

PLANNING COMMITTEE – 7 SEPTEMBER 2021

Application No:	21/00891/S73	
Proposal:	Application to vary condition 1 of planning permission 18/01443/FUL to amend the temporary permission to permanent	
Location:	Land Off Sandhills Sconce, Tolney Lane, Newark	
Applicant:	Messers Coates, Gray, Wilson, Calladine, Biddle, Coates etc	
Agent:	Murdoch Planning Ltd - Dr Angus Murdoch	
Registered:	19 April 2021	Target Date: 14 June 2021
Website Link:	https://publicaccess.newark-sherwooddc.gov.uk/online-applications/simpleSearchResults.do?action=firstPage	

This application is being reported to the Planning Committee as the specifics of the application warrant determination by the Planning Committee in line with the Council's Scheme of Delegation.

The Site

The application site is situated west of the Newark Urban Area, within the Rural Area as defined by the Newark and Sherwood Core Strategy and within the open countryside. The site is located at the south-westernmost end of Tolney Lane which runs from the Great North Road, on the north-west side of the River Trent and which leads to a dead end. The site, known as Green Park, is accessed from Tolney Lane via an access road through an existing Gypsy and Traveller site known as Hirrams Paddock, which has been extended to the south-west to serve this site. Green Park represents the final gypsy and traveller site at the south-western end of Tolney Lane.

The site measures 1.35 hectares in area, is roughly rectangular in shape and its authorised use is as a gypsy and traveller residential caravan site on a temporary basis. The site is sub-divided into 10 pitches, all served by a central roadway. There are open fields to the north-west and south-west of the site with a more recent gypsy and traveller site to the south-east.

Hedges define the north-west and south-east boundaries, which are protected by a Tree Preservation Order (11/00099/TPO) and the Old Trent Dyke forms the south-western boundary of the application site.

The majority of the site is within Flood Zone 3b on the Environment Agency's flood maps, which means it is at the highest risk of fluvial flooding, and is defined as being within the functional floodplain. Parts of Tolney Lane itself, the only access to and from the site, are also at high risk of flooding from the River Trent, with low points that are liable to flood before the site itself.

Tolney Lane accommodates a large gypsy and traveller community providing approx. 300 pitches.

Relevant Site History

18/01443/FUL

Application for the variation of condition 1, to make the temporary permission permanent, attached to planning permission 12/00562/FUL granted on appeal at Plots 1-10 Green Park, Tolney Lane (PI Ref: APP/B3030/C/12/2186072 and APP/B3030/A/12/2186071) (Change of use from paddock to gypsy and traveller residential caravan site - retrospective). Temporary permission was extended for a further 3 years until 30 Nov 2021.

17/00954/FUL

Removal of part of condition 1 attached to planning permission 12/00562/FUL (Change of use from paddock to gypsy and traveller residential caravan site) to allow the site to be permanent, refused 02.07.2018 by Planning Committee for the following reason:

“The proposed development represents highly vulnerable development that would be located within Flood Zone 3b and therefore would be inappropriate and should not be permitted in accordance with the National Planning Policy Framework and the PPG. The NPPF states that all development should be directed towards areas at lower risk of flooding. When temporary permission was first granted on this site there were no available Gypsy & Traveller sites in areas at lower risk of flooding. Whilst the Local Planning Authority cannot currently demonstrate a five year supply of pitches, the shortfall of 2 pitches is not considered significant or severe. The purpose of granting temporary consent was to cater for the applicant's immediate accommodation needs whilst allowing for the possibility of identifying other sites at lesser risk of flooding. The temporary consent still has almost 8 months to run (up to 30th September 2018) and the Authority is pro-actively pursuing the identification of a suitable site to meet future gypsy and traveller needs within, or adjoining, the Newark Urban Area. Although there would be some social and economic factors which would weigh in favour of the proposal it is not considered that these, in combination with the supply position, are sufficient to outweigh the severe flood risk and warrant the granting of permanent consent.

In the opinion of the Local Planning Authority, to allow permanent occupation of the site at such high risk of flooding would therefore place both the occupants of the site and members of the emergency services at unnecessary risk and be contrary to the National Planning Policy Framework and the Planning Practice Guidance, Core Policies 5 and 10 of the Newark and Sherwood Core Strategy and Policy DM5 of the Allocations and Development Management DPD.”

