

PLANNING COMMITTEE - 2 MARCH 2021

Application No:	20/01405/FUL
Proposal:	Material change of use of land for stationing of caravans for residential occupation with associated development (new access, hard standing, utility block) – part retrospective
Location:	Land off Main Street, Balderton
Applicant:	Mr Patrick Doherty
Agent:	Heine Planning Consultancy – Mrs Alison Heine
Registered:	3 August 2020 Target Date: 28 September 2020
	Extension of time agreed until 5 March 2021
Website link:	https://publicaccess.newark-sherwooddc.gov.uk/online-applications/simpleSearchResults.do?action=firstPage

Background

Members will recall that the above application was presented at the meeting of 3 November 2020. Members resolved to approve the application for a temporary period of 3 years, subject to the completion of a S106 legal agreement within 3 months of the date of the Planning Committee to secure two off-site footways either side of Hollowdyke Lane (failure to do so would result in a refusal on highway safety grounds). The full resolution is set out at Appendix A attached to this report. Members should note that the estimated cost for the construction of the two footpaths was accepted to be approx. £7,850 when the application was previously considered in November.

The previous officer report is repeated below with additions indicated in bold and underlined to assist with clarity.

Additional Information Submitted

Prior to the end of the stated 3 month period, the agent submitted the additional information which is summarized below:-

- A quote of £23,183.39 for the total cost of the provision of the two footways either side of Hollowdyke Lane;
- In addition to the above cost, a bond for the same financial amount would also be required up-front, as an insurance-like deposit (although if all the works were implemented without any issue, this would be returned in full). With the cost of the preparation of the S106 likely to be around £500, the total cost would come close to £50,000;
- This is an excessive and unnecessary expense for a temporary permission and the

applicant is not willing to carry out this work;

- The family have now been occupying the site for nearly 6 months without any problems;
- Hollowdyke Lane is a no-through road, serving just one business and is used by local residents/dog walkers who use the lane for country walks, without the need for a pavement, local pedestrians form a path over the grass verge that links Main Road to Hollowdyke Lane;
- Given this, it is not clear why it is considered necessary for the applicant to install a pavement link so that their site is connected the short distance to Main Road;
- It should not be for their client to have to pay to install a pavement for the benefit of others;
- If this footway is necessary, it should have been secured within the Fernwood Strategic site for over 3,000 dwellings, to the east of this site;
- This requirement for a temporary consent would unreasonably impact on the deliverability of the development as it would place an unjustifiable and disproportionate financial burden on the applicant and therefore fails the test of reasonableness;
- It is only justified to encourage pedestrian access to/from the site and not for highway safety reasons;
- Such a request might have been justified for a permanent consent for 6 apartments but it is not justified for a single pitch gypsy site with a temporary permission of just 3 years;
- The applicant would be prepared to construct this footway link if permission were granted on a permanent basis, alternatively a temporary permission could be granted without the S106 requirements, or if neither of these options is acceptable, consider refusing the application so that an appeal can be advanced;
- The agent also considers that conditions 6 and 16 (requiring landscaping and bird and bat box provision on the site) are also unreasonable for any temporary permission;
- A second quote has been submitted from Via East Midlands Ltd which gives an estimate of approx. £40,000 for the design and construction of the footways;
- Other members of the public are using Hollowdyke Lane as a footway without any problems;
- If the Council/Parish Council consider the existing arrangement unsafe they should consider installing a segregated footway for the general public, however no complaints were reported in this regard at the last meeting about this existing arrangement and it is not clear why it is acceptable for the general public but not the applicants.

Comments of NCC, Highway Authority

NCC, state that the Via figure is for design and build; not just build. This [design] would add substantially to the other figures quoted. Also it is not a budget figure where there will be significant built-in contingencies that add to the price. This is not the same as getting a quote. Their budget estimate is £18k - £20k for the build. This does not include any design work, since it would be normal to expect the developer to provide the design.

As Highway Authority they would much sooner see residents of this proposed development use a constructed footway rather than choose a muddy verge or, worse still, walk within the carriageway for obvious safety reasons. This issue is exacerbated should residents/users require wheelchair, pram or motorized scooter access.

The Highway Authority do not wish to be petitioned to provide a footway to replace a muddy path when this should have been provided as part of a development to provide sustainable and

safe pedestrian links. It is also understood that it can be much harder to justify the provision of such a facility in the future, if after the temporary permission period has expired a permanent permission is sought and there have been no reports of injury accidents. The financial restraints are understood but this is an issue for the LPA to determine.

Comments of the Business Manager

Members will recall that they were minded to grant a temporary permission for three years on the basis of the identified harmful impact from the considerable nearby noise sources of the A1 trunk road and main line railway which means that noise levels are in excess of recognised standards and the health implications of living at the site in exposure to consistently high background noise levels is a significant concern. However, the weight attached to the noise impact is reduced due to the fact that the identified harm would only be felt for a limited, temporary period until a more appropriate site becomes available through the development plan process, given the total lack of alternative available sites and in the best interests of the children.

These considerations remain unchanged.

The application has been brought back to Members for consideration on the basis that the works required for the provision of the two footways along Hollowdyke Lane, to be secured through a S106, have now been costed as being more than double the amount previously presented and considered. This represents a material difference to the proposal that requires further consideration. The level of financial cost required to be invested at the site weighs more acutely in this case given the current resolution to grant a temporary permission for a limited period of just 3 years and whether this is reasonable.

In light of the above, the options before Members in the re-consideration of this application are:-

1. Grant planning permission on a permanent basis subject to the S106 requirement;
2. Grant temporary planning permission for 3 years without the S106 requirement; or
3. Refuse planning permission.

Regulation 122 of the CIL Regulations 2010 (as amended) makes it unlawful for a Planning Obligation to be taken into account when determining a planning application for a development, or any part of a development, if the obligation is not:

- Necessary to make a development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

Whilst it is accepted that the provision of the two footways is necessary to make the development acceptable in highway safety terms and that it directly relates to the development itself, there is concern as to whether the cost of these works are fair and reasonable and related in scale and kind to a single family gypsy and traveller pitch for only a 3 year period.

Paragraph 108 of the NPPF states that in assessing applications for development, it should be ensured that:-

“a) appropriate opportunities to promote sustainable transport modes can be – or have been –

taken up, given the type of development and its location;
b) safe and suitable access to the site can be achieved for all users; and
c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.”

Part c) of this paragraph refers to ensuring that any significant impacts from the development on highway safety can be “cost effectively mitigated to an acceptable degree.” This appears to acknowledge that there could be cases where mitigation is considered to go beyond being “cost effective” and may therefore not be appropriate to pursue.

