

## PLANNING COMMITTEE – 2 NOVEMBER 2021

<b>Application No:</b>	<b>21/01900/FUL</b>	
<b>Proposal:</b>	<b>Use of land as a Gypsy and Travellers' site, erection of amenity blocks and associated works (retrospective)</b>	
<b>Location:</b>	<b>Land at Shannon Falls, Tolney Lane, Newark NG24 1DA</b>	
<b>Applicant:</b>	<b>S Price, Smith, Winter, Donaghue, A W Coverdale, Lowe, J Coverdale</b>	
<b>Agent:</b>	<b>Alison Dudley, Zenith Planning and Design</b>	
<b>Registered:</b>	<b>8 September 2021</b>	<b>Target Date: 3 November 2021</b>
<b>Website Link:</b>	<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></b>	

**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 defined boundary of the Newark Urban Area, within the Rural Area as designated by the Newark and Sherwood Core Strategy and within the countryside. The site sits on the north side of Tolney Lane which runs in a westerly direction from the Great North Road and which terminates in a dead end. It sits close to the junction where Tolney Lane forks into two and the northern arm runs towards the railway line. It is located between the River Trent to the south-east (approx. 20 from the southern boundary of the site) and the railway line to the north-west.

The application site represents the eastern part of a wider site known locally as Shannon Falls which is located between the larger gypsy and traveller sites known as Church View to the east and Hoes Farm to the west. Shannon Falls has now been sub-divided into two larger western and eastern areas and a smaller site to the north-west. The western half of Shannon Falls has a temporary permission for 8 gypsy and traveller pitches, although the site is not formally set out as approved and it is not clear whether this permission has been implemented. The southernmost part of this western half of Shannon Falls appears to be being used as a small unauthorized haulage yard. The smaller north-western part of the Shannon Falls site was granted permission in 2018 for a permanent gypsy and traveller pitch which has been completed.

This application site measures 0.5 hectare in area and is roughly rectangular in shape. The application form describes the site as unused scrubland although it also confirms that works and the change of use commenced on 1 May 2021 and therefore the application is now retrospective as works continue to be undertaken on the site.

Lying both within Flood Zone 3a and 3b (functional floodplain), the site has a high probability of

fluvial flooding, according to Newark and Sherwood's Strategic Flood Risk Assessment. In addition, the adjacent section of Tolney Lane itself is the first area to flood and to significant depths. The submitted topographical survey shows the southern boundary of the site is the lowest part, with typical ground levels of 11.1m AOD. Ground levels on the northern boundary range from 11.6m AOD and 11.9m AOD.

The application site is outside the designated Newark Conservation Area but the boundary of this heritage asset runs along the southern side of Tolney Lane, opposite the site.

Historically, the site has been subjected to material being tipped onto the land to raise ground levels which occurred roughly in 2001. This has never been authorised in planning terms and continues to be the subject of an Enforcement Notice as set out in the history section below.

The site is surrounded on three sides by existing residential caravan sites occupied by gypsy and travellers and their existing boundary treatments. The southern boundary of the site is defined by the road. Tolney Lane accommodates a large Gypsy and Traveller community providing in excess of 300 pitches.

### Relevant Planning History

Including the application site and adjacent land to the north and west:

E/1/1129 - Use of the land as a site for caravans, refused in 1959;

E/1/2531 - Construct a residential caravan site, refused in 1970;

02/02009/FUL - Use of land as residential caravan site (21 plots) and retention of unauthorised tipping on the land which raised land levels, refused on flooding grounds.

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

Whilst the site had ceased being used as a caravan site in compliance with the Enforcement Notice (prior to these retrospective works and the temporary permission approved on the remainder of the Shannon Falls site in 2019), the unauthorised tipping however, remains on the land and artificially raises ground levels.

On land directly to the north-west but excluding the application site:

15/01770/FUL - Change of Use of Land to a Private Gypsy and Traveller Caravan Site, consisting of One Mobile Home, Two Touring Caravans and One Amenity Building, refused by Planning Committee in May 2016 on the grounds of flood risk.

