



Report to Planning Committee 3<sup>rd</sup> July 2025

Business Manager Lead: Oliver Scott – Planning Development

Lead Officer: Kirsty Catlow – Planning Officer

Report Summary			
Application No.	24/02008/S73		
Proposal	Application for removal of condition 01 to make temporary permission permanent and the personal permission general as attached to planning permission 21/00891/S73		
Location	Land Off Sandhills Sconce, Tolney Lane, Newark-On-Trent		
Applicant	Mr & Mrs Smith, Harris, Holmes, Calladine, Smith, Winters, Stewart, Smith, Tidd & Price.	Agent	Dr Angus Murdoch
Web Link	<a href="#">24/02008/S73   Application for removal of condition 01 to make temporary permission permanent and the personal permission general as attached to planning permission 21/00891/S73.   Land Off Sandhills Sconce Tolney Lane Newark On Trent</a>		
Registered	14.11.2024	Target Date	09.01.2025
		Extension of Time Date	11.07.2025
Recommendation	That Planning Permission is <u>APPROVED</u> subject to conditions, including the variation of Condition 1, as opposed to its removal.		

**This S73 planning application is being referred to Planning Committee for determination as the previous application was dealt with by Planning Committee, and the recommendation is one of approval (subject to conditions), contrary to an objection from the Environment Agency (a Statutory Consultee).**

## **1.0 The Site**

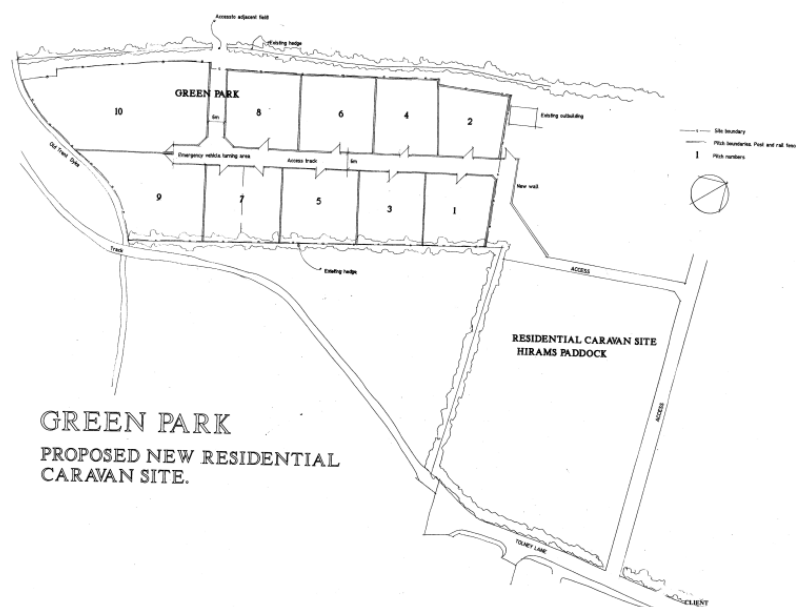
- 1.1 The application site is situated west of the Newark Urban Area defined by the Newark and Sherwood Allocations and Development Management DPD and within the open countryside. The site is located at the south-westernmost end of Tolney Lane which

runs from the Great North Road, on the northwest side of the River Trent and which leads to a dead end. The site, known as Green Park, is accessed from Tolney Lane, via an access road, which runs through an existing neighbouring gypsy and traveller site to the north-east. The road has been extended to the south-west to serve this site. Green Park represents the final gypsy and traveller site at the south-western end of Tolney Lane.



*Original site location plan submitted under 12/00562/FUL*

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



*Original site plan submitted under 12/00562/FUL*

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



*Aerial view of the application site taken from Google maps*

- 1.4 The majority of the site, towards the south west, is located within Flood Zone 3b on the Environment Agency's flood maps, which means it is at the highest risk of fluvial flooding, and is defined as being within the functional floodplain. Parts of Tolney Lane itself, which is the only access to and from the site, are also at high risk of flooding from the River Trent, with low points that are liable to flood before the site itself.
- 1.5 There are numerous sites off Tolney Lane which accommodate a large gypsy and traveller community, comprising of approx. 300 pitches.

## **2.0 Relevant Planning History**

- 2.1. **21/00891/S73** – Application to vary condition 1 of planning permission 18/01443/FUL to amend the temporary permission to permanent. Temporary permission was extended for a further 2 years until 30 November 2023.
- 2.2. **18/01443/FUL** - Application for the variation of condition 1, to make the temporary permission permanent, attached to planning permission 12/00562/FUL granted on appeal at Plots 1-10 Green Park, Tolney Lane (PI Ref: APP/B3030/C/12/2186072 and APP/B3030/A/12/2186071) (Change of use from paddock to gypsy and traveller residential caravan site - retrospective). Temporary permission was extended for a further 3 years until 30 November 2021.
- 2.3. **17/00954/FUL** - Removal of part of condition 1 attached to planning permission

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

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

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

- 2.4. **14/01640/FULM** - Remove/Vary conditions 5 and 6 attached to the planning permission granted on appeal at Plots 110 Green Park, Tolney Lane (PI Ref: APP/B3030/C/12/2186072 and APP/B3030/A/12/2186071; NSDC Ref: 12/00562/FUL). Condition 5 required the removal of all solid walls and close boarded timber fences from site and replacement with post and rail fences within 3 months of the date of the permission and Condition 6 required the ground level within Pitch 8 to be reduced within 3 months of the permission. This application was refused by Planning Committee 18.12.2015 on grounds of failure to demonstrate it would result in no increased flood risk.
- 2.5. **12/00562/FUL** - Change of use from paddock to gypsy and traveller residential caravan site (retrospective), refused by Planning Committee 12.10.2012 on grounds of impact on flood risk, harm to open countryside and prematurity. Following an extensive Public Inquiry the Inspector resolved 10.06.2014 to grant temporary planning permission for 5 years until 30 September 2018 (PI Ref: APP/B3030/C/12/2186072 and APP/B3030/A/12/2186071).

### **3.0 The Proposal**

- 3.1 Planning permission is sought to remove Condition 1 attached to the current permission under reference 21/00891/S73, to allow the temporary gypsy and traveller use of the site to become permanent and to allow for a general permission, rather than a personal permission.

