

Application No:	16/01884/FUL
Proposal:	Change of use of scrubland for the siting of 8 static mobile homes for gypsy travellers and reduce ground levels to 10.5m AOD
Location:	Shannon Falls, Tolney Lane, Newark
Applicant:	Mr C Price

This application was considered by the Planning Committee on 25 January 2017 when Members resolved to refuse planning permission on the grounds of flood risk. Copied at the end of this short report is a copy of the officer report that came before Members and the recorded minutes detailing the debate and confirming the resolution of the Planning Committee.

The applicant has appealed against the refusal of planning permission and an Informal Hearing is due to take place on 27 February 2018. Within the appeal submission, additional information has been submitted in relation to the proposed occupiers of the site that was not before Members when they came to their decision, which represents further material evidence that could have been weighed in the balance in the consideration process. The additional personal circumstances detail set out within their appeal documentation is copied below.

“The appellant is a general dealer who mainly trades in vehicles and scrap metal and goes around vehicle repair garages touting for business. He also travels to fairs at Appleby, Stow-on-the-Wold, Kenilworth and Newcastle-upon-Tyne to buy and sell anything on which he can make a profit. The appellant travels for up to 6 months of the year and, although now 73 years of age, wishes to continue travelling for as long as he can.

Creddy and his extended family do not have their own pitches and are reliant on doubling-up on relatives’ sites with inadequate facilities and no security of tenure. They have been trying to establish a home base in Newark for many years but, have not been able to find any alternative to Shannon Falls.

The appeal site is intended to accommodate the following households:

*Creddy and Rebecca Price;
Romeo (Creddy’s brother) and Babs Price;
Elvis (Creddy’s brother) and Dilly Price;
Beryl Price (Creddy’s sister);
Sylvia Smith (Rebecca’s sister); and
Andrew and Jana (Rebecca’s sister) Price.*

They have a need for lawful accommodation in this area, and for a site where they can live together as a traditional family group in order to provide each other with mutual help and support.”

To be clear, had this information been presented with the original application, officers would have likely recommended a personal permission be granted for a temporary period of 3 years. In the light of this additional material information that has been received, Members are asked to consider whether this would be likely to affect their resolution on this proposal if the matter were to come before them again, for determination.

The other material planning considerations relating to flooding, impact on the countryside and character of the area, residential amenity, highway considerations and access to services have not changed since the consideration of the application a year ago. However, the need for gypsy and traveller pitches, which was at 21 for the period 2013-2018 in January 2017, (taking account of planning permissions granted since) has now fallen to 2 within the same 2013-2018 five year tranche. However it is also acknowledged that on a rolling five year basis the Authority is presently unable to demonstrate a five year land supply and that under this measure there is an unmet requirement for 14 pitches between 2017 – 2022. Members will therefore have to give appropriate weight to this material change since the previous decision a year ago.

I would also draw to Members' attention two further matters. Firstly, the Conclusions and Balancing Exercise of the officer's Committee report copied below which considers that the lack of information on the occupiers of the site results in officers being unable to recommend a temporary planning permission be approved in line with the Green Park application. Secondly, as set out within the Minutes copied below, during the debate on the proposal at the meeting, a number of differing resolutions were put before Members and each one was lost on a single vote.

Officers therefore request a further informal resolution of the Planning Committee on this proposal to consider whether Members would be likely to come to a different resolution in light of the additional and more up to date material information presented above, either in terms of the granting of a temporary or permanent and personal planning permission. This further informal consideration and resolution can then be presented to the Planning Inspector and taken into account during the Hearing to take place at the end of February 2018.

Copy of Minutes of item agreed by Committee at their meeting on 2 February 2017:

SHANNON FALLS, TOLNEY LANE, NEWARK (16/01884/FUL)

The Committee considered the report of the Deputy Chief Executive, which sought planning permission for the change of the site from scrubland to the creation of 8 pitches each one housing a static mobile home each with its own associated amenity building.

Councillor D. Lloyd representing Newark Town Council spoke against the application in accordance with the views of the Town Council, as contained within the report.

Members considered the application and it was commented that the Authority should undertake a lead role in sorting out the flooding issues on Tolney Lane. This area was home to the Gypsy and Travelling community and had been for many years and their safety should be carefully considered. A bridge was suggested as a solution for quick egress in the event of flooding, which could be built in the middle of Tolney Lane. The bridge would be a solution to the safety issues and would enable planning permission to be granted within this area. Concerns were raised regarding the tethering of caravans and the safety implications to the residents of Tolney Lane.

A Member sought clarification regarding a planning appeal on land directly to the north of the application site. It was confirmed that there had been an issue with the receipt of the appeal and that it had been returned.

Members suggested that the item be deferred pending further investigation into safety solutions for this area.

A vote was taken to defer the application, which was lost with 5 votes for and 6 votes against.

A further vote was taken to grant the application, subject to conditions, which was lost with 5 votes for and 6 votes against.

AGREED (with 6 votes for and 5 votes against) that full planning permission be refused for the reason contained within the report.