17/02087/FUL - Change of Use of Land to a Private Gypsy and Traveller Caravan Site consisting of one mobile home, one amenity building and two touring caravans and associated works, approved on a permanent basis by Planning Committee in June 2018. Permission has been implemented.

On land directly to the west but excluding the application site:

12/01088/FUL - Change of Use of scrub land for the siting of 8 static mobile homes for gypsy travellers (and 8 associated amenity blocks). Planning permission was refused by Planning Committee in July 2013 on grounds of flood risk.

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

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

18/02167/FUL - Change of use of scrubland for the siting of 8 touring caravans and associated amenity block for gypsy travellers was approved by Planning Committee for a 3 year temporary period until 28 February 2022. Unclear whether this has been implemented.

### The Proposal

Retrospective planning permission is sought for the change of the site from scrubland to the creation of 13 pitches, and measure on average approx. 360 sq m in area. Each will accommodate 2 trailer caravans and according to the submitted plans:-

- 11 of the pitches are served by a single amenity building (9.5m x 4.3m and max of 3.75m high; brick walls and concrete pantiles with white UPVC windows and doors);
- Pitch 5 has two smaller amenity buildings (6m x 4m and max of 3.7m high; timber cladding, profiled metal sheeting with anthracite UPVC windows and doors) and
- Pitch 3 has one smaller building (6m x 3.7m by max 3.5m high; brick walls and concrete tiles with white UPVC windows and doors).

The pitches are located either side of a central spine road, served from an access leading from Tolney Lane which terminates in a turning head, constructed of crushed stone and permeable tarmac for the first 5 metres. The currently submitted plan shows a hedge to be reinstated along the front boundary with Tolney Lane. Pitches would be defined by new 1.5m high post and rail

fencing and existing treatments define the outer wider boundary of the site.

The submitted Planning Statement states that the applicants fall within the definition of Travellers set out within the Planning Policy for Traveller Sites 2015 but no further information is given. It states:- "All of the pitches have already been allocated to Traveller families who are in immediate need of a site and some of whom have already moved onto the site." It concludes that the Council do not currently have a 5 year land supply for gypsy and traveller sites and the recently revised GTAA (Gypsy and Traveler Accommodation Assessment) has identified a need for 118 additional pitches by 2034 and 77 by 2024, of which only 2 have so far been granted planning permission. The submitted Planning Statement also refers to the Option Report which proposes the provision of flood resilient access to Great North Road, which includes an option of raising the ground level of Tolney Lane. Although it acknowledges that the Review of the Allocations and Development Management is still in its early stages, it concludes that the Council consider this is the most appropriate area for future allocations as a permanent site for gypsy and travelers, subject to the flood alleviation measures being implemented.

A Flood Risk Assessment has also been submitted which concludes that the development passes both the Sequential and Exception Tests. It states the latter test is passed because the benefits of the provision of a site in an area where there is an established need for such development and flood mitigation measures will reduce the vulnerability of people at the site.

In terms of risk, it identifies that the site is at risk of surface water flooding and fluvial flooding (in the 1 in 100 chance each year) with estimated flood depths of 0.15m and 0.9m respectively. It acknowledges that over time there will be a gradual increase in risk due to climate change, which increases the 1 in 100 chance each year fluvial event with climate change estimated to be 12.2m AOD. Flood depths at the site would range between 0.2m and 1.1m. It recognizes that the proposal increases the impermeable area and therefore there will be increased volumes of surface water that has the potential to increase flood risk.

It recommends the following flood resilience measures:-

- that the finished floor levels of the amenity buildings are 0.3m above the surrounding ground level;
- there is a water entry strategy allowing flood water to enter the amenity buildings and drain freely from them;
- the electrical supply and switchboard within the amenity blocks are elevated above the flood level;
- the users of the site should register to receive flood warnings from the Environment Agency to reduce the vulnerability of people at the site;
- the occupants of the site should identify the actions to be undertaken in the event of receiving a flood warning; and
- surface water run-off is managed so that stormwater from the development will not affect any adjoining properties or increase the flood risk elsewhere.