- 3.2 Condition 1 attached to 21/00891/S73 states:

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

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

*And shall be for a limited period being the period up to 30 November 2023, or the period during which the land is occupied by them, whichever is the shorter. When the land ceases to be occupied by those named in this condition 1, or on 30 November 2023, whichever shall first occur, the use hereby permitted shall cease and all caravans, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place in accordance with a scheme approved under condition 7 hereof.*

*Reason: In the recognition of the current need for gypsy and traveller sites within the District and to allow for further assessment of alternative sites to meet this need including sites at less risk of flooding in accordance with the aims of Core Policy 10 of the Newark and Sherwood Amended Core Strategy (March 2019).'*

- 3.3 No Planning Statement or supporting information has been submitted with the application.
- 3.4 For the avoidance of doubt, the agent was asked to provide an up-to-date list of all current occupiers of the site. The following names were provided on 2<sup>nd</sup> May 2025:

Plot 1: Richard & Lisa Smith, kids Moses, Issac and Joseph Smith  
Plot 2: Sarah Harris, kids Thomas & Robert Harris  
Plot 3: Thomas & Olivia Holmes, kids Thomas Holmes  
Plot 4: Jason & Shayla Calladine  
Plot 5: Sam, & Grace Smith, kids Karen Lydia Smith  
Plot 6: Tyrone & Milly Winters, kids Levi, Tyrone, Storm, Creed, Beauty Winters  
Plot 7: Davey & Debbie Stewart, kids Noah, Shania and Davey Stewart

Plot 8: Amy Smith, kids Amy Smith

Plot 9: Sarah Jane Tidd

Plot 10: Leo & Montana Price

The site wardens reside on Plots 1, 8 and 9.

- 3.5 The agent has confirmed that all of the applicants who reside on the site are traditional ethnic Romany Gypsy Travellers who form part of the need for further sites in the area, and therefore meet the definition within the Annex 1 PPTS 2024.
- 3.6 As this represents a Section 73 application, no plans or Flood Risk Assessment have been submitted with the application, as reliance will be made on those submitted under reference 12/00562/FUL. The Inspector commented on the FRA's submitted with the original application that:- *"It is common ground that the 2 FRA's submitted with the application the subject of the appeal D were inadequate. For the Environment Agency (EA), Mr Andrews pointed out that the submitted FRA's did not: analyse the flood risk from the adjacent Old Trent Dyke; identify mitigation measures to take account of works undertaken on site; or analyse the hazards associated with the access and egress route, with input from the emergency services. I still do not have a document which constitutes a FRA approved by the EA and that is an additional breach of the requirements of the Framework, PPG and CS. However, during the course of this Inquiry, I have heard a considerable amount of expert evidence on behalf of the appellants and the EA regarding flood risks and it falls to me to consider the risks on that basis."* On allowing the appeal, the Inspector subsequently relied wholly upon site evacuation following a Flood Alert warning from the Environment Agency, in terms of keeping the occupiers safe, in the event of a flood.

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

- 4.1 Occupiers of 8 properties have been individually notified by letter.
- 4.2 Site visit undertaken on 10.02.2025.

#### **5.0 Planning Policy Framework**

##### **The Development Plan**

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

Spatial Policy 1 - Settlement Hierarchy

Spatial Policy 3 - Rural Areas

Spatial Policy 7 - Sustainable Transport

Core Policy 4 - Gypsies & Travellers – New Pitch Provision

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

Core Policy 9 - Sustainable Design

Core Policy 10 - Climate Change

Core Policy 13 - Landscape Character



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

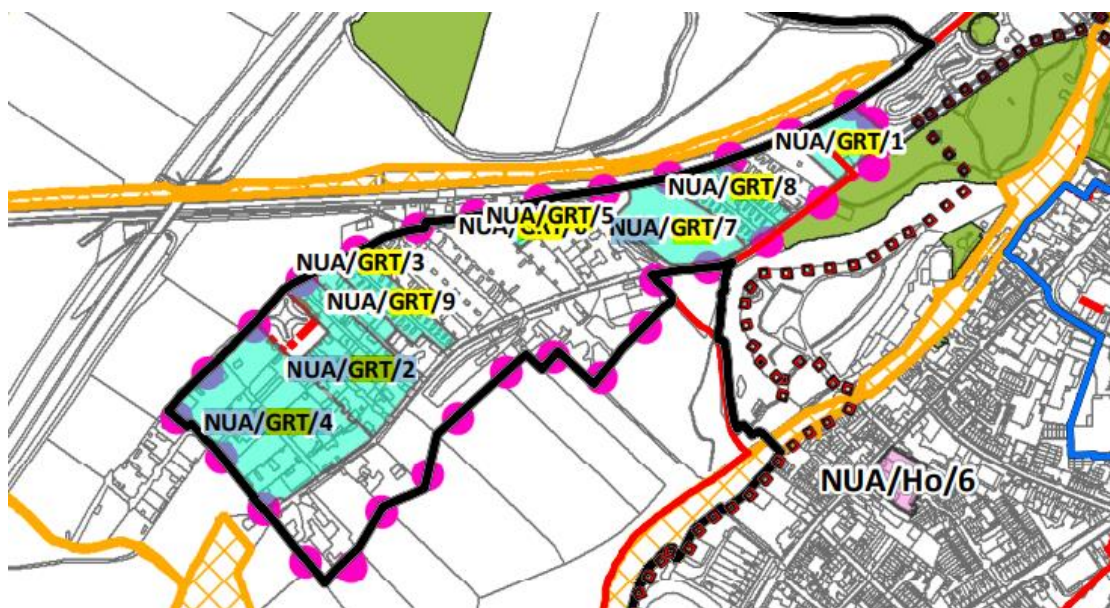
Policy DM5 – Design

Policy DM8 – Development in the Open Countryside

Policy 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 and was examined in public in November. However, the outcome of the examination is not yet published and whilst the plan is at an advanced stage of preparation, there are unresolved objections to amended versions of the above policies and new content around Gypsy and Traveller provision emerging through that process. Therefore, 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.