Copy of officer report to Planning Committee:

PLANNING COMMITTEE – 25 JANUARY 2017

AGENDA ITEM NO. 11

Application No:	16/01884/FUL	
Proposal:	Change of use of scrubland for the siting of 8 static mobile homes for gypsy travellers and reduce ground levels to 10.5m AOD	
Location:	Shannon Falls, Tolney Lane, Newark	
Applicant:	Mr C Price	
Registered:	30 November 2016	Target Date: 25 January 2016

This application is being referred to the Planning Committee for determination in accordance with the approved scheme of delegation.

The Site

The application site is situated west of the Newark Urban Area, within the Rural Area as defined by the Newark and Sherwood Core Strategy and within the countryside. The site sits on the north side of Tolney Lane which runs in a westerly direction from the Great North Road which leads to a dead end. It sits at a junction where Tolney Lane forks into two and the northern arm runs towards the railway line. It is located between the River Trent to the south-east and the railway line to the north-west. The application site represents the western part of a wider site known locally as Shannon Falls which is located between the larger gypsy and traveler sites known as Church View to the east and Hoes Farm to the west. The application site is situated on the southern side of a larger site known locally as Shannon Falls.

The vacant site measures 0.4 hectares in area and is roughly rectangular in shape. It measures approx 115 metres long by approx 30 metres wide. The application form describes the site as scrubland although there is evidence of recent earthworks on the site providing a flat earthed application site bounded on three side by bunds of earth whereas the boundary to the south-east (adjacent to Tolney Lane) is defined by high mature leylandii trees. Beyond the application

site boundary to the north-east and north-west is the remainder of the larger Shannon Fall site which is rough land, at risk from the dumping of household waste. The south-western boundary of the site is defined by the road, although there is no existing access into the site and the earth bunds are intended to prevent access.

Approximately two thirds of the site (to the south-east) is within Flood Zone 3 of the Environment Agency's Flood Map/Strategic Flood Risk Assessment, and the remaining third to the north-west is located within Flood Zone 2. The application site is outside the designated Conservation Area but the boundary of Newark Conservation Area runs along the southern side of Tolney Lane, opposite the site.

Historically, the site has been subjected to material being tipped onto the land to raise ground levels which occurred roughly in 2001. This has never been authorised in planning terms and continues to be the subject of an Enforcement Notice as set out in the history section below. Early in 2016, the site was also subjected to fly tipping of household and commercial waste. Following concerns raised by the Council's Environmental Health Service, the waste was removed from the site which has now been left level and clean and tidy with earth bunds around the boundaries to seek to prevent a repeat of waste dumping.

Tolney Lane accommodates a large Gypsy and Traveller community providing in excess of 200 pitches.

Relevant Planning History

Including the application site and adjacent vacant land to the north and east:

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

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

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

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

Whilst the site has ceased being used as a caravan site, the unauthorised tipping remains on the land, artificially raising ground levels.

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

15/01770/FUL - Change of Use of Land to a Private Gypsy and Traveller Caravan Site, consisting of One Mobile Home, Two Touring Caravans and One Amenity Building, refused by Planning Committee in May 2016 for the following reason:

“The proposed development represents highly vulnerable development that would be located within Flood Zone 3 and therefore should not be permitted in accordance with the National Planning Policy Framework and the PPG. Whilst the Sequential and Exception Tests do not fall to be applied in this case, even if they were applicable, whilst the Sequential Test may be considered to be passed on the basis that there are no reasonably available alternative sites for this use, the proposal fails the Exception Test. The submitted Flood Risk Assessment does not comply with the requirements set out in the Site Specific Flood Risk Assessment Checklist (paragraph 68) of the Flood Risk and Coastal Change Section of the Planning Practice Guidance and therefore fails to adequately demonstrate that the development will be safe for its lifetime, without increasing flood risk elsewhere.

In the opinion of the Local Planning Authority, the proposal would therefore place both the occupants of the site and the wider area at risk from flooding and be contrary to 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.”

It is noted that the applicant has recently appealed against this decision.

This application site only:

12/01088/FUL - Change of Use of scrub land for the siting of 8 static mobile homes for gypsy travellers (and 8 associated amenity blocks). This was identical to this current application. Planning permission was refused by Planning Committee in July 2013 for the following reason:

“The proposed development represents highly vulnerable development that would be located within Flood Zone 3 and therefore should not be permitted in accordance with the National Planning Policy framework and its Technical Guidance. Whilst the Sequential and Exception Tests do not fall to be applied in this case, even if they were applicable (which they are not), whilst the Sequential Test may be considered to be passed on the basis that there are no reasonably available alternative sites for this use, the proposal fails the Exception Test. The submitted Flood Risk Assessment does not comply with the requirements sets out in paragraph 9 of the Technical Guidance to the NPPF and therefore fails to adequately demonstrate that the development will be safe for its lifetime, without increasing flood risk elsewhere.

In the opinion of the Local Planning Authority, the proposal would therefore place both the occupants of the site and the wider area at risk from flooding and be contrary to the National Planning Policy Framework and its Technical Guidance, Core Policies 5 and 10 of the Newark and Sherwood Core Strategy and saved Policy PU1 of the Newark and Sherwood Local Plan.”