Furthermore, Members’ attention is also drawn to the appeal decision issued for a site on Land north of Crossways, off Main Street, Bathley in 2019. Here, contrary to the decision to refuse planning permission based on highway safety concerns of the proposed access raised by the Highway Authority, (amongst other issues) the Inspector found that given the scale of the single gypsy and traveller pitch proposed, it would not lead to an unacceptable impact on highway safety, despite the recognised tension of not achieving safe, convenient and attractive accesses for all and providing links to the existing network of footways so as to maximize opportunities for their use. This appeal decision is considered to be material to this case and so is attached at Appendix B for the information of Members.

The view of the Highway Authority remains that in order to make the development safe and encourage pedestrian activity to and from the site, the two footpaths need to be provided as part of the development. Whilst this is acknowledged, the additional information submitted on the cost of providing these facilities represents a new planning consideration that needs to be weighed in the balance. It is considered that the relative cost of meeting this requirement is both unreasonable and not an acceptable cost effective mitigation in the light of the view to grant a limited 3 year temporary permission.

To grant a temporary permission without the S106 requirements would go against the recommended advice of the Highway Authority, which is not a view that is taken lightly. However, in this particular case, in the light of the Bathley appeal decision together with the scale of the proposed development as a single traveller pitch, the limited use of Hollowdyke Lane for buses and access only, as well as the financial investment that would be unreasonable to expect for a limited development of three years, together with the 30mph speed limit along Main Street and external lighting column on the site at the corner of the road junction, all contribute to the view reached. Whilst it is not possible to completely eliminate any highway safety risk, taking all these matters into account, and acknowledging there would be some highway safety risk, it is not considered reasonable to request the financial contribution on the basis of a temporary permission.

It then falls to consider whether the application should therefore be considered on a permanent basis to enable the footway provision to be appropriately and reasonably secured. However, given that the proposal remains unacceptable on noise impact grounds that have not been addressed in any way since November last year, it is not recommended that a permanent permission be viewed favourably.

The final option before Members is one of refusal. The Planning Policy for Traveller Sites (PPTS) identifies that where a Local Planning Authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent

planning decision when considering applications for the grant of temporary planning permission. This weighs heavily in favour of a grant of planning permission and demonstrates the lack of alternative available sites. On this basis, Members are advised that a refusal is unlikely to be defensible at appeal.

RECOMMENDATION

That planning permission is approved for a temporary period of 3 years subject to

a) The conditions and reasons set out in Appendix A (Resolution); and

b) the completion of a section 106 legal agreement within 3 months of the date of this Planning Committee (failure to do so would result in a refusal on the grounds that the scheme fails to secure a safe vehicular access to/from the site), to secure details of the width, position, radii and construction of the access and to secure a bound material for the access for a distance of 5m into the site.

This application is being reported to the Planning Committee as it has been referred by the Local Member, Councillor Betty Brooks in line with the Council's Scheme of Delegation.

The Site

The application site lies to the east of the junction of Main Street with Hollowdyke Lane in Balderton. The site backs onto the A1 trunk road to the south-east boundary which is elevated above the ground level of the site, and to the East Coast Mainline railway to the north-east boundary which is set below the ground level of the site within a cutting. Hollowdyke Lane progresses under a bridge supporting the A1 to the east while Main Street passes over the railway initially and then continues under the A1 before heading north-east towards Coddington village.

The 0.08 hectare site is roughly rectangular in shape (approx. 40m by 20m) and is bounded by Main Street (to the north-west), Hollowdyke Lane (to the south-west), the A1 (to the south-east) and the railway line (to the north-east). Until July 2020 the site was a grass paddock with small stable building largely enclosed by post and rail fencing with no formal access point although there was a gate in the south-west corner (see photo below). The land slopes slightly from its highest point in the north east (to accommodate the bridge over the railway line) to its lower level along the southern boundary and there is a steep but small embankment from the level of the site down to the lower ground level of Hollowdyke Lane. The ground level of the site is therefore higher than the existing houses on Main Street to the south-west, which makes the site prominent, particularly when viewed from the south-west along Main Street.

To the north-west of the site on the opposite side of Main Street, 13 two-storey houses in a small terrace have more recently been built, with limited set back, with their ground levels cut down below the slope of the road and bridge over the railway line. To the south-west of the site on the other side of Hollowdyke Lane are two storey detached dwelling in larger plots. Beyond the railway line to the north and the A1 to the east are agricultural fields and open countryside.

The application site is situated within and on the edge of the defined Newark Urban Area as defined by the Allocations and Development Management DPD. The site is located within Flood

Zone 1 of the Environment Agency Flood Maps but is susceptible to surface water flooding. Approximately 30m to the north-west of the application site is a 'Site of Nature Conservation' (local wildlife area) known as Balderton Ballast Pit.

Relevant Site History

79/551 – Outline planning permission for one dwelling was refused and dismissed at appeal in 1980 on the grounds of the site then being beyond the present development limits of the village, on the basis that it would represent a prominent visual stop to the view eastwards which would detract materially from the street-scene at the boundary between developed land and open countryside and thirdly that whilst it may be possible to design a dwelling with an acceptable degree of amenity internally, there would be a very low level of amenity outside the building due mainly to noise but also to overlooking.

17/00643/FUL - Planning permission was refused by the Local Planning Authority for 6 No. new residential units in the form of flats in October 2017 for the following reason:-

"The application site is constrained by topography and proximity to the railway and A1, constraints which need to be mitigated as part of any development proposals. In the opinion of the Local Planning Authority the amount of development, and the layout required will result in a compromised and confused proposal that is detrimental to the character and appearance of the area and represents poor overall design. This is reflected in the poor legibility of the scheme relative to site frontages and the entrances to the individual units and the proposed parking areas. The proposal is therefore contrary to Policy CP9 of the Core Strategy and DM5 of the Allocations and Development Management DPD together with the National Planning Policy Framework (March 2012). There are no other material planning considerations that would outweigh the identified harm."

However, the scheme was approved at appeal in a decision dated 21 June 2018 and remains extant until 21 June 2021. A copy of this decision is attached to the end of this report.

In July 2020 the site was cleared of vegetation, levelled and laid with hard standing (crushed granite or limestone) and enclosed by approx. 2m - 1.8m high close boarded timber fencing around three boundaries of the site, with the southwestern boundary fronting Hollowdyke Lane left open and an informal access created in the south-west corner of the site close to the junction between Main Street and Hollowdyke Lane (see photo below). At the beginning of August 2020, this planning application was submitted to the Local Planning Authority.