It also recommends that prior to occupation of the site a Flood Warning and Evacuation Plan should be in place and that the applicants are responsible for maintaining and implementing this plan for the life of the development. The Plan should, as a minimum, it advises:

- identify who is responsible for maintaining the Plan and its implementation;
- identify the locations to which residents would evacuate;
- identify the period from receipt of the first flood warning for residents to evacuate the site

- including the removal of caravans and vehicles; and
- identify the arrangements for returning to the site.

The plans under consideration are:

- Site and Location Plans (Drawing No: SF-21-P01 Rev B)
- Amenity Buildings (Drawing No: SF-21-P02 Rev A)
- Topographical Survey (Drawing No: 41263\_T Rev 0)

#### Departure/Public Advertisement Procedure

Occupiers of 18 properties have been individually notified by letter. A site notice has also been displayed near to the site and an advert has been placed in the local press.

#### **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

Core Policy 14 : Historic Environment

##### **Allocations & Development Management DPD**

DM5 – Design

DM8 – Development in the Open Countryside

DM9 – Protecting and Enhancing the Historic Environment

DM12 – Presumption in Favour of Sustainable Development

##### **Other Material Planning Considerations**

- National Planning Policy Framework 2021
- Planning Practice Guidance
- 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** – Object on grounds that:-

- i. The area is in Flood Zone 3;
- ii. Severe risk to life if flooding were to occur;
- iii. Numerous sites in near proximity impedes emergency evacuations.

**The Environment Agency** – Object, the proposed development falls within a Highly Vulnerable flood risk vulnerability category that should not be permitted within Flood Zone 3, in which the application site is located and they recommend the application should be refused as being contrary to the NPPF and PPG.

They go on to state:-

“While the proposed development is not appropriate for this location in policy terms, we would also like to take this opportunity to outline the specific flood risks to the area. Comparison of our modelled data against the topographic survey provided by the applicant indicates likely maximum flood depths of:

- 0.25m during the 5% Annual Exceedance Probability (AEP) event. The event used to determine the functional floodplain
- 0.78m during the 1% AEP event
- 1.08m during the 1% AEP event and including a 30% allowance for climate change
- 1.24m during the 1% AEP event and including a 50% allowance for climate change
- 1.32m during the 0.1% AEP event

The above noted flood depths would put any future occupants of the development at a significant degree of flood risk, with the submitted Flood Risk Assessment (FRA) failing to demonstrate how future occupants would be kept safe.

The FRA proposes to rely on evacuation before a flood event occurs in order to keep any future occupants safe during 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.

Absence of safe access and egress from the proposed development coupled with the lack of safe refuge during a flood event makes this an extremely hazardous location in which to locate highly vulnerable development.”

The EA go on to provide an advisory note on foul sewage disposal, stating the drainage hierarchy should be applied with septic tanks representing the last resort. A permit may also be required from the Environment Agency which may not be approved even if planning permission is granted.

**NCC, Highway Authority** – As the proposal includes a new vehicular access onto the adopted section of Tolney Lane, a revised plan needs to be submitted to show visibility splays (which may necessitate the lowering or removal of fencing and hedging fronting Tolney Lane, either side of the access) and swept path analyses for a large car/van with a towing caravan.

**Trent Valley Internal Drainage Board** – Have no comments to make in respect of this application.

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

In the event of the need to evacuate, such action will create an immediate strain upon emergency and local authority services and resources, including hardship grants for flooded residents and businesses. It would appear to be inappropriate to sanction development that will trigger additional resource needs. The Newark and Sherwood Area has experienced significant flooding 3 times in 3 years. During each event emergency services and local authorities have struggled to meet demand from existing communities and established dwellings. Again any additional strain creates a risk that services cannot reach and protect vulnerable people.

Typically members of the travelling community evacuate the site and use a mobile touring caravan as their accommodation during the floods. It should be noted that the lorry park currently designated as the evacuation point for caravans removed from Tolney lane is also an area subject to a flood risk. Whilst an alternative site is desirable no such site has yet been identified. Any additional number of caravans may place an unacceptable strain on resources.

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

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

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

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

**NSDC, Environmental Health** – If planning permission is granted, an application for a caravan licence will need to be submitted to the Council.

**NSDC, Environmental Health (Contaminated Land)** – Potential for contaminated land, request standard phased contamination condition is attached to any consent.