5.4. It is however considered necessary to draw Members' attention to the fact that within the emerging DPD, a number of sites have been identified which would support further permanent gypsy and traveller pitches, in association with the delivery of flood alleviation improvements to Tolney Lane, and the definition of the Tolney Lane Policy Area, beyond which further Gypsy and Traveller sites would not be supported, as shown below outlined in pink dots:-



5.5. Members should note that the application site falls outside of the proposed Tolney Lane Policy Area, to the south west, and is not identified as a new site allocation. Therefore, in the event the Amended Allocations & Development Management DPD is adopted as proposed, it would not support the use of this site for permanent gypsy and traveller residential occupation.

## 5.6. **Other Material Planning Considerations**

- National Planning Policy Framework 2024 (as amended in 2025)

- Planning Practice Guidance (online resource)

5.7. The Court of Appeal recently considered the status of, and relationship between, Planning Practice Guidance (PPG) and the National Planning Policy Framework (NPPF) in *Mead Realisations Ltd v Secretary of State for Housing Communities and Local Government and another* [2025] EWCA Civ 32. The Court held that the NPPF and PPG are of the same status, and subsequently the PPG can amend the policy guidance contained within the NPPF. Both the guidance in the PPG and the policies in the NPPF are capable of being material considerations in decision-making, and the weight to be given to them is a matter for the decision-maker.

- Planning Policy for Traveller Sites – December 2024

5.8. When determining planning applications for traveller sites, the Planning Policy for Traveller Sites states that planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. It goes on to state that applications should be assessed and determined in accordance with the presumption in favour of sustainable development, in accordance with the guidance contained within the NPPF and this planning policy for traveller sites.

5.9. 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.

5.10. 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, Local Planning Authorities should attach weight to the following matters:

- Effective use of previously developed (brownfield), untidy or derelict land
- Sites being well planned or soft landscaped
- Promoting healthy lifestyles
- Not enclosing sites with high walls or fencing, giving the impression its occupants are isolated from the rest of the community.



5.11. In terms of housing land supply, Para 28 it advises that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, the provisions in paragraph 11(d) of the National Planning Policy Framework apply. Local planning authorities should consider how they could overcome planning objections to particular proposals using planning conditions or planning obligations including:

- limiting which parts of a site may be used for any business operations
- specifying the number of days the site can be occupied by more than the allowed number of caravans
- limiting the maximum number of days for which caravans might be permitted to stay on a transit site.

5.12. **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 or permanently, and all other persons with a cultural tradition of nomadism or of living in a caravan, but excluding members of an organized group of travelling show people or circus people travelling together as such.”*

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

5.13. 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...”*

## **6.0 Consultations and Representations**

Please Note: Some comments below are provided in summary - for comments in full

please see the online planning file.

### Statutory Consultations

- 6.1. **Environment Agency – Object**, to the removal of condition 1 to make the temporary permission permanent, due to the flood risk posed to the site, and recommend the LPA refuse the application on this basis. We should note that we continue to work closely with the LPA on a potential flood alleviation scheme which will hopefully provide greater protection to the wider Tolney Lane GRT site. However, we have made our position clear to the LPA that until such a scheme is in place, we remain concerned about the risk posed to residents during extreme flood events and will continue to object on planning policy grounds. Therefore, our position has not changed since our last response, which was issued on 1<sup>st</sup> October 2021, and this response should continue to be referred to. The most up to date hydraulic modelling still indicated the same level of risk posed to the site. The Environment Agency confirmed on 31<sup>st</sup> March 2025, that a large portion of the south-west of the application site remains within Flood Zone 3b, and the remainder of the site remains within Flood Zone 3a.



*Site edged in red, extent of Flood Zone 3b shown in green*

### Town/Parish Council

- 6.2. **Newark Town Council – Object**, due to the location of the land on a flood plain and the site not being a proposed allocated site in the Newark and Sherwood District Council's Development Plans.

### Representations/Non-Statutory Consultation

- 6.3. **NSDC Planning Policy Team** (comments in full)

### Context

- 6.4. The site was granted temporary consent, via a Public Inquiry, in June 2014. In doing so the Inquiry Inspector reached the conclusion that notwithstanding the lack of five year land supply, and other material considerations in support of the proposal, this was

insufficient to justify the granting of permanent consent. This balanced judgement was principally reached as a result of the 'serious flood risk' the site was subject to. With the prospect of safer and more suitable sites being allocated through the Development Plan process, and delivered with planning permission, within 5 years being referenced. Subject to effective management and minimisation of the risks over a 'finite' and temporary period- the Inspector reached the view that the material considerations weighing in favour of the granting of consent would support the granting of a temporary permission (up to the 30th September 2018).

- 6.5. Subsequently, permanent consent has been sought through a number of further applications- but with only additional temporary consents being granted. The most recent being in November 2021 (21/00891/S73), which expired on 30th November 2021. As part of the determination of the 2021 application legal advice was received outlining that providing there is good, sound reason for the continued granting of temporary consent this would not lead to a greater likelihood of permanent permission being found to be more acceptable over time.

#### Plan Review Update

- 6.6. Since the last temporary consent was granted, the Authority has continued to progress the review of its Allocations & Development Management DPD. Submission of the Draft Amended DPD to the Secretary of State occurred in January 2024 and the Hearing Sessions as part of the Examination in Public were concluded on the 12th November 2024. Further correspondence from the Plan Inspector was received, including questions to the Council around Tolney Lane, the Tolney Land Flood Alleviation Scheme and delivery in this location. The Council has responded to these questions and now awaits further instruction from the Inspector. This represents an advanced stage in the plan-making process, and the Council has submitted what it considers to be a sound, robust and comprehensive strategy to address Traveller accommodation requirements over the plan period.
- 6.7. This incorporates a range of site allocations in the Newark and Ollerton Areas, and the designation of a 'Policy Area' to provide for the future management of the Tolney Lane area. Taken alongside completions and commitments post-2019 these new site allocations will allow for the minimum requirements of the Planning Policy for Traveller Sites (PPTS) to be exceeded, and a five-year land supply established. Through the Policy Area – those part of Tolney Lane at least flood risk and sites where additional pitch allocations have been identified would be brought inside the Urban Boundary. There would be a presumption against further outward expansion beyond this boundary. Central to the Strategy is the design and delivery of a 'Flood Alleviation Scheme' (FAS) for Tolney Lane – intended to increase the flood resiliency of the single point of access/egress up to a 1% AEP flood event and provide site-level reductions in flood risk along its length.
- 6.8. No pitch allocations are proposed for the application site, and it sits outside of the extents for the Tolney Lane Policy Area. The approach taken in discounting the allocation of the site is consistent with the decision reached through the Public Inquiry. With the substantial flood risk the land is subject to making its use for permanent Traveller accommodation unsuitable.

