

## **PLANNING COMMITTEE – 20 NOVEMBER 2018**

Application No:	18/01443/FUL	
Proposal:	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).	
Location:	Green Park, Tolney Lane, Newark on Trent	
Applicant:	Mr & Mrs Coates, Gray, Wilson, Knowles, Calladine, Biddle, Coates, Jones, Smith, Hearn and Wiltshire	
Registered:	03 October 2018	Target Date: 28 November 2018

**This application is being presented to the Planning Committee in line with the Council's Scheme of Delegation as Newark Town Council has objected to the application which differs to the professional officer recommendation.**

### **The Site**

The application site is situated west of the Newark Urban Area, within the Rural Area as defined by the Newark and Sherwood Allocations and Development Management DPD and within the open countryside. Located at the south-westernmost end of Tolney Lane which runs from the Great North Road, the site is situated on the north-western side of the River Trent and to the south-east of the A46.

The site measures 1.35 hectares in area, is roughly rectangular in shape and provides 10 pitches for gypsy and travellers, on a temporary basis. The pitches are located either side of a central track formed by compacted ground, and are bounded by stone walls. Hedges define the north-west and south-east boundaries and the Old Trent Dyke forms the south-western boundary beyond which are open fields. The site uses an existing access road that runs through a site known as Hirrarns Paddock which has been extended to the south-west to serve Green Park, which terminates development along Tolney Lane.

Approximately 90% of the site is within Flood Zone 3b of the Environment Agency's Flood Map, which includes the access road serving the site from Tolney Lane, the remaining 10% at the north-eastern end is located within Flood Zone 2. Parts of Tolney Lane itself are located within Flood Zone 3.

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

## Relevant Planning History

**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.”*

**14/01640/FULM** - Remove/Vary conditions 5 and 6 attached to the planning permission granted on appeal at Plots 1-10 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.

**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).

## The Proposal

Planning permission is sought to remove part of Condition 1 attached to planning permission 12/00562/FUL for the change of use to the gypsy and traveller residential caravan site, to allow the use to be permanent.

Condition 1 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 September 2018, 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 September 2018, 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.”

The Proof of Evidence of the Appellant’s flooding expert at the Public Inquiry dated 13 March 2013 and a letter dated 23 September 2013 from the same has been submitted as a Flood Risk Assessment in support of this application.

As this represents a Section 73 application, no plans have been submitted with the application as reliance will be made on those submitted under reference 12/00562/FUL.

#### Departure/Public Advertisement Procedure

Occupiers of seven properties have been individually notified by letter. A site notice has also been displayed near to the site (expiry date 22.11.2018) 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 1 : Settlement Hierarchy

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

## **Allocations & Development Management DPD**

Policy DM5 – Design

Policy DM8 – Development in the Open Countryside

Policy DM12 – Presumption in Favour of Sustainable Development

### **Other Material Planning Considerations**

- National Planning Policy Framework 2018
- Planning Practice Guidance 2014
- Publication Amended Core Strategy (July 2017)
  
- 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 (August 2017)

This document states: "New developments in flood risk areas must not increase the burden on emergency services. The Emergency Services are in heavy demand during flood incidents. The Fire and Safety Regulations state that "people should be able to evacuate by their own means" without support and aid from the emergency services. The emergency services and local authority emergency planners may object to proposals that increase the burden on emergency services."

"New development must have access and egress routes that allow residents to exit their property during flood conditions. This includes vehicular access to allow emergency

services to safely 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** – Members decided to OBJECT to this application and could see no reason to change their original objection. There could be a flood risk which could impact significantly on any touring caravans on the site in periods when flooding occurs. This application should not be in conflict with the Allocations and Development Management Options Report for designating Traveller and Gypsy sites in Newark.

**NCC Highways Authority** – The application site is located on the unadopted section of Tolney Lane and this proposal is not expected to affect the public highway. Therefore, there are no highway objections to this application.

**Environment Agency** – “We **object** to the proposed development as it falls within a flood risk vulnerability category that is inappropriate to the flood zone in which the application site is located. The application is therefore contrary to the National Planning Policy Framework (NPPF) and its associated planning practice guidance (PPG).

