



Report to Planning Committee 11 November 2024

Business Manager Lead: Oliver Scott – Planning Development

Lead Officer: Clare Walker, Senior Planner, 01636 655834

Report Summary			
<b>Application No.</b>	24/00548/FUL		
<b>Proposal</b>	Change of use of land to residential Gypsy/Traveller caravan site comprising 6 pitches each providing 1 static and 1 touring caravan and dayroom.		
<b>Location</b>	The Old Stable Yard Winthorpe Road Newark On Trent NG24 2AA		
<b>Applicant</b>	Messrs Lamb, Smith & Smith	<b>Agent</b>	WS Planning & Architecture
<b>Web Link</b>	<a href="#">24/00548/FUL   Change of use of land to residential Gypsy/Traveller caravan site comprising 6 pitches each providing 1 static and 1 touring caravan and dayroom.   The Old Stable Yard Winthorpe Road Newark On Trent NG24 2AA</a>		
<b>Registered</b>	07.05.2024	<b>Target Date</b>	24.06.2024 Extension of Time Agreed: 14.11.2024
<b>Recommendation</b>	Refuse		

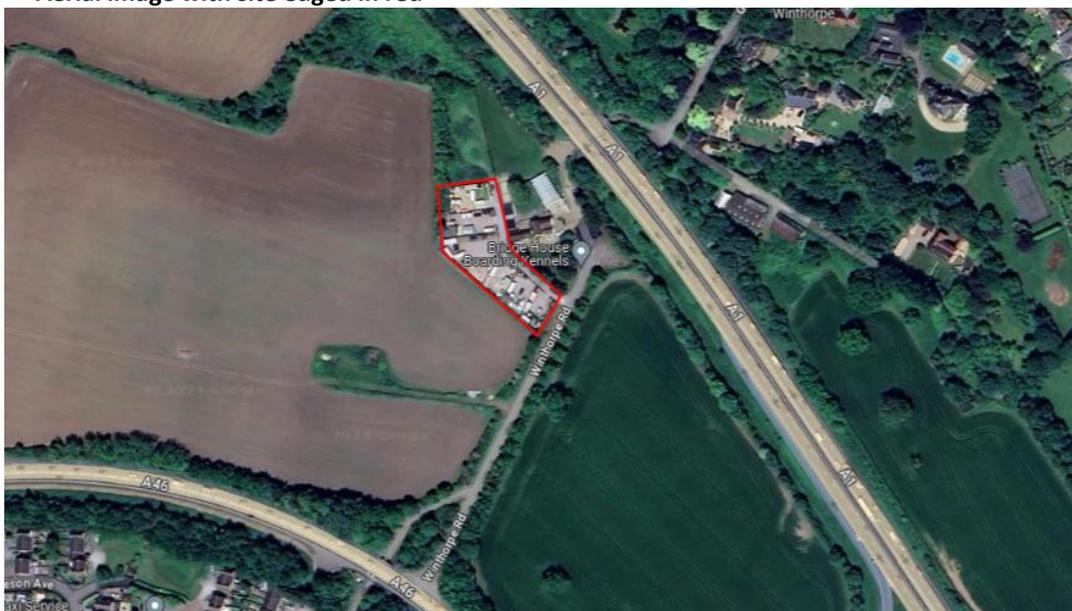
This application is before the Planning Committee for determination in line with part 1.8(e) of the Scheme of Delegation, given that this application raises significant issues such that it is considered prudent that the application be determined by committee.

In addition, it has been referred by two adjoining ward members, Councillors Spoons and Dales. The reason for referral relates to the planning history, its significance and the many variables such as the A46 widening and flood risk which will warrant debate given there are no sequentially more acceptable locations for this.

## 1.0 The Site

- 1.1 The site is located adjacent (west of) Bridge House Boarding Kennels on the western side of Winthorpe Road, north of Newark between the A1 and the A46. Accessed from the A46 Bypass (off the Bridge House Farm access road), the site lies within the 'Open Break' policy area which seeks to prevent coalescence between the settlements of Newark and Winthorpe.
- 1.2 Agricultural land lies to the north-west and south-west. The A1 trunk road lies to the north-east with the A46 bypass located to the south. The site is approximately 472m from Winthorpe and 250m from the settlement boundary of Newark. The site lies within Bridge Ward but is close to Winthorpe parish boundary.
- 1.3 The site lies within an area where National Highways propose improvement works to the A46 (dualling) which has been subject to initial consultation under 23/00486/CONSUL and now forms an application as a National Infrastructure Strategic Project, with NSDC as a consultee.

**Aerial image with site edged in red**



- 1.4 The site comprises an area of approximately 0.27ha of land that was formerly a field but is now occupied by a number of touring caravans, and utility/amenity buildings on hardstanding which are divided by close boarded fencing into six pitches/plots.

## 2.0 Relevant Planning History

- 2.1. There is some important and relevant planning history to this site which is detailed below. However, in summary, the Council has served Enforcement Notices against this retrospective development which have been appealed, taken through the Courts (resulting in the decision being quashed) and been redetermined by the Planning Inspectorate resulting in the appeals being dismissed twice. Three key issues were identified as 1) flood risk, 2) impact on the Newark-Winthorpe Open Break and 3) noise. However, further enforcement action was paused as site allocation was

explored due to changing circumstances around 2 of the 3 key planning issues, with new flood modelling and national highways proposals affecting the Open Break designation. The site previously featured as a potential site allocation for Gypsy and Travellers in the First round of the Plan Review of the Allocations and DM DPD. However following the result of the Council commissioned Noise Surveys, the issue of noise remains of concern such that the site cannot be allocated for Gypsy and Travellers.

- 2.2. 18/00036/ENF – Two separate Enforcement Notices were served on the land as follows:
- 2.3. An **Enforcement Notice was served on 15<sup>th</sup> February 2018** for a breach of planning control that ‘without planning permission, the material change of use of land to residential occupation including the stationing of caravans and the erection of a structure’. The notice required the cessation of the use of the land and the removal of all caravans, residential paraphernalia and the structure by a set timeframe. **APP/B3030B/C/18/3196972** – An appeal (**known as Appeal A**) was lodged on ground (a) (that planning permission should be granted for the development set out above) which was dismissed with the Notice being upheld and corrected/varied on 13<sup>th</sup> June 2022 following a Hearing. Compliance was required within 12 months of the decision date.
- 2.4. An **Enforcement Notice was served on 9<sup>th</sup> November 2018** for a breach of planning control that ‘without planning permission, undertaking operational development consisting of the carrying out of works to the land including but not limited to the laying of materials to create hardstanding, the erection of a building and associated concrete base and the burying of cables, pipes, containers and associated infrastructure’. The notice required the removal of the development that had occurred by a set timeframe. **APP/B3030B/C/18/3217010** - An appeal (**known as appeal H**) was lodged on ground A (that permission should be granted) and ground (g) (that the period for compliance falls short of what should reasonably be allowed). On 13<sup>th</sup> June 2022 the appeal was dismissed with the Notice being upheld and varied requiring compliance within 14 months of the decision date. This appeal decision forms Appendix 1 of this report.
- 2.5. The two enforcement notices mentioned above, that were upheld on appeal on 29<sup>th</sup> April 2019 were previously subject to a successful challenge in the High Court by Judicial Review and had to be redetermined. The challenge succeeded on a single ground that related to the part of the decision not to grant permission. Specifically, that the decision failed to apply paragraph 27 of the Government’s policy statement ‘Planning Policy for Traveller Sites dated August 2015 (PPTS) and that it failed to treat the lack of a 5-year supply of deliverable sites as a ‘significant material consideration’ which could have affected the balance of the case. The Court Judgement is *Smith v Secretary of State for Housing Communities and Local Government [2020] EWHC 3827 (Admin)*.
- 2.6. Six other appeals (known as B, C, D, E, F and G) that were determined by appeal decision letter dated 29<sup>th</sup> April 2019 did not need to be reconsidered; these were considered under only ground (g) that the period for compliance falls short of what

should reasonably be allowed. These appeals were dismissed with corrections and variations made.