The Proposal

Planning permission is sought for the change of the site from scrubland to the creation of 8 pitches each one housing a static mobile home each with its own associated amenity building. Each mobile home measures 4m by 8m and each amenity building measures 3.5m by 4m, 2.1 m to the eaves and 4.3m to the ridge. The latter will be constructed of brick with tiled roof. One parking bay will also be provided within each pitch. The applicant has confirmed that he and his family are a local family of travellers who have a good reputation within the local community and who currently reside with their wider family.

The use has not yet commenced on the site. The proposed site will be served by a 5m wide access road adjacent to the western boundary of the site, each pitch is roughly 300 square metres in area. The majority of the existing hedgerow fronting Tolney Lane is to be retained. The western boundary of the site, together with fencing to sub-divide the pitches are provided by 1.8m high timber panel fencing to provide privacy. Some hardstanding areas outside the mobile homes will receive a gravel finish suitable for vehicle use.

The site will be accessed from two points, one along the western boundary and one in the south-west corner of the site in accordance with the Highway Authority's specifications.

Accompanying the application is a Design and Access Statement and a Flood Risk Assessment. In support of his proposal, the applicant has confirmed that he owns the site and after travelling from site to site for a number of years, often residing on unauthorised land, he wishes to settle on this site and allow the other pitches to be used by further travellers who require pitches to establish their residence. The Design and Access Statement also states that

“demand for these locations is very high as it allows travellers to re-home legally on land they own and not illegally on private land which can become a nuisance. The need for Gypsy traveler sites within the local area is very high and there is minimal provision for sites within the development plan. By utilizing this unused parcel of land, reduces the demand for mobile homes within this area. It allows travellers to live together on private land designated for this land use, away from the public view, thus having minimal effect on the surrounding area.”

The description of the development includes the lowering of land levels on the site to 10.5m AOD however, no detailed information has been submitted in support of this and how the lowering of levels would relate to the land levels around the site afterwards and how that would be dealt with, and there is nothing provided regarding how the spoil would be removed and where it would be taken.

The submitted Flood Risk Assessment states that the Local Authority has requested that site levels generally are reduced to 11.48m AOD (ie the same level as the entrance from Tolney Lane). The description of proposed development is therefore in direct contradiction to the submitted FRA.

The Flood Risk Assessment (FRA) states that the southern end of the site and its access is within Flood Zone 3 (at risk of fluvial flooding via an over-topping of the River Trent in a 1 in 100 year event) while the northern end of the site is in Flood Zone 2. The Assessment comments that the Technical Guidance of the National Planning Policy Framework states that the Local Planning Authority may permit 'highly vulnerable' development in Flood Zone 3a provided that it ensures the development is of a suitable standard. It goes on to say that although it should be ideally located within Flood Zone 1, it can be sited within Flood Zone 2 if the Exception test is passed and can be sited in Flood Zone 3a at the discretion of the Local Planning Authority.

The FRA confirms that levels on the site rise from 11.48m AOD at its entrance to 12.31m AOD towards the north-west boundary. The Assessment states that the Local Authority has requested that site levels generally are reduced to 11.44m AOD (ie the same level as the entrance from Tolney Lane). It also states that in order to raise floor levels of the mobile homes above flood waters, caravans would be sat on stone gabions that raise them to a minimum of 12.31m AOD. This would give a minimum finished floor level to the caravans of 12.91m AOD, 300mm above the modelled flood level for a 1 in 100 year event including an allowance for climate change, of 12.61m AOD (the 1 in 1000 year event). However, the rest of the land on the site (including the amenity blocks and amenity/parking areas would remain at 11.48m AOD. The report contends that the localised raising of the caravans would remove a small volume from the flood plain however; the caravans would be sat upon permeable stone fill in the form of stone gabions that would allow water to pass through them, thus reducing the flood risk elsewhere by providing some storage volume. Allowing for 600mm between ground level and floor level, the minimum ground level shall be 12.31m AOD, a maximum of 1070mm above the proposed reduced ground level.

The FRA also states that it is proposed that all caravans should be anchored by tension chains to prevent flotation in extreme flood and concordant risk to persons and property downstream. The FRA contends therefore that the addition of tension chains to the structure creates a building used for residential purposes when considered against the classifications of the Technical Guidance. This means that caravans, when anchored, can be considered as 'more vulnerable' not 'highly vulnerable.'

The FRA concludes that the depth of water is such that access and egress from the site will not be possible during times of flood. Therefore an evacuation plan is required which will remove occupants of the site before an overtopping event. A Flood Warning and Evacuation Plan is included within Appendix D of the FRA.

In terms of the effect on the flood plain, the assessment has considered the impact of the local raising of land on flood levels elsewhere. The flood plain is large spanning 3km between the main River Trent and the Newark Branch at the site and thus the effect of local raising would be minimal on flood levels elsewhere with no significant increase in the risk of flooding.

The caravans and gas tanks should be securely chained down to concrete pads to prevent them from floating away during extreme flood events, according to the FRA.

Departure/Public Advertisement Procedure

Occupiers of 17 properties have been individually notified by letter. A site notice has also been displayed near to the site and an advert has been placed in the local press.

