

Continued use of land as a caravan site for
Gypsies/Travellers with six touring caravans and retention
of amenity block, toilet building, parking area and surfacing

Report Item No

Application Reference:
21/01407/FUL

Aylesbury Gardens, Newton Road, Sweptstone

Applicant:
Mr Amos Wilshere

Date Registered:
15 July 2021

Consultation Expiry:
28 February 2023

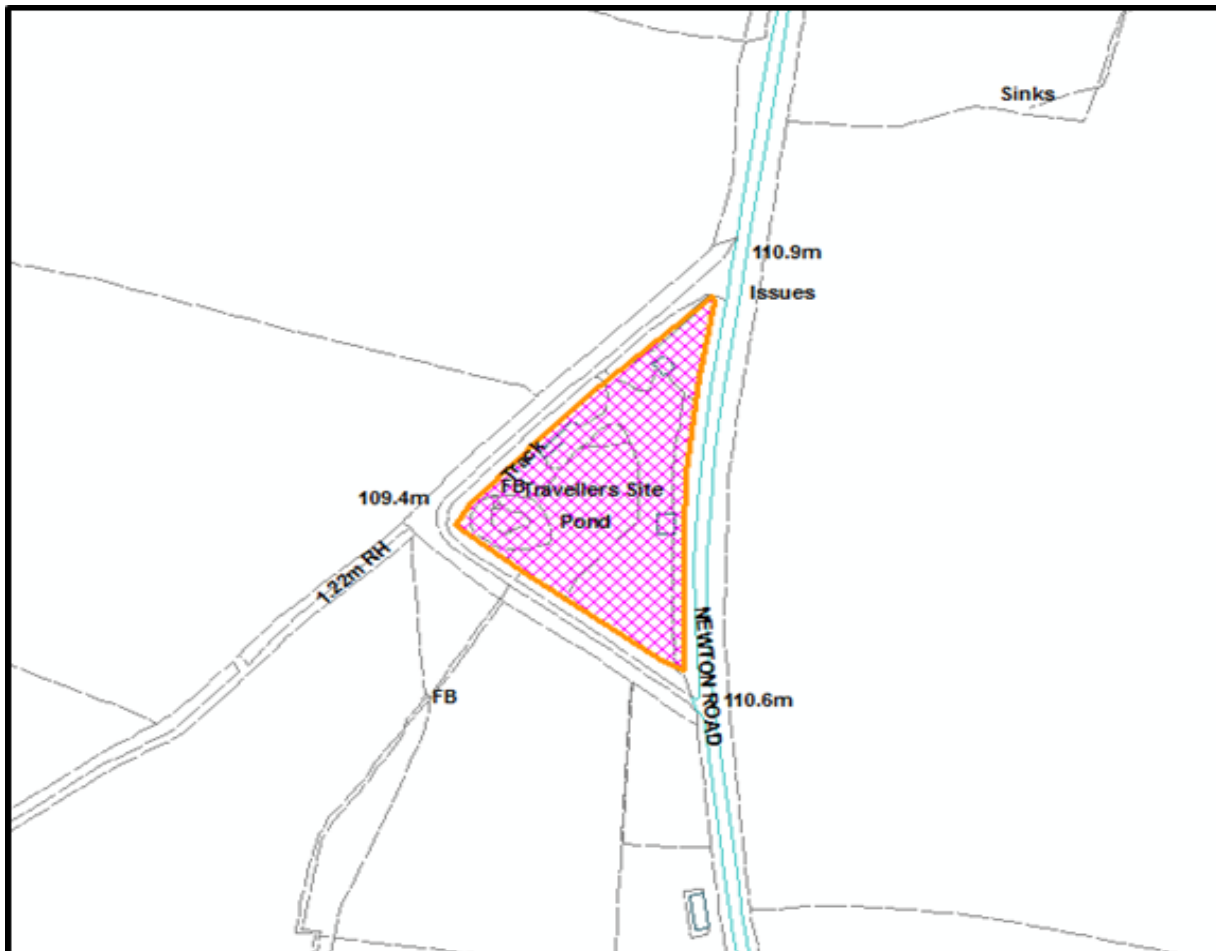
Case Officer:
Jenny Davies

Determination Date:
9 September 2021

Recommendation:
PERMIT subject to S106 Agreement

Extension of Time:
Requested until 8 March 2023

Site Location



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RECOMMENDATION - PERMIT subject to the following conditions:

1. Approved plans
2. Occupation of site by Gypsies and Travellers only
3. Personal condition – occupation of site by Mrs Smith and her children and grandchildren only
4. No more than six touring caravans on the site (and no static caravans)
5. Site laid out in accordance with submitted plans, including position of caravans/pitches, site access and parking and turning areas, and parking/turning areas to remain available for such use (undertaken within three months of the date of permission being granted)
6. Surface water drainage system details and timetable for installation (submission within one month of the date of permission being granted)
7. River Mease SAC construction method statement (submission before any further development on site)
8. Vehicular and pedestrian access restricted solely to as shown on submitted layout plan
9. Soft and hard landscaping (including existing vegetation to be retained, new planting and materials for areas of hard surfacing) and means of enclosure, a timetable for installation and a scheme for management/maintenance of the soft landscaping (submission within two months of the date of permission being granted)
10. External lighting (none to be installed unless in accordance with approved details)
11. Connection to mains electricity retained and no use of any standalone generators
12. No vehicle over 3.5 tonnes stationed, parked, or stored on the site
13. No commercial activities shall take place on the land, including the storage of materials
14. Retention of amenity block and toilet building in accordance with submitted plans and for use only as ancillary to the Gypsy/Traveller site
15. Removal of permitted development rights for any fences, gates, or walls other than in accordance with the scheme required by condition 9.

Main Report

1. Proposals and Background

This application is brought to Planning Committee because the previous applications relating to similar proposals for the site have all been determined at Planning Committee.

If Members resolve to permit this application, then officers advise that the Council should advise the Planning Inspectorate that it no longer wishes to defend the appeal relating to the application site that is to be redetermined (following the Court of Appeal quashing the 2018 appeal decision which relates to the refusal of planning permission 16/00305/VCU).

Planning permission is sought for the continued use of land as a caravan site for Gypsies/Travellers with six touring caravans and retention of amenity block, toilet building, parking area and surfacing at Aylesbury Gardens, Newton Road, Swepestone.

The site is located on the western side of Newton Road, approximately halfway between the villages of Swepestone and Newton Burgoland as shown on the location plan and aerial photograph at Figure 1 below:

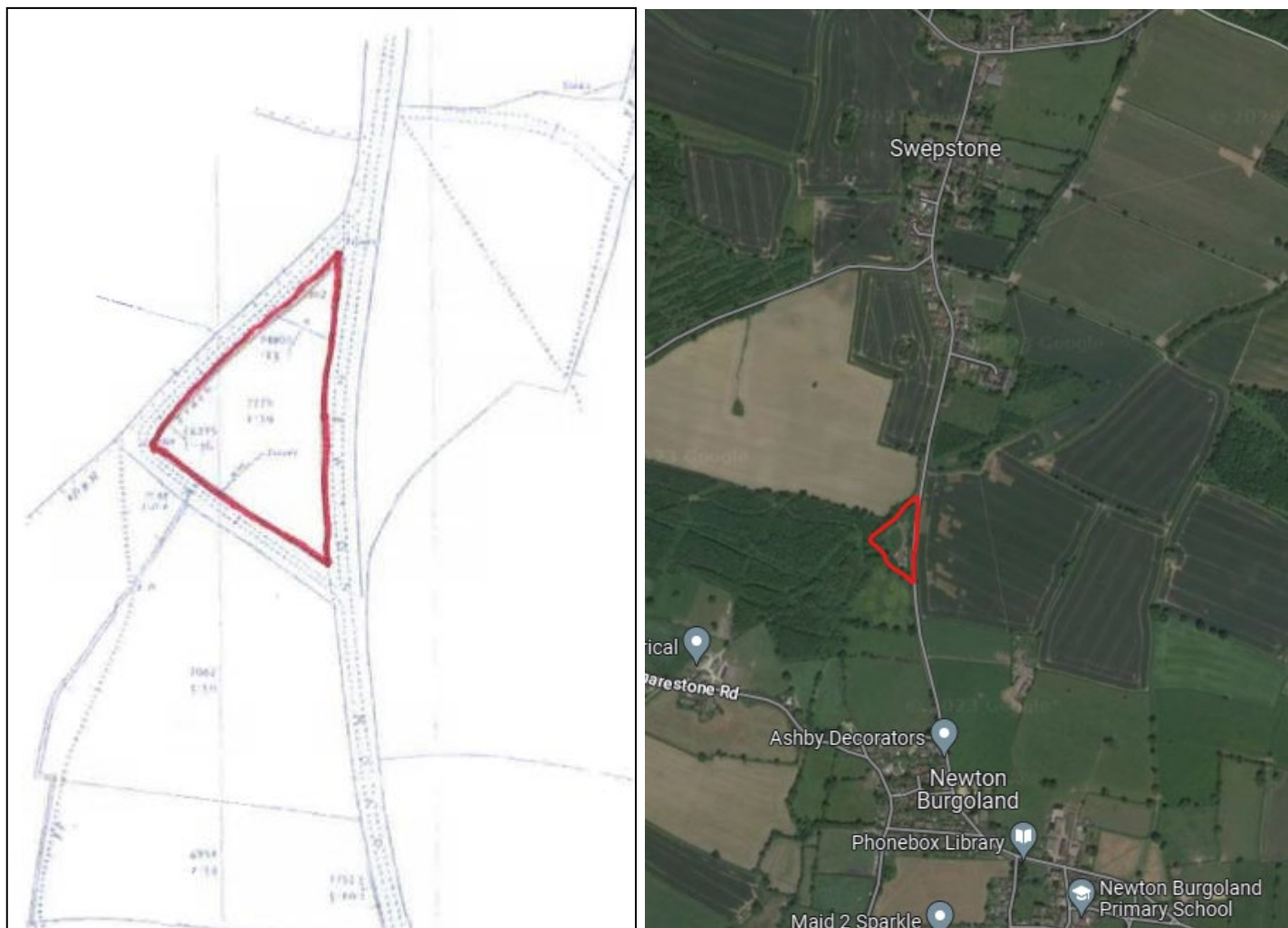


Figure 1

Planning history back to 2012

There is a long and complex planning history to the site.

