

PLANNING COMMITTEE – 15 FEBRUARY 2022

Application No:	21/02613/FUL	
Proposal:	Use of land as a Gypsy and Travellers' site, erection of amenity blocks and associated works for temporary 3 year period (Retrospective) Re-submission of 21/01900/FUL	
Location:	Land at Shannon Falls, Tolney Lane, Newark On Trent	
Applicant:	S Price, Smith, Winter, Donaghue, A W Coverdale, Lowe, J Coverdale	
Agent:	Alison Dudley, Zenith Planning and Design	
Registered:	16 December 2021	Target Date: 10 February 2022
		Extension of Time agreed until 17 February 2022
Website Link:	https://publicaccess.newark-sherwooddc.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=R41VYGLBIPJ00	

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 Site History

21/01900/FUL – Use of land as a Gypsy and Travellers' site, erection of amenity blocks and associated works (retrospective), refused 03.11.2021 for the following reason:

“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.”

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.

18/02087/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.

22/00073/S73 - Application to remove condition 2 from planning permission 18/02167/FUL to allow the existing temporary use to become permanent – Pending Consideration.

The Proposal

This is a re-submission of planning application 21/01900/FUL, as listed in the planning history section above. The main difference between this application and the one previously considered by the Committee at their November meeting last year is the fact that this application is for a temporary period for 3 years. In addition, the last application demonstrated gypsy status for 5 of the 13 pitches. This application submission includes the gypsy status of all the occupiers and the personal circumstances of residents of 9 of the 13 pitches. The Flood Risk Assessment has also been up-dated to include the most up to date flood information.

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.

Each pitch measures on average approx. 360 sq m in area. Each will accommodate 2 trailer (assumed to be tourer) 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 submitted Planning Statement 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 travellers, 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, but that because this is an application for a temporary permission of 3 years, this impact would not be realized. The 1 in 100 chance each year fluvial floodplain level would be 11.87m AOD within the site which is similar to the highest parts of the site and would result in fluvial flood depths at the lowest (southern) part of the site of 0.9m. It recommends that flood resilience measures are adopted to manage the risk of flooding. These include a water entry strategy, elevating services above the flood level, the use of flood warnings and the preparation of a Flood Warning and Evacuation Plan. This plan identifies that the residents would evacuate to the Lorry Park on Great North Road in the first instance, although there is a site owned by one of the applicants at Moorbridge Caravan Park, in Bestwood, Nottingham as a second option. The FRA 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.

Further to the previously submitted application, this application submission includes the gypsy status of all the occupiers and the personal circumstances of residents of 9 of the 13 pitches. The occupants of the other 4 pitches did not wish to provide statements, but are currently residing at Park View Caravan Park and have school aged children. Names and occupiers of each pitch have been provided. They all currently reside on existing sites on Tolney Lane and have done so for many years and so they have established relationships with both personally (family and friends) as well as with local services, schools, health care etc. They were all living on Tolney Lane at the time the GTAA survey was undertaken in 2019. They have no guarantee of a pitch on any of the existing sites and it means that if they move off the site to go travelling, there is no guarantee their pitch will still be available when they return, which can result in them having to live temporarily by the roadside. This site has been purchased jointly in order to provide more security for the families who are content to continue living in touring vans to enable them to comply with the Evacuation Plan and leave the site at short notice. There are a number of children who attend local schools and a number of the residents suffer with health issues.

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.

The Flood Warning and Evacuation Plan identifies that the occupiers of Pitches 2 and 3 (Mr A and J Coverdale) are responsible for the monitoring and maintenance of the Plan. The Plan outlines that occupants of the site should sign up to The EA's Floodline Warnings Direct scheme to be informed of possible flood alerts. Each occupant should prepare a Personal Flood Plan. It sets out the Evacuation Procedures to be followed and a Flood Recovery Plan.

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)
- Swept Path Assessments (Drawing No: F21179/01)

Submitted supporting documents comprise:

- Planning Statement
- Flood Risk Assessment dated Dec 2021
- Flood Warning and Evacuation Plan dated Dec 2021
- Supporting Text for Visibility Splays
- Additional Supporting Information in Response to Refusal dated Dec 2021
- Supporting Statements and Personal Information from Proposed Residents

Departure/Public Advertisement Procedure

Occupiers of 25 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 2 - Spatial Distribution of Growth

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 (adopted July 2013)

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:

- o Existing level of local provision and need for sites;
- o The availability (or lack) of alternative accommodation for the applicants;
- o Other personal circumstances of the applicant;
- o Locally specific criteria used to guide allocation of sites in plans should be used to assess applications that come forward on unallocated sites;
- o 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.