- 2.7. 18/00343/FUL – Full planning permission was sought for the siting of 12 no. caravans on 6 separate plots for permanent residential use (retrospective). Withdrawn 12.03.2018.
- 2.8. Three historic applications have been noted which all relate to the refusal of permission for a single dwelling on the site (06/01051/OUT refused 08.11.2006, 05/01994/OUT refused 02.11.2005 and 99/51298/OUT in 2019) but these are not of direct relevance.

### **3.0 The Proposal**

3.1 The application seeks planning permission for the change of use of land to a residential Gypsy/Traveller caravan site comprising 6 pitches. The application is retrospective. Each pitch is designed to provide for a single household to accommodate a mobile home, caravan, utility/amenity building and space for parking. The applicants are a collective group of six families each occupying one of the six pitches.

3.2 Documents assessed in this appraisal:

- Application form
- Site Location Plan, drawing no. JOO4777-DD-01
- Site Plan as Existing, drawing no. JOO4777-DD-02
- Site Plan as Proposed, drawing no. JOO4777-DD-03
- As Proposed Dayroom, drawing no. JOO4777-DD-04
- Desktop Review and Assessment Report 1565.DRAR.00, by dBA Acoustics, 12.03.24
- Planning Statement (and 18 Appendices including topographical survey, Stateley Caravans Acoustic Performance Report and 16 appeal decisions), March 2024
- Confidential Statement of Personal Circumstances
- Flood Risk Assessment Rev 00, by SLR dated 1<sup>st</sup> July 2024
- Foul Drainage Justification, submitted 13<sup>th</sup> September 2024
- STW Assets Plan, submitted 13<sup>th</sup> September 2024
- Rebuttal to EA objection, 7<sup>th</sup> October 2024
- Further comments on EA position by agent, 22<sup>nd</sup> October 2024

### **4.0 Departure/Public Advertisement Procedure**

4.1 Occupiers of 4 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 (expiring 14<sup>th</sup> June 2024) due to its location, ability to identify affected neighbours and being a potential departure to the Development Plan.

4.2 Site visit undertaken on 20<sup>th</sup> May 2024.

### **5.0 Planning Policy Framework**

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

- Spatial Policy 1 - Settlement Hierarchy
- Spatial Policy 2 - Spatial Distribution of Growth
- 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 Gypsies & Travellers and Travelling Showpeople
- Core Policy 9 -Sustainable Design
- Core Policy 10 – Climate Change
- Core Policy 12 – Biodiversity and Green Infrastructure
- Core Policy 13 – Landscape Character

### 5.2. Allocations & Development Management DPD (2013)

Policy NUA/OB/1 (Open Breaks)

DM5 – Design

DM12 – Presumption in Favour of Sustainable Development

5.3. The [Draft Amended Allocations & Development Management DPD](#) was submitted to the Secretary of State on the 18th January 2024. This is therefore at an advanced stage of preparation albeit the DPD is yet to be examined. There are unresolved objections to amended versions of all of these policies emerging through that process, and so the level of weight which those proposed new policies can be afforded is currently limited. As such, the application has been assessed in-line with policies from the adopted Development Plan unless otherwise stated.

### 5.4. Other Material Planning Considerations

- National Planning Policy Framework 2023
- Planning Practice Guidance (online resource)
- National Design Guide – Planning practice guidance for beautiful, enduring and successful places September 2019
- Residential Cycle and Car Parking Standards & Design Guide SPD June 2021
- Lisa Smith v The Secretary of State for Housing, Communities and Local Government and others [2021] EWHC 1650 (Admin) Court of Appeal ruling on 31.10.2022 that PPTS 2015 was unlawfully discriminatory.
- Gypsy & Traveller Accommodation Assessment, February 2020
- The Equality Act 2010
- Human Rights Act 1998
- Proposed reforms to the National Planning Policy Framework and other changes to the planning system
- National Planning Policy Framework: draft text for consultation, July 2024
- Planning Policy for Traveller Sites (2015) summarised below:

When determining planning applications for traveller sites, this policy states that planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Government's overarching aim

is to ensure fair and equal treatment for travellers, in a way that facilitates their traditional and nomadic way of life while respecting the interests of the settled community.

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

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

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

Weight should also be attached to:

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

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

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

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

## **6.0 Consultations and Representations**

- 6.1. Comments below are provided in summary - for comments in full please see the online planning file.

## Statutory Consultations

- 6.2. **Nottinghamshire County Council (Highways)** – (13.06.2024) – No objections subject to conditions to 1) require a hard surfaced verge crossing to serve the access from Winthorpe Road and 2) internal site access to be surfaced in a bound material for a minimum of 10m and thereafter maintained.
- 6.3. **Nottinghamshire Lead Local Flood Authority** – No bespoke comments to be provided as this is a non major development.
- 6.4. **Environment Agency – Object**

**(18.10.2024) – Maintain objection.**

The appeal decisions provided by the applicant, do not set a precedent in the EA's view.

The NPPF states:

*Paragraph 165. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.*

*Paragraph 168. 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 allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.*

With regards to the Exception Test and the FRA, we are concerned that Plot 6 would not be safe from flooding during the "design flood" and therefore would not be safe from flooding for its lifetime.

We have also highlighted the potential issues at the site with regard to access and egress, and the need for a flood warning and emergency plan. However, our previous response made it clear that we do not carry out these roles during times of flood and instead it is a matter for the Emergency Planner to decide on the adequacy of these plans.

We also highlighted that the void space under the plots would need to be kept clear so that flood storage is not lost due to the development. While we do agree these could be secured by way of a condition this would be difficult to enforce in perpetuity. This is why we included this as an advisory note to the applicant to not only ensure flow routes across the floodplain are maintained but to also protect residents' properties from dangers such as waterborne debris.

Foul Drainage/ Land & Water comments

While we agree that the nearest watercourse is not immediately adjacent to the site we would have expected the applicant to provide justification for not being able to connect via pipe or ditch if this is the case.

We are concerned that the applicant may have opted for cesspools as the cheapest, easiest option rather than properly exploring the alternatives. We would want to see a detailed, in-depth investigation as to why alternatives are not viable, e.g. Percolation testing and areas required for soakaways from package treatment plants etc.

We do agree that there is no mention of distance to feasible connection in our guidance or GBR, just distance of 30m from public sewer multiplied by number of properties (e.g. within 180m of site boundary). There is a sewer located to the north of the site boundary which, according to our measurements is within this 180m distance.

We would like the applicant to explain reasons why this is not possible (e.g. access through neighbouring land to install pipework, disproportionate cost, suitability of sewer for connection).

### **(03.10.2024) – Object**

Flood risk assessment not acceptable as does not adequately assess the flood risk posed by the development. In particular the FRA fails to:

- consider how people will be kept safe from the identified flood hazards;
- consider how a range of flooding events (including extreme events) will affect people and property;
- take the impacts of climate change into account.

Caravans for permanent residential use are classified as “highly vulnerable” to flooding in the PPG. According to Table 2 of the PPG, in flood zone 2, such development is only appropriate when the sequential test and exception test is passed. The applicant has submitted a flood risk assessment as part of the “Exception Test”.

In accordance with the National Planning Policy Framework (paragraphs 164 and 165), the proposed development is appropriate provided that the site meets the requirements of the exception test. Our comments on the proposals relate to the part of the exception test that demonstrates the development is safe. The local planning authority must decide whether or not the proposal provides wider sustainability benefits to the community that outweigh flood risk.

The FRA has based its assessment on a ‘design flood’ of the 1 in 100 year 30% climate change event from the EA Trent at Gunthorpe climate change model update, 2021. We agree with this approach. This data indicates a ‘design flood’ level of 10.98mAOD.

