

## PLANNING COMMITTEE – 5 JUNE 2018

<b>Application No:</b>	<b>17/02087/FUL</b>	
<b>Proposal:</b>	<b>Change of use of land to a private gypsy and traveller caravan site consisting of one mobile home, one amenity building and two touring caravans and associated works</b>	
<b>Location:</b>	<b>Land at Tolney Lane, Newark</b>	
<b>Applicant:</b>	<b>Mrs K Webster</b>	
<b>Registered:</b>	<b>29 January 2018</b>	<b>Target Date: 26 March 2018</b>

### The Site

The application site is situated west of the Newark Urban Area as defined on the Proposals Map of the Allocation and Development Management DPD, within the Rural Area as set out within the Core Strategy and within the countryside. The site sits on the northern side of Tolney Lane which runs in a westerly direction from the Great North Road and which leads to a dead end. The majority of the section of Tolney Lane that runs between the application site and the Great North Road is located within Flood Zone 3. Half way down Tolney Lane, the road forks into two and the northern arm runs towards the railway line. The application site lies adjacent to the railway line boundary and forms the north-western corner of a larger site known locally as Shannon Falls which is located between the existing gypsy and traveller sites known as Church View to the east and Hoes Farm to the west. The site is also located adjacent to two brick built residential properties known as Mill Cottage and Mill House, which are to the west of the application site.

The site measures 0.1 hectare in area and is roughly rectangular in shape. It measures approx 55 metres wide by approx 35 metres deep. The application form describes the site as vacant and the last use of the land as unknown. There are some remains of close boarded timber fencing along the site's south-west boundary, but is predominantly bounded by mounds of earth and large blocks of masonry. The existing boundary treatment to the northern boundary with the railway line is a 2m high steel palisade fence and some sporadic tree planting. The south eastern boundary appears to be defined by posts with no means of enclosure between. To the east and south-east of this application site is the remainder of the larger Shannon Fall site, which is currently vacant.

The site is located within Flood Zone 2 of the Environment Agency's Flood Map/Strategic Flood Risk Assessment, which means it is at medium risk of flooding. Historically the application site (together with the land to the east and south-east, known as Shannon Falls) has been the subject of unauthorized tipping and the raising of ground levels which occurred in 2001 and this remains the subject of an extant Enforcement Notice which requires the lowering of ground levels. Parts of Tolney Lane which provides the access to the site, falls within Flood Zone 3, which means it is at high risk of flooding.

Tolney Lane accommodates a large Gypsy and Traveller community providing approx 260 pitches.

## Relevant Planning History

Relating to this application site together with the wider Shannon Falls site to the east and south-east of this application site:

- E/1/1129 - Use of the land as a site for caravans, refused in 1959;
- E/1/2531- Construct a residential caravan site, refused in 1970;
- 02/02009/FUL - Use of land as residential caravan site (21 plots) and retention of unauthorised tipping on the land which raised land levels, refused on flooding grounds.

Two enforcement notices were served which sought to firstly cease the use as a caravan site and remove all caravans from the land and secondly to remove the unauthorised tipping from the land so that no part of the site is above the level of 10.5mAOD. The applicant appealed to the Planning Inspectorate but on 25 May 2006, the appeals were dismissed and the enforcement notices upheld on the land and still stand.

Whilst the site has ceased being used as a caravan site, the unauthorised tipping remains on the land, artificially raising ground levels.

Relating to this application site only:

- 15/01770/FUL - Change of Use of Land to a Private Gypsy and Traveller Caravan Site, consisting of One Mobile Home, Two Touring Caravans and One Amenity Building, refused by Planning Committee in May 2016 for the following reason:

“The proposed development represents highly vulnerable development that would be located within Flood Zone 3 and therefore should not be permitted in accordance with the National Planning Policy Framework and the PPG. Whilst the Sequential and Exception Tests do not fall to be applied in this case, even if they were applicable, whilst the Sequential Test may be considered to be passed on the basis that there are no reasonably available alternative sites for this use, the proposal fails the Exception Test. The submitted Flood Risk Assessment does not comply with the requirements set out in the Site Specific Flood Risk Assessment Checklist (paragraph 68) of the Flood Risk and Coastal Change Section of the Planning Practice Guidance and therefore fails to adequately demonstrate that the development will be safe for its lifetime, without increasing flood risk elsewhere.

In the opinion of the Local Planning Authority, the proposal would therefore place both the occupants of the site and the wider area at risk from flooding and be contrary to the National Planning Policy Framework and the Planning Practice Guidance, Core Policies 5 and 10 of the Newark and Sherwood Core Strategy and Policy DM5 of the Allocations and Development Management DPD.”

Relating to the adjacent land to the east and south-east (also part of the Shannon Falls site):

12/01088/FUL - Change of Use of scrub land for the siting of 8 static mobile homes for gypsy travellers (and 8 associated amenity blocks). Planning permission was refused by Planning Committee in July 2013 on the grounds that the submitted Flood Risk Assessment was not able to demonstrate that the development would be safe for its lifetime without increasing flood risk elsewhere.

16/01884/FUL - Change of use of scrubland for the siting of 8 static mobile homes for gypsy travellers and reduce ground levels to 10.5mAOD was refused by Planning Committee on 25 January 2017 for the following reason:

The proposed development represents highly vulnerable development that would be located within Flood Zone 3 and therefore should not be permitted in accordance with the National Planning Policy Framework and the PPG. Whilst the Sequential and Exception Tests do not fall to be applied in this case, even if they were applicable, whilst the Sequential Test may be considered to be passed on the basis that there are no reasonably available alternative sites for this use, both scenarios of the proposal (i.e. lowering the land levels in accordance with the description of development or the carrying out development in line with the Flood Risk Assessment) fail the Exception Test. The submitted Flood Risk Assessment does not comply with the requirements set out in the Site Specific Flood Risk Assessment Checklist (paragraph 68) of the Flood Risk and Coastal Change Section of the Planning Practice Guidance and therefore fails to adequately demonstrate that the development will be safe for its lifetime, without increasing flood risk elsewhere. Even with the lowering of land levels to 10.5m AOD (which has not been adequately demonstrated through the submitted FRA), the proposed use would not be safe for its lifetime.

