

## PLANNING COMMITTEE – 30 MARCH 2021

<b>Application No:</b>	<b>21/00027/FUL</b>	
<b>Proposal:</b>	<b>Change of use of the land for the siting of caravans for residential purposes for 2no. gypsy pitches and hardstanding ancillary to that use (retrospective)</b>	
<b>Location:</b>	<b>Chestnut Lodge, Barnby Road, Balderton</b>	
<b>Applicant:</b>	<b>Mr Tom Holmes</b>	
<b>Registered:</b>	<b>22 February 2021</b>	<b>Target Date: 19 April 2021</b>
<b>Website link:</b>	<a href="https://publicaccess.newark-sherwooddc.gov.uk/online-applications/simpleSearchResults.do?action=firstPage">https://publicaccess.newark-sherwooddc.gov.uk/online-applications/simpleSearchResults.do?action=firstPage</a>	

**This application is being reported to the Planning Committee as the specifics of the application warrant determination by the Planning Committee at the request of the Business Manager – Planning Development.**

### The Site

The application site lies on the south side of Barnby Road. Approx. 500m to the west of the site is the junction with Balderton Lane (which links Balderton with Coddington), and beyond which is the A1. East of the site, Barnby Road eventually leads to Barnby in the Willows. The site sits between two properties, Chestnut Lodge to the east and Chestnut House to the west (which is also in use as a transportation company). Adjacent to the site is also a gas valve compound. On the opposite side of the site is a Moorhouse, a dwelling with equestrian facilities.

The roughly 0.38 hectare site is L-shaped with a 27m frontage with Barnby Road and then wraps around the rear of the gas valve compound. The site is flat and was previously predominantly a grassed field/paddock. Two underground gas pipelines run across part of the site, each side of which are 6m wide easements where no structures should be sited. As well as the application site, the applicant also owns land to the west of the site (to the rear of Chestnut House), some of which is occupied by former agricultural buildings as well as land to the east of the site where the dwelling known as Chestnut Lodge sits in a substantial plot. To the east of Chestnut Lodge is an unmade vehicular access from Barnby Road that runs down the side of the Lodge (enclosed along its eastern and then turns 90 degrees adjacent to its rear boundary, which then stretches into the application site. This access serves both the Lodge, the application site and the agricultural buildings beyond the site to the west. Beyond the application site to the south are agricultural fields, and the field immediately to the south-west of the site is also owned by the applicant.

Situated in the open countryside, the site is located to the east of the main built up area of Balderton. The application site is located within Flood Zone 1 of the Environment Agency Flood Maps, which means it is at low risk of fluvial flooding but is susceptible to surface water flooding. There are two underground gas pipes that run across the site from the gas valve compound running to the south; one pipe then turns 90 degrees and runs along the southern boundary of the application site. Barnby Road has a deep grass verge on its southern side in this location, some of

which is planted with mature trees, but no footways are provided along Barnby Road.

### Relevant Site History

88/1154 - Erection of agricultural dwelling, approved 30.01.1989 (this related to Chestnut Lodge)

FUL/990739 - Removal of agricultural occupancy condition, approved 19.01.2000

### The Proposal

Retrospective planning permission is sought on a permanent basis for the material change of use of the land to form two gypsy and traveller pitches. The submitted site layout shows one caravan being located on each pitch served by an associated parking area. The caravans appear to have been located on the site last December/January, prior to this application being submitted, and are now occupied. Although not shown on the submitted plans, the access road is bounded by new post and rail fencing enclosing each pitch either side of the access road. One caravan sits adjacent to the western boundary of the site, facing eastwards sited to the north of the access road, and overlooks a large area of newly laid grass, with dedicated parking area for three spaces adjacent to the access road. The other caravan sits adjacent to the southern boundary and faces north. On this basis, each pitch would measure approx. 0.23 and 0.1 ha in area.

New close boarded timber fencing has been erected around all the boundaries of the application site which is shown on the submitted plan to be supported by new planting, but no details have been submitted.