**NSDC, Conservation** – no formal comments received.

**Representations have been received from three local residents/interested parties (one anonymous) which can be summarised as follows:**

- In favour of building amenity blocks and hope it will include recycling facilities;
- It would be appreciated if the traveller community could develop some kind of self-policing/neighbourhood watch scheme;
- The site plans are incomplete failing to show how the pitches will be laid out/location of septic tanks/room for caravans/parking vehicles, having regard to the adjoining caravan site and site licencing requirements;
- Are septic tanks appropriate here given flood risk and high water table?
- Elevations of utility buildings fail to show raised FFL as recommended in the FRA;
- There is no consideration of the personal needs of the intended occupiers and their search for more suitable locations;
- The site adjoins a site granted temporary consent until early 2022 due to flood risk concerns;
- The draft Local Plan confirms the Council has failed to address the need for Traveller pitches and has failed to find suitable land that is not at serious risk from flooding;
- I can think of no other Council in England prepared to tolerate families living with a flood record like Tolney Lane; Traveller lives matter too! No one should be expected to live on these sites and it reflects very badly on the Council;
- On land adjacent to this site, large lorries/vehicles are being parked without the necessary operator's licence;
- The site access is on a blind bend in the road and so is dangerous;
- Ground levels on the site have been artificially raised without planning permission;
- The site has been used recently for the burning of toxic waste – e.g. industrial tyres which has caused breathing difficulties and affecting people's stress and having detrimental psychological impacts;
- Construction has been occurring on the site at un sociable hours causing noise, vibrations, ground shudders from steel containers being delivered and repaired on the site;
- If they are gypsy and travellers why do they need solid structures to be built on the site?
- It is doubtful whether the occupiers are travellers in the true sense of the word;
- Concerned that if this application is granted it will set a legal precedent.

#### Comments of the Business Manager

The main planning considerations in the assessment of this proposal are the need for gypsy and traveller sites and lack of a 5 year supply, flood risk, the planning history of the site, the impact on the appearance of the countryside and the character of the area, highway issues, access to and impact on local services, residential amenity, personal circumstances of the applicants and their status.

Core Policy 4 of the Amended Core Strategy states that the District Council will, with partners, address future Gypsy and Traveller pitch provision for the District which is consistent with the most up to date Gypsy and Traveller Accommodation Assessment (GTAA) through all means necessary, including, amongst other criteria, the granting of planning permission for pitches on

new sites in line with Core Policy 5. It goes on to state that future pitch provision will be provided in line with the Council's Spatial Strategy with the focus of the Council's efforts to seek to secure additional provision in and around the Newark Urban Area.

Core Policy 5 lists criteria to be used to help inform decisions on proposals reflecting unexpected demand for traveller sites, by reflecting the overall aims of 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.

### Background and Planning History

The Council has considered the principle of a residential caravan use on this site in 2002 and it was refused on grounds of flood risk. Two enforcement notices were served which sought to firstly cease the use as a caravan site and remove all caravans from the land and secondly to remove the unauthorized tipping from the land so that no part of the site is above the level of 10.5m AOD. The applicant appealed to the Planning Inspectorate and the appeals were dismissed. The Inspector concluded:

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

The consideration of such a use in this location has already been considered and found to be unacceptable on flood risk grounds both by this Council and the Planning Inspectorate in 2006.

However, on the adjacent land to the west, (also included as part of the Shannon Falls site and on land covered by the 2006 decision) and notwithstanding a dismissed appeal by the Planning Inspectorate in 2018 (decision letter saved in Background Papers list below), the Planning Committee resolved to approve an 8 pitch gypsy and traveller site (for tourer caravans only) on a temporary basis until February 2022 (with no removal of any tipping material), Ref: 18/02167/FUL.

In addition, on the adjacent site to the north-west, an application for a single traveller pitch which included some removal of the unauthorized tipping material, notwithstanding the Environment Agency objection and the appeal dismissal on the adjoining site, the Planning Committee determined in June 2018, to grant a permanent permission, Ref: 17/02087/FUL.