Planning Policy Framework

The Development Plan

Newark and Sherwood Core Strategy DPD (adopted March 2011)

Spatial Policy 3 : Rural Areas

Spatial Policy 7 : Sustainable Transport

Core Policy 4 : Gypsies & Travellers and Travelling Showpeople – New Pitch Provision

Core Policy 5 : Criteria for Considering Sites for Gypsy & Travellers and Travelling Showpeople
Core Policy 9 : Sustainable Design
Core Policy 10 : Climate Change
Core Policy 13 : Landscape Character
Core Policy 14 : Historic Environment

Allocations & Development Management DPD (adopted July 2013)

Policy DM5 – Design
Policy DM8 – Development in the Open Countryside
Policy DM9 – Historic Environment
Policy DM12 – Presumption in Favour of Sustainable Development

Other Material Planning Considerations

- National Planning Policy Framework 2012
- Planning Practice Guidance (on-line facility)
- Planning policy for Traveller sites – August 2015

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

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

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

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

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

- Emergency Planning Guidance produced by the Nottingham and Nottinghamshire Local Resilience Forum (December 2012)

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 exit their property during flood conditions.....The emergency services are unlikely to regard developments that increase the scale of any rescue as being safe.”

Consultations

Newark Town Council – Object on the following grounds:

- “1. The site is in a Flood Zone Risk Area 3 which is in one of the highest flood risk categories and the proposed elevation of the land could increase the risk to adjacent sites;
2. The main mitigation proposed for the flood risk is to chain down the mobile homes located on the site; this is not considered to be acceptable given the level of risk and there being only one egress for the site (Tolney Lane);
3. The inclusion of 8 brick built out houses will exacerbate the flooding risk in the surrounding area;
4. The proposal to ensure that there are no moveable items on the site is not credible and will lead to a lack of amenities for any future residents.”

NCC Highways Authority – “The application site was the subject of a previous application (12/01088/FUL), and the Highway Authority raised concerns as to whether the proposal would increase traffic congestion at the Great North Road/Tolney Lane junction. Additional information has now come forward and it is considered that these concerns have now been addressed. The site plan submitted indicates that the existing access is to be improved. Therefore, there are no highway objections to this proposal subject to the following:

No part of the development hereby permitted shall be brought into use until the alterations to the existing access have been completed and constructed in accordance with the Highway Authority’s specification.

Reason: In the interests of highway safety.

Note to Applicant

The development makes it necessary to improve a vehicular crossing over a footway of the public highway. These works shall be constructed to the satisfaction of the Highway Authority. You are, therefore, required to contact VIA, in partnership with Notts. County Council tel: 0300 500 8080 to arrange for these works to be carried out.”

Environment Agency – “We **object** to this application because the proposed development falls into a flood risk vulnerability category that is inappropriate to the Flood Zone in which the application site is located. We recommend that the application should be refused planning permission on this basis.

Reasons

Technical Guidance to the National Planning Policy Framework classifies development types according to their vulnerability to flood risk and gives guidance on which developments are appropriate in each Flood Zone. In this case the application site lies within Flood Zone 3a and on the edge of functional floodplain defined by the Technical Guide to the NPPF as having a high probability of flooding.

The development type in the proposed application is classified as Highly Vulnerable in accordance with table 2 of the Planning Practice Guidance to the NPPF. Tables 1 and 3 of the Planning Practice Guidance to the NPPF make clear that this type of development is not compatible with this Flood Zone and should not therefore be permitted.

Overcoming Our Objection

The development is located in the floodplain of the River Trent is at high risk of flooding. The flood depths on site in comparison to existing conditions could range from 200mm to 1.1 metres. The flood depths on the access adjacent to the site are 1.4 metres and it has been accepted that there is no safe means of access and egress during a flood event for the occupants or emergency services if required to access the site.

There are recommendations to raise platform levels above the 1000 year flood level, and although we would support this in terms of making the new development safe, we do not agree with the conclusion that the loss of floodplain storage does not require compensation. The cumulative impacts of losing floodplain storage can have a significant impact and therefore any new development in the floodplain should look to mitigate their impacts by providing level for level floodplain compensation.

To overcome this objection, the LPA would need to consider the appropriateness of the development to the Flood Zone. If the LPA do consider the development appropriate then we recommend floodplain compensation is provided on a level for level basis. We also recommend NSDC contact their Emergency Planner to review the Emergency Plan. The flood depths on site and adjacent to the site will still pose significant risk to life and therefore the development does not comply with the requirements of the NPPF Planning Practice Guidance. Mitigation to overcome this will need to be considered and we do not support the recommendation of 5.5.3 for occupants to be isolated within the caravans until waters receded, as the Trent will be in flood for a long duration (potentially in excess of a week) and therefore loss of services could pose a significant risk to life.”

Trent Valley Internal Drainage Board – “There are no board maintained watercourses in close proximity to the site. Surface water run-off rates to receiving watercourses must not be increased as a result of the development. The design, operation and future maintenance of site drainage systems must be agreed with the Lead Local Flood Authority and Local Planning Authority.”

NSDC, Planning Policy – “The main policy considerations to be made in assessing this application are the planning status of the applicants as Gypsies and Travellers (G&T) and the balance between the need for G&T pitches and the sites flood risk status.