Photo taken 21.08.2020

During September 2020 it became apparent that caravans and other vehicles were moved onto the site for a brief limited period, however, more recently, the site has remained vacant and unoccupied.

The Proposal

Full planning permission is sought on a permanent basis for the material change of use of the land for the stationing of two caravans (1 static and 1 tourer) for residential occupation to provide a single pitch Gypsy-Traveller site and the construction of a utility building. The submitted site layout plan shows a new vehicular access in the south-east corner of the site, the static mobile home positioned centrally on the site with the proposed utility building and tourer caravan at the north-eastern end of the site and two parking spaces. An area of amenity space is shown between the static mobile home and the boundary with Main Street. The vehicular access from Hollowdyke Lane is to be graded into the existing embankment and tarmacked up to the entrance gates which are recessed by 12m into the site. The submitted plan shows new fencing along the rest of the boundary with Hollowdyke Lane and new vegetation planting within the site along the Main Street and Hollowdyke Lane boundaries.

No precise details of either caravan has been submitted as they cannot be prescribed as they are often traded second hand but the tourer/camper van provides additional bedroom space required by the family. The utility building (providing bathroom, wc and laundry/dayroom area) measures 5m by 4m in footprint with a pitched roof measuring 3.56m to the ridge. It is to be constructed in brickwork, roof tiles and timber joinery with precise materials to reflect the locally and approved at a later date via condition. The agent has confirmed that the development is to be connected to main sewers. Electricity and water supplies have been installed on the site as well as three 10ft high street lights (one in 3 corners of the site). The accompanying submitted Planning Statement states that the crushed stone surface allows water to freely drain as a permeable sub-base, as recommended for use with SUDS (sustainable urban drainage systems) and confirms to the Ministry of Transport Specification Clause SHW 805. This is to provide low maintenance of the site as the occupiers will be absent for periods of time when they go travelling, as set out within the Planning Statement. It also states a concrete base will be laid for the mobile home and utility block and run off from these structures will be collected in large water butts for re-use on site (e.g. watering plants, cleaning vehicles and caravans).

There is off road parking and maneuvering space for at least 2 vehicles and room for the storage of

refuse bins within the site, next to the site entrance.

According to the submitted Statement, the site would be enclosed with **1m** high timber fencing panels along the two road frontages (and not the 2m high fencing that currently exists at present), although there is no indication of when this change would occur. It states that this would then allow for the additional landscaping proposed within the site along these boundaries to be seen from the public realm. The 2m high fencing to the A1 and railway line boundaries would be retained for security purposes with entrance gates 2m high (no details have been submitted), recessed and opening inwards.

The supporting Statement states that no commercial use is proposed and the site would be occupied by persons who comply with the definition of Gypsy Traveller set out in the Planning Policy for Travellers Sites 2015. The applicant, Mr Doherty, is married with four children ranging from 3 to 15 years in age with another baby due before the end of the year. The applicant does landscaping work and in 2019 travelled to Sandy/Biggleswade, Stevenage, London, Rochester and Canterbury for work, stopping mostly on the roadside but also with relatives in London and Canterbury. The Statement goes on to state *“The family have been doubling up on an unauthorized site down Tolney Lane owned by Billy Bowers where they have lived for the last 7 months. With the serious flooding issues on Tolney Lane they do not wish to remain in this location. Prior to this they stopped with family on a Traveller site owned by Mr Doherty’s parents at Radcliffe on Trent in Rushcliffe. The site was overcrowded as it was shared with the extended family.”* In addition, one of the children has serious health issues. The Statement concludes that the family have need of a settled base with access to proper facilities to ensure their wellbeing and to provide social distancing from others, which has not been possible on shared/unauthorized sites.

The submission relies on the noise survey conducted for the 2017 appeal decision as, according to the Planning Statement, it is not possible to carry out any more up-to-date studies at present due to the effect of Covid 19 lockdown on traffic levels on main roads. It states there is no reason to believe the conditions will be any different than in 2017. In response to concerns regarding noise levels on the site, the agent states that the applicant has purchased the site in full knowledge of the background noise levels and it does not trouble them. The applicant lived on site for 2 months during the summer and report no difficulty sleeping. The agent reports the applicants have lived most of their lives in noisy environments and with generator noise and that their homeless situation is a far more pressing concern.

The agent has also made comment on the Council’s recently published Gypsy and Traveller Accommodation Assessment (GTAA), which has confirmed that there is a significant immediate and unmet need for more pitches up to 2033 but more importantly the need identified is front loaded and immediate with a need for 77 pitches between 2019 and 2024. The agent states that this is a huge figure for any single local authority in England and this level of need must weigh very strongly in support of any application for new sites and reflects a clear policy failure to address this issue. The GTAA has not been examined and the agent concludes that the study is very likely to underestimate need in this district and should be treated as a minimum figure.

The Submission

- Application Form;
- Location Plan – Drawing No: Plan 1
- Proposed Site Layout – Drawing No: Plan 2 Rev A;

- Proposed Utility Block;
- Planning Statement – Letter dated 28.07.2020 from Agent;
- Photograph of street light;
- Agent letter dated 20.10.2020.

Departure/Public Advertisement Procedure

Occupiers of nine properties have been individually notified by letter and a site notice has also been displayed near to the site.

Planning Policy Framework

The Development Plan

Newark and Sherwood Amended Core Strategy DPD (adopted March 2019)

Spatial Policy 1 – Settlement Hierarchy

Spatial Policy 2 – Spatial Distribution of Growth

Spatial Policy 7 - Sustainable Transport

Core Policy 4 – 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 12 – Biodiversity and Green Infrastructure

NAP1 – Newark Urban Area

Allocations & Development Management DPD (adopted July 2013)

Policy DM1 – Development within Settlements central to delivering the Spatial Strategy

Policy DM5 – Design

Policy DM7 – Biodiversity and Green Infrastructure

Policy DM12 – Presumption in Favour of Sustainable Development

Other Material Planning Considerations

- National Planning Policy Framework (NPPF) - March 2019
- Planning Practice Guidance, on-line facility
- GTAA, Feb 2020
- The Equality Act 2010
- Human Rights Act 1998
- The Written Ministerial Statement of December 2015 relating to intentional unauthorised development
- Planning Policy for Traveller Sites (PPTS) – 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.

Weight should also be attached to:

- a) Effective use of previously developed (Brownfield), untidy or derelict land;
- b) Sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;
- c) Promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children;
- d) Not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

If a LPA cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. There is no presumption that a temporary grant of planning permission should be granted permanently.