No precise details of either caravan have been submitted although the officer's site visit revealed structures that look residential rather than having the appearance a traditional caravan, although it has been confirmed that the structures do fall within the definition of a caravan as set out by the Caravan Sites Acts of 1960 and 1968. External lighting has been installed on the site in the form of 5 street lights (5 other lighting columns have been erected to the south-west but outside the red line of the application site). The applicant has confirmed that foul sewerage disposal would be via septic tanks.

The occupiers of this site have confirmed that they are two gypsy and traveller families, including three children (aged 6 and under) who used to reside at Tolney Lane but have moved in order to be able to reside on a safe site that is not at risk of flooding.

Following an objection being received from Cadent concerning the siting of one of the caravans being within the 6m wide easement area, an amendment to this siting was submitted showing one of the caravans being re-sited together with an increase in the red line site boundary.

The following plans and supporting documents are being considered under this application:

- Site Location Plan received 22 February 2021;
- Block Plan received 22 February 2021;
- Ownership Aerial Photograph received 15 January 2021;
- Planning Statement;
- Aerial photograph showing position of lighting columns;
- Photograph of a lighting column.

## Departure/Public Advertisement Procedure

Occupiers of 2 properties have been individually notified by letter. 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 3 – Rural Areas

Spatial Policy 7 - Sustainable Transport

Core Policy 4 – Gypsies and Travellers – New Pitch Provision

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

Core Policy 9 -Sustainable Design

Core Policy 13 – Landscape Character

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

DM5 – Design

DM8 – Development in the Open Countryside

DM12 – Presumption in Favour of Sustainable Development

### **Other Material Planning Considerations**

- National Planning Policy Framework 2019
- Planning Practice Guidance, on-line facility
- Landscape Character Assessment SPD 2013
- 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 (summarised below)

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:

Effective use of previously developed (Brownfield), untidy or derelict land;

Sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;

Promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children;

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** – Object to proposal – Members consider that there is no safe access to and from the site as there are no footway or cycle tracks into Balderton. The main route from the site (Coddington Road) is a busy thoroughfare with no pavement and the road is quite narrow and not suitable from pedestrians or cyclists.

**Barnby in the Willows Parish Council** – Object to proposal for the following reasons –

- Road safety – roads are very narrow serving an agricultural community, increases in traffic that maybe towing caravans would create problems with agricultural vehicles, pedestrians, cyclists and horse riders, putting safety at risk. Barnby is a tiny village and its roads could not cope with increased traffic and noise taking short cuts to/from the A17. Road surfaces are already poor that is not gritted and with increases in deliveries is deteriorating further. The access road to the site is narrow and could lead to safety issues at its junction.
- Loss of privacy – two neighbouring properties (Moorhouse and Chestnut House) are likely to be overlooked. The site is large and has potential for expansion, exacerbating the concerns raised of increases in population and vehicle movements/volumes.
- Light Pollution – Overbearing erection of excessive floodlighting is not only causing invasion of privacy but is light pollution that can be seen from long distances and are left on for long periods/late into the night, impacting neighbours and wildlife.

- Impact on landscape and character of area – loss of hedgerows and trees is already evident with erection of new wooden fence paneling, meaning a loss of nesting, shelter and food sources for wildlife (deer, hares, barn owls, tawny owls, little owls and bats (protected species)).
- Facilities – Barnby has no facilities other than a church, no access to shops, schools or medical provision.
- Some works have already been completed before planning permission has been granted.
- Further information needed on removal of waste/sewage; how the parking provision of 6 spaces have been calculated; positions in relation to gas pipes.

**NCC, Highway Authority** – Object - It is extremely unlikely that the proposal would be accessed by any other form of transport than the private car/van. There are no footway or cycle route provision close by, and very infrequent bus service. I therefore consider that the proposal is contrary to the National Planning Policy Framework and to Spatial Policy 7 of the NSDC's Core Strategy.

I recommend refusal on the following grounds:

The proposal does not offer reasonable and practical ways of accessing the site other than by private car/van, and is therefore contrary to the principles of Spatial Policy 7 of the LDF Core Strategy in that it fails to provide safe, convenient and attractive accesses for all, including the elderly and disabled, and others with restricted mobility, and does not provide links to any existing network of footways, bridleways and cycleways.