The PPG classifies development types according to their vulnerability to flood risk and provides guidance on which developments are appropriate within each flood zone. This site lies within flood zone 3a, which is land defined by the PPG as having a high probability of flooding. The development is classed as highly vulnerable in accordance with table 2 of the flood zones and flood risk tables of the planning practice guidance. Tables 1 and 3 make it clear that this type of development is not compatible with this flood zone and therefore should not be permitted.

Furthermore, we object to this application because it fails the second part of the flood risk exception test. The NPPF and PPG clearly state that change of use applications, where the proposed use is a caravan site, are not exempt from application of the exception test. The NPPF makes it clear that both elements of the exception test must be passed for development to be permitted. Part 2 of the test requires the applicant to demonstrate, via a site-specific flood risk assessment (FRA), that the development will be safe, without increasing flood risk elsewhere. Where possible, the development should reduce flood risk overall.

In this instance the developer’s FRA fails to:

- demonstrate that the development is ‘safe’;
- demonstrate the provision of safe access and egress routes.

### **Flood risks to the site**

We would like to take this opportunity to highlight the risks to the site should a flood event occur. We ask that you present this information to planning committee so they are fully aware of the current day risks to the site, and even more importantly, the increased risks associated with climate change. It is our opinion that whilst climate change does not need to be considered or mitigated for temporary planning permissions, it is vitally important that the increased flood levels associated with climate change are considered and mitigated against for permanent permissions. This is essential given the much longer lifetime associated with permanent developments. It is our opinion that committee need to be fully aware of this when reaching a decision.

The flood depths that would impact this site during various flood events, according to our modelled data, are set out below. Given the highly vulnerable nature of the proposed development, you may wish to consider the flood depths arising from the 1 in 1000 year event:

- The site could flood to a level of 12.61mAOD during a 1 in 1000 year event, which equates to **flood depths of up to 1.03m.**

- The site could flood to a level of 12.34mAOD during a 1 in 100 year 20% climate change event, which equates to **flood depths of up to 0.77m**;
- The site could flood to a level of 12.15mAOD during a 1 in 100 year event, which equates to **flood depths of up to 0.59m**;
- The site does not get flooded during a 1 in 20 year event.

Furthermore, it is worth noting that these flood depths are those which are shown to impact the site itself, the depths increase significantly when you look at the proposed access and egress route known as Tolney Lane.

In terms of mitigation, the development is proposing to rely solely on flood warning and evacuation planning; there are no proposals to raise land, and there are no proposals to raise the touring caravans themselves. There are no innovative proposals to reduce flood risk to the development and future occupants. The FRA proposes to rely on evacuation of the site before a flood event.

Where a development proposes to rely on flood warning and evacuation, our preference is for dry access and egress routes to be provided in order to demonstrate the safety of the development and future occupants. In this particular location the access and egress route is the first area of the site to flood, and it floods to extremely significant depths. The FRA recognises this and instead proposes to manage the flood risk by way of advanced flood warning and evacuation planning; a matter which falls outside of our remit as a statutory consultee. The PPG makes clear that the Local Planning Authority are responsible for determining the adequacy of flood warning and evacuation plans, in consultation with emergency planners.

We strongly recommend that prior to determining the application, your Authority seek expert advice from the local emergency planners in order to consider whether or not the proposed flood warning and evacuation plans will demonstrate the safety of the development and future occupants over its lifetime.

### **Previous decisions**

We are mindful that a planning inspector has previously deemed temporary occupancy of this site appropriate; the inspector overruled our flood risk objection, and surprisingly deemed it appropriate to grant a temporary 5 year planning permission despite the significant flood risks to this site. The inspectors reasoning was that a temporary 5 year permission would allow the Local Plan process to develop, with the ultimate aim of identifying an alternative site of lesser flood risk to which the temporary occupants of this site could then be moved.