Annex 1 provides a definition of “gypsies and travellers” **and states:-**

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

Consultations

Balderton Parish Council – Members object to the application on highway grounds. The entrance to the site is very hazardous with little room to run into Hollowdyke Lane when travelling from an easterly direction. Main Street is effectively a single track road in that vicinity owing to the parked vehicles form adjacent dwellings. Their comments also provide a list of queries and questions relating to the details of the scheme.

Barnby in the Willows Parish Council – object to the proposals for the following reasons:

- 1) Location – the site is a dangerous location with poor visibility and issues with speeding giving the potential for accidents due to increased activity and lack of visitor parking;
- 2) Traffic flow – increase use of village for cut through to A17, speeding issue and fly tipping;
- 3) Character – not in keeping with the character or the surrounding area and traffic will

- increase;
- 4) Process – works should not have been started prior to permission being granted and many residents have not been consulted;
 - 5) Details – concern about no caravans and no of residents that would occupy site; and
 - 6) Drainage – connection to mains sewer yet a septic tank appears to have been installed.

NCC – Highway Authority – “The principle of residential development on this piece of land was established by the appeal decision. This proposal is less intense than the previous approval and offers a vehicular access in the same position as the one approved. The site has no footway link, to make it safe and encourage pedestrian activity to/from the site, a 2m wide footway should be provided along the site frontage to the west of the access (approx. 12m), a further 2m footway should be provided on the other side of Hollowdyke Lane to link up with the footway on Main Street. Should these matters be resolved there would be no reason to offer a highway objection, subject to the following conditions:- 1) details of access width, position, radii and construction to be submitted and approved; 2) access to be surfaced in a bound material; 3) parking/turning to be provided and retained; 4) scheme to provide two new footways either side of Hollowdyke Lane; 5) scheme to prevent surface water discharging onto public highway

Highways England – No objection, the proposal will have no detrimental effect on the nearby Strategic Road Network (SRN), namely the A1.

Network Rail – No objection in principle to the development, but sets out requirements which must be met, especially with the close proximity to the development of an electrified railway. They advise that in particular that drainage and method statements should be the subject of conditions, the reasons for which can include the safety, operational needs and integrity of the railway. All other matters can be dealt with through informatives attached to the decision notice.

NSDC, Policy – No objection in principle, within the urban boundary in a sustainable location and not at risk from flooding and needs to be assessed against the criteria of Core Policy 5. In line with the requirements of Core Policy 4 in the Amended Core Strategy, a new Gypsy and Traveller Accommodation Assessment (GTAA) has been prepared, whilst currently untested, it is considered to be robust and identifies a requirement of some 118 pitches up to 2033, which will be met as part of the Amended Allocations and Development Management DPD and the granting of consent for appropriate development. Presently however the Council is unable to demonstrate a five year land supply, as required through national policy.

Where proposals will contribute towards the meeting of that need, and assist in establishing a five year land supply then those factors should weigh heavily in favour of the granting of consent. Through the information provided in support of the application there is no reason to question the status of the intended occupants, in terms of the definition for planning purposes. Notwithstanding this the pitch requirements identified through the new GTAA are driven by locally identifiable need. Consequently proposals to satisfy accommodation requirements which have resulted from in-migration, post the August 2019 baseline for the assessment, should be seen as reflecting windfall need. The assessment is clear in recommending that this additional need should not be assessed against the levels of need identified in the GTAA, or contribute towards supply to meet this need. Based on the information provided, the intended occupants do not form a component of the need identified through the GTAA. The proposal should therefore be treated as windfall and assessed on its merits.

NSDC, Environmental Health – **Comments received 07.09.2020** – Taking into account the noise

levels within the report, the lack of additional acoustic controls due to the raised height of the A1 and the multiple impacts, such as sleep disturbance effects, cardiovascular and psychophysiological effects and mental health effects associated with such high levels identified by the World Health Organisation, it may be difficult to support the application.

Representations have been received from 57 local residents/third parties which are summarized below, (in addition 10 anonymous letters have been received):-

Highway safety

- On a dangerous corner, with blind spot;
- New fence obstructs visibility even more;
- There have been several accidents;
- Will result in increase traffic congestion;
- Will increase parking on roads and on street parking on Main Street already reduces the width of road to single carriageway, causing danger;
- Cars exceed the 30mph speed limit when coming over railway bridge on Main Street;
- Opposite Hollowdyke Lane is a staggered junction that is also dangerous;
- Access into and out of site is very steep and access will be more difficult with large vehicles pulling large caravans;
- No parking for visitors provided - insufficient size of site for all the vehicles;
- Cyclists and walkers use Hollowdyke Lane (which has no footpaths) who will all be at greater risk from the increased traffic from the use;
- Once new residential development at Fernwood and south of Newark and the closure of Barnby Road level crossing to vehicle traffic will significantly increase traffic in the area;
- The site is not safe for caravans being so close but at a lower level than the adjacent A1;
- Any accident on the A1 has the potential to leave the carriageway and enter the caravan site from above;
- The access on the site has moved to the corner and is not in accordance with the submitted plan;
- There are no pedestrian footpaths on Main Street, which is dangerous;
- Children and animals playing on the site with balls etc. could end up on the A1 or railway line causing danger;
- Totally unsuitable use next to the A1 and the railway line.

Visual Amenities

- A caravan site is unsightly in this location and out of place;
- The character of the area would be ruined along with the historic village and Conservation Area;
- It is squeezed onto a very tight site;
- Concerns regarding increased litter;
- The 'stockade' type fencing is an eyesore.

Residential Amenities

- The proposed use is too close to existing dwellings and will result in increased noise, loss of privacy, light pollution and poor outlook onto the site and its boundary treatment;
- No front elevation of the site has been provided – which is needed to assess the aesthetics of the site;
- The site is opposite a sheltered housing unit that assists independent living to residents with learning difficulties;

- High noise and pollution from A1 and railway line for residents on the site;
- Triple glazing cannot be used successfully within caravans;
- Concern that site will be used to run businesses.