14/01640/FULM

Remove/Vary conditions 5 and 6 attached to the planning permission granted on appeal at Plots 1-10 Green Park, Tolney Lane (PI Ref: APP/B3030/C/12/2186072 and APP/B3030/A/12/2186071; NSDC Ref: 12/00562/FUL). Condition 5 required the removal of all solid walls and close boarded timber fences from site and replacement with post and rail fences within 3 months of the date of the permission and Condition 6 required the ground level within Pitch 8 to be reduced within 3 months of the permission. This application was refused by Planning Committee 18.12.2015 on grounds of failure to demonstrate it would result in no increased flood risk.

12/00562/FUL

Change of use from paddock to gypsy and traveller residential caravan site (retrospective), refused by Planning Committee 12.10.2012 on grounds of impact on flood risk, harm to open countryside and prematurity. Following an extensive Public Inquiry the Inspector resolved 10.06.2014 to grant temporary planning permission for 5 years until 30 September 2018 (PI Ref: APP/B3030/C/12/2186072 and APP/B3030/A/12/2186071).

The Proposal

Planning permission is sought to vary Condition 1 attached to the current permission under reference 18/01443/FUL to allow the gypsy and traveller use to become permanent rather than continue on a temporary basis.

Condition 1 states:

“The use hereby permitted shall be carried on only by the following and their resident dependents:

- Steven and/or Cherylanne Coates;
- Adam and/or Florence Gray
- Zadie Wilson (soon to be Knowles) and/or Joe Knowles
- Danny and/or Marie Knowles
- Richard and/or Theresa Calladine
- Edward and/or Margaret Biddle
- Steven and/or Toni Coates and Peter Jones
- Amos and/or Jaqueline Smith
- John and/or Kathy Hearne
- Susie and/or Billy Wiltshire

And shall be for a limited period being the period up to 30 November 2021, or the period during which the land is occupied by them, whichever is the shorter. When the land ceases to be occupied by those named in this condition 1, or on 30 November 2021, whichever shall first occur, the use hereby permitted shall cease and all caravans, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place in accordance with a scheme approved under condition 7 hereof.

Reason: In the recognition of the current need for gypsy and traveller sites within the district and to allow for further assessment of alternative sites to meet this need including sites at less risk of flooding in accordance with the aims of Core Policy 10.”

In support of the application the agent has submitted the following comments:-

“As you know the site has been occupied without any problems since 2013 and has been subject to a series of temporary consents, the most recent of which was approved by your authority in 2018. In the Officer’s Report for that application it states:

“The Inspector examining the Amended Core Strategy has reached the view, as set out in post-hearing note 4 (issued 8 May 2018), that “the GTAA is very likely to have underestimated need which means that the number of pitches set out in Draft Core Policy 4, which is based on the GTAA is insufficient.”

This is enlarged upon later in that Report as follows:

“Whilst as a result of the Amended Core Strategy examination the precise level of need cannot be currently defined it is clear is that there is unmet need. Given the circumstances it is also the case that the Council is unable to demonstrate a five year supply of sites. Therefore the contribution the proposals would contribute towards meeting future need and the current supply position ought to weigh heavily in their favour.

Whilst the Plan Review will result in the need for a new GTAA to be carried out in the short term (over the next 2 years) and subsequent site allocations (in the forthcoming DPD) being based on the new GTAA, the current level of need cannot be accurately calculated. However, what is clear is that it will result in an identification of unmet need (precise quantum yet to be identified) and in determining this application now appropriate weight must be afforded to this consideration in favour of the application. In addition to an unmet need, there are currently no other sites with planning permission, and no allocated sites identified and consequently the Council does not have a five year supply of sites. This weighs heavily in support of this proposal.”

The Report concluded:

“The recommendation to Members is that a further temporary permission be granted for a further 3 year period, to allow the applicant’s immediate accommodation needs to continue to be met, whilst the extent of future need is quantified and more appropriate land identified through the Development Plan process. This would tie in with the Allocations and Development Management DPD which is forecast for adoption in November 2020.”

The reason only a temporary rather than a permanent permission was granted was because unmet [need] was still unquantified at that time and therefore flood risk was considered to outweigh that unquantified need. Since then, the 2020 GTAA has been published in June of this year (attached) which discloses a substantial level of unmet need of some 169 pitches. This means that need is now quantified. No alternative sites have been identified and no allocations made to meet these considerable needs. Each of these factors attract substantial weight.