Six touring caravans were brought onto the site in December 2011. A Temporary Stop Notice was served on Mr and Mrs Smith on 29 December 2011 preventing any further development on the site, including bringing on any more caravans. In January 2012 the applicant (Mr Wilshire) and Mr and Mrs Smith signed a written undertaking which reiterates the requirements of the Temporary Stop Notice.

Temporary planning permission for four years (until 15 April 2017) was granted on appeal in April 2013 (12/00003/RET) for the continued use of the site for a new travellers' site with six touring caravans and erection of an amenity block, which has now expired. This application was first refused at Planning Committee in July 2012 on sustainability and visual amenity grounds. A subsequent application to remove condition 2 on the appeal decision to allow the permanent use of the land as a travellers' site (13/00664/VCI) was refused in December 2013 and dismissed on appeal in September 2014. A further subsequent application to vary condition 4 of the appeal decision to amend the site layout, including the parking area and day room in new positions, and the laying of extra hardcore (14/01090/VCI) was approved in March 2015, which also expired on 15 April 2017.

An application to remove condition 2 on planning permission 14/01090/VCI to allow the travellers' site to remain on the land permanently and to vary condition 4 to enlarge the size of the day room (16/00305/VCU) was refused at Planning Committee in December 2016, again on sustainability and visual amenity grounds. An appeal against the Council's decision was dismissed in October 2018. The appeal decision was challenged in the High Court and this challenge was dismissed in June 2021. The case was then heard at the Court of Appeal who allowed the challenge and quashed the 2018 appeal decision in October 2022, on the basis that the effect of the exclusion of the site residents from the definition of Gypsies and Travellers in the 2015 Planning Policy for Traveller Sites (PPTS) was discriminatory to them and that there was no proper justification for that discrimination. The government has not appealed to the Supreme Court and so the appeal relating to the refusal of planning application 16/00305/VCU will be redetermined by the Planning Inspectorate. The Council has not yet heard from the Planning Inspectorate in respect of progressing the appeal.

In July 2021 the current application was submitted for continued use of a residential caravan site with six touring caravans and retention of amenity block, toilet building, parking area and surfacing. This application was made for a residential caravan site as the residents were not at that time considered to be Gypsies and Travellers for planning purposes as they did not fall within the definition of Gypsies and Travellers set out in the 2015 PPTS. The Council does have powers to decline to determine planning applications in certain circumstances, but the application did not meet the criteria to use these powers set out in the legislation.

The Council has held determination of this application in abeyance pending the outcome of the Court of Appeal case, and so the Council is now able to determine the current application.

In light of the Court of Appeal judgement finding that the 2015 PPTS definition of Gypsies and Travellers is discriminatory to the site residents, the description of the current application has been amended to refer to the caravans being for Gypsies and Travellers. Re-consultation with neighbours and consultees has been undertaken and a site notice displayed.

An Enforcement Notice was served in July 2021 in respect of the site requiring cessation of the use of the land as a caravan site, removal of all associated operational development and resultant waste material and debris and restoration of the land to its previous condition. It is standard practice not to take enforcement action until all outstanding planning and legal matters have been completed.

The proposal

The number of caravans (six) remains unchanged from the previous planning applications. Amended plans have been submitted during the course of the application to show the amenity block. The plan below at Figure 2 shows the proposed layout, although an amended plan has been requested from the agent to reflect the position of the caravans on the site. The details of the amended plan will be reported on the update sheet to the Committee:

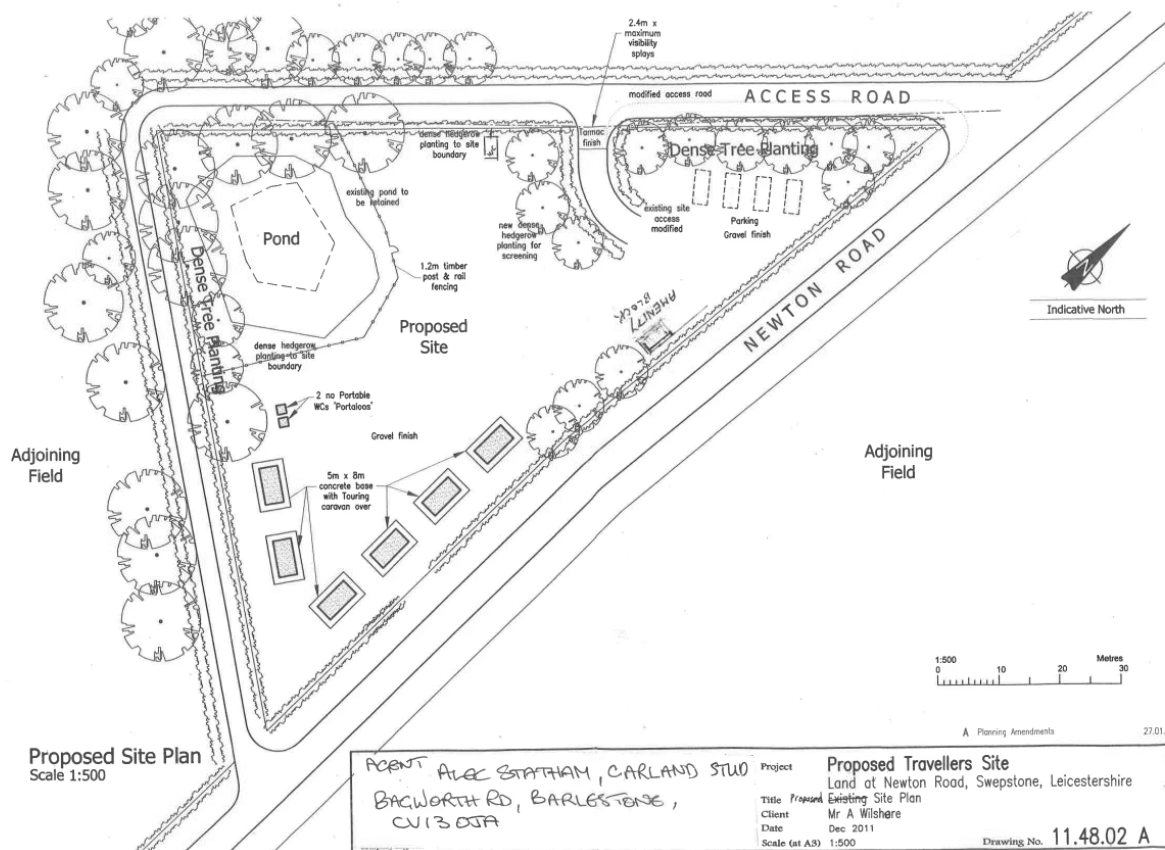


Figure 2

The caravans are positioned on the southern part of the site on an area of hard surfacing (gravel and loose aggregate) which extends northwards to form a driveway and parking areas. The amenity block has been constructed adjacent to the eastern boundary and is shown in the photograph below at Figure 3:



Water and electricity supplies to the site and a connection to the mains sewer that runs along the adjacent County Road have been installed. Two timber buildings located adjacent to the north western boundary (which have been on the site since 2012 at the earliest) used for ancillary storage would be retained.

Mature hedgerows and trees and fencing in places form the site's three boundaries. No trees or hedgerows are shown to be removed. The layout plan shows additional hedgerow planting to be provided on either side of the driveway close to the site access, with gaps in the hedgerow on the eastern boundary having been planted, and existing hedgerow and tree planting on and close to the boundaries to be retained. The pond on the western part of the site and the area of grassland on the central and western part of the site would also be retained with a post and rail fence forming the boundary between the site and this area. Bins are stored on the northern part of the site.

The existing access onto the stretch of the County Road that adjoins the site's north western boundary would continue to be utilised, and four parking spaces would be provided close to the northern corner. The north western stretch of County Road is made up of a track for the first 65 metres from its junction with Newton Road to the site access, and then narrows to a footpath width for its remainder which is overgrown. The stretch of County Road that adjoins the site's south western boundary was accessible by vehicles but is largely overgrown. The County Roads are public highway and provide access to a public footpath/bridleway (Q49) and area of National Forest planting at their junction at the western corner of the site.

The site lies within the catchment area for the River Mease Special Area of Conservation (SAC) and a tributary of the river adjoins the site and flows through the pond on the site.

The site is occupied by Mrs Smith, her five adult children, one spouse/partner to her children, and five grandchildren. Mrs Smith's husband recently passed away in early February 2023.