We have now reached the end of the 5 year permission, and an alternative site of lesser flood risk has still not been identified. We are understanding of the situation this leaves your Authority in. On the face of it, nothing has really changed since the planning inspector deemed a temporary planning permission suitable, i.e. there are still no alternative sites for gypsy and traveller provision in Newark and Sherwood, and the flood risks to the site are essentially the same as they were 5 years ago. Having considered the planning inspector's previous decision, we understand that your Authority may be minded to grant another temporary permission. Another temporary planning permission would allow your Authority to continue long term work on identifying an alternative site, or perhaps look at options to reduce the flood risks to the existing site.

However, it is vitally important that your Authority consider the planning position that might result from the continuous granting of temporary planning permissions; whilst case law can be seen as a fluid situation, we are aware of scenarios where continuous 'temporary' permissions could result in a 'deemed permission' for permanent use. Your Authority, and planning committee, must consider this in reaching a decision re: temporary use. Our recommendation is that if you are indeed minded to approve another temporary permission, you only do so with a time limit that would prevent the use from becoming 'permanent' through case law.

### **Next steps**

Given the information set out above, we do not foresee how this application can overcome our objection; it is contrary to the NPPF at a fundamental level, and the flood risks to the site are highly significant. Whilst we are understanding of the difficult position that your Authority are in, we must act reasonably and fulfil our role as a statutory expert on flood risk.

None the less, if your Authority is minded to approve the application on a temporary basis we ask that you re-consult us and notify us of your intention to do so.

If you are minded to approve the application on a permanent basis, we must stress that we would consider instigating the call in direction as we consider the risks to this site to be too significant to allow permanent 'highly vulnerable' development to proceed, without further work to reduce flood risks to the site beforehand."

**Trent Valley Internal Drainage Board** – The site is within the Trent Valley Internal Drainage Board district. The Board maintained Old Trent Dyke Pt 3, an open watercourse, exists along the boundary of the site and to which BYELAWS and the LAND DRAINAGE ACT 1991 applies. The Board's consent is required to erect any building or structure (including walls and fences) whether temporary or permanent, or plant any tree, shrub, willow or other similar growth within 9 metres of the top of any edge of any Board maintained watercourse or the edge of any Board maintained culvert. The Board's consent is required for any works, whether temporary or permanent in, over or under any Board maintained watercourse or culvert. The erection or alteration of any mill dam, weir or other like obstruction to the flow, or erection or alterations of any culvert, whether temporary or permanent, within the channel of a riparian watercourse will require the Board's written consent. The Board's Planning and Byelaw Policy Advice Notes and Application form is available on the website – [www.wmc-idbs.org.uk/TVIDB](http://www.wmc-idbs.org.uk/TVIDB)

The Board's consent is required for any works that increase the flow or volume of water to any watercourse or culvert within the Board's district (other than directly to a main river for which the consent of the Environment Agency will be required). The Board's consent is required irrespective of any permission granted under the Town and Country Planning Act 1990. The Board's consent will only be granted where proposals are not detrimental to the flow or stability of the watercourse/culvert or the Board's machinery access to the watercourse/culvert which is required for annual maintenance, periodic improvement and emergency works. The applicant should therefore note that the proposals described within this planning application may need to be altered to comply with the Board's requirements if the Board's consent is refused.

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 Policy –**

#### **"Amended Core Strategy**

The Inspector examining the Amended Core Strategy has reached the view, as set out in post-hearing note 4 (issued 8 May 2018), that "the GTAA is very likely to have underestimated need which means that the number of pitches set out in Draft Core Policy 4, which is based on the GTAA is insufficient." In response the Council has therefore drafted main modifications to Core Policy 4 and 5, in line with the Inspectors favoured approach. Making the commitment to produce a new GTAA over the short-term (i.e. within the next two years), and to include revised pitch requirements and site allocation/allocations to meet any residual need within the Amended Allocations & Development Management DPD. The main modifications have been subject to a six week public consultation, which closed on the 21st September with no representations being received on the amendments to Core Policy 4 or 5.