The submitted flood risk assessment identifies that in the ‘design flood’ the site is

expected to flood to depths of between 0.4 to 2.3 metres. (section 6.1.2). The area of the proposed mobile home plots is expected to flood to depths of between 0.18m and 1.38m. See table below:

Plot	Flood depth at each plot in metres with a flood height of 10.98mAOD
Plot 1	0.18m
Plot 2	0.28m
Plot 3	0.38m
Plot 4	0.33m
Plot 5	0.68m
Plot 6	1.38m

We are therefore concerned about the suitability of the site for residential development, in particular access and egress from the mobile homes during a flood event.

The FRA proposes raising the mobile homes 700mm above ground level as a mitigation measure. However, Section 8.2.2 of the FRA identifies that even with this 700mm raising plot 6 would still be inundated with flood water to a depth of 0.38m which is unacceptable.

The EA then goes on to provide advisory notes:

The use of voids are not generally recommended as they are often used for storage or trap debris which can impede the function of floodwater spreading across the floodplain, however recognise that mobile homes are always raised off the ground by their very construction. Therefore they strongly recommend that these voids are kept clear at all times and not be blocked over or used for storage in order to protect the function of the floodplain while also ensuring that dwellings remain as safe as possible.

Flood warning and emergency response - while 5 of the plots will be raised above the design flood level, access and egress to and from the site would be inundated. This would make evacuation during a flood extremely difficult and place extra pressure on the emergency services if required. EA don't comment on adequacy of flood emergency response procedures, their involvement with this development during an emergency will be limited to delivering flood warnings to occupants/users covered by our flood warning network.

The PPG sets out in determining whether a development is safe, the ability of residents and users to safely access and exit a building during a design flood and to evacuate before an extreme flood needs to be considered. One of the key considerations is

whether adequate flood warnings would be available to people using the development. Therefore, LPA need to consider emergency planning and rescue implications.

Advice is also given on the sequential test.

An objection is also made to the disposal of foul water because it involves the use of a non-mains foul drainage system in circumstances where it may be reasonable for the development to be connected to a public sewer and no justification has been provided for the use of a non-mains system. Cesspools and cesspits present a considerable risk of causing pollution, which can be difficult to monitor and correct. The Environment Agency does not encourage the use of cesspools or cesspits, other than in exceptional circumstances.

**(27.09.2024) – Object** – on two grounds; flood risk and foul drainage.

**(26.06.2024) - Object** - on two grounds; flood risk and foul drainage.

#### **Town/Parish Council**

6.5. **Newark Town Council** (host parish)– (29.05.2024) No objection was raised to this application.

6.6. **Winthorpe Parish Council (adjacent parish)** – Do not support for the following reasons:

- The Council does not consider there to be substantial differences from the previous application in terms of noise levels for the residents of The Old Stable Yard, flood risk or the Open Break policy in the area, particularly in light of the fact that the A46 update has not yet been approved.
- The Council believes that it is important not to set a precedent in terms of illegal occupation leading to the granting of planning permission.

#### **Representations/Non-Statutory Consultation**

**6.7 NSDC Environmental Health** – Object on noise grounds:

Previous (deemed) applications have been submitted for the development, which have been refused in part due to the impact of noise from the A1 adjacent to the site. These previous applications included the provision of acoustic barriers, either along the site boundary or running along a length of the roadside, however these barriers were considered to be either of limited effect or impractical to install and maintain.

The current application proposes the development take place with no acoustic barriers in place, and proposes conditions to limit/prevent residential use of touring caravans on site, and to require static units to comply with acoustic performance requirements of BS3632:2015. An amended acoustic report has been submitted to reflect this scheme.

The acoustic report indicates that external noise levels will be significantly above those in BS8233. The applicant indicates that areas of the site will benefit from shielding by other structures, and will therefore be 'relatively quieter'. The submitted site plan however shows the static units on site to be perpendicular to the A1, and as such these will only provide a barrier to small areas of each plot. Internal noise levels within the static units have been assessed with windows closed, and indicated to be above the guideline levels for both living rooms and bedrooms. It is stated that levels are less than the +5dB relaxation which may be applied if the development is deemed to be necessary or desirable, however this places internal noise levels in the bedroom above World Health Organisation sleep disturbance levels, even with the windows closed. Given that it is deemed necessary to keep windows closed, additional ventilation and cooling provision would be required to be provided to achieve comfortable conditions. This would likely raise noise levels further.

It is therefore evident that occupiers of the site will be exposed to unacceptable levels of noise, both externally and within the static units. Exposure to significant levels of noise can have health and behavioural impacts on those affected and on this basis environment health object.

6.8 **NCC as Lead Local Flood Authority** – Do not wish to make bespoke comments on surface water flooding and offer general guidance.

6.9 **Comments have been received from 8 third parties** (n.b. some are not resident in this district) of which 7 are in support and 1 objection. These can be summarised as follows:

**Support:**

- Often walk past the site (the underpass to Winthorpe) and never been any noise related issues from residents of this travelling site;
- Cannot see a reason for the site not being here, always maintained, people of polite, courteous and polite residents in the 6 years they have been present;
- The site has not flooded nor had to be evacuated in the 6 years that the site has been present;
- There is more noise from within a house than from the dual carriageway when walking past the site and the static homes will block the noise out further;
- In the 6 years of residing here, no medical issues and if residents are happy with the noise should this not be their decision just like those that choose to but a house next to a busy road?
- These families, who are well respected and caused no issues, need the Council's support to live on the site with their families on their own land.
- Noise survey states it was undertaken in static home – there are none on site and therefore not done correctly
- NSDC previously granted permission on number of other sites where noise levels were higher (e.g. Main Road, Balderton).
- The site has never flooded and residents are signed up to the environment agency flood alerts
- NSDC has unmet gypsy and traveller need that isn't being met.

- Site was to be allocated but was removed from the plan due to noise issues -which isn't totally accurate
- The children attend school and have not raised concerns regarding their health/hearing due to noise which is also true for the adults of the site
- These families are part of the community
- Former school headteacher of school where applicants children attended sets out the exceptional values of the family and points to how this process is unsettling for the children in a general sense
- There has been no issue with police nor has any pressure been placed on emergency services during recent flood events
- The residents on this site have not raised noise complaints relating to adjacent kennel businesses in 6 years
- The listed building nearer the A1 than the site (near the underpass to Winthorpe) cannot have double glazing as listed and is subject to more noise than the application site
- Noise to gardens would be same if not higher than experienced by houses at Fernwood/Middlebeck when new relief road goes in
- Choice of where to live should be considered, especially as NSDC for not have provision to offer the families an alternative
- Pressure on the families in the last 6 years have had an adverse impact on their mental health
- There are no other options for these families
- This would fulfil some of the gypsy need
- All nice families who are not bothered
- Visited the site many times and can't see the issue with the noise
- Regarding the open break there is a house adjacent so there is no break
- Unmet need should be addressed otherwise traveller population will find illicit sites that are suitable and potentially cause danger to the environment

## Object

- Bridge House Farm was purchased to allow owners to live with their dogs that could run free, without the fear of complaints from neighbours. Investment has been made to allow it to be multi-purpose establishment comprising a show kennel and boarding kennels.
- Show days (most weeks all year round) can involve very early morning starts and late finishes with 40 or so show dogs making substantial noise. Boarding kennel is usually fully booked and licenced for 30 dogs so at any one time there are c70 dogs on site. Concern for those sleeping in the caravans that this noise from barking would disturb their sleep.
- Concern that that noise complaints made by applicants could lead to enforcement proceedings causing irreparable damage to the business.
- Application lacks details around dayrooms etc. Currently there are several tourers and outbuildings on each plot but the plans are for 1 tourer, 1 static and 1 dayroom so will additional constructions be removed?
- Environmental Health have concluded noise levels inside the caravans are above guidelines and does not take into account the noise from the new A46.