In the opinion of the Local Planning Authority, the proposal would therefore place both the occupants of the site and the wider area at risk from flooding and be contrary to the National Planning Policy Framework and the Planning Practice Guidance, Core Policies 5 and 10 of the Newark and Sherwood Core Strategy and Policy DM5 of the Allocations and Development Management DPD.

The applicant appealed this decision and within their appeal submission, additional information was provided which provided greater clarity on the gypsy and traveller status of the applicants. Having received this additional material information, the proposal was again reported to the Planning Committee in February 2018 when Members resolved that if this further information had been submitted with the original application submission, they would have resolved to grant a temporary permission for 3 years which would have been personal to the occupiers and subject to other conditions relating to flood risk mitigation. This was duly reported to the Planning Inspector prior to the Informal Hearing which was held on 28 February 2018. However, in a decision letter dated 26 April 2018, the appeal was dismissed on flood risk grounds. A copy of this decision is attached at the end of this report.

## The Proposal

Full planning permission is sought for the change of use of the land to a private gypsy and traveller caravan site, consisting of one mobile home, two touring caravans and one amenity building and associated works. The mobile home measures approx. 11.5m by 6m and the proposed amenity building measures 6.1m by 5.3m, 2.4m to the eaves and 3.8m to the ridge. The amenity building accommodates a kitchen/dining area and separate toilet and would be constructed of blockwork, rendered externally and cement fibre slate roof. The site is proposed to dispose of its sewerage by a septic tank.

The mobile home and amenity building is situated adjacent to the northern boundary of the site and sited on existing ground levels. The two touring caravans are located adjacent to the western boundary on ground levels to be reduced by 1m in depth. Vehicular access is located in the southern corner of the site and a 1:12 gradient ramp created that leads from Tolney Lane to the lower ground level within the site. There are batter slopes with 1:2 and 1:3 gradients to deal with the difference in ground levels within the site. The application form states 4 parking spaces would be provided on the site. The surfacing within the site would comprise a permeable hard surfacing central area of the plot with grassed areas either side. Hedging is proposed to be planted along all external boundaries of the site.

Accompanying the application is a Flood Risk Assessment which states that ground levels across the site fall in a general southerly direction from approx. 12.5m to 11.8m Above Ordnance Datum (AOD), which suggests that between 1.3m and 2m of fill has been placed on the site without consent. However, there is no pronounced 'step' in ground levels beyond the western and northern boundaries of the site. This suggests that either the filling extended beyond the site boundaries, or it was not as extensive as suggested by the Enforcement Notice. In particular, Tolney Lane is at a similar level to the site and therefore complying with the Enforcement Notice would result in a significant bank along the edge of Tolney Lane.

The FRA goes on to state that the applicant has therefore completed a limited site investigation to determine the depth of fill material placed over the site. Four mechanically excavated trial pits were dug across the site and the depth to the underlying 'natural' clay measured. It is clear that the depth to the clay varies between 0.75m and 1.0m, rather than the 1.8m implied by the Enforcement Notice. Officers have responded to this suggestion, in consultation with the Environment Agency, and recognised that the figure stated within the Enforcement Notice was probably calculated using aerial photogrammetric (LiDAR) data which covered vast areas, may not have been particularly accurate in seeking to obtain a precise reading on small site specific situations. The excavations on the site therefore appear to provide a more accurate reading of the situation and based on the information presented, this would appear to be a sensible and pragmatic way forward in this regard. The applicants have therefore been advised by officers that whilst the Enforcement Notice remains extant on the land, if the site was lowered to its 'natural' clay level, which may not be strictly in accordance with the Notice, the local planning authority would be unlikely to pursue any further action on the site in this regard.

The Assessment identifies the Old Trent Dyke located to the north of the site beyond the railway line, flowing in an easterly direction and the River Trent some 150m to the south of the site means that the site may be at risk from fluvial flooding. The FRA states that the site lies within Flood Zone 2 with an annual exceedance probability (AEP) of flooding between 1% and 0.1%. In the 0.1% AEP event, flood water propagates across the entire site and reaches a maximum level of approx. 12.36m AOD, a depth of water varying from 0.14m to 0.56m. The estimated flood levels at the application site for the 1% + 30% for climate change and 1% + 50% for climate change would therefore be 12.47m AOD and 12.76m AOD respectively.

The PPG classifies caravans, mobile homes and park homes intended for permanent residential use as 'highly vulnerable.' PPG Table 3 states that within Flood Zone 2, highly vulnerable development is required to pass the Exception Test.

The FRA quotes para 101 of the NPPF which advises that the aim of the Sequential Test is to 'steer new development to areas with the lowest probability of flooding.' Furthermore it states 'development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.' The FRA goes on to state that evidence will be presented to demonstrate that there are no reasonably available sites in areas with a lower risk of flooding and this report has been prepared on the basis that the Sequential Test has been passed. No further evidence has been received in this regard.

In terms of the Exception Test the FRA states that evidence will be presented to demonstrate that development has wider sustainability benefits to the community that outweigh the flood risk and therefore the first part of the Exception Test is passed. No further evidence has been received in this regard.