Other planning history:

- use of land for siting of a caravan (97/0677) Enforcement Notice served July 1997 and subsequent appeal dismissed, notice upheld, and planning permission refused. Therefore, the Notice is still in force;
- erection of a polytunnel (95/00721) refused September 1995 on grounds of the land not forming part of an agricultural holding and no evidence of the site being used for agricultural purposes. Therefore, the polytunnel would be unwarranted in the countryside and contrary to the policy of protecting the countryside for its own sake;
- erection of stable, store/office and duck pond (94/0531) approved October 1994;
- erection of one dwelling (outline) (79/0832) refused September 1979 on grounds of being a new dwelling in the open countryside, an intrusion into the countryside and difficult to resist future similar developments;
- erection of one dwelling (outline) 75/0258) withdrawn March 1975.

2. Publicity

69 Neighbours have been notified.

Site Notice displayed 31 January 2023.

Press Notice published Leicester Mercury 4 August 2021.

3. Summary of Consultations and Representations Received

Objections from:

Sweptstone Parish Council originally objected to the application as follows:

Planning on this site has now been considered on numerous occasions by North West Leicestershire District Council; on two occasions or more by a planning inspector and by the High Court.

For the reasons that have been stated by this Council objecting to previous planning applications and in addition as representations to the planning inspector; all of which please reread. In reliance upon the previous Planning Inspector's findings and the previous North West Leicestershire District Councils decisions, all of which should be re-read, we strongly submit that there has been no change whatsoever. Accordingly, there can be no grounds whatsoever for reconsidering any planning application on this site for the uses set out in the planning application. The occupants and owners have strung the council along for 9 1/2 years. The submission of this application should in no way lead to any further delay in enforcement action being taken to remove the site occupants.

For the reasons stated above, Sweptstone Parish Council strongly objects to this planning application. Indeed, in view of the history of this matter we consider that NWLDC are entitled to refuse to entertain the application, let alone consider it, but if contrary to that contention they do consider the application, then it should be rejected.

The Planning Inspector has previously stated that there is no good reason why they should be allowed to remain on the site, it is impossible therefore for NWLDC to reasonably come to an alternative solution. The High Court has decided that these people are not travellers. That was the basis upon which they claimed an exception to previous decisions.

The district plan does not list this site as scheduled for development for residential purposes. It is open countryside, and the development is visually unacceptable, environmentally unacceptable and economically unsustainable.

There are no guarantees that other users will not expand the uses and intensify them particularly as the site is now used by lorries carrying scrap metal.

The application is contrary to the local plan, countryside policy, sustainability policy and is not listed for consideration in the new proposed development plan. That was the basis upon which they claimed an exception to previous decisions.

We ask that the application either be refused, or notification given of non-determination on the grounds of previous consideration.

We do wish to make the point that any further delay in enforcement at the site is likely to lead to an ombudsman's referral or judicial review. We started by saying that this application should not delay enforcement. We note that the enforcement officer has been to the site and would ask the NWLDC to inform us what action is actually now being taken to remove the occupants.

Following the amendment to the application description, Swepstone Parish Council has confirmed that it objects to the application and its objections remain the same and are already clearly documented.

Hinckley and Bosworth Borough Council initially had no comments to make. Following the amendment to the application description, HBBC object on the grounds that the application site is in an unsustainable location and has significant adverse impact to the intrinsic value, beauty, open character, and landscape character of the open countryside.

No Objections from:

Snarestone Parish Council
Leicestershire County Council - Archaeology
Leicestershire County Council - Ecology
Leicestershire County Council - Gypsy/Traveller Liaison Officer
Leicestershire County Council - Lead Local Flood Authority
Natural England
NWLDC - Planning Policy
NWLDC - Tree Officer
NWLDC - Waste Services

No Objections, subject to conditions and/or informatives from:

Leicestershire County Council - Highway & Footpath Authority
NWLDC - Environmental Protection

No Comments from:

No comments have been received from the National Forest Company and Severn Trent Water by the date of this report. Any further comments received from consultees will be reported on the update sheet to the Committee.

Third Party Representations

13 letters of representation (from nine households) have been received which object to the application, with the comments made summarised below. Eight letters were received when the application was first submitted, and a further five have been received after the amendment to the application description.

Topic of Objections	Summary of Objections to Topic
<i>Previous Decisions, Court Judgements, Procedure and Enforcement</i>	Illegal occupation of the site over ten years ago.
	Enforcement Notice already in place prohibiting siting of caravans.
	Planning permission has now been refused numerous times.
	Continued unsuccessful legal challenges to occupy the site should not be allowed.
	The Council has powers to refuse to determine further applications.
	Site residents should have been moved many years ago.
	Failure to remove the site residents is not a legitimate reason for them to remain.
	Enforcement action should proceed regardless of the current application, as whilst in certain circumstances the Council's actions are held in abeyance whilst an application is being considered, in this case all planning routes have been considered and rejected by inspectors and the High Court.
	Enough Council Tax payers' money has been spent considering the applications and fighting appeals.
	Difficult for the Council to sustain and resist an application for judicial review of a planning decision that did not give detailed responses and reasons for deviating from the Planning Inspector's report.
<i>Gypsy/Traveller Status and Personal Circumstances</i>	Residents do not travel and so are not travellers.
	If the residents are not travellers and without special circumstances applying, the site would not be suitable.
	No reference to the site residents' personal circumstances which weakens the application.
<i>Principle and Need</i>	Need for the site has not been demonstrated.
	Not included in the Local Plan as a site for caravans.

PLANNING APPLICATIONS- SECTION A

	Government policy relating to traveller sites in Green Belt states that permission should only be granted in special circumstances.
	Site inappropriate for a 'middle class' rural area.
	Council should have by now found a more suitable place and space for the families.
	Suitable caravan site available one mile away next to the Old Crown Inn.
	Site clearly unsuitable for its present temporary use and the needs should be catered for elsewhere in a more suitable environment.
	Applicant could accommodate the residents elsewhere.
	Applicant bought site knowing permission had been refused for a dwelling but thought could put people on the site and use as leverage to establish another caravan site.
	If approved will be a caravan site for Gypsies and Travellers forever.
	Previous agricultural use should be maintained.
	Site should be reinstated to its former condition.
	Site should be used for community forest school, allotments, community gardens or outdoor wellbeing spaces for local residents.
	Previous application for a dwelling on the site was refused.
	Site has a no development order on it issued by the Council.
<i>Access to Services</i>	Unsustainable area.
	Site not served by local services.
<i>Visual Impact</i>	Development in open countryside.
	Intrusion of urban/semi-urban nature into the countryside and adverse visual impact and an eyesore.
	Spoils peaceful aspect of two charming country villages.
	Inappropriate for the area between the two communities.

PLANNING APPLICATIONS- SECTION A

	Setting of a precedent for unacceptable infill between the villages.
	Site is visually untidy and messy.
	Additional tents and sheds have been erected.
	Light pollution.
<i>Residential Amenities</i>	Noise pollution.
<i>Footpaths and Tracks</i>	The adjacent tracks are overgrown and have not been looked after by the Council since the site has been occupied and so are unused by walkers as are the nearby footpaths.
<i>Other Matters</i>	Site plan does not show the amenity block.
	Scrap metal dealing taking place and lorries parked on site.
	Setting of precedent.
	None of the residents of the two villages wish to see a caravan site here.
	Residents have not complied with the temporary planning permission and no reason to believe they would comply with any planning permission.
	No change to any of the material considerations and previous reasons for refusal that the site is wholly inappropriate and contrary to adopted planning policies.
	Previously made comments about this site are still relevant and should be considered and wish to object for the same reasons that have been given previously.

All responses from statutory consultees and third parties in respect of this application are available for Members to view on the Council's website.

The comments and objections made by consultees (including the Parish Council) and third parties, which are summarised above, are fully considered in the relevant assessment sections of the report below.

The comments made by Swepstone Parish Council and third parties in respect of the previous planning applications and appeals have also been considered and taken into account when considering this application.

4. Relevant Planning Policy

National Planning Policy Framework - July 2021

The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are applied. The following sections of the NPPF are considered relevant to the determination of this application:

Paragraphs 8 and 10 (Achieving sustainable development)
Paragraph 11 (Presumption in favour of sustainable development)
Paragraphs 47, 48 and 55-57 (Decision-making)
Paragraphs 60 and 62 (Delivering a sufficient supply of homes)
Paragraph 92 and 100 (Promoting healthy communities)
Paragraphs 104, 105 and 110-112 (Promoting sustainable transport)
Paragraphs 119, 120 and 124 (Making effective use of land)
Paragraphs 126, 130-132 and 134 (Achieving well-designed places)
Paragraphs 152, 154, 157, 159 and 167 (Meeting the challenge of climate change, flooding and coastal change)
Paragraphs 174, 180, 182, 183, 184 and 185 (Conserving and enhancing the natural environment)

Adopted North West Leicestershire Local Plan (2021)

The North West Leicestershire Local Plan forms part of the development plan and the following policies of the Local Plan are relevant to the determination of the application:

S1 - Future Housing and Economic Development Needs
S2 - Settlement Hierarchy
S3 - Countryside
D1 - Design of New Development
D2 - Amenity
H7 - Provision for Gypsies and Travellers and Travelling Show people
IF1 - Development and Infrastructure
IF4 - Transport Infrastructure and New Development
IF7 - Parking Provision and New Development
En1 - Nature Conservation
En2 - River Mease Special Area of Conservation
En3 - The National Forest
En6 - Land and Air Quality
Cc2 - Water - Flood Risk
Cc3 - Water - Sustainable Drainage Systems

Adopted Leicestershire Minerals and Waste Local Plan (September 2019)

The Leicestershire Minerals and Waste Local Plan forms part of the development plan although there are not any policies within the plan that are relevant to the determination of the application.