When considering applications, weight should be attached to the following matters:

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

If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission.

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."

- 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...”

- Newark and Sherwood Gypsy and Traveller Accommodation Assessment, 2020;
- The Equality Act 2010;
- Human Rights Act 1998.

Consultations

Newark Town Council – Object, the site is in a high-risk flood area which poses a danger to life.

The Environment Agency – Object, The site lies within Flood Zone 3a and 3b (functional floodplain) and has a high probability of flooding. The development is classed as highly vulnerable and Tables 1 and 3 of the PPG make it clear that this type of development is not compatible with this Flood Zone and should not be permitted. The submitted FRA suggests that the impacts of climate change over this period are unlikely to be significant. The EA agree with this statement however, exclusive of the impacts of climate change the development site is still shown to experience flood depths up to 500mm in the vicinity of plot 13, and 400mm in the vicinity of plots 1 and 2 during the 1% Annual Exceedance Probability (AEP) event. Flood depths of up to 800mm are also possible during the 1% event on Tolney Lane immediately adjacent to this site. The flood risk to the site, even for a temporary permission, is clearly still significant.

They raise concern that granting of continuous temporary permissions could result in a deemed permission for permanent use.

The likely maximum flood depths on this site would be:

- 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

Flooding to a depth of 0.6m represents DANGER FOR ALL. If the flooding is to a greater depth or involves moving water, the degree of hazard will be even higher. The above noted flood depths constitute a risk to life for any future occupants of the development.

Where there is reliance on flood warning and evacuation, the EA's 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 with to locate highly vulnerable development.

The proposals are contrary to NPPF and the flood risk to the site is highly significant.

Advisory note included on foul drainage.

NCC, Highway Authority - No objections, the Highway Authority's observations dated 28 October 2021 remain relevant:

28.10.2021 - Amended and additional plans submitted demonstrate that a safe and suitable means of access can be accommodated on Tolney Lane, subject to conditions.

NSDC, Environmental Health - No objections. If planning permission is granted, an application for a caravan licence will need to be submitted to the Council.

NSDC, Environmental Health (Contaminated Land) - Historic mapping has identified a former railway line that crosses the site linking the Nottingham to Lincoln line with the former Parnham's Island Mill. Railway land is a potentially contaminative use and the former Department for the Environment Industry Guide for Railway Land identifies multiple possible contaminants. As it appears that no desktop study/preliminary risk assessment has been submitted prior to, or with the planning application, then I would request that our standard phased contamination conditions are attached to the planning consent.

NSDC, Emergency Planner – No comments have been received.

NSDC, Conservation – No formal comments made.

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

Comments of the Business Manager

This is a re-submission of planning application 21/01900/FUL, as listed in the planning history section above. The main difference between this application and the one previously considered by the Committee at their November meeting last year is the fact that this application is for a temporary period for 3 years. In addition, the last application demonstrated gypsy status for 5 of the 13 pitches. This application submission includes the gypsy status of all the occupiers and the personal circumstances of residents of 9 of the 13 pitches. The Flood Risk Assessment has also been up-dated to include the most up to date flood information.

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, Planning History and other recent decisions on Tolney Lane

The Planning Committee considered the same use on the same site but on a permanent basis at its meeting in November 2021 when it was resolved to refuse planning permission on the grounds of flood risk and lack of sufficient demonstration of the gypsy status of the occupants.

Historically the principle of a residential caravan use on this site was also considered 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." Whilst the use ceased in accordance with the Enforcement Notice, the unauthorized tipping remains on the site.

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 touring 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 be aware that there is an application on this Committee agenda for the site at Park View Caravan Park, for the same use, which had a temporary permission until 30 Nov 2021 and is now applying for a permanent approval – Ref: 21/02492/S73. It is recommended for refusal on flood risk grounds. Recently at the Committee’s meeting in September 2021, Members considered an application at Green Park (Ref: 21/00891/S73), which was originally submitted to convert the temporary permission to a permanent consent but on seeing a recommendation for refusal the agent requested that it be considered for a further temporary permission. Members resolved to grant a further temporary permission for 2 years (until 30 Nov 2023) to allow alternative sites to come forward through the Plan Review process.