However, should this application be approved the access into the site should be improved/widened at its mouth to allow one vehicle to pass another. Details of this should be submitted for approval. The Highway Design Guide seeks a width of 4.8m within 8.0m of the public highway plus 0.5m clearance on both sides.

**Cadent – Following submission of amended plans** - No objection as new plan shows all caravans/structures outside the 6m easements on the two gas pipelines. Add informative to decision notice.

**National Grid** – No objection.

**NSDC, Environmental Health** – Noise – whilst there is likely to be some noise from the adjacent transportation company, there is a large solid fence between the two properties which is likely to have some noise reducing properties. The gas valve compound makes a fairly loud and constant noise (assumed to be 24 hours a day). The site is protected by a close boarded timber fence which will again offer noise reduction.

Lighting – the lights erected are normal LED street lights and the luminaires are all on the horizontal. There was no spillage of lighting from the property. However two lights (nearest the main road) were not switched on. These two lights must be fitted with a back plate.

**NSDC, Environmental Health – Contaminated Land** - Aerial photography dating back to 2000 appears to show agricultural buildings present on the application site. I note that the application is for caravans with hardstanding which is lower risk than residential with gardens. However, agriculture is a potentially contaminative land-use and such land can possibly be used for a wide variety of potentially contaminative activities.

The applicant/developer will need to have a contingency plan should the construction/conversion phase reveal any contamination, which must be notified to the Pollution Team in Public Protection at Newark and Sherwood District Council on (01636) 650000.

**Five representations have been received from two local residents/interested parties (who wish to remain anonymous) which can be summarised as follows:**

- Design – the mobile homes are more like prefab houses and are not in keeping with adjacent properties – it should be a higher standard of design so it is not out of character and should protect the character and appearance of the countryside;
- There has been removal of tree coverage along boundaries during the development, impacting negatively on wildlife;
- Loss of privacy;
- Harmful visual impact on residential amenity and a Residential Visual Amenity Assessment (RVAA) should be undertaken;
- Additional hardstanding suggests there is likely to be further over-development of the site, leading to loss of garden land and open aspect of the locality;
- Biodiversity – an environmental impact assessment should be considered to demonstrate the consideration on the surrounding environment and wildlife;
- Light pollution – there is a substantial amount of external street lighting with extremely bright white lighting which is on from dusk until dawn every night – this is not energy efficient and negatively impacts on residential amenity of neighbours. Lights are a ‘statutory nuisance’ which is also having a negative impact on wildlife; sleep deprivation and health of neighbours; ruined the ability to enjoy the night sky; lighting glare affects highway safety on the main road;
- The applicant is gypsy in origin however they wish to settle and no longer move from place to place, which is intended to be a permanent arrangement – thus rendering the application incorrect as they do not fall within the planning definition;
- Gypsy and traveller sites should be strictly limited in the open countryside as additional dwellings on green field sites is inappropriate development;
- If this application is approved it would set a precedent for additional sites for more family members – there are 2 large touring mobile homes in the front garden which are also lived in;
- The family chose to move from Tolney Lane – they had somewhere to live;
- It is not acceptable that they have no regard for the rules and apply retrospectively;
- A septic tank has been installed;
- Cadent states that heavy vehicles are not supposed to cross the underground pipelines on the site;
- 3 truck loads of sand were delivered to the site recently and there are 10mph signs on the access on the site, showing the intention to expand development further.

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 11 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 figure rises to 169 to take account of undetermined households and those who do not meet the definition – but who may require a culturally appropriate form of accommodation). The District's requirement of 118 pitches forms the basis of the five year land supply test, as required as part of the PPTS. Helpfully the GTAA splits this need across 5 year tranches – with 77 pitches needing to be delivered or available within the first period (2019-24) for a five year supply to be achieved. This reflects a heavy skewing towards that first tranche – due to the need to address unauthorised and temporary development, doubling up (i.e. households lacking their own pitch) and some demographic change within that timespan (i.e. individuals who will be capable of representing a household by the time 2024 is reached). This represents a significant unmet need. Provision to help 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).