- 6.9. As part of the Plan Review process the Council has entered into a Statement of Common Ground with the Environment Agency. Through which the Agency welcome the principle of the FAS and its ability to deliver significant betterment. Further agreement was reached over the benefits from taking a plan-led approach to development in the area and allowing for its regularisation. Both parties seek an end to the cycle of Environment Agency objections to proposed new pitches in locations at greatest flood risk, with temporary permissions then being granted at appeal due to a lack of alternative provision in more suitable locations.

#### Traveller Accommodation Need and Supply

- 6.10. The Gypsy and Traveller Accommodation Assessment (GTAA) for Newark & Sherwood identifies a total need for 169 pitches for Gypsies and Travellers for the period 2019 – 2034. This comprises need from Travellers who met the 2015 PPTS planning definition of a Traveller (118 pitches); from households that did not meet the 2015 PPTS planning definition of a Traveller (30 pitches); and from undetermined households where it was not possible to complete an interview with residents (21 pitches). Since the GTAA was published in February 2020 there have been changes made to the PPTS as a result of the Lisa Smith Court of Appeal Judgement, relating to the planning definition of a Traveller for planning purposes.
- 6.11. The Council's consultants Opinion Research Services (ORS) have carefully considered the implications on the assessment of need in the GTAA, reviewing the outcomes of household interviews. Concluding that 134 pitches of the overall 169 pitch requirement reflects the needs of Traveller households meeting the revised definition in Annex 1. Whilst the Council recognises 169 pitches as its overall pitch target, it is the lower 134 pitch need which provides the relevant local target for calculation of the five-year land supply – in line with the PPTS. This need has been broken down into 5 year periods, and there is an adjusted requirement for the current five-year period (2024-2029) of 100 pitches (taking account of completed pitches and the residual unmet requirement from the previous five-year period).
- 6.12. It remains necessary to forecast delivery from proposed site allocations to identify a five-year land supply. Paragraph 48 in the NPPF details the tests applicable to emerging policy in order to determine how much weight it can be afforded within the Development Management process. Until such time as the Inspector issues their report it will not be clear how the emerging Traveller strategy performs against tests b and c. These concern the extent to which there are unresolved objections to relevant policies, and the degree of consistency of the relevant policies in the emerging plan to the Framework. Accordingly, an up-to-date assessment of supply without forecast delivery from site allocations is provided below.

<b>First Five-Year Period (2019-24)</b>	
Five Year Pitch Requirement	85
Completed Pitches within period	3
Residual Requirement	82
<b>Second Five Year Period (2024 - 29)</b>	
Five Year Pitch Requirement	24
Residual Requirement 2019-24	82

Completed Pitches within period	6
Adjusted Requirement	100
Annualised Requirement	20
<b>Supply</b>	
Pitch Supply from Unimplemented Permissions	37
Pitch Supply from Allocated Sites	0
Total Supply	37
<b>No Years Supply</b>	
Against Requirement	37/20=1.85

- 6.13. Despite a number of permissions having been granted, the Authority remains in a position where it lacks sufficient identifiable and deliverable sites to address either its overall pitch requirements, or to demonstrate a five-year land supply (being currently able to show a 1.85 year supply).
- 6.14. Accompanying the publication of the new NPPF of the 12th December was an updated PTS – this makes clear at paragraph 28 that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, then the provisions in paragraph 11(d) of the National Planning Policy Framework apply. Consequently, the tilted balance towards decision-making which this requires becomes engaged. This means that;

*Where the policies which are most important for determining the application are out-of-date, granting permission unless:*

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination*

#### Flood Risk

- 6.15. The site remains at substantial flood risk – directly in having previously been identified as being located in the functional floodplain (Zone 3b), and with the single point of access/egress to Tolney Lane also being within the same zone and modelled to flood early in an event of a sufficient magnitude. However, at the time of writing the Agency has not signed off the District Council's latest Strategic Flood Risk Assessment for use beyond the Plan Review process – and so there is no up-to-date local definition of the Functional Flood Plain. The response from the Environment Agency is therefore noted, providing confirmation that the site is split between Flood Zones 3a and 3b.

- 6.16. As mentioned above, there are no proposals for the site to benefit from site-level reductions in flood risk through the delivery of the Flood Alleviation Scheme for Tolney Lane.
- 6.17. Applying the Sequential Test as required by national and local planning policy there is a lack of reasonably available and suitable land at lesser risk elsewhere, and so the proposal would pass the Test on this basis. The Planning Practice Guidance is also clear that the Sequential Test should be applied prior to having regard to Table 2 'Flood Risk Vulnerability and Flood Zone Incompatibility' of its Flood Risk section. Albeit, the Table is clear in identifying that a 'highly vulnerable' use is incompatible with Flood Zone 3a and 3b, and so should not be permitted.
- 6.18. Through the *Mead Realisations Ltd v Secretary of State for Housing Communities and Local Government and another* [2025] EWCA Civ 32 judgment the PPG was found to hold the same legal status as the NPPF, in that they are both statements of national policy issued by the Secretary of State. Both the guidance in the PPG and the policies in the NPPF are capable of being material considerations in decision-making, and the weight to be given to them is a matter for the decision-maker. This provides a helpful steer over the status of Table 2 in the Flood Risk section of the PPG.
- 6.19. With regards to the Exception Test, I'm content that regarding its first part- there would be wider sustainability benefits to the community via the contribution towards meeting the identified accommodation needs of Travellers. However, I note the objection from the Environment Agency over the second part of the Test . Given the failure to pass both parts of the test, and in-line with national policy, the proposal ought to be refused.