Other Guidance

Housing Act 1985
Human Rights Act 1998
Equality Act 2010
The Community Infrastructure Levy Regulations 2010
The Conservation of Habitats and Species Regulations 2017
Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their

Impact Within the Planning System
Planning Policy for Traveller Sites - August 2015
Planning Practice Guidance - November 2016
North West Leicestershire Gypsy & Traveller Accommodation Needs Assessment (GTAA) (November 2022)
River Mease Water Quality Management Plan - August 2011
The River Mease Developer Contributions Scheme (DCS) - September 2016
Natural England - advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites - March 2022
Good Design for North West Leicestershire SPD - April 2017
National Design Guide - October 2019
Leicestershire Highways Design Guide (Leicestershire County Council)
DEFRA Rights of Way Circular (1/09) - October 2009
Guide to assessing development proposals on agricultural land (Natural England - February 2021)
National Forest Strategy 2014-2024

5. Assessment

Background

Original Planning Application and First Appeal Decision

In the original appeal decision for the site, the Inspector concluded that '...the proposal would considerably harm the character and appearance of the countryside. There would also be a negative impact in terms of the failure to achieve a sustainable form of development. In combination the total amount of harm would be significant and there would be a conflict with the development plan.'

The Inspector also concluded that *'...on the other side of the balance is the level of general unmet need which weighs in support of the appeal proposal.'* and referred to the Council's inability to suggest alternative sites for the Smith family. The Inspector also gave the family's personal circumstances some weight in relation to the health of one of the family but gave little weight to the need to access schooling due to the ages of the younger children.

The Inspector therefore gave significant weight, in the short term, to the scale of need and the likely consequences of the lack of pitches for the family's immediate future which would interfere with their human rights. The Inspector also noted that *'...it is reasonable to expect that over time, the planning circumstances will change with the adoption of currently emerging Local Plan documents. Taking into account the expected timetable for producing the CS and the Development Plan Document specifically relating to gypsy and traveller sites, this will not be for some considerable time.'*

However, the Inspector took the view that the significant harm to visual amenity and sustainability outweighed the factors which favoured the proposal and did not justify a permanent permission. The Inspector considered that a temporary permission was justified and that four years was a realistic time frame, noting that *'...the PPTS reiterates that there is no presumption that a temporary permission should become permanent, and all parties should take this into account.'* Therefore, a temporary permission for four years was granted which expired in April 2017.

First Application for Permanent Use of the Site and Second Appeal Decision

Following determination of the appeal in April 2013, an application to remove condition 2 of the

appeal decision to allow the permanent use of the land as a traveller's site was submitted in August 2013 (13/00664/VCI). This application was refused by the Council under delegated powers in December 2013 for the following reason:

There have not been any significant material changes in circumstances at the site or in relation to its residents. The proposal would therefore be significantly harmful as the reliance on the car and the distance to services means it would fail to achieve a sustainable form of development and also would result in considerable harm to the character and appearance of the area contrary to Policies E4 and S3 of the adopted North West Leicestershire Local Plan and significantly harm the intrinsic character and beauty of the countryside, undermining a core planning principle of NPPF. The unmet need for further pitches would not outweigh this harm and insufficient time has lapsed since determination of the appeal to justify a permanent permission as enough time has not passed for the Authority to progress and adopt a Gypsy and Traveller Site Allocation DPD. There are no other material considerations that would justify granting a permanent permission. Therefore, in this case it is considered that a permanent permission is not justified.

A subsequent appeal was dismissed in September 2014 with the Inspector stating that '...as there is nearly three years to go before the temporary permission time limit is reached it is premature now to argue that nothing is likely to change in the meantime.'

Second Application for Permanent Use of the Site, Third Appeal Decision and High Court and Court of Appeal judgments

An application to remove condition 2 on planning permission 14/01090/VCI to allow the travellers' site to remain on the land permanently and to vary condition 4 to enlarge the size of the day room (16/00305/VCU) was submitted in March 2016 and refused at Planning Committee in December 2016, again on sustainability and visual amenity grounds. An appeal against the Council's decision was dismissed by the Planning Inspectorate in October 2018.

The appeal decision was challenged in the High Court and this challenge was dismissed in June 2021. The case was then heard at the Court of Appeal who allowed the challenge and quashed the 2018 appeal decision in October 2022, on the basis that the effect of the exclusion of the site residents from the definition of Gypsies and Travellers in the 2015 Planning Policy for Traveller Sites (PPTS) was discriminatory to them and that there was no proper justification for that discrimination. The government has not appealed to the Supreme Court and so the appeal relating to the refusal of planning application 16/00305/VCU will be redetermined by the Planning Inspectorate. The Council has not yet heard from the Planning Inspectorate in respect of progressing the appeal.

Principle of Development

In accordance with the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for the determination of the application is the Development Plan which, in this instance, comprises the adopted North West Leicestershire Local Plan (2021) and the adopted Leicestershire Minerals and Waste Local Plan (2019).

Gypsy/Traveller Status

The site is and would be occupied by Mrs Smith, her five adult children, one spouse/partner to one of her children, and five grandchildren. Mrs Smith's husband recently passed away in early February 2023. All those residing on the site are accepted by the Council to be ethnic Gypsies or Travellers.

The PPTS was updated in August 2015 to include a change in the definition of gypsies and

travellers so that only those who lead a nomadic lifestyle, including those who have ceased to travel temporarily due to their own or their family's or dependents' educational or health needs or old age, fall within this definition. The 2018 appeal decision found that the site residents did not meet this definition.

However as set out earlier in this report, the Court of Appeal quashed the 2018 appeal decision in October 2022, on the basis that the effect of the exclusion of the site residents from the definition of Gypsies and Travellers in the 2015 PPTS was discriminatory, and that there was no proper justification for that discrimination.

Therefore the 2015 PPTS definition of Gypsies and Travellers cannot be applied to the site residents, as to do so would be discriminatory to the site residents and contrary to the Court of Appeal judgment.

If planning permission is granted, a condition could be imposed restricting occupation of the site to those who are ethnic Gypsies and Travellers only.

Planning Policy Position

Recent court judgments confirm that when applying paragraph 11 of the NPPF and whether the 'tilted balance' set out under paragraph 11.d applies, it is necessary first to identify which are the policies most important for the decision, then examine each policy individually to see whether it is out-of-date including having regard to whether they are consistent with the NPPF, and then form a view whether, taken collectively, they are out of date for the purposes of the decision. If collectively the policies are considered to be out of date, then the 'tilted balance' set out at paragraph 11.d of the NPPF is applied. However, if one of the most important policies is out-of-date this does not automatically trigger the 'tilted balance'.

The site lies outside the defined Limits to Development within the Local Plan and is therefore within the countryside.

Policy S2 sets out the settlement hierarchy for the location of new development. Under Policy S3 sites for Gypsies and Travellers in accordance with Policy H7 will be supported on land outside the Limits to Development subject to satisfying six criteria. Policy H7 relates specifically to Gypsy/Traveller sites. There are other policies in the Local Plan that are also relevant to the determination of this application, i.e. Policies D1, D2, IF4, IF7, En1, En2, En3, En6, He1, Cc2 and Cc3, which relate to detailed/technical matters including design, highway safety, nature conservation and the historic environment.

Given that Policy H7 relates specifically to Gypsy/Traveller sites and that Policy S3 relates to sites in the countryside, these two policies are considered to both be relevant to the application and the most important policies for the purposes of this application.

The pitch requirements set out under Policy H7 (part 1) are considered to be out of date as they are based on the Leicester and Rutland Gypsies and Travellers Accommodation Needs Assessment (GTAA) published in May 2013 as a Refresh Report to the 2007 GTAA, which have been superseded first by the pitch requirements in a GTAA published in 2017, and more recently by a new GTAA for North West Leicestershire published in November 2022. The 2022 GTAA is considered in more detail later in this report.

In addition, the points set out under Policy H7 (parts 2 and 3) are also considered to be out of date as the Development Plan Document (DPD) referred to in part 2 has not been progressed (further details on this point are also set out later in this report) and sites have not been

identified as set out in the first part of part 3, as this was to be done via the DPD.

Therefore, whilst Policy H7 is considered to be partially out of date, it is not fully out of date. The application cannot be assessed against part 1 of the policy but can be assessed against the pitch requirements set out in the 2022 GTAA (and this is done further below). Parts 2 and 3 are not applicable to this application, although a consideration of the implications of not progressing the DPD are set out below.

The remaining parts of the policy (parts 4, 5 and 6) are considered to be up to date as they reflect the aims of the NPPF. Part 4 sets out criteria for assessing Gypsy/Traveller sites which are all still material planning considerations, part 5 relates to the safeguarding of existing Gypsy/Traveller sites which is still a planning requirement for the District (although not relevant to this application), and part 6 relates to the River Mease Special Area of Conservation which still has to be considered when assessing applications in its catchment area.

As such whilst full weight cannot be given to Policy H7 as a whole, it is only parts 1, 2 and 3 to which no weight can be given, and full weight can be given to parts 4, 5 and 6, when determining the appeal. Therefore, it is considered that Policy H7 survives as a whole and is not considered to be out of date.

Policy S3 is considered to be in keeping with the aims of the NPPF as it clearly sets out the types of development that can be supported in the countryside and sets out criteria for the assessment of developments on the character and appearance of the countryside, as is Policy En3 which sets out criteria for assessing development within the National Forest. As such Policies S3 and En3 are considered to be up-to-date and are given full weight in the determination of this application. Neither of these policies is likely to change materially through the current Local Plan Review.

Therefore the 'basket' of policies is not considered to be out of date and so the 'tilted balance' under paragraph 11d of the NPPF is not engaged.