Members may also re-call that two further sites along Tolney Lane have also been considered recently for the same use –

- Park View Caravan Park, which has a temporary permission until 30 Nov 2021 – Ref: 18/01430/FUL) and
- Green Park (Ref: 21/00891/S73), which at its meeting in September 2021, Members resolved to grant a further temporary permission for 2 years to allow alternative sites to come forward through the Plan Review process, but this has been subject to a re-notification of the Environment Agency, at their request. This application is being reported back on this Committee agenda.

## The Need for Gypsy and Traveller Pitches

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

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 is accepted that the Authority 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 weigh heavily in the favour of the granting of consent where proposals will contribute towards supply.

Importantly, the GTAA assumed a net zero contribution from inward migration into the District - meaning that its pitch requirements are driven by locally identifiable need. This site did not form part of the baseline for the Assessment. It is also unclear from the supporting information as to whether the proposal would cater for the needs of individuals who formed a component of the need identified through the Assessment – but happened to be living on a site elsewhere in the District at the time. On the basis of the information currently submitted, it is not possible to conclude that the proposed development would positively contribute towards meeting the need identified through the GTAA, or the demonstration of a five year land supply.

Information is also lacking to enable a firm conclusion to be drawn over whether the intended occupants meet the planning definition of a traveller provided through the Planning Policy for Traveller Sites (a matter set out in more detail in the Personal Circumstances section below). Given that it has not been established that the pitches would contribute towards locally identified need then the proposal must fall to be considered as reflecting unexpected demand – with Core Policy 5 providing the basis for assessment.

There are currently no other alternative sites available with planning permission, and no allocated sites identified and consequently the Council does not have a five year supply of sites. These matters carry significant weight in favour of the proposals where they contribute towards supply.