Other matters

- Retrospective application shows disregard for planning regulations;
- Expecting to see approved flats to be built out on the site, which would be more suitable and provide much needed affordable housing;
- Concerns that grassed areas on the other side of the A1 will be used in a similar way without permission;
- There is no need for another traveller site there are plenty on Tolney Lane and the new site at Newark Road, Ollerton;
- The proposal will put a strain on local facilities, such as schools and doctors, that are already stretched;
- NSDC should compulsory purchase the site and give it over to a recreation area or car park for terrace of properties opposite the site to reduce on street parking to make Main Street safe;
- Ground levels have been raised;
- If a septic tank has been installed, it will be a health hazard and how is it going to be emptied with restricted access?
- The submitted plans are poor with a lack of measurements and scale;
- There has been a lack of notification of the application;
- The application will adversely affect the value of properties;
- Concern over the use of LPG and health and safety;
- Has the Council already made up its mind on this proposal?

Comments of the Business Manager

Principle of Development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 state that planning applications shall be determined in accordance with the development plan unless material considerations indicate otherwise, this is consistent with Paragraph 14 of the NPPF.

The District Council, as Local Planning Authority, has a duty to provide sites on which Gypsy and Travellers can live. In line with the requirements of Core Policy 4 in the Amended Core Strategy, a new Gypsy and Traveller Accommodation Assessment (GTAA) has been prepared which seeks to quantify the level of need within the District. Whilst this is yet to be tested at examination, the assessment is based on survey derived information and corresponds with current best practice. Accordingly it is considered that this provides a robust understanding of gypsy and traveller need over the plan period. Requirements for those who meet the gypsy and traveller definition for planning purposes (as set out in Annex 1 of the Planning Policy for Traveller Sites) equates to some 118 pitches, up to 2033. This represents a significant unmet need. Provision to meet this need will be made as part of the production of the Amended Allocations & Development Management DPD, which is currently underway which will seek the allocation of specific sites, as well as through the granting of consent for appropriate development. Presently however the Council is unable to identify any other sites that are currently available or deliverable for Gypsy and Travellers and in

addition is unable to demonstrate a five year land supply, as required through national policy (PPTS).

Where proposals will contribute towards the meeting of that need, and assist in establishing a five year land supply then those factors should weigh heavily in favour of the granting of consent. However, that is not the case in this particular instance. Through the information provided in support of the application there is no reason to question the gypsy and traveller status of the applicants for this site, in terms of the definition for planning purposes. Notwithstanding this, the pitch requirements identified through the new GTAA are driven by locally identifiable need. Consequently proposals to satisfy accommodation requirements which have resulted from immigration, post the August 2019 baseline for the assessment, should be seen as reflecting windfall need. The assessment is clear in recommending that this additional need should not be assessed against the levels of need identified in the GTAA, or contribute towards supply to meet this need. Based on the information provided, the intended occupants do not form a component of the need identified through the GTAA (as they were not local to Newark and Sherwood when the surveys were being undertaken and so were not included within the quantum of local need identified at that time). The proposal should therefore be treated as windfall and assessed on its merits. However, the PPTS states in paragraph 27 that if a Local Planning Authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a **significant** [my emphasis] material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission.

The application site is located within the defined Urban Boundary for the Newark Urban Area as set out in the Allocations and Development Management DPD, where the principle of development is acceptable – bearing in mind the approach provided by Policy DM12 for a presumption in favour of sustainable development. In addition to this, Core Policy 4 states that future pitch provision will be provided in line with the Council's Spatial Strategy with the focus of the Council's efforts to seek to secure additional provision in and around Newark Urban Area.

Beyond this, Core Policy 5 sets out a range of criteria, which proposals reflecting unexpected demand, such as this, would need to satisfy. The overall aims of this policy are identified as reducing the need for long distance travelling and possible environmental damage caused by unauthorized encampments and the contribution that live/work mixed use sites make to achieving sustainable development. Given its highly sustainable location within the Newark Urban Area, this site leaves the proposal well-placed to satisfy these overarching aims as well as the second criteria of CP5 that requires consideration of reasonable access to essential services (mains water, electricity, drainage and sanitation) and basic everyday community services and facilities – including education, health, shopping and transport.

In summary, whilst the District has a significant unmet need for Gypsy and Traveller pitches, this application would not be counted in meeting any of this locally identified need, as the applicants have moved into the area and would not have been counted within the GTAA survey work. However, this identified need does not represent a maximum figure and it must be recognized that there will always be the need to consider the merits of proposals for additional pitches beyond this, such as this proposal. So whilst less positive weighting can be given in this case to meeting the significant unmet need, it is also acknowledged that the District cannot provide a 5 year supply of deliverable sites and this is a material consideration that needs to be afforded significant weight in the consideration of granting a temporary permission, in accordance with the policy guidance within the PPTS.

The principle of this use in this location is therefore considered to be acceptable and the remainder of the criteria set out within Core Policy 5, which are more site specific, are set out and considered below.

Impact on the character and appearance of the area, heritage assets and ecology

The first criteria of Core Policy 5 states that the site would not lead to the unacceptable loss, or significant adverse impact on the landscape character and value, important heritage assets and their settings, nature conservation and biodiversity sites. The fifth criteria of CP5 seeks that the site is capable of being designed to ensure that appropriate landscaping and planting would provide and maintain visual amenity.

Prior to the recent works being carried out, the site was a small, overgrown, grassed paddock. Although it was open, green surfaced and more rural in character, it was very enclosed and cut off from the open countryside beyond by the significant transport infrastructure features of the A1, the railway line and the railway line bridge on Main Street. As such, although prominent in the streetscene being somewhat elevated and located on a sweeping road junction, it contributed little positive impact on the area and had limited landscape character and value in its previous form. Furthermore in considering the impact on the loss of the paddock, significant weight must also be afforded to the fact that there is an extant permission on the site for a development of 6 flats, which would also result in the loss of this open, green character and introduce a substantial level of built development in the form of a two-storey building comprising 6 no. 1-bed affordable apartments served by substantial hard surfaced parking areas.

In terms of designated heritage assets, the nearest one to the application site is the boundary of Balderton Conservation Area which is located approx. 260m to the west along Main Street. It is clear from the comments received from third parties that the historic environment within the Conservation Area is valued and of great worth to local residents and concerns have been raised that the appearance of the proposed site would be out of keeping and detrimental to the character of the area. Whilst the concerns raised have been taken into account, it is considered that the distance between the application site and the boundary of the Conservation Area, would be sufficient to adequately protect the setting of the Conservation Area from harm.