As noted above, Policy H7 (part 2) states that the required provision for Gypsies and Travellers would be identified through a Gypsy and Traveller Site Allocations DPD. Work on this commenced in 2017 and a report was presented to the Council's then Local Plan Advisory Committee (LPAC) on 14 March 2018 which set out a draft DPD. This proposed the allocation of land at Nottingham Road, Ashby de la Zouch as a transit site and a site at Sweptstone Road, Measham for a travelling show people site. The DPD also proposed to protect land at Ashby Road, Sinope as a permanent site for Gypsies and Travellers, in accordance with an implemented planning permission. Based on the 2017 GTAA findings this was sufficient to meet the permanent needs for Gypsies and Travellers.

The LPAC raised various concerns regarding the proposed transit site. The matter was due to be considered at a meeting of the Council on 20 March 2018 with a view to consultation on the document. In view of the concerns raised by the LPAC, along with several other concerns raised in response to the report, officers were asked to undertake further work.

At a meeting of the LPAC on 7 November 2018 it was agreed that the needs of Gypsies and Travellers should now be addressed as part of the current Local Plan Review. Since then, officers have been engaged in the process of seeking to identify suitable sites. In total, more than 500 sites have been assessed and considered. Potential sites are assessed against the criteria set out in part 4 of Policy H7 and against a range of sustainability criteria.

To inform the current Local Plan Review, as noted above, a new GTAA was published in November 2022. The Council is currently working on its strategy for planning for Gypsy/Traveller needs as part of the Local Plan Review. At Local Plan Committee on 8 December 2022 officers reported their next steps to members. This included undertaking further work to assess the potential for increased capacity at existing sites as well as giving further consideration to the allocation of new permanent sites (albeit that a significant amount of work has already been undertaken by officers on this matter with limited progress) and a review of the criteria in Policy H7. At Local Plan Committee Members also resolved that the Council look to include provision of a transit site as a matter of urgency.

Considering the above, consideration needs to be given to the Council's progress in identifying suitable sites for Gypsies and Travellers. This matter was most recently considered in the appeals relating to the application site.

The first appeal Inspector in April 2013 stated that publication of a DPD '*...may not be for some considerable time...*' but that four years was a realistic timeframe. At the time of the second appeal the Council considered a short and unrealistic time frame had passed to allow for further progression and adoption of the DPD referred to above.

The second appeal Inspector in September 2014 considered that '*...this document [the DPD] ...could well be at an advanced stage by 2017*', that '*...the previous Inspector clearly allowed the temporary planning permission in order to allow time for the Council to progress their site allocations document...*' and that '*...there could well have been significant progress on the site allocations document [the DPD] by then.*' He went on to conclude that '*...significant work should have taken place on identifying Gypsy sites by then by progressing the allocation document in tandem. It is therefore far too soon to argue that it is clear the policy situation will not have changed by the time the temporary time limit is reached.*'

The 'New Local Plan' will cover the period between 2020 and 2040. Officers are in the process of reviewing the Local Plan and the Council undertook a Regulation 18 consultation on certain aspects of the new Local Plan between January and March 2022. However, this focused primarily on the strategy for housing and employment growth; the need for gypsy and traveller accommodation was not included as the 2022 GTAA was still being prepared at the time, and it did not include matters relating to any of the policies referred to in this report other than Policy S2 (Settlement Hierarchy), although the proposed changes to that policy do not affect this application.

The Council's strategy on planning for Gypsy and Traveller needs as part of the Local Plan Review has not been finalised at the time of writing this report, but it is anticipated that this is something that will be consulted on later in 2023, and it will consider the Court of Appeal judgment.

Given that work on identifying sites for Gypsies and Travellers was subsumed into the Local Plan Review, and that the current Local Plan Review is underway with the next stage of consultation anticipated to take place later in 2023, on balance it is considered that it would be difficult to demonstrate that sufficient progress has been made in identifying Gypsy and Traveller sites in the District since the first appeal decision in April 2013 nor since the second appeal decision in September 2014. Therefore, it is considered that given the timetable for the Local Plan Review, the lack of progress in identifying suitable sites should be given weight in favour of the application and granting a permanent permission.

Need for Pitches

As set out above, the Council considers that the pitch requirements set out under part 1 of Policy H7 are out of date. The November 2022 GTAA identifies a need for six Gypsy and Traveller pitches for those who did not meet the 2015 PPTS definition, which is derived from the residents of the application site: four from existing households and two from future household formation. Whilst there are six caravans on the site, based on the research undertaken for the 2022 GTAA and one of the 2018 appeal statements, it is considered that the site provides four pitches.

The need identified in the 2022 GTAA for those whose households did meet the PPTS definition totals 39 pitches, broken down into the following trajectory at Figure 4:

Years	0-5	6-10	11-15	16-19	Total
	2022-26	2027-31	2032-36	2036-40	
Need (pitches)	27	4	5	3	39

Figure 4

The majority of this need (27 pitches) is expressed as current need, i.e., it is required in the next five years (2022-2027).

The 2022 GTAA also identifies a potential further two pitches from an 'undetermined' need, which arises from those households that it was not possible to make contact with as part of the GTAA research.

In light of the Court of Appeal judgment, it is considered that the need for pitches identified in the GTAA for those who did not meet the 2015 PPTS definition should be amalgamated with the need for those who did meet the definition. This would give a total need of 47 pitches in the district for all ethnic Gypsies and Travellers to 2040.

The Inspector for the second appeal on the application site noted that '*...other Gypsy planning permissions could also have been granted by then [April 2017] which would alter the supply situation.* Whilst planning permission has been granted for 12 pitches since determination of the second appeal in April 2014, these are existing sites/pitches and so cannot be considered to reduce the current pitch requirement of 47 pitches to 2040 set out in the 2022 GTAA. No planning permissions have been granted for Gypsy/Traveller sites/pitches in the district since publication of the 2022 GTAA. As such there is currently a need for 47 Gypsy/Traveller pitches in the district, of which there is an immediate need for at least 31 pitches to 2026.

The need for pitches set out in the 2022 GTAA considers all of the existing Gypsy/Traveller sites in the district, where ethnic Gypsies and Travellers live, including the application site. The site residents are ethnic Gypsies and Travellers and the site was visited and the residents interviewed as part of the 2022 GTAA research, and so the need arising from this site is accounted for in the 2022 GTAA. The GTAA is therefore considered to be an acceptable and robust evidence base to assess the need arising from the application site and make a decision on this application, as required by the PPTS.

Based on the 2022 GTAA, there is clearly still an insufficient level of local pitch provision, and it is accepted that there is an immediate and longer term need for pitches within the district and that the Council cannot currently demonstrate a five year supply of Gypsy and Traveller sites as required by the PPTS. There is therefore still a need for this site. All these factors have weight

in favour of granting permission.

There is therefore still a significant unmet need for Gypsy/Traveller pitches in the district which is now considered to have weight in justifying a permanent permission. Also considered to have weight is that if permitted the site would immediately contribute to the unmet need for sites and reduce the current shortfall, compared to the lengthier process involved in identifying sites via the Local Plan Review process. Both matters also weigh in favour of granting permission.

Alternative Sites

There is one public site within the District at Hemington (owned and managed by Leicestershire County Council) but this is currently not taking any new families due to contamination issues. The County Council's Gypsy Traveller and Liaison Officer advises that the other public site in the county (Aston Firs) is at capacity.

A site at Old Ashby Road, Sinope for six pitches was previously identified as being an available alternative site. However, since that time the site has been occupied and is no longer considered to be an available alternative site.

Potential space on private sites within this District and elsewhere cannot be taken into account, as they are outside local authority control and there may be a number of reasons as to why Mrs Smith and her family cannot reside on such sites.

Whilst there is no evidence that the residents have looked for alternative accommodation other than the application site, it would appear that living on the roadside is the most likely outcome if this application fails. It is considered that moving from the site onto the roadside would not be in the best interests of the residents, in particular the children living on the site and those residents with disabilities and health conditions. The lack of other available alternative sites for the site residents therefore attracts some weight in favour of the proposal.

Personal Circumstances

The agent has advised that two of the other residents have learning difficulties and severe disabilities, and detailed information was submitted in respect of their health as part of the last appeal. Mr Smith, who recently passed away, also had serious health issues. The County Council's Traveller Sites and Liaison Officer has also provided information in respect of the health and education of the residents, including that constant care is provided to the two residents with learning difficulties and disabilities by Mr and Mrs Smith and their other adult children. As such, it is considered that they are dependent on the extended family. With Mr Smith's death, there will be increased care giving responsibilities for Mrs Smith and her other children. There are five children living on the site, three of which attend secondary and primary schools. The other two children are not yet of school age.

The County Council's Traveller Sites and Liaison Officer advises that stability is required to access health and education provision, that the family are fully aware of the difficulties experienced from lack of education which results in poor literacy skills, that permanent site provision will significantly improve access to services such as health and education. The Officer has also previously advised that the family are integrating well into the community by attending church and school. These comments are similar to those made in respect of the previous applications, which were seen by the Inspectors.

The first appeal decision states that the lack of an appropriate settled base for the family would represent an interference with their home and family life. The Inspector also gave the family's personal circumstances some weight in relation to the health of one family member. At that

time the Inspector gave little weight to the need to access conventional schooling given the ages of the three grandchildren at the time. However, these three children are now at school. In addition, much more information has been provided since that time regarding the health of the residents. At the 2018 appeal, the Council gave significant weight in the planning balance to the personal circumstances of the site residents. This all amounts to a material change in personal circumstances since determination of the 2016 application, and it is considered that significant weight should be given to the residents' personal circumstances, which is it considered would justify granting a permanent permission.