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. Drawing on the information provided in support of the application, the two households were previously accommodated on two separate lawful pitches at an existing site on Tolney Lane within the baseline of the new GTAA – and the age breakdown of dependents means that they will not form new households prior to 2024. Consequently the two pitches proposed here will not directly contribute towards meeting the District's need requirements – either as part of a five year land supply or in terms of wider need across the plan period as a whole. Notwithstanding this, having regard to the general layout of the site it is possible that additional pitches could be accommodated at a later date (subject to this being deemed acceptable). This has the potential to help to address the needs of the dependent who is forecast within the GTAA to become a new household towards the end of the plan period, and so require a pitch at that time. Were permission to be granted then the formalising of this position could be explored via site allocation as part of the plan-making process.

Where the proposal does help meet an immediate need is through the pitches vacated on the site at Tolney Lane, which is privately owned and host to 12 lawful pitches. The GTAA shows the need generated by those existing occupants (who met the planning definition of a traveller) to constitute; 1 pitch to meet a current need and an additional 4 to meet future needs as a result of new household formation later in the plan period. It is not therefore unreasonable to consider that 1 of the vacated pitches will provide available supply to meet the single pitch required to service that current need on Tolney Lane. On this basis there would therefore be an indirect contribution towards a five year land supply. This positive indirect contribution is a significant benefit, and one which should be afforded considerable weight as part of the planning balance.

The application site is located in the open countryside, approx. 700m east of the boundary of the Newark Urban Area, as defined by the Allocations and Development Management DPD. Core

Policy 4 states that future pitch provision will be addressed through all necessary means, including amongst other criteria, the granting of planning permission for pitches on new sites in line with Core Policy 5. Provision will be made 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 the Newark Urban Area.

Beyond this, Core Policy 5 sets out a range of criteria, which proposals 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 the site's relatively close location to the Newark Urban Area, this site leaves the proposal reasonably well-placed to satisfy these overarching aims.

In summary, the District has a significant unmet need for Gypsy and Traveller pitches. The proposal would represent an indirect contribution towards a five year land supply. This positive indirect contribution is a significant benefit, and one which should be afforded considerable weight as part of the overall planning balance.

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. Core Policy 13 of the Core Strategy addresses issues of landscape character. The Landscape Character Assessment SPD informs the policy approach identified within Core Policy 13. The LCA provides an objective methodology for assessing the varied landscape within the district and contains information about the character, condition and sensitivity of the landscape.

The site is identified as being within the East Nottinghamshire Sandlands and within the Landscape sub-type of Winthorpe Village Farmlands (ES PZ 04). The policy approach for this area is to 'Conserve and Create', identifying it as being of moderate condition and of moderate sensitivity. The characteristic visual features within this area are smaller field sizes adjacent to villages with pasture. Specific recommendations for built features therefore encourage conservation of what remains of the rural landscape by concentrating new development around existing settlements and creating new development which reflects the local built vernacular. With regard to landscape features this seeks to create new hedgerows and conserve existing, seek opportunities to conserve field pattern where feasible, contain new development within historic boundaries as well as to seek opportunities to conserve existing pastoral fields and historic field patterns and conserving and enhancing tree cover and landscape planting generally.

Prior to the recent works being carried out, the site was an open grassed field/paddock and relatively well bound with trees/hedging along the northern boundary with the road, but flanked by existing development to the east and west. The current site is still dominated by open grassed areas, but with the addition of two residential caravans and additional close boarded timber fencing. Whilst this creates a more enclosed site, the new fencing has yet to be supported by new

planting on the inside of the site. In order for such new planting to be of an appropriate native planting species, a soft landscaping condition should be imposed on any permission. The caravans do not reflect local built vernacular, however they are not readily visible from Barnby Road. Given the retrospective nature of the application, it is not exactly clear what vegetation/planting has already been removed from the site, but it appears that any removal is likely to have taken place around the site boundaries, where new planting is proposed in any event. Whilst vegetation removal is regrettable from both a landscape character and ecology point of view, a matter reflected by the comments from Barnby Parish Council, the vegetation was not protected in any way. The mature trees within the grass verge of Barnby Road in this location are retained and so the mature treed and soft setting to the site from Barnby Road is largely retained.