It is very disappointing that this application has been submitted part retrospectively because it now makes it impossible to be able to assess any biodiversity impacts. It is fortunate however, that a Phase I Habitat Survey was submitted with the previous planning application on the site in 2017 which although now strictly out of date, does provide information from 3 years ago before the current works were undertaken. The report identified that the only favourable biodiversity feature on the site was the hedgerow on the eastern and southern boundaries of the site which offered potential opportunities for foraging bats and nesting and foraging birds. As such it recommended most of this hedgerow be retained but where some had to be removed to provide access, that it be compensated for by new hedgerow planting in a native species. Unfortunately all of this hedgerow has been removed from the site. The previous scheme sought biodiversity enhancements by conditioning that additional bird and bat boxes be provided on the site. Whilst it is highly disappointing that unauthorised works have occurred on the site with complete disregard for ecology, in order to find a pragmatic way forward, should planning permission be granted, it is considered reasonable to impose the same condition to require what were originally considered as enhancements; but now represent mitigation to harm that has already occurred on the site. The proposed development does include new hedgerow planting around the two most prominent boundaries of the site, and whilst it would take a while to establish itself, it would

provide the opportunity for some mitigation. This new planting would also provide a softening to the reduced height timber fencing that whilst not ideal would represent a natural feature and allow greater visual permeability perhaps between the site and the public realm as opposed to the existing high solid and fortified appearance.

Overall, the current scheme represents a single storey scaled development of two caravans and one utility building, as opposed to the extant two storey building measuring 29m long by 7.8m high. No information has been submitted regarding the materials to be used for the proposed utility building so if any permission were to be granted, this would need to be controlled through condition. The proposed access gate would be a 2m high close boarded timber fence, which because it would be set back into the site in a less prominent location, is considered to be acceptable subject to its appearance and finish, which could be conditioned. The general impact on the visual amenities of the area and streetscene is found on balance to be acceptable but this is predicated on the confirmation within the application submission that the current 1.8m high fencing along the Main Street and Hollowdyke Lane frontages would be reduced down to a max of 1m height and new hedgerow planting would be planted along the inside of the fence to soften the appearance of the site. Should the application be viewed favourably, in order to protect the visual amenities of the area it would be important to condition that this physical alteration would be carried out within a limited timescale.

To conclude, whilst some harm has been identified to biodiversity from the unauthorized commencement of development on the site, it is considered that mitigation could be provided and for the reason outlined, it is not considered that any harm would extend to the setting of Balderton Conservation Area and it would be difficult to sustain unacceptable detriment to the landscape character and value of the area or the general streetscene, subject to the imposition of appropriate conditions. This criteria of CP5 is therefore considered to be met.

Impact on residential amenity

The fourth criteria of Core Policy 5 states that the site would offer a suitable level of residential amenity to any proposed occupiers, including consideration of public health, and not have an unacceptable adverse impact on the amenity of nearby residents particularly in rural and semi-rural settings where development is restricted overall.

Paragraph 127(f) of the Framework states that planning decisions should create places that promote health and well-being with a high standard of amenity for existing and future users.

The NPPF goes on in paragraph 170 “Planning policies and decisions should contribute to and enhance the natural and local environment by:...e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability”.

Paragraph 180 of the Framework states that “Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should: a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life...”

The CP5 also goes on to advise on general guidelines for pitch sizes. A pitch that is a permanent site and self-contained, the policy advises the pitch should be approx. 550 sq m. (The application states that no business use would operate at the site and this has been taken in good faith). This site is 800 sq m, so as such, it is considered that the proposed site provides an adequate pitch size to serve the applicant and his family.

Noise is an important planning consideration in the assessment of this application. No acoustic report has been presented within this submission. Instead there is a reliance on the Noise Assessment, dated June 2017, produced in support of the previous application approved for 6 flats on the site.

The Council’s Environmental Health officer is satisfied that there is no reason to believe the noise conditions would be different now compared to back in 2017.

The noise study in 2017 noted that there are constant high levels of both light (cars and vans) and heavy (lorries and buses) road traffic using the A1, low levels of road traffic including some agricultural vehicles using Hollowdyke Land and Main Street. In addition, there are high volumes of fast moving mainline trains using the railway. The dominant noise source likely to affect the site is road and rail traffic.

Average Noise Levels Measured on Site

	Daytime 16hr (07:00 – 23:00)	Night time 8hr (23.00 – 07:00)
North East Corner	65.1dB LAeq	61.9dB LAeq
South West Corner	64dB LAeq	61dB LAeq

BS8233:2014 ‘Guidance on Sound Insulation and Noise Reduction for Buildings’ recommendations

Daytime internal noise levels <35dB	External Noise Levels between 50 and 55dB
Night time internal noise levels <30dB	Previous BS stated Night time L _{Amax} 45dB

The guidelines suggest in outdoor living areas of moderate annoyance, daytime and evening of **50dB** and serious annoyance, daytime and evening is likely above a LAeq of **55dB**. As a consequence, it will be noisy outside at all times.

The results demonstrate a consistent level of noise across the 24 hour period indicative of constant traffic noise from the A1 Trunk Road. Ambient night time levels are lower but are still in excess of 60dB. Noise levels on the road frontage were marginally lower than levels next to the road embankment. In relation to L_{Amax} (frequency of events) during the night-time range from **70dB to 85dB** at the site which is likely to lead to sleep disturbance and window open (outdoor values) of **60dB**. Effects of sleep disturbance have been observed at individual L_{Amax} exposures of **45 dB** or less.

The agent states that BS8233:2014 does indicate that a compromise may be required in noisier environments such as transport corridors, taking account of the convenience of living in such

locations and making the best use of land. As the 2018 flats appeal decision has confirmed, this is an area where development already exists and would be expected or indeed encouraged by planning policy.

In addition in support of the proposal, the agent claims the solid timber fence proposed along the railway cutting will help reduce the intermittent noise of passing trains, many of which are slowing down for Newark. It is not possible to mitigate the A1 Trunk Road noise levels as the road is elevated 2-3m above the site. However, the mobile home could be oriented to ensure the main living areas are facing Main Street and the utility block could be fitted with triple glazed units, which could be conditioned. Residential mobile homes are required to be built to a standard specification (BS 3632:2005) to provide sound insulation levels of 35dB which is not dissimilar to that for a normal dwelling.

Further comments from the Council's Environmental Health officer has stated that they are not able to access the stated British Standard to check this claim or clarify whether this means a reduction of 35 dB. Nevertheless, the CEO concludes that if the windows of any caravan are open there would be a realistic reduction of 10 dB from the outside noise levels. As a result the indoor levels with windows open would be above World Health Organisation guideline values for community noise in specific environments, dwelling indoors/inside bedrooms of 35 dB and 30 dB respectively, which is likely to lead to speech intelligibility and moderate annoyance, daytime and evening as well as sleep disturbance at night time. Whilst it may be possible to design a mobile home with attenuation in mind, it is likely that occupants will wish to have windows open in warmer weather.