### Conclusion

- 6.20. There is a significant unmet need for Traveller accommodation – with the Council in the position where it cannot currently identify sufficient land to meet either its overall requirements, or demonstrate a five-year land supply. This results in the tilted balance outlined at paragraph 11(d) of the NPPF becoming engaged. Part 1 of the paragraph identifies a range of areas where the application of policy in the Framework for their protection provides a strong reason for refusing the development proposed, this includes 'areas at flood risk'. The application site is at the highest level of flood risk – being located within the functional floodplain, with national policy orientated around application of the Sequential and Exceptions Test in this regard. Whilst the proposal can be considered to have passed the Sequential Test, it has not demonstrated satisfaction of the Exceptions Test. Under Part 1 of paragraph 11 d) national policy concerning the Exceptions Test would in my view provide a 'strong reason' for refusing the proposal.
- 6.21. Were one to conclude differently and take the view that the Exceptions Test fell short of providing that required 'strong reason', then the decision-maker would proceed onto part 2. Through which, permission ought to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making



effective use of land, securing well-designed places and providing affordable homes, individually or in combination. Clearly there remains the need to continue to also have regard to parts of the Development Plan which are up-to-date and in your judgement relevant to the determination of the proposal.

- 6.22. It is recognised that the proposal would make a contribution towards pitch supply, and there is a lack of reasonably available and suitable land at lesser flood risk elsewhere. Consequently, the proposal has passed the Sequential Test. However, I remain unconvinced that the granting of permanent pitches within Flood Zone 3a and 3b would be consistent with the purpose of the presumption to promote 'sustainable development', and it would fail to direct the proposed development to a sustainable location. The highly vulnerable use is incompatible with the level of flood risk the application site is subject to, with the PPG setting out that it should not be permitted. Furthermore, there has also been a failure to demonstrate the Exceptions Test as passed. As a consequence, the adverse impact of granting permanent consent would in my view significantly and demonstrably outweigh the benefits – when assessed against the policies in the Framework and up-to-date parts of the Development Plan.
- 6.23. There has been no material change since the original Public Inquiry, which would lead me to draw a different conclusion to the Inquiry Inspector. Whilst there are factors which weigh heavily in the favour of granting consent these continue to fall short of outweighing the significant flood risk concerns, to the extent that the granting of permanent consent would be justified – even with paragraph 11 d) of the NPPF engaged. Whilst we are clearly beyond the five year period anticipated at the time of the Public Inquiry, the plan-making process is now at an advanced stage. There is the real prospect of site allocations at lesser flood risk being adopted early in the New Year – providing reasonably available and suitable land at lesser flood risk than the application site. Whilst I do not consider there is the case to support the granting of permanent consent, I would raise no objection to a further short term temporary consent of up to a year, in order to allow the site allocation process to conclude and provide the applicants with certainty over that period.
- 6.24. No comments have been received from any local residents or third parties.

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

- 7.1. Temporary planning permission was originally granted for the existing use of the gypsy and traveller caravan site on 10 June 2014, following an extensive Public Inquiry. The principle of the use of the site for these purposes on a temporary basis has therefore been established.
- 7.2. The Inspector stated within his decision following the Public Inquiry that *"....the absence of a 5 year supply of deliverable sites for gypsy and travellers must carry weight, notwithstanding paragraph 28 of PPTS. Nevertheless, principally because of the serious flood risk, I am still not persuaded that all the material considerations justify a permanent permission. .... However, the section of the PPG concerning the use of planning conditions indicates that temporary permission may be appropriate where it is expected that the planning circumstances may change by the end of the relevant period. There is at least a realistic prospect of safer, more suitable sites being allocated through*

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

- 7.3. The Inspector concluded in adding to the reasons for a temporary permission that *“it still requires the occupiers to leave the appeal site at the end of the temporary period, but this is a proportionate response and interference with the residents’ rights under Article 8 of the ECHR, given the legitimate objective of ensuring safety and avoiding undue additional burdens on the Council and emergency services.”*
- 7.4. The original permission was granted following the Inspector balancing the lack of available gypsy and traveller pitches at the time of consideration, against the high level of flood risk on the site. The decision was intended to cater for the applicants’ immediate accommodation needs whilst allowing for the possibility of identifying other sites at lesser risk of flooding. The original permission was renewed for a further 3 years in 2018 (18/01443/FUL), and again in November 2021 (ref: 21/00891/S73) for a further 2 years.
- 7.5. As confirmed in the PPTS, there is no presumption that a temporary grant of planning permission should be granted permanently, and legal advice has previously been sought on this matter, which confirms that as long as there is a good, sound reason for the continued granting of temporary permission, that this would not lead to a greater likelihood of a permanent permission being found to be more acceptable over time. However, there would need to have been a material change in circumstances since the determination of the previous permissions to justify any permanent permission, and this is considered in more detail further below.

### **Need**

- 7.6. The Gypsy and Traveller Accommodation Assessment (GTAA) for Newark and Sherwood identifies a total need for 169 pitches for Gypsy and Travellers for the period 2019-2034. Since the GTAA was published in February 2020 there have been changes made to the PPTS as a result of *Smith v Secretary of State for Levelling Up, Housing & Communities & Anor* 9 [2022] EWCA Civ 1391], relating to the planning definition of a Traveller for planning purposes. Having reviewed the assessment of ‘need’ in light of this appeal judgement, it has been concluded that 134 pitches reflects the needs of Traveller households meeting the revised definition. Therefore, whilst the Council recognises 169 pitches as its overall pitch target, it is the lower 134 pitch need which provides the relevant local target for calculation of the five year land supply – in line with the PPTS.
- 7.7. Despite a number of permissions having been granted for gypsy and traveller sites, the Authority remains in a position where it lacks sufficient identifiable and deliverable sites to address either its overall pitch requirements, or to demonstrate a five-year land supply (being currently able to show a 1.85 year supply).

- 7.8. An updated PPTS was published on 12<sup>th</sup> December 2024, alongside the updated NPPF, which makes clear at paragraph 28 that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, then the provisions in paragraph 11(d) of the National Planning Policy Framework apply. Consequently, the presumption in favour of sustainable development towards decision-making becomes engaged. This means that;

*Where the policies which are most important for determining the application are out-of-date, granting permission unless:*

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination'*

The application of the above paragraphs to this proposal are discussed further in the Conclusion and Planning Balance section below.