Services on the Site

Mains water and electricity supplies and a mains sewer connection are in place and proper toilets have been provided. Appropriate bin storage is also available within the site and the bins are emptied by the Council's waste and recycling vehicles, as considered in more detail later in this report.

As such it is considered that the site is capable of being provided with adequate water and electricity supplies, adequate drainage and sewage disposal facilities and waste disposal facilities and therefore the proposal complies with part 4 (e) of Policy H7.

Scale of Development

It is considered that given the scale of the proposal, it would not be out of proportion with the scale of Swebstone and Newton Burgoland, nor would it dominate these settlements or overwhelm their existing service provision or infrastructure, and so it would comply with part 4 (b) of Policy H7.

Access to Services and Facilities

The original application was in part refused on the grounds of the site being in an unsustainable location. At paragraphs 30 and 31 the first appeal Inspector found that *'Given the limited access to public transport, the lack of a roadside footpath and its unlit nature, along with the distances to the nearest shops and health facilities, I am led to the conclusion that the car would be the predominant means of transport for the existing and future residents of the appeal site. The reliance on the car, and the distance to services do count against the proposal in terms of achieving a sustainable form of development. Although these are offset by the positive aspects of the proposal, the overall effect is a negative one.'*

The 2016 application was in part refused on the following grounds:

The site is in a relatively isolated location within the countryside, with poor accessibility to services and public transport, which would result in increased journeys by private car. There are no footpath facilities or streetlighting on Newton Road. Therefore, the site is considered to be unsustainable for use as a gypsy/traveller site and would be contrary to Policies S3 (2j) and H7 (4a) of the submitted North West Leicestershire Local Plan and the intentions of the NPPF and the Planning Policy Statement for Travellers.

It is considered that there have not been any material changes in respect of the level of services and facilities in Swebstone and Newton Burgoland and the accessibility of the site since determination of the 2016 application.

The NPPF states at paragraph 103 that opportunities to maximise sustainable transport solutions will vary from urban to rural areas and this should be considered in decision making. It is acknowledged that journeys by car to services/facilities would be offset against the provision

of a settled base which reduces the need for long-distance travelling in line with paragraph 13 of the PPTS.

It is however considered that on balance, the statements in the NPPF and the PPTS are outweighed by the conflict with Policy S3 and part 4 (a) of Policy H7, as there are not any realistic opportunities available for residents of the site to use other means of travel and the site is not accessible nor will be made accessible by a range of sustainable transport, and so therefore the residents are reliant upon the private car to access all services/facilities, including those that are basic day to day services/facilities. As such the proposal is contrary to Policy S3 and part 4 (a) of Policy H7 of the Local Plan.

Impact on Best and Most Versatile Agricultural Land

The site may previously have been in agricultural use and so consideration needs to be given to the loss of agricultural land. Best and Most Versatile (BMV) agricultural land is defined as that falling within Grades 1, 2 and 3a of the Agricultural Land Classification (ALC). The Natural England's ALC map appears to indicate that the site falls within Class 2 or 3 so it is not clear what class of agricultural land the site falls within, but it could be BMV.

Whilst Natural England's guidance does not suggest that the loss of smaller BMV sites is acceptable, the magnitude of loss of agricultural land is low where less than 20 hectares of BMV would be lost. Therefore, given the very limited extent of the potential loss of the site (around 0.6 hectares although this includes the pond) and that other BMV is available in the locality, it is considered that this is not sufficient to sustain a reason for refusal in this case.

Other Matters

An Enforcement Notice for the siting of a caravan on the site was served in July 1997 (97/0677) and the subsequent appeal was dismissed, the notice upheld, and planning permission refused. The erection of one dwelling (outline) (79/0832) was also refused in September 1979 on grounds of being a new dwelling in the open countryside, an intrusion into the countryside and difficult to resist future similar developments. However, that caravan was not proposed to be used by a Gypsy/Traveller family, and the current application does not relate to a dwelling, and therefore neither has any similarities in terms of the principle of the development to the current application.

Concerns have been raised by residents that other structures, including sheds, have been erected on the site, which are ancillary to the residential use of the caravans. These structures do however not form part of this application.

It is considered that there are limited economic benefits to the proposal as it would not result in significant local construction jobs, and it would make a small contribution to helping to maintain local services in the area.

Conclusion on Planning Policy considerations

The site is capable of being provided with adequate services, would not be out of proportion with the scale of the nearby villages and would not result in a significant loss of BMV agricultural land.

There is a significant unmet need for Gypsy/Traveller pitches in the district in both the immediate and longer term, the Council cannot currently demonstrate a five year supply of Gypsy and Traveller sites as required by the PPTS, there is a lack of other available alternative sites and the site is able to immediately contribute to the unmet need for sites in the district, all of which have weight in favour of permitting the application.

The decision to no longer prepare a specific Gypsy and Traveller DPD but to subsume it within the Local Plan review, the timetable for the Local Plan Review and the lack of progress in identifying suitable sites also carry weight in favour of permitting the application. The residents' personal circumstances also have significant weight in favour of the proposal.

It is however considered, as the residents would be reliant upon the private car to access basic day to day services/facilities, that the proposal is contrary to Policy S3 and part 4 (a) of Policy H7 and this would count against the scheme.

A full conclusion covering all the issues raised in this report is given at the end.

Design and Visual Impact

The need for good design in new development is outlined in Policy D1, the Council's Good Design SPD, the National Design Guide, and paragraphs 126 and 130 of the NPPF. Policy S3 requires development in the countryside to safeguard and enhance the appearance and character of the landscape. Part 4 (f) of Policy H7 requires Gypsy and Traveller sites to be compatible with landscape as well as the physical and visual character of the area. Policy En3 requires development in the National Forest to be appropriate to its Forest setting.

The original application was refused in part on impact on the visual amenities of the locality. The first appeal Inspector found that *'The appeal proposal would represent a visual intrusion of prominently located caravans in a rural, countryside setting which would considerably harm the character and appearance of the area contrary to LP Policies E4 and S3. Further, the intrinsic character and beauty of the countryside would be significantly harmed, undermining a core planning principle of the Framework.'* The second appeal decision did not further consider the visual impact of the proposal.

Permission was granted in March 2015 (14/01090/VCI) (on the basis that it would be in place for a temporary period until April 2017) to amend the site layout so that three caravans were sited adjacent to the site's south western boundary and three caravans, and the day room/amenity block are sited adjacent to the eastern boundary, with further hard surfacing laid on the site. The same layout formed part of the 2016 application to make the site permanent.

The 2016 application was in part refused on the following grounds:

The proposal would appear prominent and incongruous in the site's rural location and therefore would be significantly detrimental to the intrinsic character and beauty and visual amenities of this countryside locality. The proposal is therefore contrary to Policies S3 and E4 of the adopted North West Leicestershire Local Plan and the fifth core planning principle set out at paragraph 17 the National Planning Policy Framework.

However, since that time the hedgerows and trees along boundaries have matured and provide a greater level of screening than was in place both in 2016 and at the time of the other previous applications. A stretch of hedgerow on the Newton Road boundary did appear to have been removed before 2016 but the resulting gap was small and not completely open and new vegetation has filled it in. Furthermore, the level of development alongside the Newton Road boundary has been reduced in comparison to the original layout, which results in the development being located closer together. The increase in scale of the amenity block is not considered to make the building significantly prominent due to it being positioned adjacent to mature trees. Whilst the development is visible through the hedgerow alongside Newton Road in the winter months and at night time, these views are limited by the screening available and it

is not considered to be overly prominent in views from the road as shown on the photographs below at Figures 5, 6 and 7:



Figure 5 – view south along Newton Road towards the site



Figure 6 – view south along Newton Road towards the site



Figure 7 – view north along Newton Road towards the site

At the time of the first appeal decision the hedgerows alongside the boundaries with the County Road were patchy with ready views into the site. Three caravans would now be sited alongside the south western boundary compared to two on the original layout. However, the route along the County Road is now heavily overgrown along the western stretch of the north western boundary and the whole of the south western boundary, which provides further screening from the County Road.

There is a view into the site through the site access off the County Road as shown below at Figure 8. There is also a limited view of the site through the trees on a short stretch of the north western boundary from the County Road, as shown below at Figure 9. However immediately adjacent to this stretch is a dense area of planting on the site boundary, as shown at Figure 10. The amenity block and caravans are at the far end of the site and are not near the County Road and so are not considered to be prominent in these views. In addition, the central part of the site has been laid with top soil and seeded and is now an area of grassland which when at a taller height provides a screen, and additional planting is proposed alongside the access and new planting can be provided along the north western boundary, which could be secured by condition.



Figure 8



Figure 9



Figure 10

Most trees and hedges that bound the site are still in place and their retention was secured by the previously approved landscaping scheme, which could be secured by condition.

It is considered that the screening available and with the approved landscaping scheme would strike a balance between screening the development and not completely isolating the site's occupants, as sought by the PPTS.

The development would still be an urbanising element in the countryside and be visible to some extent through the site boundaries and would therefore cause some harm to the character and appearance of this countryside location. However, it is considered on balance that the development would no longer represent a visual intrusion into a rural countryside setting that would considerably harm the character and appearance of the area and cause significant harm to the intrinsic character and beauty of the countryside.

The appeal decision into the siting of a caravan on the site in 1997 (97/0677) considered that the caravan and buildings could be seen from Newton Road and because of their size and positioning would be unduly prominent and incongruous in the site's rural setting. The Inspector considered that retention of the caravan would seriously harm the open character and appearance of the area. However, for the reasons set out above, on balance it is considered that a reason for refusal based on impact on the character and visual amenities of the immediate and wider locality, which is in the countryside and National Forest, could not be sustained under Policies S3, H7 (part 4f) and En3 of the Local Plan.