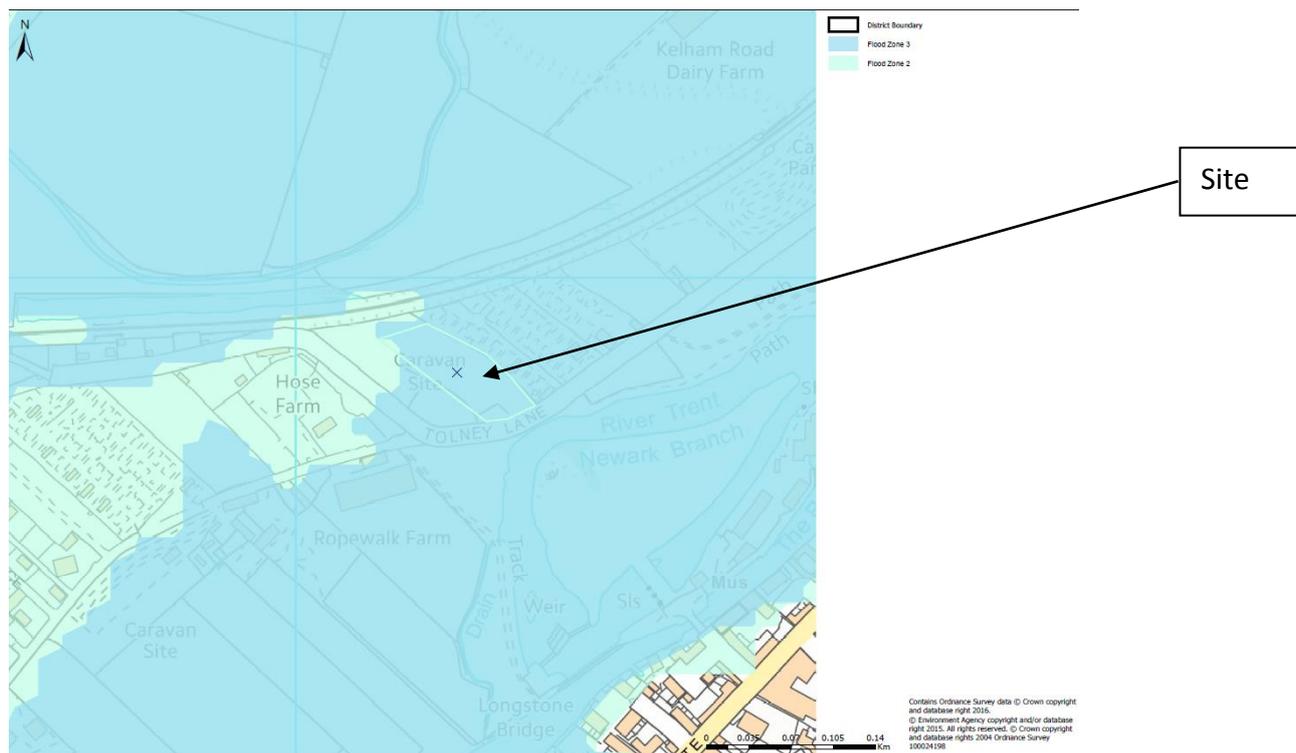
## Flood Risk

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. Core Policy 10 and Policy DM5 also reflect 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.

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 Zones 3a and 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.

The supporting text to Core Policy 5 clearly sets out that Tolney Lane is currently subject to significant flood risk and so to justify additional pitch provision (usually of a temporary nature) proposals will need to demonstrate material considerations which outweigh flood risk. The submitted Flood Risk Assessment has had no regard to the update made to the Strategic Flood Risk Assessment in 2016. The plan below identifies the site, Flood Zone 2 and Flood Zone 3 relative to the site.



On the basis of the update made to the Strategic Flood Risk Assessment, parts of the site (including areas proposed to host pitches) fall within Zone 3b (functional floodplain), as crucially does its point of access onto Tolney Lane – the bulk of the remainder of the site is within Zone 3a. Beyond this the single point of access/egress to the wider Tolney Lane area from Great North Road which is also within the functional floodplain.

The NPPF states the aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are

reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. There are also two parts of the Exception Test that need to be passed:

- a) The development would provide wider sustainability benefits to the community that outweigh 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.

It is accepted that the granting of permanent pitches would pass the Sequential Test, as the Council are unable to point to any reasonably available sites at lesser risk. Even though the proposal has not been demonstrated as contributing towards the meeting of locally identified need, the criterion based approach provided by Core Policy 5 is sufficiently flexible so as to provide the reasonable prospect of finding land at lesser flood risk.

In relation to the Exception Test, it is not clear how the first part of the test could be passed concerning sustainability benefits to the community that would outweigh flood risk. The justification within the submitted FRA is noted, but it is focused around provision of a site in an area where there is an 'established need' for such development - and as already stated on the basis of the submitted information it is not considered that the proposal would contribute towards meeting locally identified need. No additional sustainability benefits beyond this are identified by the applicant, although it is acknowledged that it would allow for the individual accommodation requirements of the intended occupants to be met.

The second part of the Exception Test is justified within the FRA by the mitigation measures set out in the Proposal section above. Despite the case officer requesting that the Flood Warning and Evacuation Plan details be submitted for consideration prior to determination, nothing has been received to date. Clarification has also been sought on whether the caravans "trailers" described in the submission are tourer units that can easily be removed from the site or whether they are "fixed" units on the site, but there has been no response. The FRA states that this Warning and Evacuation Plan should be in place prior to occupation of the site, a matter that has not been complied with, therefore putting current occupiers of the site in danger. Without the details of the Flood Warning and Flood Evacuation Plan (as well as full details on exactly who will be occupying the whole site), it is not possible to come to a reasonable judgement as to whether the development would be safe for its lifetime. In terms of the potential for increased flood risk elsewhere, the unauthorized raising of ground levels on the site would remain, thereby reducing flood storage capacity without compensation and the FRA acknowledges that there would be an increase in surface water run-off from the site also which would have a harmful impact on land off the site, elsewhere.

Details of the Environment Agency objection is set out in the consultation section above who object on the basis of the proposal being contrary to national policy and the submitted FRA failing to demonstrate how future occupants would be kept safe, given flood depths on the site and no safe egress route can be demonstrated. This is reflected further in the concerns raised by the Council's Emergency Planner regarding the additional burden that would result on responders to flood events.