The agent contends that noise impacts need to be seen in the context of sustainable development and must be considered alongside other relevant issues, taking into account any wider benefits of the development. The applicant is fully aware that the site is affected by background noise. This is not considered a problem. The serious risk of flooding down Tolney Lane and problems associated with sharing an unauthorized site with others, without access to proper facilities, is a far greater concern to the Applicant and his family, the agent puts forward. The poor health and educational attainment suffered by the Traveller population is well documented and to a large degree can be attributed to the lack of available permanent sites for them to settle on. The alternative for many is a roadside existence where they run a much greater risk to their health and are often subject to noise from road traffic. It is often argued that Travellers are more tolerant to higher noise levels as they are more used to living in noisy environments than many in the settlement community. The Applicant is used to living on a crowded site with others, and with the accompanying background noise of generators. The stance taken by the applicant in relation to noise is that that they purchased the site in the full knowledge of the proximity of the site to the elevated A1 trunk road and the lower level east mainline railway and the consequent noise levels that would be experienced on the site. The agent claims that these factors should reduce the weight to be given to the harm to the living conditions as a result of noise levels on this site. However, officers are of the view that whilst it may be the case that noise from nearby sources may not bother the applicant at present, longer term exposure to consistently high noise levels is likely to have greater effect and there cannot be certainty that residents would remain content into the future if planning permission was granted on a permanent basis.

Having regard to the Noise Exposure Hierarchy Table within para 005 of the Noise section of Planning Practice Guidance, noise from nearby sources that are present and disruptive have the potential for sleep disturbance and other measures such as keeping windows closed for long periods of time, resulting in a diminished quality of life. That amounts to a Significant Observed

Adverse Effect which could not be adequately mitigated. The PPG states that such conditions should be avoided.

Notwithstanding the comments from the agent, the Council's EHO concludes that taking into account the noise levels within the report, the lack of additional acoustic controls due to the raised height of the A1 and the multiple impacts associated with such high levels it may be difficult to support the application.

All of the above leads to the conclusion that the noise environment of this site is unsuited to the residential occupation of caravans. The significant concerns raised in relation to the levels of noise that would be experienced by occupiers on the site that could not be acceptably mitigated in any way, weighs heavily against the scheme.

Turning now to existing residents who would live close to the site, the proposed mobile home would be positioned approx. 21m from facing habitable rooms of houses on the opposite side of Main Street, which would be the nearest affected receptors of the proposed development. This distance would be an acceptable back-to-back relationship between dwellings within an urban environment and boundaries treatments would exist between, including Main Street. The utility building can be oriented so that the side elevation faces Main Street, which has no openings. On balance, it is considered that these relationships would not result in any unacceptable loss of privacy, light or create over-bearing impacts. There is a property to the south-west of the site that is also adjacent to the site, however, high and deep boundary treatments provide a substantial physical buffer to any direct relationship with the application site. There are three external lighting columns (that have the appearance of street lights) approx. 3m high in three corners of the site. The lights have upper cowls that direct light downwards onto the site and it appears that they are unlikely to result in any glare or light nuisance to adjacent residents, however, this will be properly assessed by the EHO over the next few days and it will be reported to Members on the Late Items Schedule. With conditions to restrict the occupation of the site to a maximum of two caravans (being one tourer and one static) and preventing any commercial use of the site, this should also adequately protect the amenity of neighbouring properties. On this basis, it is concluded that the proposal would not result in any unacceptable impacts on the residential amenities of existing surrounding dwellings.

Impact on Highway Safety

The third criteria of Core Policy 5 states that the site has safe and convenient access to the highway network.

Highways England has confirmed no objection to the proposal and its relative impact on the A1 trunk road. Notts County Council as Highway Authority has raised no objection subject to a number of conditions relating to 1) details of access width, position, radii and construction to be submitted and approved; 2) access to be surfaced in a bound material; 3) parking/turning to be provided and retained; 4) scheme to provide two new footways either side of Hollowdyke Lane; and 5) scheme to prevent surface water discharging onto public highway. Highway safety has been the most significant concern of local residents that have commented on the scheme. However, in reaching their view, the Highway Authority have had to have regard to that fact that the existing extant permission for the flat development allowed a new access road in the same position proposed by this scheme and although the vehicles entering and leaving the site are likely to be of a different nature, the intensity of the use of the access would be much reduced by this less intensive development. As such an objection on highway safety grounds would not be

sustainable, subject to the discussion below.

Condition 4 recommended by NCC Highways is required because the site has no footway link and therefore to make it safe and encourage pedestrian activity to/from the site, a 2m wide footway should be provided along the site frontage to the west of the access (for approx. 12m), a further 2m footway should be provided on the other side of Hollowdyke Lane to link up with the existing footway on Main Street. This facility is considered to be essential in highway safety terms otherwise the occupiers of the site if accessing or egressing the site on foot, would likely be forced to walk in the road, which is dangerous.

The agent has responded to this requirement by stating:-

"A footway can be provided outside the site to connect to the existing network but I consider your suggestion unreasonable for the scale of development proposed which is a lot less intense than that previously agreed for this site. Whilst your suggestion might have been appropriate for the 6 units of accommodation approved on appeal, for a single Traveller pitch I think a 2m footway to the west of the access as far as Coddington Road (ie for 15m approx) should suffice with a dropped crossing so that occupants can cross to the footway outside dwellings on the west side of Coddington Road/ Main Street. My clients report that they have no difficulty crossing Coddington Road on foot at present. The junction is some 50m from the crest of the railway bridge."

Having discussed the alternative new footway and crossing point over Main Street suggestion with the Highway Authority, the advice given is that this is not safe and would result in danger to highway users. The only way to ensure the proposal is safe in highway safety terms is to provide the footways in accordance with the Highway Authority's advice. Given that the footway works would be positioned outside the red line of the application site on highway land, the only way to secure their implementation via a condition would be through a "Grampion" style condition which would require these additional works to be implemented prior to the commencement of development on the site. In this case, however, that is not possible as works have already commenced. The only way that these matters could now be secured would be through an appropriate legal agreement between the parties which would legally require the applicant to agree to undertake the footway construction. As the development has already commenced, it is also not possible to secure the details of the access, its width, position, radii and construction and details of a bound material for a distance of 5m into the site to be secured by condition and the provision of these matters would also need to be secured through the legal agreement. This legal agreement would need to be in place before any planning permission is granted.