To consider a site against the current G&T policy, the intended occupants need to satisfy the planning definition contained within PPTS. As this proposal appears to be intended to provide for the needs of a specific family, rather than being speculative, it will be necessary to establish if the definition is satisfied. The statement accompanying the application offers some information but further clarification would appear necessary. The following advice is based on the assumption that the definition is satisfied.

The FRA accompanying the application identifies the site as being within EA defined Flood Zones 2 and 3 with the access back to adoptable highway also being at varying degrees of flood risk. The appropriate sequential test is therefore whether there are any other G&T sites available at lesser risk of flooding. The Council does not currently have a 5 year supply and so cannot identify any available sites at lesser risk of flooding. This situation could however change over the life of this application.

An appeal decision is imminent on a site that would deliver 12 pitches. If this is allowed, in combination with planning permissions already granted, it would meet the pitch requirement for the current 5 year period of 2013 to 2018 and give approximately 1 years supply into the next period.

The Development Plan is currently being reviewed and the next stage – Preferred Approach - Sites due to begin public consultation in January 2017 is aiming to allocate site(s) to meet the pitch need for the remainder of the plan period.

It will be necessary to revisit the above issues at the time of determining this application to make an as accurate as possible assessment of need.

CONCLUSION

If at the time of determination there is no 5 year supply it will be necessary to balance need for pitches against flood risk in a similar manner to other recent applications/appeals for G&T pitches on Tolney Lane. I would suggest that the closer the Council is to demonstrating a 5 year supply of pitches at lesser risk of flooding, the less justification there is for allowing permanent pitches in areas at high risk of flooding. In one appeal on another site on Tolney Lane, an Inspector granted a temporary consent that recognised the appellant's immediate accommodation needs and the high flood risk status of the site by allowing for the possibility of sites at lesser risk of flooding to be identified during the duration of the temporary consent. This approach has been reflected in a planning approval on a further site on Tolney Lane and may be appropriate here."

NSDC, Environmental Health – "I would expect the design of this site should follow the recommendations in the government's guide – Designing Gypsy and Traveller Sites – Good Practice Guide.

If approved this site would need a Caravan site licence from Environmental Health, unless exempted this would be chargeable and the holder would need to pay an annual fee to maintain any licence issued.

Conditional within the site licence would be such issues as spacing between caravans and boundaries, firefighting provision, site access, water supply and waste disposal.

The design and access statement states the homes will be positioned a minimum of 1m from the boundary. The homes must be more than 3m from the site boundary with a separation distance between each home of 6m where they are in separate occupation. The proposed site plan shows the drainage and amenity block arrangements should comply with the licence conditions imposed.

The Before and After Tidy Up photographs are evidence of materials once deposited on the site and the materials/soils used to raise levels are of unknown quality. Given the potential for contamination and this sensitive residential use, I would request a contamination condition to ensure the safe use of the land.”

NSDC, Access and Equalities Officer - It is recommended that the developer be advised to give consideration of inclusive access to and around the proposal. Access to available facilities and features should be carefully considered.

Representations have been received from two local residents/interested parties which can be summarised as follows (one anonymous response has been received but is not included below):

- This site is in Flood Zone 3;
- Any increase in surface water run-off to the surrounding areas would create a danger and increase the flood risk;
- The proposal to anchor caravans by chaining them down would not be sufficient to protect the safety of the occupants or nearby residents in the event of a flood, which is a distinct possibility;
- More suitable and safer sites should be found for the gypsy traveller community;
- To provide more accommodation for travelers can only be a good thing;
- Clean- up should be carried out ecologically responsibly;
- Street lighting on Tolney Lane is erratic and should be improved in the interests of highway safety as traffic will increase;
- Provision for pedestrian safety should also be introduced, the lane seems to be used as a racing track;
- Vehicles stopping outside Church View should also be prevented like some plant pots to narrow the lane.

Comments of the Business Manager

The main planning considerations in the assessment of this proposal are the need for gypsy and traveller sites, flood risk, the planning history of the site, the impact on the character of the area, highway issues, access to and impact on local services, residential amenity for occupants of the application site and neighbouring sites and the personal circumstances of the applicant.

The Need for Gypsy and Traveller Pitches

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

Core Policy 4 (CP4) set a district wide target of 84 pitches to be provided up to 2012. 93 pitches were provided over this period and since that time work has been progressing on a new assessment of need and approach to meeting this. The Council initially intended to produce a separate Gypsy and Traveller DPD but now propose to include this within the review of the development plan. Public consultation on the Plan Review Issues Paper took place between 5th October and 16th November 2015.

The Issues Paper identifies a requirement for 25 permanent pitches in the period 2013-2018. Four pitches have been delivered through the grant of permanent planning permission which leaves a requirement for 21 pitches. There are currently no other sites with planning permission, no allocated sites and consequently the Council does not have a five year supply of sites.

Whilst the Plan Review may ultimately yield a new approach to the provision and distribution of Gypsy and Traveller sites, in determining this application now the main considerations have to include the lack of other available sites, which is a material consideration that needs to be given significant weight in the determination of this application.