In relation to the second part of the Exception Test, the report states that on the northern part of the site the ground level is at approx. 12.5mAOD. The finished floor level of the static mobile homes would be 0.75m above ground level and a level of 13.25mAOD which hence provides a freeboard of some 0.78m above the 1% AEP flood level inclusive of an allowance for the upper end estimate climate change and would therefore provide a safe place of refuge for residents if caught unawares by a 1% AEP flood event. The report also recommends that the residents of the proposed development subscribe to the 'Floodline' flood warning service of the Environment Agency that aims to provide a minimum 2 hour warning of an impending flood. In relation to access and egress, the FRA refers to the NSDC Tolney Lane Flooding Action Plan which identifies a reception facility at the Lorry Car Park, adjacent to the Newark Cattle Market is provided for evacuees. The FRA therefore claims that there is therefore adequate warning available for residents of Tolney Lane to be safely evacuated to a safe refuge despite the risk of flooding to the only egress route. The Assessment states that planning permission has been previously granted by NSDC for at least 132 pitches that would be cut off by the flooding of Tolney Lane in a similar manner to the application site. It refers to application 10/01464/FULM when planning permission was granted by Members of the Planning Committee having clearly concluded that flood risk could be satisfactorily overcome by the flood evacuation plan, despite that site using the same access/egress route as this application site.

In terms of flood compensation storage and the potential to increase flood risk elsewhere, the FRA states that lowering the entire application site in accordance with the Enforcement Notice (or down to the 'natural' clay level would serve no purpose in reducing a potential obstruction to flood flows arising from the placement of the fill as higher ground would remain on all sides. And locating the mobile home in a depression would significantly increase flood risk. It therefore proposes to maintain existing ground levels only in the immediate vicinity of the static mobile home and amenity building and lower the rest of the site by 1m as far as it is practical. This would require the removal of some 500 cubic metres, approx. 50% of the volume that would be required to comply fully with the Enforcement Notice. The FRA concludes that the "retention of part of the fill that is subject to the Enforcement Notice would have no significant impact on the flood risk elsewhere." It also states that by virtue of the seep lattice construction supporting the elevated floor of the static mobile home, floodwaters would not be impeded or excluded from the footprint of the static mobile home and as such would have no impact on the flood risk elsewhere. Similarly the FRA confirms that the amenity building will be designed to flood and constructed with resilient

material so there will be no loss of flood plain storage. The small footprint of the amenity building would provide no significant obstruction to flood flows and would have no significant impact on the flood risk elsewhere.

In terms of surface water run-off, it would shed directly into the ground from the proposed development, thereby mimicking the existing drainage patterns and areas of hardstanding will be formed using a permeable stone, therefore the development will not increase surface water run-off over and above the existing scenario.

The FRA concludes by providing copies of two appeal decisions including, Green Park appeal decision, and the former Abattoir site on Tolney Lane when both were granted permission for a 5 year period and subject to Flood Evacuation Plan as well as other conditions.

In response to a request regarding more information on the status of the applicant, the agent has stated:

“Mr and Mrs Webster are ethnic Romany Gypsies, a matter which engages the Public Sector Equality Duty. In addition they have pursued a nomadic way of life all their adult lives, doing landscaping, driveways and trading in caravans. Mr and Mrs Webster have ceased travelling for work temporarily so that their children can have continuous education: the 2 youngest of their 4 children (aged 9 and 10) are still enrolled at and attending the local Mount School (where all their children were educated). Planning Policy for Traveller Sites 2015 states that people can stop travelling temporarily, *inter alia*, for the educational needs of their children. Thus it is clear as well as being Romany Gypsies, Mr and Mrs Webster are Travellers in terms of Annex 1 PPTS. This matter attracts significant weight.”

In addition the agent has stated the following in regard to the need for gypsy and traveller sites:

“I attended as the only objector to the emerging Newark Local Plan so far as it affects Traveller site policy. In particular I argued before the Inspector that the Travellers’ needs assessment was deficient and needed to be re-undertaken as it under-recorded need. Last week the appointed Inspector issued his final Note (attached) and agreed with me in that regard finding:

*I have given careful consideration to the pre-hearing representations on provision in the CS Review for G&Ts (Matter 14), the discussion that took place at the hearing, and the post-event exchanges. Having done so, I have formed the view that the GTAA is very likely to have underestimated need which means that the number of pitches set out in Draft Core Policy 4, which is based on the GTAA, is insufficient.*

Clearly therefore there is: unmet need; no 5 year supply of Traveller sites and no suitable, alternative sites available for the Applicants and their family. In the context of the best interests of the Applicants’ children, these factors attract substantial weight and indicate that this proposal should attract officer support and be approved by the Committee.”

#### Departure/Public Advertisement Procedure

Occupiers of 20 properties have been individually notified by letter.

## **Planning Policy Framework**

### **The Development Plan**

#### **Newark and Sherwood Core Strategy DPD (adopted March 2011)**

Spatial Policy 1 : Settlement Hierarchy

Spatial Policy 3 : Rural Areas

Spatial Policy 7 : Sustainable Transport

Core Policy 4 : Gypsies & Travellers and Travelling Showpeople – New Pitch Provision

Core Policy 5 : Criteria for Considering Sites for Gypsy & Travellers and Travelling Showpeople

Core Policy 9 : Sustainable Design

Core Policy 10 : Climate Change

Core Policy 13 : Landscape Character

#### **Allocations & Development Management DPD (adopted July 2013)**

Policy DM5 – Design

Policy DM8 – Development in the Open Countryside

Policy DM12 – Presumption in Favour of Sustainable Development

### **Other Material Planning Considerations**

- National Planning Policy Framework 2012
- Planning Practice Guidance 2014
- Publication Amended Core Strategy 2017
- Planning policy for Traveller sites – August 2015

When determining planning applications for traveller sites, this policy states that planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates their traditional and nomadic way of life while respecting the interests of the settled community.

Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies within the NPPF and this document (Planning policy for traveller sites).

This document states that the following issues should be considered, amongst other relevant matters:

- Existing level of local provision and need for sites;
- The availability (or lack) of alternative accommodation for the applicants;
- Other personal circumstances of the applicant;
- Locally specific criteria used to guide allocation of sites in plans should be used to assess applications that come forward on unallocated sites;
- Applications should be determined for sites from any travellers and not just those with local connections.

The document goes on to state that local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan and sites in rural areas should respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on local infrastructure.

- Emergency Planning Guidance produced by the Nottingham and Nottinghamshire Local Resilience Forum (August 2017)

This document states: “New developments in flood risk areas **must not** increase the burden on emergency services. The Emergency Services are in heavy demand during flood incidents. The Fire and Safety Regulations state that “people should be able to evacuate by their own means” without support and aid from the emergency services. The emergency services and local authority emergency planners may object to proposals that increase the burden on emergency services.”

“New development **must have** access and egress routes that allow residents to exit their property during flood conditions. This includes vehicular access to allow emergency services to safely reach the development during flood conditions. It should not be assumed that emergency services will have the resource to carry out air and water resources during significant flooding incidents; therefore safe access and egress routes are essential.....

The emergency services are unlikely to regard developments that increase the scale of any rescue as being safe...”

### Consultations

**Newark Town Council** – Object on the grounds that it is in Flood Zone Risk 3, one of the highest classifications of flooding.

**NCC Highways Authority** – It is difficult to raise objection to this application for one mobile home and two touring caravans due to the significant number of pitches/premises currently served by Tolney Lane. It does, however, again draw attention to the incremental increase of pitches over time and the potential impact on Tolney Lane as a result.

**Environment Agency** – We object to this application because the proposed development falls into a flood risk vulnerability category that is inappropriate to the Flood Zone in which the application site is located. We recommend that the application should be refused planning permission on this basis.

### **Reasons**

The Technical Guidance to the National Planning Policy Framework classifies development types according to their vulnerability to flood risk and gives guidance on which developments are appropriate in each Flood Zone. In this case the application site lies within Flood Zone 2 and therefore would need to satisfy both the sequential and exception tests. The FRA makes reference to the possibility that both tests can be satisfied in section 12.3 of the FRA however does not state how these can be met, however the LPA will determine whether the tests can be satisfied.



The FRA has calculated the 30% and 50% climate change allowance figures and applied these to the proposed site. The proposal is to retain a section of land which was originally raised without authorisation in order to ensure that the development would remain well in excess of both the 1 in 100 year 30% and 50% climate change allowances. The FRA shows that during a 30% climate change event the dwelling would remain 0.75m above the predicted flood level while during a 50% climate change event it would remain 0.49m above the predicted flood level. While this would appear to provide adequate flood mitigation, the Shannon Falls site is subject to two enforcement notices which were previously served, firstly, to cease use of the land as a caravan site and, secondly, to remove the unauthorised tipping from the land so that no part of the site is above the level of 10.5 metres AOD. Appeals against these notices were dismissed on 25 May 2006, and the notices upheld on the land remain extant. While use of the land as a caravan site was ceased the land levels have not been reduced. The extant notices apply to the whole of the Shannon Falls site not just this portion and represent a large portion of the floodplain which has been lost. While it has been mentioned that the site lies within FZ2 it could be argued that this is due in main to this unauthorised land raising and were the levels be reinstated to 10.5mAOD, as required by the extant notice then the FZ would likely change as a result.

In the event of a flood all areas surrounding the site will be inundated with water. The flood depths on the access routes adjacent to the site are 1.4m during 1 in 100 year plus 20% estimate for climate change and 1.71m during a 1 in 1000 year event.

The modelled flood level during a 1 in 1000 year (0.1%) return would cause access and egress routes to flood to depths of 1.71m and is given a hazard rating of “danger for all” in FD2320. This includes the emergency services. The modelled flood level during the 1 in 100 year plus 20% climate change return period would cause access and egress routes to flood to depths of 1.4m and is given a hazard rating of “danger for most” in FD2320. This includes children, the elderly and the infirm and the general public.

Therefore this indicates and has been acknowledged within section 8.3 of the FRA that access and egress routes will be cut off. Therefore, an evacuation plan is required which will remove occupants of the site before an overtopping event.

An evacuation plan is outlined in Appendix 03 of the Flood Risk Assessment. This consists of the previously NSDC approved evacuation plan and includes information on action to be taken when the Environment Agency issues flood warnings. We recommend that Newark and Sherwood District Council contact their Emergency Planner to review the Emergency Plan and ensure the development does not further increase the burden on the emergency services and is still considered robust.

**Trent Valley Internal Drainage Board** – Surface water run-off rates to receiving watercourses must not be increased as a result of the development. The design, operation and future maintenance of the site drainage systems must be agreed with the Lead Local Flood Authority and the Local Planning Authority.

**NSDC, Environmental Health Service** – Support the application.

**NSDC, Emergency Planner** – Object to the application.

I am not qualified to provide comments to either support or object to this application and my comments are to assist the planning team in their considerations.

The proposed development is sited in Flood Zones 2 and the access road is within Flood zone 3. The Tolney road area has been subject to previous significant flooding requiring evacuation. The access road can be flooded to a level designated as 'Danger to All' meaning that emergency service vehicles would also face danger during any attempt to cross the flood waters. The proposed site for the static and touring vans whilst in Flood zone 2 may still have risk and caravans are classed as 'highly vulnerable' structures.