- 7.9. Both the extent of the pitch requirement and the lack of a five-year land supply represent significant material considerations, which should weigh heavily in the favour of the granting of permission, where proposals will contribute towards supply.
- 7.10. Accordingly, the granting of permanent permission would allow for the current planning definition need, picked up as part of the GTAA, to be met and contribute progress towards a five-year land supply. This weighs heavily in the favour of granting permanent permission, and robust and justifiable reasons are needed to depart from a permanent approval on this basis. Officers consider, however, as did the Inspector previously, that given the potential risk to people and property, flood risk has the potential to form such a reason.

### **Flood Risk**

- 7.11. The site remains at substantial flood risk – both directly through its location in Flood Zone 3, and indirectly as a result of the single point of access/egress to Tolney Lane also being within the same Zone, and modelled to flood early in an event of a sufficient magnitude. This position remains unchanged since the initial Public Inquiry in 2014. The Environment Agency have confirmed that the majority of the site, towards the south west where the pitches are located, remains within Flood Zone 3b – functional floodplain, with the remainder of the site towards the north east being located within Flood Zone 3a. There are no proposals for the site to benefit from site-level reductions in flood risk through the delivery of the Flood Alleviation Scheme for Tolney Lane.
- 7.12. The final criterion of Core Policy 5 states that 'Proposals for new pitch development on Tolney Lane will be assessed by reference to the Sequential and Exception Tests as

defined in the Planning Practice Guidance. These will normally be provided temporary planning permission.’ The NPPF states that local planning authorities should minimise risk by directing development away from high-risk areas to those with the lowest probability of flooding. National guidance/policy relating to flood risk since 2014 has introduced new guidance in relation to climate change that increases the bar in relation to the assessment of new development. Core Policy 10 and Policy DM5 also reflects the advice on the location of development on land at risk of flooding and aims to steer new development away from areas at highest risk of flooding.

- 7.13. 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.
- 7.14. Annex 3 (Flood risk vulnerability classification) 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 2 (Flood risk vulnerability and flood zone incompatibility) of the Practice Guidance states that within Flood Zone 3a or b, highly vulnerable classification development should not be permitted. The Planning Practice Guidance make it clear that this type of development is not compatible within this Flood Zone and should therefore not be permitted.
- 7.15. In coming to his decision in 2014, in the appeal on this site, the Inspector acknowledged that the development was contrary to local and national policies concerning flood risk such that it would represent a highly vulnerable use and therefore inappropriate development in Flood Zone 3 that should not be permitted. However, he concluded that if residents of the site could be evacuated within 8 hours of the first flood alert warning, before flood levels are likely to prevent safe evacuation from the site for the residents, then there would be no input required from the Council or emergency services, and the development need not give rise to an additional burden. (No comments have been received from the Council’s Emergency Planner on this application). The Inspector concluded that the lack of a five-year supply was sufficient to warrant the grant of a temporary consent, subject to managing the risk to occupants of the site through the use of very prescriptive conditions to reduce the risk and secure a site-specific evacuation plan.
- 7.16. In considering whether it would be appropriate to permit a permanent permission, it remains the case that the majority of the site is located within Flood Zone 3b (functional floodplain) and therefore remains at high risk of flooding, and as such a permanent residential caravan site represents inappropriate development in this location.
- 7.17. Applying the Sequential Test, as required by national and local planning policy, there is a lack of reasonably available and suitable land at lesser risk elsewhere, and so the proposal would pass the Test on this basis.
- 7.18. The NPPF and PPG clearly state that change of use applications, where the proposed use is a caravan site, are not exempt from assessment under the Exception Test and the NPPF makes it clear that both elements must be passed for development to be

permitted. Paragraph 178 of the NPPF states, “To pass the exception test, it should be demonstrated that:

a) The development would provide wider sustainability benefits to the community that outweigh the flood risk; and

b) The development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.”

7.19. In terms of part a, there would be wider sustainability benefits to the community via the contribution the site would make towards meeting the identified accommodation needs of gypsy’s and travellers. However, the proposal would fail part b, as confirmed by the objection received from the Environment Agency. On that basis the application for permanent residential occupation of the caravan site should be refused.

7.20. The agent continues to rely upon Flood Risk Assessments that were submitted in support of the 2012 application. Both FRA’s submitted were considered inadequate during the Inquiry process and do not address the Exception Test or the technical ability of the site itself to be safe for its proposed use and demonstrate that it would not increase flooding elsewhere. Instead the site relies wholly on the requirement to evacuate the site on receipt of a Flood Alert warning from the Environment Agency prior to a flood event occurring. There is no other mitigation proposed, such as raising of land levels, raising of touring caravans, or any other innovative proposals to reduce flood risk to the development or future occupiers. Consequently, the Environment Agency continue to object to the proposed development due to the risks posed to residents during extreme flood events. Therefore, the proposal fails to pass the Exception Test.

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

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

### **Other Matters**

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

7.24. **Biodiversity Net Gain (BNG)** – In England, BNG became mandatory (under Schedule

7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021)) from February 2024. BNG is an approach to development which makes sure a development has a measurably positive impact ('net gain') on biodiversity, compared to what was there before development. This legislation sets out that developers must deliver a minimum BNG of 10% - this means a development will result in more, or better quality, natural habitat than there was before development. However, there are some exemptions to where BNG is applicable – these are set out in The Biodiversity Gain Requirements (Exemptions) Regulations 2024. This includes section 73 planning permissions where the original planning permission, to which the section 73 planning permission relates, was subject to exemption.

- 7.25. The original FUL application was submitted in October 2012, prior to Biodiversity Net Gain becoming Mandatory, and planning permission was subsequently granted in June 2014. This application seeks permission to vary Condition 1 relating to the occupation of the site. As a result, the proposal would be exempt in terms of BNG, as the application merely seeks to amend an original planning application, which itself was exempt from mandatory BNG.

## **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.

### **Legal Implications**

- 8.2. Planning Committee is the appropriate body to consider the content of this report. A Legal Advisor will be present at the meeting to assist on any legal points which may arise during consideration of the application.