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 District Council, as Local Planning Authority, has a duty to provide sites on which Gypsy and Travellers can live. 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 sizeable overall requirement which needs to be addressed and a considerable shortfall in being able to demonstrate a five year land supply. 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 would 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 would appear from the additional information with this latest application that the accommodation needs of the applicants were captured by the GTAA survey and therefore this 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 other sites on Tolney Lane at the time. Further information has also been submitted this time to demonstrate that all the occupiers would meet the planning definition of a traveller provided through the Planning Policy for Traveller Sites and the personal circumstances of residents of 9 of the 13 pitches have also been included and a statement submitted to say that the 4 remaining pitches are to be occupied by existing residents of Park View Caravan Park. However, whilst it can

be considered to meet the immediate accommodation needs of the occupants for the next 3 years, it cannot be classed as contributing to the need identified by the GTAA which could only be contributed to by permanent pitches. This is because at the end of the 3 year temporary period, that need would still exist. This significantly reduces the positive weight that can be afforded to the proposal.

The applicant's reference to the contents of the Options Report document, the consultation for which recently concluded is noted. The case presented is that the recent Options Report consultation proposes the provision of flood resilient access to Great North Road, which includes an option of raising the ground level of Tolney Lane itself. Although the agent acknowledges that the Review of the Allocations and Development Management is still in its early stages, they conclude that the Council consider this is the most appropriate area for future allocations as a permanent site for gypsy and travellers, subject to the flood alleviation measures being implemented.

The weight which local planning authorities may give weight to relevant policies in emerging plans is determined by the tests at paragraph 48 of the NPPF. In this respect the stage of preparation of the Amended Allocations & Development Management DPD remains early, and there is also an unresolved objection towards the approach to Tolney Lane from the Environment Agency – received through the consultation. Consequently the amount of weight which could be afforded to the Lane's future suitability for site allocation is extremely limited.

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. Paragraph 27 of the PPTS states that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this is a significant material when considering applications for the grant of temporary planning permission. However, the granting of a temporary permission does not contribute to meeting the significant unmet need identified by the GTAA, but merely moves that need 3 years down the road. There can therefore be no positive weight that can be afforded to meeting the significant local identified need through the granting of this application, and the current requirement of 77 pitches up to 2024 would remain unaltered, even if this application were to be approved.

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.

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.

Even though the proposal has 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. However, it is accepted that as the Council is unable to point to any reasonably available sites at lesser risk of flooding that the Sequential Test is passed in this case.

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 it is 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 (albeit this would only be for a limited period of 3 years).

The second part of the Exception Test is justified within the FRA by the mitigation measures set out in the Proposal section above together with the submission of a Flood Warning and Evacuation Plan, which is geared to evacuating the site completely prior to a flood event, which is assisted by only tourers being positioned on the site. The FRA states that this Warning and Evacuation Plan should be in place prior to occupation of the site, it is not clear whether this has been complied with given that the site is already part occupied. 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.

The full comments of the Environment Agency are 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. They conclude that the 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. This was reflected in the concerns raised by the Council's Emergency Planner on the previous application on this site, regarding the additional burden that would be placed on emergency service responders in a flood event.

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 no objection on highway safety grounds, subject to the imposition of conditions and as such it is considered that the proposal raises no highway safety harm and accords with Development Plan policy in this regard.

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 relatively 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 the proposal is not for permanent pitches and there are no communal facilities provided within this scheme, but they provide a rough guideline for appropriate pitch sizes. It is considered that the size of the proposed pitches are generally acceptable and the smaller sized pitches should not prove fatal to the scheme, provided they allow for safe maneuverability of vehicles around the site which, as referenced in the highway safety section above, is unlikely.

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.

Although occupants of 4 of the pitches did not want to give detailed statements about their personal details, it would appear from the information submitted, that all the occupants have demonstrated their gypsy status in accordance with the definition set out in the PPTS and may have been captured in the GTAA survey carried out in 2019. Furthermore the personal circumstances of residents of 9 of the 13 pitches have also been provided. The supporting information determines them to be members of the Traveller community, who wish to live a more settled life due to either educational or health needs. The occupants have moved from other sites on Tolney Lane for reasons of improved security and better facilities. A list of names have been provided to identify the occupants of each pitch and whether they would include children.

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

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

Significant positive weight needs to be attached to the personal circumstances of the occupiers of the site, particularly the benefits associated with schooling arrangements for the children that a permanent base would provide.