In the event that occupants did not successfully evacuate then it is possible they would be safe within the caravans however any vulnerability or change in circumstances requiring them to leave would place significant challenges before emergency responders or cause occupants to place themselves in danger.

Documents submitted including the Flood Risk Assessment have noted the fact that the lorry park currently designated as the evacuation point for caravans removed from Tolney lane is also an area subject to a flood risk. Whilst an alternative site is desirable no such site has yet been identified. Any additional number of caravans may place an unacceptable strain on resources.

In support of my comments I would draw your attention to point 1.2 of the National Planning Policy Framework ;

***New developments must have access and egress routes that allow residents to safely exit their property during flood conditions.***

I have not had sight of a specific emergency/evacuation plan for the proposed site. As per the National Planning Policy Framework (NPPF) I would draw attention to Section 3 highlighting emergency/evacuation plans; Developers are advised to have flood emergency plans in place for developments in flood risk areas to ensure that evacuation and flood response procedures for the development are documented and agreed. These plans should include:

- Aims and objectives of the plan
- Maps showing development and flood risk areas, including depth and velocity of flooding
- Evacuation or containment procedures, including evacuation routes
- Flood warnings (EA Flood Warning Service) and identification of local flood warden.
- Safe refuge information
- Identification of vulnerable residents
- Utility services
- Procedures (including details of any stores containing flood defences e.g. sandbags)
- Emergency contact information
- Media information e.g. local radio stations and warning processes for residents

**NSDC, Access and Equalities Officer** – General comments on the need for inclusive access to and use of the proposals, with particular reference for disabled people and Approved Document M of the Building Regulations.

**One representation** has been received from an interested party which supports the application and every application should be used to combine with community development measures that foster integration such as road safety and recycling.

## Comments of the Business Manager

The main planning considerations in the assessment of this proposal are the need for gypsy and traveller sites, the planning history of the site, flooding, the impact on the appearance of the countryside and character of the area, highway issues, access to and impact on local services, residential amenity, personal circumstances of the applicant and their status.

### The Need for Gypsy and Traveller Pitches

The NPPF and the Government's 'Planning policy for traveller sites' requires that Local Planning Authorities maintain a rolling five year supply of specific deliverable Gypsy & Traveller sites together with broad locations for growth within 6-10 years and where possible 11-15 years. Government policy states that a lack of a five year supply should be a significant material consideration in any subsequent planning decision when considering applications for the grant of planning permission.

Core Policy 4 (CP4) set a district wide target of 84 pitches to be provided up to 2012. 93 pitches were provided over this period and since that time work has been progressing on a new assessment of need and approach to meeting this. The Council initially intended to produce a separate Gypsy and Traveller DPD but now propose to include this within the review of the Development Plan. The District Council is currently engaged in the review of its Core Strategy and Allocations & Development Management DPD. The review was initially progressed jointly, but has now had to be uncoupled on account of a proposed gypsy and traveller allocation in Newark proving to be undeliverable. The Core Strategy will be progressed first and was submitted to the Secretary of State in its amended form on the 29th September 2017, and the hearings were held on the 1<sup>st</sup> and 2<sup>nd</sup> February 2018.

Core Policy 4 and 5 are proposed for amendment through this process and has sought to set out the new pitch requirements, the approach to meeting these requirements and the criteria for considering site allocations and proposals to meet unexpected demand. The two policies are however the subject of unresolved objections which limit the weight they can be currently afforded, in line with the tests outlined through paragraph 216 of the NPPF. In addition to this, the local planning authority presented evidence to the Hearing Inspector and based on the application of the amended methodology (taking account of the definitional change) identified the following pitch requirements for the 2013-2018, 2018-2022 and 2022-2028 five year tranches of the GTAA-

<b>Time period</b>	<b>Precise Pitch Requirement</b>	<b>Rounded Pitch requirement</b>
2013 – 2018	13.8 pitches	14 pitches
2018 – 2023	14.3 pitches	15 pitches
2023 – 2028	10.9 pitches	11 pitches
<b>Total Required</b>		40 pitches

However, as already referred to by the agent, the Inspector has following the close of the Amended Core Strategy hearings issued a 'post-hearing note' on 8 May 2018 stating that he has "formed the view that the GTAA is very likely to have underestimated need which means that the number of pitches set out in Draft Core Policy 4, which is based on the GTAA, is insufficient."

In this respect the LPA is currently drafting a Main Modification in line with the Inspectors note, committing to the production of a new GTAA over the short-term (i.e. within the next two years), and to include revised pitch requirements and site allocation/allocations to meet any residual need through the review of the Allocations & Development Management DPD. This will be presented to the Inspector along with the other main modifications necessary to make the plan sound, which will then be subject to a six-week consultation. Whilst, as a result of the above, the precise level of need cannot be currently defined it is clear is that there is unmet need and in determining this application now, this must afford appropriate weight in favour of the application. Consequently the Council also cannot currently demonstrate a five year supply of sites. This lack of a 5 year supply, absence of other available sites and the suitability of this site by reference to the criteria of Core Policy 5, are all material considerations that need to be given significant weight in the determination of this application. In this respect the LPA is currently drafting a Main Modification in line with the Inspectors note, committing to the production of a new GTAA over the short-term (i.e. within the next two years), and to include revised pitch requirements and site allocation/allocations to meet any residual need through the review of the Allocations & Development Management DPD. This will be presented to the Inspector along with the other main modifications necessary to make the plan sound, which will then be subject to a six-week consultation. Whilst, as a result of the above, the precise level of need cannot be currently defined it is clear is that there is unmet need and in determining this application now, this must afford appropriate weight in favour of the application. Consequently the Council also cannot currently demonstrate a five year supply of sites. This lack of a 5 year supply, absence of other available sites and the suitability of this site by reference to the criteria of Core Policy 5, are all material considerations that need to be given significant weight in the determination of this application.