### National Policy

Confirms that the Framework has not changed the statutory status of the development plan as the starting point for decision-making. Proposed development which accords with an up-to-date Local Plan should be approved and proposed development which conflicts should be refused, unless other material considerations indicate otherwise.

Carries a presumption in favour of sustainable development, which should be seen as a golden thread running through plan-making and decision-taking. The policies in paragraphs 18-219, taken as a whole, constitute what sustainable development means in practice for the planning system. A sequential approach to development and flood risk should be followed, with the objective of steering new development to Flood Zone 1. Where there are no reasonably available sites in Flood Zone 1, then the flood risk vulnerability of the proposed use should be taken into account and consideration given to reasonably available sites in Flood Zone 2, applying the Exception Test if required. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered, applying the Exception Test if required. Whilst general changes of use proposals are absolved from application of the tests this does not extend to those which would result in a caravan site.

The Planning Policy for Traveller Sites (PPfTS) (2015) sets out, in conjunction with the NPPF, Government policy for traveller sites. This steers LPA's towards ensuring that traveller sites are sustainable, economically, socially and environmentally. Through the policy Local Planning Authorities (LPAs) are required to identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against locally set targets. Beyond this there is an obligation for LPAs to identify the same standard of supply, or broad locations for growth, for years 6 to 10 and, where possible, years 11-15. Where an LPA cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. There is however no presumption that a temporary grant of planning permission should be granted permanently.

### Assessment

The application at Green Park (18/01443/FULM) seeks a number of variations to the conditions attached to the temporary consent granted under 12/00562/FUL in order to make it permanent, whilst the proposal at Park View Caravan Park (18/01430/FUL) represents a fresh application following the lapsing of the previous temporary consent. Given the overlapping issues I have provided one set of comments.

### *Need for Gypsy and Traveller Pitches*

Whilst as a result of the Amended Core Strategy examination the precise level of need cannot be currently defined it is clear that there is unmet need. Given the circumstances it is also the case that the Council is unable to demonstrate a five year supply of sites. Therefore the contribution the proposals would contribute towards meeting future need and the current supply position ought to weigh heavily in their favour.

### *Flood Risk*

The consideration of recent proposals on Tolney Lane has been largely framed by the 2014 Green Park appeal decisions (APP/B3030/C12/2186072, 2186073, 2186074 and 2186071). Whereby the lack of available sites to meet need weighed heavily in the balance against flood risk issues, to the extent that temporary was supported so that immediate accommodations needs could be met whilst more appropriate land was identified through the Development Plan process. With the



Inspector being of the view that whilst there was a strong flood risk policy objection the sequential and exceptions tests did not strictly apply.

Subsequently through a recent appeal decision, (APP/B3030/W/17/3180652) at Shannon Falls also on Tolney Lane, a different Inspector deemed that, notwithstanding the above decision and the line taken by the Council with respect to temporary consent, national guidance requires the sequential and exceptions tests to be applied to any proposal involving the change of use to a caravan site. Furthermore the Inspector also considered that the Green Park decisions differed significantly to those relevant to the Shannon Falls appeal, with static caravans and utility blocks being proposed, the need for the raising of ground levels and for flood plain compensation. This led her to reach the view that significant harm in terms of flood risk to third parties would result, with all the measures to pass the Exception Test being unable to be achieved. Consequently no material considerations (including the matters of need and five year land supply) were deemed sufficient to outweigh the strong policy objection in flood risk terms.

The majority of Green Park (18/01443/FULM) and the entirety of Park View (18/01430/FUL) are located within the functional floodplain (Flood Zone 3b). Furthermore a section of the only point of access serving the Tolney Lane is also situated within the functional floodplain. Clearly this represents a significant level of flood risk to both people and property. Table 3 'Flood Risk Vulnerability and Flood Zone Compatibility' within the Planning Practice Guidance (PPG) is categorical that 'highly vulnerable' uses such as that proposed here should not be permitted within Zone 3b. Where developments may contain different elements of vulnerability (such as Green Park) then the PPG helpfully outlines that the highest vulnerability category should be used, unless development is considered in its component parts. I do not consider that this would be practical in this case however, given the single highly vulnerable use proposed and the layout of development relative to the outline of the floodplain. Consequently there exists a strong policy objection against the grant of planning consent.