No designated heritage assets are located near to the site that would be affected by the proposals.

It is very disappointing that this application has been submitted retrospectively because it now makes it difficult to be able to assess any biodiversity impacts. Given that the site was an open grassed field/paddock it is unlikely that the site would have supported any significant levels of biodiversity, however any removal of hedgerow or trees from the site may have offered potential opportunities for foraging bats and nesting and foraging birds. Should planning permission be granted, therefore, it is considered reasonable to impose a condition to require some biodiversity enhancements to provide two bat and two bird boxes on the site.

Section 11 of the NPPF relates to making effective use of land and paragraph 117 states that planning decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding the environment. Paragraph 122 states that planning decisions should support development that makes efficient use of land, taking into account: a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it ....d) the desirability of maintaining an area's prevailing character and setting. Core Policy 5 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 and permanent sites where pitches are self-contained and there is an element of business use, 640 sq m. The size of the application site presented could accommodate around 5 pitches of a 550 sq m pitch area or up to 4 pitches of a 640 sq m pitch area. As such, it could be considered that the proposal is not making effective use of the land given the limited density of pitches on the land available. Whilst this is acknowledged, given the site would contribute towards the unmet need of gypsy and traveller pitches, it would be difficult to sustain a reason for refusal on this basis. In addition neither the size of the pitches or the general layout would preclude the application site from accommodating additional pitches in the future (subject to planning permission), should the applicant wish to pursue this option.

Overall, the current scheme represents a single storey scaled development of two caravans. The close boarded timber fences, which have been erected around the site boundaries although more of a suburban feature and would more appropriately be of a post and rail design in this countryside location, can be softened through new additional native planting. The majority of the fencing would be set back into the site in a less prominent location, and as such is considered to be acceptable subject and would be softened over time by new planting. The general impact on the visual amenities of the area and roadside is found on balance to be acceptable with new hedgerow planting along the new fencing to soften its appearance.

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 reasons outlined and it would be difficult to sustain unacceptable detriment to the landscape character and appearance of the area, 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 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 Council's Environmental Health officer has assessed the impact of noise from existing uses adjacent to the site – namely the gas valve compound and the potential of noise from the adjacent transportation company and is satisfied that occupiers of the site would be adequately protected from these noise sources by the close boarded timber fencing erected around the boundaries.

Turning now to existing residents who would live close to the site, Moorhouse, a two storey dwelling on the opposite side of Barnby Road is positioned approx. 51 m from the northern boundary of the application site and Chestnut House to the west is sited approx. 52m away from the western boundary of the site, which would be the nearest affected receptors of the proposed development.

There are five external lighting columns (that have the appearance of street lights), approx. 3m high; two are situated adjacent to the boundary with Barnby Road and three more within the site. Concerns regarding the current levels of illumination coming from the site has been raised by Barnby Parish Council. The Council's Environmental Health officer did have some concern in relation to the potential for light spillage to the north of the site. As such, should planning permission be granted, a condition would be imposed to require a back plate to be fitted to each of the columns adjacent to the road. Given the single storey nature of the two caravans, together with boundary treatments and the distance between the site and existing neighbours, it is not considered that the relationships would result in any unacceptable degree of harm on the amenities of existing occupiers close to the site.

#### *Impact on Highway Safety*

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

Notts County Council as Highway Authority has raised objection to the application on the following basis:- "The proposal does not offer reasonable and practical ways of accessing the site other than by private car/van, and is therefore contrary to the principles of Spatial Policy 7 of the LDF Core Strategy in that it fails to provide safe, convenient and attractive accesses for all, including the elderly and disabled, and others with restricted mobility, and does not provide links to any existing network of footways, bridleways and cycleways." This stance is supported by Balderton Parish Council.

The nearest pavement to which the site could be connected is either approx. 2.1km to the west

along Barnby Road towards Newark, 1.5km to the south-west along Balderton Lane towards Balderton or 1.9km to the north-west along Balderton Road towards Coddington. It is not therefore considered to be reasonable to insist that the applicant for two gypsy and traveller pitches be required to provide any of these lengths of footway to provide the requirements set out by the Highway Authority.