I am also mindful of the appeal decision relating to a gypsy and traveller site at Green Park, Tolney Lane, which was granted temporary planning permission for 5 years in light of the fact that the Council could not demonstrate alternatively available sites. In the more recent appeal at Edingley, it was acknowledged that the Council could not demonstrate a 5 year land supply but was working towards a Gypsy and Traveller DPD which would consider allocating sites to meet the identified need and that individual applications should not pre-empt this process. The Inspector noted that National Planning Practice Guidance (NPPG) sets out guidance when determining planning applications. It confirms that the Framework explains how weight may be given to policies in emerging plans. However in the context of the Framework and in particular the presumption in favour of sustainable development it states that arguments that an application is premature are unlikely to justify a refusal of planning permission. Preferred sites will be brought forward during the Plan Review process that is currently on-going.

I would also recall to Member's attention the application at Newark Road, Wellow (15/00457/FUL) for 8 pitches that is currently under consideration at appeal.

The absence of a five year supply of deliverable sites represents a material consideration in favour of the proposal. However this needs to be considered and balanced alongside other material planning considerations in coming to a determination.

Flooding

The description of development refers not only to a new use but also to the lowering of land levels to 10.5m AOD. In contradiction, however, the submitted FRA has been written on the basis of existing land levels being lowered to 11.48m AOD and stone gabions being placed on the site to raise the caravans. Both scenarios are considered below.

The final criterion of Core Policy 5 states that 'in the case of any development proposal which raises the issue of flood risk, regard will be had to advice contained within PPS 25: Development and Flood Risk and the findings of the Newark and Sherwood Strategic Flood Risk Assessment. Where flooding is found to be an issue, the District Council will require the completion of a site specific Flood Risk Assessment'. The NPPF states that local planning authorities should minimise risk by directing such development away from high risk areas to those with the lowest probability

of flooding. Policy DM5 also states that the Council will aim to steer new development away from areas at highest risk of flooding.

Notwithstanding the weight to be given to need referred to above, the application site is located within Flood Zone 3a, at high risk from flooding and on the edge of functional floodplain of the River Trent. It is therefore essential that the Local Planning Authority balance the benefits of meeting this need against flood risk.

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

The NPPF states that local planning authorities should minimise risk by directing inappropriate development away from high risk areas to those with the lowest probability of flooding. However, given that this represents vulnerable development that should not be permitted in the first instance, the Sequential and Exception Tests do not fall to be applied to this type of proposal. Even if the Sequential and Exception Tests were applicable (which they are not) whilst the Sequential Test may be considered passed, on the basis that there are no reasonably available alternative sites for this use at lower risk, the proposal fails the Exception Test, if it were appropriate to apply it. There are two parts of the Exception Test set out in the NPPF:

- It must be demonstrated that the development provides for wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and
- A site specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere.

Firstly, whilst it is accepted that the development would provide some wider sustainability benefits to the community, in terms of the occupants of the site being able to access schools, hospitals and other services within the Newark Urban Area, this does not outweigh the severity of the harm caused to that same community by the high flood risk at the site and the harm to the wider community in retaining some of the unauthorised tipping on the land, thereby continuing to represent a loss of flood storage capacity within the functional floodplain of the River Trent, and which will inevitably lead to increased flooding impact elsewhere in the wider area. This harm has already been established through the appeal process. There is no evidence submitted of any mitigation for this impact by providing level for level floodplain compensation elsewhere.

Secondly, the Environment Agency states that the flood depths on the site in comparison to existing conditions would range from 200mm to 1.1metres. The flood depths on the access adjacent to the site are 1.4 metres and it has been accepted that there is no safe means of access and egress during a flood event for the occupants or emergency services, if required to access the site. This would be the case if the land levels on the site were reduced to 10.5m AOD or 11.48m AOD.

Members may be aware of the evacuation procedures that have been put in place for existing occupiers of Tolney Lane where residents are allowed to assemble on the cattle market during a flood event. However, this evacuation plan is not ideal and was introduced to try to provide a

solution to occupants that already existed along Tolney Lane. It should not be seen as an appropriate mitigation strategy when considering new pitches along the Lane. The Environment Agency have stated that the submitted FRA has made no assessment of the flood risk along Tolney Lane, the only route in and out of the site, nor does the FRA address issues of the impact of the additional residents attempting to egress the site along an already heavily used egress route.

Emergency Planning Guidance produced by the Nottingham and Nottinghamshire Local Resilience Forum referred to in the other material considerations section above, represents standing advice, material to the consideration of this application and it raises significant concerns in relation to any new development that would increase the burden on emergency services as it is likely that even with an evacuation plan in place, emergency services would still have to go along Tolney Lane to ensure total evacuation had occurred and granting planning permission for additional pitches will exacerbate the need for this checking procedure and therefore increase the danger of the situation for all.

The flood depths on site and adjacent to the site will still pose significant risk to life and therefore the development does not comply with the requirements of the Planning Practice Guidance. Mitigation to overcome this will need to be considered and there is no support for the recommendation of 5.5.3 for occupants to be isolated within the caravans until waters receded, as the Trent will be in flood for a long duration (potentially in excess of a week) and therefore loss of services could pose a significant risk to life.

Whilst Members have accepted evacuation procedures are sufficient to allow proposals to go ahead on other Tolney Lane sites in the past, as has a Planning Inspector on a 5 year temporary basis, it remains my professional view that the principle of locating this highly vulnerable use in an area at high risk from flooding is not appropriate and should not be permitted, in accordance with the PPG of the NPPF. This is relevant to both scenarios.