### Planning History

This Council has already considered the principle of a residential caravan use on this site in 2002. The application was refused on the following grounds:

*“The site lies within the defined washlands of the River Trent a high risk zone according to paragraph 30(3) of Planning Policy Guidance Note 25 and is subject to known periodic flooding. In the opinion of the Local Planning Authority, any development of the site that includes the raising of ground levels, or the placing of fixed structures would aggravate the existing problem of flood defence/land drainage in this locality. As a consequence, the loss of this washland storage area would lead to additional properties in the locality having a greater probability and risk of flooding, which would not be in the interest of proper planning. This proposal is therefore considered to be contrary to policy PU1 of the Newark and Sherwood Local Plan and the advice contained in Planning Policy Guidance Note 25 'Development and Flood Risk' July 2002, specifically paragraph 70.”*

Two enforcement notices were served which sought to firstly cease the use as a caravan site and remove all caravans from the land and secondly to remove the unauthorised tipping from the land so that no part of the site is above the level of 10.5m AOD. The applicant appealed to the Planning Inspectorate and the appeals were dismissed. The Inspector concluded:

*“I fully understand that the occupants of the site would make sure they were well aware of any imminent flooding and, because of their experience of travelling, they could vacate the site quickly, if necessary. However, this does not address the concerns about the continuing availability of functional flood plain, and the consequences of development for flood control over a wider area.”*

The proper consideration of such a use in this location has already been considered and found to be unacceptable on flooding grounds both by this Council and the Planning Inspectorate in the past.

The planning history section at the beginning of this report also refers to two applications considered in 2012 and 2017 for a Gypsy and Traveller residential caravan site on the adjoining site to the south-east of this site. The first application sought permission on the higher land levels due to the unauthorised increase of land levels which was refused on flooding grounds. The latter application sought permission for the same use but also included the removal of some of the fill from the land and raising the floor level of the caravans above the flood level on stone gabions and chaining down the static caravans to prevent them floating away and a Flood Evacuation Plan as mitigation. This application went to appeal and the Inspector's decision letter is attached at the end of this report. The Inspector determined that notwithstanding identified need, the lack of a five year land supply and recent temporary planning permissions granted along Tolney Lane, the Inspector dismissed the appeal on the grounds of flood risk.

The submitted FRA states that the application site is within Flood Zone 2 (at medium risk of flooding) and this is correct on the basis of the current land levels. However, this is the case because of the artificial raising of ground levels that occurred in 2001 without any planning approval, as set out in the planning history section above. The material remains on the land today, and therefore has represented unauthorised development since the appeal decision (ie for the last 10 years). If the material was removed, land levels would reduce and the flood risk on the site would increase which potentially would change the Flood Zone from 2 to 3.

The removal of some of the unauthorised fill on this site is welcomed, however, this cannot be given positive weight in the determination of the application, nor could removal of all the unauthorised fill as this is simply a requirement to take the site back to base level and cannot and should not be seen as a betterment of the scheme in flooding terms that can be weighed in its favour. The retention of any of this material on this site, results in the loss of flood storage capacity within the flooding catchment area of the River Trent and therefore in a flood event, rather than allowing the site to flood, it disperses flood water away and results in increased flood impacts to other land elsewhere. Whilst this is a matter of fact, because of the width and size of the flood plain along this section of the River Trent, it is likely that this impact would not be substantial in itself, however, it would prove very difficult to model in order to quantify this increased impact or try to identify the position of the exacerbated flood impact elsewhere.

The lack of expediency for default action to remove the unauthorised fill should also not represent a material planning consideration in the determination of this application, as the test of proportionality to pursue enforcement action is an entirely different and separate consideration.

### Flooding

The final criterion of Core Policy 5 states that 'in the case of any development proposal which raises the issue of flood risk, regard will be had to advice contained within PPS 25: Development and Flood Risk and the findings of the Newark and Sherwood Strategic Flood Risk Assessment. Where flooding is found to be an issue, the District Council will require the completion of a site specific Flood Risk Assessment'. The NPPF states that local planning authorities should minimise risk by directing such development away from high risk areas to those with the lowest probability of flooding. Policy DM5 also states that the Council will aim to steer new development away from areas at highest risk of flooding.

The submitted FRA states that the application site is within Flood Zone 2 (at medium risk of flooding) and this is correct on the basis of the current land levels. However, this is the case because of an artificial raising of ground levels that occurred in 2001 without any planning approval, as set out in the planning history section above and removal of fill on the site could increase flood risk on the site.

Table 2 (in paragraph 66) of the Planning Practice Guidance (PPG) states that caravans, mobile homes and park homes intended for permanent residential use are classified as “highly vulnerable” uses. Table 3 (in paragraph 67) of the PPG states that within Flood Zone 2, highly vulnerable classification development may be permitted but it would be subject to the Exception Test being passed.

The NPPF states that local planning authorities should minimise risk by directing inappropriate development away from high risk areas to those with the lowest probability of flooding. Whilst the Sequential Test may be considered passed, on the basis that there are no reasonably available alternative sites for this use at lower risk, the proposal fails the Exception Test. There are two parts of the Exception Test set out in the NPPF:

- It must be demonstrated that the development provides for wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and
- A site specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere.

Firstly, no information has been submitted with the application which demonstrates that the development would provide wider sustainability benefits to the community.