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 can be accessed by clicking on the link provided within the background papers list at the end of this report.

It is therefore considered that whilst the proposed site is not currently able to be accessed safely by any other form of transport other than by private vehicles use, it would not be reasonable on the basis of cost, to require the applicant to provide a footway link between the site and the nearest existing footway, which is approx. 1.5km away from the site. This lack of a safe and more sustainable option for accessing the site therefore weighs against the proposal in the overall planning balance. Notwithstanding this, if Members were minded to approve the application, the Highway Authority recommends that the mouth of the access road be improved and this could be imposed by condition.

### *Sustainability*

The second criteria of CP5 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.

Whilst it is acknowledged that the site is not located within the Newark Urban Area, it is only a relatively short distance away from the boundary (700m) and the ability to enjoy the full range of basic everyday services and facilities offered within Balderton. The site is adequately served in terms of electricity and water supplies. The applicant has confirmed that the site will be served by septic tanks and as such, the Environment Agency have advised an informative be added to any decision notice to advise what is required in this regard outside the planning process.

### *Flood Risk*

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 terms of surface water drainage, both pitches would continue to be served predominantly by significant areas of permeable ground surfaces and as such, it unlikely to result in any unacceptable impact on the site or neighbouring sites in the regard. The Environment Agency has requested an informative be attached to any decision notice to set out the requirements needed under other legislation to deal with the considered use of septic tanks.

### *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 site would be occupied by two families, one with two children and the other with one child. The eldest two children have reached primary school age. The personal needs of the families require a settled base to ensure 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 occupiers of the site, particularly the benefits associated with schooling arrangements for the children that a permanent base would provide, although it is acknowledged that this needs to be tempered somewhat in this case, given that such a settled base for education purposes was provided for at their previous pitches situated at Tolney Lane.

### *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, and the site occupied, without seeking planning permission, a matter reflected in the comments from Barnby Parish Council. Those actions did not enable matters such as biodiversity or impact on trees/hedgerows 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.

### *Planning Balance and Conclusion*

The recent GTAA has identified a significant unmet need for gypsy and traveller pitches. The two pitches proposed here will not directly contribute towards meeting this need requirement – either as part of a five year land supply or in terms of wider need across the plan period as a whole. Notwithstanding this, having regard to the general layout of the site it is possible that additional pitches could be accommodated at a later date (subject to this being deemed acceptable). This has the potential to help to address the needs of the dependent who is forecast within the GTAA to become a new household towards the end of the plan period, and so require a pitch at that time.

Where the proposal does help meet an immediate need is through the pitches vacated on the site at Tolney Lane, which is privately owned and host to 12 lawful pitches. On this basis there would therefore be an indirect contribution towards a five year land supply. This positive indirect contribution is a significant benefit, and one which should be afforded considerable weight as part of the planning balance.

The site is in a relatively highly sustainable location, as although located in the open countryside, the site is in close proximity to all the facilities required for day to day living and the requirements of a growing families (although only accessible by private vehicles). 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, harm has been identified with regard to the lack of facilities to access the site other than by private vehicles, without the provision of a significant length of new footway, which is considered to be an unreasonable cost in this case. This weighs against the proposal in the planning balance.

An approval would provide a settled base that would facilitate access to education and enable the families 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 two families, 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 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.

Weighing all these competing considerations in the overall planning balance, I am led to the conclusion that in this case, the benefits of the scheme outweigh the harm identified. As such a recommendation of approval is offered to Members, subject to conditions.

## **RECOMMENDATION**

**That planning permission is approved subject to the conditions and reasons shown below**

### Conditions

01

The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites or its equivalent in replacement national policy.

Reason: To ensure that the site is retained for use by gypsies and travellers only, as it is located in an area where new residential development would not normally be acceptable.

02

No more than 2 static caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any time.

Reason: In order to define the permission and protect the appearance of the wider area in accordance with the aims of Core Policy 13 of the Newark and Sherwood Amended Core Strategy (March 2019) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

03

No commercial or industrial activities shall take place on this site, including the storage of materials associated with a business.