- Concerned at disruption from A46 bypass works if approved and how the applicants would access their site.
- Concerns relating to flood risk. Land at Bridge House Farm has come under increased flooding since the development (hardcore laying) has occurred. What will the drainage system for surface water comprise?
- Concerns that the security fence that separates the dog exercise field running adjacent to an area where the applicants' children play may not be enough to protect the children from injury from the pack of dogs (e.g. children retrieving balls etc).
- Concern about fireworks on bonfire night and the noises/distress it causes the dogs which was previously not an issue.
- Make clear this is not a personal objection against the travelling community and accept that large section of the site is kept in good condition.
- However as occupants of house with double glazing who at times struggle with the existing noise cannot see how the site is acceptable.
- Kindly request that consideration is given to protect the way of life developed over many years and is granted permission conditions are put in place to protect the freedoms, health and safety and well being of all parties including the dogs and the businesses.

## **7.0 Comments of the Business Manager – Planning Development**

7.1. The previous appeals relating to this site focused on three matters in dispute; 1) impact on the designated open break, 2) flood risk and 3) noise. Whilst all matters need to be considered afresh as part of this application, these areas remain key areas of focus. The report that follows addresses the following main matters:

1. Principle of development (G&T need)
2. Sustainability and criteria considered for new Gypsy and Traveller Sites
3. Open Break/Landscape Impacts
4. Flood Risk and Drainage
5. Highway Safety
6. Living Conditions
7. Other Matters
8. Gypsy Status and Personal circumstances

7.2. The National Planning Policy Framework (NPPF) promotes the principle of a presumption in favour of sustainable development and recognises the duty under the Planning Acts for planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004. The NPPF refers to the presumption in favour of sustainable development being at the heart of development and sees sustainable development as a golden thread running through both plan making and decision taking. This is confirmed at the development plan level under Policy DM12 'Presumption in Favour of Sustainable Development' of the Allocations and Development Management DPD.

## Principle of Development

- 7.3. Core Policy 4 (Gypsies and Travellers – New Pitch Provision) sets out that it will address future Gypsy and Traveller pitch provision through all necessary means including the allocation of new sites through a development plan.
- 7.4. The District Council, as Local Planning Authority, has a duty to provide sites on which Gypsy and Travellers (G&Ts) can live. The Gypsy and Traveller Accommodation Assessment (GTAA) for the District demonstrates a minimum requirement for 169 pitches to meet the needs of Travellers between 2013-33 (118 pitches of this overall 169 minimum requirement would be necessary to meet the needs of ‘planning definition’ Traveller households, as defined within Annex 1 of the National Planning Policy for Traveller Sites). Through the *Lisa Smith v The Secretary of State for Housing, Communities and Local Government and others* [2021] EWHC 1650 (Admin) legal case, the planning definition within Annex 1 was found to be unlawfully discriminatory. Due to its exclusion of Gypsies or Travellers who have permanently ceased to travel due to old age, disability or due to caring responsibilities. No amendments have been made to national policy following the legal decision, and so accordingly there is a lack of clarity over what local pitch target should form the basis for calculation of the five-year land supply test, as required as part of the Planning Policy for Traveller Sites (PPTS). Whether this should still be calculated on the basis of the planning definition, or from the overall minimum requirement.
- 7.5. Either local target would reflect a heavy skewing towards that first five-year 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). The Council’s latest monitoring data shows that since 2019 there have been 3 completed pitches, and there are a further 39 pitches with an extant planning permission<sup>1</sup> capable of being implemented. In overall terms this leaves us with a residual minimum requirement for 127 pitches up to 2033.
- 7.6. Indeed, it is necessary to project forwards delivery from proposed site allocations to satisfy relevant national policy tests, and to demonstrate a five-year land supply. However, as outlined earlier it is not yet currently possible to afford meaningful weight to those emerging site allocations, and once they are removed from the five-year land supply calculation then NSDC currently has a 1.48 year supply.
- 7.7. This represents a significant unmet need under both scenarios. Provision to assist in meeting this need will be made as part of the production of the Amended Allocations & Development Management Development Plan Document (ADMDDP), which at the time of writing is currently awaiting examination. The amended ADMDDP seeks the allocation of specific sites for Traveller accommodation and would provide an updated Framework for the granting of consent for appropriate development on windfall sites.

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<sup>1</sup> 21/02528/FUL – Shady Oaks, Spalford (4 pitches, adjacent site), 23/00063/FULM - Chestnut Lodge, Barnby Road, Balderton (19 pitches), 23/00060/FUL – Appleby Lodge, Barnby Lane, Newark (8 pitches) and 22/01203/FULM – Oak Tree Stables, Sand Lane, Besthorpe (8 pitches)

The Council is currently unable to identify any other sites that are currently available or deliverable for Gypsy and Travellers and in addition is unable to demonstrate a five-year land supply, as required through national policy (PPTS). It is therefore accepted that the Local Planning Authority is not able to demonstrate a five-year land supply for Gypsy and Traveller pitches and has a considerable shortfall 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.

- 7.8. The emerging policies within the Publication Amended Allocations and Development Management DPD demonstrates a commitment by the Council to meeting the need for pitches in the District. However, only limited weight can be given to the newly proposed allocation sites as the Plan is still going through the plan-making process and has yet to be examined and found sound. As such, in the absence of any current allocated sites and in the light of the significant unmet need, provision of pitches are only likely to come forward through the determination of planning applications on windfall sites.
- 7.9. In terms of how this site would contribute to the Council's Gypsy and Traveller need, no firm evidence of demand for inward migration into the District was found as part of the GTAA. Therefore, net migration to the sum of zero was assumed for the GTAA – which means that net pitch requirements are driven by locally identified need rather than speculative modelling assumptions. With inward and outward migration in balance with one another, this means that when a household moves into the District that movement is counterbalanced by the outward migration of another. Therefore, providing proposed pitches are addressing the needs of a Traveller household, consistent with the definition below (reflecting the Smith decision), then they would contribute supply against the local pitch target.

*'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 or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.'*

- 7.10. With regards to the current need for G&T pitches, as set out above, there have been several planning approvals over 2023/24, resulting in an additional 39 pitches gaining permission and there is one planning application pending consideration (ref. 24/00282/FULM<sup>2</sup>) for 15 pitches. However, the overall supply secured since 2019 (the published date of the Gypsy and Traveller Accommodation Assessment) still falls some way short of being able to meet either overall needs or to provide for a five-year land supply. Consequently, the absence of a sufficient land supply and of suitable and available alternative sites elsewhere is a significant material consideration in the assessment of this application.

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<sup>2</sup> at Land to the rear of Lowfield Cottages, Bowbridge Lane, Balderton

- 7.11. The status of the applicants as meeting the gypsy and traveller definition has previously been accepted by the prior proceedings relating to this site. Therefore, the net additional pitches proposed would be 6.
- 7.12. Based on the information provided by the Applicant, subject to a planning condition restricting occupation of the site to those meeting the planning definition of a gypsy or traveller, the proposed pitches would be available to help meet existing, and future, locally identified G&T need. This positive contribution towards meeting the need identified through the GTAA, in the absence of a five-year land supply, is a significant material consideration in favour of the proposal.

### **Sustainability and Criteria for Considering sites for Gypsies and Travellers**

- 7.13. Core Policy 5 (CP5) sets out that provision for new gypsy and traveller pitches will be made in line with the Council's Spatial Strategy with the focus of the Council's efforts to seek to secure additional provision in and around the Newark Urban Area (NUA).
- 7.14. Beyond this, CP5 sets out a range of criteria, which proposals need to satisfy. The overall aims of this policy are identified as reducing the need for long distance travelling and possible environmental damage caused by unauthorised encampments and the contribution that live/work mixed use sites make to achieving sustainable development. The 9 criteria are summarised below;
1. The site would not lead to the unacceptable loss, or significant adverse impact on landscape character and value, important heritage assets and their settings, nature conservation or biodiversity sites;
  2. 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.
  3. The site has safe and convenient access to the highway network;
  4. The site would offer a suitable level of residential amenity to any proposed occupiers, including consideration of public health and not have an unacceptable adverse impact on the amenity of nearby residents particularly in rural and semi-rural settings where development is restricted overall;
  5. The site is capable of being designed to ensure that appropriate landscaping and planting would provide and maintain visual amenity;
  6. In the case where development proposals raise the issue of flood risk, regard will be had to advice contained in the Government's 'PPFTS' and the findings of NSDC SFRA. Where flooding is found to be an issue, a site specific FRA should be completed applying both the Sequential and Exception Tests as appropriate to achieve safety for eventual occupiers;