Residential Amenities

In terms of residential amenities, the nearest dwellings are at Newton Road and The Dairy in Swebstone (over 250 metres away) and on Snarestone Road, Newton Burgoland (330 metres from the site). A mobile home used as living accommodation that has temporary permission is located over 230 metres away at Red Acres Farm on Newton Road, and outline permission has recently been granted for a dwelling on this site (22/00288/OUT). The external lighting that has previously been approved under the discharge of conditions is small in scale and faces into the site. A condition was imposed on the first appeal decision relating to the provision of a mains electricity supply and cessation of the generator which could be re-imposed. No objections have been made by the Council's Environmental Protection team in respect of noise, odour, light or other environmental protection matters.

Given these distances and the above circumstances, noise and disturbance from use of the site and comings and goings and the use of lighting is unlikely to be significantly detrimental to the amenities of local residents, and there will be no impacts in terms of loss of light, loss of privacy or creation of an oppressive environment.

There is considered to be sufficient space around the caravans and on the site to ensure a satisfactory level of amenity to occupiers. A separate application to the Authority for a caravan site licence, which covers matters relating to space between caravans and other standards, should be made if planning permission is granted.

As such the proposal complies with Policy D2 of the Local Plan and the Council's Good Design SPD.

Highway Safety

In terms of highway safety, there would be no change in the scale and nature of the proposal from the previous applications. The bins are left for collection at the junction of the north western County Road and Newton Road, where there is sufficient space for them to be left without significantly impinging on the access width or visibility. The County Highway Authority (CHA) has not raised any objections in relation to highway safety matters, subject to conditions. Furthermore, the first appeal Inspector found that *'I do not consider that the caravan site would generate significant numbers of traffic movements so as to create a danger of vehicles emerging at this junction.'* and imposed a condition restricting the access to the site, which could be re-imposed.

It is considered that two of the CHA's requested conditions relating to the access arrangements and surfacing could now not be imposed, as they were not imposed by the Inspector on the temporary planning permission and as the site has been in use for over ten years it would be unreasonable to do so now. In addition, the County Road that the site accesses onto is public highway and so the existing access arrangements including at its junction with Newton Road could not be changed without the CHA's permission.

The advice in paragraph 111 of the NPPF is that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

It is therefore considered that the impacts of the development on highway safety would not be unacceptable and when considered cumulatively with other developments, the impacts on the road network would not be severe. The proposal therefore complies with Policies IF4 and IF7 of

the Local Plan and paragraphs 110 and 111 of the NPPF.

Ecology and Protected Species

In relation to protected species, a pond occupies the western corner of the site. A brook/ditch adjoins the site on its north western side and another stream is located on the other side of the north western stretch of the County Road. The site's boundaries are formed by mature hedgerows and trees and there are more trees, hedgerows, vegetation and areas of woodland close to the site. Two derelict buildings lie close to the site's north western boundary. Before occupation the site was covered with overgrown grass and vegetation and did not appear to have been in any use for some time. All of these are features that could be used by European Protected Species (EPS) and as such species may be affected by a planning application, the Local Planning Authority has a duty under regulation 9(5) of the Habitats Regulations 2017 to have regard to the requirements of the Habitats Directive in the exercise of its functions.

An initial ecological report and Habitat Suitability Assessment were submitted with the original application, although concerns were raised by local residents in relation to impact on great crested newts (GCN). A full GCN survey of the pond was undertaken and both the County Ecologist and Natural England were satisfied that GCN would not be adversely affected.

The first appeal Inspector also found that *'...even accepting that there may be GCN in the wider countryside, I am satisfied that from the survey evidence and the expert assessments of both the main parties and English Nature (Natural England), the use of the appeal site would be unlikely to cause significant disturbance to protected species.'* There is no reference within the second appeal decision to impact on GCN or on other protected species.

Since the first appeal decision, vegetation has now largely been removed from the site, the soil has been scraped back and material laid on the site to form the base for the caravan bases, the area of hard surfacing and the access drive, which is likely to make the site even less suitable a habitat for GCN.

The derelict buildings and boundary hedges/trees are still in place on the site (and will be retained) and the external lighting scheme was agreed by the County Ecologist so bats and barn owls are unlikely to be adversely affected. The works to the site are also likely to make the site less suitable for reptiles although there is still suitable habitat for them in the surrounding area. In terms of otters, water voles, spined loach and white clawed crayfish, there are no works to or direct impacts on the adjacent watercourse/ditches and pond and a method statement was previously agreed to prevent impact on the watercourse during construction. There is no evidence of badger setts within 30 metres of the site. The County Ecologist has no objections and previously advise that there is no need for any ecology surveys.

On this basis it is considered that protected species have not and would not be adversely affected by the proposal and so it complies with the Habitats Regulations 2017 and Policy En1 of the Local Plan.

Whilst the mandatory requirement for 10 percent biodiversity net gain (BNG) has not yet been enacted through the Environment Bill (expected November 2023), paragraph 174(d) of the NPPF sets out a requirement to minimise impacts on and provide net gains for biodiversity. Mitigation or compensation for the loss of habitats as required under part 2 of Policy En1 does not apply to this proposal, as the habitat that is been lost in the past on the site was not considered to meet any of the criteria listed in this part of the policy. In this case, whilst no BNG calculations have been provided, the areas of habitat have been lost for some time and no additional buildings or hard surfacing are proposed above that already on site. The proposal

also includes retention of the mature trees and hedgerows on the site boundaries, the pond and the large areas of grassland and vegetation within the site. New tree and hedgerow planting is also proposed, along with planting to gaps within the boundary hedgerows. Overall, it is considered that the proposals would comply with the provisions of paragraph 174(d) of the NPPF.

Trees and Hedgerows

No trees or hedgerows would be removed or affected by the proposal and so a tree survey was not requested. The Council's Tree Officer has no objections. As such the proposal would comply with Policy En1 of the Local Plan.

Flood Risk

The site is within Flood Zone 1 and most of the site lies within an area at low risk of surface water flooding, although it does not cover the part of the site on which the caravans and amenity block are located. Parts of the adjacent County Road and Newton Road are within an area at low, medium, and high risk of surface water flooding. The LLFA has been consulted but has not objected and refers to its Standing Advice.

Concerns were raised in respect of previous applications regarding flood risk. However, no evidence has been provided in relation to flooding of the site and the surrounding area and flood risk was not raised as a significant concern in the appeal decisions. As noted above the caravans and amenity block are not within the area at low risk of surface water flooding.

As such the proposal is unlikely to result in an increase in flooding on the site or elsewhere and so would comply with Policies CC2 and CC3 of the Local Plan.

Impact on the River Mease SAC/SSSI

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC), which was designated in 2005 and a tributary of the river runs along the site's north western boundary and through the pond on the site. Discharge from the sewage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river.

As a result of the proposed development there could be an impact on the River Mease SAC, which may undermine its conservation objectives, from an increase in foul and surface water drainage discharge as well as its proximity to a tributary of the River Mease. Therefore, an appropriate assessment of the proposal and its impacts on the SAC is required.

The site was previously greenfield with no associated foul drainage discharge, and so there has been and would be an increase in occupancy of the site, resulting in an increase in foul drainage discharge from the site. Additional foul drainage discharge from the site would therefore adversely impact on the SAC as it would pass through the sewage treatment works within the catchment area of the River Mease SAC and contribute to the raised phosphate levels in the river.

Discharge from surface water disposal via a sustainable drainage system or via the mains sewer system can also result in an adverse impact on the SAC, including in relation to water quality and flow levels.

The adjacent tributary and the pond could be affected by construction works and activity associated with the proposal.

Foul Drainage

The River Mease Developer Contribution Scheme First and Second Development Windows (DCS1 and 2) have been produced to meet one of the actions of the River Mease Water Quality Management Plan (WQMP). Both DCS1 and DCS2 are considered to meet the three tests of the 2010 CIL Regulations and paragraph 182 of the NPPF. DCS1 was adopted in November 2012 and DCS2 was adopted in September 2016.

In March 2022 Natural England published advice in respect of the nutrient neutrality methodology which can be used to mitigate against the impacts of additional phosphate entering the SAC from foul drainage associated with new development.

The site is served by a mains water supply and has a connection to the mains sewer that runs along the adjacent County Road, which the first appeal Inspector noted overcame the Council's concerns in respect of impact on foul drainage discharge on the original application. DCS1 was adopted in the period between refusal of the original application and the issuing of the first appeal decision. However, the Council advised the first appeal Inspector that as the application had been submitted before adoption of DCS1 that it would not apply in that case. As such the first appeal Inspector raised no concerns in respect of impact on the SAC and stated that *...there is no need for a S106 agreement in this regard.*

The second appeal decision made the following comments in respect of the SAC: *"The impact on the River Mease Special Area of Conservation was also discussed. The Parish Council argued that because the temporary planning permission was to be made permanent the impact was inevitably going to be greater and so a developer contribution might be required, and no evidence had been provided as to how this was to be dealt with. However, the previous Inspector dealt with the River Mease issue and concluded there would be no impact on the river without any mention of the temporary nature of the permission she was going to grant. The Council also withdrew any objection on the River Mease issue at the point when it was still assuming the application was for a permanent permission. Consequently, I do not think this issue needs to be revisited again."*

Whilst it was previously accepted that a River Mease DCS contribution was not required for the site, having regard to recent European case law and that the temporary planning permission has lapsed, it is now considered that the foul drainage discharge from the site needs to be mitigated for. Natural England have confirmed that this is the case. There is capacity available under the DCS for the four pitches on the site and so a DCS contribution would need to be secured via a Section 106 Agreement, which needs to be signed before a planning permission could be issued.