#### *Planning Balance*

Consequently key to your consideration will be whether the contribution granting permanent consent would make towards meeting gypsy and traveller needs and the current supply position outweighs the strong policy objection from a flood risk perspective. In my opinion this should not be the case given the danger to people and property posed by the level of flood risk - the PPG provides a clear steer in this regard. Consequently I would not be able to provide support for the granting of a permanent consent.

Nonetheless I am mindful that both locations have previously been deemed acceptable for the granting of temporary consent and that the factors underpinning those decisions remain equally applicable here. It is anticipated that production of a new GTAA will occur well in advance of the two year requirement suggested by the Inspector for the Amended Core Strategy, and that the identification of a more appropriate site (or sites) will occur through the efficient review of the Allocations & Development Management DPD. Whilst there is the need to prepare a new GTAA it is not considered that this will dramatically extend the timelines involved with the review of the Allocations & Development Management DPD – with adoption of the amended DPD forecast in the Local Development Scheme for November 2020. The context which previous consents were granted within therefore remains largely the same.

Accordingly I would be inclined to take the view that a further temporary consent could be justifiable - in order that the applicants immediate accommodation needs can continue to be met whilst more appropriate land is identified. This support would however be contingent on the

applicant's temporary occupancy of the land falling short of the period of time which would create an expectation of permanence – whilst the PPfTS is clear that this expectation shouldn't exist I believe that there is relevant caselaw. The applicant will also need to be able to demonstrate the Exceptions Test as passed. I would accept that the proposal would be able to demonstrate sustainability benefits, but I would defer to the Environment Agency for advice over the technical aspects of the test. In this respect I note that a Flood Risk Assessment (FRA) prepared in March 2013 has been submitted in support of the Green Park proposal (18/01443/FULM). This is clearly some time ago and predates the review of the Strategic Flood Risk Assessment undertaken in support of the Core Strategy review. It is therefore important that we are content the FRA provides an appropriate basis for considering flood risk issues for the site – and I have some concern as to whether that is the case. I would suggest that input is required from the Environment Agency on this matter.

### Conclusion

The contribution which the proposals would make towards meeting gypsy and traveller needs and the inability to demonstrate a five year supply weigh heavily in favour of the proposal; I am however not convinced that these material considerations outweigh the strong flood risk policy objection to the extent that permanent consent should be granted. I would nevertheless provide support for the granting of a further temporary consent to allow the applicant's immediate accommodation needs to continue to be met, whilst the extent of future need is quantified and more appropriate land identified through the Development Plan process – subject to the qualifications outlined above.”

**NSDC Emergency Planner** – “Object to proposal. I have considered the report prepared in support of the appellants position. I must clarify that I am not formally trained in flood risk assessment or hydrology and my comment concern the management of emergency events and risks to local communities and the capability of services required to support such communities.

Whilst existing residents may have experience and capability of evacuation in response to flood warnings my concern is that future residents may lack such capability and capacity to self evacuate the site. I note that a number of the current residents have been resident for some years. It is therefore possible that residents with current capacity to self evacuate will remain at the site for years to come with the potential increased risk due to age related health matters. I remain concerned at the potential increased demand upon those charged with delivering flood warnings.

**NSDC Environmental Health** – “In response to the consultation request for the above planning application I can confirm that if the application is successful the site operator will be required to submit an application to NSDC for a Caravan Site Licence under the terms of the Caravans Sites and Control of Development Act 1960. In determining any such application the Authority will have regard to any planning consent conditions regarding the duration of the planning approval and pitch numbers/occupation levels and the licence duration and conditions will mirror any such restrictions. In addition the site licence will include conditions in regard to site layout, spacing, drainage, fire safety, amenity provision etc.

If the site is restricted, via planning consent conditions, to touring caravans only (as opposed to static units) then consideration will need to be given to the requirement for an amenity block and associated drainage to provide accessible and adequate facilities for the occupiers on site. The siting of such a block may be a consideration for the Planning Authority in determining or conditioning the application.”