In terms of flood risk, since the 2018 permission, the Applicants’ Flood Risk expert Ian Walton and I were involved in an Appeal for a Travellers site that was, like here, located in FZ3b (that site was also in the Green Belt) and where mitigation was by way of evacuation (as proposed here since 2014). I attach that Appeal Decision dated January 2020 from which you will see that the Secretary of State granted a permanent, non-personal planning permission. Need in that case was for just 21 pitches, unlike the 169 pitches required in Newark.

It is therefore now clear that the material considerations have changed significantly since the 2018 approval:

- 1. Need was unquantified in 2018; the 2020 GTAA establishes an unmet need of 169 pitches;*
- 2. The 2018 Report indicated that allocations to meet need would be in place by November 2020; currently (April 2021) no such allocations have been made;*
- 3. The position in 2018 was that flood risk outweighed an unquantified need; there is recent authority from the Secretary of State that Traveller sites can be permanently located in FZ3b.*

This is a well-run site of long-standing that that the Officer’s Report accepts is in a sustainable location. In the 6 years the site has been occupied, the residents have become part and parcel of the local community and have demonstrated by their actions that they are good neighbours. Approving this application would resolve the accommodation needs of 10 Traveller families on a Previously Developed Site, whilst reducing unmet need and making a meaningful contribution to the required 5 year supply.

For all these reasons, the proposal should be supported by the Council.”

As this represents a Section 73 application, no plans or Flood Risk Assessment have been submitted with the application as reliance will be made on those submitted under reference 12/00562/FUL. The Inspector commented on the FRA's submitted with the original application stating:- *“It is common ground that the 2 FRA's submitted with the application the subject of the appeal D were inadequate. For the Environment Agency (EA), Mr Andrews pointed out that the submitted FRA's did not: analyse the flood risk from the adjacent Old Trent Dyke; identify mitigation measures to take account of works undertaken on site; or analyse the hazards associated with the access and egress route, with input from the emergency services. I still do not have a document which constitutes a FRA approved by the EA and that is an additional breach of the requirements of the Framework, PPG and CS. However, during the course of this inquiry, I have heard a considerable amount of expert evidence on behalf of the appellants and the EA regarding flood risks and it falls to me to consider the risks on that basis.”* On this basis, the Inspector sought to rely wholly on site evacuation following a Flood Alert warning from the Environment Agency.

This application submission has been supported by a copy of an appeal decision for Horton Road, Datchet dated 23 January 2020 (link to access attached to Background Papers listed at the end of this report).

Departure/Public Advertisement Procedure

Occupiers of 8 properties have been individually notified by letter.

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 & Travellers – New Pitch Provision

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

Core Policy 9 : Sustainable Design

Core Policy 10 : Climate Change

Core Policy 13 : Landscape Character

Allocations & Development Management DPD (adopted July 2013)

Policy DM5 – Design

Policy DM8 – Development in the Open Countryside

Policy DM12 – Presumption in Favour of Sustainable Development

Other Material Planning Considerations

- National Planning Policy Framework 2021
- Planning Practice Guidance (on-line resource)
- Planning Policy for Traveller Sites – August 2015

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

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

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

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

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

Annex 1 of this policy provides a definition of "gypsies and travellers" which reads:-

"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."

- Newark and Sherwood Gypsy and Traveller Accommodation Assessment, 2020
- Emergency Planning Guidance produced by the Nottingham and Nottinghamshire Local Resilience Forum (August 2017)

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

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

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

Consultations

Newark Town Council – "It was AGREED to OBJECT to this application on the same grounds as put forward in 2012:

'The Committee OBJECT to this application on the grounds that the area is prone to flooding and is a further extension to the wash land'."

Environment Agency – "We wanted to point out that since the previous application in November 2018 there has been no change in flood risk/modelling information or policy and therefore we would like to re-iterate our previous response:

We object to the proposed development as it falls within a flood risk vulnerability category that is inappropriate to the flood zone in which the application site is located. The application is therefore contrary to the National Planning Policy Framework (NPPF) and its associated planning practice guidance (PPG).

The PPG classifies development types according to their vulnerability to flood risk and provides guidance on which developments are appropriate within each flood zone. This site lies within flood zone 3a, which is land defined by the PPG as having a high probability of flooding. The development is classed as highly vulnerable in accordance with table 2 of the flood zones and flood risk tables of the planning practice guidance. Tables 1 and 3 make it clear that this type of development is not compatible with this flood zone and therefore should not be permitted.