However, the proposal is not for a permanent permission, but a temporary one. As such, this site could not provide the long term stable base sought or count towards contributing permanently to the significant unmet need for Gypsy and Traveller pitches in the District, given the temporary nature of the proposal, even if it were to be approved. The unmet need would remain the same and whilst the occupant's immediate accommodation needs would be met, this need would remain outstanding for another 3 years. This therefore completely tempers the positive weight that can be afforded to this scheme in this case.

It is therefore concluded that the site would be occupied by Gypsy and Travellers and although it may have been demonstrated that the 13 pitches could be counted towards meeting the immediate need of the occupiers, it cannot reduce the significant local District unmet need as identified in the GTAA, because of the use's temporary nature. The personal circumstances of the occupants are also material, as are the best interests of the children and are matters that can be given some positive weighting in the over planning balance.

Conclusion and Planning Balance

The differences between this application and the one that the Authority refused in November last year are the fact that this application is for a temporary permission for 3 years only, and not for a permanent consent, additional information has been presented on the gypsy status of all

occupiers and the personal circumstances of most of the occupiers, as well as up-dated flooding information presented within the Flood Risk Assessment.

On the basis of the submitted information although it has been demonstrated that the occupiers are of gypsy status and at least 4 occupiers would have been identified as part of the overall need, given that they used to reside at Park View Caravan Park, which only currently benefits from a temporary permission. As such the provision on this application site on a temporary basis would not contribute towards the locally identified need established through the GTAA, but rather secures it for a further 3 years. As such no positive weighting can be applied to this proposal in meeting unmet need. Though it is accepted that the proposal would allow for the immediate individual accommodation requirements of the occupants to be met, albeit for a limited period of 3 years. However, the fact that the District cannot demonstrate a 5 year land supply is a significant material consideration in favour of granting a temporary permission, as set out in the PPTS, which can be given some weight.

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 site most recently). In any event, the proposal, as a permanent or temporary site, is contrary to both national and local flood risk policies and fails the Exception Test. An additional 13 pitches in this high flood risk area would unacceptably add to the burden on the local emergency services, who already have to spend considerable amounts of time checking all sites have been appropriately evacuated, assisting and persuading those that may have remained on the site to evacuate and rescuing residents in dangerous scenarios, putting themselves in additional danger, in any flood event.

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 lack of alternative sites, the provision of an improved, if limited settled base for education and health care, the human rights of the families and the protected characteristics in relation to the duty under the Equalities Act are all factors that weigh positively in the overall balance and the lack of an up-to-date 5 year supply of deliverable sites, is a significant material consideration when considering applications for the grant of a temporary planning permission.

However, having acknowledged the above list of positive weightings and considerations, in the overall planning balance, it is not considered that the danger to people and property, the unnecessary risks that would be afforded to local emergency services, together with the failure of the proposal to provide for the significant unmet need are the determinative factors that cannot be outweighed in the overall planning balance. It is therefore recommended that the application be refused.

RECOMMENDATION

That planning permission is refused for the following reason:

The proposal represents highly vulnerable development that would be located within Flood Zones 3a and 3b (and relying on an access/egress within Flood Zone 3b) and therefore should not be permitted in accordance with the National Planning Policy Framework and the Planning Practice Guidance. If appropriate, 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, no weight can be afforded to the scheme in meeting any of the significant unmet need, given the temporary nature of the proposal. Although there would be some social factors which would weigh in favour of the proposal, it is not considered that these are sufficient to outweigh the severe flood risk and warrant the granting of consent, even on a limited, temporary basis. To allow occupation of a site at such high risk of flooding would put occupiers of the site and members of the emergency services at unnecessary risk.

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.

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/

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.

03

Refused Plans:-

- Site and Location Plans (Drawing No: SF-21-P01 Rev B)
- Amenity Buildings (Drawing No: SF-21-P02 Rev A)
- Swept Path Assessments (Drawing No: F21179/01)

BACKGROUND PAPERS

Application case file.

Application for Gypsy and Traveller site dismissed at Appeal on adjacent Shannon Falls site to the west (dated 26.04.2018)

https://publicaccess.newark-sherwooddc.gov.uk/online-applications/files/E081234D6309833101E18E83AD362861/pdf/16_01884_FUL-DECISION-853193.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.

Lisa Hughes
Business Manager – Planning Development