## **9.0 Conclusion and Planning Balance**

- 9.1 The objection from the Town Council is duly noted and has been taken into account in the recommendation put before Members.
- 9.2 There is a significant unmet need for Traveller accommodation within Newark and Sherwood, with the Council in the position where it cannot currently identify sufficient land to meet either its overall requirements or demonstrate a five-year land supply. The current five-year supply currently stands at 1.85 years. This results in the presumption in favour of sustainable development, outlined at paragraph 11d) of the NPPF, becoming engaged.
- 9.3 However, Paragraph 11 (d) (i), at footnote 7, of the NPPF identifies policy exceptions within the Framework that protect areas or assets of particular importance that provide a strong reason for refusing the development proposed. One of the exceptions listed include 'areas at risk of flooding.' As such, under part (d) (i), the



application of the presumption in favour of sustainable development no longer takes precedence in decision-taking and the application of (d) (ii) also falls away.

- 9.4 The application site is at the highest risk of flooding, being located within the functional floodplain, with national policy requiring development to pass both the Sequential and Exceptions Test.
- 9.5 In terms of the Sequential Test, it is recognised that the proposal would make a contribution towards pitch supply, and there is currently a lack of reasonably available and suitable land at lesser flood risk elsewhere in the District. Consequently, the proposal has passed the Sequential Test.
- 9.6 However, it has not been demonstrated that the proposed development would pass the Exceptions Test. The granting of permanent pitches within the functional floodplain would not be consistent with the purpose of the presumption to promote 'sustainable development', and it would fail to direct the proposed development to a sustainable location. The highly vulnerable use is incompatible with the level of flood risk the application site is subject to and would not be adequately mitigated. As a result, under paragraph 11 (d) (i) of the NPPF, this would provide a 'strong reason' for refusing the proposal and the presumption in favour of sustainable development no longer overrides.
- 9.7 There has been no material change since the original appeal decision, which would justify reaching a different conclusion to the Inquiry Inspector. Whilst there are factors which weigh heavily in the favour of granting consent, these continue to fall short of outweighing the significant flood risk concerns, to the extent that the granting of permanent consent would be justified.
- 9.8 Whilst we are clearly beyond the five-year period anticipated at the time of the Public Inquiry, the plan-making process is now at an advanced stage. There is the real prospect of site allocations at lesser flood risk being adopted in 2025, which would provide reasonably available and suitable land, at lesser flood risk than the application site.
- 9.9 The Environment Agency have advised that if, as the Local Planning Authority, NSDC is minded to approve the application on a permanent basis, they would consider instigating the 'call-in' direction, as they consider the risks to this site are too significant to allow permanent 'highly vulnerable' development to proceed, without further work to reduce flood risk to the site beforehand.
- 9.10 Whilst it is not considered appropriate to support the granting of a permanent consent, it is considered reasonable to allow a further short term temporary consent of a year, in order to allow the site allocation process to conclude and provide the applicants with certainty over that period.
- 9.11 To allow a further temporary permission, Condition 1 would need to be varied as opposed to being removed. It is therefore recommended that the condition be varied to allow a further 12 months residential occupation.

- 9.12 In terms of the personal element of Condition 1, which the application also seeks to delete, the Inspector, when considering the original application, attached great weight to the ability of future residents to evacuate the site within 8 hours of the first flood alert warning. The Inspector concluded that the lack of a five-year supply was sufficient to warrant the grant of a temporary consent, subject to managing the risk to occupants of the site through the use of very prescriptive conditions to reduce the risks and secure a site-specific evacuation plan, this included naming all occupiers of the site within Condition 1, and requiring each of the residents named in condition 1 to register with the Environment Agency's Flood line Warnings Direct Service (Condition 8). The application site remains within Flood Zone 3b, and is only acceptable on a further temporary basis, firstly to provide the current occupiers some certainty over the next 12 months as to their living arrangements, and in the interests of protecting occupiers from the risks of flooding. For these reasons, it is considered necessary for the permission to remain personal to those currently residing on the site.
- 9.13 Given the length of time it has been since the original application was permitted, and the possibility that the occupiers of the site may have changed, during the course of the application an updated list of all occupiers has been provided by the Agent. Officers are satisfied, based on the information submitted by the agent, and in consultation with the Council's Community Relations Team, that the current occupiers of the site meet the definition of a Traveller as set out in Annex 1 of the PPTS 2024.

#### **Remaining conditions**

- 9.14 The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
- 9.15 Conditions 02 (maximum number of caravans on site), 03 (no commercial or industrial activities), 04 (no vehicles over 3.5 tonnes), 07 (site restoration) and 08 (Flood Warning Service) all remain relevant and will be repeated again.
- 9.16 In terms of Conditions 05 (replacement of walls and fences) and 06 (ground level of pitch 8 reduced), the agent has not confirmed or provided evidence to show that the works required by these conditions, have been undertaken, therefore those conditions will also be repeated.
- 9.17 It is therefore recommended that the application is **approved**, subject to the following conditions, including the variation of Condition 1, as opposed to its removal.

### **10.0 Conditions**

#### **01**

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

Richard and/or Lisa Smith, plus children  
Sarah Harris, plus children

Thomas and/or Olivia Holmes, plus children  
Jason and/or Shayla Calladine  
Sam and/or Grace Smith, plus children  
Tyrone and/or Milly Winters, plus children  
Davey and/or Debbie Stewart, plus children  
Amy Smith, plus children  
Sarah Jane Tidd  
Leo and/or Montana Price

And shall be for a limited period being the period up to 30 July 2026, or the period during which the land is occupied by them, whichever is the shorter. When the land ceases to be occupied by those named in this condition 1, or on 30 July 2026, whichever shall first occur, the use hereby permitted shall cease and all caravans, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place in accordance with a scheme approved under condition 7 hereof.

Reason: In the recognition of the current need for gypsy and traveller sites within the District and to allow for further assessment of alternative sites to meet this need including sites at less risk of flooding in accordance with the aims of Core Policy 10 of the Newark and Sherwood Amended Core Strategy (March 2019).

## **02**

No more than 20 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, of which none shall be a static caravan, shall be stationed on the site at any time.

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

## **03**

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

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

## **04**

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

Reason: In the interests of the appearance of the surrounding area and the amenities of surrounding land uses in accordance with the aims of Core Policies 5 and 13 of the Newark

and Sherwood Amended Core Strategy (March 2019) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

## **05**

Within 3 months of the date of this permission, all of the solid walls and close boarded fences erected on the site shall be demolished and the resultant debris removed from the site and those walls and fences shall be replaced with post and rail fences, all in accordance with the plan showing the layout of the site received by the Council on 5 April 2012, but that providing where that plan indicates a "new wall" at the access to the site, that shall also be a post and rail fence.