7. Where a major development project requires the temporary or permanent relocation of a major traveller site the district council will work with the affected community to identify alternative sites using the criteria above;
  8. Relates to calculating capacities of pitch sizes (250-640m<sup>2</sup>)
  9. Relates to new pitches on Tolney Lane.
- 7.15. In terms of the sites ability to satisfy the above criteria of CP5, criterion number 1 is considered within the next section along with landscape impacts which reflects criterion 5.
- 7.16. The second criterion of CP5 requires consideration of reasonable access to essential services (mains water, electricity, drainage and sanitation) and basic everyday community services and facilities – including education, health, shopping and transport.
- 7.17. In terms of criterion no. 2, whilst the site is outside of the Newark Urban Area, it is acknowledged that nevertheless it is located just 250m from the edge of it providing residents with relatively easy and convenient access to the town's facilities and services both by car and on foot via the pedestrian underpass close by. The Applicant has confirmed the site is served by electricity and water supplies and is served by an existing septic tank. There are issues around foul drainage which are discussed in the relevant section of this report, however officers are generally satisfied that the site is situated with reasonable access to essential services.
- 7.18. No highways objection has been raised (there is more detail in the relevant section of this report) passing criterion no. 3. Impacts on living conditions overlaps with criterion 4 which is discussed in detail later and flood risk (criterion 6) is also a matter covered in detail. Finally, in terms of other relevant criteria, the pitch sizes (criterion 8) have been considered acceptable previously and remain so now.

### **Open Break and Landscape Impacts**

- 7.19. The application site is located outside of the settlement boundary for Newark, in the 'Newark and Winthorpe Open Break' designation via Policy NUA/OB/1. This states that:
- 'In order to ensure that existing settlements retain their separate identities and characteristics, the District Council has identified certain areas that are under pressure for development which provide an Open Break between settlements...'*
- It then identifies the land between Newark and Winthorpe by name and map. It goes on to say that planning permission will not normally be granted for built development.
- 7.20. Amongst other things, paragraph 25 of the Planning Policy for Traveller Sites (PPTS) states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.

- 7.21. As set out in the above section, given the chronic shortage of available gypsy and traveller sites, the Council has sought to explore and test whether this site could be made suitable for allocation, despite the designation. An independent review of the Open Break was commissioned and undertaken by Via East Midlands in January 2022 where positive conclusions were drawn in respect of the impacts of this development upon it.
- 7.22. This review of the Newark to Winthorpe Open Break was undertaken to assess the impacts of the proposed dualling of the A46 and the Gypsy and Traveller site on the designation and their cumulative effect. The conclusions reached in terms of the Traveller site were that it is partially enclosed by a tree belt along the site's western boundary – though during the winter months, the tops of caravans and the fence boundary to the southwest of the site would be visible from along Winthorpe Road. It was concluded that the sense of an open rural break is somewhat compromised by the site, as also concluded through the previous appeals. However, the review went on to note that the visual impact is relatively localised and at a level where it would not compromise the Open Break purposes overall. It was recommended that additional tree and hedge planting to the southwestern boundary would help mitigate the visual impact of the site.
- 7.23. For the purposes of the Development Plan considerations, the localised impact on the openness of the designation was weighed against the extent of emerging local pitch requirements and the limited alternative options for allocation. It was concluded that the test within the policy around 'built development' (proposed to become 'development' through the Amended Allocations & Development Management DPD) not normally being acceptable could be passed due to the circumstances, particularly given the integrity of the designation could also be maintained. In assessing this planning application, officers find no reason to disagree with the conclusions drawn in respect of the Open Break impact.
- 7.24. With regards the existing Open Break designation, the proposed scheme would appear likely to remain within the level of impact previously identified through the Council's review. This would result in a level of impact consistent with that of a localised nature. Introduction of additional tree and hedge planting to the southwestern boundary would further help mitigate the visual impact of the site. In my view when considered against the lack of a five-year land supply, the overall pitch requirement needing to be satisfied, the current inability to afford meaningful weight to site allocations emerging through the Development Plan process and that the integrity of the designation could be maintained then the threshold whereby built development would not *normally* be permitted within the designation can be passed by the proposal.
- 7.25. Turning then to landscape impacts, albeit there is a degree of overlap here with the Open Break considerations.
- 7.26. At a national level, the site lies within National Character Area 48 Trent and Belvoir Vales. At the local level, the site lies within the East Nottinghamshire Sandlands Character area and in Policy Zone - ES04 - East Nottinghamshire Winthorpe Village

Farmlands as per the Landscape Character Assessment SPD which provides the evidence base for Core Policy 13. The landscape here is typically flat comprising predominantly arable fields, with landscape condition and sensitivity defined as 'moderate' giving a policy action of 'conserve and create' as also embedded in CP13. For landscape features this policy seeks creating new hedgerows and tree cover, conserving existing hedgerows and for built features concentrating new development around existing settlements.

- 7.27. The concerns identified by the previous appeal Inspectors were that the caravans on the appeal site have a noticeable and negative impact on the openness of the area on account of their size and prominence. Notwithstanding this conclusion, this application site is partially contained by an existing tree belt along the western boundary and additional planting to the south-west of the site has been identified as having the potential to mitigate the visual impacts of the proposal. This appears to be within the applicants' ability to undertake and officers are therefore satisfied that the impact on both the Open Break and Landscape would be capable of being partially mitigated and that this issue alone need not be fatal to the outcome.

### **Flood Risk and Drainage**

- 7.28. For background context, in exploring the site allocation, an updated Level 2 Strategic Flood Risk Assessment (SFRA) has been undertaken. Following submission of the Amended Allocations & Development Management DPD in January 2024, and receipt of this application, a difference between the climate change outputs in the updated SFRA and the Environment Agency (EA) modelling became apparent. The modelling for the updated SFRA is currently awaiting approval by the Agency. Therefore, to support the plan-making process agreement has been reached through an updated Statement of Common Ground (SoCG) with the EA, and in respect of the application site this sets out that a more conservative approach which adopts the EA's modelling would be most appropriate. The SFRA has been further updated so that the content relating to the application site reflects this. Whilst it has also been agreed that the SFRA continues to provide a robust and proportionate evidence base for the purpose of the Amended Allocations & Development Management DPD this wouldn't currently extend to the Development Management process – for which the Environment Agency's mapping and modelling should be used.
- 7.29. The site lies in Flood Zone 2 according to the EA's flood risk maps.
- 7.30. Core Policy 10 of the Amended Core Strategy and Policy DM5 of the Allocations and Development Management DPD along with the NPPF set out a sequential approach to flood risk. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Policy is clear that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. If it is not possible for development to be located in zones with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification

set out in national planning guidance.

- 7.31. It is for the Local Planning Authority to undertake the Sequential Test. The LPA has already accepted that there is an inadequate supply of reasonable alternative sites in the district that the occupiers of this site could relocate to. In light of this, the Sequential Test is passed. Given this, it is then necessary to consider if the Exception Test needs to be applied. Caravans and mobile homes are classified by the NPPF as 'highly vulnerable' in flood risk terms. Table 2 (Flood risk vulnerability and flood zone 'incompatibility') of the NPPG indicates that the Exception Test is required for highly vulnerable development in Flood Zone 2.
- 7.32. The NPPF sets out that 'the application of the exception test should be informed by a strategic or site specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. To pass the exception test it should be demonstrated that:
- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
  - b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
- Both elements of the exception test should be satisfied for development to be allocated or permitted.
- 7.32 The Council previously accepted that the first part of the exception test was met. This remains our position. However, in the previous appeal decisions, the Inspector(s) concluded that with regard to part (b), due to the 'highly vulnerable' condition of its users and assessed risk of flooding using various models, it was not safe for occupants of any of the units to continue to reside at the site.
- 7.33 In support of this application, the applicants have prepared a bespoke Flood Risk Assessment which has been reviewed by the Environment Agency as statutory consultee. Their role is to advise on whether the development is safe from flood risks. They have raised objections, mainly due to concerns at how people would be kept safe from flood risk during a flood event. They comment even with the recommended raising of the mobile homes 700mm from ground level, Plot 6 would still be inundated with flood water to a depth of 0.38m in a flood event which is unacceptable. Further, whilst 5 of the plots will be raised above the design flood level, access and egress to and from the site would be inundated for all 6 plots. This would make evacuation during a flood extremely difficult and place extra pressure on the emergency services if required. The Environment Agency have adopted a position therefore that the second part (b) of the exception test is not passed in the same way that the Planning Inspector did previously.
- 7.34 The [planning practice guidance](#) (PPG) states that, in determining whether a development is safe, the ability of residents and users to safely access and exit a building during a [design flood](#) and to evacuate before an extreme flood needs to be considered. One of the key considerations to ensure that any new development is safe is whether adequate flood warnings would be available to people using the

development.

