudice to their suitability, those several parcels could be one starting point for identifying a suitable site, since the Rights conveyed in 1947 are attached to all those parcels;
- b. If the current site is to be denied to us, then if one or more of the other parcels specified in Schedule 1 can be shown to meet our requirements, then the Brough Hill Fair has a legal right to occupy one of those parcels; and
- c. If none of the parcels listed in Schedule 1 are suitable, the rights set out in Schedule Three will not apply, and an alternative replacement site will be required. By definition, this will be on a separate parcel not protected by the Rights transferred in the 1947 Conveyance, which is why we claim a Prescriptive right attached to the current site, which can only be transferred by a Deed.

6.26 In identifying reasonable alternatives for the relocation of the Fair site, we would also make the following points:

- The Brough Hill Fair Community Association has confirmed that, if the Fair is required to relocate, their first preference would be for a suitable site within safe and easy walking distance of Brough village, say one third of a mile;
- While we broadly support the reasoning for rejecting Options 3, 4 and 5, the urgency of identifying reasonable alternative location sites may justify revisiting how those sites are developed. For instance, land in Option 3 or 4 could be made available for the Fair, if flood compensation works could be accommodated elsewhere; and
- If a suitable site is to be identified quickly, it is essential that Gypsy and Traveller representatives are actively involved throughout that process, rather than National Highways developing options based on its own interpretation of what the Gypsy and Traveller community needs, and only engaging the community once they have identified what they consider a suitable site.

## **7.0 Para 36 (3) of the Draft Development Consent Order**

- 7.1 We object to Para 36 (3) of the Draft Development Consent Order, which would allow National Highways to suspend the right to hold the Brough Hill Fair for the purpose of construction of the authorised development.
- 7.2 That provision is a consequence of the proposal to build the new A66 through the existing site with the Fair relocated onto the Bivvy site, and extremely close to the line of the road. It is a consequence of National Highways not valuing and understanding the Fair and believing that relocation onto any available piece of land would be acceptable.
- 7.3 If the approach we advocate of developing reasonable alternatives, including both the rerouting of the road, and relocation of the Fair onto a site which fully meets the para 6.20 criteria, para 36 (3) of the Draft Development Consent Order will not be required because the Fair will be able to remain in situ while the road is built on the alternative alignment, or it will be able to relocate to the new site in advance of road construction works.

Michael Hargreaves Planning

4 April 2023