Secondly, the NPPF states that it must be “*demonstrated that the development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning...*” Full details of the EA comments are outlined within the consultation section of this report, but they object on the grounds that the proposed development falls into a flood risk vulnerability category that is inappropriate to the Flood Zone in which the application site is located. They recommend that the application should be refused planning permission on this basis.

In addition they state that the application site lies within Flood Zone 2 and therefore would need to satisfy both the sequential and exception tests. The FRA makes reference to the possibility that both tests can be satisfied in section 12.3 of the FRA however does not state how these can be met.

The access/egress route is within Flood Zone 3 and can be classed as a “Danger to All” which puts even the emergency services at risk. Therefore this indicates and has been acknowledged within section 8.3 of the FRA that in a flood event, access and egress routes will be cut off. Therefore, an evacuation plan is required which will remove occupants of the site before an overtopping event.

An evacuation plan is outlined in Appendix 03 of the Flood Risk Assessment. This consists of the previously NSDC approved evacuation plan and includes information on action to be taken when the Environment Agency issues flood warnings.

The Emergency Planner at NSDC objects to the application and their comments are set out in full in the consultation section above. The submitted Evacuation Plan is not supposed to cater for any additional caravans which may place an unacceptable strain on resources.

They draw attention to point 1.2 of the National Planning Policy Framework which states '*New developments must have access and egress routes that allow residents to safely exit their property during flood conditions.*'

As already set out, it is considered that the Sequential Test is passed on the basis of the lack of reasonably available alternative sites for this use at lower risk of flooding (if it were being considered as being within Flood Zone 2). There are also concerns that the development should be considered as if it is in Flood Zone 3 (with the removal of the fill) and should therefore be rejected as being inappropriate development. Even if it is considered that the site is within Flood Zone 2, the Exception Test fails because if it is within Flood Zone 3, the proposals include some retention of the fill on the site, however no floodplain compensation is proposed, thereby increasing flood risk to others. The Evacuation Plan states that residents would register on the EA "Floodline" warning system which provides a 2 hour warning of a flood event, to enable residents to evacuate the site and head for the Cattle Market as set out within the Tolney Lane plan.

Members may be aware of the evacuation procedures that have been put in place for existing occupiers of Tolney Lane where residents are allowed to assemble on the lorry park during a flood event. However, this evacuation plan is not ideal and was introduced to try to provide a solution to occupants that already existed on Tolney Lane after the year 2000 flood and it should not be seen as an appropriate mitigation strategy when considering new pitches along the Lane.

Emergency Planning Guidance produced by the Nottingham and Nottinghamshire Local Resilience Forum referred to in the other material considerations section above, represents standing advice, material to the consideration of this application and it raises significant concerns in relation to any new development that would increase the burden on emergency services as it is likely that even with an evacuation plan in place, emergency services would still have to go along Tolney Lane to ensure total evacuation had occurred and granting planning permission for additional pitches will exacerbate the need for this checking procedure and therefore increase the danger of the situation for all.

Whilst Members have accepted evacuation procedures are sufficient to allow proposals to go ahead on other Tolney Lane sites in the past, it remains the view of officers that the principle of locating this highly vulnerable use in an area at high risk from flooding is not appropriate and should not be permitted and practical experiences of the difficulties in managing evacuation and risk were realized in the 2012 flood event. The unauthorised material that currently remains on the site continues to result in a loss of flood storage and therefore continues to exacerbate flooding risk elsewhere.

The very recent appeal decision on the adjoining site will be a material planning consideration in the determination of this application.

The view of officers, as well as the Environment Agency, is that as the site is only within Flood Zone 2 due to unauthorised material being deposited on the land, and therefore for the basis of the consideration of this application, the site should be considered as being within Flood Zone 3 and the development therefore represents inappropriate development in this high risk flood location. The proposal is considered to be contrary to Development Plan policies as well as the NPPF and the PPG and this weighs heavily against the proposal in the planning balance.

## Impact on the Countryside and Character of the Area

The first of the criteria under Core Policy 5 states that 'the site would not lead to the loss, or adverse impact on, important heritage assets, nature conservation or biodiversity sites'.

Criterion 5 of Core Policy 5 states that the site should be 'capable of being designed to ensure that appropriate landscaping and planting would provide and maintain visual amenity'.

The aim of conserving the natural environment, protecting valued landscapes, minimising impacts on biodiversity and pollution is also reflected in the NPPF. Whilst development exists along the majority of the Lane, only the eastern third sits within the defined Newark Urban Area. The application site is located between the sites known locally as Church View to the east and Hoes Farm to the west. Church View benefits from an authorised use for 35 residential caravans and Hoes Farm has planning permission for 25 pitches. Whilst the site is located within the countryside, it is sandwiched between these two sites which are authorised for caravan use. The proposed development is for the creation of 1 pitch (1 mobile home, 2 touring caravans and a utility block) that would be enclosed by additional hedge planting. Taking all these matters into consideration, the proposal is unlikely to represent a significant visual intrusion that would have such a harmful impact on the appearance of the countryside in this location, to warrant refusal of planning permission in this case. It is also acknowledged that the site has no special landscape designation and is unlikely to lead to any significant adverse impact on nature conservation or biodiversity. Although the Newark Conservation Area boundary runs along the south-eastern side of Tolney Lane, it is approx. 100m from the boundary and as such, it is not considered that the proposal would be harmful to the setting of the Conservation Area.

The proposal is considered to broadly accord with Local Plan and National Framework Policies in this regard.

## Highway Issues

Criterion 3 under Core Policy 5 requires the site has safe and convenient access to the highway network.

Spatial Policy 7 states that development proposals provide safe, convenient and attractive accesses for all, including the elderly and disabled, and others with restricted mobility, and provide links to the existing network of footways, bridleways and cycleways, so as to maximise opportunities for their use. Proposals should provide appropriate and effective parking provision, both on and off-site, and vehicular servicing arrangements. Proposals should ensure that vehicular traffic generated does not create new, or exacerbate existing on street parking problems, nor materially increase other traffic problems.