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

## Comments of the Business Manager

Temporary planning permission was 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 for a temporary period has therefore been established.

The Inspector stated within his decision following the Public Inquiry that *"...the absence of a 5 year supply of deliverable sites for gypsy and travelers 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."*

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."*

The original consent was granted following the Inspector's 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 current consent expired on 30 September 2018. As confirmed in the PPTS there is no presumption that a temporary grant of planning permission should be granted permanently, although there is relevant case law that may lead to a different view. However there would need to have been a material change in circumstance since the determination of the previous consent to justify any permanent permission, and I don't believe this to be true in this case.

## 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 temporary 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. The District Council is currently engaged in the review of its Core Strategy and Allocations & Development Management DPD. The review was initially progressed jointly, but has now had to be uncoupled on account of a proposed gypsy and traveller allocation in Newark

proving to be undeliverable. The Core Strategy will be progressed first and was submitted to the Secretary of State in its amended form on the 29th September 2017, and the hearings were held on the 1<sup>st</sup> and 2<sup>nd</sup> February 2018. Core Policy 4 and 5 are proposed for amendment through this process and set out the new pitch requirements, the approach to meeting these requirements and the criteria for considering site allocations and proposals to meet unexpected demand.

However, the Inspector since the Plan Review hearing has stated that he has “formed the view that the GTAA is very likely to have underestimated need which means that the number of pitches set out in Draft Core Policy 4, which is based on the GTAA, is insufficient.” In response the Council has therefore drafted main modifications to Core Policy 4 and 5, in line with the Inspector’s favoured approach. Making the commitment to produce a new GTAA over the short-term (i.e. within the next two years), and to include revised pitch requirements and site allocation/allocations to meet any residual need within the Amended Allocations & Development Management DPD. The main modifications have been subject to a six week public consultation, which closed on the 21st September with no representations being received on the amendments to Core Policy 4 or 5. We are still awaiting a response from Inspector in this regard.

Whilst the Plan Review will result in the need for a new GTAA to be carried out in the short term (over the next 2 years) and subsequent site allocations (in the forthcoming DPD) be based on the new GTAA, the exact level of need cannot be currently calculated. However, what is clear is that it will result in an identification of unmet need (precise quantum yet to be identified) and in determining this application now, appropriate weight must be afforded in favour of the application. There are currently no other sites with planning permission, and no allocated sites identified and consequently the Council does not have a five year supply of sites. This weighs heavily in favour of this proposal.

### Flood Risk

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. 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. 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.

The majority of the site (approx. 90%) is located within Flood Zone 3(b) and as such is at high risk of flooding and within the functional floodplain of the River Trent, as are parts of the access to it, along Tolney Lane.

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 Practice Guidance states that within Flood Zones 3a and 3b, highly vulnerable classification development should not be permitted. Tables 1 and 3 of the Planning Practice Guidance make it clear that this type of development is not compatible within this Flood Zone and should therefore not be permitted. Flood risk therefore continues to weigh significantly against the proposal. The Environment Agency has stated that whilst climate change does not need to be considered or mitigated for temporary planning permissions, it is vitally important that the increased flood levels associated with climate change are considered and mitigated against for

permanent permission. The EA comments in the consultation section above set out the flood depths that would impact the site during various flood events.

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 and the Inspector being of the view that whilst there was a strong flood risk policy objection the sequential and exceptions tests did not strictly apply. The EA has commented that the NPPF and PPG clearly state that change of use applications, where the proposed use is a caravan site, are not exempt from application of the Exception Test.

If Members take the view that the Sequential and Exception Tests are applicable 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. There are two parts of the Exception Test set out in the NPPF, which must be passed:

- 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 and where possible the development should reduce flood risk overall.

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.