The flows from the caravans against the existing headroom at Snarestone Treatment Works have already been considered in respect of the previous permission.

Surface Water Drainage

A scheme for surface water disposal was agreed as part of the discharge of conditions on the appeal decision and this could be further secured by condition.

River Mease Tributary

Given that the site adjoins the tributary, and it also flows through the pond on the site, a construction management plan to prevent adverse impacts on the watercourse during construction was agreed as part of the discharge of conditions on the appeal decision, and this could be further secured by condition if any further construction works are to take place.

The caravans and amenity block are sited away from the tributary and pond, and the pond itself is fenced off from the rest of the site, and so any activity on the site would take place away from the watercourse and pond.

Conclusion on impact on the River Mease

Therefore, it can be ascertained that the proposal will, either alone or in combination with other plans or projects, have no adverse effect on the integrity of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI, and would comply with the Habitat Regulations 2017, the NPPF and Policies En1 and En2 of the Local Plan.

Bin Storage and Collection

There is space within the site for bin storage. The Council's Waste Services team advise that the waste and recycling receptacles would need to be presented at the end of the current access road adjacent to the adopted highway of Newton Road.

The furthest caravan would be 130 metres from this bin collection point. Whilst the Building Regulations require bins to be stored no more than 25 metres from a bin collection point, which would be exceeded in this case, this is separate legislation and there is no requirement in the Local Plan and Good Design SPD to meet these requirements in such a situation. There would also be a fairly level route through the site and along the County Road (i.e., no steep gradients), and this arrangement has been in place for several years. The Waste Services team has also not raised any objections in respect of this matter. It is therefore considered that there is not any policy justification to warrant a refusal of permission in respect of bin collection and storage. A note to applicant could be imposed advising that residents would need to leave their bins for collection in the bin collection area or by the roadside, and that if bins would be left for collection in the public highway that the Council has powers to remove the bins once emptied.

Other Matters

No request has been received from the Council's Contaminated Land Officer for contaminated land investigations or remediation. The County Archaeologist advises that the application warrants no further archaeological action. There is no Green Belt within the District.

The nearest public right of way (Q49) does not run through or adjoin the site. The majority of the County Road appears to be very overgrown and so it may be difficult to access the network of public rights of way and open access woodland to the north east and west. However, as the County Road is public highway any obstruction of the County Road would be dealt with under separate legislation.

The written ministerial statement issued on 31 August 2015 announced that it is national planning policy that intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals. The ministerial statement has not been replaced or revoked and so remains a material consideration.

It is considered that the residents moved onto the site and continue to occupy the site in the knowledge that there is no planning permission for the use of the site as a caravan site or for any of the other development that has taken place. It is also considered that the applicant was also aware of the same. Knowingly acting in breach of planning control is clearly a factor against the grant of planning permission which cannot be ignored. However, in this case, it carries limited weight only given the circumstances that the recently published 2022 GTAA establishes the need for additional pitches so there is a significant unmet need for pitches, and there are no alternative sites available for the residents to live on.

Concerns have been raised by residents in respect of the setting of a precedent. The proposal is not considered to set a precedent for additional caravans on the site or for the development of other sites in the locality, as other sites will be affected by a different set of circumstances, and it is a fundamental tenet of the planning system that every application is determined on its own merits.

Concerns raised by residents and Swepstone Parish Council relating to the operation of a business and untidy land are matters to be dealt with under the Council's enforcement and untidy land powers.

The right to appeal against a Council's decision on a planning application is set out under the Town and Country Planning Act 1990. The right to challenge a decision (including those made by the Planning Inspectorate) in the High Court and the Court of Appeal are also available to those with an interest in the site and third parties.

Conclusion - The Planning Balance

There is a significant unmet need for Gypsy/Traveller pitches in the District in both the immediate and longer term, the Council cannot currently demonstrate a five year supply of Gypsy and Traveller sites as required by the PPTS, there is a lack of other available alternative sites for the families and the site is able to immediately contribute to the unmet need for sites in the District, all of which have weight in favour of permitting the application.

The decision to no longer prepare a specific Gypsy and Traveller DPD but to subsume it within the Local Plan review, the timetable for the Local Plan Review and the lack of progress in identifying suitable sites also carries weight in favour of permitting the application. The residents' personal circumstances also have significant weight in favour of the proposal.

The acceptability in respect of the capability of the site to be provided with adequate services, the scale of the proposal and the impacts on BMV, residential amenities, trees and hedgerows, ecology and protected species, flood risk, the River Mease SAC/SSSI and waste collection arrangements are all neutral factors in the overall balance.

The intentional unauthorised development carries limited weight only. On balance it is considered that a reason for refusal based on impact on the character and visual amenities of the immediate and wider locality, which is in the countryside and National Forest, could not be sustained under Policies S3, H7 (part 4f) and En3 of the Local Plan. However, the reliance on the private car is considered to be of weight in favour of refusing the application, although as will be seen in the balancing exercise below, this is considered to be outweighed by the matters in favour of permitting the proposal, including the significant unmet need and personal circumstances.

The rights of the site residents have been considered under Article 8 of the European Convention on Human Rights. Refusal of the application could lead to the families' eviction from the site, as such interfering with their private and family life. The loss of their home, albeit currently unauthorised, and the apparent lack of alternative accommodation which could result in a return to a roadside existence, makes such interference more serious. The health of the site residents and children's best interests, although not determinative planning issues, are a primary consideration. As two of the residents have learning difficulties and disabilities, and as three of the five children are at school, there would be considerable disturbance as a result of having to move schools and the general welfare of the children would be best served by a permanent and secure home. The recent death of Mr Smith means there will be increased care giving responsibilities for Mrs Smith and her other children. Accordingly, this matter attracts

considerable weight in favour of the development in the circumstances of this case.

However, Article 8 is a qualified right. Interference may be justifiable in accordance with the law and where necessary in a democratic society, for example to regulate the development of land in the public interest. It is considered that such interference in this instance is consistent with the aims of the planning system, including within the Local Plan, to reduce the reliance on the private car for journeys for access to services/facilities.

Regard is also had to the Public Sector Equality Duty (PSED), contained in the Equality Act 2010, which requires the Council to have regard to the aims of achieving amongst other things the elimination of harassment and discrimination and the advancement of equality for opportunity and good relations between persons who share a relevant protected characteristic and those who do not. The residents on the site are ethnic Gypsies. Ethnic Gypsies and Travellers have a protected characteristic for the purposes of the PSED. Dismissal of the application would deprive the residents of the opportunity to live on this site, and this must be set against the serious effect the proposal would have in terms of the one planning consideration as outlined above. It does not therefore follow that the application should be approved.

However, it is considered that refusal of the application would have an excessive or disproportionate effect on the interests of the occupiers of the site, including the interests of the children in this case and those with learning difficulties and disabilities.

The first appeal Inspector considered that the significant harm identified outweighs the factors which favoured the proposal at that time and did not justify a permanent permission. The second appeal Inspector concluded that *'The appellant assumes that if a temporary permission is not acceptable then a permanent one is the only solution. However, the Inspector clearly found a permanent permission to be unacceptable. The alternative to a temporary permission would therefore have been a refusal of permission. Such a course of action is not open to me on a conditions appeal made under s73 of the Act. Nevertheless, had I agreed with the appellant I still would not have allowed the appeal as there was no evidence that a permanent planning permission was acceptable at this location. It may be that by 2017 the external situation and the appellant's circumstances might have changed sufficiently to suggest that it would be reasonable to revisit the previous Inspector's conclusions, but that is not the situation at the present time.'*

Whilst the site's unsustainable location weighs against granting permission, the limited harm to the character and appearance of the countryside and the weight attached to the significant unmet need for Gypsy/Traveller pitches in the district in both the immediate and longer term, the site's immediate contribution to this unmet need, the lack of a five year supply of Gypsy/Traveller sites, the interference with the residents' human rights due to the lack of alternative sites and of pitch provision in the district and the Council's lack of sufficient progress with identifying suitable sites, along with the significant weight attached to the residents' personal circumstances, all weigh in favour of granting a permanent permission. These matters are considered to form evidence and a material change in circumstances since determination of the 2016 application and the other previous applications that justify a permanent permission now being acceptable in this location. A permanent permission is considered appropriate in this case rather than a further temporary permission, given the lack of progress made by the Council in identifying suitable sites for Gypsies and Travellers, the significant unmet need for Gypsy/Traveller pitches in the district in both the immediate and longer term, which includes a need for pitches for the site occupiers, the site's immediate contribution to this unmet need, the lack of alternative sites and the site occupiers' personal circumstances. Given the site's

unsustainability it is also considered that a personal condition to the site occupiers and their dependents could be imposed.

Taking into account all these considerations, it is concluded that the identified harm would be significantly outweighed by the other considerations that weigh in favour of the application. It is therefore considered that the application should be approved.

FIRST RECOMMENDATION - PERMIT, subject to conditions and the signing of a Section 106 Agreement

SECOND RECOMMENDATION - If Members resolve to permit the application, then officers advise that the Council should advise the Planning Inspectorate that it no longer wishes to defend the appeal relating to this application site that is to be redetermined (following the quashing by the Court of Appeal of the 2018 appeal decision relating to the refusal of planning permission 16/00305/VCU)