- 7.35 In all circumstances where warning and emergency response is fundamental to managing flood risk, local authorities are expected to take advice from the emergency planning and rescue implications of new development in making their decisions to determine whether the proposals are safe in accordance with paragraph 173 of the NPPF and the guiding principles of the PPG.
- 7.36 Colleagues working in Emergency Planning are currently busy on flood watch duties so have not been able to offer bespoke advice. However, their position on the previous appeal remains relevant. They raised concerns regarding the risk to occupants and the additional strain on the emergency services which all remain valid concerns.
- 7.37 In an extreme flood event, the access road could 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. In the event that occupants did not successfully evacuate, then it is possible that occupants of 5 of the 6 caravans would remain safe (noting that pitch 6 would be inundated) within their caravans. However, any vulnerability or change in circumstance requiring them to leave would provide challenges for emergency responders or cause occupants to place themselves in danger.
- 7.38 The Newark Cattle Market lorry park is designated as the evacuation point for caravans from nearby Tolney Lane, an area also at flood risk. Additional caravans moving on to the site during a flood event would place additional strain on resources.
- 7.39 The conclusion reached by the EA is that whilst the site wouldn't increase flood risk elsewhere (subject to the voids being kept clear<sup>3</sup>), the development would not be safe for its lifetime taking account of the vulnerability of its users. It is not possible to raise the caravan at plot 6 any higher without altering the existing ground levels (an engineering operation that would need to form part of the application in any event) so there is nothing more that can be done to make it any safer. The proposal therefore fails part (b) of the exception test.
- 7.40 Should Members be minded to disagree with this assessment, continued occupation would have to be predicated on the basis of managing the flood risk. Measures such as requiring the applicants to provide an emergency/evacuation plan and that they sign up to the EA'S flood warning scheme would be necessary. The applicants point to this approach being acceptable elsewhere, by appeal Inspectors (in weighing the balance) and at Tolney Lane where it has been tried and tested.

### *Foul Drainage*

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<sup>3</sup> This could be secured either by condition or by the extant Enforcement Notice remaining so in perpetuity. Any grant of planning permission would cease to be affected, insofar as planning permission is granted. Accordingly, non-compliance with the planning permission would represent a breach of the Enforcement Notice, and so would encourage compliance in perpetuity, and would render the issue relatively simple to enforce.

- 7.41 The national drainage hierarchy within the UK Building Regulations sets out the listed order of priority for discharge in the following order: (1) public sewer then if this is not reasonably practical (2) private sewer communicating with a public sewer, then (3) either a septic tank or another waste treatment system and (4) finally a cesspool. The presumption is always to connect to a public sewer if reasonable to do so as this option represents a much lower risk to the environment than others further down the hierarchy.
- 7.42 The applicants propose a cess pit - a non mains foul drainage system. The EA have objected to the scheme on the basis that it may be reasonable to connect to a public sewer which is located c160m north/north-west of the site boundary within the general binding rules of 180m (6 properties x 30m) distance and an inadequate justification has been provided. They also note maps show a now abandoned sewage pipe which runs directly through the site, which could have serviced the nearby dwellings/property which border the site. The EA would like the applicant to investigate how the property handles their sewage discharges at present as there may be a possibility to use the same means of disposal.
- 7.43 The applicant has provided a rebuttal to the EA's objection and state that the nearest connection point is greater than 180m from the site. They indicate that part of the site is underlain with superficial deposit of the Holme Pierrepont Sand and Gravel Member – sand and gravel (although probably no greater than 1m deep) and that underlying that is Mercia Mudstone Group – Mudstone that is likely to be relatively impermeable suggesting that discharging effluent to ground via drainage field would be unfeasible in any event.
- 7.44 The EA has stated that they agree that the nearest watercourse is not immediately adjacent to the site but would have expected the applicant to provide justification for not being able to connect via pipe or ditch if this is the case. They are concerned that the applicant may have opted for cesspools as the cheapest, easiest option rather than properly exploring the alternatives. They want to see a detailed, in-depth investigation as to why alternatives are not viable, e.g. percolation testing and areas required for soakaways from package treatment plants etc.
- 7.45 The applicants consider the EA comments (certainly around the cesspit being the cheapest option) as being unreasonable in the context of their rebuttal. They argue that the requirement to investigate isn't a proportionate approach. The STW asset plan was also provided, which shows no feasible connection within 180m, with the closest route possible requiring access across third party land, or through National Highways ownership. The applicants assert this would be unfeasible to achieve, and there is no guarantee of their continued use in perpetuity.
- 7.46 The applicants point to the downside of biological systems, like Septic Tanks, and that that they rely on biological factors and biological systems which can falter if left 'unfed' such as during period of travel for the families. The proposed cesspits are in situ, rather than proposed, which is predominantly why they are opted for in this submission. However, as the submission does make clear, the applicant has requested a fully rounded consideration of the use of conditions i.e. temporary permission / personal

permission.

- 7.47 If a temporary permission was to be given, I agree that a cesspit could be considered a proportionate solution to foul drainage, primarily because upon cessation of any permission, the works undertaken have to be undone, and the land restored to its former condition including removal of services and connections. It would be possible to condition that other options for foul drainage are further explored, however this would only be recommended as being reasonable and proportionate if the permission was for a longer temporary permission or indeed a permanent one.

### **Highways Safety**

- 7.48 Spatial Policy 7 seeks to ensure vehicular traffic generated does not create parking or traffic problems and policy DM5 requires the provision of safe access to development and appropriate parking. Core Policy 5 requires that prospective Gypsy and Traveller sites have safe and convenient access to the highway network.
- 7.49 Firstly, with regards to parking, each pitch is provided with sufficient parking for at least two vehicles and there is space to manoeuvre touring caravans/larger vehicles to allow them to leave the site in a forward gear. Officers are satisfied that the parking provision would be adequate and would not present a risk of parking on the surrounding highway network.
- 7.50 Vehicular access to the site is taken from Winthorpe Road which is currently the responsibility of National Highways (NH). NH have not objected to the planning application, noting that wider access to and from the site should be improved because of the evolving proposals for dualling of the A46 in the vicinity of the site.
- 7.51 It is not currently clear to the County Council which highway authority would have responsibility for that section of Winthorpe Road fronting the site under the dualling proposals, which have not yet been approved.
- 7.52 Notwithstanding the above, the future dualling proposals would need to be designed to provide an appropriate tie-in to Winthorpe Road which will have regard to existing access arrangements. At the present time, the site access is not physically affected by the dualling scheme.
- 7.53 NCC Highways Authority advise that the existing site access is in poor condition. The surface comprises loose stone where it crosses the highway verge and is also loose and pitted within the site. Both areas give rise to the risk of loose material being carried onto the carriageway and verge on Winthorpe Road which could be detrimental to highway safety. Improvements are necessary. To safeguard the County highway authority's future interests, should it become responsible for Winthorpe Road following dualling of the A46, the highway authority recommends that the existing verge crossing should be improved to provide a bound surface which complies with the highway authority's specification for verge crossings.