However, in relation to the second part of the Exception Test, the proposal is considered to fail. This is confirmed by the comments from the Environment Agency who conclude that the FRA fails to demonstrate firstly that the development is 'safe' and secondly the provision of safe access and egress routes. The EA comments that where a development proposes to rely on flood warning and evacuation, the preference is for dry access and egress routes to be provided in order to demonstrate the safety of the development and future occupants. In this particular location the access and egress route is the first area of the site to flood, and it floods to extremely significant depths. The FRA recognizes this and proposes to manage the flood risk by way of advanced flood warning and evacuation planning – a matter which falls to the Local Planning Authority in consultation with emergency planners. The Council's Emergency Planner has raised objection to the application, as set out in the consultation section above.

However, the Inspector, in reaching his decision to grant a temporary permission, balanced the benefits of meeting an acknowledged need against flooding. The Inspector recognised that the development was contrary to local and national policies concerning flood risk, such that it would not normally be allowed. However, if residents of that site could be evacuated in a flood situation before any significant input was required from the Council or emergency services, the Inspector concluded that the development need not give rise to an additional burden and the residents would be likely to be reasonably safe. The Inspector determined that the lack of a five year supply was sufficient to warrant the grant of a temporary consent subject to managing risk to occupants of the site through the use of conditions to secure a site specific evacuation plan.

The Inspector 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. 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.

The applicants have failed to comply with the conditions requiring the removal of solid walls and fencing and the lowering of ground levels on the site within 3 months of the permission. If approved, these conditions would therefore need to be re-imposed on any new planning permission.

In considering whether it would be appropriate to permit a permanent permission, I consider it remains the case that the site is located within Flood Zone 3(b) and therefore remains at high risk of flooding and as such represents inappropriate development in this location.

It is therefore considered that the proposal continues to be 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.

It is therefore considered that notwithstanding the failure of the proposal to meet the second part of the Exception Test in this case, the management of flood risk in the way proposed has been regarded as being an acceptable temporary mitigation strategy on this site previously. The same approach to conditions could therefore been applied again to this site, as in the past perhaps on a further temporary basis. Flood risk therefore continues to weigh significantly against the proposal and this is considered further within the Conclusion and Planning Balance set out below.

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

In line with the second reason for refusal, the Inspector concluded that there would be some limited harm from the development on the character and appearance of the countryside, and as such was contrary to Spatial Policy 3 and Core Policies 5 and 9 of the Core Strategy. However, he concluded that that had to be weighed against the advice within the PPTS that gypsy and traveller sites may be located in rural areas and as such some level of harm is inevitable. This consideration was weighed in the balance within the Inspector's overall decision and found not to be fatal to the principle of the development.

#### Personal Circumstances

The personal circumstances of the applicants appear to remain unchanged and as previously, this weighs in favour of the proposal.

#### Other matters

The local planning authority has been previously satisfied over the acceptability of the proposal in respect to the other planning considerations of residential amenity, highway safety, ecology and the site's relatively close proximity to Newark Urban Area with resulting access to facilities and services, and as such the development continues to accord with the Development Plan policies referred to in the Planning Policy Framework section of this report above in this regard, which weigh in favour of the proposal.

## Conclusion and Planning Balance

At the present time there is an unmet need for Gypsy and Traveller pitches within the district, although the exact quantum is currently unknown. National policy and guidance dictates that such an unmet need and the lack of deliverable sites carries significant weight when determining applications for temporary permissions. In further support for the proposal is the lack of a 5 year supply and the lack of other available sites as well as the suitability of this site by reference to the criteria listed by Core Policy 5 (heritage, ecology, sustainable location, highway safety, residential amenity and visual amenity) all of which are material considerations that need to be given positive or neutral weight in the determination of this application.

In allowing the appeal at this site 5 years ago, the Inspector considered that that whilst Gypsy and Traveller development would usually be inappropriate in a high risk Flood Zone, balanced against all the other considerations that weigh positively listed above, a temporary permission was appropriate in that instance. Indeed, the reasoning behind the Inspector's granting of a temporary consent continue to remain valid at this time.