The applicant's reference to the contents of the Options Report document, the consultation for which recently concluded is noted. Whilst the potential for the land to form part of the Council's approach towards site allocation is accepted, it must be acknowledged that the level of weight an emerging amended Plan can be afforded is dictated by the tests outlined at paragraph 48 of the NPPF. In this respect the review could not be said to have reached an advanced stage, and there

remain unresolved objections (from the Environment Agency in this instance). Consequently it is not considered it be appropriate to afford any meaningful weight to the emerging approach towards site allocation. Indeed the purpose of that process is to assist in the meeting of locally identified need... and this proposal has not demonstrated that it would contribute towards that objective.

The proposal is contrary to both national and local planning policies and represents highly vulnerable development that should not be permitted on sites at high risk of flooding. Whilst the Sequential Test is passed, the Exception Test is failed. This weighs heavily against the proposal in the planning balance.

#### Impact on the countryside and character of the area

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

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

The site is within the open countryside. The aim of conserving the natural environment, protecting valued landscapes, minimising impacts on biodiversity and pollution is reflected in the NPPF. Whilst development exists along the majority of the Lane, only the eastern third sits within the defined Newark Urban Area. The application site is located between the sites known locally as Church View to the east and the western half of Shannon Falls. Whilst the site is located within the countryside, it is sandwiched between these two sites which are authorised for caravan use. The proposed development is for the creation of 13 pitches with associated amenity blocks that would be enclosed and defined by post and rail fencing. Having carefully considered this visual impact, on balance and given the existing character of the area, it is not considered that this would be so visually intrusive and incongruous to weigh negatively within the planning balance.

The proposed hedging along the frontage of the site would soften the appearance of the development. It is also acknowledged that the site has no special landscape designation and is unlikely to lead to any significant adverse impact on nature conservation or biodiversity.

Although the Newark Conservation Area boundary runs along the south-eastern side of Tolney Lane, it is approx. 100m from the boundary and as such, it is not considered that the proposal would be harmful to the setting of the Conservation Area.

In relation to visual, countryside, biodiversity and heritage impacts, the proposal therefore has a neutral impact and is considered to broadly accord with local and national policies in this regard.

#### Highway Safety Issues

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

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

The Highway Authority has raised concerns that the new access from Tolney Lane does not comply with the visibility splay requirements of the NCC Highway Design Guide and has asked for amendments. They have also requested swept path analyses to show maneuverability within the site. Despite requesting these details, no revised plans have been submitted to date. As such, it has not been demonstrated that the proposal is safe for all users of the highway and this weighs against the proposal.

#### Access to and impact on Local Services

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

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

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

#### Residential Amenity

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

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

The size of the proposed pitches are reasonable, measuring approx. 360 square metres in area, which roughly equates to the 350 sq m pitch size for permanent sites where there are communal facilities within the overall site, as set out within the guide in Core Policy 5. Clearly there are no communal facilities provided within this scheme, but a permanent site where pitches are self-contained would be roughly 550 sq m in area. I do not consider the proposed smaller sized pitches to be fatal, unless they prevent safe maneuverability of vehicles around the site (see section above on highway safety matters).

There are existing solid boundary treatments in place around the external boundaries of the site to afford appropriate levels of amenity both to existing residential properties nearby as well as occupiers of the application site.

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

#### Personal Circumstances

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

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

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

- a) whether they previously led a nomadic habit of life
- b) the reasons for ceasing their nomadic habit of life
- c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.

In order for appropriate weight to be given to the unmet need for Gypsy and Traveller pitches in the consideration of these proposals, the onus is on the applicant to prove that they along with any other occupier of the site, have Gypsy and Traveller status in accordance with the definition. Information is also lacking in this regard despite it being sought. The application form lists the names of 7 applicants, but there are 13 pitches proposed. No list of names have been provided to identify the occupants of each pitch or their ages. Confirmation has also been sought as to whether the occupiers of the site were included in the GTAA survey, but no response has been received.

The supporting Planning Statement determines them to be members of the Traveller community, who wish to live a more settled life due to either educational or health needs. In this respect Romany Gypsies, Irish and Scottish Travellers falling outside of the planning definition may still be able to claim a right to culturally appropriate accommodation under the Equality Act (2010) as a result of their protected characteristics. However, no specific information has been submitted to allow this judgement to be made, despite requests from the case officer.

Give the lack of detail presented, the personal circumstances of the occupants of the site can be given limited weight.