- 7.54 In the interests of highway safety, NCC as Highways Authority therefore recommend conditions in the event that permission is granted to require:
- 1) Provision of a hard surfaced verge crossing to serve the access from Winthorpe Road; and
  - 2) Internal site access road to be surfaced in a bound material for a minimum of 10m into the site and retained for the lifetime of the development.
- 7.55 The triggers NCC Highways Authority have recommended (prior to the development being brought into use) do not work given the application is retrospective and would need to be undertaken within a certain timeframe of an approval (e.g. within 6 months or whatever period Members felt was reasonable and factoring in the length of the permission). Subject to conditions to deal with these matters, there is no highway harm identified arising from the proposal. However, requiring these works to be undertaken for a temporary permission could be considered as disproportionate when factoring in cost. In the event that permission is given, consideration should be given to the reasonableness of conditions, as per the requirements of the NPPF.

## **Living Conditions**

### *Noise context and background*

- 7.56 Noise (from the roads) was a key issue during the last appeal and one where both Inspectors ultimately found that the site 'was unsuitable to residential occupation of the caravans.' In the redetermined appeal the Inspector says at para.30 that:
- 'The noise from nearby sources is indeed noticeable and likely to be disruptive, with potential for sleep disturbance. In policy terms the development is not a place that would promote health and well-being with a high standard of amenity for existing and future users and is contrary to key development plan policies. There are adverse effects that cannot be adequately mitigated. National policy is to the effect that such living conditions should be avoided.'*
- 7.57 The Inspector also expressed concerns regarding the rerouting of the A46 and bringing this much closer to families. They noted that whilst it might be possible to design a mobile home with noise attenuation in mind, in warmer weather, occupants would have windows open and it was unrealistic to expect windows to be closed for most of the time.
- 7.58 Since the appeal, further noise assessments have been commissioned by the Council in the exploration of possible site allocation. The noise work identified that without mitigation to the A1, internal noise levels within a touring caravan on-site are likely to be 6-9 dB above the 'reasonable' target level, with external noise levels of 9dB above the 'reasonable' target level for gardens. It was concluded that it would not be feasible to enforce a higher sound reduction on the caravans themselves, and so the only mechanism available to reduce noise levels within the caravans would be to reduce the noise at source, by providing barrier screening to the A1. The modelling carried out indicated that with a 4-metre-high barrier in place, it would likely be possible to meet the 'reasonable' standard in touring caravans with windows closed, whilst also

meeting a reasonable standard of garden amenity. This barrier would need to extend alongside the A1 for a distance of 500m.

- 7.59 This would have provided for a technically effective mitigation measure, but its introduction would result in a greater impact to the openness of the Open Break designation than previously assessed. The Winthorpe Open Break review had concluded that it was possible for the site itself to have a localised impact on the designation. However, this would be increased through the introduction of an acoustic barrier of the height and length needed – and take that impact beyond ‘localised’. The additional impact was considered likely to undermine the designation. This represented a significant policy constraint on the suitability of the site for allocation and has meant discounting allocation on this ground alone with its deletion identified in main modification to the Submission Amended Allocations & Development Management DPD. The site occupants were given the further opportunity to make representations prior to submission, and have raised an objection to the proposed removal of the site from the plan. The plan Inspector will now consider this matter as part of the Examination in Public.
- 7.60 Beyond its impact, the acoustic barrier necessary to mitigate the impacts would require third-party land and funding to deliver, for which no agreement has been reached or sources identified. The necessary mitigation measure is therefore not considered achievable and indeed has not been advanced as part of this application.

#### *Noise Assessment*

- 7.61 The current application proposes that the development takes place with no acoustic barriers in place. It proposes conditions to limit residential use of touring caravans on site, and to require static units comply with acoustic performance requirements of BS3632:2015. An amended acoustic report has been submitted to reflect this scheme. The Council’s Environmental Health Officer advises:

*“The acoustic report indicates that external noise levels will be significantly above those in BS8233. The applicant indicates that areas of the site will benefit from shielding by other structures, and will therefore be ‘relatively quieter’. The submitted site plan however shows the static units on site to be perpendicular to the A1, and as such these will only provide a barrier to small areas of each plot. Internal noise levels within the static units have been assessed with windows closed, and indicated to be above the guideline levels for both living rooms and bedrooms. It is stated that levels are less than the +5dB relaxation which may be applied if the development is deemed to be necessary or desirable, however this places internal noise levels in the bedroom above World Health Organisation sleep disturbance levels, even with the windows closed. Given that it is deemed necessary to keep windows closed, additional ventilation and cooling provision would be required to be provided to achieve comfortable conditions. This would likely raise noise levels further. It is therefore evident that occupiers of the site will be exposed to unacceptable levels of noise, both externally and within the static units. Exposure to significant levels of noise can have health and behavioural impacts on those effected. I would therefore object to the proposed development.”*

- 7.62 The applicants point out that the acoustic report relies upon the raw data of SLR consulting who undertook prior acoustic assessments and point to the fact that there are **no** static caravans on site. What the acoustic report does is model the levels, based on this raw data and evidence of static caravan performance, specifically those that are BS3632:2015 compliant. They also point out that a touring caravan and static's acoustic performance is distinctly different, which is why they suggest that a touring caravan be restricted to no overnight accommodation as it is impractical to upgrade them to perform adequately.
- 7.63 The applicant's willingness to purchase new static caravans with an improved acoustic performance, no doubt at considerable expense, is noted. However, even in this scenario, the noise levels internally with the windows closed would still be above guidelines and externally would not be addressed at all. Ultimately harm from road noise is not a matter that can be adequately addressed as noted by the two appeal Inspectors and the Council's own environmental health professionals. Therefore, whilst I have sympathy with the position that the occupants are satisfied with their own living conditions, this is not a sustainable position due to the levels of harm identified.

#### *Impact on living conditions of neighbours*

- 7.64 Another important matter includes the impact of the development upon the living conditions of the neighbours. Bridge House Farm and Boarding (and Show) Kennels lie directly to the north-east of the site.
- 7.65 There is no concern that the pitches would cause any issue in terms of loss of privacy, overlooking, overbearing or any other physical impact. However, concern has been expressed from the neighbours that noise from barking dogs (at anti-social hours) could disturb sleep for residents of the application site. The owners of the kennels advise they have invested in their business to allow dogs to run free and residential neighbours were not anticipated. The concerns appear to be that noise complaints could ultimately damage their business, that the security fence between them may not be sufficient to protect children from injury and concern regarding noise from fireworks.
- 7.66 Officers are not aware that there have been any noise complaints raised with Environmental Health regarding noise from dogs during the site's occupation. In any event the 'Agent of Change' principle in planning which is designed to protect existing premises from the threat of closure from noise complaints would be relevant here and would likely mean no action would be appropriate on noise grounds.
- 7.67 The fence between the two sites is substantial and there is no reason to suggest that children from the site would climb over to retrieve balls and it would be for parents to supervise their children to prevent this in any case. Likewise, there is no evidence to indicate that the kennels would be any more exposed to firework noise than before the site was established.

## Other Matters

- 7.68 It is noted that the previous appeal Inspector considered the implications of the Police, Crime, Sentencing and Courts Act 2022. This relates to making it a criminal offence when a person(s) who resides on any public or private land without permission and is causing, has caused or is likely to cause significant harm, obstruction, harassment or distress. The Inspector previously found no evidence that the appeal would disproportionately affect the applicants and that this was not a matter that needed to be weighed separately in the planning balance. No new evidence has been provided that requires this debate to be reopened.