The scheme set out within the FRA retains some of the unauthorised tipping that currently remains on the site, and so would continue to result in a loss of flood storage within the functional floodplain and therefore continues to exacerbate flooding risk elsewhere.

Whilst reducing the land levels of the site to 10.5mAOD is likely to return the flood storage capacity of the floodplain to its previous capacity, the use still remains a highly vulnerable use on land at high risk of flooding, which cannot be adequately mitigated against through chaining down structures or an Evacuation Plan and occupiers would be at risk.

It is therefore considered that the proposal, under both scenarios, is contrary to the NPPF (and its PPG), Core Policies 5 and 10 of the Core Strategy and Policy DM5 of the Allocations and Development Management DPD.

The Plan Review will seek to identify and provide appropriate and suitable sites for new pitches moving forward to service local need.

Planning History

This Council has already considered the principle of a residential caravan use on this site in 2002 and 2013. The first application was refused on the following grounds:

“The site lies within the defined washlands of the River Trent a high risk zone according to paragraph 30(3) of Planning Policy Guidance Note 25 and is subject to known periodic flooding. In the opinion of the Local Planning Authority, any development of the site that includes the raising of ground levels, or the placing of fixed structures would aggravate the existing problem of flood defence/land drainage in this locality. As a consequence, the loss of this washland storage area would lead to additional properties in the locality having a greater probability and risk of flooding, which would not be in the interest of proper planning. This proposal is therefore considered to be contrary to policy PU1 of the Newark and Sherwood Local Plan and the advice contained in Planning Policy Guidance Note 25 'Development and Flood Risk' July 2002, specifically paragraph 70.”

Two enforcement notices were served which sought to firstly cease the use as a caravan site and remove all caravans from the land and secondly to remove the unauthorised tipping from the land so that no part of the site is above the level of 10.5 AOD. The applicant appealed to the Planning Inspectorate and the appeals were dismissed. The Inspector concluded:

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

This identical application was considered by the Planning Committee in 2013 and refused for the following reason:

“The proposed development represents highly vulnerable development that would be located within Flood Zone 3 and therefore should not be permitted in accordance with the National Planning Policy framework and its Technical Guidance. Whilst the Sequential and Exception Tests do not fall to be applied in this case, even if they were applicable (which they are not), whilst the Sequential Test may be considered to be passed on the basis that there are no reasonably available alternative sites for this use, the proposal fails the Exception Test. The submitted Flood Risk Assessment does not comply with the requirements sets out in paragraph 9 of the Technical Guidance to the NPPF and therefore fails to adequately demonstrate that the development will be safe for its lifetime, without increasing flood risk elsewhere.

In the opinion of the Local Planning Authority, the proposal would therefore place both the occupants of the site and the wider area at risk from flooding and be contrary to the National Planning Policy Framework and its Technical Guidance, Core Policies 5 and 10 of the Newark and Sherwood Core Strategy and saved Policy PU1 of the Newark and Sherwood Local Plan.”

The proper consideration of such a use in this location has already been considered and found to be unacceptable on flooding grounds both by this Council and the Planning Inspectorate. The Enforcement Notices served remain on the land, although the removal of the tipping has not been carried out. Since this decision in 2005, Tolney Lane has experienced another significant flood event in November 2012, which has only served to affirm the difficulties of allowing such development in this high risk area.

Impact on the character of the area

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

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

The site is within the open countryside. The aim of conserving the natural environment, protecting valued landscapes, minimising impacts on biodiversity and pollution is reflected in the NPPF. Whilst development exists along the majority of the Lane, only the eastern third sits within the defined Newark Urban Area. The application site is located between the sites known locally as Church View to the east and Hoes Farm to the east. Church View benefits from an authorised use for 35 residential caravans although it is currently only occupied by approximately 3 caravans. Hoes Farm has planning permission for 25 pitches. Whilst the site is located within the countryside, it is sandwiched between these two sites which are authorised for caravan use and the application site itself is already covered by hard surfacing. The proposed development is for the creation of 8 pitches with 8 associated that would be enclosed and defined by close boarded timber fencing. The FRA states that the floor level of the proposed caravans would be set at 12.91m AOD, which would be 1.43m above the ground level of 11.48m AOD, perched on stone gabions. The appearance of the caravans would therefore be slightly unusual, and access would necessitate steps. Although the stone gabions are not likely to be readily visible, given proposed boundary treatments, the increase in height of the caravans would make them more prominent and slightly odd compared to the height of existing caravans in the area. However, having carefully considered this visual impact, on balance and given the existing character of the area, it is not considered that this would be so visually intrusive and incongruous to warrant refusal of permission on this basis.

Taking all these matters into consideration, I am satisfied that the proposal is unlikely to represent a significant visual intrusion that would have such a harmful impact on the appearance of the countryside in this location, to warrant refusal of planning permission in this case. However, I would recommend a condition be attached to any approval for additional landscaping works to soften the appearance of the development. I also acknowledge that the site has no special landscape designation and is unlikely to lead to any significant adverse impact on nature conservation or biodiversity.