Reason: In the interests of the appearance of the surrounding area and the amenities of surrounding land uses in accordance with the aims of Core Policies 5 and 13 of the Newark and Sherwood Amended Core Strategy (March 2019) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

04

No vehicles over 3.5 tonnes shall be stationed, parked or stored on this site.

Reason: In the interests of the appearance of the surrounding area and the amenities of surrounding land uses in accordance with the aims of Core Policies 5 and 13 of the Newark and Sherwood Amended Core Strategy (March 2019) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

05

Prior to installation, full details of any ancillary structures to be placed on the site, including those that might be required to meet separate Caravan licensing legislation, shall be submitted to and

approved in writing by the Local Planning Authority. Once approved any such ancillary structures shall only be kept on the site in accordance with the approved details.

Reason: In order to ensure any proposals are of an appropriate design in accordance with the aims of Core Policy 9 of the Newark and Sherwood Amended Core Strategy (March 2019) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

06

Within two months of the date of this permission, details showing the mouth of the access road measuring at least 5.8m wide within 8.0m of the public highway on appropriately scaled plans shall be submitted to and approved in writing by the Local Planning Authority. Within two months of these details being approved, any widening works required to be undertaken shall be fully completed.

Reason: In the interests of highway safety.

07

Within two months of the date of this permission, two back plates shall be fitted to the two lighting columns positioned adjacent to Barnby Road, in order to prevent light spillage to the north of the site. These back plates shall be retained for the lifetime of these lighting columns.

Reason: In the interests of reducing light pollution in this sensitive countryside location.

08

Within two months of the date of this permission full details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include:

- full details of every tree, shrub, hedge to be planted (including its proposed location, species, size and approximate date of planting) and details of tree planting pits including associated irrigation measures, tree staking and guards, and structural cells. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species;
- hard surfacing materials.

Reason: In the interests of visual amenity and biodiversity.

09

The approved soft landscaping shall be completed during the first planting season following the first occupation/use of the development. Any trees/shrubs which, within a period of five years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All tree, shrub and hedge planting shall be carried out in accordance with BS 3936 -1992 Part 1-Nursery Stock-Specifications for Trees and Shrubs and Part 4 1984-Specifications for Forestry Trees ; BS4043-1989 Transplanting Root-balled Trees; BS4428-1989 Code of Practice for General Landscape Operations. The approved hard landscaping scheme shall be completed during the first planting season.

Reason: To ensure the work is carried out within a reasonable period and thereafter properly maintained, in the interests of visual amenity and biodiversity.

010

Within two months of the date of this permission full details and the precise positioning of 2 bat boxes and 2 bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The approved boxes shall then be installed within two months of approval in accordance with the agreed details prior to occupation and retained thereafter for the lifetime of the development.

Reason: In the interests of maintain and enhancing biodiversity.

011

The development hereby permitted shall not be carried out except in accordance with the following approved plans, reference

- Site Location Plan received 22 February 2021;
- Block Plan received 22 February 2021;
- Aerial photograph showing position of lighting columns.

Reason: So as to define this permission.

#### Notes to Applicant

01

Aerial photography dating back to 2000 appears to show agricultural buildings present on the application site. It is noted that the application is for caravans with hardstanding which is lower risk than residential with gardens. However, agriculture is a potentially contaminative land-use and such land can possibly be used for a wide variety of potentially contaminative activities.

The applicant/developer will need to have a contingency plan should the construction/conversion phase reveal any contamination, which must be notified to the Pollution Team in Public Protection at Newark and Sherwood District Council on (01636) 650000.

02

A septic tank is not the optimum method of dealing with the disposal of foul sewerage waste.

Government guidance contained within the national Planning Practice Guidance (Water supply, wastewater and water quality – considerations for planning applications, paragraph 020) sets out a hierarchy of drainage options that must be considered and discounted in the following order:

1. Connection to the public sewer
2. Package sewage treatment plant (adopted in due course by the sewerage company or owned and operated under a new appointment or variation)
3. Septic Tank

Foul drainage should be connected to the main sewer. Where this is not possible, under the

Environmental Permitting Regulations 2010 any discharge of sewage or trade effluent made to either surface water or groundwater will need to be registered as an exempt discharge activity or hold a permit issued by the Environment Agency, in addition to planning permission. This applies to any discharge to inland freshwaters, coastal waters or relevant territorial waters.