Furthermore, we object to this application because it fails the second part of the flood risk exception test. The NPPF and PPG clearly state that change of use applications, where the proposed use is a caravan site, are not exempt from application of the exception test. The NPPF makes it clear that both elements of the exception test must be passed for development to be permitted. Part 2 of the test requires the applicant to demonstrate, via a site-specific flood risk assessment (FRA), that the development will be safe, without increasing flood risk elsewhere. Where possible, the development should reduce flood risk overall.

In this instance the developer's FRA fails to:

- demonstrate that the development is 'safe';
- demonstrate the provision of safe access and egress routes.

Flood risks to the site

We would like to take this opportunity to highlight the risks to the site should a flood event occur. We ask that you present this information to planning committee so they are fully aware of the current day risks to the site, and even more importantly, the increased risks associated with climate change. It is our opinion that whilst climate change does not need to be considered or mitigated for temporary planning permissions, it is vitally important that the increased flood levels associated with climate change are considered and mitigated against for permanent permissions. This is essential given the much longer lifetime associated with permanent developments. It is our opinion that committee need to be fully aware of this when reaching a decision.

The flood depths that would impact this site during various flood events, according to our modelled data, are set out below. Given the highly vulnerable nature of the proposed development, you may wish to consider the flood depths arising from the 1 in 1000 year event:

- The site could flood to a level of 12.61mAOD during a 1 in 1000 year event, which equates to flood depths of up to 1.03m.
- The site could flood to a level of 12.34mAOD during a 1 in 100 year 20% climate change event, which equates to flood depths of up to 0.77m;
- The site could flood to a level of 12.15mAOD during a 1 in 100 year event, which equates to flood depths of up to 0.59m;
- The site does not get flooded during a 1 in 20 year event.

Furthermore, it is worth noting that these flood depths are those which are shown to impact the site itself, the depths increase significantly when you look at the proposed access and egress route known as Tolney Lane.

In terms of mitigation, the development is proposing to rely solely on flood warning and evacuation planning; there are no proposals to raise land, and there are no proposals to raise the touring caravans themselves. There are no innovative proposals to reduce flood risk to the development and future occupants. The FRA proposes to rely on evacuation of the site before a flood event.

Where a development proposes to rely on flood warning and evacuation, our preference is for dry access and egress routes to be provided in order to demonstrate the safety of the development and future occupants. In this particular location the access and egress route is the first area of the site to flood, and it floods to extremely significant depths. The FRA recognises this and instead proposes to manage the flood risk by way of advanced flood warning and evacuation planning; a matter which falls outside of our remit as a statutory consultee. The PPG makes clear that the Local Planning Authority are responsible for determining the adequacy of flood warning and evacuation plans, in consultation with emergency planners.

We strongly recommend that prior to determining the application, your Authority seek expert advice from the local emergency planners in order to consider whether or not the proposed flood warning and evacuation plans will demonstrate the safety of the development and future occupants over its lifetime.

Previous decisions

We are mindful that a planning inspector has previously deemed temporary occupancy of this site appropriate; the inspector overruled our flood risk objection, and surprisingly deemed it appropriate to grant a temporary 5 year planning permission despite the significant flood risks to this site. The inspectors reasoning was that a temporary 5 year permission would allow the Local Plan process to develop, with the ultimate aim of identifying an alternative site of lesser flood risk to which the temporary occupants of this site could then be moved.

We have now reached the end of the 5 year permission, and an alternative site of lesser flood risk has still not been identified. We are understanding of the situation this leaves your Authority in. On the face of it, nothing has really changed since the planning inspector deemed a temporary planning permission suitable, i.e. there are still no alternative sites for gypsy and traveller provision in Newark and Sherwood, and the flood risks to the site are essentially the same as they

were 5 years ago. Having considered the planning inspector's previous decision, we understand that your Authority may be minded to grant another temporary permission. Another temporary planning permission would allow your Authority to continue long term work on identifying an alternative site, or perhaps look at options to reduce the flood risks to the existing site.