If the relevant land owners/parties do not enter into the agreement within a reasonable timeframe (it is suggested six months from the date of committee) the application should be refused on the grounds that the scheme is unsafe in highway safety terms. This is included within the recommendation to you, set out below.

Third parties have raised concerns regarding the increased use of Hollowdyke Lane in the future with the delivery of large numbers of new houses at Fernwood and south of Newark. However, as part of the approved planning permission, Hollowdyke Lane will be closed to all traffic apart from buses, so levels of traffic will likely be significantly reduced in the future.

Flood Risk and Drainage

Criteria 6 seeks that in the case of any development proposal which raises the issue of flood risk, regard will be had to advice contained within the Government's PPTS 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, applying both the Sequential and Exceptions Tests, as appropriate, to achieve safety for eventual occupiers.

The site is within Flood Zone 1 on the Environment Agency flood maps, which means it is at low risk of fluvial flooding. In relation to the disposal of foul sewage, the agent has confirmed that the site would be connected to the main sewer and surface water would soak through the permeable hardsurface on the site. Network Rail has requested a condition be imposed requiring greater detail on these matters so that they can ensure that there would be no impact on their adjoining railway land and the Highway Authority have required drainage details to be incorporated into the access road in order to prevent surface water run-off from the site onto the adopted highway. In the event that planning permission is approved, these matters can be satisfactorily covered through the imposition of conditions. Some local residents have raised concerns about a septic tank have been installed on the site, however, the agent has confirmed that the site will be connected to main sewers.

Personal Circumstances

As already referred to in this report, there is no reason to doubt that the applicant and his family fall within the definition set out within Annex 1 of PPTS.

The applicant's family comprises himself, his wife, his four children under the age of 16 and Mrs Doherty is expecting her fifth child later this year. The personal needs of the family include the health needs of one of the children who requires the family to have a settled base so that they can be registered with doctors. In addition it will ensure all the children can attend school.

Members will need to be aware of the relevant case law regarding the Human Rights of Gypsies and Travellers set out in the Rafferty and Jones V SSCLG and North Somerset Council. A refusal of permission is likely to have significant consequences for the home and family life of the family involved and it is clearly a circumstance where Article 8 Convention Rights are engaged. Article 8 imposes a positive obligation to facilitate the Gypsy way of life and, as a minority group, special consideration should be given to their needs and lifestyle. In that respect, the occupants have a clear preference for living in caravans and the option of living in bricks and mortar accommodation would not facilitate that lifestyle.

In addition, Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of children must be a primary consideration in all actions made by public authorities. The Article 8 rights of the children in that context must be considered. No other consideration can be treated as inherently more important than the best interests of the children.

Significant positive weight needs to be attached to the personal circumstances of the applicants, particularly the benefits associated with healthcare and schooling arrangements for the children that a permanent base would provide for the applicant and his family.

Other matters

The Written Ministerial Statement of December 2015 relating to intentional unauthorised development is also a material consideration. That statement confirmed that the Government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission, with no opportunity to appropriately limit or mitigate

the harm that has already taken place. Accordingly, the Government announced that where intentional unauthorised development has occurred, it would be a material consideration counting against development.

The development in this case was clearly intentional and the physical works have been undertaken, in addition to a brief occupation of the site, without seeking planning permission. Those actions did not enable matters such as biodiversity or noise to be considered in advance, or any mitigation in respect of those issues put forward. Consequently, it is a matter that weighs against the grant of planning permission.

Any impact on house values are not a material planning consideration that can be taken into account in the determination of this application.

Planning Balance and Conclusion

Whilst the recent GTAA has identified a significant unmet need for gypsy and traveller pitches, this proposal represents a windfall site where the applicants do not form part of that local identified need. The significance of meeting the demand of unmet need is therefore neutral in this particular case. However, the PPTS identifies that where a Local Planning Authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. This weighs heavily in favour of a grant of planning permission and demonstrates the lack of alternative available sites.

The site is in a highly sustainable location close to all the facilities required for day to day living and the requirements of a growing family and tilts towards an approval. No harm has been identified in relation to the character and appearance of the area, heritage assets, residential amenity and flood risk which are therefore neutral in the overall planning balance. However, retrospective harm has been found to ecology although mitigation is offered in the form of new hedgerow planting. In highway safety terms, the applicant would need to comply with the requirement for off-site footway provision in order to make the development safe. This would need to be resolved within 6 months from the Planning Committee meeting through the sealing of a S106 legal agreement to secure this pedestrian feature; otherwise the application should be refused.

An approval would provide a settled base that would facilitate access to education and healthcare and enable the family to continue their gypsy way of life. The human rights of the family means due regard must also be afforded to the protected characteristics of Gypsies and Travellers in relation to the Public Sector Equality Duty (PSED) when applying the duties of section 149 of the Equality Act 2010. All of those factors attract significant weight in favour of the development.

Having regard to the personal circumstances and human rights of the family, including the best interests of the children, the option to occupy the site would undoubtedly be less disruptive than the possible resort to road side living and make access to education and health services much easier.

The fact that the development was intentionally undertaken without planning permission is a matter that weighs against a grant of planning permission, albeit that weight is moderated by the fact that no alternative sites were available for the applicants to occupy.

The list of considerations in favour of the proposal are also tempered by the identified harmful

impact from the considerable nearby noise sources of the A1 trunk road and main line railway and the unsuitability of the environment in that regard. Noise levels are in excess of recognised standards and the health implications of living at the site in exposure to consistently high background noise levels is a significant concern.

Weighing all these competing considerations in the overall planning balance, I am lead to the conclusion that in this case, that given the total lack of alternative available sites and in the best interests of the children that a temporary permission for a period of 3 years would be the appropriate balanced decision and as such the weight attached to the noise impact is reduced due to the fact that the identified harm would only be felt for a limited, temporary period until a more appropriate site becomes available.

A temporary permission would enable the applicants to reside at the site until new sites come forward through the development plan or any associated policy documents. Permission for a limited period of three years is therefore offered to Members.

RECOMMENDATION

That planning permission is approved for a temporary period of 3 years subject to

- a) The conditions and reasons shown below [the conditions are set out within Appendix A]; and**
- b) the completion of a section 106 legal agreement within 6 months of the date of this Planning Committee (failure to do so would result in a refusal on the grounds that the scheme fails to secure a safe vehicular and pedestrian access to/from the site) to secure two footways either side of Hollowdyke Lane, to secure details of the width, position, radii and construction of the access and to secure a bound material for the access for a distance of 5m into the site.**

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.

Lisa Hughes
Business Manager – Planning Development

Committee Plan - 20/01405/FUL