Reason: In the interests of reducing flood risk in accordance with the aims of Core Policies 5 and 10 of the Newark and Sherwood Amended Core Strategy (March 2019) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

## **06**

Within 3 months of the date of this permission, the ground level within Pitch 8, which is identified on the plan showing the layout of the site received by the Council on 5 April 2012, shall be reduced so that, at the south-western boundary of Pitch 8, corresponds with the unaltered ground level on the other side of the south-western boundary fence, so that in all other respects, the ground level within Pitch 8 is no higher than the levels indicated for that area on Site Levels Drawing No 1636.A.2 received by the Council on 5 April 2012. All resultant materials shall be removed from the site.

Reason: In the interests of reducing flood risk in accordance with the aims of Core Policies 5 and 10 of the Newark and Sherwood Amended Core Strategy (March 2019) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

## **07**

The scheme for the restoration of the site to its condition before the development took place, as shown on the submitted and approved on Drawing No 1636.A.3 dated July 2014, shall be carried out and completed in accordance with the stated timetable. At the end of the period for which planning permission is granted for the use, or the vacation of the site, whichever is the sooner, the site shall be restored in accordance with the approved drawing and the approved timetable.

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

## **08**

The use hereby permitted shall cease and all caravans, equipment and materials brought onto the land for the purposes of such use shall be removed within 6 months of the date of any failure to meet any one of the requirements set out in (i) to (vii) below:

(i) Within 28 days of the date of this permission, each of the residents named in condition 1 hereof (hereafter referred to as the residents) shall (a) register with the Environment Agency's Floodline Warnings Direct Service (hereafter referred to as the Flood Warning Service which expression shall include any replacement for that Service provided by the Environment Agency); and (b) provide the local planning authority with confirmation from the Environment Agency that they have done so;

(ii) Each of the residents shall maintain their registration with the Flood Warning Service (or any replacement service) throughout the life of this permission and shall provide the local planning authority with further confirmation from the Environment Agency that they are registered within 28 days of each of the following: (a) the second anniversary of the date of this permission; and (b) any written request from the local planning authority for such confirmation;

(iii) Each of the residents shall notify the Local Planning Authority in writing of the locations to which they could evacuate in the event of a Flood Alert, together with their current telephone contact details within 28 days of each of the following: (a) the date of this permission; (b) the second anniversary of the date of this permission; and (c) any written request from the local planning authority for such details;

(iv) Throughout the life of this permission, no less than 3 of the residents shall be nominated as Flood Wardens for the site. Details of the nominated Flood Wardens including names and telephone numbers shall be provided within 28 days of the date of this permission to the Local Planning Authority. Thereafter, the names and telephone numbers of the Flood Wardens shall be confirmed in writing to the Local Planning Authority within 28 days of each of the following: (a) any change to the identity of any of the nominated Flood Wardens; (b) the second anniversary of the date of this permission; and (c) any written request from the local planning authority for such details;

(v) Within 8 hours of a Flood Alert, this being the first alert issued through the Flood Warning Service, all of the residents will evacuate the site, bringing all caravans and vehicles with them;

(vi) Within 10 hours of a Flood Alert the Flood Wardens, or any one of them, will confirm to the Local Planning Authority that all of the residents have evacuated the site; and

(vii) None of the residents shall return to the site until notice is issued through the Flood Warning Service that the Flood Alert is at an end and the all clear has been given.

Reason: In the interests of reducing flood risk in accordance with the aims of Core Policies 5 and 10 of the Newark and Sherwood Amended Core Strategy (March 2019) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

### Informatives

#### **01**

This application has been the subject of discussions during the application process to ensure that the proposal is acceptable, subject to the variation of conditions, as opposed to the removal of conditions. The District Planning Authority has accordingly worked positively and

pro-actively, seeking solutions to problems arising in coming to its decision. This is fully in accord Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

## **02**

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 in this instance, as the temporary accommodation is provided by caravans, and not buildings.

## **03**

From the information provided as part of the application, the development granted by this notice is considered exempt from the biodiversity gain condition.

Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 states that planning permission is deemed to have been granted subject to the condition “the biodiversity gain condition” that development may not begin unless:

- a) a Biodiversity Gain Plan has been submitted to the planning authority, and
  - b) the planning authority has approved the plan;
- OR
- c) the development is exempt from the biodiversity gain condition.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan if one is required in respect of this permission is Newark and Sherwood District Council (NSDC).

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. Details of these exemptions and associated legislation are set out in the planning practice guidance on biodiversity net gain ([Biodiversity net gain - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/biodiversity-net-gain))

Based on the information available, this permission is considered by NSDC not to require the approval of a biodiversity gain plan before development is begun, because the following reason or exemption is considered to apply – The application is a section 73 planning application, where the original planning application was exemption from BNG.

## **BACKGROUND PAPERS**

Application case file –

[24/02008/S73 | Application for removal of condition 01 to make temporary permission permanent and the personal permission general as attached to planning permission 21/00891/S73. | Land Off Sandhills Sconce Tolney Lane Newark On Trent](#)



Link to Committee Report for application 21/00891/S73

[21/00891/S73 | Application to vary condition 1 of planning permission 18/01443/FUL to amend the temporary permission to permanent | Land Off Sandhills Sconce Tolney Lane Newark On Trent](#)

Link to Committee Report for application 18/01443/FUL –

[18/01443/FUL | Application for the variation of condition 1, to make the temporary permission permanent, attached to planning permission 12/00562/FUL granted on appeal at Plots 1-10 Green Park, Tolney Lane \(Pl Ref: APP/B3030/C/12/2186072 and APP/B3030/A/12/2186071\) \(Change of use from paddock to gypsy and traveller residential caravan site\). | Green Park Tolney Lane Newark On Trent Nottinghamshire NG24 1DA](#)

Link to Inspectors appeal decision on 12/00562/FUL

[12/00562/FUL | Change of use from paddock to gypsy and traveller residential caravan site | Land Off Sandhills Sconce Tolney Lane Newark On Trent Nottinghamshire](#)