Further to this we note that the planning committee, when considering the November 2018 application resolved to grant a further 3 year temporary permission. However, it is vitally important that your Authority consider the planning position that might result from the continuous granting of temporary planning permissions; whilst case law can be seen as a fluid situation, we are aware of scenarios where continuous 'temporary' permissions could result in a 'deemed permission' for permanent use. Your Authority, and planning committee, must consider this in reaching a decision re: temporary use. Our recommendation is that if you are indeed minded to approve another temporary permission, you only do so with a time limit that would prevent the use from becoming 'permanent' through case law.

Next steps

Given the information set out above, we do not foresee how this application can overcome our objection; it is contrary to the NPPF at a fundamental level, and the flood risks to the site are highly significant. Whilst we are understanding of the difficult position that your Authority are in, we must act reasonably and fulfil our role as a statutory expert on flood risk.

None the less, if your Authority are minded to approve the application on a temporary basis we ask that you re-consult us and notify us of your intention to do so.

If you are minded to approve the application on a permanent basis, we must stress that we would consider instigating the call in direction as we consider the risks to this site to be too significant to allow permanent 'highly vulnerable' development to proceed, without further work to reduce flood risks to the site beforehand."

NB Whilst the above comments from the EA confirm that the application site is within Flood Zone 3a, the case officer sought additional clarification as it was their understanding that the majority of the site was within Flood Zone 3b. The EA have since confirmed in writing that the majority of the site is indeed within Flood Zone 3b (within the functional floodplain).

No representations have been received from local residents/interested parties.

Comments of the Business Manager

Temporary planning permission was granted for the existing use of the gypsy and traveller caravan site on 10 June 2014, following an extensive Public Inquiry. The principle of the use of the site for these purposes on a temporary basis has therefore been established.

The Inspector stated within his decision following the Public Inquiry that *"...the absence of a 5 year supply of deliverable sites for gypsy and travelers must carry weight, notwithstanding paragraph 28 of PPTS. Nevertheless, principally because of the serious flood risk, I am still not persuaded that all the material considerations justify a permanent permission. However, the section of the PPG concerning the use of planning conditions indicates that temporary permission may be appropriate where it is expected that the planning circumstances may change by the end of the relevant period. There is at least a realistic prospect of safer, more suitable sites being*

allocated through the development plan process and delivered, with planning permission, within the next 5 years. If the risks can be effectively managed and minimized over a finite and temporary period then, in the very particular circumstance of this case, the material considerations identified as weighing in favour of the development would cumulatively indicate that permission should be granted for a temporary period, notwithstanding the national and local policy objections.”

The Inspector concluded in adding to the reasons for a temporary permission that *“it still requires the occupiers to leave the appeal site at the end of the temporary period, but this is a proportionate response and interference with the residents’ rights under Article 8 of the ECHR, given the legitimate objective of ensuring safety and avoiding undue additional burdens on the Council and emergency services.”*

The original permission was granted following the Inspector balancing the lack of available gypsy and traveller pitches at the time of consideration against the high level of flood risk on the site. The decision was intended to cater for the applicants’ immediate accommodation needs whilst allowing for the possibility of identifying other sites at lesser risk of flooding. That permission was renewed for a further 3 year temporary permission in 2018, which expires on 30 November 2021. As confirmed in the PPTS, there is no presumption that a temporary grant of planning permission should be granted permanently, and legal advice has been sought which confirms that as long as there is a good, sound reason for the continued granting of temporary permission, that this would not lead to a greater likelihood of a permanent permission being found to be more acceptable over time. However there would need to have been a material change in circumstance since the determination of the previous permissions to justify any permanent permission, and this is considered further below.

Need

The Gypsy and Traveller Accommodation Assessment demonstrates a need for 118 pitches to meet the needs of those who were established to meet the planning definition between 2013-33 (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 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).

It was considered that the recent Chestnut Lodge permission near Balderton had the effect of creating an available supply of 1 pitch towards the current five year requirement (as well as having the potential to meet a further pitch required towards the end of the plan period). The Authority however has a considerable shortfall in being able to demonstrate a five year land supply, and a sizeable overall requirement which needs to be addressed. Both the extent of the pitch requirement and the lack of a five year land supply represent significant material considerations, which should weigh heavily in the favour of the granting of permission where proposals will contribute towards supply.