### Conclusion

On the basis of the submitted information it has not been demonstrated that the proposal would contribute towards the locally identified need established through the GTAA, or the achievement of a five year land supply. Though it is accepted that the proposal would allow for the individual accommodation requirements of the occupants to be met, and that depending upon their status they may have protected characteristics under the Equalities Act – potentially being able to claim the requirement for ‘culturally appropriate’ accommodation.

However it is considered that flood risk represents a significant material consideration, and one which outweighs those potential benefits. Whilst it cannot be argued that there are sequentially preferable sites which are reasonably available for the proposed development at lesser risk elsewhere, it still remains the case that Core Policy 5 is sufficiently flexible to allow the reasonable prospect of such land being found. Indeed this is reflected in the types of locations where other gypsy and traveller sites have been permitted (for example, the Barnby Road most recently). In any event, the proposal as a permanent site is contrary to both national and local flood risk policies and fails the Exception Test.

Whilst the remaining material planning considerations (impact on the countryside and character of the area, residential amenity, and access to services) assessed in this report are neutral, the proposal is also currently harmful in highway safety terms.

In the overall planning balance, it is considered that the flood risk together with the highway safety harm are the determinative factors and is not considered to be outweighed in the overall planning balance, despite the proposed provision of 13 further pitches. It is therefore recommended that the application be refused.

## **RECOMMENDATION**

**That planning permission is refused for the following reasons:-**

01

The proposal represents highly vulnerable development that would be located within Flood Zone 3 (and relying on an access/egress within Flood Zone 3) and therefore should not be permitted in accordance with the National Planning Policy Framework and the Planning Practice Guidance. Whilst the Sequential Test may be considered to be passed on the basis that there are no reasonably available alternative sites at a lesser risk, the proposal fails the Exception Test by not adequately demonstrating that the development will be safe for its lifetime, without increasing flood risk elsewhere. Furthermore, the applicants have failed to demonstrate that occupiers of the site fall within the definition of a gypsy and traveller, as set out within Annex 1 of the Planning Policy for Traveller Sites, 2015.

In the opinion of the Local Planning Authority, the proposal would therefore place both the occupants of the site and the wider area at risk from flooding and be contrary to Core Policies 5 and 10 of the Newark and Sherwood Amended Core Strategy (2019) and Policy DM5 of the Allocations and Development Management DPD (2013) as well as the National Planning Policy Framework (2021), Planning Practice Guidance and Planning Policy for Traveller Sites (2015), which are material planning considerations.

02

The proposal has failed to demonstrate that it can provide the required visibility splays to make the new access safe or that there is adequate room within the site for the length and size of vehicles that would serve the site to manoeuvre safely within the site and leave in a forward gear.

In the opinion of the Local Planning Authority, the proposal would therefore place both users of the site and users of Tolney Lane at risk from highway safety dangers and be contrary to Spatial Policy 7 and Core Policy 5 of the Newark and Sherwood Amended Core Strategy (2019).

## **Notes to Applicant**

01

You are advised that as of 1st December 2011, the Newark and Sherwood Community Infrastructure Levy (CIL) Charging Schedule came into effect. Whilst the above application has been refused by the Local Planning Authority you are advised that CIL applies to all planning permissions granted on or after this date. Thus any successful appeal against this decision may therefore be subject to CIL (depending on the location and type of development proposed). Full details are available on the Council's website [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

02

The application is clearly contrary to the Development Plan and other material planning considerations, as detailed in the above reason(s) for refusal. Working positively and proactively with the applicants would not have afforded the opportunity to overcome these problems, giving a false sense of hope and potentially incurring the applicants further unnecessary time and/or expense.

#### BACKGROUND PAPERS

Copy of Appeal Decision for the adjacent site to the west (Ref:- 16/01884/FUL)

[https://publicaccess.newark-sherwooddc.gov.uk/online-applications/files/E081234D6309833101E18E83AD362861/pdf/16\\_01884\\_FUL-DECISION-853193.pdf](https://publicaccess.newark-sherwooddc.gov.uk/online-applications/files/E081234D6309833101E18E83AD362861/pdf/16_01884_FUL-DECISION-853193.pdf)

Application case file.

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

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

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