The Highway Authority has raised no objection to this application and it is considered that the proposal would not result in any significant highway implications and the proposal accords with the Local Plan and National Framework Policies in this respect.



### Access to and Impact on Local Services

The second of the criteria under Core Policy 5 is that ‘the site is reasonably situated with access to essential services of mains water, electricity supply, drainage and sanitation and to a range of basic and everyday community services and facilities – including education, health, shopping and transport facilities’.

Whilst the site lies within the countryside, it is acknowledged that it is in relative close proximity to the edge of existing development. Occupiers would have good access to existing Tolney Lane development and to existing services and facilities provided by the Newark Urban Area. The site is ideally located between two established Gypsy and Traveller sites and therefore access to long established community and social facilities associated with the historic use of Tolney Lane would be readily available for occupiers.

Taking the above factors into consideration, the application site is reasonably located in terms of access to the range of amenities and services and as such would be relatively sustainable.

### Residential Amenity

Criterion 4 of Core Policy 5 states ‘the site would offer a suitable level of residential amenity to any proposed occupiers and have no adverse impact on the amenity of nearby residents’.

Policy DM5 requires the layout of development within sites and separation distances from neighbouring development to be sufficient to ensure that neither suffers from an unacceptable reduction in amenity including overbearing impacts, loss of light and privacy.

It is considered that with the proposed hedge boundary planting that the site would offer a suitable level of protection to current residential amenities of existing occupiers nearby as well as a suitable level of amenity to any proposed occupiers of the site.

The proposals therefore meet the requirements of Criterion 4 of Core Policy 5 and Policy DM5.

### Personal Circumstances

The Government’s ‘Planning Policy for Traveller sites’ (August 2015) requires a revised assessment of Gypsy and Traveller status. Annex 1 of the document sets out the definition of gypsy and traveller for the purposes of the policy as follows:

‘Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependants’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.’

The guidance states that in determining whether persons are “gypsies and travellers” for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters:

- a) whether they previously led a nomadic habit of life
- b) the reasons for ceasing their nomadic habit of life

- c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.

In order for appropriate weight to be given to the unmet need for Gypsy and Traveller pitches in the consideration of these proposals, the onus is on the applicant to prove that the applicant along with any other occupier of the site, have Gypsy and Traveller status in accordance with the definition set out in the Planning Policy for Travellers Sites.

Following a request, the agent has provided additional information in this regard, which is set out in this report. On this basis it is considered that the applicant's gypsy and traveller status is proven.

### Conclusions and Balancing Exercise

The NPPF and the PPG clearly and explicitly state that this highly vulnerable use should not be permitted within Flood Zone 3 (which is likely to be the site's status without the existing unauthorised fill) and under these circumstances the Sequential and Exception Test would not be applicable.

If Members take a more pragmatic view on the unauthorised fill, decide that it is unlikely that the material would be removed and consequently accept its impact in marginally increasing flood risk elsewhere through loss of flood storage, and assess the application on the basis that the site is within Flood Zone 2, the Sequential and Exception Tests would apply. Whilst it is accepted that the Sequential Test is passed, on the basis of the inadequate FRA, it fails the Exception Test in any event.

Since the up-holding of the Enforcement Notices in 2005, it is clear that whilst flood risk has remained of paramount importance as a material consideration, unmet need and the lack of reasonable deliverable alternative sites and a 5 year supply weighs heavily in favour of the proposal.

At present there is an unmet need for Gypsy and Traveller pitches within the District. National policy and guidance dictates that such an unmet need, lack of a 5 year supply and deliverable alternative sites carries significant weight in favour of the proposal. However, supporting information has been provided on the gypsy and traveller status of the applicant and as such Members may consider that temporary permission would be deemed acceptable in this particular case.

Whilst the remaining material planning considerations (impact on the countryside and character of the area, residential amenity, highway considerations and access to services) assessed in this report appear to represent positive weight to this proposal, in the professional view of officers, the harm caused by retaining some of the existing land levels on the site and locating this development within an area at high risk of flooding does not and cannot be outweighed in the overall planning balance. The provision of 1 further pitch to meet unmet need is not considered to be a positively determinative factor in this case. It is therefore recommended that the application be refused on flooding grounds.

### RECOMMENDATION ONE

**That planning permission is refused for the following reason:**

01

The proposed development represents highly vulnerable development that if located within Flood Zone 3 should not be permitted in accordance with the National Planning Policy Framework and the PPG. If located within Flood Zone 2, whilst the Sequential Test may be considered to be passed on the basis that there are no reasonably available alternative sites for this use within an area at lower risk, the proposal fails the Exception Test. The submitted Flood Risk Assessment does not comply with the requirements set out in the Site Specific Flood Risk Assessment Checklist (paragraph 68) of the Flood Risk and Coastal Change Section of the Planning Practice Guidance and therefore fails to adequately demonstrate that the development will be safe for its lifetime, without increasing flood risk elsewhere.

In the opinion of the Local Planning Authority, the proposal would therefore place both the occupants of the site and the wider area at risk from flooding and be contrary to Core Policies 5 and 10 of the Newark and Sherwood Core Strategy and Policy DM5 of the Allocations and Development Management DPD and the National Planning Policy Framework and the Planning Practice Guidance, which are material planning considerations.

#### Background Papers

Application Case File

For further information, please contact **Julia Lockwood** on ext **5902**.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

Matt Lamb  
Business Manager for Growth and Regeneration

Committee Plan - 17/02087/FUL