The new GTAA (with a baseline of February 2019) recorded 10 pitches on the application site, with 11 households meeting the planning definition of a traveller with a further 2 households being undetermined. However, notwithstanding the results of the survey carried out as part of the GTAA in 2019, it was accepted by the Inspector in 2014 that all the then applicants met the definition and given that the permission continues to be personal to 10 named households, it is accepted that this application is being assessed on this same basis. The current need is therefore considered to be for 10 pitches. Beyond this, additional need was also identified to occur within the first and then two subsequent five year tranches in order to address the needs of planning definition households forming through demographic change.

Accordingly, the granting of permanent permission would allow for the current planning definition need, picked up as part of the GTAA to be met and contribute progress towards a five year land supply. This weighs heavily in the favour of granting permanent permission, and robust and justifiable reasons are needed to depart from a permanent approval on this basis. Officers consider, however, as did the Inspector previously that given the potential risk to people and property, flood risk has the potential to form such a reason.

Flood Risk

The final criterion of Core Policy 5 states that 'Proposals for new pitch development on Tolney Lane will be assessed by reference to the Sequential and Exception Tests as defined in the Planning Practice Guidance. These will normally be provided temporary planning permission.' The NPPF states that local planning authorities should minimise risk by directing development away from high risk areas to those with the lowest probability of flooding. National guidance/policy relating to flood risk since 2014 has introduced new guidance in relation to climate change that increases the bar in relation to the assessment of new development. Core Policy 10 and Policy DM5 also reflects the advice on the location of development on land at risk of flooding and aims to steer new development away from areas at highest risk of flooding. Paragraph 13 (g) of the PPTS sets out a clear objective not to locate gypsy and traveller sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans.

The site is located within Flood Zone 3(b) and as such is within the functional floodplain of the River Trent, and at the highest risk of fluvial flooding, as are parts of the only access to and from it, along Tolney Lane.

Table 2 of the Planning Practice Guidance states that caravans, mobile homes and park homes intended for permanent residential use are classified as "highly vulnerable" uses. Table 3 of the Practice Guidance states that within Flood Zone 3b, highly vulnerable classification development should not be permitted. Tables 1 and 3 of the Planning Practice Guidance make it clear that this type of development is not compatible within this Flood Zone and should therefore not be permitted.

In coming to his decision in 2014, in the appeal on this site, the Inspector acknowledged that the development was contrary to local and national policies concerning flood risk such that it would represent a highly vulnerable use and therefore inappropriate development in Flood Zone 3 that should not be permitted. However, he concluded that if residents of the site could be evacuated within 8 hours of the first flood alert warning, before flood levels are likely to prevent safe evacuation from the site for the residents, then there would be no input required from the Council or emergency services, and the development need not give rise to an additional burden. (No

comments have been received from the Council's Emergency Planner on this application). The Inspector concluded that the lack of a five year supply was sufficient to warrant the grant of a temporary consent, subject to managing the risk to occupants of the site through the use of very prescriptive conditions to reduce the risk and secure a site specific evacuation plan.

In considering whether it would be appropriate to permit a permanent permission, it remains the case that the majority of the site is located within Flood Zone 3b (functional floodplain) and therefore remains at high risk of flooding and as such a permanent residential caravan site represents inappropriate development in this location.

It is accepted that the granting of permanent pitches would pass the Sequential Test, as there are currently no reasonably available alternative sites at lesser risk of flooding. The NPPF and PPG clearly state that change of use applications, where the proposed use is a caravan site, are not exempt from assessment under the Exception Test and the NPPF makes it clear that both elements must be passed for development to be permitted. Paragraph 164 of the NPPF states, "To pass the exception test, it should be demonstrated that:

- a) The development would provide wider sustainability benefits to the community that outweigh the flood risk; and
- b) The development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall."

Whilst it is considered that sustainability benefits to the community could be met in this case, the proposal would fail part b, as confirmed by the comments received from the Environment Agency.

The agent continues to rely on Flood Risk Assessments that were submitted in support of the 2012 application. Both FRA's submitted were considered inadequate during the Inquiry process and do not address the Exception Test or the technical ability of the site itself to be safe for its proposed use and demonstrate that it would not increase flooding elsewhere, but instead relies wholly on the requirement to evacuate the site on receipt of a Flood Alert warning from the Environment Agency prior to a flood event occurring. As such, the Environment Agency continue to object to the proposed development on the basis of the failure to pass the Exception Test.