## Gypsy Status and Personal Circumstances

- 7.69 The Council has previously accepted that the applicants have gypsy status, meeting the definition of travellers set out as defined by the PPTS 2015.
- 7.70 There are a number of other considerations that need to be taken into account in making this decision. These include the best interests of the children living on site, which arises from a duty under Article 3.1 of the United Nations convention on the right of the child. Case law is clear that the best interests of the child are a primary consideration.
- 7.71 Officers are advised that the six plots are home to 12 adults and 17 children. A number of the children, though not all, attend local primary schools and therefore there is a need to be within the locale to facilitate this. Some of the adults and children have health needs, some significant, though it is worth clarifying that none of these relate directly to hearing issues. Residents are enrolled in local medical practices, hospitals and dentists etc and rely on these facilities in connection with their health needs. The pending threat of homelessness is adding anxiety and stress to the situation as they have nowhere else to go. The applicants have explained they have local family connections, both on and off-site, and circumstances which mean that they need, for personal reasons, to live in the Newark area. There are no available sites with capacity for these families to relocate to.
- 7.72 These personal circumstances are very similar to when the appeal was redetermined in June 2022, where the Inspector summarised these in paragraph 52 of their decision letter. At that time, the headteacher of a local school where some of the children attended wrote in to support their case expressing their concern if the children were forced to move on with no permanent home. The Inspector accepted that:

*'...the current location is a family home where the children have flourished in a positive and stable environment which has contributed to the academic and emotional progress of the children, and that to change this now would be detrimental to their social and emotional well-being as well as their ability to thrive academically.'*

The Inspector went on to confirm in paragraph 54 that:

*'The weight that should be given to the personal circumstances of the residents of the site, having regard to the best interests of the children, continues to be substantial, particularly the benefits associated with the healthcare and schooling arrangements.'*

I fully concur with these statements.

## **8.0 Implications**

- 8.1. In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Equality and Diversity, Financial, Human Rights, Legal, Safeguarding, Sustainability, and Crime and Disorder and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

## **9.0 Planning Balance and Conclusion**

- 9.1 The previous appeal decision is a material consideration in determining this appeal. At that time the Inspector noted at para 69 of their decision:

*'...the harm to the designated open break policy is not diminished due to the new matters raised, and the combined harm resulting from this, the flood risk and the harm to living conditions of residents on the site is substantial. In my view and particularly significant is the harm arising from the noise environment which renders the site unsuited to residential occupation of caravans for any appreciable length of time due to concerns over disturbance and long term health and well-being, not least in the relation to the children occupying, or who may occupy the site in future, Road traffic noise is a known health hazard and whilst its effect specifically on children's health is less understood, this adds to my own concerns.'*

- 9.2 The previous appeal decision has helped focus the issues to three key areas. Notwithstanding this, the scheme has been assessed afresh.
- 9.3 The site is in a sustainable location having regard to accessible facilities nearby. It has been concluded and accepted that the Council has a grossly unmet gypsy and traveller need, with just a 1.48 year land supply of sites (compared with the required 5 year supply) which is a significant material consideration that weighs in favour of the application. The lack of alternative sites available to occupiers also weigh in favour of an approval.
- 9.4 Additionally, this site provides a settled base that facilitates access to health and education for the group of families that enables them to live together conducive to gypsy culture. The best interests of the children living on the site carry significant weight.
- 9.5 There would be some adverse impacts from the development upon the designated open break, however following additional work commissioned by the Council, these are now better understood and are considered localised and capable of partial mitigation with landscaping to the south-west. Some limited harm would however remain unmitigated but on its own should not be fatal.
- 9.6 Whilst the Environment Agency did not object to the potential site allocation, they have raised objection to this application due to concerns that Part (b) of the Exception Test has not been passed. Specifically, that Plot 6 would not be safe during a flood event and they have highlighted potential issues with regard to access and egress. It

has been established that nothing more can be done to protect Plot 6 albeit there are means of managing flood risks in terms of access. I am aware that such risks are managed relatively successfully at Tolney Lane albeit I note replicating this approach could place emergency responders under more pressure. Clearly the site is not ideal from a flood risk perspective but most of the risk, though not all could be effectively managed.

- 9.7 Foul drainage is also a matter that has not been adequately resolved, and there is currently insufficient information for the EA to be satisfied that this is the best option for the environment.
- 9.8 Noise remains a significant concern having attracted an objection from Environmental Health and is not a matter that can be adequately mitigated. The applicants' submission suggests they would purchase new static homes to allow the upgrade to modern British noise standards for sleeping – this would not be considered reasonable to require by condition (due to cost) and in any event wouldn't fully mitigate the harm identified as it would mean windows could never be open at nighttime, and in any case external noise cannot be appropriately dealt with.
- 9.9 I note that the previous inspector gave some additional weight to the fact that it was intentionally undertaken without planning permission which must follow here.
- 9.10 No adverse impacts have been identified in respect of highways impacts or any other matters and these are neutral in the balance.
- 9.11 As can be seen above, there are various competing components to the scheme which all need to be considered and weighed against each other. Whilst it is tempting to take the view that occupants are satisfied with their environment, when considering the site has been previously found by two Inspectors to be inherently unsuitable for a gypsy and traveler site due to concerns over disturbance from the noise environment and long term health and well-being, and that objections remain from our own Environment Health professionals, this does make it more difficult to come to a different view.
- 9.12 Taking this alongside the flood risk and the harm (albeit localized) to the open break, these matters all point to a position that the scheme gives rise to significant harm. Therefore, on balance, officers consider that the harm identified is significant enough to outweigh the positives of the scheme. Officers have considered the previous Inspector's 'proportionality assessment' at paragraphs 76 to 81 and concur with the conclusions of that. For all of these reasons it is recommended that permission be refused.

## **10.0 Reason for Refusal**

01

In the opinion of the Local Planning Authority, the development would give rise to significant harm to occupiers of the site. The harm would arise from the local noise environment and from risk of flooding as part b of the Exception Test in relation to flood risk is failed for placing vulnerable occupiers at risk during a flood event. The risk and harm cannot be avoided or adequately mitigated. Some harm would also arise to

the Newark and Winthorpe Open Break as landscaping would only partly mitigate the impacts. The application also fails to demonstrate that the foul drainage accords with the national drainage hierarchy as it involves the use of a non-mains foul drainage system without adequate justification. When considering the harm identified cumulatively, this amounts to significant and substantial harm, and despite the positive factors weighing in favour of the development, including but not limited to the lack of land available for gypsy and traveller pitches, the harm is not outweighed.

The proposal is therefore contrary to Core Policies 5, 9 and 10 of the Newark and Sherwood Amended Core Strategy DPD (adopted March 2019) and policies NUA/OB/1, DM5 and DM12 of the Development Plan, as well as being contrary to the National Planning Policy Framework 2023, Planning Practice Guidance and the Planning Policy for Traveller Sites (2015) which are material planning considerations.

### Informatives

01

The application was refused on the basis on the following plans and documents.

- Application form
- Site Location Plan, drawing no. JOO4777-DD-01
- Site Plan as Existing, drawing no. JOO4777-DD-02
- Site Plan as Proposed, drawing no. JOO4777-DD-03
- As Proposed Dayroom, drawing no. JOO4777-DD-04
- Desktop Review and Assessment Report 1565.DRAR.00, by dBA Acoustics, 12.03.24
- Planning Statement (and 18 Appendices including topographical survey, Stateley Caravans Acoustic Performance Report and 16 appeal decisions), March 2024
- Confidential Statement of Personal Circumstances
- Flood Risk Assessment Rev 00, by SLR dated 1<sup>st</sup> July 2024
- Foul Drainage Justification, submitted 13<sup>th</sup> September 2024
- STW Assets Plan, submitted 13<sup>th</sup> September 2024
- Rebuttal to EA objection, 7<sup>th</sup> October 2024
- Further comments on EA position by agent, 22<sup>nd</sup> October 2024

02

The application is contrary to the Development Plan and other material planning considerations, as detailed in the above reason(s) for refusal. However the District Planning Authority has worked positively and proactively with the applicant in order to reduce the issues even though not all problems arising can be overcome.

03

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

The proposed development has been assessed and it is the Council's view that CIL is not payable on the development hereby approved as the development type proposed is zero rated in this location.

04

This application is exempt from mandatory Biodiversity Net Gain as it was made prior to the date when it came into effect and in any event because it is retrospective.

#### BACKGROUND PAPERS

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Application case file.

Committee Plan - 24/00548/FUL