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

The proposal is considered to broadly accord with Local Plan and National Framework Policies in this regard.

Highway Issues

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

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

The Highway Authority has raised no objection to this application and it is considered that the proposal would not result in any significant highway implications and the proposal accords with the Local Plan and National Framework Policies in this respect.

Access to and Impact on Local Services

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

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

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

Residential Amenity

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

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

The size of the proposed pitches are reasonable, measuring approx. 300 square metres in area and I am satisfied that with boundary fencing in place that the sites would offer a suitable level of amenity to proposed occupiers. There would be no negative impact on residential amenity of any existing properties.

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

Personal Circumstances

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

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

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

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

In order for appropriate weight to be given to the unmet need for Gypsy and Traveller pitches in the consideration of these proposals, the onus is on the applicant to prove that the applicant along with any other occupier of the site, have Gypsy and Traveller status in accordance with the definition set out in the Planning Policy for Travellers Sites.

The submitted Design and Access Statement states that the applicant and his family are a local family of travellers who have lived within the local area/community for a number of years. It also states that they have been travelling from site to site for a number of years residing in some cases on land which was not designated for this land use. It confirms that the applicant wishes to accommodate himself and his wider family on this site whilst the remainder of the pitches would be used by other travellers who need accommodation. Some old black and white photographs have been provided showing a family with the Price surname camped in various places two of which refer to Bury St Edmunds.

Very little information has been submitted in this regard to date, although it has been requested. As such, this recommendation to Committee is based on that fact that their status is not proven, however, this may alter in the submission of any additional information and any update will be reported at Planning Committee.

Conclusions and Balancing Exercise

The NPPF and the PPG is an up to date policy that clearly and explicitly states that this highly vulnerable use should not be permitted within Flood Zone 3a and under these circumstances the Sequential and Exception Test would not be applicable.

Whilst the Sequential and Exception Tests do not fall to be applied in this case, even if they were applicable (which they are not), whilst the Sequential Test may be considered to be passed on the basis that there are no reasonably available alternative sites for this use, the proposal fails the Exception Test, failing to demonstrate that the development would be safe for its lifetime, without increasing flood risk elsewhere, and this would be the case if land levels were reduced in accordance with the description of the development or if land levels were reduced in accordance with the submitted FRA.

Since the up-holding of the Enforcement Notices in 2005, it is clear that whilst flood risk has remained of paramount importance as a material consideration, unmet need and the lack of reasonable deliverable alternative sites and a 5 year supply has significantly increased significance as a material consideration more recently. This is borne out in the Green Park appeal decision, where a temporary permission was approved notwithstanding the flood risk.

At present there is an unmet need for Gypsy and Traveller pitches within the District. National policy and guidance dictates that such an unmet need, lack of a 5 year supply and deliverable

alternative sites carries significant weight in favour of the proposal. However, very little supporting information has been provided on the gypsy and traveller status of the applicant or proposed occupiers of the site. In the absence of this demonstration, the onus of which is on the applicant to provide, it is considered that positive weight cannot be afforded to this material consideration, in contrast to the Green Park application. As such it is not considered that a permanent or temporary permission would be deemed acceptable in this particular case.

Whilst the remaining material planning considerations (impact on the countryside and character of the area, residential amenity, highway considerations and access to services) assessed in this report appear to represent positive weight to this proposal, in the professional view of officers, the harm caused by locating this development within an area at high risk of flooding does not and cannot be outweighed in the overall planning balance. It is therefore recommended that the application be refused on flooding grounds.

RECOMMENDATION

That full planning permission is refused for the following reason

Reason for Refusal

01

The proposed development represents highly vulnerable development that would be located within Flood Zone 3 and therefore should not be permitted in accordance with the National Planning Policy Framework and the PPG. Whilst the Sequential and Exception Tests do not fall to be applied in this case, even if they were applicable, whilst the Sequential Test may be considered to be passed on the basis that there are no reasonably available alternative sites for this use, both scenarios of the proposal (i.e. lowering the land levels in accordance with the description of development or the carrying out development in line with the Flood Risk Assessment) fail the Exception Test. The submitted Flood Risk Assessment does not comply with the requirements set out in the Site Specific Flood Risk Assessment Checklist (paragraph 68) of the Flood Risk and Coastal Change Section of the Planning Practice Guidance and therefore fails to adequately demonstrate that the development will be safe for its lifetime, without increasing flood risk elsewhere. Even with the lowering of land levels to 10.5m AOD (which has not been adequately demonstrated through the submitted FRA), the proposed use would not be safe for its lifetime.

In the opinion of the Local Planning Authority, the proposal would therefore place both the occupants of the site and the wider area at risk from flooding and be contrary to 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.

Notes to Applicant

01

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

02

The application is clearly contrary to the Development Plan and other material planning considerations, as detailed in the above reason(s) for refusal. However the District Planning Authority has worked positively and proactively with the applicant to make some revisions to the proposal. Unfortunately these revisions have been unsuccessful in removing the harm identified through the above reason for refusal.

Background Papers

Application case file.

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

All submission documents relating to this planning application can be found on the following website www.newark-sherwooddc.gov.uk.

Kirsty Cole
Deputy Chief Executive

Committee Plan - 16/01884/FUL