The EA have commented previously on the appeal decision at Datchet, where the same decision was submitted in support of another application, and stated:-

"Horton Road, Datchet

- The EA's objection was solely a policy objection because of the 'highly vulnerable' development in Flood zone 3.
- The site is in both flood zones 2 and 3, so the applicant planned to raise some of the land to the flood zone 2 height, and put the caravans on the raised areas, with the finished floor levels raised further. This would mean that the caravans are a safe space during periods of flooding.
- The site had an achievable and effective floodplain compensation scheme for the proposed land raising, to replace the lost floodplain storage.
- The access road is in Flood Zone 3, there is therefore a warning and evacuation plan to evacuate the caravans in advance of flooding. This is a well-established plan with an on-site warden to manage the evacuation and receive the warnings etc."

Comparison with application 12/00562/FUL at Tolney Lane

Application 12/00562/FUL (or 18/01443/FUL) at Tolney Lane has never been accompanied by an adequate Flood Risk Assessment, as quoted above in the Inspector's appeal decision, so no mitigation measures were proposed. The EA has responded with a policy objection for the same reasons as they did at the Horton Road site; a policy objection because of the PPG/NPPF. At the Horton Road appeal, the Inspector went against this policy and approved the proposal based on the 'very special circumstances' of that case (being located in Green Belt) where both local and national policy allowed for inappropriate development to be permitted where the very special circumstances justification is made. The Inspector concluded that when account was taken of all the material considerations in favour of the development, they considered them to clearly outweigh the harms identified, thereby amounting to the very special circumstances in that case. This site is not within the Green Belt and therefore 'very special circumstances' do not apply in this case.

With the Horton Road site, the caravans were high enough to be a safe refuge if for some reason a person wasn't evacuated in time, the required land raising could be effectively mitigated through a floodplain compensation scheme and EA had the assurance that there was a very robust evacuation plan, with an on-site warden. All of the above meant that the EA could be fairly assured that the occupants were likely to be safe in the event of flooding, and the scheme would not increase flood risk elsewhere.

On this site, no adequate FRA has ever been produced to demonstrate what height the caravans' finished floor levels will be compared to the flood levels, no evidence has been produced to show if there is a safe refuge on site above flood levels and no details of any floodplain compensation schemes have been submitted. In fact, the requirements set out under Conditions 5 (to removed solid boundary walls on the site and replace with post and rail fencing) and 6 (to lower the ground levels on Plot 8 to their original levels) set out by the Inspector for flood mitigation have not been complied with since their imposition in 2014. It is therefore not possible to put aside the in principle policy objection on flood risk grounds because no other acceptable forms of mitigation can be provided in this case to demonstrate that the occupants of the site would be safe from flooding, nor that flood risk would not be increased elsewhere. Looking at the flood levels in the Tolney Lane area, the EA suspect that flood levels are higher than those at Horton Road, although they don't have any figures for Horton Road to compare.

As such, the submitted appeal decision at Datchet can be given little weight in the consideration of this application, as the weight to be given to different material planning considerations will differ on different sites and the flood risk issues in particular are clearly materially different and cannot be compared, in any event.

It is therefore considered that the proposal continues to be contrary to the NPPF (and its PPG), Core Policies 5 and 10 of the Core Strategy and Policy DM5 of the Allocations and Development Management DPD as well as the guidance within the NPPF, PPG and PPTS.

Flood risk therefore continues to weigh significantly against the proposal for a permanent permission and this is considered further within the Conclusion and Planning Balance set out below.

Other Matters

The remaining material planning considerations – impact on the open countryside, the site's relative close proximity to Newark Urban Area and its facilities and services, ecology, trees and hedgerows, highway safety and residential amenity, remain unchanged from the previously considered application and as such do not require further consideration in this instance. The Gypsy and Traveller status of the occupants of the site have already been established through past applications. For information, the full officer report from the previous 2018 application can be viewed by clicking on the link attached to the Background Papers listed at the end of this report.

Conclusion and Planning Balance

Both the extent of future pitch requirements identified by the GTAA and level of shortfall towards a five year land supply are acknowledged, and weigh heavily in favour of granting permanent consent.