There has been little material change to planning considerations since that decision was reached. However, the matter that requires careful consideration is the continued granting of temporary permissions consecutively. Whilst the Planning Policy for Traveller Sites (PPfTS) (2015) sets out that there is no presumption that a temporary grant of planning permission should be granted permanently, there is case law that exists that where continuous temporary permissions are granted, it could result in a deemed permission for permanent use. This would represent the second consecutive temporary permission on this site, if Members consider would be acceptable on a temporary basis.

The site remains at high risk of flooding, being situated within the functional flood plain of the River Trent (Flood Zone 3(b)) and the proposal represents a highly vulnerable use which should not be permitted. As such the recommendation to Members is that a further temporary permission be granted for a further 3 year period, to allow the applicant's immediate accommodation needs to continue to be met, whilst the extent of future need is quantified and more appropriate land identified through the Development Plan process. This would tie in with the Allocations and Development Management DPD which is forecast for adoption in November 2020. The approval should be subject to the same stringent conditions previously imposed regarding site evacuation measures. Members should, however, also carefully consider that the Inspector considered that the use was acceptable on flood risk grounds with this level of management "on a finite basis" and the longer the applicants are on the site, the more the considerations of flood risk appear to diminish over time. The temporary approval is recommended subject to the same stringent conditions previously imposed on this site to ensure any risk to occupants from flooding can be effectively managed.

## RECOMMENDATION

**That planning permission is granted on a temporary basis for a further 3 years until 30 November 2021 subject to no comments being received which would raise additional material planning considerations to those already considered within the report and subject to the conditions and reasons shown set out below.**

## Conditions

01

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 2021, 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 2021, 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.

02

No more than 20 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, 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 Core Strategy (March 2011) 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 Core Strategy (March 2011) 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 Core Strategy (March 2011) 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 Core Strategy (March 2011) 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 Core Strategy (March 2011) 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 a timetable that shall be submitted to and approved by the local planning authority in writing within 3 months of the date of this permission. 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 Core Strategy (March 2011) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

07

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 (vi) below:

- (i) Each of the residents named in condition 1 hereof (hereafter referred to as 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 and third anniversaries of the date of this permission; and (b) any written request from the local planning authority for such confirmation;

- (ii) 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 and third anniversaries of the date of this permission; and (c) any written request from the local planning authority for such details;
- (iii) 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 first nominated Flood Wardens including names and telephone numbers shall be provided prior to the first occupation of the site hereby approved. 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 and third anniversaries of the date of this permission; and (c) any written request from the local planning authority for such details;
- (iv) 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;
- (v) 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
- (vi) 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 Core Strategy (March 2011) and Policy DM5 of the Newark and Sherwood Allocations and Development Management DPD (July 2013).

## **Notes to Applicant**

01

The application as submitted is acceptable. In granting permission without unnecessary delay the District Planning Authority is implicitly working positively and proactively with the applicant. This is fully in accordance with Town and Country Planning (Development Management Procedure) Order 2010 (as amended).

02

The applicants' attention are drawn to the following comments from the Trent Valley Internal Drainage Board:- The site is served by the Board maintained Old Trent Dyke, an open watercourse which is located along the southern site boundary. In order to protect the Board's machinery access, no excavation of soil, deposition of spoil, planting of trees, structure or fencing or other such obstructions will be allowed within 9m of the edge of the above watercourse without the prior consent of the Board. The Board note that pitches 9 and 10 are located adjacent to the above watercourse. No objection to the proposal provided that no temporary or permanent structures are located within 9m of the top edge of the bank of Old Trent Dyke.

The application indicates that post and rail fencing will be erected within 9m of the above watercourse. Subject to obtaining the Board's formal consent this will be acceptable provided that the post and rail fencing does not exceed 0.9m in height and is sited between 0.5m and 1m from the top edge of the bank. Access gates with a minimum clear opening of 4.25m must also be provided at the upstream and downstream site boundary to allow the Board machinery access along the watercourse. The applicant is advised to contact the Board's Planning and Byelaw Officer, Mr Andrew Dale for further information.

03

The applicants' attention is drawn to the comments of the District Council's Environmental Health officer that state that if approved site will require a caravan site licence.

#### **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](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**  
**Business Manager – Growth and Regeneration**