Please note that the granting of planning permission does not guarantee the granting of an Environmental Permit. Upon receipt of a correctly filled in application form we will carry out an assessment. It can take up to 4 months before we are in a position to decide whether to grant a permit or not.

Domestic effluent discharged from a treatment plant/septic tank at 2 cubic metres or less to ground or 5 cubic metres or less to surface water in any 24 hour period must comply with General Binding Rules provided that no public foul sewer is available to serve the development and that the site is not within an inner Groundwater Source Protection Zone.

A soakaway used to serve a non-mains drainage system must be sited no less than 10 metres from the nearest watercourse, not less than 10 metres from any other foul soakaway and not less than 50 metres from the nearest potable water supply.

Where the proposed development involves the connection of foul drainage to an existing non-mains drainage system, the applicant should ensure that it is in a good state of repair, regularly de-sludged and of sufficient capacity to deal with any potential increase in flow and loading which may occur as a result of the development.

Where the existing non-mains drainage system is covered by a permit to discharge then an application to vary the permit will need to be made to reflect the increase in volume being discharged. It can take up to 13 weeks before we decide whether to vary a permit.

Further advice is available at: <https://www.gov.uk/permits-you-need-for-septic-tanks> and <https://www.gov.uk/guidance/general-binding-rules-small-sewage-discharge-to-the-ground>

03

The apparatus that has been identified as being in the vicinity of your proposed works is:

- High or Intermediate pressure (above 2 bar) Gas Pipelines and associated equipment
- Electricity Transmission overhead lines
- Above ground electricity sites and installations

BEFORE carrying out any work you must:

- Ensure that no works are undertaken in the vicinity of our gas pipelines and that no heavy plant, machinery or vehicles cross the route of the pipeline until detailed consultation has taken place.
- Carefully read these requirements including the attached guidance documents and maps showing the location of apparatus.
- Contact the landowner and ensure any proposed works in private land do not infringe Cadent and/or National Grid's legal rights (i.e. easements or wayleaves). If the works are in the road or footpath the relevant local authority should be contacted.
- Ensure that all persons, including direct labour and contractors, working for you on or near

Cadent and/or National Grid's apparatus follow the requirements of the HSE Guidance Notes HSG47 - 'Avoiding Danger from Underground Services' and GS6 – 'Avoidance of danger from overhead electric power lines'. This guidance can be downloaded free of charge at <http://www.hse.gov.uk>

- In line with the above guidance, verify and establish the actual position of mains, pipes, cables, services and other apparatus on site before any activities are undertaken.

04

The occupiers of the caravan site will be required to apply for a caravan site license.

05

The applicant/developer will need to have a contingency plan should the construction/conversion phase reveal any contamination, which must be notified to the Pollution Team in Public Protection at Newark and Sherwood District Council on (01636) 650000.

06

This application has been the subject of discussions during the application process to ensure that the proposal is acceptable. The District Planning Authority has accordingly worked positively and pro-actively, seeking solutions to problems arising in coming to its decision. This is fully in accordance with Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

07

The applicant is advised that all planning permissions granted on or after the 1st December 2011 may be subject to the Community Infrastructure Levy (CIL). Full details of CIL are available on the Council's website at [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

The proposed development has been assessed and it is the Council's view that CIL is not payable on the development hereby approved as the gross internal area of new build is less than 100 square metres.

#### BACKGROUND PAPERS

Application case file.

Appeal Decision – Land north of Crossways, off Main Street, Bathley - [https://publicaccess.newark-sherwooddc.gov.uk/online-applications/files/CFF2A8570A92C13CB360771CDB1EDE4B/pdf/18\\_02219\\_FUL-APPEAL\\_ALLOWED-1023336.pdf](https://publicaccess.newark-sherwooddc.gov.uk/online-applications/files/CFF2A8570A92C13CB360771CDB1EDE4B/pdf/18_02219_FUL-APPEAL_ALLOWED-1023336.pdf)

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).

**Lisa Hughes**  
**Business Manager – Planning Development**