Crucially, however, the purpose of the temporary consent was to allow time for the Authority to conclude production of its new GTAA, establishing the level of need, and to formulate a strategy towards site allocation to ensure that those needs can be met; whilst simultaneously allowing the immediate accommodation needs of the applicants to be met. The temporary consent does not expire until the 30th November 2021, and so there remains a limited level of time until this is reached. Production of the new GTAA has been concluded, and progress towards a detailed site allocation strategy has been made – to the extent that public consultation commenced this summer. Whilst it is too early in the process to afford meaningful weight to the emerging Amended Allocations & Development Management DPD, it sets out a clear position around what sites located on Tolney Lane will be potentially considered for allocation to meet their future needs, and how planning issues in the area will be managed in the future. This position is one which would not support the allocation of land that is within functional floodplain or unless flood risk is reduced via provision of flood resilient access to Great North Road. Green Park's location within functional floodplain would be unaffected by provision of road improvements.

Flood risk, therefore represents a significant material consideration against the granting of a permanent consent, and one which is not considered to have the potential to outweigh matters of supply; particularly given the potential risk to people and property within the functional floodplain.

In allowing the appeal decision at this site (for touring caravans that would evacuate the site at the Environment Agency's flood warning as is set out within this proposal), the Inspector considered that that whilst Gypsy and Traveller development would usually be inappropriate in a high risk Flood Zone, balanced against all the other considerations that weighed positively including significant unmet need, a temporary permission was appropriate in that instance. Indeed, the reasoning behind the Inspector's granting of a temporary consent continue to remain valid at this time. This decision was reflected in the previous granting of a temporary permission for 3 years on the previous approval granted on this site. It is concluded therefore that there has been little material change to planning considerations since that decision was reached.

The continued policy and technical objection from the Environment Agency, in this regard, is also clear and unambiguous. It is therefore considered that the established need set out in the recent GTAA publication does not in itself tip the balance sufficiently in support of a permanent permission on this site by outweighing the harm and risk to occupants of this type of development being situated within unsustainable locations such as the highest flood risk zone (the functional floodplain) of the River Trent.

Notwithstanding the failure to pass the second part of the Exception Test, there is the precedent where previous permissions have accepted application of a temporary mitigation strategy - and so there can be no issue with this being repeated on this site in November when the current temporary permission expires. Progress towards the identification of land elsewhere in and around the Newark Urban Area is being made through the Plan Review, and will provide an option for the occupants to meet their accommodation needs in a location at lesser flood risk. The current timetable anticipates Examination of the Submission Amended Allocations & Development Management DPD will occur in June 2022, receipt of the final Inspector's report in December 2022 and Adoption of the DPD in February 2023. As such, an extension of the existing temporary permission for a further two years on this site may be considered appropriate in assessing any renewal of the temporary consent later this year.

However, it remains the case that the granting of a permanent consent cannot be supported.

RECOMMENDATION

That planning permission is refused for the following reason:

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The application use falls within a 'highly vulnerable' flood risk vulnerability category that is inappropriate to the Flood Zone in which the application is located (Flood Zone 3b – defined as functional floodplain). Tables 1 and 3 of the PPG make it clear that this type of development is not compatible to this Flood Zone and therefore should 'not be permitted.' In addition, the proposal fails part b) of the Exception Test.

The purpose of granting temporary permission was to cater for the applicants' immediate accommodation needs whilst allowing for the possibility of identifying other sites at lesser risk of flooding and the Authority is pro-actively pursuing the identification of suitable sites to meet existing and future gypsy and traveller needs within, or adjoining, the Newark Urban Area through the Development Plan process.

Whilst the proposal would assist in the permanent supply of pitches position, it is not considered that this is sufficient to outweigh the severe flood risk and warrant the granting of permanent permission. To allow permanent occupation of a site at such high risk of flooding would therefore be contrary to Core Policy 5 and 10 of the Newark and Sherwood Amended Core Strategy 2019 and Policy DM5 of the Allocations and Development Management DPD 2013 together with the aims and guidance of the NPPF, PPG and PPTS, which are material planning considerations.

Background Papers

Application case file.

Link to Committee Report for application 18/01443/FUL –
https://publicaccess.newark-sherwooddc.gov.uk/online-applications/files/461DBB74E8E93E1ECADF1FB2362BD61C/pdf/18_01443_FUL-COMMITTEE_REPORT-925151.pdf

Link to appeal decision from Horton Road, Datchet -
https://publicaccess.newark-sherwooddc.gov.uk/online-applications/files/FF1957075D103CBBADBA7C6A5EC5E615/pdf/21_00891_S73-COPY_OF_APPEAL_DECISION_FROM_DATCHET-1221221.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.

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